Mid-Year 2024: Arbitration

July 24, 2024

Decisions from the U.S. Supreme Court, federal circuit courts, and a California court of appeals addressed multiple aspects of arbitration: What happens to a lawsuit when a court is asked to stay the proceedings pending arbitration, who qualifies for an exemption from the Federal Arbitration Act (FAA), what is a "dispute" and when does it "arise" were all at issue. Together, they highlight the evolving landscape of employment arbitration.

Major court cases

The following cases allowed for continued court oversight of a dispute sent to arbitration, reflect a broader interpretation of the FAA's transportation worker exemption, navigate when a dispute arises for purposes of deciding whether the EFAA applies, and held certain provisions of an arbitration agreement were unenforceable.

SCOTUS: Smith v. Spizzirri

- **Holding**: The language in the FAA providing a court "shall on application of one of the parties stay the trial of the action until [the] arbitration" requires courts to stay, not dismiss, actions subject to valid arbitration agreements.
- **Reasoning**: When a court dismisses an action, the plaintiff has an immediate right to appeal, whereas there is no similar right to appeal the grant of a motion to compel arbitration. By dismissing the action, the district court effectively confers a right to appeal a decision otherwise foreclosed by the FAA.

8th Circuit: Eniola Famuyide v. Chipotle Mexican Grill Inc.

- **Issue**: What constitutes a "dispute" and when does it "arise" for purposes of applicability of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA), which was enacted in 2022?

9th Circuit: Ortiz v. Randstad Inhouse Services LLC

- **Issue**: Whether a warehouse worker falls within the FAA's "transportation worker exception."
- **Holding**: The plaintiff's job duties were sufficiently connected to the transportation of goods through interstate commerce to trigger the transportation worker exemption. This ruling expands the transportation worker exemption under the FAA to include warehouse workers.

California Court of Appeals: Cook v. University of Southern California

- **Issue**: Was an arbitration agreement signed by a condition of employment permeated by unconscionability, which could not be severed from the agreement?
- **Holding**: The following provisions in an arbitration agreement were unconscionable:
  1. Extending the arbitration agreement to claims beyond the employment relationship.
  2. Covering third-party beneficiaries.
  3. Stating that the agreement will survive termination of employment.

Congress

The bipartisan **Protecting Older Americans Act**, which cleared the Senate Judiciary Committee in May 2024, may further chip away at arbitration. The measure would invalidate pre-dispute mandatory arbitration agreements regarding claims of age discrimination.

Podcasts
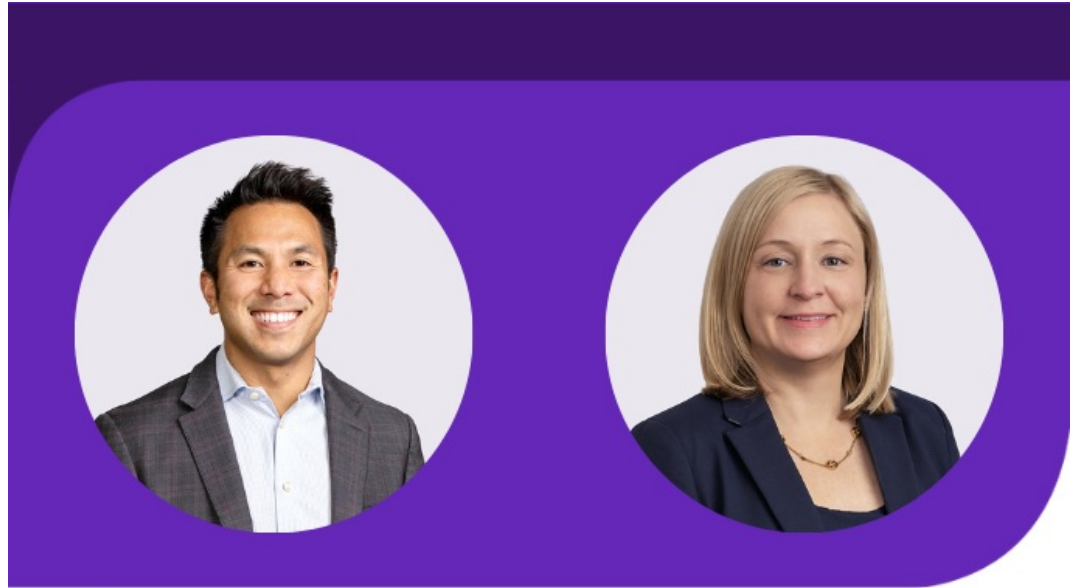
Hosts: **Scott P. Jang**, Principal and Technology Industry Co-Leader, and **Corey Donovan Tracey**, Principal

MYR 2024: Trends + Developments in the Arbitration Space

"In these other areas that we've talked about today, it looks like there's more to come. So, we will be watching that. And employers will want to be mindful of that as it comes to their arbitration agreements and how they're using them and implementing them with their employees."

Listen

Hosts: **Eric R. Magnus**, Principal, Class Actions and Complex Litigation Co-Leader, and Atlanta Office Litigation Manager, and **Katharine C. Weber**, Principal and Disability, Leave and Health Management Co-Leader

MYR 2024: FAA Transportation Workers Act Exception

"You and I would like to argue that the test that they were arguing for is clean cut. But it actually isn't, because if the Court would have gone the other way, the debates would have become, 'well, what *is* the transportation industry?' That debate would have been probably equally as divisive."

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Key employer takeaways

The law on arbitration is ever evolving:

- Application of the EFAA is still in flux.
- Broadened interpretation of Transportation Worker Exemption means the FAA may not apply to even more workers, so state laws will apply.
- Courts are scrutinizing the enforceability of employment arbitration agreements, especially in California.
- More legislative carve-outs to mandatory arbitration.

Related readings

Resolving Circuit Split, U.S. Supreme Court Says Courts 'Shall' Stay Cases Sent to Arbitration

Ninth Circuit Continues to Expand Transportation Worker Exemption Under Federal Arbitration Act

Ninth Circuit Holds Warehouse Worker Qualifies as Transportation Worker Under FAA Exemption

FAA's Transportation Worker Exception Covers Airline Ramp Agents, U.S. Supreme Court Holds

Disputing What 'Dispute' Means: Courts Debate When Ending Forced Arbitration Act Applies

President Biden Signs Law Limiting Arbitration Agreements for Sexual Assault, Harassment Claims

Mid-Year 2024: Now + Next

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