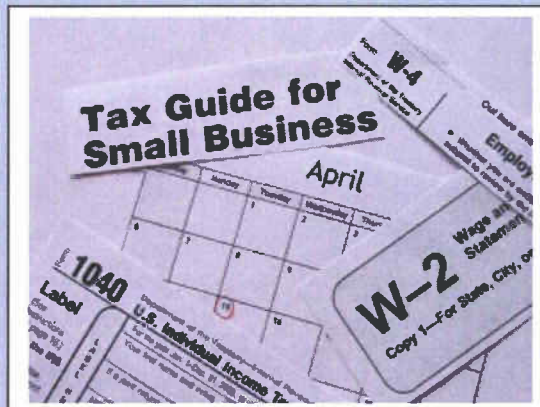


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Should You Be Paying the Business Privilege Tax?

By Lauren Reap, Esq.



The Business Privilege Tax is a tax applied to all persons engaged in business within the City of Philadelphia. However, your business need not be physically located within the City of Philadelphia to be subject to this tax.

Under the Philadelphia Code, the Business Privilege Tax will be imposed on "every person engaging in business in the City of

Philadelphia," which includes any person having an "active presence" in Philadelphia. Philadelphia Code § 19-2603 (1) & (3). An "active presence" has been explained to include any activity within Philadelphia, even if that activity is conducted by your employees, representatives, or independent contractors. A person will be subject to this tax as long as the activity of such an agent, makes possible "the creation, realization or continuance of contractual relationships between the person and customers located within the City." Active presence includes even the mere solicitation of business.

continued on page 2...

Sexual Harassment – Report it Immediately

By Eugene Mattioni, Esq. and Joseph Bouvier, Esq.

In recent weeks, the hostile work environment created by sexual harassment has been a topic in the news. Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employment discrimination based upon race, color, religion, gender, or national origin. Title VII's broad prohibitions against gender discrimination specifically cover sexual harassment, which includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment.

continued on page 4...

Inside this issue:

Should You Be Paying the Business Privilege Tax? 1

Sexual Harassment – Report it Immediately 1

Mental Stress and Workers' Compensation Claims 6

Disclaimer

The content of this Newsletter has been prepared by Mattioni, Ltd. for informational purposes only and should not be construed as legal advice. The material in this Newsletter is not intended to create and receipt of it does not constitute, a lawyer-client relationship, and readers should not act upon it without seeking professional counsel.

Should You Be Paying the Business Privilege Tax?

continued from page 1

Most importantly, a “physical presence,” like maintaining an office or store front in the City, is not necessary for the City to impose the Business Privilege Tax on you and your business. The Philadelphia tax regulations explain that “taxable activity” under the Business Privilege Tax is determined on a case by case basis, and as such, the determination is highly fact specific. Taxable activity has been deemed to include any business, service or activity that “originates from, is carried through, directed from or otherwise attributable to Philadelphia.”

Regulations issued by the City have shed light on this issue by explaining that a business, lacking a physical presence in Philadelphia, will still be deemed to have created the requisite “nexus” with Philadelphia for imposition for the Business Privilege Tax if it “systematically” conducts business activity in Philadelphia. Note, “business activity” in this context still includes activity engaged in through employees, independent contractors, and other similar persons. Additionally, a business will be deemed to have engaged in systematic and regular business activity if there have been ten (10) or more days of business activity occurring in Philadelphia within a year. However, be aware that there are also some activities which, if engaged in for only three to ten (3-10) days out of a year, still may constitute regular and systematic business activity. Such activities include soliciting sales and delivering goods into Philadelphia.

The Business Privilege Tax manifests itself in two separate tax calculations, a tax on Gross Receipts and a tax on Net Income. Whether a person will be subject to both portions of the tax depends on the extent and nature of that person’s activity within the City of Philadelphia. For example, when a person is subject to the Business Privilege Tax based on solicitation alone, the taxpayer will be subject only to the Gross Receipts portion of the tax. *Philadelphia Code § 19-2603 (4).*

continued on page 3.....

Should You Be Paying the Business Privilege Tax?

continued from page 2

Therefore, because imposition of the Business Privilege Tax is not always cut and dry, it is imperative that you seek legal or other similar professional consultation if you think that you may be subject to this tax. Some questions you may want to ask regarding whether you and your business are subject to the Business Privilege Tax include the following:

Do you have any customers in Philadelphia?

If so, how many?

How much money do you make per year from those customers?

What do your customers pay you to do for them?

Does that business activity involve, or go through the City of Philadelphia in some manner?

Do you utilize independent contractors or other agents?

What do they do and where do they do it?

Where are they based?

Do you send representatives or agents of your company into Philadelphia?

This article is meant to provide general information regarding the Business Privilege Tax. Anyone with questions about the Business Privilege Tax is encouraged to meet with an attorney, accountant, or other appropriate professional to discuss particular issues and questions.





Sexual Harassment – Report it Immediately

continued from page 1

Title VII covers all private employers, state and local governments, and education institutions that employ 15 or more individuals. Also covered are private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training. The “relief” or remedies available for employment discrimination, whether caused by intentional acts or by practices that have a discriminatory effect, may include: back pay, hiring, promotion, reinstatement, front pay, and reasonable accommodation. Damages may be available to compensate for past monetary losses, future monetary losses, and for mental anguish. Punitive damages may also be available when the conduct is especially egregious and malice or recklessness exist.

Title VII protects men and women from a sexually abusive work environment. The victim and harasser can be a woman or a man and can also be the same gender, according to the U.S. Equal Employment Opportunity Commission (EEOC). Anyone who believes that he or she has been sexually harassed, may file a charge with the EEOC. A charge must be filed with the EEOC within 180 days from the date of the alleged violation, although this deadline can be extended when the charge is also covered by a state or local anti-discrimination laws. In Pennsylvania, the aggrieved individual can also file a charge with the Pennsylvania Human Relations Commission (HRC). Generally, filing with either the EEOC or the HRC will protect the charging parties rights under both federal and state law. It is always best to contact the EEOC and/or HRC promptly when sexual harassment is suspected, so that no legal rights are jeopardized.

continued on page 5...



Sexual Harassment – Report it Immediately

continued from page 4

Employers can prevent sexual harassment by having a clear unequivocal policy against sexual harassment. It must be clear that sexual harassment will not be tolerated and that employees who violate the policy will be disciplined. Other important steps include effective communication of the policy and procedures in place for addressing complaints of sexual harassment, and training of managers on how to identify and respond effectively to harassment. It is very important for supervisors and managers to confront sexual harassment immediately. A thorough investigation of the charges must be made.

If sexual harassment at the highest levels of management occurs, a victim should promptly seek out legal counsel. Unfortunately, when such conduct occurs at this level the entire organization may be impacted by the bad behavior and the normal channels available may also be corrupted or less likely to respond effectively. To limit a company's liability employees and managers should be encouraged to report harassing conduct at an early stage, so that appropriate steps can be taken to prevent the conduct from escalating.

After a charge has been filed under state or federal law, one of the agencies will conduct an investigation. The charge can be settled, subjected to mediation or in some instances dismissed if investigation shows the charge is unsupported by credible evidence. The agency may bring suit or alternatively issue a notice closing the case. When a case is closed, the EEOC issues a "right to sue" letter which gives the charging party 90 days in which to file a lawsuit on his or her own behalf. Similarly, the HRC can close a case but will give a claimant two (2) years to file suit.

The federal and state procedural rules addressing discrimination and harassment claims can be a difficult to navigate even for professionals. We have very generally addressed but one aspect of the wide array of anti-discrimination laws in the work place. Individuals should study their employment handbooks for guidance and when confronted with sexual harassment seek early intervention of management or hire an employment discrimination attorney.

Mental Stress and Workers' Compensation Claims

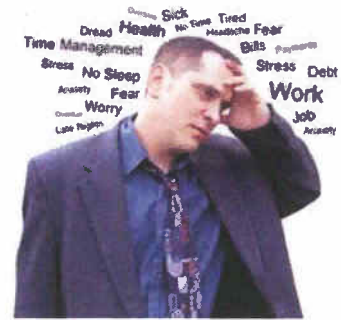
By Regina Parker, Esquire

An employee alleging a mental stress injury caused by work must prove that the stress at work caused a mental injury and that the stress was not to be expected for the type of job the employee performs. In such cases, the focus will be on whether the employee was exposed to abnormal working conditions. Working conditions considered to be abnormal can include a number of instances involving harassment, a dramatic change in working conditions, or physical and verbal abuse. This article will focus on claims brought by employees who are confronted with a weapon while at work and later develop mental stress related problems.

Some jobs by their very nature are highly stressful. It is not abnormal for an employee to be exposed to the threat of death by way of weapon where the employee's job carries the threat of an armed assault. These jobs include police officers, law enforcement officials, city bus drivers, bank tellers, and convenience store clerks. For a high stress working environment to constitute a legally sufficient abnormal working condition, there must be a finding either that the employee's work performance was unusually stressful for that kind of job or a finding that an unusual event occurred making the job more stressful than it had been. For example, in the case involving a police officer, the issue becomes whether the officer was asked to perform work duties that was above and beyond his/her work duties as a police officer, such that would amount to abnormal working conditions.

The determination of what constitutes abnormal working conditions is not always obvious. The courts have rarely extended the definition to employees who have been subjected to armed assaults when their job contains the risk of such confrontations. In a case involving a public bus driver, the court ruled that the psychic injury of a bus driver who was approached by several armed hooded men was not the result of an abnormal working condition. In that case, the employer presented evidence showing that such incidents did occur with enough regularity that handling of them had been incorporated into the operator's training program.

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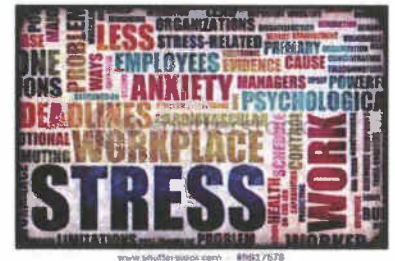
Mental Stress and Workers' Compensation Claims

continued from page 6

However, in another case involving a public bus driver, it was determined that being robbed/assaulted at gunpoint was not a normal working condition. In that case, the employee had been previously robbed at gunpoint while working and in another instance slashed with a knife across the back of her leg during a robbery attempt. During the second robbery attempt, the driver was attacked as a result of expected testimony in a robbery trial. The court found that she was subjected to an abnormal working condition when she was last attacked because she was singled out by her assailant and it was abnormal for her to be intimidated into not testifying under threat of death.

The determination of whether an employee has been exposed to abnormal working conditions is determined on a case by case basis. When employers show that the employee receives on the job training on what to do when confronted with robberies or armed gunmen, courts are likely to find that such events are not out of the ordinary, especially if the establishment has been robbed several times. The question is whether these employees should expect to be subjected to an armed robbery given the nature of their job, the frequency of robberies and the training that the employees are provided to deal with same.

This article addresses a limited issue concerning mental stress workers' compensation claims. The facts and circumstances of each situation differ and the outcome of each case may be different. Anyone with questions regarding this issue should contact an attorney for advice.



Firm News and Updates

John Mattioni, Esquire, Chairman of the Board of Mattioni Ltd., was the principal speaker at a Veteran's Day program held at Centennial Mill, in Voorhees, NJ, honoring the service of United States Merchant Mariners and U.S. Merchant Marine Academy students and graduates in World War II. Mr. Mattioni is a graduate of the Academy, the only federal service academy entitled to display its battle standard as a result of the loss of many students while serving on U.S. Merchant Ships in that conflict.

Centennial Mill holds a special community wide program each year honoring veterans who serve in our nation's armed forces. This fourth annual veteran's day program honored the unsung heroes who manned our merchant ships in World War II but were not granted veterans status until 1988. More than 9,300 merchant mariners died as direct result of enemy action, suffering losses at a rate greater than the casualties suffered by the U.S. Marine Corps.

Joseph F. Bouvier, Esquire, was re-elected to the Board of Directors for the Greater Swedesboro Business Association. The Greater Swedesboro Business Association is a non-profit group dedicated to preserving and improving the Swedesboro, New Jersey downtown business district and other developing business districts in the greater Swedesboro area.

Regina Parker, Esquire and Dawn M. Tancredi, Esquire, have become Shareholders of the Firm.

Dawn M. Tancredi, Esquire, as president of the St. Joseph's Law Alumni Association had the honor of awarding the 2010 Sheehan and McClanaghan Awards to this year's recipients, Dr. Elwyn Chase and Hank Raucci, Esquire.

Ms. Tancredi was also was a faculty member at the recent Pennsylvania Bar Institute seminar, "Zoning in Philadelphia."

Jennifer Iacono, Esquire, 2010 graduate of Widener Law School, summa cum laude has become associated with the Firm. Ms. Iacono also passed the Pennsylvania and New Jersey Bar examinations.

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