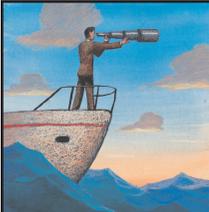




ATTORNEYS SERVING PRIVATELY HELD BUSINESSES AND THEIR OWNERS

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Legal Advisory

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NO END TO SEXUAL HARASSMENT CLAIMS

From Hollywood to corporate boardrooms and back rooms around the country, the number of sexual harassment accusations shows no signs of abating. More than 12,000 sex-based claims were registered with the Equal Employment Opportunity Commission (EEOC) last year. And who knows how many incidents remain unreported?

Lesson to be learned: Employers should not be lulled into dismissing or ignoring the potential for sexual harassment claims. The problem simply is not going away—at least not anytime soon.

Historically, there are two basic types of sexual harassment claims. Quid pro quo harassment occurs when employment decisions are determined by whether a person submits to sexual advances or demands. Environmental harassment denotes unwelcome sexual conduct that creates an intimidating or offensive work environment.

According to the EEOC, a single incident or isolated incidents of offensive behavior generally do not create a hostile environment, unless the conduct is severe. Although both types of harassment have been litigated in the courts, environmental harassment is generally more difficult to prove.

Key point: An allegation of sexual harassment is strengthened if the complaint is contemporaneous. **Note:** The EEOC considers a complaint to be contemporaneous even if the worker doesn't notify the employer about the unwelcome conduct until he or she quits the job.

Once the company receives notice of a complaint, it should investigate the situation, even if the employee did not communicate displeasure at the time of the alleged harassment.

Is the employer automatically liable for a supervisor's actions? No. Each case is decided on its own merits. Nevertheless, the EEOC guidelines



(see Sexual Harassment on page 3)

OVERVIEW OF THE NEW TAX LAW

The historic new tax law—the Tax Cuts and Jobs Act (TCJA)—includes sweeping changes for both individuals and businesses, generally beginning in 2018.

Individual Tax Provisions

Most individual tax provisions in the TCJA are scheduled to “sunset” after 2025. The following are some of the main items:

Tax rates: The current tax rate structure is modified with a reduction in tax rates and adjustments of bracket income amounts.

Standard deduction: The standard deduction is effectively doubled to \$12,000 for single filers and \$24,000 for joint filers. As a result of this change and the repeal of certain itemized deductions (see “Itemized deductions”), more filers will opt to take the standard deduction.

Personal exemptions: All personal exemptions, including exemptions for dependents, are eliminated.

Child tax credit: The new law increases the child tax credit from \$1,000 to \$2,000, of which \$1,400 would be refundable. It also allows a \$500 credit for non-child dependents.

State and local taxes: The deduction for state and local income taxes (SALT) is limited to \$10,000 annually. This may consist of (1) state and local property taxes or (2) state and local income taxes or sales taxes, or (3) a combination of the two.

Mortgage interest: The new law generally retains the deduction for mortgage interest but reduces the maximum threshold for acquisition debt for new purchases from \$1 million to \$750,000, while eliminating deductions for interest treated as home equity debt.

Medical expenses: For 2017 and 2018, the deduction is available for unreimbursed medical expenses above 7.5% of adjusted gross income (AGI), the threshold prior to the Affordable Care Act (ACA), down from 10% of AGI.

Charitable donations: This deduction is preserved, with an increase in the annual AGI limit from 50% to 60%.

Itemized deductions: Other itemized deductions, including miscellaneous expenses and casualty and theft losses (except for federal disaster-area losses), are repealed.

Alimony: The new law repeals the alimony deduction for the payer (and taxation to the recipient) for alimony agreements entered into after 2018.

Alternative minimum tax (AMT): The new law increases the exemption amounts and phaseout thresholds. As a result, fewer taxpayers will be affected by the AMT.

Estate tax: The estate-tax exemption is doubled from \$5 million to \$10 million (indexed to \$11.2 million in 2018).

Health insurance mandate: The individual health insurance mandate under the ACA is abolished after 2018.

Business Tax Provisions

Unlike the individual tax provisions in the new law, the key provisions relating to businesses are generally permanent. The following is a brief rundown:

Corporate tax rates: The tax rate structure, with a top corporate rate of 35%, is changed to a flat 21% rate.

Pass-through entities: The new law allows pass-through entities—such as partnerships, S corporations and limited liability companies (LLCs)—to claim a 20% deduction on earnings, subject to certain restrictions.

Section 179 deduction: The new law doubles the maximum “expensing” allowance from \$500,000 to \$1 million and increases the phaseout threshold from \$2 million to \$2.5 million.

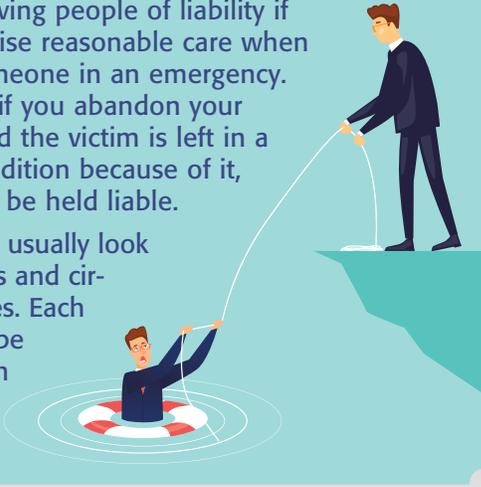


Are You a Good Samaritan?

If you see someone in danger, should you come to that person's rescue? This raises both moral and legal issues.

Most states have passed "Good Samaritan" laws, relieving people of liability if they exercise reasonable care when aiding someone in an emergency. However, if you abandon your efforts, and the victim is left in a worse condition because of it, you might be held liable.

The courts usually look at the facts and circumstances. Each case may be decided on its own merits.



Bonus depreciation: The first-year bonus depreciation, which was 50% for 2017, is doubled to 100% for property placed in service after September 27, 2017, subject to a gradual reduction after five years.

Luxury cars: The new law raises the caps on depreciation deductions allowed under the "luxury car" rules.

Section 199 deductions: The new law repeals the Section 199 deduction for qualified domestic production activities.

Corporate AMT: The corporate AMT is repealed.

Entertainment deductions: The deduction for business-related entertainment is repealed.

Family and medical leave credit: The new law creates a new credit of up to 25% for family and medical leave wages.

Interest deductions: Deductions for business interest expenses are capped at 30% of AGI, subject to certain special rules (with an exception for certain small businesses).

International taxation: A complex new tax regime applies to foreign earnings of U.S. corporations.

The new tax reform law includes numerous other changes that will affect individuals and businesses. Obtain professional tax assistance. 📁

NO END TO SEXUAL HARASSMENT CLAIMS

(continued from front page)

provide that an employer will be held responsible for the unreasonable acts of its employees, regardless of whether the acts were authorized or forbidden and whether the employer knew, or should have known, of the occurrence.

How does an employer determine whether the behavior is reasonable? This can be troublesome. For instance, there may not have been any witnesses to the alleged event (or series of events), or the witnesses could be biased. In some cases, the worker making the complaint may have even encouraged the conduct. In others, the employee may have "gone along" out of fear or intimidation.

To avoid potential problems, employers should maintain an environment that is free of sexual harassment. In the event a claim occurs, follow these steps:

- ◆ Obtain a specific description of the event from both parties.
- ◆ Ask for the names of any witnesses.
- ◆ Collect all the other relevant facts (e.g., how long the conduct has been going on and whether the alleged victim has shown disapproval).
- ◆ Keep records of the meetings.
- ◆ Find out what course of action the alleged victim is seeking.
- ◆ Check to make sure that unwanted conduct has stopped.
- ◆ When it's appropriate, respond with action.

Finally, try to educate, or re-educate, all employees about sexual harassment issues. If your company has not yet established a grievance procedure for complaints, it should do so promptly. Spell out the policy in the company manual, and make sure employees understand it.

In this case, it is far better to be safe than sorry. Do not think that sexual harassment cannot occur at your company. Take the necessary steps for a speedy resolution. 📁



FIVE LEGAL ISSUES FOR STARTUPS

Are you starting a new business venture? There are many practical considerations from a legal perspective. The following five issues deserve your immediate attention:

1. Form of ownership: One of the first decisions you will make is the form of business ownership. Typically, you must choose between operating the company as a C corporation, S corporation, partnership, limited liability company (LLC) or, if you are on your own, a sole proprietorship.

Notably, C corporations, S corporations and LLCs provide protection against liability from creditors. In addition, taxes may be a major factor, especially in light of the new tax law changes involving lower corporate tax rates and deductions for pass-through entities (see page 2). Obtain expert advice for your situation.

2. Place of incorporation: You may choose to incorporate your company in the state of your main location or in a state such as Delaware, which promotes favorable rules for businesses. Consider all the costs and tax ramifications of being incorporated in Delaware versus the main place of your business.



3. Structure of ownership: For most corporations, the simplest ownership structure requires you to issue full-vested shares of stock for a designated price. But this approach is not always preferred if you are seeking financing from outside sources. In that case, you might impose vesting restrictions. Discuss the alternatives with your legal adviser.

4. Intellectual property: Does your company have a “secret sauce” or other recipe for business success that will set it apart from the competition? Protecting your brand is vital to the growth of the company. There are various legal means of protecting intellectual property, including use of patents, copyrights, trademarks and domain names. Furthermore, have employees sign agreements concerning trade secrets of your company.

5. Recordkeeping: Keeping good records is essential to avoiding legal battles and winning the ones you are forced to fight. As your business gets off the ground, resist the temptation to do things informally. The time spent documenting actions and business relationships, including contracts and other agreements that establish responsibilities and obligations, is time well spent.

Do not overlook these important issues and related legal matters. Do things right from the start. 📌

BRIEFS

◆**Turn for the Worse**—Is a good worker suddenly starting to slip up? In a new case, an employee received favorable reviews, but then his performance began to wane. He was issued written warnings and received instructions on how to improve. Subsequently, the employee applied for promotions and transfers that were denied. When he sued for discrimination, the company prevailed because it had documented his work performance.

◆**What Women Want**—A pregnant female employee and her boyfriend worked at Chipotle. When her boyfriend was fired, the woman was removed from the schedule. The restaurant said it had assumed that she did not want to work there anymore, but she sued for sex discrimination. Now the Minnesota district court has ruled this action could be discriminatory and is allowing the case to proceed.

◆**Facility Access**—Does your business impose a rule that its restrooms can only be used by employees? This may be in violation of state law requiring public access to facilities. Not only could this hurt your standing with customers or clients, it could result in a hefty fine. Municipalities may apply similar rules. Check into the status for your business locations in the appropriate states.

◆**Portability Power**—The new tax law increases the federal estate-tax exemption to \$11.2 million (see page 2) without removing other estate-tax benefits. **For example:** Under the “portability” provision, if certain requirements are met, an estate can utilize the unused portion of the exemption from a deceased spouse. This creates an effective tax shelter of \$22.4 million for a couple. Make arrangements to maximize the benefits.