



EMPLOYMENT TIPS FOR THE PHARMACEUTICAL, BIOTECH, AND LIFE SCIENCE INDUSTRIES

Tip #1: Why Pharmaceutical, Biotech, and Life Science Clients with a Massachusetts Presence Should Consider Rolling Out An Arbitration Agreement—With A Class Action Waiver

Until recently, there has been much debate about the enforceability of arbitration agreements containing class action waivers. Courts disagreed as to whether employers could enforce these agreements against workers seeking to sue on a class action basis. The debate is over. In 2018, the Supreme Court settled the issue. Arbitration agreements with class action waivers are enforceable to the same extent as other contracts. This means that a well-crafted and implemented arbitration program can provide insulation from bet-the-company wage and hour class action lawsuits.

An employment arbitration program is not right for every company. To be sure, there are pros and cons to arbitration. With few exceptions, however, every company with a sizeable workforce should at least conduct an analysis and make an informed decision about the usefulness and scope of an arbitration agreement.

In Massachusetts, companies are subject to unique levels of exposure in wage and hour class actions that might make individual, non-class arbitration an attractive option. For instance, triple damages are mandatory for proven violations of Massachusetts wage law. Unlike federal law and the laws of other states, Massachusetts law does not allow companies to avoid paying triple damages by proving that the wage violation was made in good faith.

Making matters worse, plaintiffs who prove their claims under Massachusetts wage law are also entitled to their attorneys' fees and costs, along with interest on their damages.

If these facts are not daunting enough, there is more. Massachusetts wage law is filled with traps for the unwary and the vigilant. And certain corporate officers, executives, and managers are subject to individual liability for their companies' violations of Massachusetts wage law—some of them simply by virtue of their job titles.

These are the realities of Massachusetts wage and hour laws. Combine these realities with another fact: Courts have certified classes in employment cases that consist of thousands of employee-plaintiffs. In this light, giving modest consideration to the potential use of a tailored arbitration agreement with a class action waiver is a no-brainer. Some back-of-the-envelope math will provide an order of magnitude sense of the exposure that a company could face in a multi-plaintiff wage case under Massachusetts law—damages that could potentially be avoided through use of an arbitration agreement.

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