

S.12 (Hoylman)

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<p>BILL</p> <p>S.12 (Hoylman)</p>
<p>SUBJECT</p> <p>Enacts the Empowering People in Rights Enforcement (EMPIRE) Worker Protection Act</p>
<p>DATE</p> <p>May 10, 2022</p>
<p>OPPOSE</p>

This bill has two important objectives: To turn over the responsibility of enforcing the State’s labor laws to individuals, labor unions, and other employee advocates; and prohibiting the use of arbitration agreements to resolve employment disputes. The Business Council, on behalf of its 3,200 members, opposes this bill.

It is a core function of the State to ensure its laws are equitably enforced. The Department of Labor’s role is to impartially investigate employee complaints regarding all kinds of working conditions, including issues related to wage and hour complaints. To abrogate this responsibility to private citizens and/or worker advocates will not lead to impartial application of the law, but rather a slew of claims, based in fact or not, that will do nothing but cripple the court and administrative system, enrich those who not doubt will prey on employees with promises of settlement monies, and contribute to the perceptions that New York State is hostile to business.

Further, we find it offensive that the legislature seems unwilling to provide adequate funding to the Department of Labor to allow the Department to fulfill its duties and instead looks punitive actions against employers to generate additional state revenue. If the intent is to raise revenue for the state, it should be proposed through the budget process as an additional tax on employers.

As important, the bill has the effect of circumventing arbitration agreements entered into freely between employees and employers. Arbitration is an important tool benefiting employees by providing a fair and accessible means for resolving disputes. The Federal Arbitration Act, 9 U.S.C. §2 states that a written provision in a contract providing for arbitration as a means to settle disputes “...shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” The United States Supreme Court has consistently ruled that federal and state courts must enforce the Act and “reflects an emphatic federal policy in favor of arbitral dispute resolution” *Marmet Health Care Center, Inc. v. Brown* 132 S.Ct.1201 (1202) quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213,217 (1985).

Arbitration enables employees with grievances to obtain redress for the vast majority of disputes they are likely to have – small, individualized claims for which litigation in court is impractical. It also serves the court system by providing an alternative means of resolution thus freeing up the already overburdened state court system.

Naysayers argue that arbitration clauses threaten due process because employees are deprived their day in court. In fact, the process of arbitration generally provides an employee with a forum to obtain redress for actions alleged committed by companies in a fair and expeditious manner without the burden of attempting to navigate the court system.

Many of the “advocates” arguing against the use of arbitration are actually proponents of (and beneficiaries of) class action lawsuits. It is debatable whether class actions provide employees with better outcomes. It is not uncommon for employees, as parties to a class action to see results of minimal compensation but generous fees for the attorneys that instituted the litigation. One needs to question whether employees truly benefit from class action settlements.

The American Arbitration Association (AAA) administers employee arbitrations and has implemented rules and policies tailored for the resolution of employees’ disputes, which provide basic requirements of procedural fairness and afford strong protections for employees and employers. If the goal of the legislation is to ensure fairness and accountability, it appears as though a system is already in place thus obviating the need for such legislation.

For these reasons, The Business Council opposes this bill.