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Federal Arbitration Act Trumps State Court's Interpretation of Noncompete Clause

In a recent ruling concerning employee noncompetition agreements that also contained arbitration provisions, the Supreme Court held that the state court's decision to render noncompetition agreements invalid under state law violated the Federal Arbitration Act (the "FAA"). In *Nitro-Lift Technologies, LLC v. Howard*, 133 S. Ct. 500 (2012), the Supreme Court held that whether the challenged noncompetition agreements were valid under Oklahoma law was to be decided by an arbitrator – pursuant to the agreements' arbitration provisions – and not the state court. This decision is an important reminder of the FAA's mandate and Congress' "national policy favoring arbitration".

What were the facts? The plaintiff, Nitro-Lift, sought arbitration over an alleged breach of noncompetition agreements by two of its former employees. After receiving the arbitration demands, the former employees filed suit in Oklahoma state court seeking a declaration that their noncompetition agreements were null and void. The trial court dismissed the former employees' complaint on the grounds that the noncompetition agreements at issue contained valid arbitration clauses so that any dispute over the enforceability of the noncompetition agreements was to be decided by the arbitrator.

The Oklahoma Supreme Court disagreed with the lower court's ruling and, on appeal, found that the arbitration provisions did not preclude its review of the noncompetition agreements. The Supreme Court then found that the noncompetition agreements were void and unenforceable as against Oklahoma's policy.

What did the US Supreme Court Hold? In vacating the Oklahoma court's ruling, the US Supreme Court found that the Oklahoma Supreme Court's decision ignored the basic tenet of the FAA, which requires that a dispute over the validity of a contract containing a valid arbitration clause is "to be resolved by the arbitrator in the first instance, not by a federal or state court."

What are the take-aways for employers? This decision follows past Supreme Court decisions that hold that the FAA's mandate applies not only to federal courts, but also to state courts. When considering whether to include arbitration provisions

in employment agreements, employers should remain mindful of the breadth of the FAA's preemptive effect and the likelihood that an arbitrator will determine the ultimate enforceability of restrictive covenants and other clauses in an employment agreement, if challenged.

Contact Information. For more information on how to comply with California's new writing requirement for commission agreements, please contact Doug Towns (404.888.8852) or Emily Friedman (404.888.8871).

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