

LEGALLY CONSTRAINED

Start-ups turn to arbitration in workplace

Tara Zoumer thought she had found her dream job when she was hired at WeWork, a \$16 billion start-up that rents office space to young entrepreneurs. The walls were adorned with Pop Art. Neon light fixtures encouraged employees to “Hustle harder,” and there was beer on tap. “It was like walking onto a set of a movie,” Zoumer said.

But shortly after she became an associate community manager in WeWork’s office in Berkeley, California, reality set in. Zoumer said she was feeling pinched because her annual salary was only \$42,000, a sum that, on some weeks, left her without money to ride the subway.

She said she thought many of her duties — leading tours for prospective tenants, tidying up, answering phones and changing the kegs — were more suited to an hourly wage with a possibility for overtime.

Enlist colleagues

Zoumer tried to enlist colleagues to file what she hoped would be a class-action lawsuit to fight for overtime pay. But the company had instituted a policy that could force employees to ultimately resolve disputes through arbitration instead of the courts, which essentially shut down Zoumer’s lawsuit, since arbitration bars individuals from joining in a class action.

When Zoumer refused to sign the new policy, she was fired.

As once-plucky start-ups like WeWork grow — the company’s workforce has swelled to 1,500 from 300 a year ago — they are taking a page from the playbook of big corporations, which are increasingly using arbitration to thwart employees from bringing any meaningful legal challenge in court, an investigation by The New York Times found last fall.

Uber and Lyft, the ride-hailing services, make their drivers sign an arbitration clause. Square, the mobile payment processor, also requires that employees agree to bring disputes to



JOB CRISIS: Tara Zoumer, who was fired from the start-up WeWork after refusing to sign an arbitration clause, at her home in Oakland, California.

arbitration. In advice to start-ups, Brotman Law, a tax firm in San Diego, promotes the benefits of arbitration for “companies doing business over the Internet,” emphasizing that it “can save significant costs.”

Amazon and Google also use arbitration to resolve disputes with customers.

Far from burying its arbitration clause in its employment contracts, WeWork is proud of its policy. The company’s top executives said they thought that by adopting an arbitration clause as part of a broader dispute resolution program, they were staying true to their principles, which prize all levels of employees as members of a single community. WeWork says its employees are eligible for bonuses and equity in the company in addition to their salaries.

“We want to show the world that this works,” Jennifer Berrent, WeWork’s general counsel and chief culture officer, a recently created posi-

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tion, said of the dispute resolution program.

Against openness

For start-ups — many of which began in Silicon Valley — the clauses can seem to conflict with professed goals of upending business as usual and being open with employees. Arbitration, by its very nature, is a secretive process that is often lopsided in favour of the employer. That secrecy, federal labour officials said, can allow widespread problems to persist because the process bars employees from sharing their experiences with others who might be in similar positions. “They give their young work-

ers Ping-Pong tables and take away their constitutional rights,” said Cliff Palefsky, an employment and civil rights lawyer in San Francisco.

This month, the Consumer Financial Protection Bureau proposed a rule that would limit financial companies from using arbitration to prevent their customers from filing class-action lawsuits. But the rule does not apply to arbitration used in employment disputes.

As Silicon Valley companies grow from small start-ups into major employers, their labour practices are coming into focus. Despite the popular image that the industry is predominantly made up of nerdy millionaires, many of these growing companies depend increasingly on lower-paid employees.

And with some technology companies now working harder to raise money, there are growing pressures on these companies from investors to cut costs — pressures that can fall disproportionately on the workers at the lower rungs.

At WeWork, Berrent said, arbitration is part of a multistep process to resolve disputes. The company adopted the policy after months of discussion about how to deal most fairly with complaints.

At the outset of the process, WeWork requires employees to raise any complaints with their managers. If that does not work, the employee and WeWork must try mediation. Only if that fails does the issue go before an arbitrator, whose decision is binding.

Berrent said this process was in keeping with the company’s values, settling problems “through open collaboration” rather than the courts. She confirmed that Zoumer was fired for not signing the arbitration clause.

When Kevin Ziober, a Navy reservist in Costa Mesa, California, first joined BLB Resources, which manages foreclosed properties, the company was just beginning; Ziober was the 18th person hired. — New York Times News Service