

ANDERSON KILL EMPLOYMENT LAW INSIDER

ALERT

Supreme Court Upholds Employers' Mandatory Arbitration Agreements Barring Class Actions

By Bennett Pine & Wendy Chiapaikoe

On May 21, 2018, the Supreme Court handed down a pivotal decision in the arena of employment law, ending the uncertainty over the enforceability of mandatory arbitration agreements barring class actions. The Supreme Court ruled that an employee who enters into an arbitration agreement containing a class waiver as a condition of employment is precluded from pursuing class actions and must resolve disputes through arbitration. This raises new implications for employers.

The Supreme Court's Decision: Arbitration Agreements Control

In *Epic Systems Corp. v. Lewis*,¹ a divided Supreme Court enforced the use of arbitration agreements that waive class action lawsuits and mandate individualized arbitration proceedings under the Federal Arbitration Act (FAA). The case before the Court was a consolidation of three cases, all in which an employee sought to take part in a class action against his or her employer, despite having entered into agreements mandating individual arbitration and waiving class actions. While the facts were substantively similar, the outcomes among the lower courts differed, reflecting the conflict between the FAA's enforcement of arbitration agreements and a widely accepted reading of the National Labor Relations Act (NLRA) prohibiting restraints on class and collective actions.

Ultimately, the Court held that the FAA and NLRA operate in distinct spheres. Thus, arbitration agreements waiving class actions and mandating individual proceedings are valid and must be enforced by courts in accordance with the FAA. The result of the decision is to bind an employee to the terms of an agreed-upon arbitration agreement.

Green Light for Mandatory Arbitration Agreements

The Court's decision in *Epic Systems* is a significant victory for employers, providing a green light for employers to require arbitration agreements. Moving forward, employers should consider whether including mandatory arbitration agreements that waive class actions in future and present employment contracts is in the company's best interests. Existing arbitration

ANDERSON KILL
1251 Avenue of the Americas
New York, NY 10020
(212) 278-1000

ANDERSON KILL
1760 Market Street, Suite 600
Philadelphia, PA 19103
(267) 216-2700

ANDERSON KILL
1055 Washington Boulevard, Suite 510
Stamford, CT 06901
(203) 388-7950

ANDERSON KILL
1717 Pennsylvania Avenue, Suite 200
Washington, DC 20006
(202) 416-6500

ANDERSON KILL
One Gateway Center, Suite 1510
Newark, NJ 07102
(973) 642-5858

ANDERSON KILL
Wells Fargo Building
355 South Grand Avenue
Los Angeles, CA 90071
(213) 943-1444

www.andersonkill.com





who's who

Bennett Pine is a shareholder in Anderson Kill's New York and

Newark offices and is chair of the firm's employment & labor group. Mr. Pine has broad-based labor and employment law experience and regularly plays a hands-on role offering preventative maintenance advice and counseling to employers in the full range of legal issues affecting the workplace.

bpine@andersonkill.com
(212) 278-1288
(973) 642-5006



Wendy Chiapaikao is a summer law clerk in the firm's New York office. Ms. Chiapaikao, a second year law student at Fordham University School

of Law, has also interned at the Environmental Crimes Division of the Massachusetts Attorney General's Office and has worked at the Manhattan District Attorney's Office.

ANDERSON KILL NEWSLETTERS & ALERTS

TO SUBSCRIBE PLEASE VISIT:
[www.andersonkill.com/
PublicationSubscription.aspx](http://www.andersonkill.com/PublicationSubscription.aspx)

TO UNSUBSCRIBE PLEASE EMAIL:
unsubscribe@andersonkill.com

agreements without class waivers may be revised to include such terms. There are advantages and disadvantages, and employers should consider both when making this decision.

Pros of Including an Arbitration Agreement

Arbitration has several benefits over litigation. Compared to litigation, arbitration proceedings are more cost-efficient, less time-consuming, informal in procedure, can be conducted in privacy, and carry limited opportunities for appeal. Mandatory arbitration agreements tend to funnel out small claims and increase the likelihood of early settlement for actions that would otherwise be expensive to litigate. Agreements that waive class action and mandate individual arbitration further limit the scope of an employer's liability by precluding employees from aggregating claims that individually would not be worth litigating.

Cons of Including an Arbitration Agreement

On the flip side, arbitration eases the process and reduces the costs for employees to file claims against their employers. This can lead to a rise in the number of claims brought against, and an increase in expenses paid by, employers. Additionally, enforced arbitration agreements may negatively affect a company's public reputation. In the era of the #metoo movement, a company may be at risk of backlash for compelling employees to sign arbitration agreements that have potential to deter employees from pursuing claims such as employment discrimination and pay disparity. For example, in an incident predating the *Epic Systems* decision, a prominent Los Angeles law firm faced public outrage when leaked documents revealed that it forced its summer associates to agree to arbitration agreements for claims of sexual harassment. Shortly after the leak, the firm announced that it would revise its policy to exclude such binding agreements. This result may be less likely in light of the Court's decision.

Conclusion

With the approval of the country's highest court, employers may safely conclude that properly drafted arbitration agreements will be enforced. New and existing agreements should be carefully reviewed to ensure that they provide sufficient consideration to the affected employees, and are therefore valid and enforceable. For questions and information on how Anderson Kill P.C. can assist you, please contact Bennett Pine at Bpine@andersonkill.com. ▲

ENDNOTE

1 584 U.S. ___, No. 16-285 (2018).

This was prepared by Anderson Kill PC to provide information of interest to readers. Distribution of this publication does not establish an attorney-client relationship or provide legal advice. Prior results do not guarantee a similar outcome. Future developments may supersede this information. We invite you to contact the editor, Bennett Pine, at bpine@andersonkill.com or (212) 278-1288, with any questions.

