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Congress Passes Landmark #MeToo Bill



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The U.S. Senate passed legislation on February 10, 2022, that prohibits employers from requiring arbitration with employees for certain disputes. The Ending Forced Arbitration Act, which President Biden is expected to sign, invalidates pre-dispute arbitration agreements that preclude a party from filing a lawsuit in court that relates to sexual assault or sexual harassment. Pre-dispute class action waivers for sexual assault or sexual harassment claims are also unenforceable.

The bill does not prohibit parties from entering into arbitration or class action waivers once a claim arises. In other words, an employee may elect to arbitrate a claim, but the new law will ensure the employee has a choice in the matter. Generally, arbitration clauses are signed by employees as part of their employment contracts, a practice that favors employers over employees.

Data show corporate parties are far more likely to prevail before an arbiter than in court, and when employees do win, they are typically awarded a fraction of the award of a similarly situated worker whose case went to court. Arbitration also benefits employers (and their reputations) by virtue of its private nature.

Amidst the #MeToo movement, the prospect of legislation to protect employees who have been sexually harassed gained bipartisan support, with President Biden being a vocal supporter. We expect this law will lead to other changes in employment law, as companies continue to question other mandatory arbitration agreements, such as those involving allegations of racial harassment.

Indeed, separate legislation is pending, including the FAIR Act (H.R. 963), that would nullify all pre-dispute arbitration agreements. Although that bill has not gained as much bipartisan support, we expect the effort to do away with forced arbitration clauses in employment contracts to continue.