

MARCH 2013 NEWSLETTER

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CAN AN EMPLOYER PROHIBIT DATING IN THE WORKPLACE? THE ROAD TO LOVE OR LITIGATION

1. ANNOUNCEMENTS:

A. Pozzuolo Rodden is pleased to announce that Joseph R. Pozzuolo, Jeffrey S. Pozzuolo and Stephen P. Taylor have written an article titled “Using Trusts to Maximize Family Protection and Minimize Estate Taxes” which was published in the January, 2013 Practical Tax Strategies Publication of Thomson Reuters. A copy of the article is available

by clicking here: <http://pozzuolo.com/PubsArticles.shtml>

B. Joseph R. Pozzuolo, Esquire gave a seminar to the graduating medical professionals at Thomas Jefferson University Medical School on February 26, 2013 on the topic “Practical and Legal Considerations of Planning Your Professional Future”

2. QUESTION OF THE MONTH:

Can I sell the stock of my small business and pay zero federal taxes?

Answer-See Page 4 of this Newsletter

If there are any legal questions you would like this office to answer in the future, please email the question to us at info@pozzuolo.com. Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax and pension law, family law litigation.

CAN AN EMPLOYER PROHIBIT DATING IN THE WORKPLACE?

The Road To Love Or Litigation

Often times romantic relationships can arise between co-workers. This is unavoidable when employees spend a large portion of their day together at work and get to know their co-workers and develop more than professional feelings and attractions for one another. While these romances hopefully lead to happy marriages and unions they can also end in awkward break ups or even litigation. There is always the possibility that once the relationship ends an employer can be subjected to liability based upon sexual harassment if the employer was not adequately prepared to handle such workplace romances and their sometimes messy end.

The Civil Rights Act (“Title VII”) protects employees from discrimination on the basis of race, color, national origin, religion and/or sex. Employers need to ensure their policies and procedures affirmatively addressed workplace romances or they could be subject to Title VII claims of discrimination.

Some employers attempt to circumvent any liability by expressly outlawing dating between co-workers, however, despite these no dating policies workplace romances still arise. A more pragmatic

solution is to have a policy which requires disclosure of relationships between co-workers. If a relationship is disclosed an employer can have the employees attend counseling on the employer's sexual harassment policies and sign consents that they are aware of the policy and the method for reporting violations of the policy. Additionally, the employer may require that the employees sign an acknowledgement that they are both freely and voluntarily entering into the romantic relationship, that they will conduct themselves in a professional manner while at work.

Additionally, relationship between supervisors and their subordinates may require additional steps on behalf of an employer to protect itself from liability. Even having the employees sign an acknowledgement that the relationship is voluntary may not be adequate to show that it was consensual and free of harassment because of the difference in power and authority between the employees when one is a subordinate of the other. In these situations it is prudent of the employer to either transfer one employee or restructure the reporting hierarchy between the employees so one is not the direct subordinate of the other.

Additionally, workplace romances put an employer at risk for discrimination claims based on sexual favoritism. The Equal Employment Opportunity Commission ("EEOC") refers to workplace relationships as "sexual favoritism" and outlines the boundaries between what is permissible and what is prohibited. This type of sexual favoritism arises when there is a sexual or romantic relationship between two employees, and that relationship benefits the members of that relationship while also adversely affecting a third party's employment. For example, if a supervisor promoted an employee that she was having a relationship with, the other employees who were qualified for the promotion might feel they were passed over due to sexual favoritism between the supervisor and her partner.

The EEOC issued Policy Guidance on Employer Liability under Title VII for Sexual Favoritism with the purpose of providing guidance on when employers can be liable for violating Title VII based upon sexual favoritism. The EEOC expressly states, "Not all types of sexual favoritism violate Title VII." For example, the EEOC found that an "isolated instance" of sexual favoritism towards someone's significant other may be unfair it may not be found to violate Title VII, because it does not discriminate against men or women based upon their gender. The gender of the individual passed over was irrelevant to the decision to show favoritism.

However, if a person is "coerced into submitting to unwelcome sexual advances in return for job benefits" this would qualify as sexual harassment. This would be example of quid pro quo (this-for-that) sexual harassment and the employer could be liable to both the employee who was coerced into submitting to sexual harassment and other employees who did not receive job benefits because they refused to submit to such advances. Additionally, this type of favoritism is not based on a relationship between two people but is often the result of gender.

Additionally, the EEOC found that widespread favoritism could lead to a Hostile Work Environment being created. The EEOC points out that this type of widespread bias towards a protected class (in this case either men or women) leads towards a hostile work environment where employees are forced to "play along" with the bias and favoritism. The EEOC illustrated this type of widespread sexual favoritism by the example of when a manager views women employee as "sexual play things" which "creates an atmosphere that is demeaning to women." In this type of situation both men and women who find this environment offensive could support a claim of hostile work environment if they could show the conduct is severe and pervasive enough to affect their working conditions.

Accordingly, employers should be careful to ensure their policies addressed sexual favoritism,

and expressly prohibit favoritism and unwelcome advances in the workplace and have proper procedures for reporting any violations of these policies. Another way to limit this type of sexual favoritism in the workplace is to place policies which limit dating between supervisors and their subordinates, since the imbalance in authority leads to the opportunity to express favoritism.

Employers also need to be aware of when a relationship between co-workers has ended. If the relationship does not end amicably then an employee may feel resentment and attempt to take adverse employment actions against their former companion or attempts at reconciliation by one party could be viewed as sexual harassment by the other party. Therefore, an employer should also make sure an employee notifies the employer once the relationship ends and of any conduct that is in violation of the employer's sexual harassment policies.

A good policy can protect an employer from litigation arising out of workplace romances, however, a poorly drafted policy could easily subject an employer to liability. Therefore, it is important that employers consult with their attorneys to ensure their policies are adequate to diminish their liability for sexual harassment or gender discrimination claims arising from such workplace romances.

Please feel free to contact Pozzuolo Rodden, P.C. to further discuss these issues and ensure your business is adequately protected.

QUESTION OF THE MONTH:

Can I sell the stock of my small business and pay zero federal taxes?

Yes, potentially, there may be no federal tax ramifications on the sale of the stock of your incorporated family business. The American Taxpayer Relief Act of 2012 (ATRA), passed into law in January 2013, extends some previously enacted tax benefits for small business owners. A noted benefit is the exclusion from gain on the sale of qualified small business stock (QSB stock). Generally, individual taxpayers were permitted to exclude a percentage of the capital gain from the sale or exchange of qualified small business stock. Initially, the exclusion worked only for 50% of the gain. In recent years, the percentage of gain excluded from tax has steadily increased from 50% to 75% to 100%. ATRA maintains the exclusion at a 100% rate. Therefore, an individual taxpayer who sells his qualified small business stock will be able to exclude the entire gain from the sale of the stock. Also, the excluded gain remains a nonpreference item for alternative minimum tax (AMT).

- The 100% exclusion related to QSB stock acquired after September 27, 2010 and before January 1, 2014
- The investor must generally hold the QSB stock for five years
- Generally, the stock must be acquired by the investor at original issuance
- The small business may not have gross assets of \$50 million or more at issuance of the stock
- The stock must be stock in a "C" corporation
- The amount of gain that is eligible for exclusion under this provision is equal to the greater of (a) 10 times the investor's basis in the stock or (b) \$10 million.

Other limitations may apply and special rules apply for stock acquired in exchange for property.

The idea behind the exclusion is to promote investment in small businesses that qualify for the beneficial tax treatment. Furthermore, for those considering starting their own business, it may be a wise idea to acquire qualified small business stock during 2013 to secure the benefit of the Act.

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Publications

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: [http://pozzuolo.com/Pubs Articles.shtml](http://pozzuolo.com/Pubs%20Articles.shtml)

Corporate/Tax Articles

Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business

Deferred Compensation Rewards And Retains Key Employees

Design Buy-Sell Agreements For Maximum Utility

How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend

How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

How To Look, Act And Sound Like A Professional Corporation

How to Structure a Suitable Buy-Sell Agreement

How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool

Money Purchase Pension Plan Falls Out Of Favor

Protecting A Client's Business From Unfair Competition Using Restrictive Covenants

Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules

What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs

Why An Employment Contract Is Mandatory

Estate Planning Articles

Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples

College Funding Tool Offers Estate Planning Advantage

Diversify Strategies For An Effective Estate Plan

Divorce and Estate Planning

Divorce Raises The Need For Performing An Estate Planning Review

Drafting The Durable Power Of Attorney For Wealth Protection Purposes

Estate Planning For Pet Owners

Remarriage Situations Can Raise Special Estate Planning Considerations

Six Proven Estate Planning Techniques

Special Needs Trust - An Estate Planning Tool For The Disabled

The Limited Liability Company -A Sophisticated Tool For Estate Planning

Using Trusts To Maximize Family Protection And Minimize Estate Tax

Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.