

Arbitration Agreement Containing Class Waiver Enforceable in FLSA Case

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A residential care facility administrator entered into an arbitration agreement at the time she was hired which provided that she would submit any and all claims relating to her employment to arbitration. The agreement also contained a class waiver. Despite the foregoing, the administrator filed an action on behalf of herself and other current and former employees claiming that they were misclassified as “exempt” employees, but should have been entitled to overtime pay under the Fair Labor Standards Act (FLSA) because they regularly worked over forty hours per week.

The facility moved to compel arbitration, per the arbitration agreement. The district court, however, denied the motion on the grounds that the agreement was invalid because it contained a class waiver. The court distinguished the recent U.S. Supreme Court decision of [AT&T Mobility LLC v. Concepcion](#), which held that a class waiver in a consumer contract was enforceable, in finding that the same rule did not apply in the employment context.

The employer appealed, arguing that a class action waiver is not rendered impermissible by the language or the legislative history of the FLSA. The Eighth Circuit Court of Appeals noted that the administrator identified no authorities which demonstrated a congressional intent to preclude employees from agreeing to arbitrate FLSA claims individually. The Court also rejected the administrator’s attempt to establish an inherent conflict between the FLSA and the Federal Arbitration Act by relying upon the National Labor Relations Board’s recent decision in the D.R. Horton case. There, the Board found that a class waiver conflicted with the rights afforded to employees under the National Labor Relations Act, and thus found the waiver to be unenforceable. The Eighth Circuit, however, did not find this ruling to be controlling because the Board’s decision was limited, and because the Court is not bound to give deference to a Board ruling.

In reversing the district court, the Eighth Circuit reached a conclusion consistent with the other courts of appeals that have considered this very issue and have similarly concluded that arbitration agreements containing class waivers are enforceable in FLSA cases.

Arbitration agreements, particularly those containing class action waivers, are at the forefront of employment litigation. Employers are cautioned to work closely with counsel to ensure that their agreements are up-to-date

and compliant with applicable federal and state laws so that the agreements will withstand any potential challenge.

For more information read [Owen v. Bristol Care, Inc. No. 12-1719 \(8th Cir., January 7, 2013\)](#),

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