

Labor Contract Can Require Arbitration of Discrimination Claims

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In a 5-4 opinion, the U.S. Supreme Court ruled that union members covered by labor agreements containing clear and unmistakable language requiring them to arbitrate statutory claims are bound by the terms of the collective bargaining agreement, and forfeit their right to file private lawsuits. *14 Penn Plaza LLC v. Pyett*, No. 07-581 (April 1, 2009). The Court's holding effectively overturns the widely held view that a union contract's arbitration procedure was limited to resolving contractual violations and could not prevent an employee from going to court to resolve statutory violations. This belief was based on the Court's 1974 decision in *Alexander v. Gardner-Denver*, which seemed to suggest that an arbitration clause in a labor agreement could not bar union members from pursuing their statutory claims in a court of law.

In its *Pyett* decision, however, the Supreme Court clarified that *Gardner-Denver* did not prohibit parties to a collective bargaining contract from agreeing that statutory claims, including those under the ADEA, would be exclusively resolved through the contractual grievance and arbitration process, provided this limitation was clear and unmistakable. It went on to clarify *Gardner-Denver* by stating that its decision there did not generally prohibit arbitration of statutory violations, but only that the arbitration language in that case did not clearly bring statutory claims under the exclusive jurisdiction of the arbitration procedure.

In heated dissents, four justices accused the majority of changing the rules without any adequate legal reason other than its more recent favorable view of arbitration. The dissenting justices went on to reiterate concerns initially highlighted in *Gardner-Denver*. Most

significantly, entrusting a union that is primarily focused on majority rights to enforce the rights of a single employee may result in a conflict of interest thereby denying the individual's ability to obtain justice.

While the Court's decision was limited to ADEA claims, it appears its thinking would also equally apply to other federal and state law violations, unless the statute specifically prohibits the arbitration. Employers should review the non-discrimination and grievance/arbitration language in their union contracts as part of their negotiations preparation to determine whether they want to limit the forums available for statutory disputes, and if so whether the provisions are specific enough to do so.

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