

The Supreme Court's Last Word on Class Action Waivers: They Will be Enforced!

The Supreme Court recently held that a class action waiver in an employment contract will be enforced and is not a violation of the National Labor Relation Act's ("NLRA") Section 7 rights. The Court's 5-4 [decision](#) was written by Justice Gorsuch and it involved three cases consolidated into one called "Epic Systems."

We previously discussed the competing considerations set forth in the *Epic Systems* case last [September](#). Monday's decision in *Epic Systems* is one of the more significant employment law decisions in the past five years.

What is a Class Action Waiver in an Employment Contract?

CCM often includes "class action waivers" in arbitration provisions we draft in an employment contract. A class action waiver prevents an employee from adding a bunch of small, little claims into a much larger claim. Put another way, a class action waiver protects an employer from a technical violation of the FLSA that is insignificant on the individual level, but expensive in the aggregate.

Why is this Decision Important for Employers Without Employment Contracts?

Even if your business does not use employment contracts this decision is important. First, it is a check on Section 7 rights under the NLRA which have exploded in the past 20 years as a result of social media and enterprising plaintiffs' lawyers. The *Epic Systems* decision holds that the NLRA does not grant employees the right to engage in class or collective actions as a Section 7 right. Instead, the Court noted that Section 7 guarantees employees the right to bargain collectively and organize unions.

Second, this decision is important because it reinforces what we already knew about arbitration provisions in contracts. Courts like arbitration provisions and they will enforce them under [federal law](#) as well as [Illinois state law](#).

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Conclusion

Most employers who adopt class action waivers and arbitration provisions in their employment contracts are concerned about technical FLSA violations. The Supreme Court has now provided certainty that these waivers are enforceable. Certainty leads to labor and employment peace which is good for both employers and employees.

If you have any questions about the matters addressed in this *CCM Alert*, please contact the following CCM author or your regular CCM contact.

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