

President Biden Signs Bill Easing Restrictions on Workplace Sexual Harassment and Assault Lawsuits

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Key Takeaways:

- President Biden signed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act into law on March 3, 2022
- The Act prevents employers from mandating arbitration of workplace sexual harassment and sexual assault claims
- The Act allows employers and employees to agree to arbitrate covered claims after they arise, giving the employee the choice to bring their claim to arbitration or pursue the claim in court

On March 3, 2022, President Biden signed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (the “Act”) into law. The Act amends the Federal Arbitration Act to prohibit employers from mandating third-party arbitration of workplace sexual harassment or assault claims. Further, it prevents employers from requiring that employees waive their rights to pursue workplace sexual assault and harassment claims as class actions. Accordingly, the Act removes significant barriers that employees may face to pursuing claims of workplace sexual harassment or assault in court.

The Act applies to any new claims involving sexual assault and sexual harassment disputes. It does not apply to claims that arose prior to March 3, 2022. The Act defines “sexual assault dispute” to mean any dispute involving a nonconsensual sexual act or sexual contact, as such terms are defined under a specified federal criminal statute or similar applicable tribal or state law, including when the victim lacks capacity to consent. The Act defines “sexual harassment dispute” to mean a dispute relating to conduct that is alleged to constitute sexual harassment under applicable federal, tribal, or state law.

The law makes unenforceable “predispute arbitration agreements” and any “joint-action waiver” entered into *before* the dispute arose. Therefore, any arbitration agreement between the employee and employer entered into at the beginning of employment would be unenforceable as applied to claims of workplace sexual harassment and assault. This, however, does not prohibit employers and employees from agreeing to arbitrate a dispute *after* the dispute in question arises. In essence, the law allows the employee to decide whether to arbitrate a covered claim or pursue the claim in court.

The Act represents one of the most significant changes to employment law on the federal level in recent years. Going forward, employers who have mandatory arbitration provisions in their existing agreements with employees will not be able to rely on those provisions to prevent an employee from pursuing a claim of sexual harassment or assault in court. Employers who require employees to sign such agreements should consider revising their agreements to reflect the new restrictions imposed by the Act.

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