

**DATE:** [Insert Date]

**TO:** [Client Name/Company Name]

**ATTN:** [In-House Counsel/HR Director]

**FROM:** [Attorney Name/Law Firm]

**RE:** Legal Advisory: Enforceability of Class Action Waivers in Employment Contracts

Dear [Client Name],

This letter provides a legal overview regarding the enforceability of class action waivers within your current employment agreements. As judicial trends and legislative landscapes shift, it is essential to review these provisions to mitigate the risk of representative litigation.

### **1. Current Legal Standing**

Under the Federal Arbitration Act (FAA) and following the Supreme Court's ruling in *Epic Systems Corp. v. Lewis*, class action waivers in arbitration agreements are generally enforceable. Employers may legally require employees to waive their right to collective legal action in favor of individual arbitration.

### **2. Key Enforceability Factors**

To ensure your waivers remain enforceable, the following elements must be present:

- **Mutual Assent:** Evidence that the employee clearly signed and agreed to the waiver.
- **Conspicuous Placement:** The waiver must not be hidden in fine print; it should be bolded or set apart in its own section.
- **Consideration:** The waiver must be exchanged for value (e.g., an offer of employment, a promotion, or continued employment where permitted by state law).
- **Unconscionability:** The terms must not be overly one-sided or prohibitively expensive for the employee to trigger.

### **3. State-Specific Exceptions and Regulatory Risks**

Please be advised that certain jurisdictions (e.g., California) have specific restrictions regarding Private Attorneys General Act (PAGA) claims. Furthermore, the "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act" now prohibits the enforcement of mandatory arbitration and class action waivers in cases involving allegations of sexual misconduct.

### **4. Recommendations**

We recommend a periodic audit of your onboarding documentation to ensure compliance with the most recent circuit court rulings. It is also advisable to include a "severability clause" to ensure that if the class action waiver is found invalid, the remainder of the arbitration agreement remains intact.

This letter is for informational purposes and does not constitute a final legal opinion on specific pending litigation. Please contact our office to schedule a formal review of your specific contract templates.

Sincerely,

[Signature]

[Printed Name]

[Law Firm Name]