



October 30, 2018

Ranking Member Jerrold Nadler
House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Ranking Member Nadler:

Thank you for introducing the Restoring Justice for Workers Act, a bill that would ensure that millions of U.S. workers will once again have their day in court to enforce protections available to them under employment and civil right laws. Fair Arbitration Now, a network of more than 70 consumer, labor, legal and community organizations that support ending the practice of forced arbitration in consumer and non-bargaining employment contracts, is pleased to endorse this legislation.

The bill, which would amend the Federal Arbitration Act (FAA) and the National Labor Relations Act (NLRA) to ensure that disputes between employers and workers can be resolved in court, and to ensure that workers can band together in class or collective actions, is a necessary step to improve conditions in today's employment market. The bill's prohibition on predispute binding mandatory arbitration ("forced arbitration") clauses in non-bargaining employment contracts will restore justice for America's workers.

Forced arbitration clauses are ubiquitous in corporate contracts with consumers and workers. These fine-print terms require disputes to be resolved in private arbitration proceedings instead of in court. In addition, the clauses often block class actions, barring individuals from banding together to resolve related claims. Forced arbitration is not a legitimate alternative method for workers to resolve disputes with their more powerful employers. Individual forced arbitration cannot address widespread harm and misconduct, such as wage disputes, systemic discrimination and harassment, which can impact large groups of employees in a workplace. In addition, forced arbitration squashes valid legal claims from ever going forward by sending them to a secretive process and forcing complainants to act on their own, which can be too costly of an endeavor particularly if the individual claim is relatively small.

According to the Economic Policy Institute, more than 54 percent of nonunion private-sector employers use forced arbitration against their workers, impacting tens of millions of people.¹ The pervasive practice is owed to a series of closely decided U.S. Supreme Court decisions that have strengthened the FAA's power over other federal laws and the constitutional right to a civil jury

¹ Alexander J.S. Colvin, *The growing use of mandatory arbitration, Access to the courts is now barred for more than 60 million American workers*, April 6, 2018, <https://www.epi.org/files/pdf/144131.pdf>.

trial. As recently as last May, the Supreme Court held in *Epic Systems Corp. v. Lewis* that employers can enforce forced arbitration clauses that prohibit workers from bringing class or collective actions.² The Court rejected the workers' argument and the previous position of the National Labor Relations Board³ that these class action bans violate the NLRA.

Following the *Epic* decision, the Ninth Circuit Court of Appeals, in September, nullified ongoing class actions that were filed by Uber drivers against the ride-share company to resolve pay and benefit disputes. The drivers alleged, among other things, that Uber failed to remit entire gratuity paid by customers to drivers, and misclassified drivers as independent contractors, in violation of state and federal laws.⁴ The far-reaching interpretations of the FAA allow Uber and other corporations to use their contract terms to strip workers of the right to hold them accountable in a court of law.

The Restoring Justice for Workers Act correctly recognizes the fundamental rights and protections at stake. We strongly support this bill that would reinstate worker protections by eliminating forced arbitration clauses and class action bans in employment contracts, and would ensure that arbitration is truly voluntary, allowing all parties to choose court or arbitration *after* disputes arise.

If you have any questions or concerns, please contact Christine Hines, National Association of Consumer Advocates, Christine@consumeradvocates.org; Remington A. Gregg, Public Citizen, rgregg@citizen.org; or Julia J. Duncan, American Association for Justice, Julia.Duncan@justice.org.

Sincerely,

Fair Arbitration Now

<http://www.fairarbitrationnow.org/coalition/>

² *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612 (2018).

³ *In re D.R. Horton, Inc. and Michael Cuda*, NLRB Case No. 12-CA-25764, 2012 NLRB LEXIS 11, 2012 WL 36274 (Jan. 3, 2012).

⁴ *O'Connor v. Uber Techs., Inc.*, 2018 U.S. App. LEXIS 27343 (9th Cir. Sep. 25, 2018).