

# Mandatory Arbitration Will No Longer Be Enforceable Against Sexual Assault and Sexual Harassment Claims

In 2017, the #MeToo movement exploded into the legal and political worlds, following high-profile allegations of sexual harassment. Five years later, it has led to bipartisan support of one of the most significant legislative changes in arbitration law since the Federal Arbitration Act was first enacted in 1925.

The U.S. House of Representatives passed H.R. 4445, the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act,” on February 7, 2022; the Senate subsequently approved the legislation on February 10, 2022. President Biden signed it into law March 3, 2022.

H.R. 4445 amends the Federal Arbitration Act to create new exceptions to mandatory arbitration agreements. Specifically, H.R. 4445 provides that an individual has the right to nullify pre-dispute arbitration agreements and pre-dispute waivers of class claims and may file suit in a federal, state or tribal court alleging sexual assault or sexual harassment. It does not prohibit enforcing an agreement with a plaintiff who agrees to arbitration *after* the plaintiff’s claim has arisen and does not prohibit other non-sexual assault or non-sexual harassment claims from being arbitrated.

The bill is not retroactive, however. Instead, *claims* arising or accruing after March 3, are not subject to arbitration, while those that occurred prior to enactment may still be arbitrated. Further, the bill does not automatically void mandatory arbitration agreements. A plaintiff subject to such an agreement whose claims of harassment arise after enactment may choose to proceed with arbitration or choose to file suit in court instead.

Employers should be aware of the advantages and disadvantages of arbitration before entering into an arbitration agreement, including what claims they may or may not be able to bring. This new change in the law will restrict what employers are able to arbitrate.

If you have any questions about the change, need help with an employment claim or with arbitration, please contact [Rob Driscoll](#), [Matt DeLange](#) or your Reinhart attorney.

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