

Eliminating Mandatory Arbitration for Sexual Assault and Harassment Survivors

BUSINESSES

Airbnb

Google

Facebook

Lyft

Microsoft

Uber

Challenge

While sexual harassment occurs in all industries and occupations, the burden falls all too heavily on low-wage workers and women, especially women of color. Many of these workers confront sharp power imbalances within the workplace—relation to supervisors, managers, clients, customers, and other coworkers—any attempt to report misconduct or challenge working conditions can put their jobs at risk. This lack of power, combined with concerns about being disbelieved, the threat of retaliation, and economic insecurity, can result in sexual harassment survivors rarely seeking justice - a problem exacerbated by mandatory arbitration clauses in employment contracts. These mandatory arbitration provisions are often required as a condition of getting or keeping a job.

In the context of harassment claims, requiring disputes to be settled in an arbitration process can mean employees face additional costs for representation in a specialized proceeding. Mandatory arbitration clauses are often paired with non-disclosure or non-disparagement agreements, which forbid an employee from saying anything that could be construed as negative about the company or its leaders. Combined, these provisions might mean that employers that use arbitration might conceal a pervasive working culture and induce survivors' and others' silence about sexual harassment.

And for survivors of sexual assault, requiring them to use arbitration and preventing them from choosing the forum to seek justice can compound the trauma they experience by not allowing them to speak publicly about what happened to them.



Photograph: Jeenah Moon/Reuters

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Action

A number of companies are changing how they address and respond to sexual assault and harassment claims. In December 2017, when evaluating federal legislation to end forced arbitration of sexual harassment, [Microsoft announced](#) it would waive any contractual requirement mandating that employees bring any sexual harassment claims to arbitration, choosing to make the change before any new law might require it.

In March 2018, [Uber](#) similarly chose to remove mandatory arbitration requirements for individual sexual assault or sexual harassment claims by Uber riders, drivers, or employees. In announcing this new policy, Uber explained that all survivors would be “free to choose to resolve their claims in the venue they prefer: in a mediation where they can choose confidentiality; in arbitration, where they can choose to maintain their privacy while pursuing their case; or in open court.” It also ensured individual claimants could settle their claims with Uber without a confidentiality provision, which would prevent them from speaking about the facts of the sexual assault or harassment they suffered.

Uber further committed to publishing a safety transparency report that includes data on sexual assaults and other incidents on the Uber platform. In addition, it [pledged \\$5 million](#) to women’s safety organizations through 2022.

Lyft followed suit and [agreed](#) to remove confidentiality requirements and mandatory arbitration for sexual assault survivors -- extending this policy to passengers, drivers, and Lyft employees."

[Google, Facebook, and Airbnb](#) also ended forced arbitration for sexual harassment by employees. Airbnb even extended this position for employees in cases involving discrimination, including racial, gender, religious, and age inequity.

Additional companies have followed suit and more action is coming out of state legislatures and the U.S. Congress.

Impact

The ripple effect in this instance is clear. When businesses lead on issues of justice, they have an opportunity to create change across an industry. And as state legislatures’ efforts to outlaw these practices are challenged under federal law and federal legislation that would end these practices languishes, businesses choosing to eliminate these clauses outright can secure justice outcomes quicker.

Adapted from NLADA’s Policy Brief: Access to Justice is Good for Business (2019).

Common Justice Problems Addressed – Justice For All Report

Violence and Crime

Individual: Violence and crime, in the public sphere, at work, and at home.

Family, Women, and Vulnerable Groups

Individual: Family disputes, for example, around divorce and inheritance. *Structural:* Discrimination against women or against vulnerable groups.

Working Environment

Individual: Problems at work, whether as an employee or business owner. *Structural:* Unsafe or abusive working conditions.

Justice Imperative Principles Addressed

1. Driving ambitious action across operations and supply chains, focused on what justice means to people.
4. Working alongside governments, businesses, and justice partners to intentionally address justice challenges