

44th Annual Corporate Counsel Institute

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2022 Employment Law Update



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WTF?

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Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act

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Genesis: #MeToo Movement

Key Provisions:

- Makes *voidable* enforceability of arbitration agreements/class waivers “with respect to a **case** filed under Federal, Tribal, or State law if it **relates to** a sexual assault or harassment dispute.”
- Act is framed relative to “**case**” not a “**claim.**”
- Claim must arise or accrue *after* **March 3, 2022.**
- Courts (not arbitrators) decide Act’s applicability/enforceability.

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- Act's enforcement (voidability) is at the individual's option.
- Anticipated battleground: "claim" bundling to avoid arbitration, *e.g.*, an age claim pleaded with a sexual harassment claim gets filed in court as a "case."
- Takeaways:
 - Consider amending arbitration agreements with specific SH/SA carve outs to avoid bundling.
 - Move to sever bundled claims?
 - Watch for future legislation—*e.g.*, *race*, *equal pay*, *etc.*?

Speaking of #MeToo

- Sept. 2021 Amendments to Tex. Lab. Code Sections 21.141, 21.142, and 21.201(g)
 - Texas anti-sexual harassment laws amended to now apply to *all* employers (1 or more employees).
 - Employers must take "immediate and appropriate corrective action" once learning of sexual harassment/assault.
 - Individual supervisors can be held **personally liable** for harassment *and* failing to take immediate corrective action.

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