California Court Of Appeals Upholds Employer's Arbitration Waiver

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Can an employer require that its employees arbitrate employment law claims, rather than file lawsuits?

Can an employer require that employees waive the right to take part in class action lawsuits or class arbitrations against the employer?

These issues have been the subject of many lawsuits, court decisions and agency actions in recent years.

Most recently, the California Court of Appeal upheld a contract that required an employee to arbitrate claims against the employer individually in *Iskanian v. CLS Transportation Los Angeles*, a case involving wage-and-hour issues.

The *Iskanian* decision is consistent with the US Supreme Court 2011 ruling in *AT&T v. Concepcion*, which upheld arbitration and a waiver of class action standing in a case that involved consumers, not employees. In fact, the *Iskanian* decision relied heavily on *Concepcion* and reasoned that the Federal Arbitration Act preempts attempts to keep certain types of claims out of arbitration, in essence overriding public policy reasons for maintaining class actions as an important method for enforcing employee rights.

Since *Iskanian* was decided by a three judge panel, rather than the entire Court of Appeals, and the decision conflicts with the California Supreme Court ruling in *Gentry v. Superior Court* (decided before *Concepcion*), it is likely the decision will be appealed to the California Supreme Court for a final determination.

As we previously reported, the National Labor Relations Board (NLRB) is currently challenging the practice of 24 Hour Fitness, a California company that requires its employees to enter into written agreements, as a condition of employment, to arbitrate any claims the employees may have against the company. The 24 Hour Fitness employment agreement prohibits class action or collective lawsuits and arbitrations.

Also, in January 2012 the NLRB held that the practice of a home builder who required claims by its employees to be handled through individual arbitrations violated the rights of such employees under the National Labor Relations Act since they were prohibited from filing joint, collective or class employment claims.

These NLRB actions seem inconsistent with the Supreme Court decision in *Concepcion* and further muddle the picture with respect to arbitration of employment claims and class waivers.

Tharpe & Howell can assist you in navigating these murky waters, and handle all of your employment law needs. http://bit.ly/PP5Y1x

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