

TESTIMONY OF MICHAEL KEBEDE, ESQ.

Ought to Pass - LD 1711

An Act to Enhance Enforcement of Employment Laws

JOINT STANDING COMMITTEE ON
LABOR AND HOUSING

May 21, 2021

Senator Hickman, Representative Sylvester, and distinguished members of the Joint Standing Committee on Labor and Housing, greetings. My name is Michael Kebede, and I am the Policy Counsel at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support LD 1711 because it would protect the rights of workers who blow the whistle on illegal acts by their employers.

Little known to employees, the use of forced arbitration in employment agreements has doubled in scope between the 1990s and today. These kinds of agreements are prevalent in women-dominated industries – 57.6 percent of female workers are subject to the practice – as well as in low-wage fields and industries dominated by women of color. One estimate found that by 2024, forced arbitration will be in place in over 80% of workplaces, covering more than 85 million workers nationwide.¹

Forced arbitration has had the effect of slamming the courthouse doors in the face of victims of workplace harassment and discrimination, and is a huge boon to employers. By sneaking forced arbitration into contracts, employers and corporations are ensuring that even if you did notice what you signed, and have the foresight to imagine what you would prefer to do if a dispute were to arise in the future, you have very little choice but to sign.

¹ See Heidi Shierholz & Celine McNicholas, *The Supreme Court is poised to make forced arbitration nearly inescapable*, Economic Policy Institute, May 7, 2018, available at <https://www.epi.org/blog/the-supreme-court-is-poised-to-make-forced-arbitration-nearly-inescapable/>.

Studies have shown that employees are less likely to pursue discrimination cases in arbitration.² This allows discrimination to run unchecked and gives corporations no incentive to prevent or address it when bad acts arise.

If enacted, this bill would ensure that bad deeds can still be brought to light and workplace injustices are addressed in court. This bill would involve the Maine Human Rights Commission, the Attorney General, and the Department of Labor in efforts by workers to enforce rights that already exist in labor law, and rights that echo the constitutional rights that we all cherish. This is entirely appropriate: these agencies have the necessary resources and institutional knowledge to ensure that workers in Maine enjoy their rights in practice, not just in theory. We urge you to vote *ought to pass*.

² See, eg., J. Ryan Lamare, David B. Lipsky, *Resolving Discrimination Complaints in Employment Arbitration: An Analysis of the Experience in the Securities Industry*, ILR Review Vol.:73, Issue 1, 158-184, available at <https://journals.sagepub.com/doi/full/10.1177/0019793917747520> (after analyzing “all of the employment arbitration awards for cases filed between 1991 and 2006 in the financial services industry to determine whether differences in the type of allegation affect award outcomes”, researchers found that “discrimination claims largely fared worse in arbitration than did other statutory or non-statutory claims but that arbitration systems are capable of meaningful self-reform”).