

Reminder To Review Employment Arbitration Agreements

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It has been over a year since President Biden signed [H.R. 4445](#), the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFASASHA) into law on March 3, 2022. The EFASASHA amended the Federal Arbitration Act (FAA) to prohibit forced arbitration of employee claims relating to *sexual assault and sexual harassment* under federal and state law. This law prohibits employers from requiring employees to waive their right to file such claims in court against an employer through an arbitration agreement, which is often entered into at the time of hire or during the employment relationship. The EFASASHA also prohibits the enforcement of agreements requiring employees to arbitrate such claims, even if they were signed before the EFASASHA became law.

Enforcement Depends on When Claim Accrued

Recently, the United States District Court for the Western District of Pennsylvania clarified in the case of *Barnes v. Festival Fun Parks, LLC* that employers are allowed to enforce an arbitration agreement if the events that form the basis of a sexual assault or sexual harassment claim brought by an employee predate the EFASASHA. Meaning that if the alleged sexual assault or sexual harassment that makes up the basis of the claim occurred before March 3, 2022, then the agreement to arbitrate is still enforceable by the employer against the employee. Any claims premised on alleged sexual harassment and/or sexual assault based on events occurring on or after March 3, 2022, are fair game for an employee to take to court and bypass an arbitration agreement.

Time For Review

Of course, the clock is ticking, narrowing the sexual assault and sexual harassment claims that remain subject to arbitration. Employers should therefore review and revise their arbitration agreements to carve out language compelling arbitration of sexual harassment and sexual assault claims going forward. Please note that companies may still require arbitration of other types of claims as allowed by law.

If you have any questions as to how the EFASASHA affects your company's pre-existing arbitration agreements or need help drafting new agreements that comply with the EFASASHA, please contact Attorney [Susanna Fultz](#) or any member of the Barley Snyder [Employment Practice Group](#).

DISCLAIMER: The information in this alert should not be construed as legal advice to be relied upon nor to create an attorney/client relationship. Please note that the reader's or an industry's specific situation or circumstances will vary; thus, for example, an approach that is advisable in one industry may not be appropriate in another. If you have questions about your situation or about how to apply the information contained in this alert to your situation or industry, you should reach out to an attorney.

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