

Employment Law

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The Supreme Court's *Waffle House* Decision: Arbitration Agreements Do Not Preclude The EEOC From Seeking Victim-Specific Relief In Court

INTRODUCTION

In light of the recent proliferation of employment-related lawsuits and the increasing frequency of large jury awards in those cases, many Employers have turned to mandatory arbitration programs for their employees as a way to minimize the costs and uncertainties associated with the litigation of employment claims in court. For those Employers and for any others who might be considering implementing a mandatory arbitration program, the United States Supreme Court has just issued a decision of great interest.

THE FACTS

Eric Baker applied for a position as a grill operator at a restaurant operated by Waffle House, Inc. Baker, like all other applicants for employment at Waffle House, was required to sign an application containing a mandatory arbitration agreement, by which he agreed that any dispute or claim concerning his employment at Waffle House would be settled by binding arbitration.

Sixteen days after he began his job, Baker suffered a seizure at work. Shortly thereafter, Baker was discharged. Baker never initiated arbitration proceedings under the arbitration agreement; instead, he filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), alleging that his discharge violated the Americans with Disabilities Act ("ADA").

When the EEOC receives a charge of discrimination, it investigates the allegations and issues its determination as to whether or not there is probable cause to believe that a violation of the law has occurred. In most cases, the EEOC then issues a Right to Sue letter to the employee, who is responsible for pursuing the matter in court if he or she desires. On

occasion, however, the EEOC takes the case to court itself by filing an enforcement action.

In Baker's case, the EEOC took the latter course, filing an enforcement action against Waffle House on behalf of Baker, alleging violations of the ADA. The EEOC's complaint not only requested injunctive relief to eradicate the effects of Waffle House's alleged discriminatory employment practices, but also requested victim-specific relief designed to make Baker whole, such as back pay, reinstatement, and compensatory and punitive damages.

THE SUPREME COURT'S DECISION

In *Equal Employment Opportunity Commission v. Waffle House, Inc.*, the Supreme Court held that the arbitration agreement between Baker and Waffle House did *not* limit the EEOC's statutory right to file an enforcement action or to pursue any form of relief authorized by statute. The EEOC, therefore, was free to pursue victim-specific relief in court despite the existence of the arbitration agreement.

The Court also ruled that there is no federal policy that overrides the EEOC's statutory right to seek victim-specific remedies. Thus, the fact that Waffle House and Baker had entered into an arbitration agreement was, to the Court, irrelevant. It had no effect whatsoever on the EEOC or its ability to conduct enforcement actions. Employers should always remember that the law in certain states differs from federal law in important respects. Before taking any position in a legal matter, therefore, Employers should consult the laws of their particular state.

The text of the *Waffle House* opinion can be accessed at <http://www.supremecourtus.gov/opinions/01pdf/99-1823.pdf>.

PRACTICAL IMPLICATIONS

At first glance, the *Waffle House* decision seems to render arbitration agreements far less attractive than they had been, in that they no longer limit the resolution of questions of liability for victim-specific relief to the arbitration process. To some extent, such concerns are legitimate.

Yet, the decision in *Waffle House* contains some important limitations, of which any Employer interested in maintaining an arbitration program should be aware.

- The Court in *Waffle House* makes clear that its holding is limited to the situation in which an employee has not taken any action to invoke a contractual arbitration process. As for the situation when an employee actually invokes a contractual arbitration process on his or her own behalf, the Court refused to decide whether that would impact the EEOC's right to bring an enforcement action or the remedies available to it.
- The holding in *Waffle House* is further limited to situations in which the EEOC decides to pursue an enforcement action on behalf of an employee or a class of employees. Obvious practical restrictions, such as limited personnel and resources, make enforcement actions by the EEOC relatively rare. It typically pursues enforcement actions in only a small percentage of matters filed with it, and then usually only when they present novel or important legal issues. Thus, the holding in *Waffle House* will not be applied very often in practice.
- The Court in *Waffle House* acknowledged that its decision should not be understood to permit any double recovery from Employers. That is not to say, however, that the *Waffle House* decision may not result in an increase in defense costs to Employers, in the event that they are forced to defend the same claim in two forums.
- The *Waffle House* decision leaves several questions unanswered. Most notably, the Court did not address the important questions concerning the more common situation in which an employee *has* invoked the contractual arbitration process. What will be the effect in those cases on the remedies available to the EEOC in an enforcement action? Although certain portions of the *Waffle House* decision suggest that such conduct by an employee

may preclude the EEOC from bringing an enforcement action, the continuing validity of such principles is questionable in light of the reasoning of *Waffle House*.

Further, even if an enforcement action is not precluded in that situation, what if the individual seeks, for example, reinstatement in the arbitration proceeding, but chooses not to seek back pay or compensatory or punitive damages – will the EEOC nonetheless be entitled to seek such remedies in an enforcement action? Again, that question is not answered by *Waffle House*.

Finally, the Court in *Waffle House* left unanswered various questions relating to the effect of the employee's conduct on the relief available to the EEOC, such as if the employee fails to mitigate damages or accepts a monetary amount in settlement of his or her claim. Although the Court suggests that such conduct "may" limit the EEOC's potential recovery in court, given the Court's obvious reluctance to answer such questions, we believe that even this issue must be deemed to be unresolved after *Waffle House*.

CONCLUSION

Although the Court's decision in *Waffle House* may detract from the initial appeal of mandatory arbitration agreements, until the Court gives further guidance, it has left the door open for Employers to argue that the impact of *Waffle House* is limited by the narrowness of its factual setting. Thus, Employers who currently are using mandatory arbitration programs, and those who would like to implement them, should not be deterred from doing so by *Waffle House*. Such programs can and should still play an important role in reducing the costs of defending employment claims in the majority of cases.

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