

March 3, 2022

President Biden Signed into Law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act

By: [Tracy A. Warren](#), [Kathryn B. Fox](#), and [Michelle K. Meek](#)

On March 3, 2022, President Biden signed into law a bill that prohibits companies from compelling to arbitration cases where there are allegations of sexual harassment or assault. The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act makes arbitration agreements that require arbitration of individual and class claims of sexual harassment or assault invalid and unenforceable at the election of the person or class alleging the misconduct.

Now, employees with claims of sexual harassment or assault may choose to file lawsuits against their employers and alleged perpetrators in public courtrooms instead of submitting their claims to private arbitration. The new law also requires that a court, not an arbitrator, decide whether a claim constitutes sexual harassment or sexual assault, even if the arbitration agreement includes a provision delegating these decisions to the arbitrator.

This is the latest in a large number of legislative changes stemming from the #MeToo movement. Since the #MeToo movement gained international attention in 2017, there has been a push on a national, state, and local level to prevent companies from keeping allegations of sexual assault and sexual harassment, as well as resolution of claims involving these allegations, private.

The law takes effect immediately and applies to all existing arbitration agreements, even those signed prior to the law's enactment. Employee sexual harassment or assault claims that arise after enactment of the law would not be arbitrable under such existing arbitration agreements. Employers should act quickly to review their mandatory arbitration agreements and class action waivers for any necessary revisions. Should you have any questions about how law may impact your company, please reach out to any of the attorneys in [Buchalter's Labor & Employment Practice Group](#).

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Tracy A. Warren

Shareholder
(619) 219-5360
twarren@buchalter.com



Kathryn B. Fox

Senior Counsel
(619) 219-5371
kfox@buchalter.com



Michelle K. Meek

Senior Counsel
(619) 219-8075
mmeek@buchalter.com

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