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EMPLOYMENT LAW LETTER

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SEX DISCRIMINATION

Equal pay: #MeToo is not just about sexual harassment

by Jeff Slanker
Sniffen and Spellman, P.A.

The #MeToo movement has focused on sexual harassment in the workplace, but employers should be cognizant of another major gender issue that has been the focus of regulatory agencies in recent years—equal pay.

The Equal Pay Act (EPA) and Title VII of the Civil Rights Act of 1964 both prohibit discriminatory pay and pay disparities based on sex. A recent federal court of appeals case makes clear how pressing an obligation equal pay is and highlights that such cases can be hard to defend in court unless pay disparities between men and women are based on clear and consistent reasoning and rationale.

Facts

Qunesha Bowen first worked for Manheim Remarketing as an automobile detailer but was later promoted to arbitration manager. She replaced a male arbitration manager who made $46,350 during his first year in that position. She made only $32,000 in her first year in that position and didn't reach the salary equivalent to her male predecessor until her sixth year serving in the role.

Bowen's salary at some points was below the company's minimum salary for an arbitration manager and was consistently below its midpoint salary for arbitration managers. Internal investigations at the company found that women were paid less than men and that comments suggesting sexist attitudes against women were prevalent.

After learning of this pay disparity, Bowen filed a lawsuit against Manheim alleging violations of the EPA and Title VII. The company argued that it had legitimate reasons for the differences in pay between Bowen and her predecessor. He had more experience, a higher previous salary level, and a broader range of expertise.

The district court granted Manheim's request to dismiss the case based on its argument, and Bowen appealed to the U.S. 11th Circuit Court of Appeals (whose rulings apply to all Florida employers).

Opinion

The 11th Circuit held that the trial court's decision to dismiss the case wasn't appropriate and that Bowen should be allowed to attempt to establish her claims before a jury. Stated another way, the court found that a jury could conclude that the disparity in pay was based on gender—a violation of the EPA and Title VII.

To establish an initial inference of discriminatory pay under the EPA, an employee must show that an employer paid different wages to employees of

AGENCY ACTION

H-2B cap reached for first half of 2018. U.S. Citizenship and Immigration Services (USCIS) announced on December 21, 2017, that it had reached the congressionally mandated H-2B cap for the first half of fiscal year 2018. December 15, 2017, was the final receipt date for new H-2B worker petitions requesting an employment start date before April 1. USCIS continues to accept H-2B petitions that are exempt from the congressionally mandated cap. USCIS also was accepting cap-subject petitions for the second half of fiscal year 2018 for employment start dates on or after April 1. U.S. businesses use the H-2B program to employ foreign workers for temporary nonagricultural jobs. Currently, Congress has set the H-2B cap at 66,000 per fiscal year, with 33,000 for workers who begin employment in the first half of the fiscal year (October 1 through March 31) and 33,000 for workers who begin employment in the second half of the fiscal year (April 1 through September 30).

DOL proposes health plan for small businesses. The U.S. Department of Labor (DOL) announced on January 4, 2018, a Notice of Proposed Rulemaking to expand the opportunity to offer employment-based health insurance to small businesses through Small Business Health Plans, also known as Association Health Plans. Under the proposal, small businesses and sole proprietors would have more freedom to band together to provide health insurance for employees, the DOL statement said. The proposed rule, which applies only to employer-sponsored health insurance, would allow employers to join together as a single group to purchase insurance in the large group market.

Kaplan appointed chair of NLRB. President Donald Trump named National Labor Relations Board (NLRB) member Marvin E. Kaplan chairman of the NLRB on December 22, 2017. Kaplan joined the Board on August 10, 2017, for a term ending on August 27, 2020. He succeeded former Chairman Philip A. Miscimarra, whose term expired on December 16, 2017. The NLRB currently includes members Mark Gaston Pearce, whose term expires on August 27, 2018; Lauren McFerran, whose term expires on December 16, 2019; and William J. Emanuel, whose term expires on August 27, 2021. One seat was vacant when the Kaplan appointment was made.

401(k) missing participants program expanded. The Pension Benefit Guaranty Corporation (PBGC) announced in December that it is expanding its Missing Participants Program to terminated 401(k) and other plans. The expanded program is voluntary for defined contribution and small professional service plans and will be available for plans that terminated on or after January 1, 2018. Before the expansion, the program was open only to terminated PBGC-insured single-employer defined benefit plans. ✤

opposite sexes for equal work on jobs requiring equal skill, effort, and responsibility that were performed under similar working conditions. Then, the burden shifts to the employer to show that the difference in pay was justified by some factor other than sex.

As the court of appeals noted, this burden is a heavy one and requires the employer to show that sex provided no basis for the wage difference. If it's able to make that showing, the employee may still prevail if she establishes that the proffered reason is a pretext (excuse) to cover up illegal discrimination.

The appellate court held that Bowen made an initial case of discriminatory pay and that a jury could find—despite the reasons given by Manheim—that gender nonetheless motivated that pay disparity. The company's reasons (her predecessor's experience and higher previous salary)could be rebutted because her salary was consistently below the midpoint of salaries for arbitration managers. Ultimately, whether sex motivated the pay disparity was a matter for a jury to decide.

Employer takeaway

It's easy to focus on sexual harassment issues in light of their prevalence in the news, but you should always be cognizant of issues of discriminatory pay under the EPA and Title VII. Pay particular attention to evaluating and setting salaries for new hires and promotions to ensure that you are paying employees appropriately and similarly to others who have similar positions, relevant experience, and skill sets. Ultimately, you should strive to compensate employees fairly, and you are absolutely obligated to compensate employees without regard to gender or any protected class.

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REASONABLE ACCOMMODATIONS

Telecommuting: Is your physical presence at work an essential job function?

by Lisa Berg
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

In 2015, the 11th Circuit held that because physical presence at work was essential for a front desk receptionist, an employee's request to work at home wasn't a required reasonable accommodation under the Americans with Disabilities Act (ADA).

On January 30, 2018, the U.S. District Court for the Middle District of Florida faced a similar issue when a call supervisor with intermittent vertigo sued her employer, alleging that it failed to reasonably accommodate her disability when it refused her request to work from home (i.e., telecommute). Below, we discuss this decision and critical lessons learned.

Facts

Susan Morris-Huse worked at GEICO as a telephone claims representative (TCR I) supervisor, an individual who supervises the processing and settling of claims in a telephone claims unit. In 2003, she was diagnosed with Ménière's disease, an inner-ear problem that causes bouts of vertigo, balance instability, and hearing loss. Shortly after her diagnosis, she took intermittent disability leave for about a decade.

After a lengthy medical leave to undergo a procedure for her condition, Morris-Huse's doctor wrote GEICO recommending that she be allowed to work from home because she couldn't "reliably drive long distances and do things that require[d] walking up and down stairs."

ASK ANDY

Assessing employee FMLA eligibility

by Andy Rodman
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Q *My company uses a rolling 12-month period to determine employee Family and Medical Leave Act (FMLA) eligibility. If an employee requests FMLA leave on two or more occasions during the same 12-month rolling period, must she meet the 1,250-hour eligibility requirement for each of those occasions? Or does satisfaction of the 1,250-hour requirement on one occasion automatically satisfy that eligibility requirement for future FMLA occurrences within the same 12-month rolling period?*

A As with many answers to legal questions, it depends. In this case, it depends on whether the qualifying reasons in the 12-month rolling period are the same.

As a general rule, an employee isn't eligible for FMLA leave unless she worked for 12 months and 1,250 hours in the 12-month period immediately preceding commencement of the desired FMLA leave. Whether the 1,250-hour component of the eligibility test must be satisfied for each period of leave within the same 12-month rolling period depends on the nature of the qualifying events at issue.

The regulations provide that employee eligibility is determined (and notice of eligibility must be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. However, according to federal regulations, "all FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable 12-month period."

For example, let's assume that an eligible employee takes 10 weeks of FMLA leave between October and December 2017 for the birth of her child. Then, in February 2018, the same employee desires to take her remaining two weeks of FMLA leave for her spouse's serious health condition. In this example, *the qualifying reasons for leave are different*, so you must check her eligibility before approving her February 2018 request for leave. Given that she took 10 weeks of leave earlier in the 12-month period, it's possible that she may not meet the 1,250-hour eligibility requirement in February 2018.

Remember that the 1,250-hour eligibility requirement is based on the Fair Labor Standards Act (FLSA) concept of *hours actually worked.* So hours of paid or unpaid leave (when she didn't actually work) aren't counted toward the 1,250-hour eligibility requirement. That's why, in the example above, there's a greater chance that she may not meet her 1,250-hour eligibility requirement when she requests her remaining two weeks of FMLA leave in February 2018.

The FMLA regulations also explain that if an employee's eligibility changes during the 12-month period (such as if she doesn't meet the 1,250-hour requirement for subsequent periods of leave), then you must notify her of the change in eligibility status within five business days, absent extenuating circumstances.

As a "best practice," HR professionals should analyze eligibility (12 months, 1,250 hours, and 50 employees within a 75-mile radius) every time an employee requests FMLA leave. If you inappropriately grant FMLA leave to an ineligible employee, then the time granted won't count toward the 12-week allotment when she does eventually become FMLA-eligible.

The FMLA remains the most challenging employment law to administer, so consult with your employment counsel if you have any questions.

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GEICO determined that her medical documents didn't establish that she was unable to work in the office but instead required an accommodation that eliminated the need to travel long distances to and from work. It arranged for her to carpool with coworkers, allowed her to avoid climbing up and down stairs, and provided her a few places in the office where she could rest if she experienced symptoms during work. She returned to work using the ride-share system for nine months and was able to make her shifts until she transferred to another office and found housing within four miles of the office.

After 2015, Morris-Huse couldn't work anymore and went on long-term disability. She filed suit against GEICO in 2016, alleging that it failed to accommodate her disability in violation of the ADA. The company filed a request for summary judgment, seeking to dismiss the case in its entirety without a trial.

Decision

The ADA requires employers to provide reasonable accommodations that enable employees to perform their essential job functions and that don't impose an undue hardship on the business. The district court judge held that the accommodations GEICO provided Morris-Huse were reasonable, even if they weren't the specific accommodations she requested.

Further, the court held that the "restriction that Morris-Huse could not travel long distances to work was accommodated by GEICO through ridesharing and transfer to a location where Morris-Huse could obtain housing close to work, and there were reasonable accommodations that allowed Morris-Huse to perform the essential functions of her job."

The district judge also held that telecommuting was *not* a reasonable accommodation in this case because Morris-Huse was required to provide in-person guidance to workers she supervised and monitor their calls using technology available only at GEICO's offices. For this reason, her essential job functions "required her to have a regular, physical presence."

Employer takeaway

When an employee with a disability requests to work remotely from home as a reasonable accommodation, you are well advised to (1) determine whether there's a medical necessity to work from home, (2) identify and review all of her essential job functions, and (3) determine whether some or all of the functions can be performed at home.

If your company uses job descriptions or explanations of job requirements, they should clearly note the importance of physical presence for positions where it's required. Many employers simply list "regular and reliable attendance" as an essential job function. However, as technology has advanced, attendance at the workplace can no longer be assumed to mean attendance at the employer's physical location.

In this case, the district court relied in part on GEICO's written job description for a TCR I supervisor in reaching its conclusion that telecommuting wouldn't have permitted Morris-Huse to perform her essential job functions because she needed to be physically present. Therefore, this case demonstrates the importance of a well-drafted, legally compliant job description in obtaining a successful outcome in litigation.

If Morris-Huse appeals the district court's dismissal of her claim, we will keep you abreast of any developments in future issues of *Florida Employment Law Letter.*

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WAGE AND HOUR LAW

'Tom, I want you to file a countersuit!' But it's no easy matter with wage/hour claims

by Tom Harper
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From a series of unrelated federal court decisions in Florida last year, employers have learned that it's not easy to countersue employees who break agreements and steal from them.

Often, disgruntled employees file suits under the Fair Labor Standards Act (FLSA) for unpaid wages and overtime. In response, the employer investigates and discovers that the former employee was actually stealing from the company. Some of the recent cases in Florida involved failure to make payments on a promissory note, taking company tools and equipment, stealing alcohol from a restaurant, and violating a noncompete agreement. In each of these cases, federal courts dismissed the employers' counterclaims filed in response to wage/hour suits for unpaid overtime. Read on to learn why.

Supplemental jurisdiciton

The question in each of these cases was whether the court should exercise supplemental jurisdiction over the employer's counterclaims. Supplemental jurisdiction is the authority a court has to decide issues that are related to another claim even if it wouldn't normally be able to hear the related issue on its own. This means that federal courts can rule on state-law claims if they are substantially related to claims under federal law.

Congress changed the federal court jurisdiction law in 1990. The law now provides that "in any civil action of which the district courts have original jurisdiction, [they] shall have supplemental jurisdiction over all other claims that are so related . . . that they form part of the same case or controversy." Further, the law goes on to

state that courts can choose not to exercise supplemental jurisdiction, "if . . . in exceptional circumstances, there are other compelling reasons for declining jurisdiction." Some compelling reasons, as defined by the U.S. Supreme Court, could include "judicial economy, convenience, fairness, and comity."

Broken promissory note

In one recent case, Patricia Gonzalez had been a property manager for James Batmasian, an owner of investment properties. She sued for unpaid wages and overtime, and her former employer answered with a denial that he had violated the FLSA and a countersuit because she had failed to make payments under a promissory note.

Batmasian claimed that Gonzalez had signed a promissory note to repay a loan of $36,800. (This note was secured by a mortgage on her home.) He claimed that she had failed to keep her payments current under the loan and countersued her for the almost $20,000 that remained unpaid.

The court granted Gonzalez's request to dismiss Batmasian's counterclaim. It noted that, as a general rule, an employer's counterclaims are disfavored by the courts in FLSA suits. According to the court, "The only economic feud contemplated by the FLSA involves the employer's obedience to minimum wage and overtime standards and that to clutter FLSA proceedings with the minutiae of other employer-employee relationships would be antithetical to the purpose of the Act."

Then, the court found that Gonzalez's FLSA claim and Batmasian's counterclaim didn't involve "the same facts" and wouldn't use the same witnesses and evidence at trial. Instead, it said that "to prove an FLSA violation, [she] will need to present evidence of her employment, hours worked, and pay received." However, for his counterclaim to be successful, Batmasian would need to call witnesses and enter documents to prove a valid contract, the breach of material portions of the contract, and damages suffered. The fact that both disputes arose out of the employment relationship wasn't enough for the court to invoke supplemental jurisdiction.

There was a factor in the case that pointed to including the counterclaim in the FLSA suit. Batmasian argued that Gonzalez's loan payments under her note had been deducted out of her bimonthly paychecks. He argued that this would need to be explained to the jury to avoid confusion over how much she was actually paid. However, the court dismissed this argument by stating that it was "unconvinced that the addition of an entire Counterclaim is necessary to avoid confusion when the deductions could be explained with stipulations or limited evidence at trial."

Since the wage/hour claim and counterclaim involved different facts, the court found that "judicial economy" wouldn't be served by the exercise of supplemental jurisdiction. The request to dismiss the counterclaim was granted.

Conversion

Two other recent cases both involved claims by employers that former employees had taken products and supplies while

WORKPLACE TRENDS

Survey shows employers offering more health, wellness programs. Two-thirds of HR managers responding to a survey from staffing firm OfficeTeam reported their organizations have expanded health and wellness offerings in the past five years. The survey, reported in January 2018, also found that 89% of workers said their company is supportive of their wellness goals. The OfficeTeam results contrast with a survey from Willis Towers Watson reported in December that found a disconnect between employers and employees on the effectiveness of programs. Fifty-six percent of employers in that survey said they believe their current health and well-being programs encourage employees to live a healthier lifestyle, but just 32% of employees agreed.

CareerBuilder forecast identifies hiring trends for 2018. A new poll from CareerBuilder has identified employer hiring trends to watch in 2018. The poll, conducted by The Harris Poll from November 28 to December 20, 2017, found that employers will start courting college students early, with 64% planning to hire recent college graduates in 2018. Employers also will be looking to import talent, with 23% planning to hire workers from other countries to work in the United States. The survey also found that employers will increase outreach to past employees, with 39% planning to hire former employees in 2018. Sixty-six percent of employers surveyed said they will train and hire workers who may not have all the skills they need but have potential. Also, 44% of employers said they plan to train low-skill workers who don't have experience in their field and hire them for higher-skill jobs. The poll also found that employers plan to increase starting salaries.

Survey pinpoints executives' top networking mistakes. Even top executives make mistakes in their networking efforts, according to CFOs polled in a recent Robert Half Management Resources survey. CFOs were asked, "Which one of the following is the greatest networking mistake executives make?" Their responses: not asking for help (30%), failing to keep in touch or reaching out only when they need something (23%), failing to connect with the right people (19%), not thanking contacts when they provide help (14%), and not helping others (14%). "Business is changing so rapidly, no one has all the answers or expects others to," Tim Hird, executive director of Robert Half Management Resources, said. "Executives need a robust network, including mentors, peer staff-level contacts, and experts from within and outside the company, to stay on top of trends, best practices, and opportunities." ✤

employed. When the former employees sued for wage and hour claims, the employers responded with denials that they had violated the law and countersued their former employees for conversion (the civil cause of action when someone takes something of yours without permission).

Michael Molnoski was employed as a legal assistant and property manager for the same Batmasian from the previous case. He claimed that Batmasian had "intentionally misclassified" him and other employees as exempt and paid them a "faux salary" (payment that looked like a salary but was really based on hours worked instead).

Molnoski claimed he wasn't exempt and was required to work from 8:00 a.m. to 6:00 p.m. Mondays through Fridays and 10:00 a.m. to 2:00 p.m. on Saturdays. He also claimed that he received text messages, e-mails, and phone calls before and after his work, all without overtime pay.

Batmasian responded to the suit by filing a counterclaim against Molnoski alleging that while he was employed, Molnoski had "converted to his own use air handlers, condensing units, a 20 ton chiller, and other property of [Batmasian] for monetary gain." However, the court ruled that the employer's Florida-law counterclaims for conversion were improper in a wage/hour case because they didn't "stem from the employer/employee relationship which 'implicate[s] the number of hours worked or payment received.'"

Todd Erling was an employee at American Grille with Sushi. He sued for unpaid overtime. The restaurant countersued for conversion, alleging that he often came in during nonwork hours and took liquor and other alcoholic beverages for his personal use. In addition, his manager filed a countersuit for the return of $350 that he had loaned to Erling.

Here again, the court dismissed both counterclaims, finding that "although the counterclaims may arise from around the same time period, . . . the counterclaims do not have the same operative facts as [Erling's] claim under the FLSA."

If the counterclaim is only to offset the employee's potential recovery, then it can be allowed. An offensive counterclaim, however, isn't just an offset but rather seeks separate damages based on its claims. And the court found that the personal loan to Erling near the time of his termination had "no bearing" on whether he was to be paid overtime wages. Again, the counterclaim was dismissed.

Noncompete

In the last case, Andrew Hennes worked for Outsource Equipment Company as a sales representative with salary plus commission. Outsource provided material handling equipment for factories and warehouses in central Florida. In December 2016, Hennes sued his former employer for unpaid overtime.

When Outsource was served with the suit, it filed an answer and a countersuit against Hennes that alleged that he had breached the noncompete provision in his employment agreement. To support its claims, it attached a copy of the employment agreement to its counterclaim. As with the other cases, Hennes asked the court to dismiss the countersuit.

Here also, the court found that the "core of facts" on which Hennes' FLSA claim rested was the hours he worked and the amount paid to him for those hours. These issues were "quite distinct" from the issues raised in the breach of the noncompete agreement. The court said that "the FLSA claim necessarily requires different elements of proof than the Counterclaim." Regardless of the outcome of Hennes' suit, it had no effect on whether Outsource could prove he violated the noncompete agreement. As a result, the request to dismiss the counterclaim was granted.

Takeaway

These decisions *do not* mean that you can't file suit against an employee who has sued you under the FLSA. You are still entitled to file your own suits if you discover wrongful conduct and are damaged. These decisions just mean that, unless you have the right facts that are related to the wage and hour claim, it will be difficult to bring your action in a counterclaim in the same suit as that filed by the employee.

If the "facts" don't require the federal courts to take jurisdiction over another claim, they are hesitant to do so. In each of these cases, when the counterclaim was dismissed, the employer had the right to go to Florida state court and bring its claims there.

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DATA PRIVACY

Does your company do business with the EU? Familiarize yourself with the GDPR

Does your Florida company do business in the European Union (EU)? More specifically, does your company offer goods and services to the EU's member countries, or does it collect or monitor the personal data of EU-based citizens? If so, you may become subject to sweeping new EU data protection laws, and you have only a couple of months (until May 25, 2018) to comply with those laws. Read on for important details about the EU, its General Data Protection Regulation (GDPR), what it requires for American companies conducting certain types of business abroad in the EU market, and why you must ensure timely compliance with the new rules.

The EU and its member nations

The EU is an economic and political union of 28 countries that operates an internal (or single) market, allowing free movement of goods, capital, services, and people between member states. Current EU countries include Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (UK). On March 29, 2017, the UK started the two-year "Brexit" process of leaving the EU. (This article does not explore the potential impact of Britain's June 8 election on its Brexit plans.)

The EU seeks to protect its citizens' privacy in their dealings with businesses around the world, especially those that are capturing and using EU citizens' personal data. In the past, the EU focused its data protection laws on organizations that have physical operations in the EU and those it classifies as "data controllers" (i.e., organizations that determine the purpose and means of processing personal data and make decisions about that data processing). Only data controllers were subject to prior EU data regulation and oversight. That narrow emphasis exempted most American businesses from this type of EU scrutiny.

EU's broad new GDPR

As the economy became more globalized, political officials in EU member nations expressed concern about the likelihood that their citizens' personal data was being exploited without their knowledge or approval. Accordingly, the EU passed the GDPR in an attempt to better protect EU citizens' data from unauthorized use and disclosure.

The GDPR expands the organizations subject to regulation to include "data processors," defined as entities that handle personal data and follow the instructions of data controllers. Even if a business keeps data manually instead of (or in addition to) in an automated way, the GDPR is applicable. Its regulations require companies to offer enhanced data protection to EU citizens through numerous means, including undertaking increased security measures, appointing data privacy officers, and keeping records of data processing activities.

The new record-keeping requirements are extensive and go well beyond what a business might otherwise have anticipated it must undertake. The GDPR imposes a burden on covered businesses to be able to document their compliance and record keeping. In the event of an investigation, a business must show, for example, that it maintains a current inventory of personal data processing activities. That can be a major undertaking because the GDPR requires the business not only to confirm what type of data it has and why but also to demonstrate that it isn't misusing data, it isn't collecting data for an unauthorized or improper purpose, and it's purging data that is no longer needed for the purpose for which it was collected.

A business subject to the GDPR must be able to document its corporate compliance efforts and its commitment to data privacy and security. It also must be able to establish that, in the event of a data breach, it can meet its obligations for notifying anyone whose data was affected. Significantly, the GDPR expands the businesses governed by EU law to include those that offer goods and services to EU member countries but don't have operations in the EU.

GDPR principles

To maximize data privacy protection for EU citizens, the GDPR includes seven governing principles for covered businesses' collection and use of personal data:

(1) Lawfulness, fairness, and transparency;

(2) Data collection for only a stated limited purpose;

(3) Minimization of data collected to what is relevant and necessary to fulfill the limited purpose of collection;

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(4) Accuracy in data collection, including the means for correcting any errors in the data collection process;

(5) Limits on storage to accomplish the limited purpose of collection, but keep the data no longer than necessary for that purpose;

(6) Integrity and confidentiality of storage to minimize the possibility of data loss or compromise; and

(7) Accountability to show compliance with the other six principles.

With respect to accountability, the GDPR requires an affected business to implement data protection measures into its corporate policies and procedures as well as infuse its corporate structure with a culture of compliance. In the event of an investigation by an EU supervisory authority (SA), a Florida business subject to the GDPR will need to show not only that it has comprehensive data privacy policies and procedures in place but also that it follows its policies and procedures in order to maximize its compliance efforts. Robust compliance efforts will decrease the chance of a data breach and, if a breach does occur, will lower the likelihood that a severe financial penalty would be imposed by the EU following an investigation.

GDPR's potential impact on your Florida business

The expansion of data privacy protections in the EU greatly increases the likelihood that American businesses, including those in Florida, will be subject to EU regulation, investigation, and enforcement. Once it takes effect on May 25, 2018, the GDPR will allow private citizens to bring complaints and set off investigations into whether their rights to data privacy were violated. Moreover, SAs will be able to levy substantial fines on organizations that violate the GDPR. Fines can amount to up to four percent of the organization's global annual profit during the preceding financial year or £20 million (approximately $25.35 million), whichever is greater.

American companies subject to the GDPR must begin to improve their record-keeping practices and, in some cases, bolster their other compliance efforts so they can demonstrate adherence to the regulations' stringent obligations. If your business might fall under the ambit of the GDPR, you should consult with counsel to review your existing compliance program and take additional steps, as needed, to meet the regulations' more rigorous enforcement provisions and looming deadline. ✤

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