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# SCOTUS Holds that Employers May Require Arbitration in Employment Contracts

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The Supreme Court of the United States issued an important employment law decision on May 21, 2018, holding that employers can require employees to arbitrate certain workplace disputes on an individual basis rather than litigating in federal courts through class or collective actions.

The employees in the case, backed on appeal by the National Labor Relations Board, argued that individualized arbitration provisions in employment contracts conflicted with the National Labor Relations Act's requirement that employees be permitted to engage in "concerted activit[y]." The employers countered that the Federal Arbitration Act requires courts to enforce arbitration agreements as written, and that the "savings provision" in the FAA, which eliminates the enforceability obligation if the arbitration agreement violates some other federal law, was not applicable.

Writing for the 5-4 majority, Justice Neil Gorsuch said, "As a matter of policy these questions are surely debatable. But as a matter of law the answer is clear." The Court ruled that the arbitration agreements are enforceable under the FAA and did not conflict with the NLRA. Justice Gorsuch noted that the FAA and NLRA have coexisted for the better part of a century and that the claimed tension between them arose only recently, when the NLRB shifted its position on the issue.

Justice Ginsburg, writing for the dissent, called the decision "egregiously wrong," and criticized the majority for enabling "unbargained-for agreements."

The practical effect of the Court's ruling will likely be an increase in arbitration provisions in employment contracts. But there are arguments to be made against them. Recently Uber announced that it would waive arbitration for riders, drivers or employees who wish to file a claim against the company for claims of sexual assault. "[W]hen it comes to this uniquely personal and difficult set of claims, we wanted to give survivors the choice of seeking redress . . . in the venue of their choice," said Uber chief legal officer Tony West.

We will keep an eye on the way these issues develop in the business community and the court system.

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