



Long Road Ahead As Congress Begins Chipping Away At Workplace Arbitration

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We have written extensively on the recent trend of courts across the country enforcing workplace arbitration agreements, including arbitration agreements with [class and collective action waivers](#). Since the Supreme Court of the United States held in *Epic Systems Corp. v. Lewis* that arbitration agreements with class and collective action waivers [are enforceable](#), many employers have opted to institute such agreements. Indeed, such agreements have become important tools for employers as they navigate the often tumultuous waters of workplace litigation, particularly class and collective action litigation.

Following the lead of [some states](#) in [limiting workplace arbitration agreements](#), Congress is now beginning to wade in. The U.S. House of Representatives is prepared to vote on a bill that would invalidate workplace arbitration agreements and prevent companies from using this tool to avoid workplace class and collective actions. The bill, [HR 1423](#), would also prevent such agreements in the consumer and antitrust contexts. The bill states that its purpose is to:

- Prohibit pre-dispute arbitration agreements that force arbitration of future employment disputes
- Prohibit agreements and practices that interfere with the right of workers to participate in a joint, class, or collective action

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The bill's proscription against these types of agreements would apply to both employees and independent contractors. Further, the bill expressly grants courts – not arbitrators – the [authority to decide the validity](#) and enforceability of an agreement to arbitrate.

Notably, the bill would not apply to arbitration agreements in collective bargaining agreements negotiated between employers and labor organizations. Further, the bill does not appear to prevent agreements to arbitrate entered into [after a workplace dispute arises](#). In other words, although such an agreement is unlikely in reality, employers and employees may agree to resolve a specific, existing dispute before an arbitrator.

While this bill will likely pass the House, the absence of Republican support may well scuttle the bill in the Senate. Nevertheless, given the recent trend strongly favoring enforcement of workplace arbitration agreements, including those with class and collective action waivers, and the proliferation of these agreements post-*Epic* and *Lamps Plus*, employers would be wise to keep an eye on Congressional action (or inaction) in this regard.