

Employment Law Update

by Shannon Lawless

Recent Court Decisions Set Boundaries for Arbitration Clauses

Last week, the Fifth Circuit Court of Appeals held that an employer can require its employees to sign an arbitration agreement prohibiting them from pursuing claims in a collective or class action. The arbitration agreement, however, must include language clarifying that the employees have the right to bring unfair labor practices claims with the National Labor Relations Board.

Although the Fifth Circuit's decision means class action waivers will probably be enforced, many other provisions can invalidate an arbitration clause. For example, a September decision from the Washington State Supreme Court invalidated an arbitration clause as unduly harsh to employees because it (1) shortened the statute of limitations period for filing claims, (2) limited the amount of back pay damages an employee could receive, and (3) required the employer and employee to split the costs of the arbitration.

What does this mean for your company?

If you use arbitration provisions in employment agreements or other contracts, you should make sure they are carefully drafted to maximize the chance that they are enforceable. While you can probably require employees to waive their right to a class or collective action, you should include language explaining that employees can still file claims of unfair labor practices with the National Labor Relations Board. You should also avoid any provisions that could substantively limit an employee's rights, such as provisions that shorten the limitations period for filing a claim, limit the damages available, or require the employee to pay part of the arbitration costs.

If you would like more information or an attorney review of your arbitration agreements, please contact any member of the Employment Rights, Benefits & Labor Group at Ryan Swanson.

Shannon Lawless is an attorney in Ryan, Swanson & Cleveland, PLLC's Employment Rights, Benefits & Labor Group. Shannon can be reached at 206.654.2211 or lawless@ryanlaw.com.

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