

Epic Fail For Class Waivers

Insights

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Earlier this week, [I coauthored an article](#) for our firm's publications page about the first federal court in the country to strike down a class action waiver in an arbitration agreement. The decision in *Lewis v. Epic Systems* could end up being very bad news for gig employers.

For those unclear about what this means, we need to take a step back. Many companies have entered into arbitration agreements with their workers in order to introduce some efficiency and cost-savings into the dispute resolution process. Rather than having to spend all that money and waste all that time heading to court over any little disagreement that arises, you agree that such disputes will be handled in a private arbitration setting. Many emerging companies have enjoyed these arbitration agreements, as they don't have time to waste heading to court over petty disputes and bickering employees.

Taking it one step further, the second generation of arbitration agreements include "class waivers," which means that your workers agree not to mount expensive class or collective action lawsuits against you. Instead, they agree to file and argue claims individually. This is a blessing for companies, as it is much easier to defend several small one-on-one claims than it is to wage battle on a class-wide basis.

Last week, for the first time ever, a federal appeals court found that such class waivers are illegal. You can read more about the court's reasoning [here](#), but the 20-second version is that the court ruled that workers have the right to collectively come together and bring class action lawsuits, and that any agreement that says otherwise cannot be enforced. As [we explained a few weeks ago](#), class waivers in arbitration agreements have been a godsend for gig companies, so this is definitely a troubling development.

For companies operating in Illinois, Wisconsin, and Indiana, this might mean an immediate revision of your existing arbitration agreements. For businesses elsewhere, this is a situation worth monitoring, as it could end up changing the way you do business in the future.

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