

Senate Passes Law Making Mandatory Arbitration Agreements for Sexual Harassment Claims Voidable by the Claimant

Labor & Employment Law Update

on February 11, 2022



On February 10, 2022, the U.S. Senate passed a bill that prohibits mandatory arbitration for workplace sexual harassment or sexual assault claims. The bill, H.R. 4445, originated in the House, and later passed there on February 7, 2022. The Senate quickly passed the bill by large, bipartisan

margins. President Biden has voiced support for the bill and is expected to sign it into law.

H.R. 4445, named the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, prohibits enforcement of contracts that mandate that workplace disputes alleging sexual assault or sexual harassment be resolved through third-party arbitration. While the complainant can still choose to arbitrate these types of claims, the complainant now also has the option to file a lawsuit in court regardless of an existing arbitration agreement.

This law applies to any new claim of sexual harassment or assault under Federal, State, or tribal law regardless of when the claim allegedly arose or the alleged bad acts occurred. This law has retroactive effect and will invalidate existing pre-dispute mandatory arbitration agreements that could have been executed years before.

The law aims to eliminate forced arbitrations, which shield claims of sexual harassment or assault from public knowledge. In doing this, the law is intended to minimize the risk of repeat offenders and the masking of problematic cultures at certain workplaces.

In light of this new development, employers cannot enforce compulsory arbitration for sexual harassment or sexual assault claims and should accordingly amend any pre-dispute mandatory arbitration clauses so as not to include claims for sexual harassment or assault.

Senate
Passes Law
Making
Mandatory
Arbitration
Agreements
for Sexual
Harassment
Claims
Voidable by
the Claimant