

U.S. Supreme Court Affirms (Again) the Validity of Class Action Waivers In Employment Arbitration Agreements

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In a widely anticipated decision, the United States Supreme Court issued a 5-4 decision today in *Epic Systems Corp. v. Lewis*; *Ernst & Young LLP v. Morris*; and *National Labor Relations Board v. Murphy Oil USA, Inc.*, upholding the validity of class action waivers in employment arbitration agreements. Today's decision once again reiterates the Supreme Court's broad interpretation of the Federal Arbitration Act ("FAA") and preserves the ability of U.S. employers to avoid class and collective litigation in favor of private resolution of employment disputes through individual arbitration. The Court's opinion can be found [here](#).

In *Lewis*, *Morris*, and *Murphy Oil*, the plaintiff employees had argued that class action waivers in private employment arbitration agreements ran afoul of employees' Section 7 rights to concerted activity under the National Labor Relations Act ("NLRA"). The National Labor Relations Board ("NLRB"), along with the Seventh and Ninth Circuits, had adopted those arguments and held that class waivers were invalid under the NLRA. The Fifth Circuit, holding that the NLRA lacked any contrary congressional command to the FAA's mandate that arbitration agreements should be enforced according to their terms, held that class action waivers must be enforced under the FAA.

The Supreme Court majority emphatically affirmed the validity of class action waivers, describing the current cases as yet another effort to "conjure conflicts" between the FAA and other statutory schemes, which the Supreme Court had consistently rejected. The Court rejected the claimants' arguments that Congress had expressed any disapproval of arbitration or conferred a right to class or collective litigation in the NLRA. Rather, the Court followed its long line of precedent broadly holding that the FAA requires courts to give effect to the terms of private arbitration agreements, including class action waivers.

Today's decision is a major win for U.S. employers and may spark a renewed interest in the employment arbitration option. Although many employers have increasingly expressed skepticism about employment arbitration because of the unwillingness of many arbitrators to limit discovery or grant motions for summary judgment in employment

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arbitrations, the Court's confirmation that employers can avoid the risk of class or collective litigation through a class waiver in an arbitration agreement may encourage U.S. employers to revisit the arbitration option.

Dorsey has deep experience and expertise drafting employment arbitration agreements, enforcing arbitration agreements in court, and arbitrating employment claims. Please contact Melissa Raphan, Ryan Mick, or Jillian Kornblatt to discuss arbitration options.