

ISSUE ALERTS

CONFIDENTIAL SEXUAL HARASSMENT SETTLEMENTS NOT TAX-DEDUCTIBLE

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Employers' costs to resolve "sexual harassment" or "sexual abuse" claims may have effectively risen with passage of the Tax Cuts and Jobs Act of December 2017. Now, if an employer includes a non-disclosure agreement as part of settling one of these claims, neither the settlement payment nor the attorney's fees related to the settlement are tax deductible as a business expense.

UNANSWERED QUESTIONS

This provision appears to have been motivated by the number of sexual harassment and abuse claims coming to light. But while its purpose is clear, many questions remain about the finer details of implementation. For example:

- What happens to the tax deduction if the settlement or payment is for multiple claims, only one of which is sexual harassment?
- What is the scope of "any settlement or payment related to sexual harassment or sexual abuse?" For example, does it apply to severance pay for a terminated harasser?
- Whose attorney's fees are non-deductible - just the company's or also those incurred by the harassment victim?

While awaiting further IRS clarification on this provision, employers should take the opportunity to review their training, policies, and reporting process related to creating a harassment-free workplace. In the current environment, every employer is at risk. However, implementing anti-harassment training, creating sound policies to prevent and manage the potential for harassment, and consulting with employment law professionals can greatly help organizations understand and prepare for a potential claim. And if you are faced with a claim or demand related to sexual harassment, get competent legal advice before discussing settlement or payment.

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For more information on this topic or other employment, HR, and labor law matters, contact **Boyd Byers**, Foulston Siefkin's Employment and Labor Practice Group Leader, at 316.291.9716 or **bbyers@foulston.com**.

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