Open Letter to the Berkeley Law Administration on Employer Mandatory Arbitration and Non-Disclosure Agreements
March 28, 2018

Dear Dean Chemerinsky, Dean Galligan, and members of the Career Development Office,

On March 24, 2018, news broke that a prominent law firm was forcing its incoming summer associates to sign a mandatory arbitration agreement with a non-disclosure provision as a condition of employment. This firm's mandatory arbitration agreement and non-disclosure provision covered all employment-related claims between the employee and the firm, including discrimination and harassment claims. Mandatory arbitration agreements and overbroad non-disclosure agreements (NDAs) are harmful in the employment context because they silence victims, conceal wrongdoing, and push discrimination and harassment claims into secretive proceedings that favor employers over employees. Fortunately, after a group of law professors focused attention and public pressure on this particular law firm's policy, on March 25, 2018, the firm decided to drop the NDA and mandatory arbitration requirement not only for summer associates, but also for all associates and staff.[1] Since then, at least one other prominent law firm has publicly announced that it too "will no longer require any employees, including associates, to sign any arbitration agreements."[2]

Berkeley Law's Career Development Office already prohibits employers from using its "services, interviewing facilities, or jobs posting database" if they "discriminate on the basis of national origin, race, religion, sex, sexual orientation, gender (including identity and expression), disability, age, or any other basis prohibited by applicable law."[3] However, Berkeley Law does not yet extend this prohibition to employers who prevent employees from either enforcing harassment or discrimination claims in court or discussing these claims in some other public manner.

As Berkeley Law students and alumni, we respectfully request that the Career Development Office extend this prohibition to any employer that requires any employee, including associates, staff, or summer associates, to agree to as a general condition of employment: (1) a mandatory arbitration agreement, or (2) a non-disclosure agreement that covers discrimination, harassment, or other workplace misconduct. By enforcing this measure,

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[1] For more information and context, see this blog post from University of California at Irvine School of Law Professor Leah Litman:
https://takecareblog.com/blog/munger-tolles-proves-why-we-still-need-metoo.
[2] https://twitter.com/Orrick/status/978344236725735425.
[3] https://www.law.berkeley.edu/careers/for-employers/non-discrimination-policy/.

we hope that Berkeley Law can enact concrete change in the way law firms treat their employees, making our own positive contribution to the #MeToo movement.

Furthermore, we encourage you to reach out to other law schools to ask them to enforce the same policy. We believe that Berkeley Law's position in the legal job market allows our school to make this demand of law firms that recruit on campus without compromising students' employment opportunities. However, we know that this policy will be most effective and most beneficial to our students if other top law schools join Berkeley Law in enacting this prohibition.

We would be happy to discuss this proposal further with you. Please keep us updated on your decisions regarding this issue.

Sincerely,

Current Students
Nate Brown, '18 ([*nhbrown@berkeley.edu*](mailto:nhbrown@berkeley.edu) *— to anyone outside the Berkeley Law community, please only contact Nate if you have questions or comments about the letter*)
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Aseem Mulji, '19
David Gomez, '18
Daniel Yablon, '19
Dustin Vandenberg, '18
Robin Wetherill, '18
Hamza Jaka, '18
Rachel Dallal, '19
Rob Mohen, '18
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Amanda Cavazos, '19
Brady Williams, '19
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Mastoureh Jafarzadeh Sarhangabadi, '20
Michelle Sosa-Acosta, '19
Samantha Lachman, '19
Paula Salazar, '19
Roger Huddle, '20
Sophia TonNu, '19
Joe Craig, '18

Andrew Schmidt, '19
Jane Kim, '19
Diana Liu, '19
Brian Lewinstein, '20
Craig Spencer, '19
Renata Barreto-Montenegro '21 (JD/PhD)
Sarah Suwanda, '18
Sarah Mullins, '18
Cindy Pan, '19
Amin Ebrahimi Afrouzi
Anika Holland, '20
Sarah Almond Pike, '20
Natalia Ramirez Lee, '18
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Rajan Patel, '19
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Madeline Wiseman, '18
Jessica Hollis, '18
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Stella Chang, '20
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Aracely Abarca, '18
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