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On June 4, 2012, the California Court of Appeal, Second District, issued an important pro-employer decision that upholds the use of class and representative action waivers in employment arbitration agreements.

In *Iskanian v. CLS Transportation Los Angeles, LLC* (*"Iskanian"*), the Court of Appeal held that the United States Supreme Court's decision in *AT&T Mobility v. Concepcion,* which we previously reported on, "conclusively invalidates" a California Supreme Court decision that permits trial courts to reject certain class arbitration waivers in employment agreements. In so doing, the Court of Appeal disagreed with the decisions of other courts on these issues, which may result in a review by the California Supreme Court. This is a generally positive development for employers who currently have or are considering mandatory arbitration programs; however, the immediate practical effect of this decision depends upon the specific goals and attributes of the program.

The Iskanian decision

Arshavir Iskanian worked as a driver for CLS Transportation Los Angeles (CLS). In connection with his employment, Iskanian signed an arbitration agreement that contained class and representative action waivers. Following his separation, Iskanian filed a class action complaint against CLS alleging several causes of action under California's Labor Code and Unfair Competition Law. He also sought to recovery civil penalties on behalf of himself and "other aggrieved employees" under California's Private Attorney General Act (PAGA).

Applying *Concepcion,* the Court of Appeal affirmed the trial court's order requiring the parties to arbitrate their disputes and dismissing the class claims. The Court squarely addressed whether the United State Supreme Court's holding in *Concepcion* invalidated the California Supreme Court's decision in *Gentry v. Superior Court.* In *Gentry,* the California Supreme Court held that, under certain circumstances, a class arbitration waiver "would impermissibly interfere with employees' ability to vindicate unwaivable rights and to enforce the overtime laws." In *Concepcion,* the United States Supreme Court held that the Federal Arbitration Act (FAA) preempts state laws that prohibit or disfavor arbitration.

According to the Court of Appeal, *Concepcion* "thoroughly rejected the concept that class arbitration procedures should be imposed on a party who never agreed to them." Because the *Gentry* rule requires courts "to determine whether to impose class arbitration on parties who contractually rejected it," the Court of Appeal held that it no longer applies in light of *Concepcion.*

Similarly, the Court of Appeal upheld the use of representative PAGA waivers in employment arbitration agreements. Expressly disagreeing with the decision of the Fifth District Court of Appeal in *Brown v. Ralph's Grocery Co.,* the Court held that "the public policy reasons underpinning the PAGA do not allow a court to disregard a binding arbitration agreement."

Practical considerations

This case provides an excellent roadmap for employers seeking to avoid employment class actions and representative PAGA claims. For the time being, however, trial courts are free to decide whether to follow *Iskanian* or the Fifth District's conflicting decision in *Brown.* Because of the split in authority in this critical area, moreover, we anticipate that the California Supreme Court will soon review the enforceability of class and representative action waivers in employment arbitration agreements.

Our attorneys have deep counseling and litigation experience on these issues. If would like to discuss these issues further or have questions about this *Alert,* please contact one of the attorneys listed above.

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