

Tom Luetkemeyer Discusses Ongoing Ambiguities in the Application of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act

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Hinshaw partner Tom Luetkemeyer recently spoke with ALM | *Law.com* about certain complexities and ambiguities connected to the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022 (EFAA). This federal law, inspired by the #MeToo movement, aims to allow work-related sexual harassment and sexual assault claims to be heard in court, even when employees are subject to mandatory arbitration agreements.

The U.S. Court of Appeals for the Third Circuit recently addressed one of the law's ambiguities—namely, its retroactive application—when it affirmed a District of New Jersey ruling that a CVS employee could not avoid arbitration under the EFAA.

Luetkemeyer explained the importance of a plaintiff choosing to litigate claims in court as opposed to an arbitrator. He noted that plaintiffs who go to court have a more extensive right to discovery, as well as the chance to appear before a jury:

“Arbitrators have much more knowledge experience [than] their lawyers typically, and you’re not going to see runaway verdicts on compensatory and punitive damages arbitrator, whereas a jury, you know, sympathy and other factors may have played a disproportionate role in the assessment of damages. It’s a general rule that plaintiffs do better before juries and employers do better before arbitrators.”

Luetkemeyer also explained that the EFAA provides a more limited definition of what constitutes sexual harassment than under Title VII:

“With respect to the EFAA, the term sexual harassment means very specific, unwelcome sexual advances, unwanted physical contact that is sexual in nature, unwanted sexual attention, including comments and propositions or conditioning advancement in the workplace on sexual activity. So it’s very clear that it has to be related to sexual issues, and not necessarily just gender-related issues.”

[Read the full article](#) (subscription may be required).

- *Law.com:* “[‘A Source of Much Confusion:’ Courts Wrestle With Arbitration Nuance](#)” (April 4, 2025)

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