



# Legal Perspectives

from Abrahams Kaslow & Cassman LLP

## How to Manage Intermittent FMLA Leave for Exempt Employees

by: Harvey B. Cooper and Ryan M. Kunhart

One of the many headaches of managing intermittent Family Medical Leave is tracking leave in increments smaller than one work week. Non-exempt employees under the Fair Labor Standards Act (FLSA) are usually entitled to 480 hours of leave per FMLA year (12 weeks x 40 hours/week). But employers need to be cautious when employees take a reduced schedule or intermittent leave.

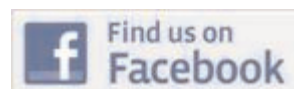
When calculating leave entitlement with a reduced schedule or intermittent leave, employers must first calculate how many hours of leave an employee is entitled to. This calculation is made according to the employee's regular work week. For example, an employee who regularly works a five-day work week and eight hour days is entitled to 480 hours of leave (12 weeks x 40 hours/week). But, an employee who regularly works a four-day work week and eight hour days is entitled to only 384 hours of leave (12 weeks x 32 hours/week).

What if an employee's schedule varies from week to week and an employer cannot determine with certainty how many hours an employee regularly works? To calculate an employee's FMLA leave entitlement in this situation, an employer should average the hours scheduled over the twelve months prior to the beginning of the FMLA leave period.

Calculating FMLA leave entitlement for a FLSA-exempt employee who works a varied schedule can be more difficult. Usually employers do not have records of the hours exempt employees work. Consequently, determining intermittent FMLA leave entitlement for exempt employees can be difficult since it is not uncommon for exempt employees to work more than 40 hours in a work week. If there is a disagreement with an exempt employee over hours worked, the burden is on the employer to disprove the employee's record of the number of hours worked.

So how should an employer handle these situations? We suggest that employers use a standard leave of absence form that includes a space for exempt employees to specify the number of hours they have worked over the preceding 12-month period. If the employer disagrees with the number of hours represented, they should immediately address the issue with the employee and check its records to see if the employee's calculation is inaccurate. This process encourages an open dialogue at the beginning of FMLA leave, which can minimize any claims of unfair treatment in the FMLA process.

If you have any questions or are interested in implementing a FMLA leave policy, please contact one of our employment law attorneys at 402-392-1250.



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## What Does it Mean to Designate a Beneficiary?

by James A. Tews

What is the effect of designating a beneficiary on a bank account? What about designating a beneficiary to receive proceeds under a life insurance policy? People sometimes do not give much thought when asked by their banker, life insurance agent, or investment account broker about naming a beneficiary. If not thoughtfully considered these decisions can have significant, unintended consequences.

First, let's examine the relationship between a bank and its customer. When establishing a bank account an individual signs a signature card and receives account disclosure forms, which together form a contractual relationship between the bank and the individual. If the individual account owner so desires, he or she may name a payable-on-death ("POD") beneficiary. Upon the account owner's death, the bank is contractually obligated to pay all remaining account funds to the POD beneficiary designated by the account owner, regardless of what the account owner's Will or Trust provides.

A contractual relationship also exists between a life insurance company and the owner of a life insurance policy. For example, when Betty buys an insurance policy she is entering into a contractual relationship with the insurance company. Under the terms of the policy, Betty pays premiums to the insurance company and, if the policy is still in effect when Betty dies, the insurance company is obligated to pay the insurance proceeds to the beneficiary Betty named in the policy (in this case, John). Again, the insurance company is contractually obligated to pay the proceeds to John, and these proceeds will not be disposed of according to Betty's Will or Trust.

Unintended consequences may result if an individual accidentally designates an inappropriate beneficiary or forgets to prepare a new beneficiary designation after circumstances change. For example, what if Greg, the father of a minor child named Anne, designates Anne as the beneficiary under a life insurance policy and Greg then dies? The insurance company would be obligated to pay the life insurance

proceeds to Anne (rather, to her court-appointed conservator), which may be contrary to Greg's desire as expressed in his estate planning documents. Would Anne be mature enough at age 19 to handle these proceeds when she receives them from the conservator? As another example, assume that Jack obtained a life insurance policy and named his wife, Jill, as the beneficiary. What happens if Jack and Jill later divorce, Jack marries Beth, and then Jack dies? If Jack did not change the beneficiary under his life insurance policy and Jill outlives him, then the insurance company would be obligated under the policy to pay the proceeds to Jill.

Be sure to consult with your estate planning attorney about designating appropriate beneficiaries so that account assets and life insurance policy proceeds will be disposed of at your death in accordance with your estate plan wishes.

If you have any questions about your estate planning matters, please call our office at 402-392-1250 and speak to one of our estate planning attorneys.

### Six Lawyers Recognized in *The Best Lawyers of America 2012*

Abrahams Kaslow & Cassman LLP is pleased to announce that six lawyers from our firm were recently selected by their peers for inclusion in *The Best Lawyers in America*® 2012 (Copyright 2011 by Woodward/White, Inc., of Aiken, S.C.).

John W. Herdzina was recognized for Corporate Law and Franchise Law; R. Craig Fry and Howard J. Kaslow were recognized for Corporate Law; Randall C. Hanson was recognized for Energy Law;

Timothy M. Kenny was recognized for Municipal Law and Litigation-Municipal; and Thomas J. Malicki was recognized for Trusts and Estates.

Since its inception in 1983, *Best Lawyers* has become universally regarded as the definitive guide to legal excellence. Because *Best Lawyers* is based on an exhaustive peer-review survey in which more than 39,000 leading attorneys cast almost 3.1 million votes on the legal abilities of other lawyers in their

practice areas, and because lawyers are not required or allowed to pay a fee to be listed, inclusion in *Best Lawyers* is considered a singular honor. *Corporate Counsel* magazine has called *Best Lawyers* "the most respected referral list of attorneys in practice."



# Employment Law

## IRS Steps Up Enforcement on Independent Contractor Misclassification

by: Harvey B. Cooper and Ryan M. Kunhart

The IRS is cracking down on employers misclassifying independent contractors, announcing a voluntary settlement program allowing businesses to properly reclassify independent contractors as employees. Under the Voluntary Worker Classification Settlement Program, businesses that have been improperly labeling employees as independent contractors now have a chance to properly reclassify their workers by paying 10 percent of the employment tax liability that may have been due on

compensation paid to the workers for the most recent tax year, with no interest or penalties due. The IRS also announced it will be more aggressive about misclassification of workers as independent contractors.

Employers must be cautious when considering entering into a settlement with the IRS. The IRS has sharing agreements with other federal agencies, such as the Department of Labor, and thirty-nine states that allow the IRS to provide them employer information,

which can be used to sue employers for wage-hour violations, employee back-benefits, unemployment tax and other charges. No amnesty program has been announced by the other agencies or state governments.

To speak with one of our employment attorneys about your employee classifications, please call 402-392-1250.

## AK&C Welcomes Ryan Kunhart



Ryan M. Kunhart

AK&C is pleased to announce Ryan M. Kunhart has joined the firm as an associate.

Mr. Kunhart graduated with his Bachelor of Arts, *magna cum laude*, from Creighton University in 2007. He was a Deans Scholar and a member of the Phi Alpha Theta National History Honor Society. Mr. Kunhart graduated with his Juris Doctor, *cum laude*, from the Creighton University School of Law in 2011. He received a certificate in litigation while at Creighton and was the recipient of the CALI Excellence for the Future Award in Trial Practice.

Mr. Kunhart will focus his practice on employment law, creditors rights, and civil litigation. He is a member of the Omaha Bar Association and the Nebraska Bar Association.

## Penalty Kick Takes Third Place in Easter Seals Family Fun Fest Kickball Tournament

In August, our attorneys participated in a kickball tournament benefitting Easter Seals of Nebraska. In the double elimination tournament our team finished third. More importantly, we helped raise over \$16,000 that Saturday afternoon while having a little fun at the same time.



Back Row: Rob Schartz, Dave Rattner, MVP Matt, Jeff Blumel, Nathan Warnock, Gary Schweitzer, Laura Woods and our mascot Sniffy the Dinosaur from MUD.

Front Row: Jen Rattner, MVP Gabe, Nina (friend of MVP Gabe), and James Tews

This newsletter is published by the law firm of Abrahams Kaslow & Cassman LLP to inform our clients and friends about various legal developments and to provide news about our firm. This newsletter is not intended to provide legal advice on specific matters but rather to provide insight into legal topics and issues of current interest. Please consult with legal counsel before taking action on matters covered in this newsletter. If you would like further information or would like to be added to our mailing list, please contact Debbie Watson at 402-392-1250 or via email at [dwatson@akclaw.com](mailto:dwatson@akclaw.com).

The Nebraska Rules of Professional Conduct for attorneys require the following statement on newsletters of law firms:  
**This is an advertisement.**

## Come Join Us for an Educational Discussion About Special Needs Estate Planning

Guardianships, Conservatorships, Powers of Attorney,  
and Supplemental and Special Needs Trusts

Attorney James Tews will be holding two informal educational discussions about estate planning for families that have a special needs family member. This is a great opportunity to visit with an experienced attorney who works often with families to help protect the future of their special needs family member.

Please RSVP for the session that is most convenient for you.

**Evening Session:**

Thursday, October 20, 2011

7:00 p.m. - 8:00 p.m.

**Morning Session:**

Thursday, October 27, 2011

7:30 a.m. - 8:30 a.m.

Both sessions will be held at our office located at  
8712 West Dodge Road, Suite 300.  
Refreshments will be served.

RSVP to [dwatson@akclaw.com](mailto:dwatson@akclaw.com) or 402-392-1250