



# Kentucky Legislature Seeks To Reestablish Employment Arbitration

Insights

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A Kentucky legislative leader has just taken the first step to try to resurrect the ability of employers to require employment disputes to be resolved by arbitration. Kentucky Senate President Robert Stivers has just introduced legislation ([Senate Bill 7](#)) to make clear that employers and employees may agree to arbitrate claims related to the employment.

## Bill Takes Aim At Recent Supreme Court Decision

The bill, introduced on February 14, is a direct response to a recent Kentucky Supreme Court decision that effectively negates the practice of arbitration for employment disputes. [The September 2018 ruling in \*Northern Kentucky Area Development Dist. v. Snyder\*](#) sent shockwaves through the state and caused many employers to immediately change a very common business practice by outlawing mandatory arbitration agreements that require applicants or employees to sign if they want to be hired or remain employed. That controversial decision made Kentucky the first in the nation to implement such a restriction.

The *Snyder* decision ruled on the validity of held Kentucky Revised Statute (KRS) 336.700, which prohibits certain agreements—including agreements to arbitrate—as a condition of employment. The state Supreme Court ruled that the statute was not preempted by the Federal Arbitration Act (FAA), a federal statute that, among other things, broadly protects arbitration agreements from state statutes such as these. The court was not swayed by the power of the FAA over the Kentucky statute, however, ruling that it did not read the state statute “as evidencing hostility to arbitration agreements.” Instead, the court said, the statute “simply prevents [employers] from *conditioning employment* on the employee’s agreement to arbitration.”

This was the key difference in the court’s eyes; the statute does not single out arbitration agreements, it said—which would violate the federal FAA—but instead prohibits employers from firing workers or failing to hire them on the condition they waive all existing rights they would otherwise have against the employer. In that way, the court said, it is not an attack on arbitration agreements, but instead intended to prohibit employers from basing employment decisions on whether the employee is willing to sign an arbitration agreement. The court noted that other kinds of agreements would also be considered null and void under the statute’s language—such as “an agreement whereby the employee waives the ability to file a whistleblower claim against the employer, or an agreement that limits the amount of damages the employee can recover against the employer”—which proves that the statute should not be preempted by the FAA.

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### **What Would New Law Mean For Employers?**

If passed, the proposed legislation would make it clear that an employer may require an employee or applicant execute an “agreement for arbitration, mediation, or other form of alternative dispute resolution as a condition or precondition of employment.” While clarifying the rights of the parties to agree to arbitrate is the main thrust of the proposed law, the bill would also provide Kentucky employers with several additional significant rights, including confirming that employers may require:

- a former employee to waive existing claims as a condition for rehiring as part of a settlement of pending litigation;
- as a condition of employment, that an employee or applicant agree to a reduced limitations period for filing claims against the employer (this is significant given the default five-year statute of limitations for many employment related causes of action in Kentucky); and
- an employee or applicant to agree to allow the employer to conduct a background check.

### **What’s Next?**

The additional rights would be a salve to long-festering thorns in the sides of many Kentucky employers. The fact the bill was filed by the Senate President is a strong indication that it is likely to pass, but one never knows when it comes to politics.

We will continue to monitor further developments and provide updates, so you should ensure you are subscribed to [Fisher Phillips’ alert system](#) to gather the most up-to-date information. We will provide an update if the bill is signed into law along with strategies tailored to maximize its benefits. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [Louisville office](#).

*This Legal Alert provides information about a specific proposed state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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