

STATE OF NEW YORK

7925

IN SENATE

January 3, 2024

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed 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:

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

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

9 2. The legislature further finds and declares that courts have miscon-
10 strued previous amendments to section 7515 of the civil practice law and
11 rules and that such amendments were intended and remain intended to have
12 retroactive effect and to nullify mandatory arbitration clauses entered
13 into prior to the original enactment of section 7515 of the civil prac-
14 tice law and rules.

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

19 § 7515. Mandatory arbitration clauses; prohibited. (a) Definitions. As
20 used in this section:

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

23 2. The term "prohibited clause" shall mean any mandatory predispute
24 arbitration clause ~~[or provision]~~ or any mandatory postdispute arbi-
25 tration clause in any contract, handbook, or other document adopted as
26 the policy of a covered entity, including a joint-action waiver, which
27 requires ~~[as a condition of the enforcement of the contract or obtaining~~

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

LBD11041-04-3

1 ~~remedies under the contract~~] that the parties submit to mandatory arbitration to resolve any allegation or claim.

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

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

4 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.

5 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.

6 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.

7 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]~~.

8 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.

9 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.

10 (b) ~~[(i)]~~ 1. Prohibition. Except where ~~[inconsistent with]~~ preempted by federal law~~[7]~~:

11 (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~~[7]~~; and

12 (ii) a prohibited clause as defined in paragraph two of subdivision (a) of this section contained in a written contract, handbook, or other

1 document adopted as the policy of a covered entity entered into or made
2 effective prior to the effective date of this subparagraph shall not be
3 enforceable.

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

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

19 4. A mandatory postdispute arbitration clause may only be enforced if:
20 (i) the clause was not required by the covered entity, was not
21 obtained by coercion or threat of adverse action, was not part of a
22 larger contract of employment but was instead a separate document, and
23 was not made a condition of employment, work or any employment-related
24 or work-related privilege or benefit;

25 (ii) each party agreeing to the clause was informed in writing using
26 sufficiently plain language likely to be understood by the average work-
27 er of the right of the party to refuse to enter the agreement without
28 retaliation;

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

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

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

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

41 (d) No covered entity may discharge, threaten, penalize, or in any
42 other manner discriminate or retaliate against a person who refuses to
43 agree to, or otherwise objects to, the provisions of a mandatory predis-
44 pute arbitration clause, a mandatory postdispute arbitration clause, or
45 a joint-action waiver. A person who experiences such retaliation may
46 bring a civil action in a court of competent jurisdiction against any
47 covered entity or persons alleged to have violated the provisions of
48 this section, and may recover all of the remedies available under para-
49 graph (a) of subdivision two of section two hundred fifteen of the labor
50 law, including but not limited to liquidated damages, reasonable attor-
51 neys' fees, and costs.

52 (e) The applicability of this section to a prohibited clause, and the
53 validity and enforceability of a prohibited clause to which this chapter
54 applies, shall be determined by a court of competent jurisdiction, irre-
55 spective of whether the party resisting arbitration challenges the
56 prohibited clause specifically or in conjunction with other terms of the

1 contract containing such prohibited clause, and irrespective of whether
2 the prohibited clause, or the contract, handbook, or other document
3 adopted as the policy of a covered entity in which the prohibited clause
4 is found, purports to delegate such determinations to an arbitrator.
5 Except where inconsistent with federal law, an issue as to whether this
6 section applies with respect to a prohibited clause shall be determined
7 under state law.

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

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

26 § 5. This act shall take effect immediately.