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LABOR & EMPLOYMENT LAW ALERT

FLSA Claims May be Subject to Mandatory Arbitration

The U.S. Court of Appeals for the Second Circuit held recently that individual overtime wage claims under the federal Fair Labor Standards Act (FLSA) are subject to mandatory arbitration if an employment contract calls for the arbitration of employment disputes. In such a scenario, the individual employee must submit his/her FLSA claims to arbitration and cannot sue in court. In *Rodriguez-Depena v. Parts Authority*, 2017 WL 6327827 (2d Cir., December 12, 2017), the Second Circuit, which has jurisdiction over New York State based employers, rejected an employee's argument that he could not be compelled to arbitrate his FLSA overtime pay claims under his employment contract even though he has limited abilities to speak or read English and arbitration can be expensive. The Second Circuit held that the absence of any Congressional intent to preclude a waiver of judicial remedies for the statutory rights at issue means that individual FLSA claims are indeed arbitrable. The Second Circuit based its conclusion on the 1991 decision of the U.S. Supreme Court in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 111 S. Ct. 1647 (1991) which upheld the enforcement of contractually required arbitration of an individual's statutory claims under the federal Age Discrimination in Employment Act.

Employers who wish to include mandatory arbitration clauses in their individual employment contracts should confer with employment counsel to insure that any such clause will withstand judicial scrutiny.

Please do not hesitate to contact one of our Firm's labor and employment law attorneys identified below if you would like more information on this issue.

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