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North Dakota
EMPLOYMENT LAW LETTER

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SEXUAL HARASSMENT

Of Matt Lauer, Al Franken, and #MeToo

by Lisa Edison-Smith

Sexual harassment isn't a new concept, in society or in the workplace. Title VII of the Civil Rights Act of 1964 outlawed discrimination in employment based on race, sex, color, national origin, or religion before many of our readers were born.

Even though there was debate in those early days about whether discrimination based on sex encompassed sexual harassment, the issue was definitively decided by the U.S. Supreme Court in 1986, in the case of Meritor Savings Bank v. Vinson. Harassment of women (and men) based on sex—whether through unwelcome advances or a hostile work environment—was unlawful. Employers responded by adopting sexual harassment policies and conducting training, and we assumed the problem went away, right?

Well, not exactly, as made clear by the recent spate of firings and resignations of high-profile men based on sexual harassment allegations ranging from vulgarity and sexual innuendo to assault. It seems that despite all the training, bad behavior continued—in some cases, seemingly unchecked.

So, what's next? What steps should prudent employers take to deal with this ever-evolving national flood of accusations?

A brief history lesson

Most employees working in the United States today have grown up in an era during which discrimination based on sex has always been illegal.

In the minds of activists, the Civil Rights Act ushered in a vision of an era of new opportunities for women in the workplace. No longer could women lawfully be terminated from employment or denied workplace opportunities simply because they became pregnant, got married, or weren't part of the traditional male power structure.

In this new era, women flocked to the workplace out of a desire for fulfillment or economic necessity. But this influx of women upset the balance of power in the traditionally male-dominated workplace, resulting in cries from women of sex-based harassment that took forms previously unrecognized by the courts.

Nowhere was this culture of male domination believed to be more widely prevalent than in Hollywood. The legendary "casting couch" predated the Civil Rights Act. Many a starlet was rumored to have been subject to unwelcome sexual advances, comments, and discrimination (both overt and covert) as part of the price of stardom.

But in 1986, the Supreme Court officially recognized that sex discrimination outlawed by the Civil Rights Act included not only traditional refusal to hire or discrimination in wages against

AGENCY ACTION

EEOC launches respectful workplace training program. The Equal Employment Opportunity Commission (EEOC) announced in early October 2017 two new training programs for employers: Leading for Respect (for supervisors) and Respect in the Workplace (for all employees). The training programs focus on respect, acceptable workplace conduct, and the types of behavior that contribute to a respectful and inclusive workplace. The programs are customizable for different types of workplaces and include a section for reviewing employers' own harassment prevention policies and procedures. The training program is an outgrowth of the Report of the Co-Chairs of the EEOC's Select Task Force on the Study of Harassment in the Workplace. "We always said the report was just a first step," said EEOC member Victoria Lipnic, who is a coauthor of the report. "Implementation of the report's recommendations is key. These trainings incorporate the report's recommendations on compliance, workplace civility, and bystander intervention training."

Pension agency launches pilot mediation project. The federal Pension Benefit Guaranty Corporation (PBGC) has announced a new pilot program to offer mediation in certain Termination Liability Collection and Early Warning Program cases. The PBGC's pilot project will allow parties to resolve cases with the assistance of a neutral, independent dispute resolution professional. The project is part of the agency's ongoing efforts to make it easier for sponsors to maintain their pension plans. "We want our customers to know we're listening to them, and we want to improve their experience in working with us," PBGC Director Tom Reeder said of the project, which was announced on October 16. "By providing an alternative dispute resolution option for employers who sponsor ongoing and terminated plans, we expect to save time and money for both the government and our stakeholders."

Labor secretary announces apprenticeship task force. U.S. Secretary of Labor Alexander Acosta has announced members of the President's Task Force on Apprenticeship Expansion. The task force membership represents companies, trade and industry groups, educational institutions, and labor unions. President Donald Trump earlier issued the Executive Order Expanding Apprenticeships in America, which called for the task force. Apprenticeships provide paid, relevant workplace experiences and opportunities to develop skills that job creators demand. The mission of the task force is to identify strategies and proposals to promote apprenticeships, especially in sectors where apprenticeship programs are insufficient. Acosta is chair of the task force. Vice chairs are Betsy DeVos, secretary of the U.S. Department of Education, and Wilbur Ross, secretary of the U.S. Department of Commerce. ✤

women but also unwelcome sexual advances or sexually charged conduct that created an objectively hostile workplace.

In the 1990s, the sexual harassment cause matured. Through many high-profile cases—such as *Jenson v. Eveleth Taconite Co.*, *Harris v. Forklift Systems,* and the well-known *Faragher* and *Ellerth* cases, employers were instructed that to avoid costly sexual harassment liability, they must provide adequate policies banning such harassment and meaningful reporting procedures to ensure that violators were stopped.

As a result, a whole cottage industry of training videos, online harassment training, and live training presentations developed. The training emphasis peaked when California and other states adopted minimum training requirements for employers.

So what went wrong?

With all of the attention paid to sexual harassment and the emphasis on training over the past 30 years, what went wrong? Why now—31 years after the Supreme Court's decision recognizing the ban on sexual harassment in *Meritor*—are employers still dealing with the #MeToo campaign and seemingly unending revelations of sexually inappropriate behavior by everyone from iconic *Today* show host Matt Lauer to Minnesota Senator Al Franken?

Judging by today's furor, one might conclude that the training of the 1990s and 2000s never happened—or at least that for some, it missed the mark. Was no one listening when all that training occurred? Given these disclosures, what are some of the important action points for employers responding to this highly charged climate?

The primary lesson is that no matter what sort of glossy brochures or PowerPoint presentations you put together banning offensive behavior (whether based on sex, gender identity, race, religion, or any protected characteristic), the proof remains in the pudding, so to speak. Having well-developed policies and slick online training will improve the workplace environment only if you have the moral courage and willingness to root out discrimination and harassment at its highest levels—that means from the executive suite to the shop floor.

Without commitment from the top down, almost any anti-harassment or respectful workplace initiative is doomed to fail. "Do as I say, not as I do" simply won't cut it in eradicating what can be deeply entrenched but highly offensive and costly workplace attitudes.

What to do now

First, understand the environment in which we live. With the increased spotlight on harassment (particularly sexual harassment), employees are much more likely to understand and perceive conduct as harassing and to feel empowered to complain about it. Frankly, that's a good thing. Your objective should be to create a culture in which harassment, discrimination, and bullying—even when subtle—aren't tolerated.

To create this sort of culture, consider the following:

- **Review and update your policies as necessary.** Dust off those old policies, and make sure that they adequately and clearly communicate what's expected, what's prohibited, and how to report offensive conduct.
- **Revitalize your training programs.** If you haven't been conducting harassment and respectful workplace training, this is the time to start! If you have, but it's gotten a bit shopworn, rethink it. Is that online module that you have used for five years really translating into respectful behavior and getting across your zero tolerance message? Start with management training for everyone, including the executive suite, and extend training to all employees, but particularly supervisors.
- **Respond promptly to complaints.** Any time an employee complains about workplace harassment, you need to be prepared to respond appropriately. Have a process already in place so that you don't waste precious time inventing one. Define in advance who will respond to complaints, conduct investigations, and emphasize measures to protect employees from retaliation and maintain confidentiality (to the extent possible).
- **Don't look the other way.** It can be hard to confront uncomfortable allegations of sexual or other harassment under the best of circumstances. But when the allegations are against the company's best salesperson, board chair, or regional president, it can be even harder. However, you will create a culture of respect for all employees only by clearly communicating that no one is exempt from behavioral expectations. Take heed, and avoid costly and very public complaints.

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NONDISCLOSURE AGREEMENTS

Revisiting employment agreements in the age of Weinstein

With all the recent sexual harassment and assault scandals in Hollywood, Washington, high-profile boardrooms, and even public television and radio, many are asking how these things could have been going on in secret for all these years. The answer, in many cases, is that the employer had some sort of contractual agreement with the alleged victims that basically guaranteed their silence.

For example, nondisclosure agreements (NDAs)—and similar nondisparagement clauses—can appear in many types of employee-employer agreements. Some—such as employment contracts and noncompete/confidentiality agreements—are entered into before the employee is even a twinkle in the harasser's eye. Employment contracts can also contain mandatory arbitration clauses, which limit an employee's ability to sue for workplace violations.

Agreements executed as part of a settlement of harassment or other workplace complaints also frequently include a nondisclosure component and/or a waiver of civil claims.

Why reconsider these agreements now?

It appears many of the women (and some men) who have come forward recently with stories of harassment and abuse at the hands of powerful men are doing so in breach of an NDA. For example, it's been reported that accusers of both Harvey Weinstein and Representative John Conyers breached decades-old NDAs to bring sexual misconduct to light. Several other women who worked for Weinstein initially demurred when contacted by reporters, citing general NDAs they signed when they first started working for the company. Gretchen Carlson of Fox News was reportedly also bound by a mandatory arbitration clause in her employment contract.

Which leads one to ask: With the apparent cultural shift toward holding harassers more accountable for their actions, are strict NDAs and mandatory arbitration clauses still a good idea? The answer will likely vary based on the employer and the circumstances.

In general, we suggest that employers that use these types of restrictions reevaluate their desirability in light of the current climate. What is it you are trying to accomplish with an NDA or mandated arbitration? When and for what purposes do you (or should you) use one? Exactly what information and/or legal avenues are you trying to restrict? Who are you trying to protect, and what are you trying to protect them from? Are there disclosures you want to specifically prohibit (such as to the press) or allow (such as to the police)?

Bottom line

Using employment contracts and other binding agreements to restrict employees' future legal rights was tricky even before the recent flood of harassment revelations. The practice is coming under even more scrutiny now. While the law may not have changed yet, the climate has. Plus, some lawmakers are already looking into restricting or eliminating the use of nondisclosure agreements and arbitration clauses in harassment situations.

We recommend taking action now to make sure your standard employment agreements will stand up to the heightened levels of scrutiny—not only in court but in the court of public opinion. Your attorney can help you craft a set of documents that extends the proper degree of protection to the employees involved as well as the employer.

Also keep in mind that even the best documents won't fit every situation. Loop your counsel in any time

an employee complains about serious harassment or misconduct. They can help you navigate the sensitive situation, evaluate the complaint, negotiate a potential settlement, and make sure your settlement documents provide the appropriate protections for the employer and the employees on both sides of the complaint. ✤

EMPLOYEE ILLNESS

Meeting (and exceeding) legal obligations to seriously ill employees

Few situations are more difficult for a caring employer than learning that an employee is facing a permanent disability or terminal illness. You've probably read plenty of articles about your obligations under the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA), but those laws cover only what an employer is legally required to do. Responsible HR professionals strive to go above and beyond to help struggling employees receive the full advantage of the benefits they offer.

Benefits during extended medical leave

One common scenario is when an employee has a disabling condition that prevents her from returning to work at the end of FMLA leave (or who isn't eligible for FMLA leave). The Equal Employment Opportunity Commission (EEOC) and many courts have taken the position that employers are required to offer disabled employees additional leave as a reasonable accommodation under the ADA if it would enable them to return to work. But what if an employee's doctors have no idea how long she will be off work? Or what if her diagnosis is terminal?

While the law generally allows you to terminate employees in those situations, employers often prefer to grant them an extended medical leave so they can maintain their group health coverage and other benefits. This is an admirable sentiment, but it's not without risks. Many insurance policies require employees to maintain a certain number of work hours or be "actively at work" to remain eligible for benefits. Plus, while coverage is guaranteed for the duration of FMLA leave, there is no similar protection for a non-FMLA medical leave.

By allowing an ineligible employee to keep her benefits, you run the risk of the insurance companies denying her claims. Because you never terminated the employee, you probably didn't offer her COBRA, either, and the time to do that may have passed. She could end up with huge medical bills and no way to get coverage, and you could be liable under COBRA or for a breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA).

To prevent this, fully insured employers should find out how long their carriers allow employees to retain their benefits while on medical leave. Some group health carriers, for example, allow up to a year as long as you have a written policy to support the practice. If your carrier has a shorter time frame, you may need to terminate the employee so she can elect COBRA in a timely manner. Be sure to consider how termination will affect the employee's eligibility for other benefits (more on this below), and contact your attorney before making a final decision.

If you're self-insured, you can generally choose how long employees stay on your plan, as long as you include the information in your plan document, summary plan description, and stop-loss contract.

Beware these tricky benefits traps

While medical coverage is considered the flagship of any employee benefits program, your other benefits can be just as critical. Here's a quick rundown of some things to look out for with other benefits:

- **STD.** Make sure the employee files for short-term disability (STD) benefits in a timely manner. Before letting employees supplement STD payments with other forms of paid leave, verify that the STD policy allows it.
- **LTD.** Long-term disability (LTD) benefits are typically available only to current employees (including those on FMLA leave and/or STD). Help employees file a claim before separation from employment if they qualify. In addition, make sure the LTD carrier has current salary information on file, preferably before the claim is submitted. That may determine the amount and duration of benefits available to permanently disabled employees.
- **Ancillary benefits.** Remind employees of any other coverage they may have, such as accident coverage, critical illness, and employee assistance programs. These are easily overlooked.
- **Life insurance conversion.** Make sure employees know about their conversion rights under your group and/or voluntary life policies. This is especially crucial for terminally ill employees. If the carrier doesn't provide a notice of conversion rights, add it to your offboarding package or checklist.
- **COBRA and state laws.** Provide notice to your COBRA administrator within 30 days after the employee's last day of work (or leave, if applicable). If you self-administer COBRA, issue an election notice to the employee within 44 days. If you're exempt from COBRA, check to see if there is a state continuation requirement that applies to you.

Final thoughts

Employers need a plan and process for helping employees in their time of need. That starts with a thorough

understanding of the benefits you offer, the eligibility and notice requirements for each type of benefit, any applicable deadlines, and other intricacies of your specific policies. By preparing now, you can prevent mistakes and oversights and hopefully ease a difficult situation for your employees and their loved ones. ✤

HEALTH INSURANCE

More employers can claim contraception exemption under new rules

The Department of Health and Human Services (HHS) announced recently that it was expanding the circumstances in which an employer can offer a group health plan that doesn't cover contraception. The action was taken in response to an Executive Order from President Donald Trump asking the agency to amend the contraception coverage regulations to promote religious liberty. New exemptions allow a wider range of employers to opt out of providing coverage for some or all types of contraception if they can demonstrate a religious or moral objection to doing so.

Some background

Few aspects of the Affordable Care Act (ACA) have been challenged as much in court or gone through as many regulatory shifts as the contraception coverage mandate. Originally, regulations required all health plans—including those offered by employers—to provide coverage of contraceptives at no cost to employees. This requirement has been chipped away over the years. The first changes took the form of a regulatory exemption for churches and an accommodation under which other religious organizations could opt out of providing the benefits. The accommodation process—under which employees who lost contraception coverage under an employer plan could obtain separate coverage free of charge through the carrier or a third-party administrator (TPA)—was later made available to some closely held corporations in response to a U.S. Supreme Court ruling.

But even with the exemptions, many religious organizations (and other employers) argued that the regulatory structure required them to be complicit in providing contraception to their employees in violation of their religious beliefs. Dozens of lawsuits were pending all across the country when the latest regulations were issued in early October 2017.

What's new

Under the new rules, an exemption from the contraception mandate can be claimed by:

- Any private employer (nonprofit or for-profit alike) that has a religious objection to contraception; and
- Nonprofit employers and non-publicly traded for-profit employers that have a moral objection to contraception.

Neither exemption is available to governmental employers (including public colleges and universities). However, both can

WORKPLACE TRENDS

Poll finds employers worried about reaction to pay disclosure rule. Half of companies polled about a new pay ratio disclosure rule say their biggest challenge is forecasting how employees will react, according to a poll by Willis Towers Watson. The rule requires companies to begin making CEO pay-to-worker ratio disclosures in early 2018. The poll also found nearly half of respondents haven't considered how—or if—they will communicate the pay ratio even though employees' reaction to the disclosure is their greatest concern. When asked whose reaction brings the most concern, half the companies cited employees. Twenty percent said they were most concerned about media reaction, followed by shareholders (16%). Few were concerned over the reaction of customers or CEOs.

Study finds employers acting to close retirement savings gap. A survey from Aon Hewitt, the talent, retirement, and health solutions business of Aon plc, shows that U.S. employers are taking steps to help workers save more and improve their long-term financial outlook. The survey of more than 360 employers, representing over 10 million employees, shows 401(k) plans are shifting in three key areas. (1) Company match: To encourage workers to save more, employers are boosting their match. (2) Automatic enrollment: Employers are defaulting employee contributions at a higher rate. (3) "Back-sweeping": Most employers automatically enroll only new hires, but many are taking action to ensure more workers participate in the plan. Currently, 16% of employers automatically enroll all eligible employees (also called back-sweeping) on an ongoing (annual) or one-time basis—double the percentage that did so in 2013.

Workers bored? Here's how they fill the time. A survey from Office Team finds that professionals admit they're bored in the office an average of 10.5 hours per week. Senior managers interviewed acknowledged boredom at work but estimated their staff is likely disinterested about six hours each week. Employees were asked what they do when they're bored. In addition to browsing the Internet, checking personal e-mail and social media, and chatting with coworkers, here are some other responses: having rubber band battles with coworkers, making grocery lists and cutting coupons, learning another language, doodling, making videos, watching TV or movies online, playing online games, writing a book, playing Ping-Pong, asking for more work, and looking for another job. Of all respondent groups, male workers and those ages 18 to 34 were found to be bored the most per week (12 hours and 14 hours, respectively). Men (46%) and employees ages 18 to 34 (52%) are most likely to leave their current position if bored. ✤

UNION ACTIVITY

Unions join NAACP in DACA defense. The United Food and Commercial Workers International Union announced in October 2017 that it had joined the American Federation of Teachers and the NAACP in a lawsuit against President Donald Trump, Attorney General Jeff Sessions, Homeland Security Secretary Elaine Duke, U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and the Department of Homeland Security (DHS) for the Trump administration's termination of the Deferred Action for Childhood Arrivals (DACA) program. The parties in the lawsuit contend that the decision to rescind DACA disregarded the due process rights of the DACA registrants and that the administration failed to engage in the required analysis or rulemaking procedures required by the Regulatory Flexibility Act and the Administrative Procedure Act.

Teamsters secure settlement of unfair labor practices. The International Brotherhood of Teamsters Local Union 118, based in Rochester, New York, claimed a victory for unionized labor in October with a settlement of more than $60,000 in damages following a long-running dispute with Palmer Food Company, Inc. The case involved unfair labor practice charges filed with the National Labor Relations Board (NLRB) in Buffalo that alleged an attempt to harm union activity at the company. In early 2017, warehouse workers at the company campaigned to organize with Local 118. The local filed charges against the company with the NLRB. Under the settlement, Palmer Food Company is to post a notice notifying workers that it will no longer engage in the practices it was charged with and what it will do to correct any improper conduct, including recognizing the Teamsters and entering into collective bargaining with the union.

Union urges FCC to investigate telecom industry sales practices. The Communications Workers of America (CWA) announced in October that it had called on the Federal Communications Commission (FCC) to more fully investigate the causes of unethical sales practices that result in "cramming and slamming" in the telecommunications industry. The union called on the FCC to investigate the relationship between sales quotas, incentives, performance management systems, and unauthorized and fraudulent charges on bills. The CWA said those sales practices force frontline employees to meet unrealistically high sales quotas and benchmarks or face the loss of compensation and their jobs. The CWA submitted comments in response to the FCC's proposed rulemaking on methods to protect consumers from unauthorized changes and charges, to empower consumers to take action, and to deter carriers from unethical sales practices. ✤

be claimed by private colleges and universities with regard to student health coverage they offer.

It should be noted that both of the new exemptions completely relieve employers of the obligation to provide contraception coverage, which means their employees may not be able to obtain it elsewhere. Under the previous "accommodation" process, when a religious organization or closely held corporation opted out of contraception coverage, the carrier, TPA, and/or HHS would be notified. Employees who lost coverage through the employer could obtain it through the accommodation process independently of the employer plan. Under the new exemptions, employers that choose one of the new exemptions can ensure that employees don't obtain free contraception coverage elsewhere as a result (as they would through the accommodation process).

Employers that are currently claiming the accommodation can revoke it in favor of one of the new exemptions.

Uncertainties remain

One issue that remains uncertain is what it means to have "sincerely held moral convictions" or "sincerely held religious beliefs" and what an employer needs to do to demonstrate that it holds such beliefs. For some organizations, that may be relatively easy—such as a nonprofit run by a church with a well-established objection to contraception. For employers that have no clear religious affiliation, however, it's hard to tell what will suffice. The regulations merely say that the employer will need to have adopted and documented its moral convictions or religious beliefs "in accordance with state law."

In addition, unlike previous versions of the regulations, the interim regulations provide no specific process for an employer to claim the exemptions. For that reason, it may take some time for carriers and TPAs to determine how they are going to handle employer requests to exclude contraceptive coverage under one of the new exemptions. While the regulations don't require any sort of form or filing, it is possible the carriers will develop their own requirements, and that could take some time.

Next steps

Theoretically, employers with an interest in claiming an exemption could do so immediately, but most will likely prefer to wait at least until the beginning of their next plan year. Because many state laws require contraception coverage, you need to determine to what extent any such laws apply to you before making any changes to your plan. You should also take care to properly document and disclose any changes you ultimately make, such as by issuing a new summary of benefits and coverage (SBC), revising your plan documents, and distributing a new summary plan description.

In short, we don't recommend getting in too big of a hurry to adopt the new exemptions (especially those of you who have a new plan year coming up on Jan. 1). It's better to take a little time for the process to crystalize, see how the carriers are going to handle the exemptions, and consult with your attorney for assistance and advice. ✤

PROTECTED ACTIVITY

Should you fire an employee for his memo on diversity? Google it

Google has been in the news recently for firing one of its engineers. The firing came after the engineer published a 10-page memo criticizing the company's diversity efforts. The memo was posted on an internal platform available only to Google employees, but it quickly spread beyond Google's ranks and onto the Web.

The controversial memo

In the memo, the engineer asserted that there are biological and personality differences between men and women that he believes contribute to the gender pay gap in the technology sector. He noted that women, on average, are more agreeable, which "leads to women generally having a harder time negotiating salary, asking for raises, speaking up, and leading." He also alleged that women have higher levels of "neuroticism (higher anxiety, lower stress tolerance)." The memo went on to assert that "to achieve more equal general and race representation, Google has created several discriminatory practices," and outlined the allegedly discriminatory practices.

The memo was not well received by many at Google or in the court of public opinion once it went public. The memo put the company between a rock and a hard place. Should Google let the engineer say his piece on its internal network and move on? Or was the topic so divisive that it had to be addressed with the employee? Google ultimately fired the engineer for violating its code of conduct, alleging he was "perpetuating gender stereotypes."

Google's new vice president of diversity, integrity, and governance responded with her own memo to employees. She stated the engineer's memo advanced incorrect assumptions about gender, and cited Google's belief that diversity and inclusion are critical to its success. She acknowledged the importance of fostering a culture that permits alternative views but noted that the "discourse needs to work alongside the principles of equal employment found in [Google's] Code of Conduct [and] policies and anti-discrimination laws."

Engineer files complaint against Google

The engineer has filed a complaint against Google with the National Labor Relations Board (NLRB). The case listing provided by the NLRB states the engineer's allegations are related to coercive statements (e.g., threats or promises of benefits). The question is whether Google's decision to fire the employee for his memo violated the National Labor Relations Act (NLRA), which protects certain types of complaints by employees as "protected concerted activity." At issue is whether the engineer was speaking on behalf of other workers and whether he can assert that he was complaining about working conditions. Such complaints are protected under the NLRA.

The engineer's memo, which referred to allegedly discriminatory practices by Google, may be his hook to generate a claim under the NLRA. Protected activity includes complaints about benefits and employment policies. The memo asserted that programs, mentoring opportunities, and classes were available only to people of a certain gender or race. The memo also asserted that there was a high-priority queue and special treatment, such as priority for interviews and training, for minority candidates.

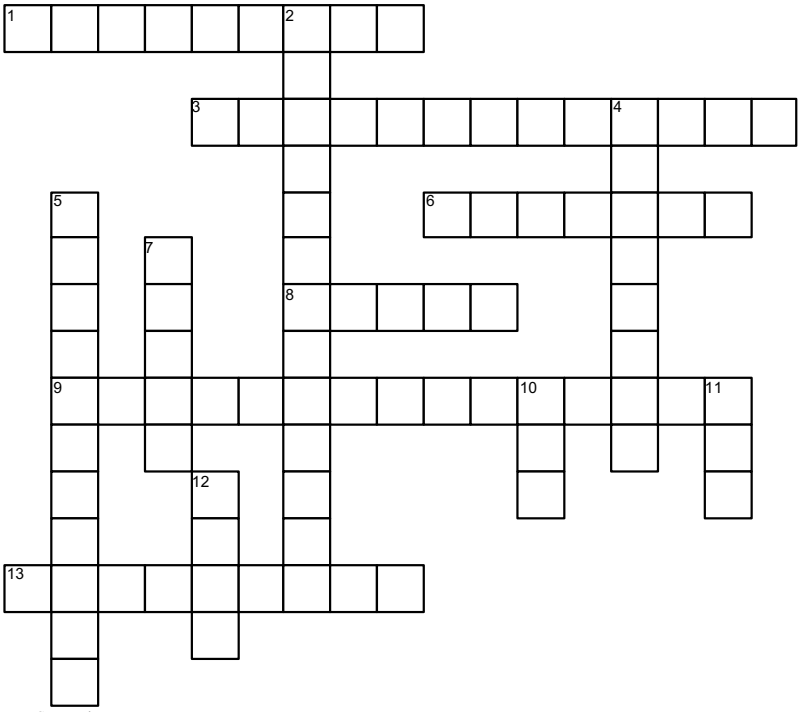
The engineer and his counsel likely will focus on those portions of the memo when attempting to establish a claim under the NLRA. Google may face penalties such as back pay or reinstatement if it is found that the company violated the NLRA and the engineer was wrongfully terminated. Also, some employers have been required to post a notice for a specific period of time to notify employees that the employers committed an unfair labor practice and remind employees of their rights under the NLRA.

Bottom line

If you are faced with a situation similar to Google's, closely examine the statements made by the employee to determine whether they could be protected under the NLRA. At the end of the day, these types of cases are often close calls. Knowing that, Google likely elected to take a risk by firing the engineer after deciding that his statements were too divisive to stand without a bold response. Time will tell whether the engineer can successfully argue that his memo was protected under the NLRA. ✤

JUST FOR FUN

Mindteaser of the month



ACROSS

1 _____ payments ease a discharged employee's transition to a new job.

3 Employers may object to the Obamacare _____ mandate based on religious reasons.

6 The _____ Savings Bank was the subject of a lawsuit that recognized sexual harassment as a form of sex discrimination.

8 _____ is the statute requiring continuation of benefits.

9 Willfully disobeying a superior's instructions is _____.

13 Hollywood movie mogul Harvey _____ is the center of a sexual harassment and assault scandal.

DOWN

2 _____ agreements prohibit employees from talking about employer misconduct, among other things.

4 _____ is the federal statutory section outlawing sex-based discrimination.

5 A _____ is a court order to withhold the pay of an employee.

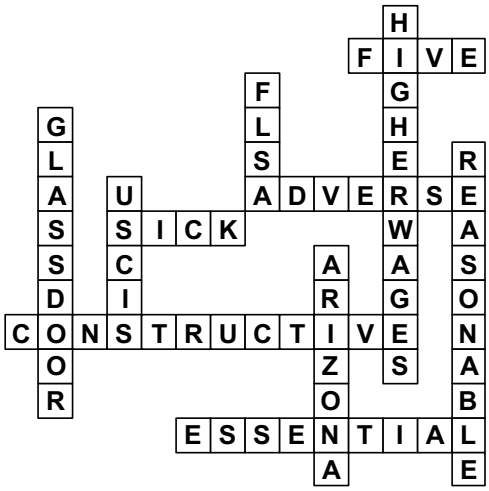
7 _____ income is the total amount of an employee's wages or salary before deductions and taxes.

10 The ___ is the much-maligned but not-repealed healthcare law.

11 ___ income is the after-tax and deduction amount of an employee's paycheck.

12 The ____ is the law setting the federal minimum wage.

Solution for November's puzzle



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