

Congress Bans Mandatory Arbitration of Employee Sexual Assault and Harassment Claims

Companies have increasingly instituted policies requiring employees to bring sexual harassment claims in confidential arbitration rather than in public litigation in the courts. These policies have resulted in a significant drop in official sexual harassment complaints to state and federal regulators. Critics of these policies, however, argue that employees fare poorly in arbitrations as compared to cases filed in the courts.

With growing pressure from the #MeToo movement, Congress was spurred to action. In February 2022, both the House of Representatives and the United States Senate passed the Ending Forced Arbitration of Sexual Harassment Act ([H.R. 4445](#)), and it was signed into law by President Biden on March 3, 2022.

- The measure adds a new chapter to Title IX concerning arbitration of disputes involving sexual assault and sexual harassment.
- The new chapter provision invalidates, at the election of the accuser or class representative, the enforceability of any pre-dispute arbitration agreement or pre-dispute joint-action waiver for cases filed under Federal, Tribal, or State law.
- Determination of the application of these provisions to an arbitration agreement, if such application is disputed, must be made under Federal law and by a court and not by an arbitrator.
- The Act applies to disputes or claims that arise or accrue on or after the bill is signed into law.

It should be noted that certain states (including New York) already have state laws with such a requirement.

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