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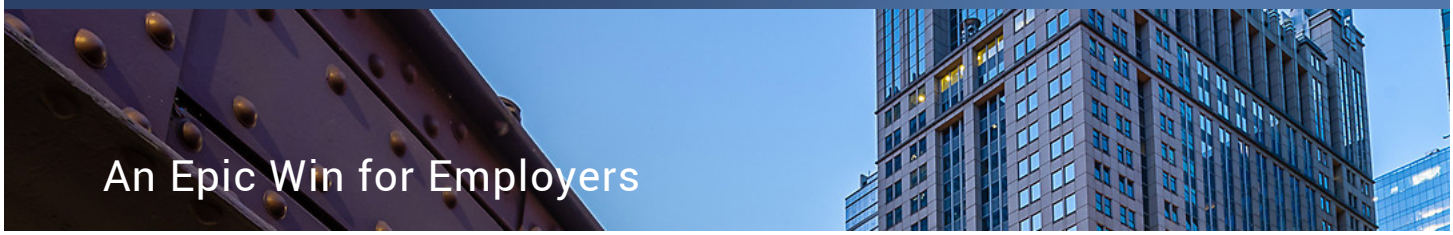

An Epic Win for Employers

By Charles Insler on May 24, 2018
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The Federal Arbitration Act (FAA) means business. And in the U.S. Supreme Court's recent decision in *Epic Systems Corp. v. Lewis,* No. 16-285 (May 21, 2018), the FAA means continued support for businesses. Interpreting the FAA, the Supreme Court held that employers and employees could agree to resolve disputes between them through one-on-one private arbitration and that arbitration agreements that disclaimed class actions or collective actions were enforceable.

Congress adopted the FAA in 1925, in "response to a perception that courts were unduly hostile to arbitration." *Epic Systems,* 2018 WL 2292444, at *5. In passing the FAA, Congress directed the courts to abandon any hostility to arbitration and to treat arbitration agreements as "valid, irrevocable, and enforceable," except "upon such grounds as exist at law." 9 U.S.C. §2. Passage of the FAA evinced a "liberal federal policy favoring arbitration agreements." *Id.*

Eight years after passing the FAA, Congress passed the National Labor Relations Act (NLRA), which guaranteed workers the "right to self-organization, to form, join, or assist labor organizations, to bargain collectively . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 29 U.S.C. §157.

In *Epic Systems* the legal question before the Court was how the FAA and the NLRA should be read together. The legal question was of particular importance because the factual situation at hand was one that could impact an estimated *25 million employees.* In essence, the question was whether the NLRA prohibited employers from requiring that their employees give up the right to litigate certain employment actions as collective or class actions. The employees argued that the FAA's savings clause – the language that excluded enforcement of arbitration agreements upon "such grounds as exist at law" – meant that the rights and "concerted activities" specifically safeguarded by the NLRA took priority over the FAA's more generalized interest in enforcing arbitration agreements.

The National Labor Relations Board agreed with this argument, finding that lawsuits designed to collectively enforce workplace rights qualified as "concerted activities for the purpose of . . .mutual aid or protection." But the Supreme Court rejected the NLRB's interpretation. Reviewing the text of the NLRA, the Supreme Court held that the NLRA "does not express approval or disapproval of arbitration. It does not mention class or collective action procedures." *Epic Systems,* 2018 WL 2292444, at *9. In fact, the NLRA does not even "hint at a wish to displace the Arbitration Act – let alone accomplish that much clearly and manifestly, as our precedents demand." *Id.*

The *Epic System* decision now permits employers to channel labor disputes into private arbitrations and avoid the potential for class actions. The ability to avoid class actions in certain employment cases is a clear win for employers, because certification of a class of plaintiffs can "create unwarranted pressure to settle" claims, even "nonmeritorious claims." *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 310 (3d Cir. 2008). More than a clear win, you might call it an epic win.

Tags: Federal Arbitration Act, NLRB, U.S. Supreme Court