



March 12, 2019

The Honorable Jeff Barker  
Chair, House Committee on Business and Labor  
Oregon House of Representatives  
900 Court Street, NE  
Salem, OR 97301

VIA Email

Re: AICPA comments on House Bill 2489

Dear Chair Barker:

The American Institute of Certified Public Accountants (AICPA) appreciates the opportunity to comment on House Bill 2489. We are concerned that Section 1 (e) is too vague and may be interpreted as eliminating arbitration clauses in employment contracts because of a misconception that employees' rights are not being protected. The misperception is not only wrong but attempting to eliminate arbitration clauses in this manner conflicts with the Federal Arbitration Act (FAA).

The AICPA is the world's largest member association representing the accounting profession, with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. AICPA members represent many areas of practice, including business and industry, public practice, government, education, and consulting. The AICPA sets ethical standards for the profession and U.S. auditing standards for private companies, nonprofit organizations, federal, state and local governments within the United States. It develops and grades the Uniform CPA Examination, and monitors and enforces compliance with the profession's technical and ethical standards.

Section 1(e) states that an employment contract is enforceable only if its terms "do not diminish any rights, privileges or remedies available to an employee under federal or state law." While not expressly eliminating arbitration clauses, we are concerned that plaintiffs may use the vagueness of this language to attack arbitration clauses which would be improper. Arbitration clauses are legally valid under the FAA and can only be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability. Therefore, we ask that a critical lens on this section be administered as the bill moves through the committee process to prevent the erosion of legal and cost-effective mechanism to resolve disputes.

Our decision to comment on House Bill 2489 is tied to our belief that arbitration clauses are too often mischaracterized as anti-employee. To the contrary, arbitration clauses are widely seen as a cost-effective alternative to resolve employment issues for the mutual benefit of management and labor. We would encourage policymakers to consider some facts we list below before disallowing such a useful tool:

1. Arbitration contracts are used widely across business, large and small. Arbitration is a longstanding preference at the state and federal level for resolving employment issues. These employment agreements cover 56 percent of all employees in the United States.
2. Reputable employers with arbitration agreements have the arbitration process administered by outside parties, such as the American Arbitration Association, or similar organizations. This allows all parties to have a clear set of rules, which are applied equally, and do not favor an employer over an employee.
3. Arbitrators are neutral. Often, those who serve as arbitrators are retired judges, attorneys or are professional neutrals. Arbitrators are unbiased and do not have a financial stake in the outcome of the arbitration and must follow rules and processes.
4. Mandatory arbitration does not discourage individuals to pursue justice and does not encourage bad actors to cover up wrongdoing. Further, arbitration protects the privacy of all parties involved and encourages individuals to bring sensitive claims forward, that they wouldn't necessarily do otherwise.

We appreciate the opportunity to share our concerns on the legislation's impact on CPAs and CPA firms specifically, and Oregon employers more broadly. We strongly encourage lawmakers to re-draft House Bill 2489 to seek a better balance between transparency and permitting a constitutionally protected alternative to costly litigation. If there are any questions or concerns, please contact me at [Skip.Braziel@aicpa-cima.com](mailto:Skip.Braziel@aicpa-cima.com) or 202.434.9273.

Sincerely,



M.L. (Skip) Braziel, Jr.  
Vice President, State Regulatory and Legislative Affairs  
American Institute of CPAs

CC: Sherri L.D. McPherson, CAE  
President/CEO  
Oregon Society of CPAs  
10206 SW Laurel Street  
Beaverton, OR 97005