Class Action Waiver For Employment? Not So Fast, Says the NLRB

By Daniel Schwartz on January 10th, 2012

Last year, I talked a lot about a U.S. Supreme Court case that seemed to open the door for employers to use mandatory arbitration agreements that precluded employees from using class actions to sue their employers.

But I noted at the time that this was a quickly shifting landscape.

A few days ago, the NLRB issued a decision that puts this issue in the "up for grabs" category. In D.R. Horton, Inc., concluded that these type of agreements "unlawfully restrict[] employees' Section 7 right to engage in concerted action for mutual aid or protection." It concluded that the employer "violated Section 8(a)(1) by requiring employees to waive their right to collectively pursue employment-related claims in all forums, arbitral and judicial."

(For additional analysis of this issue from other blogs, check out the following links here, here and here.)

Employers shouldn't rip up those agreements just yet, though. First, this decision likely applies only to those who work for private companies and can organize. Second, the decision is likely going to be appealed to the federal Courts of Appeals and then, if necessary, the U. S. Supreme Court.

And there is also the fact that NLRB precedent sometime changes with the political cycles. But for now, employers should understand the possible limits of their arbitration agreements in light of this new important decision.