Congress passes Ending Forced Arbitration of Sexual Assault, Harassment Act

By **Natalie M. McMahan**

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On February 10, 2022, Congress passed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021. This legislation is now headed to the President's desk and expected to be signed into law. The Act invalidates arbitration agreements and joint action-waivers where allegations constitute a sexual assault or sexual harassment dispute. This will have significant impact in the employment context, as it allows employees to avoid arbitration of these claims and file suit in court, although the potential plaintiff will still have the choice to go to arbitration.

Similarly, the invalidation of class action waivers will allow employees to bring a joint, class, or collective action where the dispute is based on sexual assault or harassment allegations. These joint actions could proceed in court, arbitration, administrative proceedings, or other forums. The Act will apply to any claim or dispute that arises on or after the day the President signs the Act.

Separate legislation, the Forced Arbitration Injustice Repeal (FAIR) Act, would completely invalidate arbitration agreements in employment, consumer, antitrust, and civil rights disputes. The House of Representatives previously passed the FAIR Act in 2019, and it was reintroduced in the House this week. This bill has not received the same broad support as its narrower counterpart that addresses sexual assault and sexual harassment disputes only.

Phillips Murrah's Labor and Employment attorneys continue to monitor these developments to provide up-to-date advice to our clients regarding new legislation that affects employers.

Natalie M. McMahan is a litigation attorney who represents individuals and both privately-held and public companies in a wide range of civil litigation matters.

For more information on this alert and its impact on your business, please call 405.552.2437 or [email](#) Natalie M. McMahan.

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