

Congress Passes Law, With Retroactive Effect, to Invalidate Forced Arbitration Provisions at the Employee's Election

February 11, 2022

President Joe Biden is expected to sign the *Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021*.

Once signed into law, the bipartisan legislation will invalidate existing forced arbitration provisions and provide employees who complain of workplace sexual harassment and sexual assault the choice of pursuing their claims in court rather than private arbitration. The law also invalidates joint-action waivers, which prohibit individuals to the agreement from participating in joint, class or collective actions.

Specifically, the act targets pre-dispute arbitration provisions, which historically have been utilized by employers in contracts to resolve disputes related to employment matters. The legislation does not preclude parties from agreeing to arbitrate a dispute regarding sexual harassment or sexual assault once it arises.

Proponents of arbitration provisions favor controlling the forum, streamlining litigation and relying on experienced arbitrators to resolve issues. Critics of such provisions cite financial imbalance between workers and employers and complain that bad actors are able to shield allegations from becoming part of the public record.

While the law is a win for workers, the scope of the new legislation is limited only to disputes involving claims of sexual harassment and sexual assault. Employers will retain the ability to require pre-arbitration provisions for other disputes arising out of the business relationship, such as compensation or termination.

If you have any questions regarding the impact of this legislation on existing agreements, or you would like a review of your policies and handbooks, please contact any of the members of Plunkett Cooney's Labor & Employment Practice Group today.