

LEGAL UPDATES

PUBLISHED: MARCH 4, 2022

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Bipartisan Bill Ends Mandatory Arbitration of Workplace Sexual Harassment and Assault Claims

On February 10, 2022, the U.S. Senate passed by voice vote H.R. 4445, entitled Ending Forced Arbitration of Sexual Assault (HR 4445), a bipartisan bill that invalidates pre-dispute arbitration agreements and pre-dispute joint-action waivers with respect to claims of sexual assault and sexual harassment in the workplace. The U.S. House previously passed the bill by a vote of 355-97 on February 7, 2022, and President Biden signed the bill into law on March 3, 2022.

HR 4445 amends the Federal Arbitration Act by rendering unenforceable: 1) mandatory arbitration agreements and stand-alone waivers or agreements that restrict an individual's right to participate in a joint, class or collective action in any forum regarding claims or disputes; 2) that relate to claims of sexual assault or sexual harassment; and 3) that had not arisen at the time of making the agreement.

The bill does not automatically nullify all applicable pre-dispute arbitration and pre-dispute joint-action waivers. Instead, it provides individuals raising claims of sexual assault or sexual harassment with the choice of whether to pursue their claim in court or in arbitration. While some claimants may choose to pursue their claims and enforce their rights in a court of law, others may prefer the confidential and typically more efficient arbitration process. In the event of a dispute as to whether the HR 4445 applies to an agreement to arbitrate, the bill requires a court of law rather than an arbitrator to make the determination.

The scope of the law is limited to claims of sexual harassment and sexual assault. It does not impact mandatory arbitration clauses regarding other types of civil rights' claims such as race, age and disability claims. Further, the

bill's provisions apply with respect to a "dispute or claim that arises or accrues on or after the date of enactment of the Act." As a result, the new law will apply retroactively to agreements entered into prior to the bill's enactment so long as the agreement was executed prior to the time the dispute or claim arose or accrued.

What this means to you

For future agreements, employers should consider that mandatory arbitration clauses with respect to claims of sexual harassment or sexual assault contained in documents executed by workers as a condition of employment or during employment will only be enforceable if employees choose arbitration. For existing employment agreements, mandatory arbitration clauses with respect to claims of sexual harassment and sexual assault will not be enforceable. Employers may want to clarify that employees have the option of pursuing such claims in court or in arbitration.

Contact us

If you have questions about HR 4445, employment discrimination compliance obligations, or require EEO training for your workforce, contact Julianne Story, Jenna Brofsky, Tracey O'Brien or your Husch Blackwell attorney.