

CHANGING LIVES

#UNIONSTRONG

FACT SHEET AB 3080 (Gonzalez Fletcher) NO FORCED WAIVERS OF WORKERS' RIGHTS

Purpose

To ensure that workers are not forced to waive their right to take harassment, discrimination, and labor claims against their employer to a court or state agency.

Background

A woman receives unwanted sexual advances from her boss who threatens retaliation against her career unless she acquiesces. Shocked and disgusted by this behavior, she files a lawsuit as a victim of sexual harassment only to have her boss try to get her case sent to the company's private arbitration process. This is the story of Gretchen Carlson, former Fox News anchor who tried to seek justice against her former boss, Roger Ailes.

Another worker is a victim of wage theft and files a complaint with the California Labor Commissioner. The Labor Commissioner seeks to review the case and hold a hearing, only to be stopped by a court order. Unknown to the worker, he is bound by a waiver that prohibits him from taking a wage claim to the Labor Commissioner. This case must also go to the company's private arbitration process. This is the story of Ken Kho, an auto mechanic.

The California Labor Movement has worked to pass strong worker protections, but those laws are worthless if they cannot be enforced in court or by state agencies. Today, many employers are requiring workers to sign away enforcement of those rights, effectively denying them access to justice and due process.

Mandatory waivers of rights are agreements that workers are required to sign as a condition of employment. These documents generally prohibit a worker from filing a claim to a state agency or court and require that any potential claims be submitted to the employer's arbitrator.

Forcing workers to sign these waivers lets companies keep harassment, discrimination, and labor violation claims out of court, effectively cloaking them in secrecy and, in some cases, allowing serial harassers and repeat violators to continue their conduct for years.

Requiring workers to waive their basic rights as a condition of employment is fundamentally unfair. All contracts should be voluntary, not the result of coercion, and denying a worker a livelihood if they do not sign is anything but voluntary.

More and more, employers are using waiver of rights agreements to deny employees basic workplace protections and workers are virtually powerless to stop it. A recent study by the Economic Policy Institute found that since the early 2000s, the share of workers subject to forced arbitration has more than doubled and now exceeds 55 percent.¹

Secrecy is another key reason for the increased use of forced arbitration. Unlike in court, where workers can stand together and collectively file claims, the arbitration process makes workers stand alone and keeps the process secret. Confidentiality clauses are so common in arbitration agreements that courts have stated an "attack on the confidentiality provision is, in part, an attack on the character of arbitration itself."

CONTINUED

1. *The growing use of mandatory arbitration*, Economic Policy Institute, September 27, 2017

With these waivers, workers with claims relating to sexual harassment, discrimination, wage and hour violations, dangerous working conditions, or other workplace disputes can only seek justice through a secret process where employers have all the power. Workers are less likely to file claims through arbitration than in court. Workers that file are more likely to lose in arbitration than in court. The few workers that win in arbitration, win significantly smaller awards.² The deck is stacked against workers.

A “choice” given to workers to either sign a mandatory arbitration agreement or lose their job and ability to support their family is no choice at all.

The public outcry to take action to change this unconscionable practice that facilitates a culture of silence and takes power from workers has reached an all-time high.

In 2014, the California Legislature passed AB 2617 (Weber), which prohibits preemptively forcing people, as a condition of contract, to give up the ability to take civil rights violations to court.

This year, a new bi-partisan bill was introduced in Congress to prohibit arbitration agreements in situations involving sexual harassment. The Ending Forced Arbitration of Sexual Harassment Act of 2017 states that “no pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of a sex discrimination dispute”.

Additionally, New York Governor Andrew Cuomo has unveiled legislation this year that seeks to end the practice of employers forcing employees to enter contracts that limit their ability to seek justice for sexual harassment in the forum of their choice, empowering survivors of sexual harassment to seek justice on their own terms.

It is time for California to take bold action to protect workers from being forced to waive enforcement of harassment, discrimination, and labor violations in order to make a living and provide for their families.

2. Jean R. Sternlight, *Disarming Employees: How American Employers are using Mandatory Arbitration to Deprive Workers of Legal Protections*, 80 Brooklyn L. Rev. ____ (2015)

What This Bill Will Do

AB 3080 (Gonzalez Fletcher) ensures that a person shall not be required, as a condition of employment, to waive their right to take worker protection claims such as those involving sexual assault, harassment, discrimination, pay equity, or retaliation to court or a state agency.

Additionally, the bill prohibits employers from threatening, retaliating, discriminating against, or terminating workers because they refuse to consent to such a waiver.

Support

- ~ California Labor Federation (Sponsor)
- ~ AFSCME
- ~ Amalgamated Transit Union
- ~ California Professional Firefighters
- ~ California Rural Legal Assistance Foundation
- ~ California Teamsters Public Affairs Council
- ~ Consumer Attorneys of California
- ~ Courage Campaign
- ~ Equal Rights Advocates
- ~ Jockeys Guild
- ~ SAG-AFTRA
- ~ SEIU California
- ~ United Food and Commercial Workers
- ~ United Nurses Associations of California
- ~ UNITE HERE
- ~ Western Center on Law and Poverty

Key Contacts

Michael Young, California Labor Federation
(916) 444-3676 ext. 28
MYoung@calaborfed.org

Shubhangi Domokos, Office of Assemblywoman
Lorena Gonzalez Fletcher
(916) 319-2080
Shubhangi.Domokos@asm.ca.gov