



U.S. SUPREME COURT UPHOLDS CLASS-ACTION WAIVERS IN EMPLOYMENT ARBITRATION AGREEMENTS

May 22, 2018 | Alert

Employers' use of arbitration agreements has become more prevalent in recent years, and the agreements often require that employees arbitrate any disputes in individualized proceedings to avoid class action or collective action lawsuits. Arbitration proceedings are usually less costly and present less risk for employers than traditional court proceedings. In addition, the ability of the employer to avoid a class or collective action generally reduces the expense of defending the suit and helps the employer avoid the risk of large payouts for class awards.

The United States Supreme Court recently upheld employers' ability to require individualized arbitration proceedings to resolve disputes with their employees. In *Epic Systems Corp. v. Lewis*, employees challenged the use of class action waivers, arguing that they violated the National Labor Relations Act, which guarantees workers the right to join forces in "mutual aid and protection." However, the majority rejected that argument, finding that class action waivers in employment arbitration agreements may be enforced based upon federal law favoring arbitration and court precedent.

The authority underlying the Supreme Court's decision in *Epic* is the Federal Arbitration Act (the FAA), which establishes the validity and enforceability of arbitration agreements, compels judicial enforcement of such agreements and is generally found to preempt state laws that limit or bar arbitration agreements. The FAA sets out a strong federal policy in favor of arbitration, and the majority left it to policymakers to legislate any alteration to existing law.

The ruling is undisputedly a major win for employers, potentially affecting an estimated twenty-five million employment contracts and decreasing the likelihood of often costly class action litigation.

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Arbitration agreements can be accomplished in a variety of ways in the employment context, including an employee contract, standard employment forms and documents, a job application or an employee handbook or procedure manual. It is critical, however, that employers correctly phrase the language in the arbitration provision and include a class action waiver if they want to require individual arbitration proceedings. Employers must also ensure that any agreement is not otherwise invalid under general contract principles, such as duress or unconscionability. In addition, employers must take steps to enforce the arbitration agreement when faced with a lawsuit brought by an employee by promptly moving to compel arbitration.

The attorneys in the Labor & Employment practice group at Burke, Warren, MacKay & Serritella, P.C. have extensive experience counseling and representing clients in a variety of matters, and we are available to assist in reviewing your current employment agreements or in drafting agreements to take advantage of beneficial arbitration provisions. For more information, please contact Danielle Gould at 312/840-7070 or dgould@burkelaw.com or Alex Marks at 312/840-7022 or amarks@burkelaw.com.