Uber Will Allow Victims Of Sexual Assault And Battery To Litigate In Court – But Only On An Individual Basis

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On Tuesday, May 15, 2018, in response to mounting public pressure, Uber announced that it is ending its policy of mandatory arbitration for individual civil claims of assault and battery. However, the policy change does not include class actions—a move that legal experts say is problematic.

The announcement follows a proposed class action filed on behalf of nine Wigdor LLP clients alleging harm from sexual assault, rape, attempted kidnapping and other gender-related violence by their Uber drivers. After Uber attempted to force the case out of federal court and into private arbitration, these nine women joined with five other Wigdor LLP clients alleging similar claims and sent an Open Letter to Uber's Board of Directors on April 26, 2018 asking to be released from the mandatory arbitration provision Uber claimed was enforceable.

That same day, Senator Richard Blumenthal (D-Ct.) wrote to Uber CEO Dara Khorowshahi, urging the company to "immediately release survivors of sexual assault from Uber's arbitration provisions so that they may exercise their fundamental rights as Americans and pursue their complaints through the court system." A CNN investigative report later revealed that at least 103 Uber drivers had been accused of kidnapping, sexual harassment, sexual assault and/or rape by their passengers.

The day before Uber's response to the complaint was due in federal court, Uber published a blog post stating that it has learned "it's important to give sexual assault and harassment survivors control of how they pursue their claims." Despite this comment, on Tuesday—the exact same day it unveiled its new arbitration policy—Uber quietly filed a motion to compel to arbitration the other causes of action in the Complaint filed by the nine Wigdor LLP clients. Uber's motion requests that the women be forced to file separate arbitration actions rather than proceed together. Uber also said it will object to the nine Wigdor LLP clients' proposal to proceed in court on a class basis in connection with their civil assault and battery claims.

Several legal and tech experts have acknowledged that Uber's updated arbitration policy appears to be a thinly-veiled attempt to repair its reputation, and that in order for meaningful change to occur, Uber should allow sexual assault victims to proceed in court as a class action:*" 'Uber's announcement appears to be a wolf in sheep's clothing,' said Seth Lesser, a partner at Klafter Olsen & Lesser LLP, a New York firm that specializes in workers' rights. 'The company is ending its long-standing policy of mandatory arbitration only for individual claims, but not for class action lawsuits, knowing full well that class actions are the only way most employees can afford to wage such a legal battle,' Lesser said. 'If Uber really wanted to protect its employees, it would do away with mandatory arbitration altogether, rather than enact what appears to be a token gesture at generating unearned goodwill.' "*

-Law360, "Uber's Move Away From Arbitration Falls Short, Attys Say", May 15, 2018 *"On its face, the*

ride-hailing giant's announcement seems uncharacteristically progressive for a company that's been riddled with allegations of ethical malfeasance. But as the tech sector digested the news, several loopholes came to light. 'This is a small step in the right direction, but an important step nonetheless,' [Susan] Fowler tweeted. 'There is still much work to do: this doesn't protect victims of other forms of discrimination, like racial and wage discrimination, and it doesn't allow victims to pursue class actions in open court.'"

-Vanity Fair, "Is Uber's Woke Makeover For Real?", May 15, 2018 *'They're giving away snow in the wintertime,' said Manhattan attorney Michael Barasch, managing partner of Barasch McGarry, who has been involved in transportation-related suits. 'If an individual wants to sue for sexual harassment or assault, they have to prove that Uber is on notice that this driver had prior complaints and they allowed the driver to continue to work. Uber knows that most people can't afford to hire attorneys and that it's much easier for an individual to go to arbitration.'"*

-Crain's New York Business, "Uber backtracks on sexual-assault policy", May 15, 2018 *"Fatima Goss Graves, president and CEO of the National Women's Law Center, […] said the changes Uber made are 'important and survivor-driven policies' but "they didn't go far enough," citing the class action waiver. 'We have a long history in this country of people binding together to change institutions and structures that aren't working for them,' she said.*

-CNN, "Uber says no to class action lawsuits in rider assault cases — but it's up to court to decide", May 16, 2018 *"But class-action suits are one of the ways real change to company safety standards happens, said Michael Rubin, a California lawyer with Altshuler Berzon, who focuses on class-action cases and isn't involved with the Uber lawsuit. That's because not only are individual claims more expensive for plaintiffs, they also run the risk of isolating victims.*

Statement from Wigdor LLP Partner Jeanne M. Christensen:

"Class actions play a critical role in cases exactly like this one where women can band together and amplify their experiences rather than be sequestered for easier character assassination by Uber's lawyers. We are not fooled by Uber's slick attempt to divert attention away from its true goal of isolating our female clients and shaming them one by one in litigation by talking about lawyers trying to make money in class actions."

NPR
"Under Pressure, Uber Drops Arbitration Requirement For Sexual Assault Victims"
May 15, 2018
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"Uber ends policy of forced arbitration for individual sexual assault claims"
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"Uber Will Let Users Take Sexual Assault Claims to Court, But Still Prohibits Collective Action"
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"Uber Ends Forced Arbitration In Individual Cases Of Sexual Assault, Harassment"
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Los Angeles Times
"Uber stops requiring sexual misconduct victims to quietly use arbitration instead of suing"
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CNET
"Uber arbitration move helps sexual assault victims, but goes only so far"
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Recode
"Uber filed a motion to compel alleges sexual assault victims to settle some claims under arbitration"

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ABC News
"Uber says nixing forced arbitration for assault, harassment victims won't apply to class-action suits"
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"Uber Agrees to Let Sexual Assault Victims Sue the Company in Court"
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Financial Times
"Uber drops policy silencing sex assault victims"
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"Uber, Lyft Vow Not To Push Arbitration For Sex Assault Claims"
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