

NLRB GC Instructs Regions to Hold on Class Action Waiver Cases Until Supreme Court Rules

Article By:

Ian B. Bogaty

Howard M. Bloom

Philip B. Rosen

The General Counsel of the National Labor Relations Board has instructed Regional Offices to hold in abeyance cases involving mandatory arbitration agreements with opt in or opt out clauses. Regions must do the same in cases where an employer argues that the class action waiver in its arbitration agreement is different than the one at issue in *Murphy Oil*. Regions are to evaluate cases independently.

The GC's memorandum results from the United States Supreme Court's recent grant of *certiorari* in *National Labor Relations Board v. Murphy Oil USA* (No. 16-307), *Epic Systems Corp. v. Lewis* (No. 16-285), and *Ernst & Young LLP v. Morris* (No. 16-300). The cases focus on the common issue of whether arbitration agreements that prevent employees from pursuing work-related claims on a collective or class basis violate the National Labor Relations Act.

In cases covered by the Memorandum, the GC directed Regions to enter informal settlement agreements if the cases have merit and conditioned on the Supreme Court finding class action waivers in arbitration agreements to be unlawful. Recognizing cases may contain multiple issues, Regions are instructed to enter similar informal settlement agreements regarding the class action waiver issue. If the parties are unable to settle the alternative issues in the case, those issues should move forward if the Region finds they have merit.

The Supreme Court's decision will loom large for employers. President Trump's appointment of a Justice to fill the seat vacated by Justice Antonin Scalia, who passed away last year, may be the deciding vote in the cases' outcomes. (See, [President Trump Nominates Neil Gorsuch to U.S. Supreme Court.](#))

Jackson Lewis P.C. © 2025

Source URL: <https://natlawreview.com/article/nlrb-gc-instructs-regions-to-hold-class-action-waiver-cases-until-supreme-court>