

PUBLICATION

NLRB Invalidates Mandatory Employee Class Waivers in Arbitration Agreements

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Last week, in a decision with broad implications, the NLRB struck down a common feature in mandatory employee arbitration agreements. In *D.R. Horton, Inc.*, the Board held that employers cannot require employees to sign arbitration agreements that waive class or collective claims in arbitration. In other words, employers cannot require employees to assert all arbitral claims on an individual basis. The NLRB's holding potentially contradicts a recent U.S. Supreme Court decision, which upheld class waivers in arbitration agreements. The NLRB distinguished the Supreme Court's recent holding on the basis that it did not address employment claims specifically.

In *D.R. Horton, Inc.*, the NLRB reasoned that employees are engaging in protected concerted activity under the National Labor Relations Act when they assert class or collective claims against their employer. Therefore, according to the NLRB, an employer's policy that expressly restricts employees from engaging in protected concerted activity by filing class or collective claims is unlawful. The NLRB ordered the employer to rescind its policy.

The NLRB's decision will likely be appealed to the Court of Appeals and possibly the Supreme Court, which leaves the validity of existing arbitration agreements in limbo as this case is litigated to its conclusion.