

117TH CONGRESS  
1ST SESSION

# H. R. 4841

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2021

Mr. NADLER (for himself, Mr. SCOTT of Virginia, Mr. CICILLINE, Mr. COHEN, Mr. COOPER, Mr. DANNY K. DAVIS of Illinois, Mrs. DEMINGS, Mr. DEUTCH, Mr. ESPAILLAT, Ms. JAYAPAL, Mr. JEFFRIES, Mr. JONES, Mr. LANGEVIN, Ms. LEE of California, Ms. BONAMICI, Mrs. LAWRENCE, Ms. MCCOLLUM, Ms. NORTON, Mr. RASKIN, Mr. RUSH, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SWALWELL, Mr. TAKANO, Mr. DESAULNIER, Mr. JOHNSON of Georgia, Ms. BROWNLEY, Ms. WILSON of Florida, Mr. LEVIN of Michigan, Mr. POCAN, Mr. NORCROSS, Ms. LEGER FERNANDEZ, Mrs. MCBATH, Mr. GRIJALVA, Mr. BOWMAN, Mr. YARMUTH, and Ms. ADAMS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, 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

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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”.

1 **SEC. 2. 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. 3. ARBITRATION OF WORK DISPUTES.**

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

17 **“CHAPTER 4—ARBITRATION OF WORK**  
18 **DISPUTES**

“Sec.

“401. Definitions.

“402. Validity and enforceability.

19 **“§ 401. Definitions**

20 “In this chapter—

21 “(1) the terms ‘commerce’, ‘employee’, and ‘em-  
22 ployer’ have the meanings given the terms in section  
23 3 of the Fair Labor Standards Act of 1938 (29  
24 U.S.C. 203);

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

2 “(A) an employer; or

3 “(B) an individual or entity that is not  
4 acting as an employer and engages the services  
5 of a worker;

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

10 “(4) the term ‘postdispute arbitration agree-  
11 ment’ means any agreement to arbitrate a dispute  
12 that arose before the time of the making of the  
13 agreement;

14 “(5) the term ‘worker’ means—

15 “(A) an employee; or

16 “(B) an individual who is engaged by a  
17 covered entity to perform services or work as an  
18 independent contractor (regardless of the label  
19 or classification assigned or used by the covered  
20 entity); and

21 “(6) the term ‘work dispute’—

22 “(A) means a dispute between one or more  
23 workers (or their authorized representatives)  
24 and a covered entity arising out of or related to  
25 the work relationship or prospective work rela-

1           tiouship between the workers and the covered  
2           entity; and

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

4                   “(i) a dispute regarding the terms of,  
5                   payment for, advertising of, recruitment of,  
6                   referring of, arranging for, or discipline or  
7                   discharge in connection with such work;

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

16                  “(iii) a dispute in which an individual  
17                  or individuals seek certification—

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

20                           “(II) as a collective action under  
21                           section 16(b) of the Fair Labor  
22                           Standards Act of 1938 (29 U.S.C.  
23                           216(b)); or

24                           “(III) under a comparable rule or  
25                           provision of State law.

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 a  
6 work dispute;

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

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

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

19 “(i) the right of the worker 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 worker entering into the agree-  
26 ment entered the agreement after a waiting pe-

1           riod of not fewer than 45 days, beginning on  
2           the date on which the worker was provided both  
3           the final text of the agreement and the disclo-  
4           sures required under subparagraph (B); and

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

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

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

24          “(5) no covered entity may retaliate or threaten  
25          to retaliate against a worker for refusing to enter

1 into an agreement that provides for arbitration of a  
2 work dispute.

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

7 “(c) CIVIL ACTION.—Any person who is injured by  
8 reason of a violation of subsection (a)(5) may bring a civil  
9 action in the appropriate district court of the United  
10 States against the covered entity within 2 years of the vio-  
11 lation, or within 3 years if such violation is willful. Relief  
12 granted in such an action shall include a reasonable attor-  
13 ney’s fee, other reasonable costs associated with maintain-  
14 ing the action, and any appropriate relief authorized by  
15 section 706(g) of the Civil Rights Act of 1964 (42 U.S.C.  
16 2000e–5(g)) or by section 1977A(b) of the Revised Stat-  
17 utes (42 U.S.C. 1981a(b)).

18 “(d) APPLICABILITY.—

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

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

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

23 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

24 (1) IN GENERAL.—Title 9 of the United States  
25 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. 4. PROTECTION OF CONCERTED ACTIVITY.**

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

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

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

16                   “(6)(A) to enter into or attempt to enforce any  
17           agreement, express or implied, whereby prior to a  
18           dispute to which the agreement applies, an employee  
19           undertakes or promises not to pursue, bring, join,  
20           litigate, or support any kind of joint, class, or collec-  
21           tive claim arising from or relating to the employ-  
22           ment of such employee in any forum that, but for  
23           such agreement, is of competent jurisdiction;

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

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

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

18          (b) CONFORMING AMENDMENT.—Section 10(b) of  
19          the National Labor Relations Act (29 U.S.C. 160(b)) is  
20          amended by striking “discharge” and inserting “dis-  
21          charge, or unless the person aggrieved thereby is an em-  
22          ployee alleging a violation of section 8(a)(6) whose charge  
23          involves a postdispute arbitration agreement that meets  
24          the requirements under section 402(a)(2) of title 9, United  
25          States Code, or an agreement described in section

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

6 **SEC. 5. EFFECTIVE DATE.**

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

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