

Congress Passes Bipartisan Bill to End Mandatory Arbitration of Sexual Harassment and Assault Claims in the Workplace

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In a rare display of bipartisanship, Congress recently passed a new law that is poised to eliminate pre-dispute mandatory arbitration of sexual harassment and sexual assault disputes.

On February 7, 2022, the House of Representatives overwhelmingly approved the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 ([H.R. 4445](#)) by a vote of 335 to 97. A few days later, on February 10, 2022, the Senate passed H.R. 4445, without amendment, by voice vote. President Biden issued a [Statement of Administration Policy](#) earlier this month in which he supported the bill and urged its passage, so, it is anticipated that President Biden will sign the bill into law.

Substance of the New Law

The new law adds a new Chapter 4 to the Federal Arbitration Act. The law allows a person alleging conduct constituting a sexual harassment or assault dispute under state or federal law, or the named representative in a class or collective action alleging such conduct, to elect to invalidate a pre-dispute arbitration agreement or joint-action waiver with respect to a case that relates to the sexual harassment or assault dispute.

Importantly, the new law only applies to pre-dispute arbitration agreements and joint-action waivers. It does not impact agreements to arbitrate sexual harassment or assault disputes that parties enter into after a dispute arises. And the law does not make void any arbitration provision that covers sexual harassment and/or assault claims.

The new law will also only apply to disputes that arise or accrue after the bill is enacted into law. In other words, the new law only reaches conduct constituting sexual harassment or assault that occurs after the passage of the law.

Any issue as to whether the new Chapter 4 applies with respect to a dispute shall be determined under federal law. And, a court, not an arbitrator, shall determine whether the new law applies to a dispute and the validity and enforceability of an agreement to arbitrate that falls within the scope of

the new law.

What Should Employers Do?

It is currently unclear how H.R. 4445 will be construed by the courts. Employers must be aware of this new law and understand the impact it could have on existing arbitration agreements or policies. To do so, employers should consult with experienced labor and employment counsel to explore potential changes to their existing arbitration agreements or policies to take into account H.R. 445.

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