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CLIENT ALERT

U.S. Supreme Court Reaffirms Enforceability of Class Arbitration Waivers

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On May 21, 2018, the United States Supreme Court issued its long-awaited opinion in *Epic Systems Corp. v. Lewis,* confirming the enforceability of class and collective action arbitration waivers. In doing so, the Court reconciled supposedly conflicting language from the National Labor Relations Act (NLRA) and the Federal Arbitration Act (FAA). By a vote of five to four, the Court held that the NLRA does not call for an exception to the general rule that arbitration agreements providing for individual proceedings must be enforced by their terms.

In *Epic Systems Corp. v. Lewis*, the Court reviewed three separate lawsuits in which employers sought to enforce individual arbitration pursuant to written agreements with their employees. The employees tried to pursue wage and hour claims through class or collective actions filed in federal court. The employees argued that Section 7 of the NLRA, which broadly protects workers' rights to organize and bargain collectively, trumped the FAA and made it unlawful for their employers to compel them to arbitrate their disputes exclusively on an individual basis.

Justice Gorsuch, penning the majority opinion, rejected the employees' arguments. The majority reasoned that the general language of Section 7 of the NLRA, protecting the rights of employees to engage in "other concerted activities for the purpose of. . . other mutual aid or protection," does not "even hint at a wish to displace the Arbitration Act—let alone accomplish that much clearly and manifestly, as our precedents demand." In the absence of clear evidence that Congress intended for the NLRA to override the FAA, the majority held courts must apply the FAA. That, in turn, requires courts to "enforce arbitration agreements according to their terms—including terms providing for individualized proceedings."

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