

116TH CONGRESS
1ST SESSION

H. R. 2749

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

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2019

Mr. NADLER (for himself, Mr. SCOTT of Virginia, Mr. CICILLINE, Ms. BONAMICI, Mrs. BUSTOS, Mr. CISNEROS, Mr. COHEN, Mr. COOPER, Mr. CUMMINGS, Mr. DANNY K. DAVIS of Illinois, Ms. DELAURO, Mr. DESAULNIER, Mrs. DINGELL, Mr. ESPAILLAT, Mr. EVANS, Mr. GARAMENDI, Mr. GOLDEN, Mr. HASTINGS, Ms. JACKSON LEE, Ms. JAYAPAL, Mr. KENNEDY, Mr. KILDEE, Mr. LANGEVIN, Mrs. LAWRENCE, Mr. LEVIN of Michigan, Mr. LOWENTHAL, Mrs. MCBATH, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCGOVERN, Mr. MEEKS, Ms. MUCARSEL-POWELL, Ms. NORTON, Ms. OCASIO-CORTEZ, Ms. PORTER, Mr. RASKIN, Mr. RUSH, Mr. RYAN, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SMITH of Washington, Mr. SWALWELL of California, Mr. TAKANO, Mr. TONKO, Mr. VELA, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, and Ms. CASTOR of Florida) 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

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Restoring Justice for
3 Workers Act”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are to—

6 (1) prohibit predispute arbitration agreements
7 that require arbitration of work disputes;

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

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

13 (4) amend the National Labor Relations Act to
14 prohibit agreements and practices that interfere with
15 employees’ right to engage in concerted activity re-
16 garding work disputes.

17 **SEC. 3. ARBITRATION OF WORK DISPUTES.**

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

20 **“CHAPTER 4—ARBITRATION OF WORK**
21 **DISPUTES**

 “Sec.

 “401. Definitions.

 “402. Validity and enforceability.

22 **“§ 401. Definitions**

23 “In this chapter—

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

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

6 “(A) an employer; or

7 “(B) an individual or entity that is not
8 acting as an employer and engages the services
9 of a worker;

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

14 “(4) the term ‘postdispute arbitration agree-
15 ment’ means any agreement to arbitrate a dispute
16 that arose before the time of the making of the
17 agreement;

18 “(5) the term ‘worker’ means—

19 “(A) an employee; or

20 “(B) an individual who is engaged by a
21 covered entity to perform services or work as an
22 independent contractor (regardless of the label
23 or classification assigned or used by the covered
24 entity); and

25 “(6) the term ‘work dispute’—

1 “(A) means a dispute between one or more
2 workers (or their authorized representatives)
3 and a covered entity arising out of or related to
4 the work relationship or prospective work rela-
5 tionship between the workers and the covered
6 entity; and

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

8 “(i) a dispute regarding the terms of,
9 payment for, advertising of, recruitment of,
10 referring of, arranging for, or discipline or
11 discharge in connection with such work;

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

20 “(iii) a dispute in which an individual
21 or individuals seek certification—

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

24 “(II) as a collective action under
25 section 16(b) of the Fair Labor

1 Standards Act of 1938 (29 U.S.C.
2 216(b)); or
3 “(III) under a comparable rule or
4 provision of State law.

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

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

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

11 “(2) no postdispute arbitration agreement that
12 requires arbitration of a work dispute shall be valid
13 or enforceable unless—

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

19 “(B) each worker entering into the agree-
20 ment was informed in writing using sufficiently
21 plain language likely to be understood by the
22 average worker of—

23 “(i) the right of the worker under
24 paragraph (3) to refuse to enter the agree-
25 ment without retaliation; and

1 “(ii) the protections under section
2 8(a)(6) of the National Labor Relations
3 Act (29 U.S.C. 158(a)(6));

4 “(C) each worker entering into the agree-
5 ment entered the agreement after a waiting pe-
6 riod of not fewer than 45 days, beginning on
7 the date on which the worker was provided both
8 the final text of the agreement and the disclo-
9 sures required under subparagraph (B); and

10 “(D) each worker entering into the agree-
11 ment affirmatively consented to the agreement
12 in writing;

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

20 “(4) no agreement shall be valid or enforceable,
21 whereby after a work dispute to which the agree-
22 ment applies arises, a worker undertakes or prom-
23 ises not to pursue, bring, join, litigate, or support
24 any kind of joint, class, or collective claim arising
25 from or relating to a work dispute in any forum

1 that, but for such agreement, is of competent juris-
2 diction, unless the agreement meets the require-
3 ments of paragraph (2) of this subsection; and

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

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

12 “(c) CIVIL ACTION.—Any person who is injured by
13 reason of a violation of subsection (a)(5) may bring a civil
14 action in the appropriate district court of the United
15 States against the covered entity within 2 years of the vio-
16 lation, or within 3 years if such violation is willful. Relief
17 granted in such an action shall include a reasonable attor-
18 ney’s fee, other reasonable costs associated with maintain-
19 ing the action, and any appropriate relief authorized by
20 section 706(g) of the Civil Rights Act of 1964 (42 U.S.C.
21 2000e–5(g)) or by section 1977A(b) of the Revised Stat-
22 utes (42 U.S.C. 1981a(b)).

23 “(d) APPLICABILITY.—

24 “(1) IN GENERAL.—This chapter applies to cov-
25 ered entities and workers engaged in activity affect-

1 ing commerce to the fullest extent permitted by the
2 Constitution of the United States, including the
3 work of persons engaged in domestic service in
4 households, as described in section 2(a) of the Fair
5 Labor Standards Act of 1938 (29 U.S.C. 202(a)).
6 An issue as to whether this chapter applies to an ar-
7 bitration agreement shall be determined under Fed-
8 eral law. The applicability of this chapter to an
9 agreement to arbitrate and the validity and enforce-
10 ability of an agreement to which this chapter applies
11 shall be determined by a court, rather than an arbi-
12 trator, regardless of whether any contractual provi-
13 sion purports to delegate such determinations to the
14 arbitrator and irrespective of whether the party re-
15 sisting arbitration challenges the arbitration agree-
16 ment specifically or in conjunction with other terms
17 of the contract containing such agreement.

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

1 Federal or State statute, or public policy arising
2 therefrom.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

12 (C) in section 208—

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

16 (ii) by adding at the end the fol-
17 lowing: “This chapter applies to the extent
18 that this chapter is not in conflict with
19 chapter 4.”; and

20 (D) in section 307—

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

24 (ii) by adding at the end the fol-
25 lowing: “This chapter applies to the extent

1 that this chapter is not in conflict with
2 chapter 4.”.

3 (2) TABLE OF SECTIONS.—

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

“208. Application.”.

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

“307. Application.”.

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

“4. Arbitration of work disputes 401.”.

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

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

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

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

21 “(6)(A) to enter into or attempt to enforce any
22 agreement, express or implied, whereby prior to a
23 dispute to which the agreement applies, an employee

1 undertakes or promises not to pursue, bring, join,
2 litigate, or support any kind of joint, class, or collec-
3 tive claim arising from or relating to the employ-
4 ment of such employee in any forum that, but for
5 such agreement, is of competent jurisdiction;

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

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

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

23 (b) CONFORMING AMENDMENT.—Section 10(b) of
24 the National Labor Relations Act (29 U.S.C. 160(b)) is
25 amended by striking “discharge” and inserting “dis-

1 charge, or unless the person aggrieved thereby is an em-
2 ployee alleging a violation of section 8(a)(6) whose charge
3 involves a postdispute arbitration agreement that meets
4 the requirements under section 402(a)(2) of title 9, United
5 States Code, or an agreement described in section
6 402(a)(4) of such title that meets the requirements under
7 subparagraphs (A) through (D) of section 402(a)(2) of
8 such title, in which event the six-month period shall be
9 computed from the day the waiting period described in
10 subparagraph (C) of such section ends”.

11 **SEC. 5. EFFECTIVE DATE.**

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

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