

Electronic Alert

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New #MeToo Law Prohibits Enforcement of Arbitration Provisions for Workplace Sexual Assault Claims

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Yesterday, President Biden signed into law H.R. 4445, a bill that was recently passed by Congress in a bi-partisan effort and hailed as a major victory for the #MeToo movement.

The new law largely prohibits the enforcement of mandatory pre-dispute arbitration provisions to the extent they apply to “a case” that relates to workplace sexual harassment or assault. The law amends the Federal Arbitration Act to ban agreements that were signed prior to an incident of workplace sexual harassment or assault. The law also prohibits any pre-dispute waivers of the right to participate in a joint, class, or collective action alleging such conduct. However, it is important to note that such an agreement is still allowed and enforceable if a worker chose to sign the agreement after any sexual harassment or assault dispute arises.

Importantly, the new law’s use of the term “case” rather than “claim” when referring to allegations of workplace sexual harassment or assault introduces some uncertainty as to how courts will handle claims that include other claims in addition to those involving workplace sexual harassment or assault. Courts may read the language broadly and require that an entire case stay in court, or narrowly to force all non-harassment or assault claims into arbitration. Courts may also decide the issue on a case-by-case basis, based on how connected all the claims alleged are. This will inevitably result in significant litigation around the issue.

President Biden has supported this legislation throughout its progression through Congress, and the White House has previously said the law “advances efforts to prevent and address sexual harassment and sexual assault, strengthen rights, protect victims, and promote access to justice.” The law goes into effect immediately.

Practically, employers should be aware that pre-dispute mandatory arbitration provisions in agreements will not be enforceable with respect to any dispute or claim of workplace sexual harassment or assault that arises on or after today’s date. Additionally, employers should review any mandatory arbitration provisions in their agreements to ensure that they comply with the new law.

For questions about H.R. 4445 or for any other employment-related questions, contact Wilson Jarrell or Nicole Elgin at 503-228-0500, or at wjarrell@barran.com or nelgin@barran.com.