#MeToo-inspired bills that would have helped victims of sexual assault and harassment vetoed by Brown

AB 3080 would have ensured workers aren't forced into arbitration

SACRAMENTO (Sept. 30, 2018) – Gov. Jerry Brown has vetoed three bills inspired by the #MeToo movement, including a widely praised bill that would have kept California workers from being forced into arbitration to resolve claims involving workplace sexual assault, harassment, discrimination or pay equity.

Assembly Bill 3080 by Asm. Lorena Gonzalez Fletcher (D-San Diego) – a product of the #MeToo movement and the sexual harassment scandals that have rocked Hollywood, the business world and government – would have ensured that sexual predators no longer use the secret setting of arbitration to hide their misconduct. In some cases that secrecy has allowed serial abusers to continue their conduct for years largely unchecked.

"We are sorely disappointed," said CAOC President Lee Harris. "For too long serial sexual harassers have used forced arbitration to hide their misdeeds. This measure would have helped put a stop to it, and given victims a better shot at holding predators accountable."

The bill would have also prevented companies from keeping harassment, discrimination and labor violation claims out of court and away from the public eye. In addition, AB 3080 would have prohibited employers from threatening, retaliating against or firing workers because they refuse to consent to forced arbitration.

The bill faced fierce opposition from the California Chamber of Commerce, which gave AB 3080 its so-called "job killer" label. But it won the support of a wide range of #MeToo advocates ranging from actress and activist Jane Fonda to Time Magazine "Silence Breaker" Juana Melara.

When he sat on the United States Court of Appeals, Tenth Circuit, current United States Supreme Court Justice Neil Gorsuch wrote, "It is true that the Federal Arbitration Act favors arbitration. But before the Act's heavy hand in favor of arbitration swings into play, the parties themselves must agree to have their disputes arbitrated. While Congress has chosen to preempt state laws that aim to channel disputes into litigation rather than arbitration, even under the FAA it remains a 'fundamental principle' that 'arbitration is a matter of contract,' not something to be foisted on the parties at all costs." *Howard v. Ferrellgas Partners LLP* 748 F.3d 975 (2014) citing *AT& T Mobility LLC v. Concepcion,* 131 S.Ct. 1740, 1745 (2011)

AB 3080 would not have outlawed mandatory arbitration agreements; it only would have required workers and job applicants to enter into those agreements voluntarily. It followed the dictates of the Supreme Court that arbitration under the FAA is a matter of "consent and not coercion" and would have protected employees from retaliation for not consenting to waive their

rights. In instances where private arbitration is a superior alternative for workers, they would have remained free to choose it.

AB 3080 was co-sponsored by CAOC, the California Labor Federation and SAG-AFTRA, the union that represents actors, broadcasters and journalists.

Also vetoed were bills that would have given victims of sexual harassment and discrimination more time to file claims and addressed the problem of repeat offenders.

Assembly Bill 1870, also known as the SHARE Act (Stopping Harassment and Reporting Extension), would have extended the time to file claims of harassment and discrimination under the California Fair Employment and Housing Act (FEHA) from one year to three years. Seven states already allow three years or more to file harassment and discrimination claims, including Ohio, where victims have six years to file.

AB 1870 was jointly authored by Asm. Eloise Gomez Reyes (D-San Bernardino), Asm. Laura Friedman (D-Glendale) and Asm. Marie Waldron (R-Escondido) and was co-sponsored by CAOC along with the California Employment Lawyers Association and Equal Rights Advocates.

Assembly Bill 1867, authored by Asm. Eloise Gomez Reyes (D-San Bernardino), would have required California businesses with 50 or more employees to keep records of employee complaints of sexual harassment for 10 years from the date of filing. It would have helped address the problem of repeat offenders, as some predators have been able to continue their behavior because records of their misconduct were not properly retained or destroyed by their employers. AB 1867 was sponsored by CAOC and the California Employment Lawyers Association.

Consumer Attorneys of California is a professional organization of plaintiffs' attorneys representing consumers seeking accountability against wrongdoers in cases involving personal injury, product liability, environmental degradation and other causes.

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