

New Federal Law Bars Forced Arbitration for Workplace Sexual Harassment Claims

President Biden has signed into law a measure that bars forced arbitration for workers who are victims of workplace sexual assault or harassment.

The Ending Forced Arbitration for Sexual Assault and Sexual Harassment Act bars employment contracts from requiring employees to settle their claims through private arbitration instead of in a court of law. Arbitrations have long been considered to benefit employers, as it keeps the cases from becoming public.

Legal experts predict a surge in sexual harassment litigation as a result of the law, which is retroactive, meaning any arbitration clauses in existing employment contracts would not be valid.

It's estimated that some 60 million workers in the U.S. are under contracts that include forced arbitration clauses for sexual harassment claims. Employment law experts say that most workers are likely unaware of these clauses.

The bipartisan measure was introduced by Senators Kirsten Gillibrand, D-New York, and Lindsey Graham, R-South Carolina.

The fallout for employers

Employment law experts predict that employees who feel they've been sexually harassed at work will be more willing to sue now that they are freed from forced arbitration. Some expect a significant uptick in lawsuits as some employees may have been loath to file claims knowing they would be going into mandatory arbitration.

Businesses that have arbitration agreements in their employment contracts will need to redraft them to ensure they comport with the new law.

You should also have sexual harassment prevention training as part of your company policies that covers what constitutes sexual harassment and the process for reporting it.

Additionally, employers should have in place an employment practices liability policy that may cover the cost of lawsuits alleging sexual harassment in the workplace.

EPLI covers companies against claims or lawsuits filed by employees, former employees and employment candidates regarding their employment relationship with an employer.

It provides coverage for legal costs, settlements and judgments that arise from claims of:

- Discrimination, based on age, race, gender and other factors.
- Sexual harassment.

- Wrongful termination “B” including constructive discharge, in which an employee resigns as a result of the employer creating a hostile work environment; and retaliatory discharge, in which a worker is fired as punishment for engaging in a legally protected activity.
- Breach of employment contract.
- Infliction of emotional distress or mental anguish.
- Failure to employ or promote.
- Wrongful discipline or demotion.
- Mismanagement of employee benefits.
- Defamation.
- Privacy violations.
- Violation of the Family Medical Leave Act or other such laws.

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