

Legal Considerations for Employee Arbitration Agreements after the Passage of H.R. 4445, Ending Forced Arbitration of Sexual Assault and Harassment Act

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We at Fox Smith, LLC, wanted to reach out to our clients and friends to help them understand some of the legal implications of H.R. 4445, Ending Forced Arbitration of Sexual Assault and Harassment Act of 2021, signed into law on March 3, 2022 by President Biden.

This Act is an amendment to the Federal Arbitration Act preventing the enforcement of mandatory pre-dispute arbitration agreements that compel claims relating to sexual assault or harassment. The law allows the claimant to elect arbitration if they so desire, but the employer may not make such an election. Further, even where the agreement provides otherwise, a court will determine whether claims may be compelled to arbitration.

Arbitration is a widely-used alternative dispute resolution process that is considered to be more efficient than litigating a dispute in court. Generally speaking, arbitration is quicker, cheaper, and a more flexible process than filing a lawsuit. Many employment contracts contain an arbitration clause; where employees agree, as a condition of their employment, to arbitrate disputes that fall within the scope of the arbitration provision. Oftentimes the arbitration clause is broad, and will encompass any dispute that may arise out of, or be related to, an individual's employment with the organization.

It is important to note that the Act only applies to disputes that arise after March 3, 2022, but covers agreements signed prior to

this date. Further, the Act is limited only to claims of sexual harassment and sexual assault, and does not include any other claims, such as discrimination or harassment.

IMPACTS:

At this time, employers should review their pre-dispute arbitration agreements to ensure they are in compliance with this Act. Agreements should contain language to inform employees of their option to elect arbitration or file a lawsuit for claims related to sexual harassment and sexual assault, but not for other claims of civil rights violations.

Employers should also consider adding a severability clause to existing arbitration agreements. A severability clause states that the terms in the contract are independent of one another allowing the remainder of a contract to be enforceable, should a court decide other provisions are void or unenforceable. It is an open question of law on how courts will interpret agreements without a severability clause in light of this new legislation, and these clauses will help protect an employer's ability to compel arbitration.

For questions regarding general issues or to discuss specific individual situations, please contact Pete Cosgrove at Fox Smith, LLC at www.foxsmithlaw.com or (314) 588-7000.

For additional information:

[H.R.4445 - Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021](#)