BARRAN LIEBMAN LLP
ATTORNEYS
Employment | Labor | Benefits | Higher Education
www.barran.com | 503.228.0500

Electronic Alert

Volume 21, Issue 10 May 21, 2018

Supreme Court Rules Employment Agreements Barring Class Actions Enforceable

By Heather Fossity

On May 21, 2018, the Supreme Court of the United States ruled employment arbitration agreements that prohibit employees from bringing class actions against their employers are enforceable. The 5-4 decision will have a significant impact on employers nationwide.

The case resolves six years of litigation about whether the National Labor Relations Act (NLRA) protection of concerted activity trumps the Federal Arbitration Act (FAA). Before the Supreme Court were three separate disputes involving employment agreements requiring arbitration, and these agreements prohibited class action grievances. In one case, a junior accountant at Ernst & Young entered an arbitration agreement upon employment and later sued Ernst & Young in federal court alleging wage violations under the Fair Labor Standards Act and California law. The accountant sought to bring the lawsuit on behalf of a nation-wide class, and Ernst & Young moved to compel arbitration pursuant to the employment agreement.

The Ernst & Young case, combined for review with two others, reached the Supreme Court to determine the enforceability of employment agreements that require arbitration and prevent class actions. The cases are largely about a potential conflict between the FAA, which provides that individual arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," and the NLRA, which gives employees the right to self-organization, form, join, or assist labor organizations, collective bargaining, and to "engage in other concerted activities." The decision overturns a rule first announced by the National Labor Relations Board in 2012 which held a mandatory arbitration agreement that prohibits class action grievance is overly broad and unlawful under the NLRA's protection of concerted activity.

The majority opinion, delivered by Justice Gorsuch, held arbitration agreements must be enforced as written, in line with the FAA's strong federal policy favoring arbitration. Unionized employers should note that the Supreme Court explained that today's decision does not prohibit unions from bargaining over employment arbitration agreements.

For more information or specific questions, contact Heather Fossity at hfossity@barran.com or (503) 276-2151.