**SB1049/HB1625 - An Act Relative to the Defense Against Abusive Waivers**

***Lead Sponsors: Senator Harriette Chandler and Rep. Ken Gordon***

**The Defense Against Abusive Waivers Act (DAAWA)will prevent employers from requiring that an employee sign a pre-dispute waiver of civil rights and remedies relating to discrimination, nonpayment, retaliation, and sexual harassment.**

**Abusive Waivers Enable Workplace Sexual Harassment in MA to Continue:**

* According to a WBUR poll, ***more than 20% of Massachusetts voters*** say that they have experienced workplace sexual harassment. That number rises to ***1 in 3 among women***.
* The Boston Globe reveals that ***9 out of 10 Boston women*** say that workplace sexual harassment is currently a problem. Surveys find that the vast majority of workers that experience sexual harassment ***never report it***.
* Under current Massachusetts law, ***an employer is liable*** for instances of sexual harassment committed by supervisory employees, and is often liable for harassment among co-equals. It is illegal to retaliate for filing a sexual harassment claim.
* **Pre-dispute waivers, however, encourage silence in the face of workplace sexual harassment by stripping an employee of their civil rights**:
  + Employees often fear losing their job if they file a claim within the company
  + Employers have no incentive to abide by the law or investigate a complaint because ***the employee signed away their means of redress.***
* In one case, an employer successfully required that a sexual harassment victim be forced to arbitrate in the same office in which she was harassed

**The Proposed Solution:**

* DAAWA renders provisions in any employment contract that waive rights or remedies related to claims of discrimination, retaliation, nonpayment, or sexual harassment ***null and void.***
* DAAWAalso ***prohibits*** an employer from taking retaliatory action or refusing to hire an individual that refuses to enter a contract that waives these rights.
* DAAWAwill protect employees by: Safeguarding and maintaining their rights to seek redress in court under Massachusetts law in cases of discrimination, nonpayment, retaliation and sexual harassment. Preventing retaliation against individuals who reject improper agreements. Providing remedies when an employer attempts to enforce an abusive agreement
* This act still allows for an employee to agree to arbitration or other amicable resolutions ***after*** a dispute arises. It will ***not*** affect the relationship between unions and employers.

**The Current Rights Lost in Court:**

* Right to Be a Party in MCAD Action
* Right to Jury in Judicial Forum
* Right to Pursue Claims in Judicial Forum
* Choice of Law
* Opting Out of Wage and Anti-Discrimination Laws
* Damages
* Class Actions
* Statutes of Limitations
* Forum Selection to Distant States
* Abusive Forum Requirements
* Discovery Rights
* Additional Costs

**The Current Problem:**

* Massachusetts has strong laws that prohibit discrimination, retaliation, and sexual harassment in the workplace and has enacted powerful remedies and procedures as a bulwark against these abusive practices.
* Currently, employers can undermine these protections and violate the civil rights of employees by ***requiring*** them to sign a pre-dispute waiver of their rights in their employee contract or as a pre-condition of employment.
* Under these abusive waivers, claims are often handled by mandatory arbitration, which affords employers one-sided protections such as selecting the arbitrator and holding arbitration at the employment site.
* Contracts with pre-dispute waivers may also stipulate that claims will be governed under the law of another state, ***a state without the protections*** that the Massachusetts legislature has fought hard to establish.
* Employees, ***often unknowingly****,* sign away their right to file a court claim against their employer should an issue ever arise.
* Abusive pre-dispute waivers are unjust and exploitative of employees. They are undermining the discrimination laws of the Commonwealth.