

New Law Ends Forced Arbitration of Sexual Assault and Sexual Harassment Disputes

President Biden signed [H.R. 4445](#), the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (the Act), into law on March 3, 2022. Effective immediately, the Act amends the Federal Arbitration Act (FAA) to prohibit the enforcement of any predispute arbitration agreement or joint-action waiver relating to sexual assault or sexual harassment disputes brought under federal, tribal, or state law if the alleged victim (or representative of a class/collective action) chooses to file their claim in court. The amendment gives alleged victims the choice to pursue these disputes in court regardless of whether they signed an arbitration agreement.

What Is the Effect of the Amendment?

The language of the amendment provides in part:

[A]t the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, or the named representative of a class or in a collective action alleging such conduct, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute.

The law prohibits defendant employers from compelling or requiring arbitration of sexual harassment and sexual assault disputes based on predispute arbitration agreements and waivers. The amendment applies to all past and future agreements, including those that were signed before the law was enacted. However, the amendment only applies to claims or disputes that arise or accrue on or after March 3, 2022. The amendment does not affect arbitration agreements to the extent an individual is not raising sexual assault or sexual harassment claims.

Arbitration of Sexual Assault and Sexual Harassment Claims Is Not Prohibited

Importantly, the amendment does not prohibit arbitration of sexual assault or sexual harassment disputes; it prohibits an employer from compelling or requiring arbitration if the basis for doing so is in a predispute agreement or waiver. An employee can still elect to arbitrate such disputes, or the parties can mutually agree to arbitrate the disputes after the events giving rise to the claims occurred.

Takeaways for Employers

This amendment will affect the litigation of cases involving sexual assault or sexual harassment claims for employers utilizing arbitration agreements. In light of the amendment, employers should review the language of any current arbitration agreements. The determination of how to respond to the amendment may depend on multiple factors, and employers should work with experienced legal counsel to determine the appropriate approach.

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