Supreme Court Decision Favors Employers' Enforcement Of Arbitration Clauses

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Employers may now successfully enforce arbitration provisions negotiated in a collective bargaining agreement (CBA), with a U.S. Supreme Court decision providing clarification on the issue.

By the slimmest majority, the Court ruled on April 1, 2009 in *14 Penn Plaza LLC v. Pyett*, that an arbitration clause contained within a collective bargaining agreement (CBA) that "clearly and unmistakably" required union members to arbitrate a claim under the Age Discrimination in Employment Act of 1967 (ADEA) was enforceable. The Court found that whether such claims should be arbitrated was a "condition of employment" within a union's collective bargaining authority under the National Labor Relations Act (NLRA), the federal law that outlines a union's power to negotiate on behalf of its members. The Court also found that the ADEA did not remove this particular class of grievances from the broad sweep of the NLRA. The Court therefore concluded that there was no legal basis to invalidate the arbitration clause contained in the CBA.

The *Pyett* decision marks a significant clarification of the law that many lower federal courts believed precluded forced arbitration of statutory anti-discrimination claims through a CBA. In 1974, the Supreme Court, in *Alexander v. Gardner-Denver Co.*, allowed a discharged employee to bring a statutory employment discrimination claim in federal court even though he had already engaged in arbitration of a similar contract-based claim under his union's CBA. In the years that followed the *Gardner-Denver Co.* decision, many lower courts construed the decision to preclude a union from agreeing that its members would pursue statutory employment-discrimination claims in arbitration rather than in court. Now, many years later, the Supreme Court has clarified that arbitration provisions in a CBA requiring arbitration of statutory employment-discrimination claims are enforceable so long as they are clear and unambiguous.

Victory for Employers

The Court's clarification in *Pyett* seems to be a victory for employers that can now successfully enforce arbitration provisions negotiated in a CBA. Employers should be sure to make arbitration of statutory employment-discrimination claims a point of negotiation with any union. Employers should also be sure that any arbitration clause contained within a CBA is conspicuous, stated in plain language, and that it clearly identifies the types of claims subject to arbitration. Arbitration is favorable to litigation because the results are more timely and the process is more economical.

In regard to the private sector, the Court's decision may open the door to allow employers to include arbitration provisions in employee handbooks. In the past, private employers have not included arbitration provisions because it was believed that such provisions would not be enforceable. In light of the *Pyett* decision, there is now a strong argument that such handbook provisions would be enforceable so long as they are plainly written, conspicuous, and so long as the employee signs an acknowledgement documenting receipt and review of the handbook terms.