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ABOUT THE AUTHOR



[Connie Elder Carrigan](#) is a partner in the firm, with a practice concentration in Business Law. Her focus is assisting clients with issues regarding employment law, business advice and litigation, construction law, equipment leasing and creditor bankruptcy. Connie has lectured on topics ranging from employment law, bankruptcy, and equipment leasing to construction law.

Supreme Court Upholds Arbitration Clauses in Employment Agreements

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On May 21, 2018, in three cases in which employees sought to pursue collective claims against *Epic Systems Corp.*, *Ernst & Young, LLP*, and *Murphy Oil USA, Inc.* for alleged violations of the [National Labor Relations Act](#), the United States Supreme Court ruled in a contentious 5-4 vote that the Federal Arbitration Act (the “Arbitration Act”) unambiguously requires courts to enforce arbitration agreements providing for individualized proceedings between employers and employees. In so holding, the Supreme Court dealt a major blow to workers seeking to challenge violations of federal employment statutes by way of class action. Recent studies indicate that roughly half of nonunion private sector employees have signed employment agreements mandating arbitration of disputes and barring collective actions.

In each of the three cases, the employers had required their employees, as a condition of employment, to sign contracts in which they agreed to submit to arbitration any disputes arising out of the employment relationship and in which they waived their right to pursue or to join a class-action lawsuit. The employees sought to overturn these agreements on the basis that the amounts they could obtain in individual damages would be dwarfed by the arbitration fees they would be required to pay to air their grievances.

Writing for the majority, Justice Neil Gorsuch, joined by Chief Justice Roberts and Justices Kennedy, Thomas, and Alito (with Thomas filing a concurring opinion) determined that the Arbitration Act requires courts to enforce contracts in which the parties have agreed to arbitrate disputes and that neither the Arbitration Act’s savings clause, which allows courts to refuse to enforce arbitration agreements “upon such grounds as exist at law or in equity for the revocation of any contract,” nor Section 7 of the National Labor Relations Act (NLRA), which guarantees employees “the right to . . . engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection” override the Arbitration Act’s underlying mandate.

Writing that the policy underlying the Arbitration Act may be debatable, the majority held that “the law is clear: Congress has instructed that arbitration agreements like those before us must be enforced as written. While Congress is of course always free to

amend this judgment, we see nothing suggesting it did so in the NLRA – much less that it manifested a clear intention to displace the Arbitration Act. Because we can easily read Congress’s statutes to work in harmony, that is where our duty lies.”

Justice Ruth Bader Ginsburg, writing for dissenting Justices Breyer, Sotomayor, and Kagan, deemed the majority opinion “egregiously wrong” and that this decision would lead to significant under-enforcement of statutes designed to protect the interests of workers. She argued that the 1925 Arbitration Act was enacted long before the passage of federal labor laws and that it, therefore, should not cover the one-sided arbitration provisions that employers often include in employment agreements. Reasoning that “the edict that employees with wage and hour claims may seek relief only one-by-one does not come from Congress,” Justice Ginsburg writes that “[i]t is the result of take-it-or-leave-it labor contracts harking back to the type called ‘yellow dog,’ and of the readiness of this Court to enforce those unbargained-for agreements. The [Arbitration Act] demands no such suppression of the right of workers to take concerted action for their ‘mutual aid or protection.’”

These three decisions are welcome news to employers as they limit the potential damages which may be assessed in a collective legal action relating to the enforceability of laws governing the scope of employment. It remains to be seen whether Congress will take any action to address the impact of these decisions on workers, although the current political makeup of our elected representatives would not appear to dictate such a result.

If you have questions about the impact of these decisions or any other matter relating to employment practices, please contact Connie Carrigan at ccarrigan@smithdebnamlaw.com

CONTACT US

919.250.2000
mail@smithdebnamlaw.com

RALEIGH OFFICE

The Landmark Center
4601 Six Forks Road, Suite 400
Raleigh, NC 27609

Phone: 919.250.2000
Fax: 919.250.2100

CHARLESTON OFFICE

171 Church Street
Suite 120C
Charleston, SC 29401

Phone: 843.714.2530
Fax: 843.714.2541