

Supreme Court Upholds Lawfulness of Class and Collective Action Waivers in Arbitration Agreements

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Monday, the Supreme Court held in *Epic Systems Corp. v. Lewis* that class and collective action waivers in arbitration agreements are lawful and must be enforced under the Federal Arbitration Act (FAA). The Court reasoned that neither the FAA's saving clause nor the National Labor Relations Act (NLRA) contravenes the FAA's instruction to federal courts "to enforce arbitration agreements according to their terms."

In delivering the Court's opinion, Justice Gorsuch began, "Should employees and employers be allowed to agree that any disputes between them will be resolved through one-on-one arbitration? Or should employees always be permitted to bring their claims in class or collective actions, no matter what they agreed with their employers?"

Generally, the FAA requires enforcement of arbitration agreements. The employees in *Epic* first argued that their agreements were exempt from this requirement because of the FAA's saving clause. The saving clause allows courts to refuse enforcement of arbitration agreements "upon such grounds as exist at law or in equity for the revocation of any contract." The Court explained that the saving clause permits such invalidation by "generally applicable contract defenses, such as fraud, duress, or unconscionability," and not defenses targeting arbitration. Therefore, the saving clause could not exempt enforcement because the employees argued invalidation per the individualized arbitration. Such a defense, the Court provided, "impermissibly disfavors arbitration."

Secondly, the employees argued that enforcing the arbitration agreements under the FAA conflicted with the NLRA. Section 7 of the NLRA provides workers the right to participate in "concerted activities for the purpose of . . . other mutual aid or protection." The employees argued that this language included class and collective actions, which would not be permissible under the agreements. On this issue, the Court held that the NLRA's focus was on the right to organize unions and bargain collectively. Thus, the agreements did not conflict with the NLRA because the employees can still organize unions and bargain collectively. The Court rejected the argument that the National Labor Relations Board (NLRB) was due deference for its position on the class and collective waivers.

The Court's decision is a win for employers, and it brings an end to the years of uncertainty created when the NLRB first changed course to challenge arbitration agreements.

You can read the full opinion [here](#).