

Supreme Court Approves Arbitration Agreement Class Action Bar



William P.H. Cary
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Many United States companies use arbitration agreements requiring employees to arbitrate employment claims instead of bringing them before a state or federal court. Many of these agreements are required by the employer as a condition of employment.

Recently, the United States Supreme Court significantly broadened the protections available to employers under these agreements. In the consolidated cases of *Epic Systems Corp. v. Lewis*, *Ernst & Young LLP v. Morris* and *National Labor Relations Board v. Murphy Oil USA, Inc.*, the Court approved agreements requiring employees to arbitrate wage and hour claims against their employer on an individual basis and not a class or collective action basis.

In light of this decision, companies should (re)evaluate the potential benefits of an employer-mandated arbitration program, particularly companies large enough to be exposed to class/collective actions. In doing so, companies and their attorneys should consider the advantages—expediency, predictability of outcomes, confidentiality, and possibly reduced damages—and disadvantages—rare wins on dispositive motions, limited appellate rights, and lower costs for employees—typically associated with arbitration, and assess the individual needs of the company before installing an employer-mandated arbitration program for workplace disputes. While the benefits of protection from the burdens and risks of class litigation are readily apparent, the relative ease with which arbitration claims can be brought may be seen by some as an inducement to increased employment litigation.

In drafting the terms of an arbitration program, even though the *Epic* Court reemphasized that courts must “enforce arbitration agreements according to their terms,” be aware that earlier decisions have crafted numerous requirements to assure that the system as implemented is fair.