Mandatory Arbitration Agreements May Be in Jeopardy

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A bill that would prohibit most pre-dispute mandatory arbitration agreements is one step closer to becoming law. The U.S. House of Representatives passed the Forced Arbitration Injustice Repeal Act ("FAIR Act") yesterday behind a largely party-line vote.

The bill expands on another piece of legislation President Biden signed into law earlier this month that prohibits the forced arbitration of sexual assault and sexual harassment claims. While the earlier legislation, colloquially referred to as the #MeToo law, enjoyed bipartisan support in both chambers of Congress, it remains unclear whether the FAIR Act will enjoy similar support given its broad scope. It will next be considered by the U.S. Senate.

Should the bill become law, it would prohibit *pre-dispute* mandatory arbitration of claims (including class actions) that:

- Arise between consumers and sellers, as well as claims involving third parties related to such transactions;
- Relate to an actual or potential work relationship, including with respect to both employees and independent contractors;
- Allege violations of state or federal antitrust laws; or
- Allege violations of constitutional rights or anti-discrimination laws.

The bill would apply only to claims arising after its effective date and does not prohibit the voluntary use of arbitration after a dispute arises. It also provides an exemption for collective bargaining agreements. However, those agreements could not compel individual employees to waive the right to seek judicial enforcement of claims arising from the Constitution, a statute, or public policy.

Employers who use pre-dispute arbitration provisions in their form agreements should continue to monitor developments as this legislation moves to the Senate. We will provide updates as the legislation is considered by the Senate.

For more information, please contact a member of Benesch's Labor & Employment Practice Group.

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