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ALERTS

NLRB Steps Up Enforcement Against Class Action Waivers

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Many companies have mandatory arbitration agreements with their employees. Those agreements often contain class and collective action waivers, meaning employees must bring their claims individually. In a recent decision against Hobby Lobby Stores, Inc., regarding just such an agreement, an administrative law judge (ALJ) under the National Labor Relations Board (NLRB) once again ruled that such waivers violated the National Labor Relations Act, which protects "concerted activity" on behalf of employees to promote their mutual aid and benefit.

However, the ALJ went further in this opinion than the NLRB has previously ruled. First, the ALJ ruled that the Federal Arbitration Act (which many federal courts have invoked to uphold such class action waivers in mandatory arbitration agreements) is inapplicable, stating the mandatory arbitration agreement is not a "transaction that affects commerce," a requirement for coverage under the FAA. Second, and even more significant for employers, the ALJ (1) recommended that Hobby Lobby notify the federal district courts where it had previously enforced it arbitration agreement that it would be rescinding or revising its unlawful mandatory arbitration agreement; and (2) ordered the company to reimburse the plaintiffs' attorneys' fees and litigation expenses.

This bold move will almost certainly be appealed to the full board, and then likely to federal court. Thus far, every federal appeals court to address this issue has come down against the position staked out by the NLRB. Barnes & Thornburg will closely monitor this important case.

To obtain more information, please contact the Barnes & Thornburg Labor

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