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Supreme Court Vindicates Individual Arbitration Agreements For Employment Disputes

On May 21, 2018 the United States Supreme Court upheld the right of employers and employees to execute agreements to arbitrate employment disputes on an individual basis. The decision was handed down after the Court granted a consolidated review of three separate cases involving employee challenges to such arbitration agreements.

In its holding, the Court rejected the employees’ contention that there was a conflict between Section 7 of the National Labor Relations Act (NLRA) and the Federal Arbitration Act (FAA). Section 7 grants employees the right to engage in concerted activity for the purpose of their mutual benefit (for example, to form unions, collectively bargain, or to just generally discuss workplace issues together). The FAA, on the other hand, requires that courts honor the terms of arbitration agreements as they are written.

Essentially, the employees argued that to give effect to the FAA in the case of agreements to arbitrate individually would violate the NLRA. In the employees’ view, the ability to bring a class action, or to arbitrate as a group, is precisely the type of concerted activity for mutual benefit that is protected by § 7. The employees claimed that the savings clause of the FAA, which exempts courts from honoring arbitration agreements that would violate the law, renders individual arbitration agreements unenforceable as violative of the NLRA.

In a 5-4 majority opinion, Justice Gorsuch laid this argument to waste, and resolved a brewing split in opinion among various federal courts of appeals and the National Labor Relations Board. The opinion evokes the Court’s duty to construe seemingly contradictory acts of Congress as harmonious, rather than in conflict. In doing so, Justice Gorsuch makes clear that these statutes have separate functions, and are therefore not in conflict. One (the NLRA) confers a substantive right, and the other (the FAA) deals
with the general procedure by which disputes are to be settled. The NLRA might grant employees certain substantive rights to engage in concerted activity within the work place, “but it says nothing about how judges and arbitrators must try legal disputes that leave the workplace and enter the courtroom or arbitral forum.” Rather, that is partially the function of the FAA, which clearly requires courts to enforce agreements to arbitrate.

This decision is certainly a benefit for employers as it simplifies the dispute resolution process, but also benefits employees, as it represents a step in the direction of greater protection of the freedom of parties to contract as they see fit. Arbitration, rather than a court adjudication, often represents a faster, less costly, and more efficient method of resolving an employment dispute. This decision clarifies that employment disputes may be required to be resolved only by arbitration, and that some arbitration agreements may only allow individual claims to be heard (not a class). This decision may incent employers to revisit arbitration agreements in their work places.

The counter balance to this trend may be legislative in that states may step in and prevent mandatory arbitration of certain employment claims. Likewise, at the federal level, there is a bill pending in the U.S. Senate and the House (“Ending Forced Arbitration of Sexual Harassment Act of 2017”) that would prohibit arbitration of “sexual abuse” or related sex harassment claims under the federal Title VII law. That is what happened after the Supreme Court’s Ledbetter decision in 2007 when Congress passed the Lilly Ledbetter Fair Pay Act of 2009. By some reports, approximately 25 million workers in the U.S. have agreed to arbitration of any employment dispute.

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