

RESOLVED:

Shareholders of Tesla, Inc. (“Tesla”) ask the Board of Directors to oversee the preparation of a public report on the impact of the use of mandatory arbitration on Tesla’s employees and workplace culture. The report should evaluate the impact of Tesla’s current use of arbitration on the prevalence of harassment and discrimination in its workplace and on employees’ ability to seek redress. The report should be prepared at reasonable cost and omit proprietary and personal information.

WHEREAS:

A workplace that tolerates harassment and discrimination invites legal, brand, financial, and human capital risk. Companies may experience reduced morale, lost productivity, absenteeism, and challenges in attracting and retaining talent. A number of studies have found significant share value benefits associated with diverse, equitable and inclusive workplaces.

Tesla requires employees to agree to arbitrate employment-related claims. In its 2020 proxy statement, Tesla stated that its arbitration proceedings are private if a “court rules that the underlying claims are subject to arbitration.” Tesla also stated that employees are allowed “remedies available in a court of law.”¹ However, arbitrated employees may not access the courts directly, waive rights to all forms of judicial relief and may not bring class-action lawsuits.²

Mandatory arbitration limits employees’ remedies for wrongdoing, reduces employee willingness to report discrimination³, and prevents their learning about shared concerns.⁴ It may enable further discrimination, reduce workforce effectiveness, and create brand, legal and human capital risks. It masks from investors true workplace conditions.

These concerns are particularly relevant to Tesla. Employees who sought court trials but whose cases were held in arbitration have alleged experiencing sexual harassment, discrimination, racism and violent threats. In California, over 140 discrimination complaints have been filed with the Department of Fair Employment and Housing.⁵ In New York, at least 12 employees anonymously brought concerns to a Buffalo news station.

Ongoing use of employee arbitration creates a long-tail risk for Tesla, particularly as arbitration clauses face a changing regulatory landscape. The Biden Administration stated within its campaign platform its intention to reduce arbitration’s use and some states, such as New York, have sought to retroactively release employees from arbitration agreements when discrimination concerns exist.

¹ https://www.sec.gov/Archives/edgar/data/1318605/000156459020027321/tsla-def14a_20200707.htm

² <https://casetext.com/case/balan-v-tesla-motors-inc-1>

³ <https://www.hnlr.org/2020/08/forced-into-employment-arbitration-sexual-harassment-victims-are-saying-metoo-and-beginning-to-fight-back-but-they-need-congressional-help/>

⁴ <https://www.eeoc.gov/eeoc/systemic/review/>

⁵ <https://www.bloomberquint.com/business/tesla-s-report-shows-minorities-make-up-60-of-u-s-workforce>

A number of companies have ceased to require employees to arbitrate discrimination claims. This includes Google, whose use of arbitration was identified as a key aspect of a “culture of concealment” in its \$310 million misconduct settlement.⁶

Companies with effective human capital management programs, as Tesla claims to have, should not need arbitration as a protection against lawsuits. Tesla has said “We do the work required to ensure that our culture is as diverse and inclusive as it is collaborative and driven.”⁷

After the Board of a company with 74,000 employees conducted the study requested by this proposal it changed its use of arbitration in cases alleging discrimination and altered the charter of its compensation committee to include workplace culture.

⁶ <https://www.law.com/therecorder/2020/09/25/google-ends-mandatory-arbitration-in-310m-sexual-harassment-settlement/>

⁷ <https://www.tesla.com/sites/default/files/downloads/2020-DEI-impact-report.pdf>