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United States Supreme Court Validates Class and Collective Action Waivers in Arbitration Agreements

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In a 5-4 decision in *Epic Systems Corp. v. Lewis*, No. 16-285, the United States Supreme Court upheld the use of class and collective actions waivers in arbitration agreements. Employers nationwide may require employees to sign agreements to arbitrate any employment disputes on an individual basis

The majority opinion, written by Justice Gorsuch, found no conflict between the broad mandate to enforce arbitration agreements under the Federal Arbitration Act ("FAA") and employees' rights to bargain collectively under the National Labor Relations Act ("NLRA"). Observing that these nearly 100-year-old laws "have long enjoyed separate spheres of influence," the majority opinion saw no reason to pick one statute over the other.

The majority noted that the NLRA focuses on the right to organize unions and bargain collectively. While the NLRA permits unions to bargain to prohibit arbitration, it does not approve or disapprove of arbitration, mention class or collective action procedures (which did not exist when the NLRA was enacted), or "hint at a wish to displace the Arbitration Act." The majority's enforcement of individualized arbitration agreements obeys the Supreme Court's long-standing practice to harmonize statutes whenever possible.

The majority also rejected the suggestion that class and collective action waivers are invalidated by the savings clause of the FAA. The savings clause voids arbitration agreements based upon contract defenses generally applicable to "any" contract, such as fraud or duress, not because an employer and employee freely contracted for individualized, as opposed to class, arbitration.

The judicial approval of class and collective action waivers in arbitration agreements presents an opportunity to consider whether, and how best, to implement an arbitration program for employment disputes.