

116TH CONGRESS  
1ST SESSION

# S. 1491

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

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## IN THE SENATE OF THE UNITED STATES

MAY 15, 2019

Mrs. MURRAY (for herself, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. BROWN, Mr. CASEY, Ms. CORTEZ MASTO, Mr. DURBIN, Mrs. GILLIBRAND, Ms. HARRIS, Mr. KING, Ms. KLOBUCHAR, Mr. MARKEY, Mr. MERKLEY, Mr. REED, Mr. SANDERS, Mrs. SHAHEEN, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To prohibit forced arbitration in work 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 workers are currently forced to  
9       accept, as a condition of employment or work, con-

1       tractual provisions that block their access to the  
2       courts or prohibit them from joining together with  
3       other workers to seek joint, class, or collective relief  
4       for violations of their rights. This has led to wide-  
5       spread nonenforcement of workers' rights and has  
6       permitted significant violations of those rights to  
7       continue unabated.

8               (2) Most workers have little or no meaningful  
9       choice regarding whether to accept these provisions.  
10       Often, workers are not even aware that they have  
11       given up the right to seek recourse in court or have  
12       waived their right to join other workers in joint,  
13       class, or collective actions.

14              (3) The Federal Arbitration Act (now enacted  
15       as chapter 1 of title 9, United States Code) was in-  
16       tended to clarify the ability of commercial entities of  
17       generally similar sophistication and bargaining  
18       power to voluntarily agree to use arbitration to re-  
19       solve disputes between them. Despite this congress-  
20       sional intent, the Supreme Court of the United  
21       States has interpreted the Federal Arbitration Act  
22       so that it now extends to work disputes.

23              (4) The National Labor Relations Act (29  
24       U.S.C. 151 et seq.) protects employees' right to en-  
25       gage in concerted activities for the purpose of mu-

1 tual aid or protection. This was intended and long  
2 understood to encompass employees' right to collec-  
3 tively seek relief for violations of their workplace  
4 rights. However, contrary to the plain text of the  
5 law and congressional intent, the Supreme Court of  
6 the United States, in *Epic Systems Corp. v. Lewis*,  
7 138 S. Ct. 1612 (2018), decided that employees may  
8 be forced, as a condition of employment, to waive  
9 their right to act collectively with regard to employ-  
10 ment actions.

11 (5) Forced individual dispute resolution under-  
12 mines workers' rights and exacerbates the inequality  
13 of bargaining power between workers and employers  
14 because joining a joint, class, or collective action is  
15 often the only way workers can afford to seek relief  
16 for violations of their rights.

17 (6) Workers who are forced to submit to indi-  
18 vidual dispute resolution often seek no redress at all  
19 due to well-founded fear of retaliation.

20 (7) Protecting the rights of workers to individ-  
21 ually or concertedly seek relief for violations of their  
22 labor rights through appropriate forums protects the  
23 public interest and safeguards commerce from in-  
24 jury.

1 **SEC. 3. PURPOSES.**

2 The purposes of this Act are to—

3 (1) prohibit predispute arbitration agreements  
4 that require arbitration of work disputes;

5 (2) prohibit retaliation against workers for re-  
6 fusing to arbitrate work disputes;

7 (3) provide protections to ensure that postdis-  
8 pute arbitration agreements are truly voluntary and  
9 with the informed consent of workers; and

10 (4) amend the National Labor Relations Act to  
11 prohibit agreements and practices that interfere with  
12 employees' right to engage in concerted activity re-  
13 garding work disputes.

14 **SEC. 4. PROTECTION OF CONCERTED ACTIVITY.**

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

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

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

20 “(6)(A) to enter into or attempt to enforce any  
21 agreement, express or implied, whereby prior to a  
22 dispute to which the agreement applies, an employee  
23 undertakes or promises not to pursue, bring, join,  
24 litigate, or support any kind of joint, class, or collec-  
25 tive claim arising from or relating to the employ-

1       ment of such employee in any forum that, but for  
2       such agreement, is of competent jurisdiction;

3           “(B) to coerce such an employee into under-  
4       taking or promising not to pursue, bring, join, liti-  
5       gate, or support any kind of joint, class, or collective  
6       claim arising from or relating to the employment of  
7       such employee; or

8           “(C) to retaliate or threaten to retaliate against  
9       an employee for refusing to undertake or promise  
10      not to pursue, bring, join, litigate, or support any  
11      kind of joint, class, or collective claim arising from  
12      or relating to the employment of such employee:

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

20      (b) CONFORMING AMENDMENT.—Section 10(b) of  
21      the National Labor Relations Act (29 U.S.C. 160(b)) is  
22      amended by striking “discharge” and inserting “dis-  
23      charge, or unless the person aggrieved thereby is an em-  
24      ployee alleging a violation of section 8(a)(6) whose charge  
25      involves a postdispute arbitration agreement that meets

1 the requirements under section 402(a)(2) of title 9, United  
 2 States Code, or an agreement described in section  
 3 402(a)(4) of such title that meets the requirements under  
 4 subparagraphs (A) through (D) of section 402(a)(2) of  
 5 such title, in which event the six-month period shall be  
 6 computed from the day the waiting period described in  
 7 subparagraph (C) of such section ends”.

8 **SEC. 5. ARBITRATION OF WORK DISPUTES.**

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

11 **“CHAPTER 4—ARBITRATION OF WORK**  
 12 **DISPUTES**

“Sec.

“401. Definitions.

“402. Validity and enforceability.

13 **“§ 401. Definitions**

14 “In this chapter—

15 “(1) the terms ‘commerce’, ‘employee’, and ‘em-  
 16 ployer’ have the meanings given the terms in section  
 17 3 of the Fair Labor Standards Act of 1938 (29  
 18 U.S.C. 203);

19 “(2) the term ‘covered entity’ means—

20 “(A) an employer; or

21 “(B) an individual or entity that is not  
 22 acting as an employer and engages the services  
 23 of a worker;

1           “(3) the term ‘predispute arbitration agree-  
2           ment’ means any agreement to arbitrate a dispute  
3           that had not yet arisen at the time of the making  
4           of the agreement;

5           “(4) the term ‘postdispute arbitration agree-  
6           ment’ means any agreement to arbitrate a dispute  
7           that arose before the time of the making of the  
8           agreement;

9           “(5) the term ‘worker’ means—

10                   “(A) an employee; or

11                   “(B) an individual who is engaged by a  
12                   covered entity to perform services or work as an  
13                   independent contractor (regardless of the label  
14                   or classification assigned or used by the covered  
15                   entity); and

16           “(6) the term ‘work dispute’—

17                   “(A) means a dispute between one or more  
18                   workers (or their authorized representatives)  
19                   and a covered entity arising out of or related to  
20                   the work relationship or prospective work rela-  
21                   tionship between the workers and the covered  
22                   entity; and

23                   “(B) includes, but is not limited to—

24                           “(i) a dispute regarding the terms of,  
25                           payment for, advertising of, recruitment of,

1 referring of, arranging for, or discipline or  
 2 discharge in connection with such work;

3 “(ii) a dispute arising under any law  
 4 referred to or described in section 62(e) of  
 5 the Internal Revenue Code of 1986, includ-  
 6 ing any part of such a law not explicitly  
 7 referenced in such section that relates to  
 8 protecting individuals on a basis that is  
 9 protected under a law referred to or de-  
 10 scribed in such section; and

11 “(iii) a dispute in which an individual  
 12 or individuals seek certification—

13 “(I) as a class under rule 23 of  
 14 the Federal Rules of Civil Procedure;

15 “(II) as a collective action under  
 16 section 16(b) of the Fair Labor  
 17 Standards Act of 1938 (29 U.S.C.  
 18 216(b)); or

19 “(III) under a comparable rule or  
 20 provision of State law.

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

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



1           “(1) no predispute arbitration agreement shall  
2           be valid or enforceable if it requires arbitration of a  
3           work dispute;

4           “(2) no postdispute arbitration agreement that  
5           requires arbitration of a work dispute shall be valid  
6           or enforceable unless—

7                   “(A) the agreement was not required by  
8                   the covered entity, obtained by coercion or  
9                   threat of adverse action, or made a condition of  
10                  employment, work, or any employment-related  
11                  or work-related privilege or benefit;

12                  “(B) each worker entering into the agree-  
13                  ment was informed in writing using sufficiently  
14                  plain language likely to be understood by the  
15                  average worker of—

16                          “(i) the right of the worker under  
17                          paragraph (3) to refuse to enter the agree-  
18                          ment without retaliation; and

19                          “(ii) the protections under section  
20                          8(a)(6) of the National Labor Relations  
21                          Act (29 U.S.C. 158(a)(6));

22                  “(C) each worker entering into the agree-  
23                  ment entered the agreement after a waiting pe-  
24                  riod of not fewer than 45 days, beginning on  
25                  the date on which the worker was provided both

1 the final text of the agreement and the disclo-  
2 sures required under subparagraph (B); and

3 “(D) each worker entering into the agree-  
4 ment affirmatively consented to the agreement  
5 in writing;

6 “(3) no agreement shall be valid or enforceable,  
7 whereby prior to a work dispute to which the agree-  
8 ment applies, a worker undertakes or promises not  
9 to pursue, bring, join, litigate, or support any kind  
10 of joint, class, or collective claim arising from or re-  
11 lating to a work dispute in any forum that, but for  
12 such agreement, is of competent jurisdiction;

13 “(4) no agreement shall be valid or enforceable,  
14 whereby after a work dispute to which the agree-  
15 ment applies arises, a worker undertakes or prom-  
16 ises not to pursue, bring, join, litigate, or support  
17 any kind of joint, class, or collective claim arising  
18 from or relating to a work dispute in any forum  
19 that, but for such agreement, is of competent juris-  
20 diction, unless the agreement meets the require-  
21 ments of paragraph (2) of this subsection; and

22 “(5) no covered entity may retaliate or threaten  
23 to retaliate against a worker for refusing to enter  
24 into an agreement that provides for arbitration of a  
25 work dispute.

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

5       “(c) CIVIL ACTION.—Any person who is injured by  
6 reason of a violation of subsection (a)(5) may bring a civil  
7 action in the appropriate district court of the United  
8 States against the covered entity within 2 years of the vio-  
9 lation, or within 3 years if such violation is willful. Relief  
10 granted in such an action shall include a reasonable attor-  
11 ney’s fee, other reasonable costs associated with maintain-  
12 ing the action, and any appropriate relief authorized by  
13 section 706(g) of the Civil Rights Act of 1964 (42 U.S.C.  
14 2000e–5(g)) or by section 1977A(b) of the Revised Stat-  
15 utes (42 U.S.C. 1981a(b)).

16       “(d) APPLICABILITY.—

17               “(1) IN GENERAL.—This chapter applies to cov-  
18 ered entities and workers engaged in activity affect-  
19 ing commerce to the fullest extent permitted by the  
20 Constitution of the United States, including the  
21 work of persons engaged in domestic service in  
22 households, as described in section 2(a) of the Fair  
23 Labor Standards Act of 1938 (29 U.S.C. 202(a)).  
24 An issue as to whether this chapter applies to an ar-  
25 bitration agreement shall be determined under Fed-

1 eral law. The applicability of this chapter to an  
2 agreement to arbitrate and the validity and enforce-  
3 ability of an agreement to which this chapter applies  
4 shall be determined by a court, rather than an arbi-  
5 trator, regardless of whether any contractual provi-  
6 sion purports to delegate such determinations to the  
7 arbitrator and irrespective of whether the party re-  
8 sisting arbitration challenges the arbitration agree-  
9 ment specifically or in conjunction with other terms  
10 of the contract containing such agreement.

11 “(2) COLLECTIVE BARGAINING AGREEMENTS.—  
12 Nothing in this chapter shall apply to any arbitra-  
13 tion provision in a contract between a covered entity  
14 and a labor organization, except that no such arbi-  
15 tration provision shall have the effect of waiving the  
16 right of a worker to seek judicial enforcement of a  
17 right arising under a provision of the Constitution of  
18 the United States, the constitution of a State, or a  
19 Federal or State statute, or public policy arising  
20 therefrom.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

1 (A) in section 1, by striking “of seamen,”  
2 and all that follows through “interstate com-  
3 merce”;

4 (B) in section 2, by inserting “or as other-  
5 wise provided in chapter 4” before the period at  
6 the end;

7 (C) in section 208—

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

11 (ii) by adding at the end the fol-  
12 lowing: “This chapter applies to the extent  
13 that this chapter is not in conflict with  
14 chapter 4.”; and

15 (D) in section 307—

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

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

23 (2) TABLE OF SECTIONS.—

24 (A) CHAPTER 2.—The table of sections for  
25 chapter 2 of title 9, United States Code, is

1 amended by striking the item relating to section  
2 208 and inserting the following:

“208. Application.”.

3 (B) CHAPTER 3.—The table of sections for  
4 chapter 3 of title 9, United States Code, is  
5 amended by striking the item relating to section  
6 307 and inserting the following:

“307. Application.”.

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

“4. Arbitration of work disputes ..... 401.”.

10 **SEC. 6. EFFECTIVE DATE.**

11 This Act, and the amendments made by this Act,  
12 shall take effect on the date of enactment of this Act and  
13 shall apply with respect to any dispute or claim that arises  
14 or accrues on or after such date, including any dispute  
15 or claim to which an agreement predating such date ap-  
16 plies.

