



U.S. Supreme Court Opens Door to Arbitration of Employment Discrimination Claims

In 14 Penn Plaza, LLC v. Pyett (Apr. 1, 2009, No. 07-581) 556 U.S. ____ [2009 WL 838159], the Supreme Court held that an agreement to arbitrate employment discrimination claims contained in a collective bargaining agreement (“CBA”) is enforceable. In so ruling, the high court shattered the long-held and dominant view that an arbitration provision in a union-negotiated contract cannot preempt an individual employee’s right to bring a claim of employment discrimination in the federal courts.

The former long-standing rule, based on the Supreme Court’s decision in Alexander v. Gardner-Denver (1974) 415 U.S. 36, and the line of cases that followed it, was that a CBA could not deprive a covered employee of her right to seek redress of a federal statutory right in a court of law. In Gardner-Denver, the employee was covered by a CBA that prohibited discrimination and, in a separate clause, required arbitration of any disputes as to the meaning of any provisions of the CBA. The court held that the arbitration provision applied only to contractual disputes, and did not extend to resolution of statutory claims created by Congress.

While the high court did not expressly overrule its earlier decision, it distinguished Gardner-Denver to the point of evisceration. Unlike the arbitration provision in Gardner-Denver, which was separate from the non-discrimination clause, the non-discrimination clause at issue in 14 Penn Plaza, included an arbitration provision as follows: “[a]ll [employment discrimination] claims shall be subject to the grievance and arbitration procedures . . . as the sole and exclusive remedy for violations. Arbitrators shall apply appropriate law in rendering decisions based upon claims of discrimination.” The Supreme Court held that this language expressly applied not only to contractual disputes, but also to statutory discrimination claims. The court further held that nothing in the Age Discrimination in Employment Act (“ADEA”), the statutory scheme at issue, prohibited arbitration of claims brought pursuant to its provisions.

Apart from reversing a long-accepted view under federal law, the decision in 14 Penn Plaza is significant because it would appear to permit employers to negotiate CBA provisions which would require federal ADEA discrimination claims be resolved by binding arbitration. However, caution should be exercised before trying to negotiate a non-discrimination clause into a California labor agreement similar to the one at issue in 14 Penn Plaza. First, the California Supreme Court has established stringent requirements for enforceability of arbitration agreements between individuals and employers, including requiring the full panoply of discovery and remedial rights as exist in court. The California state Supreme Court has not made such sweeping conclusions regarding union-negotiated, as opposed to individually-negotiated waivers. Second, it is not clear that California courts would interpret the state Fair Employment and Housing Act and applicable state public labor relations statutes (e.g., Educational Employment Relations Act) the same way the U.S. Supreme Court interpreted the ADEA and the private sector National Labor

Relations Act. Third, to the extent that arbitration is a less-costly alternative to litigation, it may invite more employees to file claims, increasing the number of employment discrimination cases. Fourth, practically speaking such clauses may not be within employers' reach: California public sector labor unions will proceed very cautiously before agreeing to waive statutory rights on behalf of bargaining unit members.

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This F3 NewsFlash is a summary only and not legal advice. We recommend that you consult with legal counsel to determine how this case may apply to your specific facts and circumstances.

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