

Adam Sencenbaugh in HR Magazine: High Court Cases Could Continue to Shape Employment Arbitration

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HR Magazine quoted Haynes Boone Partner [Adam Sencenbaugh](#) in an article about upcoming U.S. Supreme Court cases that may impact future employment arbitration.

Here is an excerpt:

The U.S. Supreme Court decided last term that class-action waivers in arbitration agreements don't run afoul of federal labor law—and this term, the justices will continue to shape the scope of arbitration agreements. Employers that use such agreements should periodically review their policies as this area of law continues to develop.

The high court heard oral arguments Oct. 29 in two arbitration cases. One case concerns whether an arbitration agreement that doesn't specifically mention class claims can be interpreted under state contract law to authorize classwide arbitration. The other case deals with whether a judge or an arbitrator should decide if a dispute is covered by an arbitration agreement.

The answers could have a significant impact on employment arbitration. Employers seeking to compel arbitration generally prefer to get the whole case to arbitration as quickly as possible, said Adam Sencenbaugh, an attorney with Haynes Boone in San Antonio and Austin, Texas. ...

Though the Supreme Court gave the green light to class-action waivers, it's not always clear what happens if the arbitration agreement doesn't include a waiver. Can the court allow a case to proceed to arbitration on a classwide basis? The Supreme Court justices are considering this question in *Lamps Plus Inc. v. Varela*, U.S., No. 17-988.

Chief Justice John Roberts Jr. opposed an interpretation that would expand the availability of class arbitration, Sencenbaugh noted. Roberts mused that the FAA [Federal Arbitration Act] would not require enforcing agreements that were "fundamentally inconsistent with arbitration itself."

A win for Lamps Plus would give employers another tool to evade classwide arbitration, especially if their arbitration agreements were not carefully drafted to prohibit class procedures, Sencenbaugh said.

The court struggled at oral argument with what it means to delegate decisions about arbitrability to the arbitrator, Sencenbaugh said. Justices Stephen Breyer and Sonia Sotomayor questioned what remedies were available to parties who were subject to an arbitrator's groundless decision that a particular dispute was subject to arbitration. Several justices were skeptical that the court could ever articulate a standard for when a dispute over arbitrability was wholly groundless, he added.

To read the full article, click [here](#).