

Senate Passes #MeToo Bill Allowing Employees to Bypass Arbitration

Alert

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By Bernadette Sargeant and Emily Monroe

Congress appears poised to enact legislation that will allow employees alleging sexual assault or sexual harassment in the workplace to bypass mandatory arbitration clauses the employee may already have agreed to be bound by. [The House of Representatives passed H.R. 4445](#), Sexual Assault Arbitration Ban, on February 7, 2022. [The Senate passed its own bill, S. 2342](#) on February 10, 2022 with support from both Democrats and Republicans. The Biden administration supports the anticipated legislation, which would guarantee that employees who allege workplace sexual harassment or assault are free to pursue litigation in court.

This news will affect employers who have used mandatory arbitration agreements to manage claims efficiently and effectively, engaging third-party arbitrators in a legally binding process. Arbitration agreements, even if part of an employment contract and negotiated as a part of a compensation package, may no longer be enforceable against an unwilling employee. Arbitration would still be permitted, however, if the employee chooses to participate in arbitration after making the workplace sexual harassment or assault allegations. Some employees may appreciate the privacy that third-party arbitration allows, and so at least some of these claims may still be arbitrated rather than litigated.

The White House previously noted that the bill “advances efforts to prevent and address sexual harassment and sexual assault, strengthen rights, protect victims, and promote access to justice.” President Biden is expected to sign a reconciled bill comprised of provisions of both the House and Senate bills.

The developments highlight the importance of internal processes to prevent sexual assault and sexual harassment in the workplace and to address complaints effectively. These processes include: regular sexual harassment prevention training for supervisory employees and for non-supervisory employees,

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appropriate procedures for investigation of sexual harassment and sexual assault complaints and processes to address substantiated complaints.

For more information on how this legislation might impact arbitration agreements going forward, ways to strengthen your sexual harassment prevention processes, or in anticipation of litigation that may result from the expected ban on mandatory arbitration of workplace sexual assault or sexual harassment claims, please contact [Bernadette Sargeant](#), [Amy Conway](#), [Ashley Dillon](#), [Alisa Ehrlich](#), [Carrie Francis](#), Jennifer Ives, [Molly Keppler](#), [Pat Konopka](#), Emily Monroe, [Sharon Ng](#), Kristin Berger Parker, Hailey Perkins, [Stephanie Scheck](#), [Sara Welch](#), [Ben Woodard](#) or the Stinson LLP contact with whom you regularly work.

CONTACT

Bernadette C. Sargeant

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