

NCLC to testify before the Chicago City Council on harms of forced arbitration by contractors in consumer and employment agreements

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Proposed Ordinance Would Ban Contractors from Using Forced Arbitration Clauses in Consumer and Employment Agreements

(BOSTON) Tomorrow, the Chicago City Council's Committee on Finance will hear testimony in support of an ordinance that would prevent companies that do business with the City from using or enforcing forced arbitration clauses in their agreements with consumers and employees. Forced arbitration requires a person to take a dispute to a private, biased arbitrator chosen by the company, rather than to exercise her constitutional right to have her complaint heard before an impartial judge and jury. National Consumer Law Center (NCLC) Contributing Author David Seligman will testify on behalf of NCLC and its low-income clients about the harms to the public from forced arbitration at the hearing.

Chicago's proposed ordinance is based on a proposal in the National Consumer Law Center's Model State Consumer and Employee Justice Enforcement Act. Arbitration clauses circumvent the courts by requiring a secretive, private hearing that cannot be scrutinized by the public, including large market participants. This prevents entities like the City of Chicago from learning whether the companies they do business with have disputes with consumers about the quality of the goods or services that Chicago is spending taxpayer money to procure.

Beyond the secrecy of arbitration, arbitration causes substantial unfairness to consumers. Most arbitration requirements prevent consumers from banding together through class or collective action procedures that many consumers rely on to assert their rights. Class actions are critical to consumer rights because, in many cases, individual damages are too small or suing individually is too intimidating or costly for a consumer to sue individually. And collective lawsuits also act as a deterrent to businesses considering predatory or illegal behavior.

A CFPB study found that individual consumers rarely seek relief through arbitration. But even when a consumer brings a claim in arbitration, she often finds the deck stacked against her. Arbitrators are often subject to "repeat player" bias in favor of the business and against the consumer—the business is the entity appearing in front of the arbitrator most frequently. Arbitrators rely on businesses' continued use of the arbitrator's services and therefore have an incentive to rule in favor of the business. Additionally, under federal law, the consumer cannot obtain relief on a court appeal from an arbitrator's decision, even when the arbitrator is clearly wrong on the facts or the law.

"Forced arbitration harms consumers and employees, but it harms cities and states too," explained Seligman. "Companies that use forced arbitration clauses can prevent consumer and employment disputes from becoming public, making it much more difficult for the government to learn if it is paying for bad goods or services or paying more than it should. Forced arbitration isn't only unfair;

it's also bad business."

The hearing comes on the heels of the Consumer Financial Protection Bureau's (CFPB) recent proposal to prevent consumer financial service providers from using arbitration agreements to prevent consumers from suing them in class actions. "The CFPB's proposed rule is an important step in the fight against forced arbitration but it does not address individual or employment issues," explained National Consumer Law Center Associate Director Lauren Saunders. "The harms of forced arbitration call for action at every branch and level of the government to restore the legal rights of consumers and employees."

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