

NEW FEDERAL LAW ENDS SCHOOLS' ABILITY TO REQUIRE ARBITRATION OF SEXUAL HARASSMENT AND SEXUAL ASSAULT CLAIMS

Insights

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As we approach the time of year when schools typically issue employment contracts, schools should be aware that Congress recently passed the "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act." This new law, which President Biden is expected to sign into effect, permits employees subject to arbitration agreements to unilaterally choose whether to bring sexual harassment or sexual assault claims in arbitration or in court, regardless of whether they have signed an employer's arbitration agreement. [Fisher Phillips recently published a comprehensive series of FAQs](#) for employers on this new federal legislation. Given these recent developments, it is likely the statute will encounter legal challenges moving forward to determine the scope of its application.

What Should Schools Do?

Schools should take this opportunity to review their arbitration agreements with employees now as they prepare to issue new contracts for the 2022-2023 academic year – as these agreements could be open to challenge. While current arbitration agreements may not be void in their entirety, parts of them might be. If a sexual harassment or assault claim arises after the law is enacted, the school may not be able to compel arbitration as to such claims, even if an otherwise valid agreement is in place. As contracts are governed by state law, agreements may be invalidated entirely in some jurisdictions if there is a single unenforceable clause. Schools can best protect themselves

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by ensuring their contracts are up to date in accordance with this new Act and the law in their jurisdiction.

This new legislation is consistent with the [Biden administration's agenda to end the arbitration of various types of employment disputes](#), including arbitration of claims related to discrimination and retaliation. Given that we may see further erosion of the ability to arbitrate employment related claims in the future, schools may want to evaluate their arbitration agreements with respect to employees in the wake of this recent legislation. This includes consideration of jury trial waivers where permitted under state law.

Conclusion

If you have any questions about how these changes impact your school, please contact your Fisher Phillips lawyer, the author of this Insight, or any member of [our Education Practice Group](#). Fisher Phillips will continue to monitor further developments and provide updates in the coming months, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information.