



AB 3080: Ending Forced Waivers of Workers' Rights

IN BRIEF

Assembly Bill 3080 would seek to end practices that have enabled sexual harassment in the workplace to be covered up by prohibiting one-sided arbitration agreements from being forced on new employees, providing protections for whistleblowers, and preventing retaliation towards workers who do not sign arbitration agreements.

BACKGROUND

Gretchen Carlson, a former Fox News anchor and outspoken advocate for strengthening workplace protections, received unwanted sexual advances from her former boss who threatened retaliation against her career if she didn't acquiesce. Shocked and disgusted by this behavior, she filed a lawsuit as a victim of sexual harassment to seek justice against her former boss. She did so only to be told she could not bring such a claim in court. The judge refused to hear her claim and sent her to the company's private arbitration process.

Ken Kho, an auto mechanic worker ran into the same issue when he sought justice after facing wage theft by his former employer. He originally filed a complaint with the California Labor Commissioner as a victim of wage theft. The Labor Commissioner sought to review the case and hold a hearing, only to be stopped by a court order. Unknown to the worker, Ken was evidently bound by a waiver that prohibited him from taking a wage claim to the Labor Commissioner. Instead, his only recourse would be to go through the company's private arbitration process.

PROBLEM

The Legislature has passed strong worker protections, but those laws are worthless if they cannot be enforced in court or by state agencies because an employer has forced their workers to sign away their rights in an arbitration agreement.

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.

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." A recent study by the Economic Policy Institute found that since the early 2000s, the share of workers subject to mandatory arbitration has more than doubled and now exceeds 55 percent.

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

THE SOLUTION

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.

AB 3080 would:

- Ensure that a person is not 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.
- Ensure a person is not prevented, as a condition of employment or a condition of entering into a contractual agreement, from disclosing to any other person instances of sexual harassment that they may suffer, witness, or discover in the workplace.
- Prohibit employers from threatening, retaliating, discriminating against, or terminating workers because they refuse to consent to such a waiver.

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FOR MORE INFORMATION

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