

## New tax law has twist for employers settling harassment claims



Karina R. Conley | Thursday, January 4, 2018

Among the many changes in the new Tax Cuts and Jobs Act is a little-noticed provision that is a clear nod to the current sexual harassment firestorm. The act includes a provision that directly impacts employers settling sexual harassment claims.

A small provision of the new law provides that employers can no longer deduct from business income “any settlement or payment related to sexual harassment or sexual abuse if such settlement is subject to a nondisclosure agreement.” Employers are also no longer able to deduct any attorney’s fees related to such a settlement or payment. Previously, employers could deduct both settlement payments and legal fees from sexual harassment claims as business expenses.

This means that if a nondisclosure provision is included in a settlement agreement involving sexual harassment or abuse claims, the employer cannot deduct the monies paid as settlement proceeds or attorney’s fees from business income. In matters where multiple claims are made, employers might also want to consider specifically allocating some of the settlement proceeds to non-sexual harassment claims or entering into a separate agreement for the sexual harassment claims.

No matter what, employers should carefully plan and prepare any settlement agreements in light of this provision in the new law.



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