

Supreme Court's AmEx Class Action Waiver Decision Spells Trouble For NLRB

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The Supreme Court yesterday overturned a Second Circuit decision that invalidated arbitration agreements American Express entered into with merchants. The Court ruled the plaintiffs must arbitrate their claims individually, rather than pursuing them court. This is the latest in a string of recent Supreme Court decisions that have supported arbitration agreements containing class action waivers. While not an employment case, the decision should offer further support to employers who choose to implement arbitration programs that include waiver of employee rights to bring class action claims. The Supreme Court's opinion [can be found here](#) (PDF). The *Wall Street Journal's* reporting on the case [can be found here](#).

Beyond providing more support for employer mandated arbitration programs, this decision may also signal the end of the line for the [NLRB's D.R. Horton](#) arbitration decision. In that case, the NLRB found that an employer violates section 8(a)(1) of the NLRA by requiring employees as a condition of employment to enter into an arbitration agreement that prohibits class or collective action. The Board concluded that doing so infringed on employees' rights to engage in concerted action for mutual aid or protection. The company's appeal of the NLRB's decision remains pending with the 5th Circuit Court of Appeals.

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