

U.S. House Passes Bill that Places Future of Arbitration Agreements at Risk

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It's only been two weeks since President Biden signed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (the "Ending Forced Arbitration Act") into law (which we covered [here](#)), and there is already a new major development in the world of arbitration. Yesterday, the U.S. House passed the [Forced Arbitration Injustice Repeal \("FAIR"\) Act of 2022 \(H.R. 963\)](#), which puts the future of many, if not all, arbitration agreements in jeopardy.

The potential consequences of this act are far-reaching and extend well beyond employment matters. The FAIR Act, if passed, would invalidate predispute arbitration agreements in employment, consumer, antitrust, and civil rights disputes. It would also prohibit agreements and practices that prevent individuals from participating in a class or collective action in such matters. As a result, arbitration agreements and class action waivers would be prohibited in a wide variety of agreements, implicating anything from an employment contract to a credit card agreement.

If passed, the law will be effective on the date it's enacted, but will not apply retroactively (so, existing arbitration agreements would stand). It also would only invalidate predispute arbitration agreements, so arbitration agreements entered into after a dispute arises would also remain enforceable – which is cold comfort for employers because most employees refuse to agree to arbitration *after* a dispute has arisen. Additionally, the bill provides that any dispute over whether its provisions apply will be decided in federal court, not by an arbitrator, and that the prohibition does not apply to collective bargaining agreements.

That all being said, the FAIR Act faces an uphill battle before becoming law. It is substantially broader than the recently passed Ending Forced Arbitration Act, which only applied to arbitration and class action waivers in sexual harassment and sexual assault cases. And while the Ending Forced Arbitration Act passed the House with a 335-97 vote and noted bipartisan support, the FAIR Act vote was much closer—it narrowly passed by a margin of 222-209.

We will continue to monitor this bill and provide updates as developments occur.

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