SpencerFane®

Sexual Harassment Claims and Arbitration Agreements

On February 10, Congress passed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (the "Act") and sent the Act to President Biden for signature. President Biden is expected to sign the bill quickly this week, which will become law immediately upon signature by the President.

This Act makes pre-dispute arbitration agreements relating to sexual assault or sexual harassment void. Similarly, any class or collective action waiver in pre-dispute arbitration agreements involving sexual assault or sexual harassment are void. This means that employees who allege sexual harassment in the workplace will be able to pursue their claims in court (after filing with the appropriate administrative agency, if necessary under state or federal law), regardless of whether they previously signed an arbitration agreement. Employees and former employees can still agree after a dispute arises to send sexual harassment claims to arbitration, and nothing in the Act prevents an employee from agreeing to waive a jury trial. However, there may be implications under other laws relating to the waiver of the right to a jury trial, so employers will want to consult with counsel and consider options carefully.

Regardless of the agreements employers enter into with their employees, the passage of this Act is a good reminder that allegations of sexual harassment remain a significant concern for employers, and it provides an opportunity to review anti-harassment policies and prevention training programs with managers and employees alike.

This client alert was authored by Helen Holden. She is a Partner in the Spencer Fane Phoenix office. For more information, visit www.spencerfane.com.