Legal Update

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Recent Supreme Court Decisions Limit Employee Class Actions

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In May 2018, we alerted clients to a huge win for employers who utilize individual arbitration agreements with their employees when the United States Supreme Court issued a decision in *Epic Systems Corp. v. Lewis*. Through that decision, the Supreme Court upheld the use of class action waivers in individual employment agreements. Employers were then free to place a provision in an employment and/or severance agreement waiving the right of the employee to engage in any class-action against the employer and requiring the employee instead to use individual arbitration to resolve any claims against the employer.

This week, the Supreme Court yet again gave employers another win through its decision, in *Lamps Plus v. Varela,* when it held that even an ambiguous arbitration clause in the employee's employment agreement restricted an employee to individual arbitration to settle any claims with the employer.

In *Lamps Plus*, a hacker had obtained tax information of approximately 1,300 employees and used information of one employee, Frank Varela, to file a fraudulent tax return. Mr. Varela then filed a class action in federal court on behalf of all of the employees who had information compromised. However, his employment agreement included an arbitration provision which read as follows, "arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings relating to my employment." *Lamps Plus* moved to dismiss the case based on the mandatory arbitration provision. The district court agreed Mr. Varela could only pursue his claim through arbitration, but determined Mr. Varela could arbitrate on a class-wide basis on behalf of all impacted employees. On appeal, the Ninth Circuit Court of Appeals found the arbitration provision ambiguous as to whether class arbitration was permitted, interpreted the language against the drafter (the employer in this case) consistent with state common law, and determined the most reasonable interpretation of the arbitration provision in the employment agreement is it meant workers could pursue their claims as a class in arbitration proceedings. However, the Unites States Supreme Court, in a 5-4 decision, disagreed.

In the Supreme Court's majority decision issued this week and written by Chief Justice Roberts, the Supreme Court explained the Federal Arbitration Act (FAA) preempts state common law and requires courts to enforce covered arbitration agreements according to their terms. He also cited prior Supreme Court precedent in which the Court held that a court may not compel arbitration on a class-wide basis when an agreement is "silent" on the availability of such arbitration, referencing the need for parties' consent for arbitration. Chief Justice Roberts explained how class arbitration fundamentally changes the nature of the "traditional individualized arbitration" envisioned by the FAA, as was explained in the *Epic Systems* case, and "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual

basis for concluding that the party agreed to do so." Considering the FAA, the need for consent of parties for arbitration, and prior Supreme Court precedent, the Supreme Court ruled that an ambiguous agreement cannot provide the necessary "contractual basis" for compelling class arbitration. As such, a court could not infer consent for class arbitration from the arbitration provision at issue.

As a result of these decisions, employers not only can continue to use class action waivers in individual employment agreements, but they can rest assured that employees cannot band together in class arbitration proceedings unless the employment agreements specifically allow it. These decisions are good news for employers and provide incentive for certain employers to have employees sign individual employment agreements with well-crafted arbitration provisions.

Should you need assistance in drafting individual employment agreements which include class action waivers and arbitration provisions preventing class action arbitrations, or should you have any questions regarding these decisions, please contact Claire E. Hartley at chartley@buelowvetter.com, Joel S. Aziere at jaziere@buelowvetter.com or your Buelow Vetter Attorney. We can also provide guidance on whether having such arbitration provisions in employment agreements will be beneficial for your business.

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