

## Can One Claim Bar An Entire Case From Arbitration? The Sixth Circuit Expands EFAA Exception to Mandatory Arbitration

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Federal courts' strong presumption in favor of arbitration under the Federal Arbitration Act has long enabled employers to bind most prospective claims by their employees to mandatory arbitration. A legislative caveat to this approach was enacted in 2021 in the form of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA), which was drafted to provide employees alleging sexual harassment or sexual assault claims the option to choose judicial litigation where a preexisting agreement would compel arbitration. A question arises as to whether the EFAA allows an employee to choose judicial litigation over arbitration for the entire case when the case involves multiple claims, only one of which is based on sexual harassment. On February 25, 2026, the Sixth Circuit Court of Appeals answered that question in the affirmative.

In *Bruce v. Adams & Reese, LLP*, an employee sued her former employer on allegations of wrongful termination, disability discrimination under the Americans with Disabilities Act, and sexual harassment under Title VII. In her complaint, the plaintiff referenced three specific alleged instances of sexual harassment within a one-year period, alongside further allegations that the alleged harasser "would" generally engage in harassing conduct towards the plaintiff in the workplace. The employer filed two motions to dismiss the employee's sexual harassment complaint, as well as one motion to compel arbitration of the ADA claims with a supplemental memorandum in support. Despite the plaintiff having signed a broadly written arbitration agreement, the district court found that the EFAA precluded arbitration of her entire case because she had adequately stated a claim for sexual harassment.

The Sixth Circuit Court affirmed on appeal in a two to one decision, with Judge Amul Thapar's dissenting opinion based on his conclusion that the plaintiff failed to adequately plead a sexual harassment claim. The majority analyzed whether the plaintiff had presented a valid sexual harassment claim and, if so, whether the establishment of such a claim barred the entire case from arbitration under the EFAA. In determining the first issue, the majority held that, to survive a motion to dismiss, a valid sexual harassment claim need only allege sufficient facts in the complaint so as to permit the court to develop a reasonable inference that the plaintiff was subjected to a sexually hostile work environment. Under this standard, the majority found that, even though the plaintiff's complaint offered few concrete examples of sexual harassment conduct at their employer's workplace, the language of her allegations (that the alleged harasser "would" act in a harassing manner") sufficiently indicated that the conduct was frequent or pervasive enough to warrant a reasonable inference that it had resulted in a hostile work environment.

This flexible pleading standard was sharply rebuked by the dissent, which believed that the plaintiff did not provide sufficient or specific facts to permit the court to reasonably infer that the claim was plausible. The majority countered by arguing that imposing a stricter standard of specificity for the complaint's allegations would unjustifiably subject sexual harassment claims to a heightened pleading standard.

On the second issue of whether it would be appropriate to grant a motion to compel arbitration, the court analyzed the language of the EFAA to determine whether Congress intended for any claims brought alongside sexual harassment claims to be non-arbitrable. The EFAA provides that, at the election of the plaintiff, arbitration agreements may be unenforceable "with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute." After employing several statutory interpretative canons, the court found that

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the statute's inclusion of the term "case" instead of "claim" indicated congressional intent to preclude an entire proceeding from arbitration, and that a case sufficiently "relates to" a sexual harassment claim by simple virtue of the latter being pled in the former. Consequently, the court held that the entire case, including all its claims, should proceed in court and not arbitration based on the plaintiff's election.

In light of this decision, employers should reassess risk assumptions surrounding arbitration, strengthen harassment prevention and response procedures, and engage with their legal counsel early when harassment allegations arise to evaluate pleading sufficiency and forum strategy. If you have questions about the decision and its impact on your organization, please contact your Miller Canfield attorney or one of the authors of this alert.