The Continuing Fight Over Employer-Employee Arbitration Agreements

Despite a great deal of law that supports binding arbitration as an efficient and fair means of resolving disputes in lieu of the court system, the California courts have been reluctant to enforce arbitration agreements in the employer-employee context, often finding the agreements procedurally and substantively unconscionable. Earlier this year, in *Moreno v. Sonic Calabasas*, the California Supreme Court continued this trend by finding an arbitration agreement that required an employee to waive his right to a hearing before the Labor Commissioner on a wage claim both "contrary to public policy and unconscionable." On Monday, the United States Supreme Court vacated the California Supreme Court's opinion and sent the case back to the California Supreme Court for reconsideration in light of a recent decision by the United States Supreme Court.

The United States Supreme Court has in recent history been more willing than most California courts to enforce arbitration agreements. Earlier this year, the United States Supreme Court ruled in *AT&T Mobility v. Concepcion* that a California state law which invalidates class action arbitration waivers is preempted by the Federal Arbitration Act. A great deal of legal commentary has been written about whether the Supreme Court's opinion in *Concepcion* can be effectively used to set aside developed California case law that is used to invalidate arbitration agreements in the employment context. The action of the United States Supreme Court on Monday vacating the California Supreme Court's opinion in *Moreno v. Sonic-Calabasas* is the first step in that direction. It remains to be seen what the California Supreme Court will do with the case now that it has been sent back to the court but it is worth noting that the original decision invalidating the arbitration agreement was a split decision with only four justices in the majority.

Whether the Federal Arbitration Act and the case law developed under it will ultimately push California courts toward more acceptances of employer-employee arbitration agreements is an open question. Certainly, the federal case law that has developed under the Federal Arbitration Act is much more supportive of arbitration in the employer-employee context than California law. Employers who have arbitration agreements in place with their employees should consider the United States Supreme Court's action on Monday as the first good news in support of arbitration agreements in quite some time.

If you are considering implementing arbitration agreements with your employees, or you have existing agreements in place, and you have question about the enforceability of those agreements, or any other employment related issues, please contact one of our attorneys:

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