

ASSESSING THE VIABILITY OF CLASS ACTION WAIVERS IN ARBITRATION AGREEMENTS: THE IMPACT OF AT&T MOBILITY AND THE SHADOW OF THE NLRA

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Over the past decade or more, class action litigation has proliferated, particularly in the areas of consumer rights and employment. To help control exposure to class actions, businesses have increasingly used class action waivers in the arbitration agreements that they have presented to customers and employees. However, the enforceability of such waivers has been somewhat unpredictable, depending largely on the jurisdiction and the nature of the claims. The recent decision by the *United States Supreme Court in AT&T Mobility, LLC v. Concepcion* has steadied the boat, renewing the business community's hope for enforcing class action waivers as a prominent weapon in the battles against consumer class actions and employment wage-and hour class actions. While *AT&T Mobility* gives strong support for those hopes, the war is not over. Congress and state legislators are proposing laws to invalidate predispute agreements that prohibit class claims. And the National Labor Relations Board has jumped into the fray as it considers whether prohibiting class actions in arbitration agreements is an unfair labor practice under the National Labor Relations Act. The waters of class action waiver enforceability are less muddy but still require careful navigation.

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