

May 13, 2019

Reed Hastings
Netflix
100 Winchester Circle
Los Gatos, CA 95032

Dear Mr. Hastings:

In February 2018 and September 2018, our organizations wrote to urge you to remove forced arbitration provisions from your employment contracts and to restore workers' rights to access the court system after disputes arise with your company.¹

Much has happened since we first wrote to you. We have seen how forced arbitration clauses have been used in a variety of ways to hide wrongdoing, from companies attempting to silence claims of sexual harassment² to stopping consumers who have been injured from accessing justice.³ And in February, Rep. Hank Johnson (D-GA) and Sen. Richard Blumenthal (D-CT) introduced the Fair Arbitration Injustice Repeal (FAIR) Act, which would prohibit the use of forced arbitration in consumer, civil rights, employment, or antitrust disputes. The bill defines an "employment dispute" as a "dispute between one or more individuals (or their authorized representative) and a person arising out of or related to the work relationship or prospective work relationship... regardless of whether the individual is or would be classified as an employee or an independent contractor with respect to such work."⁴ The bill, with 187 co-sponsors in the House of Representatives and 34 co-sponsors in the U.S. Senate, and counting, recognizes the dignity of all workers. We ask you to do the same.

According to a national survey, 84 percent of the public supports federal legislation that ends the practice of forcing consumers and workers into arbitration. Republicans support the legislation more than Democrats (87% to 83%).⁵ It is clear that the tide is turning and that people are taking notice at how forcing workers into arbitration foments secrecy, hides systemic wrongdoing, and deprives everyday people of justice. Supreme Court Justice Hugo Black summed up the unfairness of arbitration well:

¹ Letter from Organization to Technology Companies (Feb. 7, 2018), *available at* https://www.citizen.org/sites/default/files/employment_arb_sign-on_letter_google.pdf.

² Wired, *Why Aren't More Employees Suing Uber?*, (June 23, 2017), *available at* <https://www.wired.com/story/uber-susan-fowler-travis-kalanick-arbitration/>.

³ Washington Post, *Scooter Use is Rising in Major Cities. So are Trips to the ER* (Sept. 7, 2018), *available at* https://www.washingtonpost.com/business/economy/scooter-use-is-rising-in-major-cities-so-are-trips-to-the-emergency-room/2018/09/06/53d6a8d4-abd6-11e8-a8d7-0f63ab8b1370_story.html?noredirect=on&noredirect=on&utm_term=.c2123ff2da9f.

⁴ Forced Arbitration Injustice Repeal Act, H.R. 1423/S. 610, 116th Cong. (2019).

⁵ Guy Molyneux & Geoff Garin, *Nat'l Survey on Required Arbitration*, HART RESEARCH ASSOC. (Feb. 28, 2019), <https://www.justice.org/sites/default/files/2.28.19%20Hart%20poll%20memo.pdf>.

“For the individual, whether his case is settled by a professional arbitrator or tried by a jury can make a crucial difference. Arbitration differs from judicial proceedings in many ways: arbitration carries no right to a jury trial as guaranteed by the Seventh Amendment; arbitrators need not be instructed in the law; they are not bound by rules of evidence; they need not give reasons for their awards; witnesses need not be sworn; the record of proceedings need not be complete; and judicial review, it has been held, is extremely limited.”⁶

This issue is not going away. In fact, we believe that public support to ban the use of forced arbitration clauses will only increase as more shocking stories are revealed detailing how companies seek to use them to shield discrimination, harassment, and retaliation.⁷ You have an opportunity to be on the right side of history, and set an example as a responsible company in the marketplace. We hope you’ll take it. With questions, please contact Remington A. Gregg, at rgregg@citizen.org.

Sincerely,

American Civil Liberties Union
Arise Chicago
Atlanta Women for Equality
Broome Tioga Green Party
Colorado Center on Law and Policy
Colorado Fiscal Institute
Communications Workers of America (CWA)
Consumer Action
Consumers for Auto Reliability and Safety
Earthjustice
Economic Policy Institute
The Employee Rights Advocacy Institute For Law & Policy
Equal Pay Today
Equal Rights Advocates
Professor Matthew Finkin, University of Illinois College of Law*
Florida Alliance for Consumer Protect
Greater Syracuse Council on Occupational Safety and Health
Homeowners Against Deficient Dwellings
Impact Fund
Interfaith Worker Justice

⁶ Republic Steel Corp. v. Maddox, 379 U.S. 650, 664 (1965) (Black, J., dissenting).

⁷ See New York Times, *The Company That Sells Love to America Had a Dark Secret* (April 23, 2019), available at <https://www.nytimes.com/2019/04/23/magazine/kay-jewelry-sexual-harassment.html>, Bloomberg Businessweek, *This Is What Happens When You Try to Sue Your Boss* (Jan. 24, 2019), available at <https://www.bloomberg.com/features/2019-arbitration-hell/>, and Bloomberg Businessweek, Cantor Fitzgerald Doesn’t Want This Woman Talking About Her Mug in Court (April 25, 2019), available at <https://www.bloomberg.com/news/features/2019-04-25/cantor-fitzgerald-doesn-t-want-this-woman-talking-about-her-mug-in-court?srnd=premium>.

Lambda Legal
Legal Aid at Work
Maine AFL-CIO
NAACP
National Association of Consumer Advocates
National Center for Transgender Equality
National Consumer Law Center
National Employment Lawyers Association
National Employment Law Project
National Equality Action Team (NEAT)
National LGBTQ Task Force
Oxfam America
PathWays PA
Professor Daniel R. Ortiz, University of Virginia Law School*
Policy Matters Ohio
Public Citizen
Public Knowledge
Public Justice
SafeWork Washington
Southwest Women's Law Center
Texas Watch
Union Theological Seminary
Witness to Mass Incarceration
Women Employed
Women's Law Project

*University affiliations are listed for identification purposes only. The contents of this letter were not authorized by, and should not be construed as reflecting the view of, the listed universities.