



U.S. Supreme Court Agrees to Decide Fate of Class-Action Waivers

January 18, 2017

As many employers may remember, on August 22, 2016, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit found that class-action waivers in mandatory employee arbitration agreements were unlawful, holding that a class-action waiver contained in an arbitration agreement signed as a condition of employment violated employees' rights under the National Labor Relations Act (NLRA). (*Morris v. Ernst & Young LLP* (9th Cir. August 22, 2016).) The *Morris* decision came on the heels of a May 2016 Seventh Circuit opinion, which ruled the same way. In contrast, both the Fifth and the Eighth Circuits have found in favor of employers, holding that such class-action waivers are lawful and do not violate the NLRA. (Note that the victorious employer in the Eighth Circuit case was represented by Lathrop Gage's Kansas City office.) This created a "split in the circuits," or a divide, amongst the federal courts interpreting the NLRA. Unfortunately, for California employers, the state resides squarely in the Ninth Circuit, and any federal cases brought here would be governed by the *Morris* decision.

Predictably, this made the *Morris* case, along with several related cases, ripe for decision by the U.S. Supreme Court to resolve this split in the circuits and determine the fate of class-action waivers once and for all. Consequently, on Friday, January 13, the Supreme Court indeed made the decision to hear these cases and determine whether or not the National Labor Relations Board is correct in its interpretation that arbitration agreements containing class-action waivers are illegal under federal labor laws.

Of course, we are also waiting for President-Elect Donald Trump to nominate a replacement for Justice Scalia's vacant position to the U.S. Supreme Court, and this action, too, will play a role in this decision-making process. In the meantime, class-action waivers continue to be considered lawful under the laws of some states, such as California.

If you have any questions about the new or continued use of arbitration agreements and class-action waivers for your workforce, please feel free to contact your Lathrop Gage attorney or the attorneys listed above.

For our California-based clients (or those employers with employees in California), this topic will be discussed at the Employment Law Update on January 27, 2016 at the W Hotel in Westwood - Los Angeles.