



PHILLIPS LYTLE LLP CLIENT ALERT

LABOR & EMPLOYMENT

MARCH 2022



Federal Government Ends Mandatory Arbitration of Sexual Assault and Sexual Harassment Claims

On March 3, 2022, President Biden signed into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021¹ (“Act”). The Act amends the Federal Arbitration Act to provide that at the election of a person alleging conduct that constitutes sexual assault or sexual harassment or the named representative of a class or collective action alleging such conduct, which is filed under federal, state or tribal law, any predispute arbitration agreement or predispute joint-action waiver is unenforceable. The Act took effect immediately upon its signing. As a result, arbitration agreements that require the arbitration of sexual assault or sexual harassment claims or prohibit such claims from being brought as a class or collective action are now voidable at the discretion of the claimant. In other words, the protection from public trials and class and collective actions that predispute arbitration agreements have provided employers has been effectively removed for such claims.

The Act defines a predispute arbitration agreement as “any agreement to arbitrate a dispute that had not yet arisen at the time of the making of the agreement.”

A predispute joint-action waiver means “an agreement, whether or not part of a predispute arbitration agreement, that would prohibit, or waive the right of, one of the parties to the agreement to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum, concerning a dispute that has not yet arisen at the time of the making of the agreement.”

In light of the Act’s enactment, employers should review their predispute arbitration agreements to determine whether any revisions are needed. Employers should also review their sexual harassment prevention measure to help reduce the likelihood of having to defend a sexual assault or sexual harassment claim.

Additional Assistance

For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■

1 <https://www.congress.gov/bill/117th-congress/house-bill/4445/text>.



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