

1 AN ACT relating to employment.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 336.700 is amended to read as follows:

4 (1) As used in this section, "employer" means any person, either individual,
5 corporation, partnership, agency, or firm, that employs an employee and includes
6 any person, either individual, corporation, partnership, agency, or firm, acting
7 directly or indirectly in the interest of an employer in relation to an employee; and
8 "employee" means any person employed by or suffered or permitted to work for an
9 employer.

10 (2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary
11 ***and except as provided in subsection (3) of this section,*** no employer shall require
12 as a condition or precondition of employment that any employee or person seeking
13 employment waive~~[-, arbitrate,]~~ or otherwise diminish any existing or future claim,
14 right, or benefit to which the employee or person seeking employment would
15 otherwise be entitled under any provision of the Kentucky Revised Statutes or any
16 federal law.

17 ***(3) Notwithstanding subsection (2) of this section:***

18 ***(a) Any employer may require an employee or person seeking employment to***
19 ***execute an agreement for arbitration, mediation, or other form of***
20 ***alternative dispute resolution as a condition or precondition of employment;***

21 ***(b) Any employer may require a former employee to execute an agreement to***
22 ***wave an existing claim as a condition or precondition for the rehiring of***
23 ***the former employee as part of a settlement of pending litigation or other***
24 ***legal or administrative proceeding;***

25 ***(c) Any employer may require an employee or person seeking employment to***
26 ***execute an agreement to reasonably reduce the period of limitations for***
27 ***filing a claim against the employer as a condition or precondition of***

1 employment, provided that the agreement does not apply to causes of action
2 that arise under a state or federal law where an agreement to modify the
3 limitations period is preempted or prohibited, and provided that such an
4 agreement does not reduce the period of limitations by more than fifty
5 percent (50%) of the time that is provided under the law that is applicable to
6 the claim; and

7 (d) Any employer may require, as a condition or precondition of employment,
8 an employee or person seeking employment to agree for the employer to
9 obtain a background check or similar type of personal report on the
10 employee or person seeking employment in conformance with a state or
11 federal law that requires the consent of the individual prior to an employer's
12 receipt or use of such a report.

13 (4) An arbitration agreement executed by an employer and an employee or a
14 candidate for employment under paragraph (a) of subsection (3) of this section
15 shall be subject to general contract defenses as may be applicable in a particular
16 controversy, including fraud, duress, and unconscionability.

17 (5) In accordance with the Federal Arbitration Act, arbitration under paragraph (a)
18 of subsection (3) of this section shall safeguard the effective vindication of legal
19 rights, including:

20 (a) Providing a reasonable location for the arbitration;

21 (b) Mutuality of obligation sufficient to support the agreement to arbitrate;

22 (c) Ensuring procedural fairness for the parties to access arbitration, including
23 a fair process for selecting an impartial arbitrator and the equitable, lawful
24 allocation of arbitration costs between the parties;

25 (d) Ensuring that the parties to the agreement shall have at least one (1)
26 channel for the pursuit of a legal claim, either by requiring the claim to be
27 arbitrated individually pursuant to the agreement or otherwise; and

1 (e) Empowering the arbitrator to award all types of relief for a particular type
2 of claim that would otherwise be available for a party through judicial
3 enforcement, including punitive damages as provided by law.

4 (6) An arbitrator selected to arbitrate an agreement entered into pursuant to this
5 section shall disqualify himself or herself if he or she has any of the conflicts
6 enumerated under KRS 26A.015(2).

7 (7) If an arbitration agreement fails to specify the manner of procedure to govern the
8 arbitration process, such as, for example, by failing to designate arbitral
9 protocols promulgated by the American Arbitration Association or similar
10 organization, then the arbitrator shall use the Kentucky Rules of Civil Procedure
11 in the conduct of the arbitration.

12 (8) This section shall apply prospectively and retroactively. Any provision of an
13 agreement executed prior to the effective date of this Act that violates the
14 requirements of paragraph (c) of subsection (3) of this section shall be stricken
15 from the agreement and shall not operate to invalidate the entire agreement.

16 (9) The provisions of this section shall not apply to collective bargaining agreements
17 entered into between employers and the respective representatives of member
18 employees.

19 ➔Section 2. KRS 417.050 is amended to read as follows:

20 A written agreement to submit any existing controversy to arbitration or a provision in
21 written contract to submit to arbitration any controversy thereafter arising between the
22 parties is valid, enforceable and irrevocable, save upon such grounds as exist at law for
23 the revocation of any contract. This chapter does not apply to:

24 (1) Arbitration agreements contained within the collective bargaining agreements
25 entered into by~~between~~ employers and~~employees or between their~~ the
26 respective representatives of member employees; and

27 (2) Insurance contracts. Nothing in this subsection shall be deemed to invalidate or

- 1 render unenforceable contractual arbitration provisions between two (2) or more
- 2 insurers, including reinsurers.