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# SCOTUS ENFORCES ARBITRATION AGREEMENTS: CLASS AND COLLECTIVE ACTION WAIVERS

In a 5 to 4 opinion split down ideological lines, the Supreme Court ruled that class and collective action waivers contained in employment arbitration agreements *do not* violate the National Labor Relations Act ("NLRA") and must be enforced. This is music to the ears of all employers, especially those that have been the target of a class or collective action. In order to take advantage of this ruling, employers should consider implementing arbitration agreements as a condition of employment and/or revising arbitration agreements to ensure enforceability.

**BACKGROUND**

The Court granted certiorari to resolve one common issue in three separate cases:[1] Should employees and employers be allowed to agree that any disputes between them will be resolved through one-on-one arbitration? Or, should employees always be permitted to bring their claims in class or collective actions, no matter what they agreed with their employers?

For background: (1) Ernst & Young LLP was fighting allegations that it misclassified thousands of employees to make them ineligible for overtime pay; (2) Epic Systems Corp., a health care software company, was defending allegations that the company misclassified technical writers so that they wouldn't be eligible for overtime pay; (3) a Murphy USA unit was fighting allegations that it underpaid four employees at its gas station in Alabama.

In each of the three cases at bar, the employer and employee entered into a contract providing for individualized arbitration proceedings to resolve employment disputes between the parties. Each employee nonetheless sought to litigate the Fair Labor Standards Act ("FLSA") and related state law claims through class or collective actions in federal court.

The employees in those cases argued—and the NLRB previously held—that employers violate the NLRA when they require employees, as a condition of employment, to agree to resolve work-related disputes pursuant to an arbitration provision containing a class or collective action waiver. Because of the alleged NLRA violation, the employees said they should be allowed to proceed as class/collective groups in federal court to enforce their rights under the FLSA.

The court disagreed with the employees. The court reasoned that the Federal Arbitration Act requires courts to enforce individual agreements unless those agreements violates some federal law, and the arbitration agreements at issue *did not* violate the NLRA (as the employees had argued). The court stated that Section 7 of the NLRA is focused on employees' rights to unionize and bargain collectively, but it does not extend to protecting an employee's right to participate in a class or collective action.

**PRACTICAL TAKEAWAY**

Wage and hour class and collective actions have been on the rise in recent years. The damages at stake in wage and hour class and collective actions can be significant due to the number of employees involved, assumed or permissible statutory damages and attorney fees. With the court's ruling, employers should be able to limit such exposure by preparing well-crafted arbitration agreements requiring *individualized* proceedings.

Hall Render has defended a number of wage and hour class and collective actions for health care clients and has also counseled employers on the enforceability of arbitration agreements in the health care industry. Contact your regular Hall Render attorney for more information.

[1] *Epic Systems Corp. v. Lewis*, No. 16-285; *Ernst & Young LLP et al. v. Morris et al.*, No. 16-300; *National Labor Relations Board v. Murphy Oil USA, Inc., et al.*, No. 16-307 (May 21, 2018).