



CALIFORNIA LABOR FEDERATION \* STATE BUILDING AND CONSTRUCTION TRADES COUNCIL

## FACT SHEET

### AB 51 (Gonzalez)

#### STOP FORCING WORKERS TO WAIVE THEIR RIGHTS!

##### **Purpose**

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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**

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Workers have long understood that when the boss breaks the law, whether it's wage theft, discrimination, or sexual harassment, they should have the right to stand together and seek justice in the courts.

Companies have figured out a way around that. Today, employers are increasingly using a method known as Forced Arbitration to require workers to waive their rights as a condition of getting or keeping a job. These documents generally prohibit a worker from filing claims to a state agency or court and require that any potential claims be submitted to the employer's hand-picked arbitrator.

Workers often do not know that these rights have been waived because the arbitration clause is hidden in the fine print and is sometimes not in the workers' native language.

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. Forced arbitration is effectively denying workers' access to justice.

Requiring workers to waive their basic rights as a condition of getting or keeping a job is fundamentally unfair. All contracts should be voluntary, not the result of coercion. Denying a worker a livelihood if she or he does not sign an arbitration agreement is anything but voluntary.

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 unchecked.

The number of companies using these agreements is skyrocketing and workers are virtually powerless to stop it. In 2012, the number of workers bound by forced arbitration was 16%. That figure rose to 55% in 2017. Last year, a study from the Economic Policy Institute found that over 67% of all California workplaces use forced arbitration agreements and that the workers most frequently subjected to this practice are low-wage workers, women workers, and black and Latino workers.

The #MeToo movement has illuminated how crucial it is for workers to be able to voice their concerns together—and how particularly harmful forced arbitration is to women fighting sexual harassment. Forced arbitration means having to pursue one's claims alone, before a private arbitrator hired by the company, with a low likelihood of success and little chance to appeal.

As a result of mounting pressure, a hand full of tech companies decided to undo their forced arbitration policy for harassment claims. However, acting together to challenge workplace wrongs doesn't only matter to women fighting sexual harassment—it matters to all workers. When unscrupulous employers cheat low-wage workers out of wages, discriminate based on race or gender, or retaliate against whistleblowers, workers must have access to courts and state agency to ensure their voices are heard and justice is attainable.

Employers have a clear preference for forced arbitration because it's a secret system they have rigged to virtually guarantee they win. Workers are less likely to file claims through forced arbitration than in court. Workers that file are more likely to lose in arbitration than in court. The few workers that win in arbitration receive significantly smaller awards than in court. The system is rigged 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.

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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. Workers are demanding more from their employers and legislatures.

After articles in the press revealed Google had given a senior executive a \$90 million exit package even after it found he had been credibly accused of sexual harassment, 20,000 Google workers staged a walkout demanding changes to how it treats employees. Now, the company says it will no longer force employees to settle disputes with the company in private arbitration, expanding on an earlier pledge to do away with the practice in cases of sexual harassment or assault.

Last year, New York Governor Andrew Cuomo signed legislation on April 15th that would 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. Similarly, Washington's Governor Jay Inslee issued an executive order to ban the use of forced arbitration in state contracts.

In February 2019, bi-partisan legislation was re-introduced in Congress to prohibit arbitration agreements in situations involving sexual harassment. The Fair Arbitration Injustice Repeal (FAIR) Act of 2019 would prohibit corporations from forcing workers, consumers, and small businesses to only resolve their disputes in private arbitration, by themselves, without access to the courts or state agencies.

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.

### **FAA Preemption**

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AB 51 follows the dictates of the Supreme Court that arbitration under the Federal Arbitration Act is a matter of "consent and not coercion" and protects employees from retaliation for not consenting to waive their rights. It is consistent with the bi-partisan legislation introduced in Congress, and moving in numerous other states, that would ensure victims of sexual assault and harassment are not forced into arbitration agreements.

While the FAA has been interpreted to preempt many state regulations of arbitration, it does not apply here. This bill does not seek to invalidate any arbitration agreement that would be valid under the FAA. It does not make any category of claim arbitrable. It does not shift the burden of proof onto the party seeking to validate the agreement.

Instead, it simply ensures that workplace arbitration agreements are entered into willingly and not through coercion.

### **What This Bill Will Do**

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AB 51 (Gonzalez) 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**

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- 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  
Western States Council
- United Nurses Associations of California
- UNITE HERE
- Western Center on Law and Poverty

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