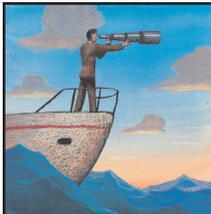




ATTORNEYS SERVING PRIVATELY HELD BUSINESSES AND THEIR OWNERS

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Legal Advisory

IDEAS AND STRATEGIES FOR YOU AND YOUR BUSINESS / FIRST QUARTER 2017

NEW CASE SHOWS PREGNANCY BIAS

Despite federal legislation designed to combat pregnancy discrimination, it remains a persistent problem in workplaces around the country, as evidenced by a new case brought by the Equal Employment Opportunity Commission (EEOC).

Background: The main federal laws in this area are Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act (PDA) of 1978, and their amendments. The PDA says that discrimination based on pregnancy, childbirth or related medical conditions constitutes discrimination under Title VII. Essentially, pregnant employees must be treated like other employees.

This means that an employer cannot refuse to hire a woman or terminate her employment because of a pregnancy-related condition as long as she is still able to perform the basic functions of the job. Along the same lines, the bias of co-workers or customers cannot

result in discrimination against a pregnant employee.

Other federal laws, including the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA), may also come into play.

Latest example: The EEOC has accused the Motel 6 hotel chain of unlawfully placing an employee on leave as a result of her pregnancy. Accordingly, the EEOC has filed a lawsuit against G6 Hospitality, the parent company of Motel 6.

According to the EEOC press release on the case, a female employee at a Motel 6 in New Orleans had informed management that she had a high-risk pregnancy. One morning, she called her supervisor and told him that she was unable to work that day because of a pregnancy-related illness.

The manager told the employee that he was modifying the work schedule to accommodate her. Then he



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FIVE ESTATE-PLANNING STEPS FOR ENTREPRENEURS

If you are like most small-business owners, your hectic lifestyle does not afford much time for serious estate planning. Nevertheless, you should not ignore the need to “get all your ducks in a row.” A comprehensive estate plan can tie up loose ends while reducing the chances that your heirs will be forced to sell your business—at a fire-sale price.

However, estate planning is rarely easy. Here are five steps that can help further the process.

1. Establish your main objectives. Consider the benefits you want to derive from your assets, the risks you are willing to take, how much you will need for retirement or other purposes, and the individuals and any charities you will designate to share in your estate. Once you spell out your goals, in writing, you can formulate the best way to achieve them.

2. Provide your advisers with an inventory of assets. You can do this by simply listing all the assets you own in addition to your business interest (e.g., real estate, stocks, bonds, bank accounts, life insurance). With professional guidance, you can project the future net worth of these assets to get a clearer picture of your taxable estate.

3. Seek to minimize potential estate tax. For starters, transfers between spouses are completely exempt from federal estate tax. Under current law, the unified estate- and gift-tax exemption can shelter other transfers of up to \$5 million (indexed to \$5.49 million for decedents dying in 2017). Also, a spouse’s estate

may benefit from “portability” by using the remaining exemption of the other spouse’s estate.

4. Reduce your estate through lifetime gifts. For 2017, the annual gift-tax exclusion covers gifts of up to \$14,000 per recipient (\$28,000 for joint gifts by a couple), in addition to the lifetime gift-tax exemption. Furthermore, special estate-tax breaks for business interests may be available. For instance, the federal estate tax due on a large business interest may be spread out over a 14-year period if certain conditions are met. Coordinate estate- and gift-tax planning with your advisers.

5. Incorporate life insurance into your estate plan. In particular, business owners may rely on life insurance for liquidity’s sake. If the policy is structured carefully, the proceeds can be received free of both estate and income taxes.

Remember that this is only a general overview of estate-planning steps for an entrepreneur. Obtain specific guidance for your family’s situation. 📖

NEW CASE SHOWS PREGNANCY BIAS *(continued from front page)*

removed her from the schedule for the entire week, even though she had requested only one day off.

After almost a week had passed, the employee tried to contact the supervisor to find out when she would be placed back on the schedule. Eventually, she received a text message in which the supervisor stated that she was being placed on a leave of absence until she gave birth. However, the employee never asked for a leave of absence.

The EEOC says that Motel 6 effectively placed the employee on forced leave of absence because of her pregnancy. This violates Title VII and the PDA. The EEOC is also seeking injunctive relief prohibiting Motel 6 from engaging in unlawful discrimination on the basis of sex, compensatory and punitive damages for the employee, and any other relief the court finds is needed.

There is an important lesson here for both employees and employers. Employees should be aware of their rights under the laws of the land. Employers must heed the rules and avoid discriminatory practices against pregnant women. 📖





When a Lease Is Broken

Suppose a tenant breaks an annual lease with a landlord. What are the rights and responsibilities of the parties?

The specific answers are based on the prevailing state and local laws, but tenants have a general obligation to honor their commitments and provide notice, while landlords must take steps to mitigate damages (i.e., seek a new tenant) if a lease is

broken. Additional complications may involve a constructive eviction where the circumstances force the tenant to leave.

Do not make any quick assumptions. Best approach: Obtain the information needed for your legal protection.

as incorporating results from recent court cases, significant EEOC policy statements and other relevant information. In the materials, the EEOC explains how Title VII would apply in various scenarios where a job candidate has been arrested or convicted of a crime. It includes discussion of

- how an employer’s use of an individual’s criminal history in making employment decisions could violate the prohibition against employment discrimination under Title VII.

CHECKS AND BALANCES ON CRIMINAL RECORDS

How far can you go when checking the criminal backgrounds of job applicants? Although the law in this area continues to evolve, it is clear that, under a system of checks and balances, you must straddle a fine line between protecting your business and avoiding discrimination. Going “over the line” could subject your company to a costly and time-consuming lawsuit, not to mention the potential bad publicity.

The situation has not gone unnoticed by the Equal Employment Opportunity Commission (EEOC), which provides some guidance concerning use of criminal arrest and conviction records as part of an employer’s background check of job applicants. Significantly, the guidance references Title VII of the Civil Rights Act of 1964. The EEOC has also issued answers to frequently asked questions on this issue. These materials can be found on the EEOC Web site at www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm.

Background: Under Title VII of the Civil Rights Act, it is unlawful to discriminate in employment based on race, color, national origin, religion or sex. However, the law does not specifically prohibit an employer from requiring applicants or employees to provide information about arrests, convictions or incarcerations.

The EEOC guidance builds upon long-standing principles the agency has followed in the past as well

- federal court decisions analyzing Title VII as applied to criminal record exclusions.
- the differences between the treatment of arrest records and conviction records.
- the applicability of disparate treatment and disparate impact analysis under Title VII.
- compliance with other federal laws and/or regulations that restrict and/or prohibit the employment of individuals with certain criminal records.
- best practices for employers.

Note that special circumstances may provide a business with more leeway than usual. For example, an employer may be required by law to conduct criminal background checks for certain jobs under the USA Patriot Act. Even if a criminal

background check is not required for safety reasons, an employer might routinely check an applicant’s history due to concerns about violent behavior, theft or similar threats. **Reason:** If an employee commits a violent or unlawful act and the employer did not conduct a background check, the employer might face a lawsuit for negligent hiring of personnel.

Caution: This is a legal minefield, fraught with perils. Be sure to give potential problems careful consideration. Although employers may rely on the EEOC guidance as a general rule, consult an attorney regarding the rights and responsibilities of the parties in specific situations. ✍️



GROWING TREND IN MOLD LAWSUITS

Courts are seeing a growing number of claims of toxic mold in homes throughout the country. In some cases, juries are awarding substantial damages. For example:

- ◆ A group of plaintiffs in California was awarded \$1.3 million for claims against contractors who performed work that caused leaks and allowed mold to enter their homes.
- ◆ Two women in Delaware were awarded \$1.04 million because their landlord failed to fix leaks, which led to mold in their home.
- ◆ Former NBA player and coach Rudy Tomjanovich was ordered by a Los Angeles County Superior Court to pay more than \$2.7 million in compensatory damages and \$250,000 in punitive damages to plaintiffs who acquired his home. Tomjanovich allegedly failed to disclose information about water leaks and mold in the residence.



Mold can cause problems ranging from headaches to respiratory conditions to lung disease,

as well as memory loss or brain damage. If you become aware of mold contamination in your home, promptly notify your insurance company (or your landlord's insurance company if you are a tenant). Depending on the findings, you might be compensated for damages due to the mold condition. Alternatively, you may decide to pursue legal action.

However, property owners have a legal duty to mitigate their damages by removing the mold. Typically, mold removal expenses may be included in the damages you seek in a legal action (see below). Also, insurance considerations may come into play and settlements may be facilitated.

A negligence claim may be filed against the prior homeowners if they knew about the mold condition and didn't disclose it, the contractors who built the home, suppliers or manufacturers of defective building materials, or a landlord (if you're a tenant). Plaintiffs in a successful lawsuit may be able to recover costs incurred as a result of inspections, repairs, replacement of damaged household items, relocation expenses while repairs are made, medical expenses (present and future), and emotional distress.

Fortunately, you do not have to pursue such claims on your own. An attorney experienced in mold lawsuits can provide the necessary guidance in this area. 🏠

BRIEFS

◆ **Voting Rights**—Did you give your employees time off to vote in last year's elections? Many states have laws requiring employers to offer this option to employees if they do not have sufficient time to vote during the workday because of their jobs. In some but not all states, employees must be paid for the time off. Find out the applicable laws for your state.

◆ **Sign of the Times**—Sexual harassment continues to be in the news on a regular basis. Last year, television news anchor Gretchen Carlson settled a multi-million-dollar lawsuit involving ousted Fox executive Roger Ailes. The case is noteworthy because it points out a trend for remuneration for plaintiffs. It shows the need for employers to review their sexual harassment policies and make adjustments, where necessary.

◆ **New I-9 Form**—Be aware that the U.S. Citizenship and Immigration Services (USCIS) has issued a brand-new version of Form I-9 (Employment Eligibility Verification). The USCIS says that employers must start using the revised form as of January 22, 2017. Among other changes, the new form asks for "other last names used" instead of "other names used" and streamlines certification processes for certain people.

◆ **Overtime Rule**—Under the new final rule issued by the Department of Labor (DOL), new thresholds for determining eligibility for overtime pay were set to take effect on December 1, 2016. However, a federal judge in Texas has blocked the DOL rule, leaving the prior rules in place pending any further action. We will keep you posted on any additional developments relating to this issue as soon as possible.