masuda funai

News & Types: Employment, Labor & Benefits Update

United States Supreme Court to Continue String of Arbitration Related Decisions

11/13/2018

Practices: Employment, Labor & Benefits, Litigation

The United States Supreme Court remains active during this fall's term in determining employers' rights and obligations when companies include an arbitration agreement in their employment or independent contractor agreements.

The United States Supreme Court ruled in *Epic Systems Corp. v. Lewis* in May 2018 that class action waivers are enforceable in arbitration clauses which require employees to arbitrate disputes on an individual, rather than a class, basis. Fresh on the heels of this ruling, the Supreme Court this October heard arguments in three additional arbitration-related matters. This intense interest in arbitration-related cases at the Supreme Court level demonstrates the continuing importance of arbitration clauses to the public dialogue and the relationship between employers and employees. Moreover, given the new conservative majority on the Supreme Court with the confirmations of Justices Neil Gorsuch and Brett Kavanaugh, expect a divided Supreme Court to now move in the direction of enhancing employer's rights.

In the first case, *New Prime, Inc. v. Olivera*, the Court heard argument related to Section 1(a) of the Federal Arbitration Act ("FAA"), which exempts certain classes of employees from the FAA's statutory scheme. The question before the Court is whether the FAA applies only to "contracts of employment" with employees or whether the FAA's statutory reach also encompasses independent contractors. In *Olivera*, the plaintiff worked for an interstate trucking company as an independent contractor. After the termination of his status as an independent contractor by his employer, the plaintiff filed various wage and other employment-related claims. The district court determined that Section 1(a) of the FAA does not extend to independent contractors, but the First Circuit Court of Appeals reversed. The Supreme Court will now take up the question, along with another procedural issue related to whether the federal courts or an arbitrator is the proper venue to decide whether a case should be arbitrated.

In the second case, *Schein v. Archer & White Shales, Inc*., the Court will determine the extent of a federal court's power. The question is whether an arbitrator or a federal court has the power to decide the arbitrator's jurisdiction, if the party requesting arbitration is making a groundless claim. An employer may want the federal court – and not the arbitrator – to determine that the claim is groundless and rule that the arbitrator does not have power to determine his or her own authority. The federal district court and the Fifth Circuit Court of

Appeals both ruled that the federal court has the ultimate authority. The Supreme Court will weigh in on this question soon.

Finally, similar to the situation in *Epic Systems*, the Supreme Court considered another class action arbitration issue in *Lamps Plus, Inc. v. Varela*. The Supreme Court will decide whether the FAA prevents a court from interpreting state law authorizing class-action arbitration. Both the district court and the Ninth Circuit Court of Appeals, applying California law, held that the employees were permitted to arbitrate on a class-wide basis, finding that general language in the arbitration agreement permits the class-wide arbitration. However, given the changed makeup of the Supreme Court, this case is a prime example of a situation in which the Supreme Court may reverse the lower courts in favor of further restricting employees' class-wide arbitration rights.

As employers wait for the Supreme Court to rule on these important employer/employee-related issues in the coming months, employers need to examine their arbitration agreements or determine whether they want to enter into arbitration agreements with their employees and independent contractors.