

## Fifth Circuit Issues Landmark DR Horton Decision

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Gavel

In a landmark decision, the United States Court of Appeals for the Fifth Circuit today held that an employer did not violate the National Labor Relations Act (NLRA) by requiring that its employees sign an arbitration agreement prohibiting them from “filing joint, class, or collective claims addressing their wages, hours, or other working conditions ... in any forum, arbitral or judicial.” The National Labor Relations Board (NLRB) previously held that the provision violated Section 7 of the NLRA, which allows employees to act in concert with each other. In the same vein, the NLRB also held that the provision violated Section 8(a)(1) of the NLRA, which prohibits employers from requiring that employees agree not to act in concert in administrative and judicial proceedings.

In reversing the NLRB’s decision, the Fifth Circuit first observed that class and collective action procedures are not a substantive right. The Court also observed that nothing in the NLRA or its legislative history provides any indication that the statute was intended to override the Federal Arbitration Act. In fact, courts repeatedly have understood the NLRA to permit and require arbitration. As such, arbitration agreements – such as the one at issue in this case – must be enforced by their terms.

Nevertheless, the Fifth Circuit did hold that the arbitration agreement at issue violated Section 8(a)(1) of the NLRA because it could reasonably be interpreted as precluding an employee’s right to file a charge with the NLRB.

The Fifth Circuit’s Opinion can be [found here](#).

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