

41st Annual Corporate Counsel Institute

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2019 Employment Law Update

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Overview

- ❖ U.S. Supreme Court Update — Arbitration Agreements
- ❖ Federal Judiciary Update
- ❖ #MeToo, Pay Equity, and EEO-1 Updates
- ❖ LGBT Rights and Title VII
- ❖ DOL White Collar Exemption Rules
- ❖ Paid Family and Sick Leave
- ❖ Joint Employer and Gig Worker Update
- ❖ Marijuana Legalization Issues

Arbitration Agreements

Henry Schein, Inc. v. Archer & White Sales, Inc.
(S. Ct. Jan. 8, 2019)

- ❖ Under the FAA, the parties' agreement determines whether an arbitrator decides issues of arbitrability of a dispute.
- ❖ “Just as a court may not decide a merits question that the parties have delegated to an arbitrator, a court may not decide an arbitrability question that the parties have delegated to an arbitrator.”
- ❖ Reversed long-standing 5th Circuit precedent.

Arbitration Agreements *(Cont'd.)*

New Prime, Inc. v. Oliveira
(S. Ct. Jan. 15, 2019)

- ❖ A court – not an arbitrator – decides whether a contract falls within the Section 1 exemption to the FAA. (“Contracts for employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce” are exempt from the FAA.)
- ❖ Exemption applies to independent contractors.
- ❖ The Court did not decide who qualifies as a “class of worker engaged in foreign or interstate commerce.”

Arbitration Agreements (Cont'd.)

Lamps Plus, Inc. v. Varela
(S. Ct. Apr. 24, 2019)

Parties must specify class arbitration
in their arbitration agreements for
that procedural tool to apply.

Anti- Forced Arbitration Legislation

Year	Number of Employees Subject to Arbitration Agreements
1992	2%
2019	55%

“End the use of forced arbitration in
consumer, employment, civil rights,
and antitrust disputes.”

- ❖ Arbitration Fairness Act of 2018
- ❖ Forced Arbitration Injustice Repeal (FAIR) Act (H.R. 1423)

Also available as part of the eCourse

[Employment Issues for Corporate Counsel](#)

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"Recent Developments in Labor and Employment Law"