

## Mandatory Arbitration Agreements Under Fire. . . Again

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**Cedars-Sinai Medical Center**, operator of a large acute care hospital in *Los Angeles*, was ordered to rescind or revise mandatory arbitration agreements that it has with some of its employees. Cedars-Sinai requires employees to sign such agreements, as a condition of employment.

This case started when a medical assistant filed a class complaint with the American Arbitration Association against Cedars-Sinai in 2014. She also filed an [unfair labor practice charge](#) with the **National Labor Relations Board (NLRB)**. Cedars-Sinai sought declaratory relief from a state court to preclude Lips from pursuing class action status before the arbitrator, pursuant to the mandatory arbitration agreement.

The NLRB's Regional Director (Region 31) sought to invalidate the mandatory arbitration agreements claiming that such agreements violated the National Labor Relations Act (NLRA). Specifically, the Regional Director argued that a mandatory arbitration agreement could reasonably be interpreted (by employees) to restrict them from filing charges with the NLRB. In addition, Cedars-Sinai's effort to enforce such agreements by filing motions and briefs with an arbitrator to preclude class actions and by seeking a declaratory judgment to that effect in court interfered with employee rights to pursue collective action.

An NLRB Administrative Law Judge (ALJ) agreed with the Regional Director. The ALJ ruled that, although the arbitration agreement did not explicitly preclude employees from initiating or seeking class action status in arbitration or other forums, employees could reasonably construe the agreement to preclude them from filing NLRB charges. The ALJ also determined that Cedars-Sinai violated the NLRA by going to court to compel Ms. Lips to submit her employment-related claims to individual arbitration. In other words, the ALJ ruled that Cedars-Sinai violated the NLRA by seeking to force its employees, through court actions, into individual arbitration proceedings pursuant to the arbitration agreement. This, according to the ALJ, restricted employees' right to act collectively.

The ALJ relied on the NLRB's prior decisions in *D.R. Horton* and *Murphy Oil* that make it illegal for companies to force individual arbitration on employees seeking to advance class labor law claims. Despite the fact that the Court of Appeals for the Fifth Circuit has overruled the NLRB on both decisions, the ALJ said he was compelled to follow the NLRB's decisions "unless the Supreme Court overrules the Board."

Employers who have mandatory arbitration agreements should undertake a review to ensure that the

agreements are valid. Agreements that contain provisions unlawfully prohibiting employees from engaging in protected concerted activities or that lead employees to reasonably believe they are prohibited from filing charges with the NLRB will not stand in the current NLRB era.

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