

The Honorable Jerrold Nadler
Chairman
U.S. House Committee on the Judiciary
Washington, DC 20515

The Honorable Doug Collins
Ranking Member
U.S. House Committee on the Judiciary
Washington, DC 20515

September 9, 2019

Re: Pass the Forced Arbitration Injustice Repeal Act (FAIR Act), H.R. 1423

Dear Chairman Nadler and Ranking Member Collins:

The undersigned organizations, which advocate for gender equality, urge you to pass the Forced Arbitration Injustice Repeal Act (FAIR Act), H.R.1423, legislation which would prevent companies from forcing individuals to give up their day in court and instead use the secretive, business-controlled process of arbitration for resolving disputes.

Today, companies commonly force workers and consumers to agree to resolve disputes in arbitration as a condition of obtaining a job or purchasing a good or service, often through form agreements buried in fine print. Many individuals entering such agreements have no idea they have waived the ability to enforce their rights in court. If they do find themselves in a dispute after entering into such an agreement, the deck is stacked in favor of the company. Arbitrators are often chosen and paid by companies. There is no public record of the proceedings or the outcome, and rarely an opportunity to appeal the arbitrator's decision. Many workers who come forward with reports of sexual harassment or other forms of discrimination, unsafe working conditions, or wage theft, or consumers who report sexual assault, cannot afford legal counsel. The agreement may force them to bear some of the significant costs of the arbitration. The resolution of their disputes may fail to make them whole for the harm they have suffered.

These days, almost all American workers and consumers are bound by forced arbitration in at least some of their interactions with corporations, but women face particular barriers to accessing justice because of forced arbitration requirements. Millions of individuals who use consumer financial products or services are subject to arbitration clauses.¹ A recent study revealed that 57.6 percent of female workers are subject to forced arbitration, and that forced arbitration is more common in industries where the workforce is disproportionately made up of women.² Women

¹ A 2015 report to Congress found that seven of the eight largest mobile wireless providers, covering 99.9 percent of subscribers, had customer agreements requiring arbitration. CONSUMER FINANCE PROTECTION BUREAU, ARBITRATION STUDY REPORT TO CONGRESS, PURSUANT TO DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(A) (March 2015), https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf

² Alexander Colvin, *The Growing Use of Mandatory Arbitration*, ECONOMIC POLICY INSTITUTE, April 6, 2018, <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/>

are close to two-thirds of the workforce in jobs that pay the minimum wage or just a few dollars above it, and more than two-thirds of workers in tipped jobs.³ Women of color are particularly overrepresented among tipped workers and other low-wage workers.⁴ Because forced arbitration is more common in low-wage workplaces,⁵ it has a particularly detrimental impact on women generally and women of color specifically.

The lack of public accountability enabled by forced arbitration has played a harmful role in allowing sexual harassment and assault to persist in the shadows. In the nearly two years since #MeToo went viral, thousands of individuals have come forward to share their experiences – many several years after the fact – and to demand justice.

When individuals share their experiences of assault, harassment and discrimination, it gives others the courage to come forward as well. But when women who report such conduct at work, at a spa or nursing home, or during a rideshare are forced into arbitration, that secretive process with no public accountability further silences victims. As the following stories demonstrate, arbitration allows companies to hide the true extent of illegal conduct from workers and the public, and helps wrongdoers evade accountability, which can isolate individuals and prevent them from coming forward.

- Saturnina Plasencia, a Latina single mother of four, worked for \$13/hour in a Dollar Store in New York. Her general manager regularly sexually harassed her and, after she refused his sexual demands, she alleged she was given fewer hours than new female hires. When she told him she was pregnant, he angrily responded “The baby could have been mine.” Saturnina did not realize when she started work that she had signed a mandatory arbitration agreement, and her case is now in arbitration.⁶ Her case is supported by the TIME’S UP Legal Defense Fund, which is housed and administered by the National Women’s Law Center Fund.
- Thousands of current and former Chipotle employees were forced to work hours off the clock without pay. When those employees were part of a class action lawsuit seeking justice over wage theft, Chipotle forced many of them to arbitrate their claims on an individual basis.⁷

³ *Id.*

⁴ Jasmine Tucker and Kayla Patrick, NAT’L WOMEN’S LAW CTR., *Women In Low-Wage Jobs May Not Be Who You Expect* (August 2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/08/Women-in-Low-Wage-Jobs-May-Not-Be-Who-You-Expect.pdf>.

⁵ Colvin, *supra* note 2.

⁶ Associated Press, *Financially hard-up women get help in pursuing MeToo cases*, www.nyl.com, October 4, 2018, <https://www.nyl.com/nyc/queens/ap-top-news/2018/10/04/financially-hard-up-women-get-help-in-pursuing-metoo-cases>.

⁷ Dave Jamieson, *Chipotle’s Mandatory Arbitration Agreements Are Backfiring Spectacularly*, HUFFINGTON POST, December 20, 2018, https://www.huffpost.com/entry/chipotle-mandatory-arbitration-agreements_n_5c1bda0de4b0407e90787abd.

- When Uber riders who alleged that they had been sexually harassed and assaulted by drivers brought a class action lawsuit against Uber for failing to properly screen its drivers, Uber tried to force them into arbitration. After a public outcry Uber agreed to allow some of the claims to go to court⁸ and eventually settled the case. In May 2018, Uber modified its policy and no longer requires forced arbitration of individual claims of sexual harassment or sexual assault of Uber riders, drivers or employees; however, it still requires arbitration of other types of claims.⁹

These brave individuals came forward to expose misconduct at great risk to their jobs and safety. Now it's time for Congress to enact legislation so that workers and consumers are no longer silenced, and are no longer forced into arbitration when their rights have been violated.

The FAIR Act restores power to workers, consumers, servicemembers, and nursing home residents by allowing them to choose whether to pursue their dispute in court or in arbitration, rather than being forced into arbitration up front. The FAIR Act would also prevent corporations from stripping away the rights of workers and consumers to come together to form class actions to address systemic and widespread corporate wrongdoing.

The FAIR Act is an important tool in helping women to expose misconduct and enforce their rights. Accordingly, we strongly urge you to pass the FAIR Act. If you have any questions, please contact Emily Martin (emartin@nwlc.org) at the National Women's Law Center.

Sincerely,

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ACLU

Caring Across Generations

Clearinghouse on Women's Issues

Coalition of Labor Union Women

CLUW of Southwestern PA

RI CLUW

⁸ *Uber Still Wants Rider Rape Case Decided Privately*, BLOOMBERG LAW, May 23, 2018, <https://news.bloomberglaw.com/daily-labor-report/uber-still-wants-rider-rape-case-decided-privately>

⁹ Tony West, *Turning the lights on*, Uber.com, May 15, 2018, <https://www.uber.com/newsroom/turning-the-lights-on>.

Equal Rights Advocates

Feminist Majority Foundation

Futures Without Violence

Gender Justice

Justice for Migrant Women

Kentucky Equal Justice Center

KWH Law Center for Social Justice & Change

Legal Aid at Work

Maine Women's Lobby

NAACP

National Alliance to End Sexual Violence

National Asian Pacific American Women's Forum (NAPAWF)

National Domestic Workers Alliance

National Employment Law Project

National Employment Lawyers Association (NELA)

National Organization for Women

Southwest Pennsylvania National Organization for Women

National Partnership for Women & Families

National Women's Health Network

National Women's Law Center

NETWORK Lobby for Catholic Social Justice

People's Parity Project

ROC Action

Shriver Center on Poverty Law

The Employee Rights Advocacy Institute For Law & Policy

The One Less Foundation

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United Church of Christ, Justice and Witness Ministries

Women Employed

Women's Law Project