

Supreme Court Rules Employer Delay Can Waive Right to Enforce Arbitration Agreement

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Key Takeaways:

- The Supreme Court has issued a rare ruling limiting the circumstances under which arbitration agreements may be enforced by federal courts.
- Under the ruling, a party who engages in court litigation and only belatedly seeks to move that dispute to arbitration may be found to have waived the right to arbitrate, even absent any prejudice to the opposing party.
- Employers who wish to enforce arbitration agreements should do so at the first opportunity.

Over the past decade, several Supreme Court decisions have made the enforcement of arbitration agreements much more likely, particularly in the employment context. On May 23, 2022, however, the Supreme Court issued a rare decision limiting the circumstances under which arbitration agreements may be enforced, ruling that an employer who delays in seeking to compel arbitration and engages in litigation with an employee waives its right to compel arbitration at a later date.

In *Morgan v. Sundance*, an employee sued her employer, alleging that she had not been properly paid for overtime work. The employee had signed an agreement upon commencing employment providing that she would “use confidential binding arbitration, instead of going to court” to resolve any such employment dispute. When the employee brought suit in federal district court, however, the employer did not immediately seek to compel arbitration. Instead, the employer sought to dismiss the suit on other grounds, then answered the complaint in court, attended mediation, and cooperated on creating a litigation schedule. Only after all this, and after the passage of eight months, did the employer move to compel arbitration. The employee opposed this motion, arguing that by waiting eight months, the employer had waived its rights to arbitration.

Most federal appellate courts that had considered the issue have previously held that, because of the “overriding federal policy favoring arbitration,” which is embodied in numerous prior Supreme Court cases, a party only waives its rights to arbitrate a dispute if (1) the party waited to assert this right and (2) the other party was prejudiced by this delay. The Supreme Court, however, disagreed. It held that there is no special “waiver” rule for arbitration. A party that knowingly relinquishes its right to force arbitration by engaging in litigation will waive its right to arbitration just as it would waive any other right.

While the ruling does not necessarily portend a shift away from recent pro-arbitration jurisprudence, it does provide a clear warning to employers. If employers want to enforce an arbitration agreement and avoid litigation, they must not wait to do so and should seek to send a dispute to arbitration at the earliest possible time.

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