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Recall! Car Dealer's Arbitration Policy Struck Down By ALJ

October 25, 2013 | | Labor And Employment

Under the Board's 2012 decision in *D.R. Hor*ton , an ALJ struck down a California car dealer's arbitration policy. The ALJ held that although the car dealer's mandatory arbitration policy did not contain an explicit class waiver, it uses language that could be construed by employees as only permitting individual arbitration actions. The ALJ's decision seems to be another in a line of decisions where the Board (and its ALJs) look past the language of the policy to the purported effect of the policy and/or how the policy could be potentially construed. Other examples include Board decisions on confidentiality policies and social media policies .

The NLRB continues to apply its *D.R. Horton* decision even though three circuit courts of appeal have rejected the Board's view of class action waivers -- *Owen v. Bristol Care, Inc.*, 702 F.3d 1050 (8th Cir); Richards v. Ernst & Young, LLP, Case No. 11-17530 (9th Cir.), and *Sutherland v. Ernst & Young LLP*, 2013 U.S. App. LEXIS 16513 (2d Cir.). A majority of federal district courts have also rejected the Board's view on this with decisions from district courts in Arkansas, California, Florida, Kansas, Pennsylvania, and New York, though district courts in Missouri and Wisconsin have agreed with D.R. Horton. All eyes continue to focus on the 5th Circuit where the appeal of the Board's decision in D.R. Horton currently is pending.

A copy of the decision invalidating the arbitration policy can be found here .

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