



November 2017

Follow @Paul\_Hastings



## *No Corporate Tax Deduction for Sexual Harassment or Sexual Abuse Settlements?*

By [Stephen Turanchik](#), [Stephen Harris](#) & [Leslie Abbott](#)

According to the recent Description of the Chairman’s Modification to the “Tax Cuts and Jobs Act” prepared by the Staff of the Joint Committee on Taxation companies will not be able to claim an income tax deduction for any settlement, payout, or attorneys’ fees related to sexual harassment or sexual abuse if such payments are subject to a nondisclosure agreement. This would be a significant departure from current law, where corporate taxpayers generally are allowed to deduct employment-related settlement amounts, including attorneys’ fees, as ordinary and necessary business expenses.

### **Paul Hastings’ Takeaway**

Employers typically require confidentiality when they settle any type of employment-related claim. If this proposal becomes law, employers will have tough choices to make. Several possible options include:

1. Employers demand confidentiality and suffer the loss of deduction (which will be mitigated by the lower corporate tax rate);
2. Employers demand confidentiality and require the accused to contribute to the settlement to mitigate the loss of deduction;
3. Employers demand confidentiality and value cases lower from a settlement perspective;
4. Employers demand confidentiality and specifically allocate as much settlement consideration as possible to non-harassment or abuse claims (of course, it is too early to tell whether this will be permissible);
5. Employers let the accused decide whether to demand confidentiality and contribute to the settlement if they do; and
6. Employers may forgo settlement confidentiality as to sexual harassment claims to preserve the corporate tax deduction, perhaps, coupled with a policy or practice of transparency with regard to these issues.

We will keep our clients informed of any final changes in the law related to this issue.

✧ ✧ ✧

# STAY CURRENT

---



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Los Angeles lawyers:*

Leslie L. Abbott  
1.213.683.6310

[leslieabbott@paulhastings.com](mailto:leslieabbott@paulhastings.com)

Stephen H. Harris  
1.213.683.6217

[stephenharris@paulhastings.com](mailto:stephenharris@paulhastings.com)

Stephen J. Turanchik  
1.213.683.6187

[stephenturanchik@paulhastings.com](mailto:stephenturanchik@paulhastings.com)

---

## Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2017 Paul Hastings LLP.