

Supreme Court: Class action waivers in employee arbitration agreements are enforceable

In its most significant employment law ruling in decades, the U.S. Supreme Court held on May 21 that arbitration agreements in which employees also waive the right to pursue class or collective relief are enforceable ([Epic Sys. Corp. v. Lewis](#)).

Arbitration can be a quicker, less expensive, and more reliable process than civil litigation for the resolution of all types of employment disputes, ranging from discrimination and sexual harassment claims to retaliation and wrongful discharge suits. The Supreme Court validated the use of arbitration agreements to resolve employment disputes in 1991. Since then, more and more employers nationwide have been utilizing such agreements with their employees.

Some employers have included “class waivers” in such arbitration agreements, in which employees agree to waive any right to pursue any “class” or “collective” relief against the employer. Under such agreements, the employee must arbitrate any legal claims on an individual basis, and may not join with other employees who may be pursuing similar claims against the employer on a “class” or “collective” basis.

In recent years, some lower courts have held that such waivers are unenforceable. Those courts have relied upon section 7 of the National Labor Relations Act, which generally protects employees’ right to engage in various types of “collective action.” Those courts have concluded that an employee class action is one kind of such “collective action,” and that employees cannot legally waive the right to engage in such action. A class waiver, those courts have said, is therefore unenforceable.

In Monday’s [Epic Systems](#) case the Supreme Court squarely rejected that conclusion. The Court held that the Federal Arbitration Act mandates enforcement of arbitration agreements that fall within its scope, and that the FAA does not include any exception or exclusion for agreements that include class or collective waivers. Courts must enforce arbitration agreements “as written,” even if they include a waiver of the right to seek class or collective relief.

The Court’s decision reinforces the utility of arbitration in the management of all types of employment disputes. But the decision is likely to have its most significant impact in the area of minimum wage and overtime claims. Lawsuits alleging minimum wage and/or overtime violations have proliferated in recent years; all a plaintiff’s lawyer needs is one disgruntled employee (or ex-employee), and the lawyer then can seek to bring hundreds of other claimants into the suit on a “collective” basis. Under the [Epic Systems](#) decision, however, employees who signed arbitration agreements containing class and collective waivers must arbitrate their individual claims on their own, and will not be able to force the employer into or join a “class” or “collective” case.



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