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KD Alert: NLRB Rules Arbitration Agreements Cannot Prevent Workers from Filing Class Actions

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Earlier this month, the National Labor Relations Board (the "NLRB") issued a decision striking down arbitration agreements that prevent employees from joining together to pursue employment-related legal claims as a class. In other words, the decision essentially bans agreements that companies may already have in place, requiring employees to pursue all claims individually through arbitration.

Rationalizing its decision, the NLRB determined that such an agreement violates Sections 7 and 8(a)(1) of the National Labor Relations Act ("NLRA"), which guarantee the rights of employees to engage in *concerted, protected activity. The NLRB made clear that its decision was sound and deeply rooted within the legislative intent of Congress in passing the NLRA, "notwithstanding the Federal Arbitration Act (FAA), which generally makes employment-related arbitration agreements judicially enforceable."*

Historically, the NLRB has been reluctant to allow employers to restrict collective actions or otherwise impinge upon employee rights. Notably, the decision was rendered by the only two remaining NLRB Members (a third recused himself), of the five seats available, possibly signaling the tone of future NLRB decisions preserving or expanding employee rights

WHAT DOES THIS MEAN FOR EMPLOYERS?

At a minimum, employers should review all policies and arbitration language to ensure compliance with the law. While the NLRB emphasized that its holding is limited to actions brought under the NLRA only, it remains to be seen if other agencies – e.g., the EEOC, fall in line. In that regard, employers are well advised to consider the possible ramifications of the NLRB's ruling when making personnel actions of any kind.

It is anticipated that the NLRB's decision will be appealed to the United States Court of Appeals. Until then, the holding will likely be followed by the NLRB. However, it is at this time unclear whether federal courts will also rely upon the NLRB's determination.

KD is available to assist employers with employment agreements, compliance and otherwise answer any questions about their rights and obligations under the law.

For more information on these matters, contact the attorneys in **KD's Employment Law Practice or visit us at www.kaufmandolowich.com.**

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