



## In the Congressional Crosshairs: Arbitration Agreements and Class Action Waivers

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In July, Congressmen Robert C. Scott (VA-03) and Jerrold Nadler (NY-10) introduced *the Restoring Justice for Workers Act*, which seeks to eliminate arbitration agreements in the employment context. They have done so while Congress is already considering (again) whether to eliminate predispute arbitration agreements as well as class action waivers in employment, consumer, antitrust, and civil rights litigation – an action with enormous potential consequences for businesses and employers. Earlier this year, Congressman Hank Johnson Jr. (D-GA) and Senator Richard Blumenthal (D-CT) introduced the Forced Arbitration Injustice Repeal Act (the “FAIR Act”). The House passed the bill in 2019, but the Senate – then under Republican control – never moved on it.

Over the last decade, the Supreme Court has repeatedly affirmed that the Federal Arbitration Act (“FAA”) strongly supports arbitration and enforcing class action waivers. The FAIR Act is directed against that prevailing current. It would amend the FAA to expressly invalidate predispute arbitration agreements and class, collective, and joint action waivers in employment, consumer, antitrust, and civil rights disputes. If passed as currently drafted, the bill would invalidate predispute arbitration agreements and group action waivers to the extent they would have covered a dispute that arises or accrues after the bill becomes law—even in agreements signed before the bill’s passage. Arbitration provisions in collective bargaining agreements would not be affected, but the bill’s reach appears otherwise unlimited in the context of employment, consumer, antitrust, and civil rights disputes.

The FAIR Act’s intent is to reach only predispute agreements, so litigants will remain free to choose arbitration after a dispute arises. But whether litigants will voluntarily opt for arbitration if the bill passes remains to be seen.

For now, the bill is pending before the House and Senate Judiciary Committees. Winston’s Class Action and Labor & Employment teams are closely following legal developments in this area and will provide updates as they become available.

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