

# New Law Prohibits Pre-Dispute Agreements to Arbitrate Claims or Waive Joint Actions of Sexual Assault or Sexual Harassment

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## KEY TAKEAWAYS

- H.R. 4445 prohibits pre-dispute arbitration clauses and waivers of right to bring joint actions in cases of sexual assault or sexual harassment.
- Courts, not arbitrators, determine the applicability of H.R. 4445.
- Questions remain as to how H.R. 4445 applies in a case involving other non-covered claims in addition to sexual assault or harassment claims.

On March 3, 2022, President Biden signed into law H.R. 4445, entitled the "[Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021](#)." This legislation aims to guarantee the right of individuals asserting claims of sexual harassment and sexual assault to be heard in court, rather than being subject to mandatory arbitration.

H.R. 4445 amends the Federal Arbitration Act and invalidates pre-dispute agreements requiring arbitration of sexual assault or sexual harassment claims, or barring class actions alleging such claims. H.R. 4445 specifies that courts, not arbitrators, decide its applicability, even if the parties agree otherwise. H.R. 4445 would apply prospectively to any claims or disputes arising or accruing after the date of enactment.

## What does this mean for employers?

An employer cannot rely on a pre-dispute agreement to require employees to arbitrate claims or preclude them from bringing a class action alleging sexual assault or harassment arising or accruing after H.R. 4445 is enacted. However, pre-H.R. 4445 sexual assault or sexual harassment claims can still be arbitrable, and waivers of class actions for such claims can still be enforceable. H.R. 4445 does not invalidate agreements to arbitrate claims or waive joint actions of sexual assault or sexual

harassment entered after the dispute arises.

While H.R. 4445 is clear as to its effects on actions involving only sexual harassment and/or sexual assault claims, questions remain as to how this new law will affect cases alleging other arbitrable claims in addition to claims of sexual assault or harassment.

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