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Time To Rethink Mandatory Arbitration Agreements? U.S. Supreme Court Rules Class Action Waivers Are Legal



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The U.S. Supreme Court has delivered a major victory for employers across America – ruling that mandatory arbitration agreements that contain a provision prohibiting any form of class or collective litigation are lawful. The issue was ripe for consideration at the Supreme Court because there was a split among the Circuit Courts of Appeal as to whether such provisions were enforceable. Thus, employers in some states could have the class action waiver, while employers in other states could not.

The decision comes as a result of three consolidated cases (*Epic Systems Corp. v. Lewis*, *NLRB v. Murphy Oil USA Inc.* and *Ernst & Young LLP v. Morris*), each of which involved employees who had signed mandatory arbitration agreements as a condition of their employment. Under those agreements, the employees waived their right to file or join a class-action suit against their employers.

The facts of the three cases were similar: multiple employees attempted to join together to sue their employers as a class for violations of the Fair Labor Standards Act and other local wage laws. The employers sought to dismiss the class claims pursuant to a provision of the mandatory arbitration agreements, which prohibited any form of collective or class action (and instead required the employees to bring individual claims before an arbitrator). The employers argued the Federal Arbitration Act (FAA) allowed employers the right to have mandatory arbitration agreements which banned such collective actions.

The employees argued that the right to collective action is guaranteed by another Federal law, the National Labor Relations Act (NLRA), which protects the right of workers to engage in “concerted activities for the purpose of collective bargaining or other mutual aid or protection.” They also contended that the amounts sought in damages were dwarfed by the legal fees they would have to incur if required to bring their cases individually under the arbitration agreements they had signed.

Justice Gorsuch, writing for a 5-4 majority, held that the FAA trumps the NLRA and that employees who sign mandatory arbitration agreements can be required to address their employment dispute only on an individual basis. Under the majority’s view, class actions are not included among the types of “concerted activities” contemplated under the NLRA, like union organizing.

If you are an employer already using mandatory arbitration agreements, now is the time to review whether those agreements prohibit class litigation. If you are an employer not currently using such agreements, now is certainly the time to evaluate (or re-evaluate) whether you should be.

The HR attorneys at Gould & Ratner can assist your organization with this review and/or evaluation process. Please do not hesitate to contact us if you would like to discuss this important topic.