Sills Cummis & Gross P.C.

Client Alert **Employment and Labor**

Supreme Court Keeps Focus of Arbitration Exemption on Workers' Responsibilities

In a recent decision, the United States Supreme Court held that whether workers can be compelled under federal law to arbitrate disputes depends on whether their responsibilities qualify them as transportation workers, not whether they work for an employer in the transportation industry.

The Federal Arbitration Act

The Federal Arbitration Act (the "FAA") is a nearly century-old law setting forth the strong federal policy favoring arbitration. Under the FAA, arbitration agreements must be honored as any other contract. Notably, arbitration agreements must be enforced as written, and parties who agree to arbitrate can be forced to arbitrate rather than pursuing litigation in court.

Many employers prefer arbitration, particularly under the FAA, because it provides a private, streamlined, and often less expensive alternative to court litigation. The FAA permits employers to enforce class action waivers meaning, for example, that an employee asserting wage-and-hour claims can be forced to arbitrate individually rather than threatening the employer with liability for a class of hundreds or thousands of employees. The FAA also preempts state laws that attempt to narrow arbitration, such as laws in New York and New Jersey intended to prohibit mandatory arbitration of certain discrimination claims (though recent federal legislation has chipped away at this with respect to claims for sexual harassment and sexual assault).

However, the FAA contains a notable exemption. Under Section 1, the act does not apply to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." An employer cannot force workers who fall within the exception to arbitrate under the FAA (though state arbitration law could still apply).

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The *Bissonnette* Decision

In *Bissonnette v. LePage Bakeries Park Street, LLC*, decided on April 12, 2024, two distribution franchisees for a national bakery company asserted wage-and-hour claims under state and federal law. They had agreed to arbitration in their distribution agreements but argued that they fell within the Section 1 exemption and thus were not required to arbitrate. The question before the Supreme Court was how to define who falls into the last clause of the exception: "any other class or workers engaged in foreign or interstate commerce." In 2001, in *Circuit City Stores v. Adams*, the Court had ruled that it would not apply the exemption to all workers engaged in any way in interstate commerce, which is nearly every worker in the United States. Rather, the exemption is limited to transportation workers. But that raised the further question, at issue in *Bissonnette*, of how to determine whether a particular worker is a transportation worker.

The defendant argued that the franchisees were not transportation workers because they were in the bakery industry, not the transportation industry. The Court rejected this argument, holding that "[a] transportation worker need not work in the transportation industry to fall within the [Section 1] exemption…." Rather, quoting in part a 2022 decision, *Southwest Airlines v. Saxon*, the Court held:

> a transportation worker is one who is "actively" "engaged in transportation of… goods across borders via the channels of foreign or interstate commerce." In other words, any exempt worker "must at least play a direct and 'necessary role in the free flow of goods' across borders."

The Court provided no further guidance on what constitutes "active" engagement or a "direct and necessary role," but the clear import is the focus on individual workers' responsibilities. A worker is not automatically exempt from the FAA because their employer is in the transportation industry, nor is a worker automatically subject to the FAA because their employer is not in the transportation industry. Whether the worker is exempt from the FAA will depend on what the worker actually does and how those responsibilities relate to interstate commerce.

Key Takeaways

The Court's decision puts the burden on employers to review each of their employee's responsibilities and determine whether that employee is actively engaged and playing a direct and necessary role in interstate commerce, with guidance that will hopefully be forthcoming from courts in the near term. For those employees who fall within the Section 1 exemption, employers should try to tailor their arbitration agreements to conform to applicable state arbitration law, which may serve as a ready substitute for the FAA and preserve the employer's ability to force arbitration where desired.

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Our Sills Cummis Employment and Labor Practice Group
can assist employers regarding the issues raised in this alert.

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