

Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021

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On February 10, 2022, Congress passed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (the “Act”). President Biden has expressed support for the Act and is expected to sign it.

The new Act amends the Federal Arbitration Act and prohibits claimants from being required to enter into pre-dispute arbitration agreements or pre-dispute joint action waivers with respect to claims of sexual assault or sexual harassment. Simply stated, if the Act becomes law, employees cannot be forced to arbitrate their claims, nor waive class action claims, related to sexual harassment or sexual assault. This will bring federal law in line with the New Jersey Law Against Discrimination, which bans employment agreements that require the arbitration of discrimination, harassment and retaliation claims.

The Act applies whether the sexual assault or harassment claim is filed pursuant to federal, state or tribal law and also applies to class action claims.

The Act applies to any dispute or claim that arises or accrues on or after the date of the Act’s enactment. Any provisions that preclude the filing of a claim in court for sexual assault or sexual harassment that arises after the law’s enactment will be unenforceable.

Employers should review their employment agreements and policies to ensure compliance with the Act. The Act is not limited to employment agreements or agreements made in the employment context.