



# Sexual Harassment Claims No Longer Subject to Mandatory Arbitration

April 21, 2022

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*The Journal Record*

<https://journalrecord.com/2022/04/20/gavel-to-gavel-sex-harassment-claims-not-subject-to-mandatory-arbitration/>

On March 3, 2022, President Biden signed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 ("Act") into law. The Act reached Biden's desk by way of a bipartisan vote of 335-97 in the United States House of Representatives and a voice vote in the United State Senate.

The Act amends the Federal Arbitration Act, found in Title 9 of the United States Code, by prohibiting predispute mandatory arbitration clauses for claims of sexual assault and sexual harassment in contractual agreements. Under the Act, a "predispute arbitration agreement" is "any agreement to arbitrate a dispute that had not yet arisen at the time of the making of the agreement." Accordingly, as of March 3, 2022, such mandatory arbitration clauses, often found in employment agreements, are invalid and unenforceable as to claims for sexual assault or sexual harassment, even where the employment agreement was entered into prior to the Act becoming law on March 3, 2022. However, the Act only applies to claims or disputes that arise or accrue on or after the Act's March 3, 2022, enactment. Thus, mandatory arbitration agreements covering applicable claims pending prior to the Act's effective date remain valid.

Under the Act, an employee may still voluntarily elect to arbitrate a sexual assault or sexual harassment dispute against an employer, but employers can no longer limit an employee's pursuit of such claims to arbitration. Conceivably, employees may choose to arbitrate sexual assault or sexual harassment disputes rather than electing to sue employers in court in an effort to maintain confidentiality. The Act, however, gives the employee, not the employer, the choice of where to pursue their sexual assault or sexual harassment claim.

Moving forward, employers should consult with counsel to update their employment agreements to ensure compliance under the Act and preserve their ability to mandate arbitration claims for claims that are not related to sexual assault and sexual harassment, as the Act does not prevent employers from mandating arbitration for claims or disputes that do not involve sexual assault or sexual harassment.

## Attorneys

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