

Labor & Employment Law Tidbit Series: Tax Reform Impacts Settlement of Harassment Claims

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As we welcome the new year, we remind you that effective January 1st the Puerto Rico tax reform introduced by Act 257 of 2018 impacts the tax treatment of settlement payments made by employers in harassment claims. This amendment provides that employers will no longer be allowed to reduce from their taxable gross income any indemnification payments and related legal fees made in harassment cases, if they are subject to a non-disclosure agreement (“NDA”). Therefore, employers in Puerto Rico are advised that if they intend to tie such indemnification payments to an NDA from the employee, they should first consider the tax implications of an NDA requirement.

Be advised that this amendment to the P.R. tax code disallowing the deduction of payments tied to NDA’s is not limited to indemnifications for sexual harassment claims. That is, it applies to all types of harassment indemnification payments under the P.R. and U.S. laws, such as payments related to harassment claims based on age, sexual orientation, gender identity, nationality, disability, religious beliefs, or other protected categories under P.R. and/or U.S. laws.

We strongly encourage employers to renew their L&E compliance programs. Updated trainings on sexual and other forms of harassment and the implementation of anti-retaliation protocols should become a priority for all employers in 2019.

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