

House Passes Bill Barring “Mandatory Arbitration” in Sexual Assault and Harassment Cases

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On February 7, 2022, in a 335-97 vote, the U.S. House of Representatives passed a bipartisan [bill](#) (“Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021”), which would prohibit “mandatory arbitration” in sexual assault and harassment cases arising or accruing on or after the date of enactment. This bill also invalidates joint, class, or collective action waivers pertaining to sexual assault and harassment claims. If signed into law, employers will have to remove these clauses from their arbitration and/or employment agreements and, if a claim arises, litigate these types of cases before a jury in state or federal court.

The bill was first introduced in light of the #MeToo movement. Many Republican lawmakers initially opposed the bill as it also included discrimination cases. The bill’s language has since been changed to focus exclusively on cases involving sexual assault and harassment.

Supporters of the bill believe that, if enacted, it will allow victim of harassment or assault to speak publicly (as opposed to litigating their case in a confidential and purportedly biased arbitration) while its opponents believe the bill to be overly broad and improper federal interference into the workplace.

Many large companies, such as [Wells Fargo](#), have already removed binding arbitration clauses pertaining to sexual assault and harassment claims.

Apparently absent from the bill is any attempt to address the issue of “runaway” juries that have recently awarded individual plaintiffs \$137 million (against [Tesla](#)) and \$155 million (against [Farmers Insurance](#)) in employment harassment and discrimination cases in California, for example. Some of the supporters of this bill might consider offering an amendment to address that issue as they debate this bill.

The bill is expected to go to the Senate shortly, and Senate Majority Leader Chuck Schumer (D., N.Y.) anticipates there to be strong bipartisan support of the bill, which is also apparently backed by President Biden.

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