

## Advice Memo From NLRB Again Affirms *D.R. Horton*, Finds Employer Arbitration Agreement Unlawful

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The NLRB continued to hold its position on arbitration agreements in an advice memorandum released last week, finding that an employer's mandatory arbitration agreement violated the NLRA despite the fact that it explicitly excluded claims in front of the NLRB and was silent as to whether it prohibited arbitration on a class basis. The Division of Advice applied the Board's holding in [D.R. Horton, 357 NLRB No. 184 \(2012\)](#), and held that the fact that the employer interpreted the agreement to prohibit class claims was enough for the agreement to restrict employee's Section 7 rights.

The *D.R. Horton* case has been widely criticized as contradicting U.S. Supreme Court cases regarding arbitration (see [AT&T Mobility LLC v. Concepcion](#)) and is currently on appeal at the Fifth Circuit.

The NLRB's advice memo is *Concord Honda*, Case No. 32-CA-072231, available on the Board's website [here](#).

See our previous coverage of *D.R. Horton*:

[Board Finds Certain Arbitration Agreements Violate NLRA](#)

[California Court of Appeals Not Persuaded by \*D.R. Horton Inc. v. Michael Cuda\*](#)

[D.R. Horton Files Reply Brief in Appeal of NLRB Decision](#)

[In the Spirit of DR Horton, ALJ Extends Protections to Job Applicants](#)

[NLRB ALJ Finds Employee Arbitration Policy Unlawful](#)

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