Tiger Woods Avoids Legal Rough...For Now: 3 Key Takeaways for Employers about Workplace Relationships, Non-Disclosure Agreements, and Arbitration

Insights
6.20.23

Tiger Woods' recent legal issues could actually help employers better understand their rights and responsibilities when it comes to workplace relationships, non-disclosure agreements, and arbitration provisions. His former girlfriend, Erica Herman, recently requested that a Florida court strike down an NDA she signed when she became romantically involved with him. She argued that it was improper under the newly enacted "Speak Out Act of 2022," which renders all NDAs invalid with respect to sexual assault and harassment claims. But the court ruled for Woods and sent the case to arbitration pursuant to a provision within the NDA. Although the judge based her decision on procedural technicalities, the case – which was just appealed to a Florida appeals court – highlights three important issues for employers to consider.

1. Putt-ing an End to Confidentiality: Federal Laws Ensure Public Airing of Sexual Assault and Harassment Claims

The Speak Out Act of 2022 and the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA) are two pieces of federal legislation enacted in response to the #MeToo movement. The Speak Out Act was passed to prevent confidentiality agreements from silencing sexual assault and harassment victims, while the EFAA prevents mandatory arbitration on disputes related to those same issues. Together, the laws are designed to lower the barriers for plaintiffs that want to litigate claims of sexual assault and harassment in public forums.

In the employment context, employers need to be aware of the practical implications resulting from the new legislative framework. As it stands, sexual harassment claims are generally no longer subject to contractual confidentiality. This means that several common employment agreements, including non-disclosure policies, severance/separation agreements, and arbitration provisions, are susceptible to invalidation.

For example, overbroad language that categorically prohibits employees from disclosing "any and all issues arising from their employment with the company" may be unenforceable even if those provisions were designed to protect legitimately valuable information, such as trade secrets. Similarly, arbitration agreements that require mandatory arbitration for "any and all disputes relating to a worker's employment with the company" may also be found unenforceable under the new statutes.

In light of the foregoing, it is crucial for employers to conduct a thorough review of all employee agreements, contracts, and policies to ensure compliance with the EFAA and Speak Out Act. In particular, you should carefully inspect all documents provided to employees for any sweeping nondisclosure language. You should also consider revising the scope of these agreements to expressly exclude disputes related to sexual assault or harassment. By undertaking these proactive measures, you can mitigate the risk of having entire employment contracts invalidated by the new statues and ensure compliance with policies that apply to workers.

2. Swing into Action: Sexual Harassment Prevention Is Critical Now More than Ever

In addition to carefully reviewing all nondisclosure language in existing employment contracts, it is imperative that business leaders engage in proactive measures to prevent sexual harassment in the workplace. Such steps include implementing comprehensive and mandatory reporting policies, conducting regular training sessions, and fostering a culture that ensures employees feel empowered to report misconduct. Additionally, developing a detailed investigation strategy for any reported harassment claims is not only vital for holding potential perpetrators accountable, but also for deterring future misconduct.

The Tiger Woods case is also illustrative that vigilance for sexual harassment must extend to all employees of a company regardless of their position. This includes equal application of company policies to apex executives. In California, for example, employers are required to provide a minimum of two hours of sexual harassment training to all supervisory employees. While busy managers may be inclined to avoid such training due to time constraints or other work demands, employers must ensure their participation. The valuable skills acquired during these training sessions can prevent costly – and reputationally damaging – public lawsuits in the long run, while also simultaneously promoting a respectful and inclusive work environment. This is a win-win for all parties.

3. FORE-get about Office Affairs: Develop Relationship Disclosure Policies

Herman claimed that Woods first pursued her romantically during the time she was employed as a general manager with a restaurant he owned. While similar workplace relationships are not necessarily uncommon and often start innocently, many employers learn the hard way that these arrangements carry legal risks as relationship dynamics change or deteriorate.

One key proactive measure that employers should install to protect themselves is developing comprehensive relationship disclosure policies. Such policies help establish clear boundaries, expectations, and protocols between management and employees, while also specifically helping supervisors monitor relationships with an eye towards preventing harassment.

At a minimum, you should require employees to disclose romantic relationships with coworkers at the earliest possible opportunity. Disclosure also helps prevent conflicts of interests, promote transparency, and maintain a fair and unbiased work environment. In the event that litigation arises

from a workplace relationship, adherence to written disclosure policies also provides employers with a possible defense that the employees' actions were objectively consensual.

Conclusion

The recent Tiger Woods case highlights the need for employers to proactively review all nondisclosure and arbitration agreements to ensure compliance with the evolving legal landscape surrounding workplace disputes. Additionally, developing relationship disclosure policies that clearly outline expectations and boundaries for personal relationships among employees is a key proactive action that helps reduce legal liability and conflicts of interests.

You should also review company policies and handbooks to incorporate robust sexual harassment prevention measures, such as mandatory reporting policies, multiple reporting channels, and regular training sessions. By taking these steps, you can develop a safer and more inclusive work environment and mitigate the risk of sexual harassment and related legal liabilities.

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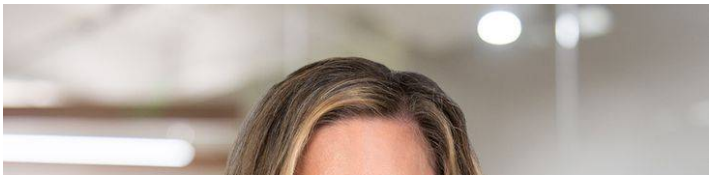

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