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Supreme Court Upholds Agreements To Individually Arbitrate Employment-Related Disputes

***Epic Systems Corp. v. Lewis*, No. 16-285;**
***Ernst & Young LLP v. Morris*, No. 16-300;**
***National Labor Relations Board v. Murphy Oil USA*, No. 16-307**

Decided May 21, 2018

Today, the Supreme Court held 5-4 that an employee's agreement to arbitrate employment-related disputes with his employer through individual arbitration is enforceable under the Federal Arbitration Act. The Court rejected the argument that enforcing the arbitration agreement's class action waiver would violate employees' right to engage in collective action under the National Labor Relations Act.

Background:

The Federal Arbitration Act (FAA) provides that agreements to arbitrate transactions involving interstate commerce "shall be valid, irrevocable, and enforceable," *except* "upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. In these consolidated cases, the employees agreed to arbitrate work-related disputes through individual arbitration, but later sued their employers in federal courts, arguing that the arbitration agreements were invalid because they violated employees' right to engage in "concerted activities" under the National Labor Relations Act (NLRA). 29 U.S.C. § 157.

Issue:

Whether an agreement that requires an employer and an employee to resolve work-related disputes through individual arbitration, and waive class proceedings, is enforceable under the FAA, notwithstanding the employee's NLRA right to engage in concerted activities.

"It is this Court's duty to interpret Congress's statutes as a harmonious whole rather than at war with one another. And abiding that duty here leads to an unmistakable conclusion."

Justice Gorsuch,
writing for the Court

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Court's Holding:

Yes. Arbitration agreements requiring individual arbitration of employment disputes are enforceable notwithstanding the NLRA collective-action right.

What It Means:

- The Supreme Court ruling confirms that courts will continue to enforce agreements between employers and employees to arbitrate their disputes on an individual basis, rather than in class action litigation.
- This case continues the Supreme Court's trend of enforcing the FAA's strong policy favoring arbitration. The Court held that under the FAA's saving clause, litigants only can challenge an arbitration agreement on grounds that would apply to "any" contract—not on grounds specific to arbitration.
- The Court's reasoning suggests that state laws restricting arbitration are not likely to withstand challenge under the FAA. Clients should consult a Gibson Dunn attorney regarding the nuances created by different jurisdictions.
- The Court determined that the NLRA's "concerted activities" provision was intended to protect organizing and collective bargaining in the workplace, not the treatment of class actions or class arbitration.
- Interestingly, the Solicitor General said the arbitration agreements are enforceable, but the National Labor Relations Board (NLRB) said they are *not* enforceable – and both argued their positions before the Supreme Court. For this reason (and others), the Court declined to afford *Chevron* deference to the NLRB's view.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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Gibson Dunn's Labor and Employment lawyers are available to assist in addressing any questions you may have regarding arbitration programs. Please feel free to contact the following practice leaders or the attorneys with whom you work:

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