



FOR IMMEDIATE RELEASE
February 9, 2022

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Rampant Forced Arbitration Clauses in Corporate Contracts Take Greatest Toll on Historically Marginalized Groups, New Report Finds

People of color, women, low-income people, and other marginalized groups pay highest price of contracts that deprive workers and consumers of justice in the courts.

WASHINGTON, DC — Corporations are subjecting millions of American workers and consumers to legal clauses that force them to settle claims in a rigged system of forced arbitration instead of an impartial courthouse — an alarming trend that harms historically marginalized groups, according to [a new report](#) by the Center for Progressive Reform.

Forced arbitration clauses favor corporations over workers and consumers because arbitrators have financial motives to rule in favor of corporations, don't have to follow the rules of evidence, explain their decisions in writing, or apply the law consistently, and they often can't be overruled by a higher court. Indeed, individuals seldom prevail in forced arbitration.

Further, few workers and consumers are aware they are subject to forced arbitration clauses, which are often buried in the legal fine print when they take a job, lease an apartment, buy a product, hire a service provider, or agree to receive health care. The ban on class action lawsuits, meanwhile, blocks individuals from holding companies accountable for relatively small individual harms that affect large groups of people.

The clauses are especially pernicious for workers and consumers who are members of historically marginalized groups, such as people of color, women, and low-income people; who are victims of sexual harassment or systemic discrimination; and/or who are otherwise vulnerable to abuse and predation, such as residents of nursing homes, the center's new report finds. The report is the first to examine the harms of forced arbitration on marginalized groups.

“In a fair and just country, corporations are held accountable in the courts if their illegal or irresponsible behavior harms people,” said CPR Board Vice President Sidney A. Shapiro, the Fletcher Chair in Administrative Law at the Wake Forest University School of Law. “But forced arbitration is preventing millions of Americans — particularly the most marginalized — from holding companies accountable for harm and depriving them of their right to civil justice.”

The new report — [Private Courts, Biased Outcomes: The Adverse Impact of Forced Arbitration on People of Color, Women, Low-Income Americans, and Nursing Home Residents](#) — finds that:

- **Low-income people** are less likely to be able to pay required arbitration fees, absorb financial losses in a dispute resolution system that is stacked against them, or hire attorneys on a contingent fee basis.
- **Low-income workers of color** are more likely to be victims of wage theft and subjected to forced arbitration clauses.
- **Women and people of color** have fewer opportunities to obtain evidence in support of discrimination and sexual harassment claims and are more likely to be victims of implicit bias in arbitration because most arbitrators are white males.
- **Nursing home residents** are forced to file claims that relate to physical injury or death caused by substandard care, neglect, and physical and elder abuse in a system that favors those accused of the harm.

Forced arbitration clauses emerged in the early 1990s in the wake of a U.S. Supreme Court case that sidelined laws that authorized individuals to sue corporations and gave companies the power to determine how such claims are decided. The practice is now widespread, affecting nearly every American in consumer contracts and more than half of all workers — and 60 percent of those who work for large employers. And it is growing.

Private Courts, Biased Outcomes urges Congress to take action to end this practice and restore Americans’ ability to hold corporations accountable in the courts. Congress must also restore access to class action lawsuits, as well as federal judicial authority to enforce laws protecting people of color, women, and others from discrimination and other harms, the report argues.

“Forced arbitration is quickly dismantling our nation’s system of civil justice,” said M. Isabelle Chaudry, senior policy analyst at the center and an expert in workers’ and women’s rights. “This system has long been a ‘great equalizer’ in our society. If we don’t restore it, our nation’s goal of equity for all, regardless of race, gender, age, or income, will continue to slip away.”

To learn more about this report, visit <https://progressivereform.org/our-work/workers-rights/private-courts-biased-outcomes-forced-arbitration-rpt/>. To register for our February 15 webinar co-hosted with the Workers' Rights Institute at Georgetown Law, see https://us06web.zoom.us/webinar/register/WN_4kF3Ru40S5yqWSSIINSGDQ.

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