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Employment Law Note

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Not So Fast: The Supreme Court Puts the Brakes on Mandatory Arbitration for Truckers

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In a recent decision, the Supreme Court found legal disputes between interstate trucking companies and owner-operator independent contractors cannot be forced into arbitration under the Federal Arbitration Act ("FAA") even if the contractor agreement includes a mandatory arbitration clause. In an 8-0 decision (Justice Kavanaugh joined the Court after oral arguments in the case), the Court's opinion in New *Prime v. Oliveira*, No. 17-340 (January 15, 2019) held the FAA's §1 exception, which excludes "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" applied to any and all "agreements to perform work." Thus, the Court concluded the §1 exception applies to exempt independent contractor ("IC") agreements from binding arbitration under the FAA.

The Case

Dominic Oliveira, a truck driver who was at various times an apprentice, employee, and independent contractor for New Prime Inc., filed a class action lawsuit in federal court against New Prime alleging that he and other drivers whom the company classified as independent contractors were actually employees, and, as such, were underpaid during their onboarding and training periods. In accordance with the terms of its independent contractor ("IC") agreement with Oliveira, which included a mandatory arbitration provision, the company sought to stay the litigation and compel arbitration to resolve the dispute. Oliveira argued, however, that the arbitration provision was void because the FAA does not apply to the "contracts of employment" for interstate truck drivers. The Supreme Court sided with Oliveira in an opinion authored by Justice Gorsuch.

The first issue presented was: who should decide whether the §1 exemption of the FAA applies? Per the terms of the IC agreement, the parties had delegated this determination to an arbitrator, but the Supreme Court disagreed.

Justice Gorsuch explained: "[A] court should decide for itself whether §1's 'contracts of employment' exclusion applies before ordering arbitration." This determination of arbitrability takes precedence over any delegation clause in an arbitration agreement because "a court may use [its authority under the FAA] to enforce a delegation clause only if the clause appears in a 'written provision in . . . a contract evidencing a transaction involving commerce'...[a]nd only if the contract in which the clause appears doesn't trigger §1's 'contracts of employment' exception."

Next, the Court examined whether the §1 exemption applied to independent contractor agreements. That question required the Court to determine the scope of "contracts of employment" exempted from coverage under §1 of the FAA. The Court noted that when the FAA was enacted in 1925, a "contract of employment" simply meant an agreement to perform work. "As a result, most people then would have

understood [the wording in § 1] to exclude not only agreements between employers and employees but also agreements that require independent contractors to perform work." Further, "the dictionaries of the era consistently afforded the word 'employment' a broad construction, broader than may be often found in dictionaries today. Back then, dictionaries tended to treat 'employment' more or less as a synonym for 'work.'" Therefore, the Court concluded that under the FAA, "contracts of employment" includes contracts with employees and contracts with independent contractors.

What Now?

Nearly one million men and women work as truck drivers nationwide. This ruling could open the floodgates to a host of lawsuits, including class and collective actions, against interstate trucking companies. Consequently, employers in this industry should immediately coordinate with their labor and employment counsel to determine how this decision impacts current and future agreements.

After *New Prime*, trucking companies can still rely on state arbitration or state contract law. However, one problem with a state-law-based approach for an "interstate" company is the significant differences from state to state. For example, some states have refused to uphold certain arbitration provisions, such as class action waivers, on unconscionability grounds. Many of these provisions could now be held invalid in some but not all states. Nevertheless, class and collective action waivers still are valuable, even if their validity must be determined on a case-by-case basis. Employers should also consider adding detailed severability clauses to any IC agreement or using multiple agreements to address employment, arbitration, and waiver issues separately.

Takeaway

While *New Prime* resolved the questions of who determines arbitrability and whether the FAA's §1 exemption applies to independent contractors, it left open many issues to be addressed by courts in the future. If you need assistance reviewing your contractor agreements to ensure they meet the new standards set by the Supreme Court in *New Prime*, or drafting new agreements to account for the ruling, please contact your Sebris Busto James attorney.

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