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**CLIENT ALERT**

**U.S. Supreme Court Rules That A Collective Bargaining Agreement Can Require Union-Represented Employees To Arbitrate Discrimination Claims**

On April 1, 2009, the United States Supreme Court ruled that an employee covered by a collective bargaining agreement is prohibited from filing a suit under the Age Discrimination in Employment Act (“ADEA”) because the collective bargaining agreement provides that statutory antidiscrimination claims of bargaining unit employees must be resolved through arbitration. 14 Penn Plaza LLC v. Pyett, (Docket No. 07-581).

**Background**

Plaintiff employees were night watchmen employed to monitor the building lobby of the defendant employer. After September 11, 2001, the employer hired security guards to monitor the lobby and transferred the night watchmen to different duties. The affected employees filed grievances alleging the transfer violated the collective bargaining agreement and the ADEA. The union withdrew the employees’ ADEA grievance and the employees refused to arbitrate the claim on their own. Instead, the employees filed an ADEA suit in federal district court. The employer argued that the employees were obligated to arbitrate their age discrimination claims under the collective bargaining agreement.

## **Discussion**

Although in Gilmer v. Interstate/Johnson Lane Corp. the Court previously held that individual employees who have agreed to waive their rights to a federal forum in a job-required stock exchange registration application could be compelled to arbitrate a statutory antidiscrimination claim, until 14 Penn Plaza the Court had not determined whether a *collective bargaining agreement* that explicitly waives employees' rights to a federal forum requires employees to arbitrate claims. In 14 Penn Plaza, the Court explained that there was no reason to distinguish waivers negotiated individually from those negotiated in the collective bargaining setting. Rather, enforceability, the Court stressed, turns on whether the agreement "clearly and unmistakably" requires the employee or employees to arbitrate claims arising under antidiscrimination laws.

The collective bargaining clause in question provided, "All claims made pursuant to ... the Age Discrimination in Employment Act ... or any other similar laws...*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." (Emphasis added). The Court found that this provision "clearly and unmistakably" required bargaining unit members to arbitrate antidiscrimination claims, and thus, members could not litigate such claims. The Court found it significant that the collective bargaining agreement enumerated the specific statutes, including the ADEA, covered by the clause and that the agreement explicitly provided that arbitration was the only remedy for all alleged violations of the enumerated statutes. These factors distinguish the provision in 14 Penn Plaza from other collective bargaining agreements, most notably the agreement in Alexander v. Gardner-Denver, that the Court previously found failed to effectively compel arbitration of antidiscrimination claims.

## **Significance for Employers**

The decision is a major victory for employers interested in resolving all antidiscrimination claims through grievance and arbitration. Employers with grievance and arbitration clauses in collective bargaining agreements should review such provisions and amend with a view toward conformance with the details of this decision in order to drastically limit litigation of discrimination claims. Also, employers who already have a similar provision in their agreements may have a basis to dismiss pending discrimination litigation.

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