

## Here We Go Again? NLRB ALJ Invalidates Part Of Pfizer's Mandatory Arbitration Pact

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Employers breathed a collective sigh of relief last year when the U.S. Supreme Court [ruled that class action waivers](#) contained in mandatory arbitration programs are lawful despite the [National Labor Relations Board's \(NLRB\) assertions](#) that such clauses run afoul of the National Labor Relations Act (NLRA).

While the Court's ruling was focused on the class action waiver component of arbitration pacts, the Court generally stated such agreements should be given deference. A recent ruling from an NLRB administrative law judge (ALJ), however, shows these arbitration agreements still may be under attack at the agency.

On March 21, an [ALJ issued a ruling](#) in a case involving a mandatory arbitration agreement which pharmaceutical company Pfizer implemented for certain employees. The program required employees to bring any claims against the company to arbitrators rather than courts. The agreement contained a "confidentiality clause."

The judge found that the confidentiality clause generally prohibiting any discussion by employees about any arbitrations had with the company violates their Section 7 NLRA rights to discuss their "terms and conditions" of employment. The ALJ specifically noted: "Court decisions allowing an employer to force employees to use arbitration do not serve as precedents for the separate proposition that an employer can prohibit employees from talking about it."

If this ruling is appealed to the full NLRB, it remains to be seen if the board (or federal courts above it) will agree with this analysis. Accordingly, employers who utilize these types of programs need to be mindful that while these agreements – including class action waivers – generally are lawful, certain clauses within them may still be subject to scrutiny by the NLRB.

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