

Legal Update

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Congress Bans Forced Arbitration and Waivers of Sexual Harassment and Assault Claims

On Feb. 10, 2022, the U.S. Senate passed the [Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act](#) (the Act). The U.S. House of Representatives had previously passed the Act, which is now expected to be signed by President Biden. Once signed, the Act will go into effect immediately.

Ending Forced Arbitration Act

The Act would essentially prohibit employers from requiring employees to resolve claims of workplace sexual harassment or assault through arbitration or other alternatives to court litigation, or waive them in advance.

Specifically, under the new law, an employer may not enforce a pre-dispute arbitration agreement or pre-dispute joint-action waiver against a person who files a case alleging sexual harassment or sexual assault in a federal, state or tribal court. An individual making a claim of sexual harassment or assault may choose to participate in arbitration or other litigation alternatives, but may not be required to do so.

Covered Disputes

Whether the new law applies to a particular dispute will be determined under federal law and that determination will be made by a court, not an arbitrator. The Act will apply to any dispute or claim arising after the date the law is enacted.

The law applies specifically to cases involving sexual harassment and assault. It does not apply to sex discrimination or other types of harassment or assault. Therefore, it does not prohibit employers from using mandatory arbitration agreements or waivers in other employment-related claims or lawsuits.



Highlights

Ending Force Arbitration Act

The U.S. Congress approved a bill that would require most workplace sexual harassment and assault claims to be resolved by courts rather than through arbitration.

Similar State Laws

Some states already have laws that prohibit arbitration agreements for sexual harassment and assault claims.

The new law would make all pre-dispute arbitration and waiver agreements for workplace sexual harassment and sexual assault claims unenforceable.