



Legal Perspectives

from Abrahams Kaslow & Cassman LLP

Paternity Leave Rights Under the FMLA

by Harvey B. Cooper and Ryan M. Kunhart

An often overlooked right under the Family and Medical Leave Act (FMLA) is an employee's right to take paternity leave. For example, although Prince William and the Duchess of Cambridge did not need to worry about parental leave and bonding time, what paternity leave rights would William have been entitled to if he worked for an FMLA covered employer in the United States?

Could William take FMLA leave to attend Kate's prenatal visits?

Yes, but only if William is married to Kate. Under the FMLA regulations only a husband is entitled to FMLA leave to care for his spouse (1) if she is incapacitated during her pregnancy; (2) during her prenatal care; or (3) following the birth of the child if the mother has a serious health condition.

After the baby is born, what are William's FMLA bonding leave rights?

William is entitled to take up to 12 weeks of FMLA bonding leave even if the child does not have a "serious health condition". William's employer cannot require him to obtain a medical certification to support the bonding leave. The employer can only obtain information confirming the pregnancy, due date, and birth of the child. The FMLA Eligibility Form has a section requesting this information.

A father is entitled to take bonding leave on an intermittent or reduced schedule only if his employer agrees.

What are William and Kate's FMLA leave entitlements if they both work for the same company?

If William and Kate work for the same employer, such as the King of Aksarben, they are only entitled to a combined total of 12 weeks of FMLA bonding leave. This limitation applies only if the parents are husband and wife. If the parents are not married, they each get 12 weeks of bonding leave. But, if the newborn child has a serious health condition, each parent, regardless

of whether they are married, is entitled to a separate 12 weeks of FMLA leave to care for the child.

A word about the Defense of Marriage Act (DOMA)

A recent Supreme Court DOMA decision cleared the way for states to decide their own definition of "spouse". The decision, however, left several situations unanswered. Since then several lower federal courts have given their view of these situations.

What if Ann and Jane are legally married in Iowa, live in Iowa and work in Iowa? Iowa recognizes same-sex marriage. Jane is pregnant. Can Ann take FMLA leave to attend Jane's prenatal appointments? The FMLA regulations usually refer to "husband" and "wife" but also sometimes refer to "spouse". The United States Department of Labor recently updated its FMLA Fact Sheet to clarify that "spouse means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage and same-sex marriage." Therefore, Ann has the right to take FMLA leave to attend the prenatal appointments.

What if Bill and Bob are legally married in Iowa, live in Iowa, but work in Nebraska? They adopt a child. Can they take paternity leave under ABC Company's FMLA policy? The recent Department of Labor Fact Sheet did not address the definition of "spouse" for those employees in a same-sex marriage who reside in states that recognize same-sex marriage but work in states that do not recognize same-sex marriage. Regardless of the current unknowns about the effect of the recent DOMA decision, we think it is good human resources policy to allow Bill and Bob to take a form of paternity leave for prenatal appointments, even if it is not FMLA leave.

If you have any questions about FMLA leave, please contact Harvey B. Cooper or Ryan M. Kunhart at 402-392-1250.



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Common Situations in Which Employees May Take Leave *by Harvey B. Cooper and Ryan M. Kunhart*

Employers sometimes become frustrated when an employee informs the human resources department, with little or no advance notice, that he or she needs time off. There are laws that generally define situations in which an employee is entitled to take leave, either paid or unpaid. Some of these laws also define how much advance notice an employee must give to be entitled to take leave. The most common types of leave include the following:

1. Family and Medical Leave Act leave.
2. Military and family military leave.
3. Funeral and bereavement leave.
4. Jury and election duty.
5. Leave as a reasonable accommodation under the Americans with Disabilities Act.

Other types of leave and time off are not legally required, but once an employer offers such leave through its policies, certain laws apply to ensure they are provided according to the policy terms. These include the following:

1. Vacation and "personal time off".
2. Holiday leave.
3. Sick leave.
4. Unpaid personal leave or short-term leave of absence for illness or personal reasons.
5. Paid "breaks".

It is a good idea for employers to at least annually review the different types of leave offered to employees. If you have any questions about your leave policies, please contact Harvey B. Cooper or Ryan M. Kunhart.



Abrahams Kaslow & Cassman LLP is pleased to announce that once again six lawyers from our firm were selected by their peers for inclusion in The Best Lawyers in America© 2014 (Copyright 2013 by Woodward/White, Inc., of Aiken, SC).

John W. Herdzina was recognized for Corporate Law and Franchise Law; R. Craig Fry and Howard J. Kaslow were also recognized for Corporate Law; Randall C. Hanson was recognized for Energy Law; Timothy M. Kenny was recognized for Municipal Law; and Thomas J. Malicki was recognized for Trusts and Estates.

Since it was first published 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 almost 50,000 leading attorneys cast nearly five 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."

Engage Event - Ollie the Trolley Millionaires & Mansions Tour of Omaha

What a great night the ladies of AK&C and their guests had exploring the neighborhoods of mid-town Omaha. Along the way, we



learned about the Mercer Mansion, Joslyn Castle and the Louis Nash residence. We also saw many of the stately homes in what was considered the "original West Omaha".

If you would like to attend one of our women's Engage events, please contact Debbie Watson at dwatson@akclaw.com or 402-392-1250.



Corporate Minutes: How Important Are They?

by John W. Herdzina

Forming and funding a corporation is somewhat similar in nature to the process of putting together your estate plan. I say this because it is something one typically knows he or she needs to complete, drags his or her feet in addressing, finds boring but important, finds exhausting, and once initially accomplished, finds easy to ignore. Sound familiar? Ignoring your closely held corporation by not holding meetings of directors and shareholders and not having minutes to show how the directors or shareholders (or committee members) addressed significant issues is irresponsible.

In Nebraska, the Business Corporation Act frequently states what the shareholders and directors must do, or in certain circumstances, may do. For example, subject to limited exceptions, a Nebraska corporation must have a board of directors, and the shareholders are required to hold annual meetings and elect the members of the board of directors. In addition, shareholders must hold special meetings at the request of the directors. The board of directors must annually elect officers and each director is required to discharge his or her duties as a director in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner a director believes to be in the best interests of the corporation (the "duty of care").

Persons dealing with the corporation's tax-related elections/decisions with the IRS, distributions of corporate earnings, banks for borrowing, trusts and escrow accounts, real estate titles and other similar type transactions, oftentimes require proof that the officers, directors and corporation have the corporate and legal authority to make such decisions and act upon them.

Claims against corporate directors, whether for a profit or not-for-profit entity, have shown the crucial role corporate minutes can play in

determining whether directors met their fiduciary obligations. Yet, commonly, people ignore the attention to detail the legal entity requires.

Minutes should reflect basics, such as compliance with procedural requirements, identification of those present, the matters considered and the actions taken or approved, as well as other decisions reached. It has been my experience that, on occasion, people involved in certain decisions, made in the past, do not always agree upon the words that were spoken, matters considered, promises made, agreements reached or actions taken. Sound familiar? As time passes, the ability to remember tends to get worse, not better.

Is it hard to believe that courts and regulators look to minutes as the most reliable source for evaluating what directors did or did not do? Corporate minutes are the best record of actions and deliberations of the board of directors (or a committee of the board). If minutes were prepared, they were most likely made at or near the time of the action(s). Thus, the accuracy of the minutes would, presumably, be better than mere recollection.

Failing to have minutes reflecting the considerations and actions taken by the shareholders and directors may result in a court ignoring the corporate existence or finding the director(s) failed to exercise the duty of care, resulting in personal liability or responsibility.

Limited liability companies in Nebraska are governed by the Nebraska Uniform Limited Liability Company Act. Even though limited liability companies are not subject to the same directives as corporations, a limited liability company should likewise use minutes to document important actions taken by members or managers of the company. When recording your corporate or limited liability company minutes, keep in mind the Latin proverb: "verba volant, scripta manent," which in English means "spoken words fly away, written words remain".



Meet Our New Associate Andy

Andrew P. Deaver joined the firm as an associate in 2013. He is a member of the business and estate planning departments and focuses his practice on probate and trust administration, business organization, structures and contracts, estate planning, and guardian and conservatorships. Prior to joining our firm, Mr. Deaver was an associate at another Omaha area law firm.

Mr. Deaver received his Bachelor of Arts degree in Chemistry from Dordt College of Sioux Center, Iowa in 2005. He received his Juris Doctor, cum laude, from Creighton University's School of Law in 2010.

Mr. Deaver is admitted to practice in Nebraska and Iowa. He is a member of the Nebraska and Iowa State Bar Associations, the Omaha Bar Association, and the American Bar Association.

Andrew P. Deaver



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The Nebraska Rules of Professional Conduct for attorneys require the following statement on newsletters of law firms:

This is an advertisement.



News in the Spotlight

Best Lawyers® releases 2014 “Best Law Firms” list

U.S. News & World Report and Best Lawyers announced the 2014 “Best Law Firms” rankings.

We are pleased to announce that Abrahams Kaslow & Cassman LLP was selected as Best Metropolitan Law firm in the following areas:

- Tier 1 Ranking in Corporate Law and Municipal Law
- Tier 2 Ranking in Franchise Law
- Tier 3 Ranking in Trusts & Estates Law

Firms included in the 2014 “Best Law Firms” list are recognized for professional excellence with persistently impressive ratings from clients and peers. Achieving a ranking signals a unique combination of quality law practice and breadth of legal expertise.

The 2014 rankings are based on the highest number of participating firms and the highest number of client ballots on record. Over 12,000 attorneys provided over

330,000 law firm assessments, and almost 7,000 clients provided close to 20,000 evaluations.

Congratulations to John W. Herdzina and Howard J. Kaslow for being recognized in the 2013 Business Edition of Super Lawyers for Business and Corporate Law.

Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. The selection process is multi-phased and includes independent research, peer nominations and peer evaluations.

Congratulations to Aaron D. Weiner on his appointment to the Omaha Bar Association's Executive Council.



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