

It Looks Like The Supreme Court Will Disapprove Of The NLRB's Continued Attack On Class Action Waivers...But When Will We Know For Sure?

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Earlier this month in *DIRECTV, Inc. v. Imburgia*, the U.S. Supreme Court cited its own precedent and concluded that courts must enforce waiver provisions in arbitration agreements that prohibit the formation of class actions – even if “the law of your state” otherwise dictates that these provisions should be invalidated. This ruling is consistent with many other decisions by the court in recent years holding that “class action waivers” are lawful. While many of these decisions have come in the “consumer agreement context” rather than the “employment agreement context,” that would seem to have little impact on how the court will ultimately rule on the issue. Despite the Supreme Court’s continued upholding of class action waivers, the NLRB continues to invalidate them when they are contained in employer arbitration programs (the blog has cited various examples of this occurring throughout the year). This issue appears ripe for Supreme Court review, as the NLRB is bucking a trend by federal courts to enforce these types of provisions. With the board’s continued attack on these provisions, there should be ample opportunity for the issue to come before the Supreme Court in the relatively near future. Here’s hoping 2016 will be the year when we find out if this is yet another overreach by the NLRB.

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