

EY's Response to N.Y. Lawmakers' Letter About Sexual Harassment and Forced Arbitration Is As Bad As You'd Expect

 goingconcern.com/eys-response-to-n-y-lawmakers-letter-about-sexual-harassment-and-forced-arbitration-is-about-what-you-d-expect

Last week, Adrienne wrote about a letter 67 New York state legislators recently signed and sent to new EY Global Chairman and CEO Carmine Di Sibio denouncing the firm's practice of forced arbitration agreements, especially in cases of sexual harassment and discrimination.

The lawmakers wrote that EY's forced arbitration policy silences victims of harassment and sends the wrong message to employees that "their claims will not be given a fair hearing and that they will have to pay exorbitant costs to simply have their claims heard."

Such is the case of former EY partner Karen Ward, who filed a complaint against EY with the Equal Employment Opportunity Commission last September, alleging she was a victim of sexual harassment and discrimination. But as a condition of her employment, she had to sign an arbitration provision that took away her right to sue EY in court.

Now instead of having to pay a \$450 filing fee to have her case against EY heard by a judge or jury in the Southern District of New York and possibly win a substantial amount of money in court, Ward has had to pay nearly \$200,000 in costs so far during the arbitration process. That's because EY refused to pay all the arbitration costs, according to a declaratory judgment complaint filed by Ward's attorneys. In March, a tribunal of three arbitrators ruled that Ward and EY would have to split the costs.

It seems that EY is sticking to its guns on forced arbitration, if you can read between all the accounting firm PR speak in its response to the lawmakers' letter. EY's response, which was emailed to Going Concern yesterday, makes no mention of the firm reconsidering or ending its practice of forced arbitration.

The response was written by Tammy Velasquez, director of state legislative and regulatory affairs at EY, and addressed to state Sen. Liz Krueger, one of the signees of the letter:

Dear Senator Krueger:

On behalf of EY, I am writing to acknowledge the letter from you and your legislative colleagues to our Global CEO Carmine Di Sibio, and your continuing advocacy of the protection and advancement of women in the workplace. As one of the largest employers in the State of New York, EY fully shares your commitment to these important goals: a diverse, inclusive and safe workplace, free of harassment or of any kind, and full compliance with all applicable laws and regulations.

We value your input and appreciate the perspectives you and your legislative colleagues bring to the important policy questions around the fairness of the arbitration process and specifically the allocation of the costs of arbitrations.

Very truly yours,

Tammy Velasquez

But Ward's claim of sexual harassment and discrimination isn't just some one-off occurrence—although one instance of sexual harassment is one too many in the workplace. Allegations of sexual harassment, discrimination, bullying, and retribution by former female EY employees against men in powerful positions—not just in the U.S. but globally—has become a really big problem at the firm. Let's not forget the Jessica Casucci case in the U.S., which was settled out of court in May 2018, or the allegations of harassment at EY Switzerland and EY India.

If EY is really committed to "a diverse, inclusive and safe workplace, free of harassment or of any kind," then why have so many alleged sexual harassment and discrimination incidents come to light in the past year or two?

Meanwhile, Ward sent an open letter to Di Sibio on Aug. 5, just like she did to former EY Global Chairman and CEO Mark Weinberger last September, requesting that EY voluntarily release her from the arbitration provision contained in her partnership agreement so she can pursue her claims in court, rather than in forced arbitration.

You can read Ward's entire letter here. But the following are a couple of excerpts from it.

On Velasquez's response to the lawmakers' letter to EY:

Mr. Di Sibio, this response is completely inadequate and is an insult not only to me, but to all women at EY and beyond. It is well known in the #MeToo era that forced arbitration perpetuates sexual harassment and discrimination in the workplace by eliminating a woman's fundamental right to seek justice in court when her employer engages in unlawful behavior. If EY is truly committed to a workplace that is "free of harassment or of any kind," it would not require *any* woman to sign away her right to pursue any claims she might have against EY in open court before a jury of her peers — let alone force her to pay hundreds of thousands of dollars just to have her claims heard in secret arbitration.

Notably, EY's response fails to elaborate as to what specific actions EY will take to address "the fairness of the arbitration process" and the "allocation of the costs of arbitrations." Clearly, EY has not given any meaningful thought to this outrageous injustice. That said, I am hopeful that you, Mr. Di Sibio, can lead the conversation to a more ethical path.

More on EY's forced arbitration policy:

EY's tagline is "building a better working world." Forcing women, as a condition of employment, to pursue claims of gender discrimination and harassment only in secret arbitration proceedings does not help to "build a better working world." In fact, it does the opposite. Taking away a woman's right to a trial by a jury of her peers and providing sexual harassers with the relief and comfort of this private forum only serves to facilitate workplace harassment and hostility towards women.

Finally, as I understand it you are a father to at least two daughters. I truly hope that they never experience anything similar to what I have. But, if they ever did would you not want them to have every opportunity to obtain justice? Would you want your children to have to pay hundreds of thousands of dollars to have their claims heard in a secret and biased arbitration process? I do not believe that any parent would want that for his or her child.

EY has maintained that Ward's sexual harassment and discrimination claims are "unfounded and baseless," and said in a statement that "the arbitrators, not EY, determined by their ruling several months ago that the cost of the arbitration would be shared by the parties, subject to final resolution of the proceedings."