



January 2, 2018

The Honorable Cheri Bustos
U.S. House of Representatives
Washington, DC 20515

RE: Ending Forced Arbitration of Sexual Harassment Act

Dear Representative Bustos:

The National Association of Consumer Advocates (NACA), a nonprofit association actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means, commends your introduction of H.R. 4734, the Ending Forced Arbitration of Sexual Harassment Act. By making forced arbitration clauses invalid and unenforceable for claims of sexual harassment and other forms of sex discrimination as defined under Title VII of the Civil Rights Act of 1964, the legislation would ensure that workers can go to court to enforce critical protections and help them to seek justice for related harm. The proposal would be a positive step forward in the effort to eliminate forced arbitration altogether and restore individuals' legal rights in consumer and workplace disputes.

Workplace sex discrimination and harassment deservedly have been in the spotlight since the recent and unprecedented public exposure of powerful corporate entities that enabled and effectively sanctioned pervasive acts of unwelcome sexual advances, offensive and demeaning remarks about a person's sex, related verbal or physical harassment, and generally treating a person unfavorably because of that person's sex.¹ We are pleased that lawmakers, through this legislation, are standing up for the rights of victims of sex discrimination and harassment.

For far too long, predispute binding mandatory arbitration ("forced arbitration") clauses inserted in corporate non-negotiable contracts have blocked consumers and workers from going to court to seek remedies when injured by corporate wrongdoing, including clear violations of state and federal consumer protection, civil rights, and workplace laws. Corporations use forced arbitration to require their customers and employees to resolve disputes in secret, private, and often costly arbitration proceedings.

The forced arbitration process has fundamental flaws. It lacks simple procedural protections available in court: no impartial judge or jury; limited ability to obtain evidence in discovery; private arbitrators who are incentivized to favor "repeat customer" corporations over individuals; and little or no opportunity to appeal a decision even when an arbitrator is clearly wrong. Indeed,

¹ See, e.g. Drew Harwell, *Hundreds allege sex harassment, discrimination at Kay and Jared jewelry company*, THE WASHINGTON POST, Feb. 27, 2017, <http://wapo.st/2pMcn9g> and Gretchen Carlson on sexual harassment and how settlements are fueling a "silent epidemic," CBS NEWS, Oct. 17, 2017, <http://cbsn.ws/2zoe502>.

the process typically is so difficult and unfair that victims of corporate wrongdoing avoid arbitration altogether. As a result, the mere existence of arbitration clauses in contracts allows bad corporate actors to escape liability for misconduct because their victims have no meaningful avenue to hold them accountable.

These disadvantages are especially true for victims of sex discrimination and sexual harassment. The secretive arbitration process enables bad actors to shield perpetrators and to punish their victims with impunity, all while avoiding public disclosure. It also facilitates the burying of evidence that potentially can show patterns of sex discrimination and harassment that engender hostile work environments.

H.R. 4734, the Ending Forced Arbitration of Sexual Harassment Act, will immediately address this serious matter of public interest by restoring critical federal protections for sexual harassment and sex discrimination victims. We applaud the legislation and look forward to working with you to secure its passage.

Sincerely,

Christine Hines
Legislative Director
National Association of Consumer Advocates