Editorial... Legal System Harassment

As announced on March 22nd by the Department of Justice, over $500 million of your tax dollars are going to be spent to settle the biggest sex discrimination case ever. That's right, more than half a billion taxpayer dollars to settle a lawsuit against the United States Government which could have been settled for as little as $20 million in 1984, and possibly less had it been settled in 1977 when the lawsuit against the U.S. Information Agency and Voice of America was filed.

Why has it taken so long, and cost so much? Because it took twenty three years to litigate the case, through endless layers of appeals and hearings. Had this process been subject to mandatory arbitration, it could have been resolved in a couple of years at the most. Despite this clear and convincing argument for avoiding the time and expense of litigation, Congress appears to be headed in exactly the opposite direction.

The Senate is currently holding hearings on legislation (S.121 "Civil Rights Procedures Protection Act") introduced by Senator Russell D. Feingold (D-Wis.) which would prohibit employers from requiring employees to arbitrate employment disputes, rather than litigate them. Such legislation would deal a knockout blow to a fair, speedy and inexpensive process to resolve workplace conflicts.

In contrast with arbitration, the litigation and associated negative public relations exemplified by recent high profile employment disputes involving Mitsubishi Motors, Texaco and Salomon, Smith Barney are destructive to employees, management and corporate reputations and are out of proportion to the harm done to the alleged victims (in that punitive damages are given to deter misconduct by other employers, not to compensate victims of discrimination).

Many companies have found that there is a better way to handle such complaints: a fairer, confidential process that avoids the million dollar damage lawsuit lottery and recognizes broader interests than the "take no prisoners" approach of our legal system.

Internal corporate processes, including mediation, ombudsman, fact finding, arbitration and peer review are among the alternatives: they enable companies and employees to resolve disagreements peacefully and equitably without years of public, expensive, and disruptive litigation.

Current labor and employment law discourages the adoption of such alternative procedures; the proposed legislation would be the death knell for the most common of these, mandatory arbitration. Mandatory arbitration requires employees to submit their employment claims to arbitration as a condition of employment, just as pay rates, benefits, and other work rules are conditions of employment in a particular job. The proposed legislation falsely presumes that employees are incapable of independently determining whether to accept such a requirement when evaluating an offer of employment.

Several factors militate against the assumption that courts are the best place for these disputes to be heard, including delay (many courts have crowded dockets and schedule employment cases in three to five years), expense, and a tortuous legal process with complex rules and endless discovery.

What is needed is positive legislation to establish a framework for basic fairness in workplace dispute resolution processes, which, if adopted by companies, would be deferred to by courts and agencies. Currently, deferral depends on the particular court. Companies are unwilling to offer a process that can be simply ignored by an unsuccessful complainant.

Consistent with continued economic deregulation, government downsizing, and devolution of federal authority, the workplace needs to be fashioned as a responsible community for the fair treatment of its members, rather than left as a battleground for aggrieved employees or for unwarranted intrusion by government agencies and courts. The alternative, as envisioned by the Senate, is a future of unimaginably expensive and time-consuming litigation.◆

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