



Kentucky Governor Signs Senate Bill 7 Into Law Reestablishing Employment Arbitration

Insights

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Kentucky Governor Matt Bevin signed into law [Senate Bill 7](#) which brings Kentucky back in line with every other state by allowing employers to require employees to arbitrate claims as a condition of employment. The new law, signed yesterday, also allows employers and employees to contractually limit the time period in which employees must file employment-related claims and specifically allows an employer to require, as a condition of employment, a background check. This is all very good news for Kentucky employers.

Law Nullifies Recent Supreme Court Decision While Safeguarding Employee Rights

The law is a direct response to a recent Kentucky Supreme Court decision that significantly restricted the practice of arbitration for employment disputes. [The 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 and only state in the nation to implement such a restriction.

The *Snyder* decision held Kentucky Revised Statute (KRS) 336.700 prohibited employers from making arbitration of disputes 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 new law makes it clear that an employer may require an employee or applicant to execute an “agreement for arbitration, mediation, or other form of alternative dispute resolution as a condition or precondition of employment.”

While the law permits arbitration as a condition of employment, it also provides that arbitration agreements shall be subject to general contract defenses such as fraud, duress and unconscionability. Further, the law mandates certain specific safeguards for employees who are subject to arbitration, in accordance with the FAA.

First, the arbitration agreement must provide for a reasonable location for the arbitration. Second, the agreement to arbitrate must have mutuality of obligation sufficient to support the agreement to

arbitrate. Third, there must be procedural fairness for the parties to access arbitration, including a fair process for selecting an impartial arbitrator and the equitable allocation of costs between the parties. Fourth, the agreement must ensure that the parties have at least one channel for the pursuit of a legal claim, either by requiring the claim to be arbitrated individually pursuant to the agreement or otherwise. Finally, the arbitrator must be empowered to award all types of relief for a particular claim that would otherwise be available in court, including punitive damages if applicable.

Law Allows Agreements to Limit the Statute of Limitations

The law also provides 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, provided that such an agreement does not reduce the period of limitations by more than 50 percent of the time that is provided under the law applicable to the claim. This is significant given the default five-year statute of limitations for many employment related causes of action in Kentucky may now be reduced by half; and
- an employee or applicant to agree to allow the employer to conduct a background check.

These additional rights are a welcome salve to long-festering thorns in the sides of many Kentucky employers.

The key takeaway is that Kentucky is no longer an outlier when it comes to mandatory arbitration. Kentucky employers are again free to institute mandatory arbitration as a condition of employment. In addition, Kentucky employers have more leeway in structuring limitations on future employee claims. This all good news.

For more information, or if you have questions about this new law, please contact your Fisher Phillips attorney or any attorney in our [Louisville office](#).

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