



Class Action Lawsuit Waivers **Federal/State Court Conflict May Affect NY Businesses**

New York employers that have employees sign an arbitration agreement should be aware that, based on a recent state court decision, state and federal courts might not equally enforce agreements waiving employees' right to bring class action claims. The Appellate Division, First Department, [struck down](#) such a waiver on the basis that it violated the National Labor Relations Act (NLRA).

In reaching its conclusion, the court held that the class action waiver violated the NLRA by improperly denying the employees the right to engage in certain "concerted activities," which include suing collectively to achieve more favorable employment terms. The court also said that while the federal Second Circuit (which covers New York's federal trial courts) had ruled that class action waivers were enforceable, other federal appellate circuit courts have struck down class action waivers, and that it agreed with those courts' reasoning more than it did the Second Circuit's. In particular, the court found no basis to suggest that the Federal Arbitration Act (FAA), which calls for the enforcement of arbitration agreements, overrides the NLRA's protection of employees' collective action. Thus, the court held that the class action waiver could not be enforced in accordance with the FAA's "saving clause".

This ruling currently binds state-level trial courts in New York and Bronx Counties, while all federal trial courts in New York remain bound by the precedent of enforcing class action waivers. Employers who use or who are considering using class action waivers should consult with counsel to understand the implications of the law (both state and federal) on their business.

The U.S. Supreme Court is expected to hear a separate case on class action waivers in its next annual term (from a federal appellate circuit that struck down such a waiver). We will provide updates when there are further developments.

DISCLAIMER: The information contained herein is provided by Glaser & Weiner, LLP for informational purposes only. These materials should not be considered as, or as a substitute for, legal advice and they are not intended to nor do they create an attorney-client relationship. Because the materials included here are general, they may not apply to your individual legal or factual circumstances. This document contains information that may be modified or rendered incorrect by future legislative or judicial developments. You should not take (or refrain from taking) any action based on the information you obtain from this document without first obtaining professional counsel. It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation. © 2017 Glaser & Weiner, LLP. All Rights Reserved.