S.3258 (Hoylman-Sigal)/A.856 (Dinowitz)

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BILL

S.3258 (Hoylman-Sigal)/A.856 (Dinowitz)

SUBJECT

Prohibiting certain conditions or preconditions of employment

DATE

March 19, 2024

OPPOSE

While purporting to protect worker rights by prohibiting certain preemployment 'restrictive' agreements, the bill has the effect of circumventing arbitration agreements entered into freely between employees and employers. For this reason, The Business Council, on behalf of its more than 3,500 members, opposes this bill.

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.

Advocates 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 allegedly 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.