

118TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mrs. MURRAY introduced the following bill; which was read twice and referred to the Committee on _____

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-
10 tractual provisions that block their access to the
11 courts or prohibit them from joining together with

1 other workers to seek joint, class, or collective relief
2 for violations of their rights. This has led to wide-
3 spread nonenforcement of workers' rights and has
4 permitted significant violations of those rights to
5 continue unabated.

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

12 (3) Chapter 1 of title 9, United States Code
13 (commonly known as the "Federal Arbitration
14 Act"), was intended to clarify the ability of commer-
15 cial entities of generally similar sophistication and
16 bargaining power to voluntarily agree to use arbitra-
17 tion to resolve disputes between them. Despite this
18 congressional intent, the Supreme Court of the
19 United States has interpreted that law so that it
20 now extends to work disputes.

21 (4) The National Labor Relations Act (29
22 U.S.C. 151 et seq.) protects employees' right to en-
23 gage in concerted activities for the purpose of mu-
24 tual aid or protection. This was intended and long
25 understood to encompass employees' right to collec-

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

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

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

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

23 **SEC. 3. PURPOSES.**

24 The purposes of this Act are to—

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

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

5 (3) provide protections to ensure that
6 postdispute arbitration agreements are truly vol-
7 untary and with the informed consent of workers;
8 and

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

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

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

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

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

19 “(6)(A) to enter into or attempt to enforce any
20 agreement, express or implied, whereby prior to a
21 dispute to which the agreement applies, an employee
22 undertakes or promises not to pursue, bring, join,
23 litigate, or support any kind of joint, class, or collec-
24 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 502(a)(2) of title 9, United
 2 States Code, or an agreement described in section
 3 502(a)(4) of such title that meets the requirements under
 4 subparagraphs (A) through (D) of section 502(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 5—ARBITRATION OF WORK**
 12 **DISPUTES**

“Sec.

“501. Definitions.

“502. Validity and enforceability.

13 **“§ 501. Definitions**

14 “In this chapter:

15 “(1) COMMERCE; EMPLOYEE; EMPLOYER.—The
 16 terms ‘commerce’, ‘employee’, and ‘employer’ have
 17 the meanings given such terms in section 3 of the
 18 Fair Labor Standards Act of 1938 (29 U.S.C. 203).

19 “(2) COVERED ENTITY.—The term ‘covered en-
 20 tity’ means—

21 “(A) an employer; or

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

1 “(3) PREDISPUTE ARBITRATION AGREEMENT.—

2 The term ‘predispute arbitration agreement’ has the
3 meaning given that term in section 401.

4 “(4) PREDISPUTE JOINT-ACTION WAIVER OF A

5 WORK DISPUTE.—The term ‘predispute joint-action

6 waiver of a work dispute’ means an agreement under

7 which a worker undertakes or promises not to pur-

8 sue, bring, join, litigate, or support any kind of

9 joint, class, or collective claim arising from or relat-

10 ing to a work dispute that has not yet arisen at the

11 time of the making of the agreement in any forum

12 that, but for such agreement, is of competent juris-

13 diction.

14 “(5) POSTDISPUTE ARBITRATION AGREE-

15 MENT.—The term ‘postdispute arbitration agree-

16 ment’ means any agreement to arbitrate a dispute

17 that arose before the time of the making of the

18 agreement.

19 “(6) POSTDISPUTE JOINT-ACTION WAIVER OF A

20 WORK DISPUTE.—The term ‘postdispute joint-action

21 waiver of a work dispute’ means an agreement under

22 which a worker undertakes or promises not to pur-

23 sue, bring, join, litigate, or support any kind of

24 joint, class, or collective claim arising from or relat-

25 ing to a work dispute that arose before the time of

1 the making of the agreement in any forum that, but
2 for such agreement, is of competent jurisdiction.

3 “(7) WORK DISPUTE.—the term ‘work dis-
4 pute’—

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

11 “(B) includes—

12 “(i) a dispute regarding the terms of,
13 payment for, advertising of, recruitment of,
14 referring of, arranging for, or discipline or
15 discharge in connection with such work re-
16 lationship;

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

1 “(iii) a dispute in which an individual
2 or individuals seek certification—

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

5 “(II) as a collective action under
6 section 16(b) of the Fair Labor
7 Standards Act of 1938 (29 U.S.C.
8 216(b)); or

9 “(III) under a comparable rule or
10 provision of State law.

11 “(8) WORKER.—The term ‘worker’ means—

12 “(A) an employee; or

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

18 **“§ 502. Validity and enforceability**

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

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

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

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

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

13 “(i) the right of the worker under
14 paragraph (5) to refuse to enter the agree-
15 ment without retaliation; and

16 “(ii) the protections under section
17 8(a)(6) of the National Labor Relations
18 Act (29 U.S.C. 158(a)(6));

19 “(C) each worker entering into the agree-
20 ment entered the agreement after a waiting pe-
21 riod of not fewer than 45 days, beginning on
22 the date on which the worker was provided both
23 the final text of the agreement and the disclo-
24 sures required under subparagraph (B); and

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

4 “(3) no predispute joint-action waiver of a work
5 dispute shall be valid or enforceable;

6 “(4) no postdispute joint-action waiver of a
7 work dispute shall be valid or enforceable, unless the
8 agreement to waive meets the requirements of sub-
9 paragraphs (A) through (D) of paragraph (2); and

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

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

18 “(c) CIVIL ACTION.—Any person who is injured by
19 reason of a violation of subsection (a)(5) may bring a civil
20 action in the appropriate district court of the United
21 States against the covered entity within 2 years of the vio-
22 lation, or within 3 years if such violation is willful. Relief
23 granted in such an action shall include a reasonable attor-
24 ney’s fee, other reasonable costs associated with maintain-
25 ing the action, and any appropriate relief authorized by

1 section 706(g) of the Civil Rights Act of 1964 (42 U.S.C.
2 2000e-5(g)) or by section 1977A(b) of the Revised Stat-
3 utes (42 U.S.C. 1981a(b)).

4 “(d) APPLICABILITY.—

5 “(1) IN GENERAL.—This chapter applies to cov-
6 ered entities and workers engaged in activity affect-
7 ing commerce to the fullest extent permitted by the
8 Constitution of the United States, including the
9 work of persons engaged in domestic service in
10 households, as described in section 2(a) of the Fair
11 Labor Standards Act of 1938 (29 U.S.C. 202(a)).

12 “(2) ARBITRATION AGREEMENTS.—

13 “(A) APPLICATION DETERMINED UNDER
14 FEDERAL LAW.—An issue as to whether this
15 chapter applies to an arbitration agreement
16 shall be determined under Federal law.

17 “(B) APPLICATION DETERMINED BY
18 COURT.—The applicability of this chapter to an
19 agreement to arbitrate and the validity and en-
20 forceability of an agreement to which this chap-
21 ter applies shall be determined by a court, rath-
22 er than an arbitrator, regardless of whether any
23 contractual provision purports to delegate such
24 determinations to the arbitrator and irrespec-
25 tive of whether the party resisting arbitration

1 challenges the arbitration agreement specifically
2 or in conjunction with other terms of the con-
3 tract containing such agreement.

4 “(C) COLLECTIVE BARGAINING AGREE-
5 MENTS.—Nothing in this chapter shall apply to
6 any arbitration provision in a contract between
7 a covered entity and a labor organization, ex-
8 cept that no such arbitration provision shall
9 have the effect of waiving the right of a worker
10 to seek judicial enforcement of a right arising
11 under a provision of the Constitution of the
12 United States, the constitution of a State, or a
13 Federal or State statute, or public policy aris-
14 ing therefrom.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

21 (B) in section 2, by inserting “or 5” before
22 the period at the end;

23 (C) in section 208, in the second sentence,
24 by inserting “or 5” before the period at the
25 end; and

1 (D) in section 307, in the second sentence,
 2 by inserting “or 5” before the period at the
 3 end.

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

“5. Arbitration of work disputes 501.”.

7 **SEC. 6. EFFECTIVE DATE.**

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