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What employers need to know now about the new tax law

The new tax law passed this winter has been very controversial for a number of reasons. Critics say it's going to increase the federal deficit by $1.5 trillion and its benefits are going to flow primarily to huge corporations and the very wealthy. Others say it'll fuel economic growth with more business investment and hiring. But what hasn't been talked about as much is how its provisions could impact the workplace and employers' practices.

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One big change comes in the area of employee sexual harassment claims. Until now, employers who settled such claims could deduct the amount they paid the accuser from their taxable income, even if the settlement was to be kept confidential under a nondisclosure agreement.

The tax bill eliminates this deduction. The idea behind this change is to discourage confidential settlements of sexual harassment claims. If employers settle these claims knowing that the public won't find out about what happened and how much they paid, the feeling is that they won't have much incentive to address the issue in the workplace. On the other hand, if they know they won't be able to deduct the costs of these settlements, presumably they'll be more likely to take a proactive approach to stop such behavior in the first place.

It's always been an employer's responsibility to have good policies in place to address this issue, but it's more important than ever with the new law, so it's a good idea to talk to an employment lawyer and review your own policies to make sure you're doing everything you can to prevent such misconduct.

Another big change is the new "paid leave credit." Under the Family and Medical Leave Act, workers at companies of a certain size are entitled to 12 weeks of unpaid leave each year to deal with personal illness or

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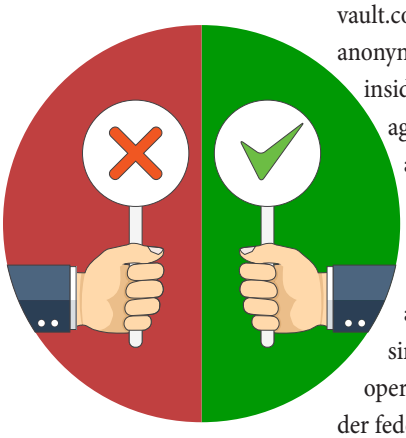
Calif. employers can sue workers for online defamation



In recent years, websites like glassdoor.com and vault.com have given workers an online forum to write anonymous reviews of their employers, providing an insider take on salaries, working conditions, management style and anything else a prospective job applicant might want to know.

A lot of times an employer might receive negative reviews that it thinks are unfair. But traditionally employers have had little recourse against employees who post nasty comments, since the postings are anonymous unless the site operator discloses the poster's identity. Further, under federal communications law website operators are generally shielded from liability for what people post, and they've cited the First Amendment and privacy grounds as justification for refusing to identify those who make defamatory comments.

However, a recent ruling from a state appeals court in California shows that the door may be opening a little bit for employers.

In that case, current and former employees of a tech company slammed the company and its management on glassdoor.com.

The company wanted to sue the posters for defamation and asked a court to order glassdoor.com to hand over information identifying them. A trial court judge denied the request and threw out the defamation claim.

But the California Court of Appeal reversed the decision and said that a website operator can be ordered to provide the identity of online posters if the employer can establish that the comments meet the standard for "malice" under defamation law. In other words, the employer would need to show the comments were both false and injured the employer's reputation.

This is still a high bar for employers to meet. They have to establish that the statements in question are objectively, factually false, and not just statements of opinion that the employer disagrees with or that hurt the employer's feelings. That means statements like "lousy management," "awful communicators" and "unfair bosses" aren't enough.

This is also just one ruling from one state. But if current or former employees are spreading false and damaging information about your company online, it's worth a call to an employment lawyer to see what your options might be.

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Suit over workplace comments can go forward in part

It's a popular misconception that "freedom of speech" protections in the Constitution mean that you can say whatever you want in any circumstance and not have to deal with negative fallout. The truth is, your First Amendment rights protect you from being arrested, prosecuted, fined or imprisoned for things you say. But if you're a worker expressing opinions at work that others find objectionable, don't count on the law necessarily protecting you from employment consequences.

If you're an employer, be aware that in certain contexts you can get in hot water for taking action against an employee over what he or she says, especially if it's political, so talk to a lawyer before taking action.

Take the case of Kimberly Collins. She worked for a hotel in Charleston, S.C., for nearly 30 years and had been promoted multiple times. In the aftermath of protests over the death of an unarmed black man who'd been shot and killed by Charleston police, Collins, who is white, apparently voiced to three African-American supervisors her negative opinions about the protests, race relations in general under President Barack Obama and the diversity training hotel employees had to undergo.

The supervisors told Collins's direct boss about the conversation, complaining not just about what she said but also about her allegedly belligerent, hostile tone, which apparently included wagging her finger in a coworker's face.

Her boss suspended her before firing her, telling her that he couldn't have her voicing political opinions in the hotel.

Collins sued, citing state law barring employers from firing workers for exercising "political rights and privileges" and federal laws protecting employees from race discrimination (she claimed she was fired in part because she was white). The employer countered that it wasn't what she said or her race that got her fired, but rather her "rudeness, insubordination and disrespect" toward superiors while saying it.

A federal judge threw out the federal claims, saying Collins did not make out a case that she was fired based on her race. But he ruled that the state-law claims could proceed, although there's no guarantee they'll go anywhere with a jury.

Either way, however, this case is a good reminder for employees to use good judgment when discussing controversial issues at work and for employers to seek legal counsel before disciplining an employee who engages in such discussions.

What employers need to know about the new tax bill

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take care of a sick family member. Under the new tax law, employers who offer paid leave instead can take a tax credit on a portion of the wages they pay to workers on leave as long as they're paying these workers at least 50 percent of their normal wage. Obviously, the purpose is to encourage companies to offer paid family and medical leave without forcing them to do so. However, employers should note that this credit will only be available for two years before Congress takes another look at it.

A third major change is the elimination of the deduction employers have been taking for subsidizing their workers' commuting costs. Before the new law, companies could provide parking and transit passes of up to $225 per month for their employees and then deduct these costs from their corporate taxes. But that's no longer true. The logic behind this change is that many employers are getting a big corporate tax cut so they no longer need smaller individual deductions like this that make the Internal Revenue Code more confusing.

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Employers that have been taking the deduction on employee commuting costs may now decide not to cover these costs anymore, leaving it up to employees — who can pay for commuting costs with pre-tax income — to cover these expenses themselves. That could lead to employees wanting more pay to replace this lost benefit.

This is all just the tip of the iceberg. Other provisions could potentially impact employer operations too. Talk to an employment attorney where you live to learn more.

Thin line between 'social networking' and solicitation

LinkedIn is probably the most popular social media site for connecting with other professionals. That's because users provide only work-related information on their pages, such as skills, experience, certifications and networking groups. As a result, people have felt comfortable connecting with pretty much anyone in order to increase the size of their networks.

But a recent Illinois case demonstrates that some employers will try to take action against professionals over whom they connect with on LinkedIn if they feel their own interests are at stake.

In that case, insurance executive Greg Gelineau left his job in 2015 with a company called Bankers Life to work for a benefits company, American Senior Benefits, that apparently was considered a competitor.

Gelineau wanted to continue networking with people he got to know at Bankers Life and sent generic "invitation to connect" emails through LinkedIn to his former coworkers.

Bankers Life sued him, accusing him of violating a "non-solicitation" provision in the employment contract he'd signed when he worked for them. In that provision, he promised Bankers Life that for 24 months after leaving the company he wouldn't seek to lure any other employee away.

According to Bankers Life, the LinkedIn invitations Gelineau sent to former colleagues constituted an attempt to recruit them to ASB. Bankers Life's evidence was that individuals who got his invitation could follow a link to his profile page, where they'd see ASB job postings.

Gelineau countered that he never sent anyone a direct message. He merely used LinkedIn to send generic "invitation" email messages to everyone in his contacts.

A judge threw out the suit.

Bankers Life appealed, but the Illinois Court of Appeals upheld the ruling, finding that the invitations sent from Gelineau's LinkedIn account were simply "passive social media activity" and that there was no targeted activity, like direct messages, that would constitute actual solicitation.

Other courts that have addressed this issue have ruled in similar ways. So, employees should feel safe connecting with old colleagues on LinkedIn but should be aware of when the line is crossed. If you as an employer are really that worried that LinkedIn contacts will cause a major exodus of valued employees, you can always talk to an employment lawyer about tightening up your non-solicitation agreements to more explicitly cover social media.

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Employer can't stop employees from taking selfies at work


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An employer cannot ban all audio and video recording in the workplace, a federal appeals court recently decided.

In the case in question, cellular giant T-Mobile included several controversial rules in its employee handbook, including a rule encouraging a "positive work environment," a rule prohibiting arguing and failing to demonstrate "teamwork," and a rule prohibiting all photography and audio/video recording without prior permission from management, HR or legal.

A communication workers' union challenged these rules before the National Labor Relations Board, arguing that they violated federal labor laws by unreasonably stopping workers from engaging in "protected concerted activity." In other words, the union claimed the rules would prevent employees from engaging in the right to organize and take collective action over wages and working conditions that they might find unfair.

The NLRB agreed with the union, finding all the rules were illegal. T-Mobile appealed to the Fifth Circuit, which agreed with the employer that rules demanding teamwork and a positive work environment were OK as "common sense civility guidelines." But it agreed with the NLRB that the audio/video rule violated labor laws.

Since the rule banned all audio and video recording, the court said, it would unreasonably discourage protected activity, such as an off-duty employee taking a photo of a wage schedule on a corporate bulletin board.

This ruling doesn't mean that all rules restricting audio or video recording in the workplace are unlawful. But it's a reminder that if you do want to limit recording and you have legitimate reasons for doing so, you should talk to an employment lawyer about crafting a policy that won't violate the law.