



Recent Appellate Court Decision Explains How Arbitration Agreements May Mitigate The Impact Of Class Actions On Employers

Darin Williams

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Valid arbitration agreements may prevent class notices from being sent to employees that would otherwise be putative class members in collective action lawsuits according to the Seventh Circuit Court of Appeals in *Bigger v. Facebook, Inc.*

Former Facebook employee Susie Bigger (Bigger) filed a collective action lawsuit against the company alleging that she was misclassified as ineligible for overtime pay under the Fair Labor Standards Act (FLSA). A “collective action,” similar to a class action, permits a plaintiff to represent themselves and others “similarly situated” in the prosecution of a lawsuit.

Courts overseeing collective actions or class actions have discretion to send notice of the lawsuit to potential plaintiffs—those “similarly situated”—in the class. Here, Bigger proposed providing notice to a group of Facebook employees to inform them of her lawsuit and their potential participation in the lawsuit, and the district court authorized the notice.

Facebook appealed the decision, arguing that the district court’s authorization of notice was improper because many of the proposed notice recipients had entered arbitration agreements that precluded them from joining the action.

Attorneys

Darin M. Williams

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In addressing “this issue of first impression,” the Seventh Circuit set forth “specific steps” that a trial court must take when an employer in a collective or class action opposes issuance of a notice by asserting that the proposed recipients of the notice have entered into mutual arbitration agreements.

Specifically, if the plaintiffs challenge the employer’s allegation of valid arbitration agreements that preclude notice, the trial court must hear evidence on the agreements’ existence and validity. Notably, the court *may not authorize* notice of the class or collective action to any employee who has been shown to have a valid arbitration agreement with the employer, if that arbitration agreement prohibits the employee from participating in the action.

In sum, valid arbitration agreements may provide employers with a shield against employees receiving notice of a collective or class action lawsuit against the employer. This in turn provides the benefit of reducing the potential class size—and corresponding potential damages and settlement value—at an early stage of litigation.

Of course, arbitration agreements in Illinois must be carefully drafted to comply with the new Illinois Workplace Transparency Act in order to be valid and enforceable. Companies should consult with their counsel for additional information and advice on Illinois arbitration agreements.