

Supreme Court Rules Class Action Waivers Enforceable Ending Uncertainty for Employers

Labor & Employment Law Update

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The U.S. Supreme Court ruled this morning that employers can enforce class action waivers included in employment-related arbitration agreements. An arbitration agreement is a contract through which an employee and an employer agree in advance to resolve any disputes that may arise through binding arbitration rather than in court. The issue before the Supreme Court was whether an employer could enforce an arbitration agreement provision requiring each employee to arbitrate his or her disputes individually rather than collectively or as part of a class action. The Court ruled that so called “class action waivers” are enforceable.

For several years the general counsel for the National Labor Relations Board (NLRB) has argued that class action waivers violate Section 7 of the National Labor Relations Act which protects employees’ right to engage in “concerted activity.” The Federal Court of Appeals for the Fifth Circuit rejected this argument, but the Seventh and Ninth Circuits agreed with the NLRB prompting the Supreme Court to look at the issue.

The Supreme Court sided with the Fifth Circuit ruling that employees and employers can agree that future disputes arising between them will be resolved only through binding one-on-one arbitration. The decision provides welcome clarity to employers and their counsel and unequivocally returns a useful tool to the employers’ risk-management toolbox.

Still, the larger question of whether an arbitration agreement is right for *your* particular business remains. The fact that you *can* require employees to sign arbitration agreements does not always mean that you should. Employers who are considering asking their employees to sign arbitration agreements should seek the advice of experienced legal counsel and carefully evaluate the pros and cons of submitting various types of employment-related disputes to binding arbitration.

Arbitration agreements – like all contracts – can be challenged on other grounds. If an employer decides, after careful consideration, that an arbitration agreement best fits its needs, care must be taken in drafting and implementing the agreement to guard against allegations that the agreement is unfair or unconscionable, or that the employee's acceptance of the agreement was the result of fraud or duress.

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