



Settlements of Sexual Harassment or Sexual Abuse Claims are no Longer Considered Tax-Deductible Business or Trade Expenses

President Trump signed the Tax Cuts and Jobs Act into law on December 22, 2017. Recognizing the #MeToo movement, the new tax law denies tax deductions for settlements or payments related to sexual harassment or sexual abuse claims if the settlement is subject to a confidentiality requirement. Section 162(q) of the Internal Revenue Code now provides:

No deduction shall be allowed under this chapter for--

- (1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or**
- (2) attorney's fees related to such a settlement or payment.**

Before the new tax law, such payments were considered "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." Now, such payments are akin to a non-deductible fine or penalty, e.g., an OSHA penalty.

Therefore, when settling sexual harassment or sexual abuse claims, employers must now consider: (1) requiring a confidentiality provision, or (2) deducting the settlement payment and related attorney's fees as a business expense. Employers can no longer do both.

Please contact a member of our Firm's Labor & Employment law or Business practice group if you have questions.



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