

115TH CONGRESS
2D SESSION

H. R. 7109

To prohibit forced arbitration in employment disputes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 30, 2018

Mr. NADLER (for himself, Mr. SCOTT of Virginia, Mr. CICILLINE, Mr. JOHNSON of Georgia, Ms. JAYAPAL, Mr. CUMMINGS, Ms. MAXINE WATERS of California, Ms. LOFGREN, Ms. JACKSON LEE, Mr. DEUTCH, Mr. JEFFRIES, Ms. BASS, Mr. GUTIÉRREZ, Mr. SWALWELL of California, Mr. TAKANO, Ms. BONAMICI, Ms. WILSON of Florida, Ms. WASSERMAN SCHULTZ, Ms. HANABUSA, Ms. NORTON, Mrs. NAPOLITANO, Ms. CLARKE of New York, Mr. RYAN of Ohio, Ms. SCHAKOWSKY, Mr. MEEKS, Mr. LOWENTHAL, Mr. VELA, Mr. COURTNEY, Ms. DELAURO, Mr. NORCROSS, Ms. KAPTUR, Mrs. WATSON COLEMAN, Mrs. DINGELL, Mr. DESAULNIER, Ms. BARRAGÁN, Mr. HASTINGS, Ms. ROYBAL-ALLARD, Mr. LYNCH, Mr. SOTO, Ms. BROWNLEY of California, Ms. LEE, Mr. GOMEZ, Mrs. DAVIS of California, Ms. ESHOO, Ms. SHEA-PORTER, Mr. TONKO, Mr. GARAMENDI, Mr. GRIJALVA, Mr. PAYNE, Mr. DANNY K. DAVIS of Illinois, Mr. ELLISON, Mr. RASKIN, Mr. WELCH, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. MCEACHIN, Mr. KENNEDY, Ms. SPEIER, Mr. CARSON of Indiana, and Mr. TED LIEU of California) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit forced arbitration in employment disputes, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restoring Justice for
5 Workers Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Millions of employees are currently forced to
9 accept, as a condition of employment, contractual
10 provisions that block their access to the courts or
11 prohibit them from joining together with other em-
12 ployees to seek joint, class, or collective relief for vio-
13 lations of their rights. This has led to widespread
14 nonenforcement of employees’ rights and has per-
15 mitted significant violations of those rights to con-
16 tinue unabated.

17 (2) Most employees have little or no meaningful
18 choice regarding whether to accept these provisions.
19 Often, employees are not even aware that they have
20 given up the right to seek recourse in court or have
21 waived their right to join other employees in joint,
22 class, or collective actions.

23 (3) The Federal Arbitration Act (now enacted
24 as chapter 1 of title 9, United States Code) was in-
25 tended to apply to disputes between commercial enti-

1 ties of generally similar sophistication and bar-
2 gaining power. Despite this congressional intent, the
3 Supreme Court of the United States has interpreted
4 the Federal Arbitration Act so that it now extends
5 to employment disputes.

6 (4) The National Labor Relations Act (29
7 U.S.C. 151 et seq.) protects employees' right to en-
8 gage in concerted activities for the purpose of mu-
9 tual aid or protection. This was intended and long
10 understood to encompass employees' right to collec-
11 tively seek relief for violations of their workplace
12 rights. However, contrary to the plain text of the
13 law and congressional intent, the Supreme Court of
14 the United States, in *Epic Systems Corp. v. Lewis*,
15 138 S. Ct. 1612 (2018), decided that employees may
16 be forced, as a condition of employment, to waive
17 their right to collectively litigate employment actions.

18 (5) Forced individual dispute resolution under-
19 mines employees' rights and exacerbates the inequal-
20 ity of bargaining power between employees and em-
21 ployers because joining a joint, class, or collective ac-
22 tion is often the only way employees can afford to
23 seek relief for violations of their rights.

1 (6) Employees who are forced to submit to indi-
2 vidual dispute resolution often seek no redress at all
3 due to well-founded fear of retaliation.

4 (7) Protecting the rights of employees to indi-
5 vidually or concertedly seek relief for violations of
6 their labor rights through the justice system protects
7 the public interest and safeguards commerce from
8 injury.

9 **SEC. 3. PURPOSES.**

10 The purposes of this Act are to—

11 (1) prohibit predispute arbitration agreements
12 that require arbitration of employment disputes;

13 (2) prohibit retaliation against employees for
14 refusing to arbitrate employment disputes;

15 (3) provide protections to ensure that
16 postdispute arbitration agreements are truly vol-
17 untary and with the informed consent of employees;
18 and

19 (4) amend the National Labor Relations Act to
20 prohibit agreements and practices that interfere with
21 employees' right to collectively litigate employment
22 disputes.

23 **SEC. 4. ARBITRATION OF EMPLOYMENT DISPUTES.**

24 (a) IN GENERAL.—Title 9 of the United States Code
25 is amended by adding at the end the following:

1 **“CHAPTER 4—ARBITRATION OF**
2 **EMPLOYMENT DISPUTES**

“Sec.

“401. Definitions.

“402. Validity and enforceability.

3 **“§ 401. Definitions**

4 “In this chapter—

5 “(1) the terms ‘commerce’, ‘employee’, and ‘em-
6 ployer’ have the meanings given the terms in section
7 3 of the Fair Labor Standards Act of 1938 (29
8 U.S.C. 203);

9 “(2) the term ‘employment dispute’ means a
10 dispute between an employer and an employee aris-
11 ing from or relating to the employment of the em-
12 ployee, and includes disputes that arise under com-
13 mon law or from the alleged violation of the Con-
14 stitution of the United States, the constitution of a
15 State, or a Federal, State, territorial, county, or mu-
16 nicipal statute;

17 “(3) the term ‘predispute arbitration agree-
18 ment’ means any agreement to arbitrate a dispute
19 that had not yet arisen at the time of the making
20 of the agreement; and

21 “(4) the term ‘postdispute arbitration agree-
22 ment’ means any agreement to arbitrate a dispute
23 that arose before the time of the making of the
24 agreement.

1 **“§ 402. Validity and enforceability**

2 “(a) IN GENERAL.—Notwithstanding any other chap-
3 ter of this title—

4 “(1) no predispute arbitration agreement shall
5 be valid or enforceable if it requires arbitration of an
6 employment dispute;

7 “(2) no postdispute arbitration agreement that
8 requires arbitration of an employment dispute shall
9 be valid or enforceable unless—

10 “(A) the agreement was not required by
11 the employer, obtained by coercion or threat of
12 adverse action, or made a condition of employ-
13 ment or any employment-related privilege or
14 benefit;

15 “(B) each employee entering into the
16 agreement was informed in writing using suffi-
17 ciently plain language likely to be understood by
18 the average employee of—

19 “(i) the right of the employee under
20 paragraph (3) to refuse to enter the agree-
21 ment without retaliation; and

22 “(ii) the protections under section
23 8(a)(6) of the National Labor Relations
24 Act (29 U.S.C. 158(a)(6));

25 “(C) each employee entering into the
26 agreement entered the agreement after a wait-

1 ing period of not fewer than 45 days, beginning
2 on the date on which the employee was provided
3 both the final text of the agreement and the
4 disclosures required under subparagraph (B);
5 and

6 “(D) each employee entering into the
7 agreement affirmatively consented to the agree-
8 ment in writing; and

9 “(3) no employer may retaliate or threaten to
10 retaliate against an employee for refusing to enter
11 into an agreement that provides for arbitration of an
12 employment dispute.

13 “(b) STATUTE OF LIMITATIONS.—During the waiting
14 period described in subsection (a)(2)(C), the statute of
15 limitations for any claims that arise from or form the basis
16 for the applicable employment dispute shall be tolled.

17 “(c) CIVIL ACTION.—Any person who is injured by
18 reason of a violation of subsection (a)(3) may bring a civil
19 action in the appropriate district court of the United
20 States against the employer within 2 years of the violation,
21 or within 3 years if such violation is willful. Relief granted
22 in such an action shall include a reasonable attorney’s fee,
23 other reasonable costs associated with maintaining the ac-
24 tion, and any appropriate relief authorized by section
25 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e—

1 5(g)) or by section 1977A(b) of the Revised Statutes (42
2 U.S.C. 1981a(b)).

3 “(d) APPLICABILITY.—

4 “(1) IN GENERAL.—This chapter applies to em-
5 ployers and employees engaged in activity affecting
6 commerce to the fullest extent permitted by the
7 United States Constitution. An issue as to whether
8 this chapter applies to an arbitration agreement
9 shall be determined under Federal law. The applica-
10 bility of this chapter to an agreement to arbitrate
11 and the validity and enforceability of an agreement
12 to which this chapter applies shall be determined by
13 a court, rather than an arbitrator, regardless of
14 whether any contractual provision delegates such
15 matters to the arbitrator and irrespective of whether
16 the party resisting arbitration challenges the arbitra-
17 tion agreement specifically or in conjunction with
18 other terms of the contract containing such agree-
19 ment.

20 “(2) COLLECTIVE BARGAINING AGREEMENTS.—

21 Nothing in this chapter shall apply to any arbitra-
22 tion provision in a contract between an employer and
23 a labor organization, except that no such arbitration
24 provision shall have the effect of waiving the right
25 of an employee to seek judicial enforcement of a

right arising under a provision of the Constitution of the United States, the constitution of a State, or a Federal or State statute, or public policy arising therefrom.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Title 9 of the United States Code is amended—

(A) in section 1, by striking “of seamen,” and all that follows through “interstate commerce”;

(B) in section 2, by inserting “or as otherwise provided in chapter 4” before the period at the end;

(C) in section 208—

(i) in the section heading, by striking “**Chapter 1; residual application**” and inserting “**Application**”; and

(ii) by adding at the end the following: “This chapter applies to the extent that this chapter is not in conflict with chapter 4.”; and

(D) in section 307—

(i) in the section heading, by striking “**Chapter 1; residual application**” and inserting “**Application**”; and

1 (ii) by adding at the end the fol-
 2 lowing: “This chapter applies to the extent
 3 that this chapter is not in conflict with
 4 chapter 4.”.

5 (2) TABLE OF SECTIONS.—

6 (A) CHAPTER 2.—The table of sections for
 7 chapter 2 of title 9, United States Code, is
 8 amended by striking the item relating to section
 9 208 and inserting the following:

“208. Application.”.

10 (B) CHAPTER 3.—The table of sections for
 11 chapter 3 of title 9, United States Code, is
 12 amended by striking the item relating to section
 13 307 and inserting the following:

“307. Application.”.

14 (3) TABLE OF CHAPTERS.—The table of chap-
 15 ters for title 9, United States Code, is amended by
 16 adding at the end the following:

“4. Arbitration of employment disputes 401.”.

17 **SEC. 5. PROTECTION OF CONCERTED ACTIVITY.**

18 Section 8(a) of the National Labor Relations Act (29
 19 U.S.C. 158(a)) is amended—

20 (1) in paragraph (5), by striking the period at
 21 the end and inserting “; and”; and

22 (2) by adding at the end the following:

1 “(6)(A) to enter into or attempt to enforce any
2 agreement, express or implied, whereby prior to a
3 dispute to which the agreement applies, an employee
4 undertakes or promises not to pursue, bring, join,
5 litigate, or support any kind of joint, class, or collec-
6 tive legal action arising from or relating to the em-
7 ployment of such employee in any forum that, but
8 for such agreement, is of competent jurisdiction; or

9 “(B) to retaliate or threaten to retaliate against
10 an employee for refusing to undertake or promise
11 not to pursue, bring, join, litigate, or support any
12 kind of joint, class, or collective legal action arising
13 from or relating to the employment of such em-
14 ployee:

15 *Provided*, That any agreement that violates this
16 paragraph or results from a violation of this para-
17 graph shall be to such extent unenforceable and
18 void: *Provided further*, That this paragraph shall not
19 apply to any agreement embodied in or expressly
20 permitted by a contract between an employer and a
21 labor organization.”.

22 **SEC. 6. EFFECTIVE DATE.**

23 This Act, and the amendments made by this Act,
24 shall take effect on the date of enactment of this Act and
25 shall apply with respect to any dispute or claim that arises

- 1 on or after such date, including any dispute or claim to
- 2 which an agreement predating such date applies.

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