Supreme Court Confirms There is No Right to Class Actions under the NLRA: Gives Nod to Employer Mandatory Arbitration Clauses

Legal Alert

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In May, the United States Supreme Court upheld a decision finding that there is not a right to class actions under the National Labor Relations Act (NLRA), effectively permitting employers to make broader use of mandatory arbitration for employment claims. Specifically, in *Epic Systems Corp. v. Lewis*, the Court confirmed that arbitration agreements must be enforced according to their terms, including individualized proceedings, and neither the Federal Arbitration Act's (FAA) nor the NLRA requires a different conclusion. Therefore, arbitration provisions in employment contracts that require employees to waive their right to class or collective actions are effective and enforceable. This employer-friendly decision came in a divided 5-4 ruling by the high Court.

What did the Supreme Court decide?

The employees in this case asked the Court to infer that class and collective actions are "concerted activities" protected by Section 7 of the NLRA, which guarantees unionized and non-unionized employees "the right of self-organization, to form, join or assist labor organizations, to bargain collectively . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." The Court, however, explained that Section 7 focuses on the right to organize unions and bargain collectively, but it does not mention class or collective action procedures or even hint at a wish to displace the FAA.

This decision is significant because it reinforces employers' use of class-action waivers in arbitration agreements, and confirms employees can give up their rights to sue in court through these arbitration provisions. The Supreme Court held that collective bargaining does not supersede federal law, and thus class-action waivers in employment contracts are legitimate.

What does this mean for businesses?

The Court's ruling opens the door to more widespread use of arbitration clauses. Many employers prefer arbitration to court because they find the costs and disruption is more manageable, the added administrative and legal costs of class action and collective employers are mitigated, they can present their cases on the merits free from concerns about perceived jury sympathies siding with employees, proprietary information can be exchanged more freely without the need for additional steps required in matters of public record, the decisions are not precedential, and the arbitration forum offers confidentiality.

While there are both costs and benefits to arbitration that need to be weighed carefully, employers should, at least, be considering broad arbitration clauses for their employees and even more so in light of this ruling.

If you have questions about the information contained in this alert, please contact Adam Gersh or any member of Flaster Greenberg's Labor and Employment Practice Group.

ATTORNEYS MENTIONED

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