The Forced Arbitration Injustice Repeal Act: What You Need to Know

The Forced Arbitration Injustice Repeal Act ("FAIR" Act) was introduced in both houses on February 28, 2019. If passed, the FAIR Act would eliminate mandatory arbitration agreements in employment, consumer, antitrust and civil rights claims. The bill would not completely do away with arbitration. Employees and consumers could agree to arbitration after a dispute occurs. The FAIR Act would also prohibit agreements that stop individuals, employees and businesses from joining or filing class actions.

Proponents of the FAIR Act argue that the arbitration process is biased in favor of big business and against individuals. Supporters also argue that forcing claims to arbitration sweeps wrongdoing accusations under the rug. Opponents of the FAIR Act argue that arbitration is fair, faster, and cheaper than litigation. Additionally, not all arbitration agreements include a confidentiality clause, thus defeating the argument that arbitration is used to keep wrongdoing out of the public eye.

Many are skeptical that this bill will pass, but even without the passage many companies are moving away from mandatory arbitration agreements to avoid the perception of unfairness. For example, after various allegations of sexual harassment at Google became public in the wake of the #MeToo movement, it recently announced that it was ending its mandatory arbitration program.

All arbitration agreements are not created equal. There are ways to draft arbitration agreements in a fair and balanced way such that it does not compete with you being an "employer of choice." If you have any questions as to how to balance these concerns, please contact us.