# California Court Expands Tools for Invalidating Arbitration Agreements: 3 Steps Employers Can Take Now

Insights
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A California appeals court recently ruled that a federal law preventing employers from requiring sexual harassment claims to be arbitrated also blocks arbitration of all other claims alleged as part of the same case. While this is not the first court in the nation to interpret the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA) this way, this decision gives employees in California a new tool for avoiding arbitration for all claims brought with a sexual harassment case. Employers nationwide should also take note, as this issue will likely continue to be litigated across the country. We'll explain what employers need to know and give you three steps you should consider taking next.

**What Is the EFAA?**

The EFAA, which was signed into law by President Biden in 2022, bans "forced" arbitration of sexual assault and sexual harassment disputes, which the law defines as follows:

- **Sexual harassment dispute:** "a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law."
- **Sexual assault dispute**: "a dispute involving a nonconsensual sexual act or sexual contact."

Specifically, the EFAA makes (at the election of the person alleging the relevant conduct) pre-dispute arbitration agreements invalid and unenforceable with respect to a "case" relating to a sexual assault or sexual harassment dispute that:

- arises or accrues on or after March 3, 2022; and
- is filed under state, federal, or tribal law.

For a detailed summary of the law, read our comprehensive FAQs here.

**California Appeals Court Rules on Scope of the EFAA**

A California appeals court recently held that when a plaintiff brings a sexual harassment or sexual assault claim, the *entire case* is exempt from arbitration under the EFAA. Here's what you need to know about *Doe v. Second Street Corp.*

***What Happened?***

Last year, an individual sued a hotel in Santa Monica where she had formerly worked as a server. At the center of the lawsuit were claims for sexual harassment and constructive discharge, based on how hotel management allegedly treated her – up until her employment ended in May 2022 – after she reported to her supervisor in 2019 that she had been attacked and sexually assaulted outside of work by a coworker. The lawsuit also alleged a variety of wage and hour violations.

The hotel argued that all her claims should be subject to mandatory arbitration (based on provisions she allegedly agreed to in 2016) because the claims accrued, and "the crux of the wrongful conduct occurred," before March 3, 2022. The hotel further argued that even if the EFAA rendered those provisions unenforceable as to the sexual harassment claims, the other claims (such as those alleging wage and hour violations) should be ordered to arbitration.

***How Did the Court Rule?***

A California Court of Appeal ruled on September 30 that the EFAA rendered the employer's arbitration provision unenforceable as to all of plaintiff's claims.

- The court held that the plaintiff's sexual harassment claims accrued after the EFAA's effective date, stating that "**a sexual harassment claim asserting a continuing violation 'accrues' on the date of the last act constituting such violation**, even if the conduct could have been actionable earlier."
- The court further held that **plaintiff's other causes of action (such as the wage and hour claims) were also exempt from mandatory arbitration because they were part of the same "case"** – adopting the analysis articulated by a New York federal judge in 2023. The court noted that the EFAA "does not require that the pendant claims *arise out of* the sexual assault or sexual harassment dispute; it is enough that the case *relates to* the sexual assault or sexual harassment claims." The court concluded that the plaintiff's entire case related to the sexual harassment dispute "because all of the causes of action are asserted by the same plaintiff, against the same defendants, and arise out of plaintiff's employment by the hotel."

As a result, all of the plaintiff's claims were exempt from mandatory arbitration under the EFAA.

**The Bottom Line for California Employers + 3 Steps You Can Take Now**

Following this decision, plaintiffs asserting a sexual harassment claim can likely avoid arbitration of ***all*** claims brought in that same lawsuit. And this is true even if the "crux" of the sexual harassment claim occurred before the EFAA's effective date – so long as the "last act" of the alleged wrongful conduct occurred on or after March 3, 2022.

This poses significant challenges for employers, who often rely on mandatory arbitration agreements to streamline dispute resolution and minimize litigation costs with respect to wage and

agreements to streamline dispute resolution and minimize litigation costs with respect to wage and hour claims, so you should consider these three action items:

1. **Continue taking steps to prevent and minimize disputes.** You should ensure your harassment, assault, and reporting policies are compliant. You should also provide training to managers and employees regarding harassment, assault, and company policy regarding the same. Finally, you should take steps to minimize wage and hour violations, which could end up in court if an individual also asserts sexual harassment or assault claims.
2. **Review your arbitration agreements to ensure carveouts are sufficient following these decisions.** For instance, arbitration agreements that carve out only sexual harassment and sexual assault claims may be deemed unconscionable following this decision. Work with counsel to determine the best approaches to your arbitration agreements.
3. **Stay tuned for developments.** The EFAA's applicability and scope continues to be litigated across the country, including regarding whether the EFAA applies to the "entire case" when a plaintiff alleges both individual claims (including for sexual harassment) and class action claims. While a California court has not yet ruled conclusively on this issue, a federal court in New York held that it does *not* and sent representative wage and hour claims on behalf of the employer's nonexempt employees to arbitration.

**Conclusion**

We will continue to monitor developments related to the EFAA and provide updates as warranted, so make sure you subscribe to Fisher Phillips' Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in any of our California offices.

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