

Using Test Cases In Wage Mass Arbitration Can Rein In Costs

In “Using Test Cases In Wage Mass Arbitration Can Rein In Costs” (Law360, March 2, 2023), Law360 notes that as arbitration becomes an increasingly prevalent forum for resolving employment law claims, providers have adopted procedures, including so-called “bellwether systems”, to help keep the process from becoming unmanageable and outrageously expensive.

Pollock Cohen partner Rafi Janove raises concerns about the use of these “bellwether systems” in mass arbitration, that while they may be designed to keep the arbitration process from being uncontrollable and too expensive, they can instead be misused by companies to delay and impede the resolution.

Rafi notes that if parties don’t carefully structure a plan for test cases, their attempt to use some as a bellwether will backfire, stating, “It’s called a bellwether system, but really all it’s doing is delaying the resolution of all the claims ... Companies’ goal is to make pursuing claims so onerous that workers simply won’t try In companies’ view, a claim that isn’t filed counts as a win, and it’s easier to get than going through the time and expense of mounting a defense.”

"The true intention of employers or companies here is not to facilitate the efficient resolution of claims," he said. "The idea really is to put up as many roadblocks as possible."

To read the full article, click on the link below (subscription may be required).

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