



ALERTS

New Law To Bar Mandatory Arbitration Agreements, Waivers For Sexual Assault And Harassment Claims

February 23, 2022

Highlights

President Biden is expected to sign the recently passed law prohibiting mandatory arbitration of claims of sexual harassment and sexual assault

Previously signed agreements requiring arbitration will be unenforceable

Employers should review and modify their agreements to comply with this new law

Congress has passed a bill aimed at ending mandatory arbitration agreements for sexual assault or sexual harassment claims. The [Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act](#) passed the U.S. Senate recently with broad bipartisan support. President Biden is expected to sign the bill into law in the near future.

The act will prohibit mandatory arbitration of claims that relate to sexual assault or sexual harassment, regardless of whether they are filed pursuant to federal, state, or tribal law. It also invalidates agreements that waive an employee's right to participate in a class action claim based on such allegations.

RELATED PEOPLE



David B. Ritter

Partner
Chicago

P 312-214-4862
F 312-759-5646
david.ritter@btlaw.com



Douglas M. Oldham

Of Counsel
Columbus, Chicago

P 614-628-1422
F 614-628-1433
douglas.oldham@btlaw.com

RELATED PRACTICE AREAS

Labor and Employment

Previously signed mandatory arbitration agreements and joint-action waivers will be unenforceable regarding such claims once the bill becomes law. Employees will have the right to choose whether to proceed in litigation or arbitration. Moreover, when an employer attempts to enforce a mandatory arbitration agreement and asserts that an individual's claim is not a sexual assault or sexual harassment claim, under the new law it will be a judge, not an arbitrator, who will make that determination.

Employers who rely on mandatory arbitration clauses and joint-action waivers to avoid lawsuits and related exposure will need to consider changing their approach. While an employee may still choose arbitration, an employer cannot compel it, and employers will need to prepare for the substantial negative press that frequently accompanies sexual assault and sexual harassment claims.

Employers should consider reviewing any mandatory arbitration clauses and joint-action waivers to ensure that sexual harassment and sexual assault claims pursuant to federal, state, or tribal law are removed from the agreements. Employers who already have such agreements in place should be prepared for them to be held unenforceable for any claim related to sexual assault or sexual harassment.

While the law has widespread implications in the employment context, it is not limited to employment relationships. It also applies to independent contractors, patients, customers and any other individual with whom a business might attempt to enforce mandatory arbitration.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or David Ritter at 317-229-3111 or david.ritter@btlaw.com, Douglas Oldham at 614-628-1422 or douglas.oldham@btlaw.com or Kenneth Yerkes at kenneth.yerkes@btlaw.com or 317-231-7513.

© 2022 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is proprietary and the property of Barnes & Thornburg LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg LLP.

This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.