



CLIENT ALERT

NEW FEDERAL LAW BANS MANDATORY ARBITRATION OF SEXUAL HARASSMENT CLAIMS

Signed by President Biden on March 3, 2022, the *Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021* affects any employer with policies or contracts requiring that claims of sexual harassment or sexual assault be addressed solely through arbitration. This federal statute guarantees employees the choice to file in court or to pursue arbitration. Importantly, this includes claims brought under state laws such as Massachusetts General Laws Chapter 151B (the state's anti-discrimination law for employees).

Many employers are unaware that the new federal law applies retroactively to existing mandatory arbitration provisions. Therefore, employers with mandatory arbitration provisions will need to change company policies, employee handbooks and collective bargaining agreements to remove or modify such clauses that are no longer enforceable with respect to allegations of sexual harassment or assault.

Of course, employees remain free after a dispute has arisen to opt for arbitration, which often represents a more cost effective and expeditious avenue to address such claims. What the new law prohibits is an employer mandating arbitration as the only available route for an employee to assert these categories of claims.

This new law should prompt employers to review their policies, procedures and practices designed to prevent claims of sexual harassment in the first instance. That means:

1. Ensuring that your policies are up to date in covering all forms of harassment and discrimination, and are distributed both to new employees and annually to all employees;
2. Providing effective training of managers and employees on preventing sexual harassment and routes for addressing concerns that arise;
3. Implementing professional, thorough and well-documented investigations of claims; and
4. Enforcing meaningful discipline and remedial measures if violations are found.

If you have questions about the *Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021* or other employment law issues, feel free to reach out to a member of our employment team: Paul Holtzman (pholtzman@kb-law.com); Jill Brenner Meixel (jmeixel@kb-law.com); Brian Richichi (brichichi@kb-law.com); or Allison Lennon (alennon@kb-law.com).