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New Federal Law Limits Mandatory Arbitration of Sexual Harassment or Assault Claims

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We have [previously written](#) on various states' efforts to limit mandatory arbitration agreements in the employment context. Now, employers in all 50 states need to be careful when requiring mandatory arbitration of employment claims.

On March 3, President Biden signed into law the [Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act](#) (the Act). The Act potentially invalidates pre-dispute arbitration agreements and class waivers regarding sexual assault or sexual harassment claims that arise after March 3, 2022. The Act also states that the determination as to whether the law applies must be made by a court rather than an arbitrator.

Notably, the Act does not *per se* invalidate arbitration agreements of such claims but rather gives the claimant the option of pursuing claims of sexual harassment or sexual assault in court, as opposed to in arbitration, if they so choose.

It remains to be seen whether this law will be interpreted broadly as potentially barring arbitration of cases that involve claims of sexual harassment or assault that are brought along with other claims.

We recommend the companies currently using arbitration agreements consult with counsel to review those agreements and ensure they do not run afoul of the Act.

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