



NLRB Unanimously Declares that Mandatory Arbitration Agreement Violates the NLRA if it Restricts Access to the Board

By: Chris Thutchley and Hope Forsyth
July 9, 2019

The National Labor Relations Board (NLRB) recently unanimously ruled in *Prime Healthcare Paradise Valley, LLC*, 21–CA–133781 and 21–CA–133783 that agreements requiring employees to resolve all disputes exclusively through mandatory arbitration violates the National Labor Relations Act (NLRA) because it unlawfully “restricts access to the Board and its processes, that the potential impact on NLRA rights is profound, and that no legitimate employer interests justify it.” *Id.* at 2. As a result, employers that utilize mandatory arbitration agreements should review and, if necessary, revise them to ensure they do not prevent employees from filing unfair labor practice charges or otherwise exercise their rights with the NLRB.

If an employee believes his or her employer has violated the NLRA, the employee may file an unfair labor practice charge with the NLRB. It is a violation of the NLRA to restrict employees’ rights to file charges. Even if an employer’s agreement, policy, rule or handbook does not explicitly discuss NLRA rights, it may still violate the NLRA if it, “when reasonably interpreted, would potentially interfere with the exercise of NLRA rights.” To evaluate whether an agreement, rule, policy or handbook provision violates the NLRA, the NLRB weighs the impact of the restriction against any legitimate justifications associated with the rule.

Prime Healthcare’s arbitration agreement applied to “all claims or controversies for which a federal or state court would be authorized to grant relief.” It listed a number of claims that were covered and some that were not, such as workers’ compensation claims or unemployment claims, but nothing regarding NLRA rights. Since the agreement made arbitration, “the exclusive forum for the resolution of all claims” (emphasis in original), the NLRB concluded that it restricted employees’ right to file charges with the NLRB. The NLRB also concluded, as a matter of law, that legitimate justifications for the restriction did not, and indeed could not, exist. The agreement, thus, was unenforceable and a violation of the NLRA. As part of its order, the NLRB required Prime Healthcare to either rescind its agreement or revise it to make clear that the agreement did not bar or restrict employees’ right to file charges with the NLRB.

Employers with broad arbitration agreements should consider seeking legal review of their policies following the Prime Healthcare order. Succinct policy revisions may be necessary to ensure that the agreements are enforceable and clearly state they do not infringe on employees' rights under the NLRA.

GableGotwals has an experienced team of labor and employment attorneys available to assist employers in these updates. Please contact any [GableGotwals Labor & Employment attorney](#) for assistance.



Chris Thrutchley
cthutchley@gablelaw.com
Direct dial: 918-595-4810



Hope Forsyth
hforsyth@gablelaw.com
Direct dial: 918-595-4839