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News & Insights

# Stinson Attorneys Discuss #MeToo Bill in *Law360* Article

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Stinson Partner Bernadette Sargeant and attorney Emily Monroe authored an article for *Law360* in response to the recent #MeToo bill that allows employees alleging sexual assault or sexual harassment to bypass mandatory arbitration clauses. In the "Expert Analysis" article, the attorneys provide information and steps employers can take to prevent harassment and assault in the workplace.

On February 7, The House passed H.R. 4445[1] followed by The Senate passing its own version of the bill, S.2342[2], with bipartisan support, on February 10. "The differences between the two existing bills are minor," said Sargeant and Monroe. "The most noteworthy difference is that the House version broadly defines sexual harassment as 'conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law,' and the Senate version lists five types of conduct that constitute sexual harassment, all of which are prohibited under existing laws."

Once the proposed legislation becomes law, current mandatory arbitration provisions in employment agreements will no longer be enforced with regard to sexual harassment or sexual assault claims, and future mandatory arbitration provisions cannot be drafted to apply to sexual harassment or sexual assault claims.

There are proactive steps to prevent sexual harassment and sexual assault in the workplace that work to address complaints more effectively, which include investing in regular sexual harassment prevention training for supervisory employees and for nonsupervisory employees, updating internal procedures for investigation of sexual harassment and sexual assault complaint and having in place a tailored way to address those complaints while preventing future complaints.

"If your company decides to continue using arbitration agreements, decide how to craft future agreements to carve out sexual harassment or sexual assault, so that you can still enforce your agreement to arbitrate any negligence claims, discrimination claims or other claims," said Sargeant and Monroe. "When

employees do opt into arbitration and waive their rights to litigate sexual harassment or sexual assault claims after reporting, be sure to craft effective, enforceable waivers."

Though it remains to be seen whether the #MeToo bill will have an impact on the number of reported harassment or assault claims, Sargeant and Monroe advise employers of the need to focus on strengthening measures that prevent and punish conduct that constitutes either sexual harassment or sexual assault.

Sargeant has extensive trial experience and experience conducting sensitive internal investigations. Her employment and white-collar litigation experience, as well as her time as counsel to several government agencies, including the Department of Justice's Office of Professional Responsibility and the Ethics Committee of the U.S. House of Representatives, combine to make her an ideal workplace investigator, sensitive to the myriad issues that arise in internal and government investigations and ongoing operations under consent decrees. Sargeant provides practical, efficient and insightful counseling and advice to clients needing to address workplace situations in real time.

Monroe has substantial experience in adversary matters, as she frequently helps employers defend against all manner of employment claims, both in agency proceedings and in civil lawsuits. She previously worked as a criminal defense attorney and prosecutor where she developed and heightened her skills regarding investigations, addressing issues of jury appeal, handling intense negotiations and resolving questions of fairness and equity. She has tried over 50 jury trials, as well as several bench trials and contested hearings.

Read the full article.

## CONTACT

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