Client Alert: Congress Approves Limits on Arbitration Agreements and Joint-Action Waivers for Sexual Harassment and Sexual Assault Claims

BY CHELSIE A. VOKES • FEBRUARY 22, 2022

On February 10, 2022, Congress passed a bill permitting employees bound by arbitration agreements to nonetheless bring their sexual harassment and sexual assault cases to court. President Biden recently voiced his support for the bill and is expected to sign the bill into law. Importantly, the bill is retroactive and therefore applies equally to agreements in place before the law takes effect.

If the bill passes, employees will be able to decide whether to pursue their sexual harassment or sexual assault claims in court or through any arbitration process offered by the employer. The bill will also allow employees to pursue sexual harassment and sexual claims through a joint, class, or collective action, despite any agreement to the contrary.

An open question is whether the bill's broad language will impact other claims which are raised alongside claims of sexual harassment and sexual assault. For example, in cases involving claims of sexual harassment and race discrimination, it is unclear whether the bill would give employees an inalienable right to raise their race discrimination claims in court. The confusion stems from the bill's language, which bars arbitration agreements or joint-action waivers from applying to any "case" (as opposed to "claim") involving claims of sexual harassment or sexual assault. Litigation will likely ensue from this language as employees aim to escape arbitration by coupling sexual harassment or sexual assault claims with claims of a different nature.

Bowditch will continue to monitor any developments on this issue and update you promptly. Employers with questions should consult with their Bowditch Employment & Labor attorneys.

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