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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

To prohibit forced arbitration in work 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 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. PURPOSES.**

7 The purposes of this Act are to—

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

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

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

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

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

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

14 **“CHAPTER 4—ARBITRATION OF WORK**
15 **DISPUTES**

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

16 **“§ 401. Definitions**

17 “In this chapter—

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

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

23 “(A) an employer; or

1 “(B) an individual or entity that is not
2 acting as an employer and engages the services
3 of a worker;

4 “(3) the term ‘predispute arbitration agree-
5 ment’ means any agreement to arbitrate a dispute
6 that had not yet arisen at the time of the making
7 of the agreement;

8 “(4) the term ‘postdispute arbitration agree-
9 ment’ means any agreement to arbitrate a dispute
10 that arose before the time of the making of the
11 agreement;

12 “(5) the term ‘worker’ means—

13 “(A) an employee; or

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

19 “(6) the term ‘work dispute’—

20 “(A) means a dispute between one or more
21 workers (or their authorized representatives)
22 and a covered entity arising out of or related to
23 the work relationship or prospective work rela-
24 tionship between the workers and the covered
25 entity; and

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

2 “(i) a dispute regarding the terms of,
3 payment for, advertising of, recruitment of,
4 referring of, arranging for, or discipline or
5 discharge in connection with such work;

6 “(ii) a dispute arising under any law
7 referred to or described in section 62(e) of
8 the Internal Revenue Code of 1986, includ-
9 ing any part of such a law not explicitly
10 referenced in such section that relates to
11 protecting individuals on a basis that is
12 protected under a law referred to or de-
13 scribed in such section; and

14 “(iii) a dispute in which an individual
15 or individuals seek certification—

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

18 “(II) as a collective action under
19 section 16(b) of the Fair Labor
20 Standards Act of 1938 (29 U.S.C.
21 216(b)); or

22 “(III) under a comparable rule or
23 provision of State law.

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

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

4 “(1) no predispute arbitration agreement shall
5 be valid or enforceable if it requires arbitration of a
6 work dispute;

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

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

15 “(B) each worker entering into the agree-
16 ment was informed in writing using sufficiently
17 plain language likely to be understood by the
18 average worker of—

19 “(i) the right of the worker under
20 paragraph (3) to refuse to enter the agree-
21 ment without retaliation; and

22 “(ii) the protections under section
23 8(a)(6) of the National Labor Relations
24 Act (29 U.S.C. 158(a)(6));

25 “(C) each worker entering into the agree-
26 ment entered the agreement after a waiting pe-

1 riod of not fewer than 45 days, beginning on
2 the date on which the worker was provided both
3 the final text of the agreement and the disclo-
4 sures required under subparagraph (B); and

5 “(D) each worker entering into the agree-
6 ment affirmatively consented to the agreement
7 in writing;

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

15 “(4) no agreement shall be valid or enforceable,
16 whereby after a work dispute to which the agree-
17 ment applies arises, a worker undertakes or prom-
18 ises not to pursue, bring, join, litigate, or support
19 any kind of joint, class, or collective claim arising
20 from or relating to a work dispute in any forum
21 that, but for such agreement, is of competent juris-
22 diction, unless the agreement meets the require-
23 ments of paragraph (2) of this subsection; and

24 “(5) no covered entity may retaliate or threaten
25 to retaliate against a worker for refusing to enter

1 into an agreement that provides for arbitration of a
2 work dispute.

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

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

18 “(d) APPLICABILITY.—

19 “(1) IN GENERAL.—This chapter applies to cov-
20 ered entities and workers engaged in activity affect-
21 ing commerce to the fullest extent permitted by the
22 Constitution of the United States, including the
23 work of persons engaged in domestic service in
24 households, as described in section 2(a) of the Fair
25 Labor Standards Act of 1938 (29 U.S.C. 202(a)).

1 An issue as to whether this chapter applies to an ar-
2 bitration agreement shall be determined under Fed-
3 eral law. The applicability of this chapter to an
4 agreement to arbitrate and the validity and enforce-
5 ability of an agreement to which this chapter applies
6 shall be determined by a court, rather than an arbi-
7 trator, regardless of whether any contractual provi-
8 sion purports to delegate such determinations to the
9 arbitrator and irrespective of whether the party re-
10 sisting arbitration challenges the arbitration agree-
11 ment specifically or in conjunction with other terms
12 of the contract containing such agreement.

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

23 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

24 (1) IN GENERAL.—Title 9 of the United States
25 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 work disputes 401.”.

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

11 (a) AGREEMENTS.—Section 8(a) of the National
12 Labor Relations Act (29 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 claim arising from or relating to the employ-
22 ment of such employee in any forum that, but for
23 such agreement, is of competent jurisdiction;

1 “(B) to coerce such an employee into under-
2 taking or promising not to pursue, bring, join, liti-
3 gate, or support any kind of joint, class, or collective
4 claim arising from or relating to the employment of
5 such employee; or

6 “(C) to retaliate or threaten to retaliate against
7 an employee for refusing to undertake or promise
8 not to pursue, bring, join, litigate, or support any
9 kind of joint, class, or collective claim arising from
10 or relating to the employment of such employee:

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

18 (b) CONFORMING AMENDMENT.—Section 10(b) of
19 the National Labor Relations Act (29 U.S.C. 160(b)) is
20 amended by striking “discharge” and inserting “dis-
21 charge, or unless the person aggrieved thereby is an em-
22 ployee alleging a violation of section 8(a)(6) whose charge
23 involves a postdispute arbitration agreement that meets
24 the requirements under section 402(a)(2) of title 9, United
25 States Code, or an agreement described in section

1 402(a)(4) of such title that meets the requirements under
2 subparagraphs (A) through (D) of section 402(a)(2) of
3 such title, in which event the six-month period shall be
4 computed from the day the waiting period described in
5 subparagraph (C) of such section ends”.

6 **SEC. 5. EFFECTIVE DATE.**

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