

Edward Yennock Quoted in "Class Action Settlement Values Fall 52% in 2018, Law Firm Says"

Bloomberg Law Big Law Business

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Edward M. Yennock, Senior Counsel in the Employment, Labor & Workforce Management and Litigation practices, in the firm's New York office, was quoted in *Bloomberg Law Big Law Business*, in "Class Action Settlement Values Fall 52% in 2018, Law Firm Says," by Michael Trimarchi.

Following is an excerpt:

The value of wage and hour class action settlements in 2018 fell to \$253 million, down 52 percent from \$525 million in 2017, with the top 10 settlements in employment-related categories declining by nearly as much, a law firm said Jan. 8. ...

A key trend in workplace class actions was shaped by the Supreme Court's 2018 ruling in *Epic Systems Corp. v. Lewis* (138 S. Ct. 1612), which said employers may enforce arbitration agreements signed by workers, even if they prohibit class-action claims.

The ruling, which the report called "transformative," was one of the most important workplace class action rulings in the last two decades. "It is already having a profound impact on the prosecution and defense of workplace class action litigation, and in the long run, *Epic Systems* may well shift class action litigation dynamics in critical ways."

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Edward M. Yennock, senior counsel at the law firm Epstein Becker Green's office in New York, told Bloomberg Tax that employers must decide if it makes sense for them to require employees to agree to such a waiver because the disadvantages may outweigh the advantages.

Even more fundamentally, as class action waivers and arbitration clauses tend to go hand-in-hand, Yennock said employers also must decide whether one-off arbitrations are preferable to the prospect of a class action. "That decision perhaps becomes more difficult as the cost and complexity of arbitration increasingly resembles litigation, among other factors," he said Jan. 11 in an email.

Yennock said class action waivers are not rendered invulnerable by *Epic*. "As the Supreme Court observed, the waivers can be invalidated if the contract can be nullified on basic grounds, such as duress, mistake, etc.," he said. "In that vein, it is worth keeping an eye on whether courts who may be hostile to class action waivers begin to scrutinize the underlying contracts more so than previously."

The scope of *Epic's* effect on the wage and hour cases, among others, likely will be revealed a bit farther down the road, said Yennock, who specializes in the practices of employment, labor and workforce management, and litigation.