



## No forced waiver of rights: Forced arbitration denies workers' access to justice

**AB 51**  
*Asm. Lorena  
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### SUMMARY OF THE BILL

AB 51 would ensure that a worker is not forced into arbitration and stripped of the right to take harassment, discrimination, and labor claims to court or a state agency.

### PROBLEM

A woman receives unwanted sexual advances from her boss, who threatens retaliation unless she acquiesces. Shocked and disgusted by this behavior, she files a lawsuit as a victim of sexual harassment only to be told she cannot bring such a claim in court. The judge refuses to hear her claim and sends her to the company's private arbitration process. This is the story of Gretchen Carlson, the former Fox News anchor who sought justice against her former boss, Roger Ailes.

Her story is repeated again and again among workers with far less celebrity – in government and in private industry, in the farm fields and in restaurants. Up and down California, forced arbitration waivers are clauses that workers are required to sign as a condition of getting or keeping a job. These clauses generally prohibit a worker from filing a claim with a state agency or going to court and require that any potential claims be submitted to the employer's arbitrator of choice.

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.

A recent study by the Economic Policy Institute (EPI) found that the share of workers subject to forced arbitration has more than doubled in less than a

decade, and now exceeds 67% among California's workforce.

After last year's sweeping #MeToo movement a number of companies decided to undo their arbitration policies for harassment claims. However, protecting a workers' right against harassment is not enough. Discrimination, wage theft and retaliation are all important rights worth protecting.

### SOME ARE DOING BETTER

In March of 2019, Google announced it would end its practice of forcing workers to sign arbitration agreements in exchange for employment. This came after 20,000 Google employees and contractors around the world walked off the job to protest the company's response to sexual harassment claims. This hard-fought victory for Google workers is one key example of how companies can and should behave towards their workers. Barring a worker from accessing the courts when they have been wronged in their workplace is unjustifiable.

Washington State passed an executive order last year banning the use of forced arbitration in state contracts.

Congress is also taking steps by introducing bi-partisan legislation, The Fair Arbitration Injustice Repeal (FAIR) Act, to prohibit corporations from forcing workers consumers and small businesses to only resolve their disputes in private arbitration, without access to the courts or agencies.

California must continue to lead and protect workers when companies fail or refuse to do so.

### **FULLY CONSISTENT WITH FEDERAL LAW**

AB 51 fully preserves an employer's ability to request arbitration - it simply prohibits the employer from retaliating against a potential employee for refusing to agree to the clause.

Since a contract isn't formed, federal law protecting contracts does not come into play. The bill does not prohibit, restrict, or discourage anyone from entering into a mandatory arbitration agreement, if they wish to consent to do so freely and voluntarily.

It does not interfere with enforcement of arbitration agreements. In fact, once a mandatory arbitration agreement has been signed, this bill has nothing more to say about the situation.

Finally, the bill does not just apply to arbitration agreements: its edicts would apply equally to waiver of any dispute resolution forum or procedure. In short, nothing in the bill discriminates against arbitration and nothing in the bill interferes with the enforcement of an agreement to arbitrate once executed.

### **SOLUTION**

AB 51 ensures that a worker is not required as a condition of employment to waive the right to a day in court or before a state agency on claims involving sexual assault, harassment, discrimination, pay equity or retaliation. It also prohibits employers from firing or threatening workers because they refuse to consent to such a waiver.

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Consumer Attorneys of California

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