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Woo-Hoo! NLRB Now Permitting Class Action Waivers

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David J. Pryzbylski
Partner

For years employers around the country operated in area of uncertainty with respect to whether “class action waivers” in employment agreements – such as those included in mandatory arbitration programs – were enforceable. The National Labor Relations Board (NLRB) routinely took the view that such waivers violated the National Labor Relations Act (NLRA). Now, the board is finally backing off that position. Class action waivers prohibit employees from forming class or collective actions under employment laws (e.g., the Fair Labor Standards Act) against companies by requiring claims to be brought only on an individual basis. In 2012, the NLRB issued its infamous decision in *D.R. Horton Inc.*, 357 N.L.R.B. No. 184 (2012) that ruled class action waivers violate the NLRA because they impede “concerted activity.” That is, the NLRB viewed the potential formation of class actions contesting alleged unlawful practices as “group activity” protected by the NLRA. While the NLRB struck these waivers down for years following its decision in *D.R. Horton Inc.*, some federal courts disagreed with the board and ruled they were, in fact, lawful – creating a legal headache for companies utilizing these programs. Earlier this year, the U.S. Supreme Court weighed in to resolve the dispute and overruled the NLRB’s position. In other words, generally, class action waivers are now lawful, at least when it comes to compliance with the NLRA. And now, in the wake of the Supreme Court’s decision, the NLRB is finally backing off its former position that class action waivers are unlawful. For example, on August 6, the NLRB decided to dismiss a complaint against a car dealer who was alleged to have maintained an unlawful class action waiver. This is welcome news for all companies who currently use – or are considering using – these waivers to stave off potentially costly class claims by current or former employees.

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