STATE OF NEW YORK

8462

2023-2024 Regular Sessions

IN ASSEMBLY

December 29, 2023

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to prohibiting the enforcement of mandatory arbitration agreements clauses and joint-action waivers with respect to workplace disputes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "Workers' Rights Enforceability Act".

§ 2. Legislative findings. 1. The legislature finds and declares that the use and enforcement of mandatory arbitration clauses and joint-action waivers in cases alleging workplace violations has been and continues to be contrary to New York public policy. Accordingly, when federal law does not require enforcement of mandatory arbitration clauses and joint-action waivers, New York law does not permit their enforcement.

2. The legislature further finds and declares that courts have misconstrued previous amendments to section 7515 of the civil practice law and rules and that such amendments were intended and remain intended to have retroactive effect and to nullify mandatory arbitration clauses entered into prior to the original enactment of section 7515 of the civil practice law and rules.

§ 3. Section 7515 of the civil practice law and rules, as added by section 1 of subpart B of part KK of chapter 57 of the laws of 2018, paragraphs 2 and 3 of subdivision (a) as amended by chapter 160 of the laws of 2019, is amended to read as follows:

§ 7515. Mandatory arbitration clauses; prohibited. (a) Definitions. As used in this section:

1. The term "employer" shall have the same meaning as provided in subdivision five of section two hundred ninety-two of the executive law.

2. The term "prohibited clause" shall mean any **mandatory predispute arbitration** clause [~~**or provision**~~] **or any mandatory postdispute arbi-**

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

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tration clause in any contract, handbook, or other document adopted as the policy of a covered entity, including a joint-action waiver, which requires [as a condition of the enforcement of the contract or obtaining remedies under the contract] that the parties submit to mandatory arbitration to resolve any allegation or claim:

(i) of discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law; or

(ii) arising from, concerning, or related to a contract of employment.

3. The term "mandatory predispute arbitration clause" shall mean a term or provision [contained in] of a written contract, handbook, or other document adopted as the policy of a covered entity which requires the parties [to such contract to submit any matter thereafter arising under such contract to arbitration prior to the commencement of any legal action to enforce the provisions of such contract and which also further provides language to the effect that the facts found or determination made by the arbitrator or panel of arbitrators in its application to a party alleging discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law shall be final and not subject to independent court review], related non-signatories, or third-party beneficiaries to arbitrate a dispute that had not yet arisen at the time of the making of the contract, handbook, or other document adopted as the policy of a covered entity, regardless of whether such clause contains a provision that purports to allow a party to opt-out within a limited time period.

4. The term "mandatory postdispute arbitration clause" shall mean a term or provision of a written contract, handbook, or other document adopted as the policy of a covered entity that requires the parties, related non-signatories, or third-party beneficiaries to arbitrate a dispute that arose before the time of the making of the contract or document, regardless of whether such clause contains a provision that purports to allow a party to opt-out within a limited time period.

5. The term "joint-action waiver" shall mean a term or provision of a written contract, handbook, or other document adopted as the policy of a covered entity, whether or not part of a predispute or postdispute arbitration clause, that would prohibit, or waive the right of, one of the parties to the clause to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum raising claims arising from, concerning, or related to a contract of employment, regardless of whether such clause contains a provision that purports to allow a party to opt-out within a limited time period.

6. The term "arbitration" shall mean the use of a decision making forum conducted by an arbitrator or panel of arbitrators within the meaning and subject to the provisions of this article [seventy-five of the civil practice law and rules].

7. The term "contract of employment" shall mean any contract to perform services for hire, regardless of whether or not such contract arises from an employment relationship, as defined under the labor law.

8. The term "covered entity" shall mean an employer or an individual or entity that is not acting as an employer and engages individuals to perform services for hire.

(b) [(i)] 1. Prohibition. Except where [inconsistent with] preempted by federal law[,]:

(i) no written contract, handbook, or other document adopted as the policy of a covered entity entered into or made effective on or after

the effective date of this section shall contain a prohibited clause as defined in paragraph two of subdivision (a) of this section[~~.~~]; and

(ii) a prohibited clause as defined in paragraph two of subdivision (a) of this section contained in a written contract, handbook, or other document adopted as the policy of a covered entity entered into or made effective prior to the effective date of this subparagraph shall not be enforceable.

2. Exceptions. [~~Nothing~~] Notwithstanding the provisions of subparagraph (i) of paragraph one of this subdivision, nothing contained in this section shall be construed to impair or prohibit [~~an employer~~] a covered entity from incorporating a non-prohibited clause or other mandatory arbitration provision that the parties agree upon within such contract, [~~that the parties agree upon~~] provided that any mandatory postdispute arbitration clause must comply with all of the conditions set forth in paragraph four of this subdivision to be permitted.

[~~(iii)~~] 3. Mandatory arbitration clause null and void. Except where [~~inconsistent with~~] preempted by federal law, or as provided in paragraph four of this subdivision, the provisions of such prohibited clause as defined in paragraph two of subdivision (a) of this section shall be null and void. The inclusion of such clause in a written contract shall not serve to impair the enforceability of any other provision of such contract.

4. A mandatory postdispute arbitration clause may only be enforced if:

(i) the clause was not required by the covered entity, was not obtained by coercion or threat of adverse action, was not part of a larger contract of employment but was instead a separate document, and was not made a condition of employment, work or any employment-related or work-related privilege or benefit;

(ii) each party agreeing to the clause was informed in writing using sufficiently plain language likely to be understood by the average worker of the right of the party to refuse to enter the agreement without retaliation;

(iii) each party agreeing to the clause did so after a waiting period of not fewer than forty days, beginning on the date on which the party was provided both the final text of the agreement and the disclosures required under this paragraph;

(iv) each party agreeing to the clause affirmatively consented to the clause in writing; and

(v) a party was represented by counsel at the time of the making of the mandatory postdispute arbitration clause, the covered entity provided the clause to that party's counsel and gave advance notice to counsel that the party was being asked to consent to the clause.

(c) Where there is a conflict between any collective bargaining agreement and this section, such agreement shall be controlling.

(d) No covered entity may discharge, threaten, penalize, or in any other manner discriminate or retaliate against a person who refuses to agree to, or otherwise objects to, the provisions of a mandatory predispute arbitration clause, a mandatory postdispute arbitration clause, or a joint-action waiver. A person who experiences such retaliation may bring a civil action in a court of competent jurisdiction against any covered entity or persons alleged to have violated the provisions of this section, and may recover all of the remedies available under paragraph (a) of subdivision two of section two hundred fifteen of the labor law, including but not limited to liquidated damages, reasonable attorneys' fees, and costs.

(e) The applicability of this section to a prohibited clause, and the validity and enforceability of a prohibited clause to which this chapter applies, shall be determined by a court of competent jurisdiction, irrespective of whether the party resisting arbitration challenges the prohibited clause specifically or in conjunction with other terms of the contract containing such prohibited clause, and irrespective of whether the prohibited clause, or the contract, handbook, or other document adopted as the policy of a covered entity in which the prohibited clause is found, purports to delegate such determinations to an arbitrator. Except where inconsistent with federal law, an issue as to whether this section applies with respect to a prohibited clause shall be determined under state law.

(f) Notwithstanding any choice of law clause in a contract, handbook, or other document adopted as the policy of a covered entity in which the prohibited clause is found, or any other contractual provision to the contrary, New York law governs the applicability of this section to a prohibited clause for a worker who, for any significant portion of their services for a covered entity, performed services in New York.

§ 4. Severability and construction. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, or its applicability to any person or circumstance is declared invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein. The provisions of this act shall be liberally construed to give effect to the purposes hereof.

§ 5. This act shall take effect immediately.