

Practical Briefs

Legal Updates for Today's Proactive Manager

VOLUME 1, ISSUE 5

AUGUST 14, 2009

UPCOMING COMMUNITY EVENTS:

4th Annual Women in Business
Council Empowerment Conference

and

Awards Luncheon

August 25, 2009

Location:

University Church of Christ

Including Workshops presented by

Armstrong & Desai, LLC

"2009's Alphabet Soup of
Employment Law Change"

and

"Critical Planning for your
Family's Future - Do it Today"

To print out the conference
registration form, please visit our
website at:

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Estate Planning for Your Family - What are You Missing?

One of the most exciting times in a person's life is the birth of a child. The years following also bring joy, excitement, and challenges into a parent's life. Some of the most critical decisions that a parent can make for her child are often put on the back burner. Have you taken the steps necessary to plan for your children's future if the "unthinkable" happens and you are no longer here to protect your most precious assets? Who will take care of your children? How will they be supported financially? What can you do to ensure someone will properly care for them?

Although it may not be pleasant to think about your untimely passing, it is a vital step in proper preparation for your loved ones' futures. If you have minor children, you should consider who will be their guardian(s) in the event both of their parents meet an untimely death. If you die without a will, a probate court could make that critical decision for you. All too often, the person the court chooses may not be who you would have chosen to care for your children.

The financial security of your minor children is also a critical part of your overall estate plan (and your responsibilities as a parent). Taking the steps necessary to create an adequate estate plan will allow

you to appoint the guardian of your children, create a trust to plan for their care and financial support as well as protect their assets from potential creditors, and otherwise properly plan for your children's future if the unthinkable happens.

If you currently have an estate plan, be sure to evaluate and update it on a periodic basis, particularly when there is a life-changing event in your life or in the lives of your beneficiaries. This includes marriage, divorce, having or adopting children, loss of a loved one, etc.

If you would like more information regarding effective estate planning for your family's future, please join us at the Women in Business Council's Annual Empowerment Conference for a more in-depth discussion regarding estate planning. If you would like assistance with your estate plan, please contact Carol Armstrong (CArmstrong@adgloballaw.com) or Sheetal Desai (SDesai@adgloballaw.com) at (205) 210-4713 with your questions and concerns.

Join Us at the 4th Annual Women in Business Council's Empowerment Conference and Awards Luncheon

Our attorneys will present workshops at this year's "Moving Forward" conference program. In the workshop "2009's Alphabet Soup of Employment Law Change", we will discuss the critical changes in federal employment laws that affect businesses of every size. We will also present, "Critical Planning for your Family's Future - Do It Today", in which we will provide an overview of key estate planning issues every woman must consider to protect her family when the unthinkable happens. The complete registration form with additional information can be found on our website, www.adgloballaw.com, or on the Chamber's website, www.tuscaloosachamber.com.



Alabama State Bar rules require the following: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

Unless otherwise indicated, Texas attorneys are not certified by the Texas Board of Legal Specialization in the areas of practice listed on their profiles.
See Texas Disciplinary Rules of Professional Conduct Rule 7.04(b)(3) (1999).

FREE BACKGROUND INFORMATION AVAILABLE UPON REQUEST

This newsletter is intended to provide general information only and is not intended to provide legal advice or opinions for any reader's particular situation. Each specific set of facts and circumstances are unique, and the reader should consult his or her legal or tax advisor concerning specific advice for the issues presented in this newsletter.

Employer Diligence in the Face of Layoffs and Terminations

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LEGISLATIVE UPDATES

The economic downturn continues to result in increased lay-offs and cutbacks. Many employers are facing reductions in force at levels not seen before. Others are taking steps to cut internal costs that can also indirectly affect employee morale. Unfortunately, these steps may result in increased charges of discrimination or other employee complaints.

Here are a few simple steps your business can take now to help keep you compliant with ever-changing federal and state employment laws and encourage a positive and efficient work environment for your employees.

1. Keep your employee handbooks up to date. Take the time to periodically review and update your employment policies to ensure that you are complying with changes in the law.

2. Stay abreast of significant changes in federal and state employment laws – HINT: THERE ARE A NUMBER OF CHANGES IN 2009! In particular, be sure you're up to speed on the new military caregiver and "qualifying exigency" military leave under the Family and Medical Leave Act, changes in the definition of "disability" and employer responsibilities under the Americans with Disabilities Act (ADA), required pay and related decision records required under the Lilly Ledbetter Fair Pay Act, and other significant changes in federal and state employment laws.

Creditor's Rights—Transferring Balances From One Creditor to Another—Beware!

One of the most frustrating issues faced by creditors in bankruptcy is the bankruptcy trustee's "preference" power. That power allows the trustee to recover payments made by the debtor in the 90-day period prior to the debtor's filing bankruptcy.

If you receive a preference demand letter in a bankruptcy case, you may simply pay the amount demanded (usually not your preferred choice), attempt to negotiate a settlement for a lesser amount, or defend against the preference claim. However, a successful defense will depend upon the specific facts and circumstances surrounding the debtor's payment to you.

In a recent federal court of appeals case, a credit card company was forced to return money to a debtor's bankruptcy estate after the trustee successfully asserted a preference claim against the company. Just prior to filing bankruptcy, the debtor applied for an account with a new credit card company and had the new company pay off its existing balance to the other credit card company. The "paid off" creditor defended the "balance transfer" payment made to it by claiming an "earmarking exception" to the trustee's preference power. The "earmarking exception" applies as a defense to a preference claim when a third party advances funds

3. Take a fresh look at your termination policies and procedures. Are you setting yourself up for a claim by a former employee, or are your policies and procedures adequate under the law? Do you have a severance plan in place, and if so, are you protecting your business with a waiver of claims upon payment of the severance? Do those waivers comply with and are they enforceable under federal age discrimination and other applicable laws?

4. Review any unemployment claim and make a considered decision regarding whether to challenge the claim. An unopposed claim may come back to haunt you if that employee subsequently files a charge of discrimination or lawsuit.

To get more information on employment law updates, please join us at the Women in Business Council's Annual Empowerment Conference for "2009's Alphabet Soup of Employment Law Changes – New Laws, New Liabilities for Employers." If you would like additional information or assistance with your company's employment policies and procedures, contact Carol Armstrong (CArmstrong@adgballaw.com) or Sheetal Desai (SDesai@adgballaw.com) at (205) 210-4713 with your questions and concerns.

to the debtor subject to an agreement requiring the debtor to use the funds to pay off another creditor.

The court disagreed, and held that the "balance transfer" was an extension of a line of credit by the new credit card company. The Court stated that the debtor had "sufficient control over the funds used to pay the credit card debt" and could have used the line of credit to pay off other creditors. The Court held that these payments were preferential transfers by the debtor and forced the paid off creditor to return the payments to the trustee.

If you would like additional information regarding preference claims and the available defenses, please contact Carol Armstrong (CArmstrong@adgballaw.com) or Sheetal Desai (SDesai@adgballaw.com) at (205) 210-4713 with your questions and concerns.

FOR MORE INFORMATION:

Visit our website at:

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1. Health Care Reform Bill Stalled

The Obama administration's August deadline for a health care reform bill came and went without passage of legislation. However, the bill has successfully made its way through three House committees, and the bill is expected to progress to the Senate Finance Committee for discussions.

2. Immigration Reform – Early 2010?

President Obama stated that he expects Congress to focus on the country's immigration system by "early next year." The President has asked Homeland Security Secretary Janet Napolitano to work with Congress to systematically work through the controversial issues, including resolving the status of the 12 million illegal immigrants that are currently in the United States.

3. Employment Non-Discrimination Act (ENDA) Still on the Horizon

The newest version of ENDA was introduced to the House of Representatives on June 19, 2009. The proposal would make it illegal for most public and private employers to discriminate against employees or job applicants based on their sexual orientation, transgender status or gender identity. The support for ENDA is the strongest it has ever been, and will be in discussion into 2010.

4. Employee Free Choice Act (EFCA) – "Card Check" Bill

EFCA (commonly referred to as the "card check bill") proposes a mandate for employers to recognize unions if the union is able to get more than fifty percent of their employees to sign authorization cards. As many will recall, this bill was expected to be a priority for the Obama administration. However, because of the recent focus on the health care reform bill and other legislations, EFCA will likely be delayed until 2010 before it is presented to Congress for a vote.

We will continue to monitor these issues and more, and provide updates on a periodic basis.