Wage and Hour Class Actions can be Converted into Individual Arbitrations which can Significantly Reduce an Employer's Exposure

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Employers who have arbitration agreements may be able to convert putative wage and hour class actions into individual arbitrations, reducing their potential exposure from millions (or hundreds of millions) to thousands of dollars. In 2010, the Supreme Court held in *Stolt–Nielsen S.A. v. Animal Feeds Int'l Corp.* that if the parties to an arbitration agreement did not explicitly agree to arbitrate their disputes on a classwide basis, a court could not compel classwide arbitration. The Supreme Court followed up that decision with a 2011 decision in *AT&T Mobility v. Concepcion* (2011) overruling a California Supreme Court decision holding that class waivers in a consumer arbitration agreement were unconscionable. These decisions have paved the way for employers to argue that their arbitration agreements with employees, even if they do not contain explicit waivers of class litigation/arbitration, may compel employees to arbitrate their wage and hour (and other employment-based) claims on an individual basis rather than in class litigation or arbitration.

Relying on these Supreme Court decisions, in *Lopez v. ACE Cash Express, Inc.**, Nossaman employment attorneys Veronica Gray and Bradley Schwan recently obtained a successful ruling on behalf of a client in a California District Court compelling the plaintiff in a putative wage and hour class action to individual arbitration instead. This is a significant decision for employers in that it means the difference between a costly, complex, and risky class action and a relatively inexpensive, straightforward, and manageable arbitration.

Now is the time to review your arbitration agreements for enforceability or consider implementing an arbitration agreement if one is not already in place.

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