LAW

Supreme Court Decision Delivers Blow To Workers' Rights

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People wait in line to enter the U.S. Supreme Court last month. The court sided with businesses on not allowing class-action lawsuits for federal labor violations.

Mark Wilson/Getty Images

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In a case involving the rights of tens of millions of private sector employees, the U.S. Supreme Court, by a 5-4 vote, delivered a major blow to workers, ruling for the first time that workers may not band together to challenge violations of federal labor laws.

Writing for the majority, Justice Neil Gorsuch said that the 1925 Federal Arbitration Act trumps the National Labor Relations Act and that employees who sign employment agreements to arbitrate claims must do so on an individual basis — and may not band together to enforce claims of wage and hour violations.

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"The policy may be debatable but the law is clear: Congress has instructed that arbitration agreements like those before us must be enforced as written," Gorsuch writes. "While Congress is of course always free to amend this judgment, we see nothing suggesting it did so in the NLRA — much less that it manifested a clear intention to displace the Arbitration Act. Because we can easily read Congress's statutes to work in harmony, that is where our duty lies."

Ginsburg dissents

Justice Ruth Bader Ginsburg, writing for the four dissenters, called the majority opinion "egregiously wrong." She said the 1925 arbitration law came well before federal labor laws and should not cover these "arm-twisted," "take-it-or-leave it" provisions that employers are now insisting on.

She noted that workers' claims are usually small, and many workers fear retaliation. For these reasons, she said, relatively few workers avail themselves of the arbitration option. On the other hand, these problems are largely solved by a class-action suit brought in court on behalf of many employees.

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The inevitable result of Monday's decision, she warned, will be huge underenforcement of federal and state laws designed to advance the well-being of vulnerable workers. It is up to Congress, she added, to correct the court's action.

In his oral announcement, Gorsuch took the unusual step of elaborately rebutting Ginsburg's dissent, which is five pages longer than the majority's opinion.

A green light for employers

The ruling came in three cases — potentially involving tens of thousands of nonunion employees — brought against Ernst & Young LLP, Epic Systems Corp. and Murphy Oil USA Inc.

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Each required its individual employees, as a condition of employment, to waive their rights to join a class-action suit. In all three cases, employees tried to sue together, maintaining that the amounts they could obtain in individual arbitration were dwarfed by the legal fees they would have to pay. Ginsburg's dissent noted that a typical Ernst & Young employee would likely have to spend $200,000 to recover only about $1,900 in overtime pay.

The employees contended that their right to collective action is guaranteed by the National Labor Relations Act. The employers countered that they are entitled to ban collective legal action under the Federal Arbitration Act, which was enacted in 1925 to reverse the judicial hostility to arbitration at the time.

Employment lawyers were elated. Ron Chapman, who represents management in labor-management disputes, said he expects small and large businesses alike to immediately move to impose these binding arbitration contracts to eliminate the fear of costly class-action verdicts from juries. "It gives employers the green light to eliminate their single largest employment law risk with the stroke of a pen," he said.

Implications for #MeToo

Labor law experts said Monday's decision very likely will present increasing problems for the #MeToo movement, and for other civil rights class actions claiming discrimination based on race, gender and religion. There is no transparency in most

binding arbitration agreements, and they often include nondisclosure provisions. What's more, class actions deal with the expense and fear of retaliation problems of solo claims. As Ginsburg put it, "there's safety in numbers."

Yale Law professor Judith Resnik observed that the decision applies to all manner of class actions. "What this says is that when you buy something, use something, or work for someone, that entity can require you to waive your right to use public courts," she noted.

BUSINESS

Supreme Court Ruling Could Limit Workplace Harassment Claims, Advocates Say

Cornell University labor law professor Angela Cornell expects the number of these litigation waivers to skyrocket now. "What we see is the privatization of our justice system," she said.

A study by the left-leaning Economic Policy Institute shows that 56 percent of nonunion private sector employees are currently subject to mandatory individual arbitration procedures under the 1925 Federal Arbitration Act, which allows employers to bar collective legal actions by employees.

The court's decision means that tens of millions of private nonunion employees will be barred from suing collectively over the terms of their employment.

Correction

May 22, 2018

A previous version of the Web story misspelled Yale Law professor Judith Resnik's last name as Resnick.

supreme court