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(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. NADLER (for himself and ____) introduced the following bill; which was referred to the Committee on _____

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

1 provisions that block their access to the courts or
2 prohibit them from joining together with other em-
3 ployees to seek joint, class, or collective relief for vio-
4 lations of their rights. This has led to widespread
5 nonenforcement of employees' rights and has per-
6 mitted significant violations of those rights to con-
7 tinue unabated.

8 (2) Most employees have little or no meaningful
9 choice regarding whether to accept these provisions.
10 Often, employees 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 employees 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 apply to disputes between commercial enti-
17 ties of generally similar sophistication and bar-
18 gaining power. Despite this congressional intent, the
19 Supreme Court of the United States has interpreted
20 the Federal Arbitration Act so that it now extends
21 to employment disputes.

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

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

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

15 (6) Employees 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 employees to indi-
19 vidualy or concertedly seek relief for violations of
20 their labor rights through the justice system protects
21 the public interest and safeguards commerce from
22 injury.

23 **SEC. 3. PURPOSES.**

24 The purposes of this Act are to—

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

3 (2) prohibit retaliation against employees for
4 refusing to arbitrate employment disputes;

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

9 (4) amend the National Labor Relations Act to
10 prohibit agreements and practices that interfere with
11 employees' right to collectively litigate employment
12 disputes.

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

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

16 **“CHAPTER 4—ARBITRATION OF**
17 **EMPLOYMENT DISPUTES**

“Sec.
“401. Definitions.
“402. Validity and enforceability.

18 **“§ 401. Definitions**

19 “In this chapter—

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

1 “(2) the term ‘employment dispute’ means a
2 dispute between an employer and an employee arising
3 from or relating to the employment of the employee,
4 and includes disputes that arise under common law or from
5 the alleged violation of the Constitution of the United States,
6 the constitution of a State, or a Federal, State, territorial, county,
7 or municipal statute;
8

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

13 “(4) the term ‘postdispute arbitration agreement’ means
14 any agreement to arbitrate a dispute that arose before the time
15 of the making of the agreement.
16

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

18 “(a) IN GENERAL.—Notwithstanding any other chapter
19 of this title—

20 “(1) no predispute arbitration agreement shall
21 be valid or enforceable if it requires arbitration of an
22 employment dispute;

23 “(2) no postdispute arbitration agreement that
24 requires arbitration of an employment dispute shall
25 be valid or enforceable unless—

1 “(A) the agreement was not required by
2 the employer, obtained by coercion or threat of
3 adverse action, or made a condition of employ-
4 ment or any employment-related privilege or
5 benefit;

6 “(B) each employee entering into the
7 agreement was informed in writing using suffi-
8 ciently plain language likely to be understood by
9 the average employee of—

10 “(i) the right of the employee under
11 paragraph (3) to refuse to enter the agree-
12 ment without retaliation; and

13 “(ii) the protections under section
14 8(a)(6) of the National Labor Relations
15 Act (29 U.S.C. 158(a)(6));

16 “(C) each employee entering into the
17 agreement entered the agreement after a wait-
18 ing period of not fewer than 45 days, beginning
19 on the date on which the employee was provided
20 both the final text of the agreement and the
21 disclosures required under subparagraph (B);
22 and

23 “(D) each employee entering into the
24 agreement affirmatively consented to the agree-
25 ment in writing; and

1 “(3) no employer may retaliate or threaten to
2 retaliate against an employee for refusing to enter
3 into an agreement that provides for arbitration of an
4 employment dispute.

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

9 “(c) CIVIL ACTION.—Any person who is injured by
10 reason of a violation of subsection (a)(3) may bring a civil
11 action in the appropriate district court of the United
12 States against the employer within 2 years of the violation,
13 or within 3 years if such violation is willful. Relief granted
14 in such an action shall include a reasonable attorney’s fee,
15 other reasonable costs associated with maintaining the ac-
16 tion, and any appropriate relief authorized by section
17 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–
18 5(g)) or by section 1977A(b) of the Revised Statutes (42
19 U.S.C. 1981a(b)).

20 “(d) APPLICABILITY.—

21 “(1) IN GENERAL.—This chapter applies to em-
22 ployers and employees engaged in activity affecting
23 commerce to the fullest extent permitted by the
24 United States Constitution. An issue as to whether
25 this chapter applies to an arbitration agreement

1 shall be determined under Federal law. The applica-
2 bility of this chapter to an agreement to arbitrate
3 and the validity and enforceability of an agreement
4 to which this chapter applies shall be determined by
5 a court, rather than an arbitrator, regardless of
6 whether any contractual provision delegates such
7 matters to the arbitrator and irrespective of whether
8 the party resisting arbitration challenges the arbitra-
9 tion agreement specifically or in conjunction with
10 other terms of the contract containing such agree-
11 ment.

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

22 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
23 (1) IN GENERAL.—Title 9 of the United States
24 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 employment disputes 401.”.

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

11 Section 8(a) of the National Labor Relations Act (29
12 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 legal action arising from or relating to the em-
22 ployment of such employee in any forum that, but
23 for such agreement, is of competent jurisdiction; or

1 “(B) to retaliate or threaten to retaliate against
2 an employee for refusing to undertake or promise
3 not to pursue, bring, join, litigate, or support any
4 kind of joint, class, or collective legal action arising
5 from or relating to the employment of such em-
6 ployee:

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

14 **SEC. 6. EFFECTIVE DATE.**

15 This Act, and the amendments made by this Act,
16 shall take effect on the date of enactment of this Act and
17 shall apply with respect to any dispute or claim that arises
18 on or after such date, including any dispute or claim to
19 which an agreement predating such date applies.