

Legal Matters®

How to address workplace misbehavior in the #MeToo age

Sexual harassment and other forms of sexual misconduct has been front and center in the media for months now. Reports of film mogul Harvey Weinstein’s conduct, followed by reports of similar behavior from other famous and powerful men in entertainment, politics, sports and business, have sparked a new awareness and intolerance for conduct that crosses the line.

Meanwhile, the #MeToo movement has empowered victims to come forward and report misbehavior.

This has implications for employers. Sexual harassment has been considered a form of illegal discrimination for several decades and employers have long been expected to take allegations seriously. But now there’s an even higher expectation that employers will actively address workplace sexual misconduct and proactively take steps to make it less likely to occur in the first place. Employers who fail to do so risk negative publicity, legal liability and the serious financial fallout that can follow.

So what can employers do? Here are some ways to get started:

► *Foster and maintain an inclusive culture*

Though nothing can guarantee problems will never arise, employ-



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ers that maintain a culture of mutual respect among workers are less likely to be vulnerable to sexual misconduct and other types of harassing or discriminatory conduct within their ranks. This means training your entire workforce. The best kind of training involves realistic situations that are relevant and specific to your work environment. Training also must be done frequently — once a year at the

continued on page 3



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Make an estate plan for your digital assets

Today, 77 percent of Americans go online every day, according to a recent Pew Research Center survey, and most of us maintain at least some kind of digital data in the cloud. We save emails, post to social media, and store photos in online albums.

All of this digital information has created a new issue for you, your heirs, and the technology firms that hold your assets. The key concern is maintaining your privacy and security and determining who can legally access this information upon your death.



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A statute called the Revised Uniform Access to Digital Assets Act provides a legal path for fiduciaries (such as your executor or attorney-in-fact) to manage your digital assets if you die or become incapacitated. But under the law, which has been adopted (often in slightly modified versions) by most states, a fiduciary can access your digital assets if, and

only if, you've given proper consent.

What are digital assets?

Digital assets include your online accounts, your emails, your social media, online photo storage, personal websites or blogs, URLs you own, and more.

What's the concern?

Even though many digital assets have no value, you may want some control over what happens to them when you die. Think about whether you want your assets deleted, modified, or distributed to family.

Until the uniform law was enacted, it was difficult to know who had a legal right to access these accounts and files. Some user agreements indicate that these assets

are non-transferrable, meaning they are either untouchable or can simply be deleted when you die.

Beyond privacy issues, some digital assets do have value. Frequent flyer points are transferrable after death, credit card points can be redeemed, and URLs may be saleable.

What's your legal protection?

Under the uniform law, your family members or executor can't access your digital assets just because of your relationship. Other users, including family members, need express authorization to access your accounts and information.

How can you ensure your executor and/or family have access?

Insert a provision in your will that grants your executor the authority to access digital assets and accounts. If you want someone other than your executor to access your digital assets, you can appoint a special fiduciary for that specific purpose.

Add language that grants your power-of-attorney authority to act on your behalf in terms of digital assets.

Inventory your digital assets and provide your executor with the necessary passwords. Some online password managers can be set up to transfer passwords to a representative on your death.

Designate a digital guardian in any online tools that offer such a feature, such as Facebook's "legacy contact" and Google's "account trustee." This is someone who will look after your account after you've died. Be aware, however, that under the uniform law any such settings will override conflicting instructions you leave in your will.

Housing hunt: Should parents buy off-campus property?

A college town can be a good place to own rental property. Students are continually rotating through, and even faculty can be a transient group in need of temporary places to live. With dorm costs rising and space at a premium in certain college towns, some parents are investing in off-campus property as a way to manage costs and ensure their student has reliable housing.

Buying property can cost less than dorm living or renting, but the math varies by market. A 2017 study by Redfin calculated that monthly mortgage payments were less expensive than renting a dorm room at 47 of 195 public colleges studied.

Homeownership can be a great way to build wealth, and many college towns offer attractive investment op-

portunities. What's more, owning a property ensures your student has an established, safe place to live from year to year. Before you invest, consider these factors:

Run the numbers. Investors who plan to sell in just four to five years may have a harder time recouping closing costs compared to buyers who are in it for the longer haul.

Check your school's housing rules. Many schools require students to live on campus for a year or more and some scholarship packages may come with an on-campus requirement.

Hire a property manager or maintenance person. Unless your student is comfortable with these tasks, it's best to hire someone to handle them. Recog-

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continued from page 1

very least — and constantly modified to stay fresh, engaging and relevant to the realities of a changing workplace. This sends a message that an inclusive, tolerant culture is important to the company. A good lawyer can either provide such training or direct you to good training resources.

► *Provide multiple channels for workers to report inappropriate behavior*

One of the biggest obstacles to combating workplace misconduct is workers' reluctance to report it, either because they fear retaliation or they are uncomfortable with the designated manager to whom they're supposed to report. One way to combat this is by having multiple individuals designated as appropriate people for reporting incidents of harassment. This increases the odds that the employee will feel safe reporting misbehavior.

► *Evaluate your workplace for risk factors*

Certain workplace dynamics can increase the risk of sexual misconduct as well as racial, ethnic or other forms of harassment and discrimination. For example, cultural and language differences in the workplace can potentially create tension, as can gender and age imbalances. "Work hard, play hard" workplaces that hold a lot of alcohol-fueled events also create obvious risk factors.

A diverse workplace in terms of age, race,

gender, sexual orientation and socioeconomic background, or a lively, fun workplace that offers social outlets, obviously isn't a bad thing. Diverse companies and companies where workers have a chance to bond are stronger companies, and of course it's illegal to make employment decisions that seek to maintain a racially, ethnically or sexually homogeneous workplace. But it's also important to be mindful of the tensions that can arise in any workplace setting.

► *Investigate quickly and thoroughly with the help of an attorney*

Employers get in trouble when they don't follow up on complaints. This means it's critical to investigate promptly and comprehensively any situation that comes to your attention. Doing so will minimize the risk of an unacceptable situation continuing to fester without your knowledge. It will also minimize the risk of that you will act too soon to discipline or fire the alleged perpetrator without having all the facts, which can also subject you to legal consequences. It goes without saying that anyone involved in conducting an investigation must be thoroughly trained and the investigation must be confidential. Enlisting an attorney to assist you is a great place to start.



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continued from page 2

nize that college kids can put a lot of wear on a place, and even if your child isn't a partier some damages occur simply due to youth and inexperience.

Work with a local lawyer. Hire an attorney to ensure your plans are in line with local zoning laws, such as renter limits or prohibitions against short-term rentals. Talk to an advisor about tools to manage liability and risk, including purchase structure, lease agreements, tenant screening and insurance.

Have frank conversations about the possible downsides. Your student may have to navigate some tricky interpersonal challenges as a landlord, roommate, and friend. Plus, leaky faucets, icy sidewalks and broken appliances can all create added stress and

complications for a young person with homework due.

Document financial agreements. Decide who will reap the financial risks and rewards of property management. Is this an investment opportunity for you or your child? Who will keep any cash flow after expenses are paid? If planning the property as a gift or loan, talk to a lawyer to avoid future legal issues and gift/estate tax implications.

Of course, it goes without saying that you'll need to take your child's personality and track record into account. Property management can be a great way for a young person to gain life experience, but parent-child relationships may be strained over the expectations and responsibilities that come with such an investment.

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Should you change your business structure after tax reform?

Following the enactment of the Tax Cuts and Jobs Act, many businesses are wrestling with whether to change their company structure.

The issue is whether to shift to a C corporation, which pays business taxes, or to remain a pass-through company, which pays taxes through the owners' individual returns.

Although taxes are not the only concern when choosing a company structure, they can be a deciding factor. The new tax bill cut the maximum corporate tax rate to 21 percent, down from a top rate of 35 percent.

However, most small businesses don't qualify for that reduced rate. That's because pass-through entities, which include LLCs, sole proprietorships and S corporations, are taxed at the owner's personal rate. And while personal tax rates also dropped, they can still be as high as 37 percent.

But the math isn't that simple. Many pass-through firms are eligible to deduct 20 percent of their income, effectively reducing their top rate, although the deduction phases out for service businesses and others generating more than \$157,500 in individual income.

Immediate tax savings are not the only numbers that should factor into calculations. Owners should also consider how soon they expect to sell. Pass-through entities offer tax advantages at the time of sale, while gains from the sale of a C corporation may be subject to both corporate and individual taxes.

If you do switch from an S corp to a C corp, you'll have to wait five years to switch back again. Then, for five years after you return to an S-corp, gains tied to the C-corp's assets will be taxed twice upon a sale.

The new law gives some businesses tax breaks, but the calculations aren't simple. Deductions available to some businesses are not available to others. Other factors such as dividends, losses and estate planning may also impact your decision. There's no one size fits all answer. Consult an attorney to review the new tax rules and the specifics of your business operation.

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