

NEWS ALERT**LABOR & EMPLOYMENT****U.S. Supreme Court Approves Use of Class Action Waivers in Arbitration Agreements**

By Salvatore G. Gangemi and Madiha M. Malik | May 23, 2018

On Monday, in a 5-4 majority decision in [Epic Systems Corp. v. Lewis](#), No. 16-285, the U.S. Supreme Court found class action waivers in arbitration agreements to be valid and enforceable, settling a long-standing split among federal courts of appeals.

By way of background, the Supreme Court years ago allowed employers to use arbitration clauses as a way to resolve employment disputes outside of court by requiring employees to agree to arbitration as a condition of employment. In recent years, employers have included class action waivers in such arbitration agreements. These waivers prevent employees from joining a class or collective action lawsuit/arbitration against their employer.

Prior to the Supreme Court's decision, federal courts of appeals were divided on the legality of such class action waivers. Though the Federal Arbitration Act (FAA) deems arbitration agreements enforceable as written, in 2013 the National Labor Relations Board (NLRB) ruled that class action waivers in employment arbitration agreements violated the National Labor Relations Act (NLRA). The NLRA prohibits infringement of employees' rights to engage in "concerted activity" for a common cause. Until relatively recently, the NLRA was not considered to affect processes like class actions, arbitration or litigation.

As [previously discussed](#), over the years the Department of Justice and courts of appeal have grappled with the validity of class action waivers in arbitration agreements. A majority of courts, including the Second Circuit Court of Appeals, have upheld class action waivers, determining that they did not violate the NLRA.

For employers in New York, Connecticut, and Vermont, the Supreme Court's decision affirms the existing Second Circuit precedent. For employers with operations in jurisdictions across the country, the Supreme Court has provided a measure of clarity, ensuring that class action waivers are legal and can be enforced.

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Moving forward, the number of arbitration agreements including class action waivers will increase substantially and will have a profound effect on wage and hour claims, which are typically asserted through class and/or collective action lawsuits. Employers should consider including class action waivers in their arbitration agreements. Absent legislation to the contrary, class action waivers are here to stay and employers should consult with their counsel to implement arbitration agreements with class action waivers.

If you have any questions regarding the information included in this bulletin, please contact:

Salvatore G. Gangemi at 203.653.5436 or sgangemi@murthalaw.com or

Madiha M. Malik at 860.240.6164 or mmalik@murthalaw.com

Patricia E. Reilly, Chair
203.772.7733
preilly@murthalaw.com

Melanie N. Aska
617.457.4131
maska@murthalaw.com

Susan J. Baronoff
617.457.4031
sbaronoff@murthalaw.com

Michael J. Bonsignore
860.240.6089
mbonsignore@murthalaw.com

Dana R. Bucin
860.240.6081
dbucin@murthalaw.com

Matthew K. Curtin
860.240.6065
mcurtin@murthalaw.com

Melissa A. Federico
860.240.6042
mfederico@murthalaw.com

Salvatore G. Gangemi
203.653.5436
sgangemi@murthalaw.com

Sarah Gruber
860.240.6060
sgruber@murthalaw.com

Madiha M. Malik
860.240.6164
mmalik@murthalaw.com

Lissa J. Paris
860.240.6032
lparis@murthalaw.com

Mindy S. Tompkins
860.240.6063
mtompkins@murthalaw.com

Barry J. Waters
203.772.7719
bwaters@murthalaw.com

Kristen L. Zaehring
203.653.5406
kzaehring@murthalaw.com

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