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Senate Passes Bill Ending Mandated Arbitration in Sexual Misconduct Cases

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On February 10, 2022, the Senate passed a landmark bill prohibiting enforcement of pre-dispute contract provisions that mandate arbitration for sexual harassment or assault claims. The bill also prohibits a “pre-dispute joint action waiver.” This means that any agreement purporting to waive the right to file a class or joint action involving sexual harassment or assault will be unenforceable.

The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act was met with sweeping bipartisan support passing unanimously by a voice vote in the Senate after garnering overwhelming backing in the House. President Biden is expected to sign a reconciled bill.

Many employers have a practice of requiring employees to agree at the outset of their employment to resolve any and all claims arising out of their employment in arbitration (a private dispute resolution procedure), and waive the right to pursue claims in court. This bill will render those agreements unenforceable only as applied to sexual harassment and sexual assault allegations. Of note, the bill does not ban post-dispute arbitration agreements where sexual misconduct is alleged, meaning that the parties can agree to arbitrate after a claim is asserted.

Contact any member of **Bodman’s Workplace Law Group** for more information. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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