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SUPREME COURT OK'S CLASS WAIVERS IN EMPLOYMENT ARBITRATION AGREEMENTS

In a big win for employers, the U.S. Supreme Court has ruled that the Federal Arbitration Act (FAA) requires courts to enforce mandatory arbitration agreements that contain class waiver provisions. This new decision in a trio of cases -- *Epic Systems Corp.*, *Murphy Oil USA Inc.*, and *Ernst & Young LLP* -- rejects the argument that class waivers violate Section 7 of the National Labor Relations Act (NLRA) because they interfere with the enforcement of employee rights under the Fair Labor Standards Act and related state wage and hour laws.

The majority opinion in this 5-4 decision emphasized that the FAA commands courts to respect and enforce arbitration agreements according to their terms, including the arbitration procedures the parties choose. The majority went on to reject the plaintiff-employees' fundamental argument that Section 7 of the NLRA conflicts with and "overrides" the FAA's command that courts must enforce arbitration agreements that contain mandatory class waivers. The plaintiffs' argument hinged on the catchall provision in Section 7 that gives employees the right "to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." The Court found, however, that while the NLRA clearly regulates collective bargaining and similar concerted activities related to collective bargaining, there is no suggestion in the NLRA that Congress intended it to also supply rules governing adjudication of class or collective actions in court or in an arbitration proceeding. As the majority put it, the plaintiffs' claim that Section 7 should have a broad meaning that would dictate how courts must resolve wage and hour actions would be to hold that Congress "tucked into the mousehole of Section 7's catchall term an elephant that tramples the work done" by other statutes.

The majority also addressed the plaintiffs' argument that the Court should defer to the NLRB's own interpretation that the NLRA displaces the FAA on this issue, as stated in the agency's 2012 *D.R. Horton* ruling. According to the Court, not only was the 2012 opinion a change in position by the NLRB, but the NLRB is not charged with the interpretation of the FAA. Rather, it is the judicial system's duty to reconcile the allegedly inconsistent provisions of the FAA and the NLRA.

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For employers, the message embodied in *Epic Systems Corp.* is as welcome as it is clear: Under the FAA, courts must enforce arbitration agreements that contain class waivers and obligate employees to resolve employment-related claims through individual arbitration proceedings. In California, however, it is important to note that this good news is tempered somewhat by the fact that many wage and hour actions include claims based the Private Attorneys General Act (PAGA). Under the California Supreme Court's still-binding decision in *Iskanian v. CLS Transp. Los Angeles, LLC*, a PAGA claim is not subject to an employer-employee arbitration agreement because in reality it is a claim brought on behalf of the state.

Please contact Miller Law Group if you have questions about drafting an arbitration agreement, or modifying an existing agreement, to take advantage of the U.S. Supreme Court's new decision.

Miller Law Group exclusively represents business in all aspects of California employment law, specializing in litigation, wage and hour class actions, trials, appeals, traditional labor, compliance advice and counseling. If you have questions about these developments or other workplace obligations, please contact us at (415) 464-4300.