

## Statement on Behalf of Yale Law School Student Groups on Law Firm Mandatory Arbitration and Confidentiality Policies

On March 24, 2018, news broke that Munger, Tolles & Olson had required its employees to agree to mandatory arbitration of their employment claims, including claims arising under Title VII of the Civil Rights Act of 1964. The leaked arbitration agreement also contained a confidentiality provision that barred signatories from disclosing information regarding “the fact and content of any arbitration proceeding (included but not limited to evidence presented, discovery taken, and documents or witness statements obtained).” In the days since, the details of similar policies at several other law firms have leaked. Although Munger Tolles and others have disavowed these policies after outcry within the profession, this practice remains widespread—according to the Economic Policy Institute (EPI), [around sixty million American workers](#) are subject to mandatory arbitration, many of whom work in unorganized private-sector workplaces. EPI [also found](#) that low-wage workers—a disproportionate number of whom are women and people of color—were the most likely to be subject to mandatory arbitration.

As organizations representing students at Yale Law School, we write in opposition to mandatory arbitration agreements. We call upon all companies that recruit law students as employees to end the practice of requiring any employee to arbitrate disputes as a condition of employment. We also urge these companies to state publicly that they will not enforce existing mandatory arbitration agreements.

Companies with mandatory and confidential arbitration agreements have prioritized their reputation over their obligation to create a safe and nondiscriminatory environment for their employees. Employees who proceed through arbitration [often face a forum](#) that is heavily tilted towards employers’ interests and that provides workers with fewer procedural protections. Moreover, the closed nature of many arbitration proceedings can make it impossible for employees throughout the economy to band together with other affected persons to hold individuals and employers accountable for illegal employment practices. As the #MeToo movement has demonstrated, silencing victims of discrimination can have grave consequences for their mental health and for the safety of other individuals. For example, Harvey Weinstein routinely pressured his victims to sign non-disclosure agreements, which enabled him to abuse other women with impunity. It is unconscionable that some employers have opted for a similar strategy in lieu of addressing hostile environments and other illegal employment practices in their workplace.

Moreover, mandatory arbitration policies imposed by employers of law students also compromise a university’s ability to fulfill its duties under antidiscrimination law. As a recipient of federal funds, Yale must provide a nondiscriminatory learning environment for all students. This mandate [requires](#) Yale to recognize that harassment has occurred, to prevent its reoccurrence, and to remedy its effects. Victims of workplace discrimination bear substantial secondary harms—sexual harassment [is linked](#) to elevated rates of depression that can interfere with victims’ performance in school and in employment. When discrimination outside of the confines of the university affects a student’s access to education, Yale [must respond](#). But when an arbitration agreement prevents students from disclosing discrimination that they have experienced, Yale is unable to provide those students with accommodations that they may need

to access their education. And in these circumstances, the university is also unable to adopt measures to protect the educational access of other students who may work for the employer in the future. As a consequence, mandatory arbitration agreements may seriously compromise the university's ability to afford a nondiscriminatory educational environment to its students and may perpetuate a cycle of discrimination.

By erecting barriers to the enforcement of substantive employment rights, mandatory arbitration agreements solidify existing hierarchies—for example, those based on race, sex, sexual orientation, gender identity, disability, and socioeconomic class. The legal profession is rife with these disparities. For example, a 2017 Law360 survey of three hundred law firms found that people of color made up only [fifteen percent of attorneys](#) and [less than nine percent](#) of equity partners at those firms. Women are also severely underrepresented. Although [over half of current law students](#) are women, only [thirty-five percent of firm attorneys](#) are women. Further, few women are included at the highest levels of firm leadership: only [twenty percent](#) of equity partners are women, a rate that has not substantially improved in decades, despite the fact that women have made up almost half of entering law school classes [since 2000](#). These disparities are particularly pronounced for women of color, [eighty-five](#) percent of whom will quit large firms within seven years of starting their practice. Mandatory arbitration—which isolates victims and can restrain enforcement of rights—will only make it more difficult to for workers and companies to address these persistent inequalities.

For these reasons, we oppose mandatory arbitration agreements. We, the undersigned student organizations, call upon all organizations that recruit law students to end the practice of requiring any employee to arbitrate employment disputes. We also urge these companies to state publicly that they will not enforce existing mandatory arbitration agreements.

We would be happy to discuss our position further with you.

Sincerely,

Asian Pacific American Law Student Association Executive Board  
Black Law Students Association  
First Generation Professionals  
Middle Eastern and North African Law Students Association  
OutLaws  
South Asian Law Students Association  
ThinkDifferent  
Title IX Working Group  
Women of Color Collective  
Yale Law Women