

# SNIFFEN & SPELLMAN, P.A.

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## LABOR AND EMPLOYMENT ALERT

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### National Labor Relations Board Rules that Certain Arbitration Agreements Violate the National Labor Relations Act

The National Labor Relations Board (“NLRB”) rang in the New Year with a bang, holding that mandatory arbitration agreements which require employees to pursue joint, class or collective claims addressing their wages, hours or other working conditions in arbitration instead of court violate Section 8(a)(1) of the National Labor Relations Act. The NLRB’s decision, D. R. Horton, Inc. and Michael Cuda, Case No. 12–CA–25764 (01/03/2012) is sure to send shock waves through the business community. A news release from the NLRB and the full opinion is available at the following link: [News Release](#).

Since the early 1990’s, following the U.S. Supreme Court’s decision in Gilmer v. Interstate/Johnson Lane Corp., (90-18), 500 U.S. 20 (1991), many employers have been aggressive in requiring employees to sign arbitration agreements as a condition of working for the employer, since the costs of litigating a claim through arbitration are typically less than defending the claim in Federal or State court. In Gilmer, the Supreme Court changed the landscape by endorsing binding arbitration of employment claims, including statutory employment discrimination claims, finding that the Federal Arbitration Act (“FAA”) supports such agreements.

While the NLRB acknowledged the breadth of the FAA, it went on to find that its decision was not at odds with the strong policy favoring the use of arbitration as a way to resolve disputes represented in the FAA. On this point, the NLRB noted:

“In this case, we consider whether an employer violates Section 8(a)(1) of the National Labor Relations Act when it requires employees covered by the Act, as a condition of their employment, to sign an agreement that precludes them from filing joint, class, or collective claims addressing their wages, hours or other working conditions against the employer in any forum, arbitral or judicial. For the reasons stated below, we find that such an agreement unlawfully restricts employees’ Section 7 right to engage in concerted action for mutual aid or protection, notwithstanding the Federal Arbitration Act (FAA), which generally makes employment-related arbitration agreements judicially enforceable.”

We will be monitoring the impact of the NLRB’s decision, and whether it is challenged by way of an appeal to a Federal Court of Appeals, and will report our findings in future issues of the Sniffen & Spellman, P.A. *Labor and Employment Alert*.

### Past Issues of the Labor and Employment Alert Posted on Website

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