

Publications

Congress Prohibits Predispute Mandatory Arbitration for Sexual Harassment and Assault Claims

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CLIENT ALERT | 2.10.2022

Earlier today, February 10, 2022, the Senate passed [House Resolution 4445](#)—expected to be signed into law by President Biden shortly—which prohibits the enforcement of contract provisions mandating arbitration of workplace sexual harassment or sexual assault claims. The law amends the Federal Arbitration Act (FAA) to include language rendering mandatory arbitration clauses covering sexual harassment and assault claims, like those contained in some employment agreements, invalid or unenforceable. The new law follows state and federal legislative efforts to limit mandatory arbitration agreements in the employment context.

The legislation enjoyed bipartisan support and faced little opposition in Congress. It passed in the House earlier this week, on February 7, by a vote of 335-97. Its passage in the Senate was similarly effortless, with the bill being approved by a simple voice vote. The White House also indicated an intent to pursue broader legislation restricting mandatory arbitration on issues such as “discrimination on the basis of race, wage theft, and unfair labor practices.”

Importantly, the legislation appears to apply to mandatory arbitration provisions that were entered into before the bill’s passage. Section 3 of the bill specifically states that the “amendments made by this Act, shall apply with respect to any dispute or claim that arises or accrues on or after the date of enactment of this act.” As such, if an employee brings a claim for sexual harassment or sexual assault that occurred after February 10, then a mandatory arbitration provision will not be enforceable, even if the provision was entered into before February 10 and would otherwise have been enforceable prior to the new law taking effect.

Employers should stay tuned for further [Vorys Alerts](#) regarding this law and other potential changes to the FAA with respect to predispute mandatory arbitration. In the meantime, employers should begin efforts to update their policies, practices, and expectations consistent with the legislation’s changes to the FAA.

Contact your Vorys attorney if you have any questions about the impact of this legislation on your existing policies or other arbitration-related questions or concerns.