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SECOND CIRCUIT VALIDATES EMPLOYERS' USE OF CONSENSUAL DISPUTE RESOLUTION AGREEMENTS UNDER WHICH EMPLOYEES WAIVE THEIR RIGHT TO PROCEED AS PART OF A CLASS ACTION AGAINST EMPLOYERS FOR POTENTIAL FLSA CLAIMS

For employers operating in the New York City Metro Area (and, more specifically, in New York, Connecticut and Vermont), important developments have occurred this past week in the form of 2 opinions of the United States Court of Appeals for the Second Circuit. That court has twice upheld the enforceability of arbitration provisions that include class action waivers of Fair Labor Standards Act ("FLSA") wage and hour claims. As a result of the holdings in *Sutherland v. Ernst & Young LLP* and *Raniere et al. v. Citigroup Inc. et al.*, employers may now take comfort that their use of arbitration agreements which require employees to arbitrate their claims individually will be enforced. Such provisions permit employers to avoid defending wage-and-hour class action lawsuits. In both *Sutherland* and *Raniere*, the Second Circuit overturned a lower court's ruling that an arbitration agreement containing a requirement that FLSA claims be arbitrated individually could not be enforced to preclude individual employees from proceeding with their wage and hour claims as part of a collective, opt-in class of plaintiffs under the FLSA. Both Second Circuit decisions stem from the recent United States Supreme Court decision that upheld a class action waiver provision in an arbitration agreement in an antitrust action filed against American Express. However, the Second Circuit went a step further and rejected the argument of plaintiffs' bar advocates that the waiver of collective actions under the FLSA is contrary to congressional intent. In recent years, FLSA class action lawsuits have been the largest and most profitable employment lawsuits for plaintiffs' attorneys. Thus, these recent decisions, which allow employers to implement arbitration agreements in a manner designed specifically to avoid wage and hour class claims, will likely change—fundamentally—the entire landscape for these types of lawsuits. Based upon these landmark decisions, employers should seriously consider promulgating and implementing policies that include individual arbitration provisions for all employment disputes, including wage-and-hour related claims.

Should you wish further information about drafting and implementing such policies and/or the associated dispute resolution arbitration agreements, or any other employment-related

matters, please contact either of the Morrison Cohen partners named below, or your usual Morrison Cohen attorney contact.

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