



#metoo Impact Reaches New Tax Law

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Allegations of sexual harassment occurring for years or even decades have roiled the news in 2017. Some argue that settlements of these issues that required the parties to maintain confidentiality have protected repeat offenders. While there are often legitimate reasons for the confidential settlement of disputed claims, the heightened scrutiny of harassment issues has led to questions about whether settlements of such claims should be confidential.

This debate has made its way into the recently-signed Tax Cuts and Jobs Act. For businesses, many lawsuit settlements would be deductible as a business expense. However, under a provision in the new tax law, no deduction would be available to the business for settlement of a sexual harassment or abuse claim if the settlement agreement required the parties to keep the matter confidential. In addition, attorney's fees related to such a settlement would not be deductible to the business. The provision does not outlaw confidential settlements. But it will arguably make settlement with confidentiality more expensive for employers.

Some believe this provision will be largely symbolic. The thought is that the impact to the business of foregoing the deduction may not outweigh the value of confidentiality. But symbolic or not, the provision underscores the intense attention being focused on the issue of sexual harassment, an issue that employers ignore at their own peril.

If you have questions about this alert, please contact your Lathrop Gage attorney or the attorney listed above.