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8th Circuit Upholds Class Waivers In FLSA Cases

January 9, 2013 | Fair Labor Standards Act,Labor And Employment

On Jan. 7, 2013, the Eighth Circuit Court of Appeals issued a decision, holding that nothing in the federal Fair Labor Standards Act (FLSA) prohibits enforcement of an arbitration agreement that includes a class waiver.

In *Owen v. Bristol Care, Inc.*, former employee, Sharon Owen, brought several claims against Bristol Care, Inc. ("Bristol Care") under the FLSA and attempted to seek class certification. Bristol Care argued that Owen had waived all class claims when she executed the Mandatory Arbitration Agreement (Agreement) with the company. Bristol Care argued that the Agreement contained a waiver that prohibited the parties "from arbitrating claims subject to [the] Agreement as, or on behalf of, a class" (the "class waiver"). The company also noted that Agreement did not waive the right to file a complaint with the U.S. Equal Employment Opportunity Commission or any other governmental agency designated to investigate complaints of harassment, discrimination or other similar claims.

Despite these arguments, the district court sided with Owen and refused to compel arbitration. In finding that class waivers are invalid in FLSA cases, the lower court relied on the recent National Labor Relations Board (NLRB) decision, *In re D.R. Horton, Inc.*, which held class waivers were unenforceable in a FLSA context because such waivers conflicted with the rights under Section 7 of the National Labor Relations Act (NLRA).

On appeal, however, the three-judge panel reversed. In issuing this decision, the Eighth Circuit noted that there is nothing "in either the text or legislative history of the FLSA that indicates a congressional intent to bar employees from agreeing to arbitrate FLSA claims individually, nor is there an 'inherent conflict' between the FLSA and the [Federal Arbitration Act]." The court continued by rejecting Owen's arguments that Congress intended to create a "right" to class actions under the FLSA and, instead, finding that nothing in the FLSA contains a "contrary congressional command" to override the Federal Arbitration Act.

With regard to Owen's reliance upon *D.R. Horton*, the Eighth Circuit held that decision carried "little persuasive authority." The appellate court held that the NLRB's decision limited its holding to arbitration agreements barring all protected concerted activity. In comparison, the Agreement between Owen and Bristol Care permitted Owen to file complaints with administrative agencies such as the EEOC or the Department of Labor, which could result in class litigation.

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