

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)

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