

Are Your Mandatory Arbitration Agreements Still Enforceable?

“On March 18, 2021, the National Labor Relations Board (NLRB) reconsidered the lawfulness of terms in employment arbitration agreements that require employees to sign as a pre-dispute condition of employment. Ultimately the NLRB decision ... represents a surgical excision of *Epic Systems v. Lewis* that will have a lasting effect on employment agreements for years to come,” write Stuart R. Goldberg, Chris Barrett and Elizabeth Liner in *Baker Donelson’s Publications*.

“The NLRB held that confidentiality requirements for arbitration hearings, discovery, and awards are enforceable. However, as to arbitration settlements, the Board ruled agreements cannot silence workers regarding the details of the settlements through pre-dispute confidentiality provisions. According to the NLRB, the Federal Arbitration Act has no jurisdiction over employment-related arbitration settlements such that confidentiality provisions intended to gag employees as to the result of settlement negotiations would interfere with workers’ rights to discuss employment-related concerns. The same could, in turn, per the NLRB, chill employees’ ability to access the NLRB.”

“Notably, the Board stated that confidentiality of settlements could be agreed upon when negotiated, but pre-dispute confidentiality provisions, as a condition of employment, cannot be enforceable. The NLRB reiterates that broad agreements providing for the arbitration of all employment-related claims could constitute a violation of the National Labor Relations Act (the Act) if the arbitration agreement, when read in light of *Boeing*, would interfere with the individual’s rights under the Act, such as filing a charge

with the NLRB.”

Read the article.