

PUBLICATION

Up Next: The Arbitration Fairness Act of 2009

May 26, 2009

Legislation has been introduced in both houses of Congress that would all but eliminate an employer's right to enter into pre-dispute arbitration agreements with its employees. Under the Arbitration Fairness Act of 2009, pre-dispute agreements requiring the arbitration of an employment dispute or any dispute arising under any statute intended to protect civil rights would be invalid and unenforceable. The Act would also prohibit pre-dispute arbitration agreements addressing consumer or franchise disputes. The legislation would not affect arbitration agreements entered prior to the statute's enactment.

Arbitration provisions in collective bargaining agreements would be exempt from the Act. However, the Senate version of the Act limits this collective bargaining agreement exemption, providing that employees covered by such an agreement would still have the right to avoid the arbitration of claims "arising under a provision of the Constitution of the United States, a State constitution, or a Federal or State statute, or public policy arising therefrom."

In its current form, the Act only prohibits *pre-dispute* arbitration agreements. Thus, employers and employees would still be permitted to enter into agreements to resolve particular disputes in arbitration, but only after the dispute has already arisen.

The proposed legislation would significantly affect employers who require employees to sign arbitration agreements, either at the outset of employment or anytime thereafter, in anticipation of possible employment disputes. Potentially more dramatic could be the effect of the Senate version's limitation on the collective bargaining exemption, if the limitation is construed broadly.

The House version of the Act (H.R. 1020) is currently pending before the House Judiciary Subcommittee on Commercial and Administrative Law. Likewise, the Senate version (S.931) is pending before the Senate Judiciary Committee.

Baker Donelson stands ready to assist you in preparing for these and other employment-related challenges. For assistance, please contact your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys in the Firm's Labor & Employment Department, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.*

Baker Donelson gives you what boutique labor and employment firms can't: a set of attorneys who are not only dedicated to the practice of labor and employment issues, but who can reach into an integrated and experienced team of professionals to assist you in every other aspect of your legal business needs. We set ourselves apart by valuing your entire company. And when it comes to your company's most valuable asset - your employees - we're committed to counseling with and advocating for you every step of the way.

For a complete listing of current Baker Donelson breakfast briefings, roundtables and seminars on a variety of topics in our markets, please [click here](#).