**Arbitration Agreements Unenforceable for Sexual Assault Harassment Disputes**

On March 3, 2022, President Biden signed the [Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021](https://www.congress.gov/bill/117th-congress/house-bill/4445/text), which amends the Federal Arbitration Act (FAA) to provide that, at the election of an individual (or their representative) who is alleging sexual harassment or assault, a predispute arbitration agreement or waiver will be invalid and unenforceable with respect to a case filed under federal, tribal, or state law. The Act applies to any dispute or claim arising or accruing on or after its enactment.

The FAA governs agreements to arbitrate in which some economic activity of one of the parties involves or affects interstate commerce, even if the transaction, taken alone, does not have a substantial effect on interstate commerce. See Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265 (1995); Citizens Bank v. Alafabco, Inc., 539 U.S. 52 (2003); Crawford v. West Jersey Systems, 847 F. Supp. 1232, 1240 (D.N.J. 1994) (the contract “need have only the slightest nexus with interstate commerce” and the contractual activity need only facilitate or affect commerce tangentially). The FAA preempts conflicting state law applicable to arbitration agreements. Doctor’s Assocs., Inc. v. Casarotto, 517 U.S. 681, 682 (1996). As a result, the FAA, including this amendment, will apply to arbitration clauses included in most employment and independent contractor agreements.

**Takeaways:** Businesses should be advised that arbitration clauses included in their employment and contractor agreements will not preclude lawsuits asserting sexual harassment or assault. Employees and contractors may still arbitrate those claims if they choose. Policies should be implemented to discourage the behaviors leading to such claims.