BARRAN LIEBMAN LLP
ATTORNEYS
Employment | Labor | Benefits | Higher Education
www.barran.com | 503.228.0500

Electronic Alert

Volume 22, Issue 8 April 26, 2019

U.S. Supreme Court Narrows Avenues for Resolving Employment Disputes Through Class Arbitration

By Trevor Caldwell & Amy Angel

On April 24, 2019, in *Lamps Plus, Inc. v. Varela*, the U.S. Supreme Court ruled that parties to an arbitration agreement cannot be required to arbitrate their claims as a class action unless the agreement explicitly allows for the class action procedure. This decision comes just a year after the Supreme Court decided *Epic Systems Corp. v. Lewis*, in which it ruled that class action waivers in arbitration agreements do not violate the National Labor Relations Act.

Background

The dispute giving rise to this case began in 2016, when a hacker tricked a Lamps Plus employee into disclosing the tax information of around 1,300 employees. Following the data breach, a fraudulent tax return was filed under employee Frank Varela's name. Mr. Varela filed a class-action lawsuit against Lamps Plus on behalf of himself and the other employees who had their data stolen. Lamps Plus moved for the case to be dismissed as Mr. Varela had signed an arbitration agreement that required all employment-related disputes to be resolved by a private arbitrator. Lamps Plus also asked the court to require Mr. Varela to only pursue his own claim in arbitration, rather than on behalf of the other affected employees. The trial court agreed that arbitration was the exclusive forum for resolving the dispute but found that the arbitration agreement allowed for class arbitrations.

The Supreme Court reversed the decision. The Court's rationale relied primarily on its 2010 decision in *Stolt-Nielsen v. AnimalFeeds Int'l Corp.*, in which it held that, under the Federal Arbitration Act (FAA), when an agreement is silent on the subject of class arbitration, there is no basis for an arbitrator (or court) to order class arbitration. The Court held that ambiguity, rather than silence, is subject to the same general rule—if the agreement does not specifically address the use of class arbitration, it cannot be inferred that the parties agreed to it. Thus, because the Lamps Plus agreement did not specifically address class arbitration, the FAA prohibits use of the procedure.

Considerations for Employers

The *Lamps Plus* case provides three big takeaways for employers.

1. Arbitration agreements apply to an employer and a single employee, unless they affirmatively state otherwise.

2. While the Supreme Court has repeatedly said that class arbitrations sacrifice the main advantages of arbitration—efficiency, informality, and lower costs—this may not actually be true in all cases. Employers should consider whether certain types of claims, such as wage claims, might be resolved

more efficiently through a class arbitration, rather than individually arbitrating the claims of tens or even hundreds of employees.

3. Employers should review their existing arbitration agreements to determine whether they specifically address class actions. If not, employers should consider whether it is in their best interest to add a class action waiver, include a clause specifically allowing class action arbitration in some or all cases, or leave them silent on the issue.

If you have questions on an arbitration agreement in light of the *Lamps Plus* case, please contact Trevor Caldwell at tcaldwell@barran.comor (503) 276-2117, or Amy Angel at aangel@barran.com or (503) 276-2195.