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## Legal Implications of Golf Course Conversions

By R. Duke Woodson

According to information gathered by the National Golf Foundation, last year 146 golf courses closed in the United States. There were a variety of reasons for the closures, including reduced play, oversupply, and basic financial issues, but the primary reason for closures was to convert the property to residential or commercial development. Although the number of closures remains small as a percentage of the total number of courses, the value of open property in heavily developed areas will drive continued conversion of courses to new development.

Florida has more golf courses than any other state and there have been 45 closures in the past five years, or 3.7 percent of the total supply, according to the National Golf Foundation. While there have been more closures in Florida than in any other state, there are several other states where closures as a percentage of total supply has been higher such as Georgia and South Carolina. These are primarily the result of oversupply and need for open land in rapidly developing areas.

Another trend in rapidly developing areas for which no statistics have been compiled is the partial conversion of golf course property into residential development. Often a golf course owner will be approached by a developer to convert a corner or sliver of property not utilized for the course. These partial conversions are a significant benefit to the course owner, providing needed revenue to maintain golf operations.

There are many legal issues associated with the full or partial conversion of courses to residential or commercial development. Almost all of these conversions require a rezoning or an amendment to the existing land use designation from open space, recreation, or agriculture to residential or commercial. The rezoning or amendment requires a public hearing, and provides an opportunity for objections by neighboring property owners who may have purchased their property specifically for access to the adjoining course or for the view afforded by being adjacent to the course. Almost all course conversions are contentious due to concern by neighboring property owners, particularly in areas where a golf course may be the last bit of green space in an otherwise heavily developed area.

Depending on the jurisdiction, issues raised in the rezoning or land use amendment process also include the effect on the road network from the intensification of land use. Many developed areas have roads that are heavily congested, and converting a 150-acre golf course into residential development will result in an increase in traffic on these already congested roads. Another issue often raised in conversions, including partial conversions, is the lack of school capacity for the proposed residential development. Neighbors already

concerned about the lack of open space and view are typically incensed by the notion that new residences will be built and further burden existing overcrowded schools.

The rezoning process requires an interdisciplinary team of attorneys, environmental consultants, engineers, traffic consultants, planners, and government relations consultants. The process typically takes well over a year, and will often involve litigation.

## Employment Law Compliance Auditing for Maximum Legal Protection and Improving the Bottom-line

By R. Scott Callen

While legal compliance auditing is generally recommended to prevent litigation and legal violations, periodic employment law audits also can be used to ensure your company has maximum legal protection — and to positively impact your company's bottom-line. General examples are provided below.

### Wage and Hour Practices

Periodic auditing may reveal wage and hour practices that exceed the legal requirements of the Fair Labor Standards Act or applicable state laws. For example, an employee's job duties or compensation may have increased to the point of qualifying for an overtime exemption. Additionally, recent legal developments (i.e., United States Department of Labor opinions and federal/state case law) may provide legal support to consider changing overtime exemption status or other payroll practices, including wage deductions.

### Hiring Practices

Audits may reveal additional hiring inquiries that could lead to better hiring decisions and increased legal protection. For example, employment applications or background investigation forms that were created several years ago may omit legally permissible questions. Accordingly, it is prudent to periodically review job applications, interviewing procedures, and background investigation forms.

### Leave Practices

Periodic audits may reveal leave policies and practices that extend beyond legal requirements, which can be very useful information for employers challenged with absenteeism abuse.

## Sexual Harassment Policies

Employers should review harassment policies to determine whether additional legal protections are available. Policies that were created several years ago may omit substantial legal protections.

## Employment Agreements

Employers should periodically review employment agreements to determine whether additional legal protections may be considered based upon recent state laws or case law developments, increased employee responsibilities or compensation, or changes in the employer's operations (i.e., employer expands operations to additional states). For example, employers may be able to secure additional legal protections through recent legal developments regarding arbitration clauses or non-competition restrictions.

Federal, state, and/or local laws and collective bargaining obligations must be carefully considered before implementing any change related to terms and conditions of employment.

## Employment Law Updates and Tips: Don't Be the Next Golf Course Company to Pay for a Sexual Harassment Lawsuit

By R. Scott Callen

Sexual harassment claims remain prevalent in the workplace and can be very costly. For example, in a recent civil action, a golf course company agreed to pay \$367,000 to the Equal Employment Opportunity Commission (EEOC) after employees and job applicants alleged that they were subjected to lewd remarks, demeaning comments, and unwelcome sexual overtures.

Five former employees and three job applicants alleged that the owner and general manager of a Washington golf course made lewd remarks, demeaning comments, and unwelcome sexual overtures. The owner ordered female employees to wear revealing attire and made constant comments about sex, the EEOC said. He told employees and job applicants during interviews that he wanted to engage in a "sexual fantasy" at the golf course, the EEOC said.

Besides paying the substantial fine, the company also has agreed to provide mandatory annual sex discrimination and sexual harassment training for the owner, managers, and employees; establish policies to address sexual harassment; and allow the EEOC to monitor the worksite for the next five years.

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In addition to taking a huge chunk out of the bottom line, sexual harassment claims can lead to negative media attention, and cause serious disruption in the work environment. We have defended many sexual harassment lawsuits that could have been avoided or dismissed, so we offer the following legal tips:

- We believe companies should design the sexual harassment complaint procedures in a legally advantageous manner. Many companies have legally required sexual harassment complaint policies, but oftentimes the policies are not structured to win a sexual harassment case.
  - Based upon developing federal and state laws, it is advisable to review personnel policies on an annual basis. Your policies may be legally "outdated" and may afford employee terms and conditions that are not legally advantageous or legally required.
  - Work with legal counsel to develop strategic documentation when you learn of a sexual harassment situation. Documentation can determine whether you win or lose a case, so what you document and how you phrase the documentation is crucial.
  - Investigations are legally required by management when you learn of a sexual harassment situation (no formal complaint is required). It is advisable to work with counsel to ensure the investigation satisfies legal requirements, but counsel also can advise on investigation strategies that can prevent or win harassment claims.
- Consider sexual harassment training and get proof that the employee attended the training.
  - Work with counsel to know when and how to offer severance agreements.