U.S. Supreme Court Approves Employers' Use of Class and Collective Action Waivers

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Resolving an issue that has been the subject of considerable litigation over the past few years, on Monday the United States Supreme Court held that arbitration agreements providing for individualized proceedings are enforceable and do not violate either the Federal Arbitration Act ("FAA") or the National Labor Relations Act ("NLRA").

In *Epic Systems Corp. v. Lewis,* the Court considered three cases in which employers and employees entered into agreements requiring resolution of disputes through individualized arbitration and waiving the employees' ability to pursue class or collective litigation through the courts. In each of the underlying cases, the employees pursued class and collective action lawsuits under the Fair Labor Standards Act ("FLSA"), despite the agreements requiring individualized arbitration. The employers challenged the employees' lawsuits, asserting that, through the agreements, the employees had waived their right to pursue class and collective actions and instead, that the matters must be resolved through individualized arbitration.

The employees argued that the class action waivers were unenforceable under the savings clause of the FAA and that they also violated Section 7 of the NLRA because they limited employees' ability to engage in protected concerted activity by barring participation in class and collective action lawsuits. The employers argued that neither the FAA nor the NLRA preclude employers and employees from entering into these agreements.

The Court majority sided with the employers. As the Court explained, the FAA expressly requires courts to enforce the terms of an arbitration agreement as written. While the FAA's savings clause permits courts to refuse to enforce arbitration agreements based on general contract formation defenses such as fraud, duress, or unconscionability, the Court found that such grounds were not present in these three cases. Further, the Court rejected the

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employees' arguments that the NLRA overrides the FAA. The employees asserted that participation in class and collective actions are concerted activities protected by Section 7 of the NLRA. The Court examined the congressional intent of the NLRA and found that there was no indication that Congress intended to confer a right to class or collective actions within Section 7 of the NLRA.

In sum, the Court acknowledged that while the policy underlying the permissibility of class and collective action waivers in this context may be debatable, the law on the subject is clear: agreements between employers and employees waiving class and collective action are lawful under both the FAA and the NLRA.

In a press release issued on Monday afternoon, the National Labor Relations Board ("Board") noted that, in addition to 55 currently-pending cases involving this issue at the Board level, there are also many other similar cases pending before the federal courts of appeals. The press release notes that, "[t]he Board is committed to expeditiously resolving these cases in accordance with the Supreme Court's decision."

The decision is a significant victory for employers who desire to contract with employees for individual arbitration and the waiver of class and collective actions. It is important to recognize, however, that this decision does not limit the ability of the Department of Labor to conduct FLSA investigations on behalf of a group of employees. Should you have any questions regarding this decision, please contact Jeff Lindemann, Anne Duprey, or any other attorney in FBT Gibbons' Labor & Employment Practice Group.

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