

# Supreme Court Deals a Blow to Workers

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The Supreme Court ruled on Monday that companies can use arbitration clauses in employment contracts to bar workers from going to court over back wages or other workplace problems. Credit Gabriella Demczuk for The New York Times

The Supreme Court has just told the nation's workers: If you're underpaid at work, or if you face discrimination on the job, you're on your own.

Federal labor law protects the right of workers to join together to improve their conditions, whether through a union or other means. But the court has now carved out a big exception to that longstanding principle. In a 5-4 decision on Monday, the court said that companies can use arbitration clauses in employment contracts to bar workers from joining forces in legal actions over problems in the workplace. In other words, workers

who are underpaid, harassed or discriminated against will have to press their cases alone in arbitration, rather than with their colleagues in a class-action case, or even with their own lawsuit.

This decision, *Epic Systems Corporation v. Lewis*, would be a blow at any moment, but it's especially harmful now. The rights of workers are under attack. Wage theft is rampant through violations of minimum-wage laws, refusal to pay overtime and forcing employees to work off the clock. Our crude national discourse encourages all types of discrimination. And we now know better than ever how pervasive sexual harassment is.

In addition, the institutions that can stand up for workers who can't stand up for themselves are falling short. The proportion of American workers in a union is at an 80-year low. State and local government agencies that enforce laws to protect workers are chronically underfunded. And the federal government is doing everything it can to lend a hand to predatory employers.

Class-action lawsuits are critical for workers to exercise their rights. The courts are supposed to be there to provide a forum for all people to demand fair enforcement of the law. But the courthouse doors are shut to those who are too scared or don't have the resources to walk through them alone.

That's why class actions, which enable people with the same or similar injuries to sue as a group, are important. Taking collective action diminishes the fear of employer retaliation and allows workers to pool resources so they can afford to bring their cases and make them more attractive for lawyers to take on.

Even an utterly routine case can cost a lot of money to litigate. Plaintiffs' lawyers we spoke with estimated that to represent just one worker who is denied minimum wage or overtime would take more than 40 hours of attorney time. In a case like that, a typical settlement for back wages for one underpaid low-wage worker might amount to \$3,000 to \$5,000, perhaps less. Few private lawyers would take that case. But if a lawyer can represent a group of workers harmed in the same way by the same employer, the economics of a case starts to make sense.

Congress has the power to open the courthouse doors again for workers. Justice Neil Gorsuch, who wrote the majority opinion, said as much in rejecting the argument that the National Labor Relations Act, which encourages collective bargaining, prevents courts from enforcing arbitration agreements.

"The policy may be debatable but the law is clear: Congress has instructed that arbitration agreements like those before us must be enforced as written," he wrote, adding that "Congress is of course always free to amend this judgment."

That's exactly what Congress should do by prohibiting employers from barring workers from joining together in lawsuits. It should amend the National Labor Relations Act and

the Federal Arbitration Act to make it clear that filing class-action lawsuits is explicitly protected under those statutes.

Until there is change on the federal level, states and localities should increase funding for their enforcement agencies so they can step in to vindicate workers' rights. But government resources alone will never be sufficient, so states should pass laws allowing whistle-blowers to bring cases on behalf of the government in workplace-related cases.

The rule of law is an essential element of our democracy. That means people need a real and enforceable right to demand that laws be fairly applied. The Supreme Court has undermined this principle by saying to the nation's workers that they get a chance at justice if only they have the means and power to pursue their cases alone. It is up to Congress to make access to justice for everyone real again by affirming the right of all workers to stand together at the courthouse door.

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