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Supreme Court Upholds Employer Use of Class Action Waivers

The US Supreme Court, by a 5-4 vote, has upheld the legality of class action waivers contained in employment arbitration agreements. Relying on the Federal Arbitration Act (FAA) and a congressional sentiment to not override the terms of arbitration agreements, the Court ruled that the FAA instructs "federal courts to enforce arbitration agreements according to their terms, including terms providing for individualized proceedings." The Court also held that the National Labor Relations Act (NLRA) is not in conflict with their conclusion.

In 2012, the National Labor Relations Board (NLRB) ruled that employers cannot use class action waivers in arbitration agreements with employees covered by the NLRA. The Board concluded that such waivers limit employees' rights under the NLRA to engage in concerted activities in pursuit of their mutual aid or protection. Prior to the high court's decision, most federal courts had disagreed with the Board's ruling.

https://www.supremecourt.gov/opinions/17pdf/16-285_q8l1.pdf

IRS Announces ACA Affordability and Premium Tax Credit Adjustments for 2019

The IRS has announced 2019 indexing adjustments for two key percentages under the Affordable Care Act (ACA).



The first percentage, the required contribution percentage used to determine whether employer-sponsored health coverage is "affordable" for purposes of employer shared responsibility has increased from the 9.56 percent in 2018 to 9.86 percent for 2019. The second percentage, used to determine the amount of household income that individuals eligible for premium tax credits must contribute toward the cost of Exchange coverage, ranges from 2.08 percent to 9.86 percent, according to associated household income bands. <https://www.irs.gov/pub/irs-drop/rp-18-34.pdf>

NLRB To Issue Proposed Joint Employer Rule As Soon As This Summer

In response to a [recent letter](#) from three US Senators expressing concern over the National Labor Relation Board's (NLRB) announcement that it is exploring the possibility of promulgating rules to clarify the issue of joint employer status, NLRB Chairman John Ring notified the Senators that "A majority of the Board is committed to engage in rulemaking, and the NLRB will do so. Internal preparations are underway, and we are working toward issuance of a Notice of Proposed Rulemaking as soon as possible, but certainly by this summer."

The Chairman went on to say that the Board is committed to gathering input from interested stakeholders and only then, to provide "clear and useful guidance" as to "the contours of a joint employment relationship," which many believe Browning-Ferris expressly left undefined.

NLRB General Counsel Issues Guidance on Legality of Employer Work Rules

In its late 2017 decision in The Boeing Company case, the National Labor Relations Board (NLRB) established a new standard that centered on balancing the impact employers' work rules have on employees' ability to exercise their Section 7 rights and employers' right to maintain discipline and productivity in the workplace. A recent General Counsel memorandum contains guidance by grouping various types of work rules into three categories set forth in the Boeing decision.

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Category 1 describes rules that are generally lawful to maintain. The types of rules in this category are generally lawful, either because the rule does not prohibit or interfere with the exercise of employees' rights under the Act, or because the potential adverse impact on protected rights is outweighed by the business justifications associated with the rule.

Category 2 describes rules warranting individualized scrutiny. Rules in this category are not obviously lawful or unlawful, and must be evaluated on a case-by-case basis.

Category 3 describes rules that are unlawful to maintain. Rules in this category are generally unlawful because they would prohibit or limit NLRA-protected conduct.