

# Seminars

## Record Retention & Recommended Policies

Federal and state laws mandate that certain documents must be retained for certain periods of time. Do you know what the law says about the HR and other records you MUST maintain? Join us for a FREE seminar to discuss this hot topic.

**Date:** June 10 *OR* June 12

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

**Place:** 8712 West Dodge Road, Suite 300

Email [dwatson@akclaw.com](mailto:dwatson@akclaw.com) or call 392-1250 to register.

# Attorney Spotlight



**Frank F. Pospishil, Partner**

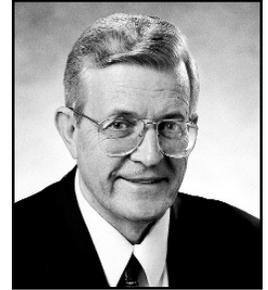
**Year Joined - 1967**

**I have practiced 41 years in:**

- Litigation
- Administrative Law
- Creditor's Rights
- Mediation

**I volunteer my time and am a member of:**

- Omaha Downtown Rotary
- Mary Our Queen Church
- Nebraska Association of Trial Lawyers
- Nebraska Bar Foundation.



**I enjoy spending my free time:** traveling, reading, hunting, fishing, gardening and cooking.

I have been married to Mary Ellen Pospishil for forty one years; and we have four children Brad, Cindy, Matt and Doug.

### This is an advertisement.

The Nebraska Rules of Professional Conduct for attorneys require the following statement on newsletters of law firms: This newsletter is published by the law firm of Abrahamas 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 email [dwatson@akclaw.com](mailto:dwatson@akclaw.com).

8712 West Dodge Road, Suite 300  
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# Legal Perspectives

from Abrahams Kaslow & Cassman LLP

## EEOC Guidance on Work/Family Balance

by Sandra L. Maass

The EEOC's Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities, advises employers they are responsible for creating flexible workplace policies and practices to make it easier for employees to balance job and family. This EEOC guidance is not meant to create a new protected category of employees with family responsibilities; rather, it makes clear that disparate treatment of employees who need to care for children, parents, or disabled family members can amount to unlawful discrimination under existing Title VII prohibitions of sex or race bias or under the ADA. While the EEOC Enforcement Guidance is not law, it is followed by the EEOC and the courts at times look to the EEOC guidelines in interpreting the law. Thus, employers should recognize the EEOC's position to avoid the potential for discrimination claims in the current diverse workforce. In

particular, the EEOC Guidance highlighted the following:

- *Sex-based discrimination against female caregivers.* Title VII may be violated if a female applicant is rejected after an interview where she is asked questions about her marital status and/or childcare responsibilities. Similarly, reducing a working mother's workplace responsibilities after becoming aware that she is pregnant or after her return from maternity leave, even if done for benevolent reasons, may violate Title VII due to gender-based stereotypes.
- *Sex-based discrimination against male caregivers.* Some employers continue to deny a male employee's request for childcare leave, although a similar request from a female employee is routinely granted. Any leave provided to women, and not to men, must be limited to the time that a woman is incapacitated by pregnancy or childbirth. Otherwise,

(Continued on page 3.)

### In This Issue

EEOC Guidance	Page 1
Attorneys Recognized	Page 1
Estate Planning	Page 2
New FMLA Rules	Page 3
Attorney Spotlight	Page 4
Record Retention Seminar	Page 4

## AK&C Attorneys Recognized

Thomas J. Malicki was listed for the first time in The Best Lawyers in America® 2008 for Trusts and Estates. John W. Herdzina and Howard J. Kaslow were also selected by their peers for inclusion in The Best Lawyers in America® 2008 edition for Corporate Law.

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 25,000 leading attorneys cast almost two million votes on the legal abilities of other lawyers in their specialties, and because lawyers are not required or allowed to pay a fee to be listed, inclusion in Best Lawyers is considered a singular honor.

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### Contact Us!

Let us know what you would like to see in our newsletter. Email your questions or comments to [dwatson@akclaw.com](mailto:dwatson@akclaw.com).

# Estate Planning

## Estate and Inheritance Tax Laws

In our last newsletter we had an overview of estate planning to assist you in developing an effective estate plan for your future. In this issue we will discuss in more detail the topic of Estate and Inheritance Tax Laws.

For the majority of people, there are currently two death taxes of concern: the Federal Estate Tax and the Nebraska Inheritance Tax. A third death tax was eliminated in 2007

when Nebraska repealed its Estate Tax.

Many people are familiar with the Federal Estate Tax because proposed changes to it are often discussed in the news. Generally, a person who dies this year may collectively pass up to \$2,000,000 in assets to family and friends (other than a spouse) through previous lifetime gifts and bequests at death.

There is no limit on the amount of assets that can be gifted or bequeathed to a spouse tax-free. Assets exceeding this \$2,000,000 limit are taxed at 45%. Due to recent federal legislation, the exclusion will significantly fluctuate over the next several years from the current \$2,000,000 limit. Below is a table for your reference regarding the federal estate taxes and related matters under the 2001 Tax Act.

Transfer tax exemptions, highest rates and potential liability under the 2001 tax act.

Year	Gift Tax Exemption	Estate <sup>1</sup> and GST tax exemption	Highest estate, GST and gift tax rates	Estate tax on \$2.5 million	Estate tax on \$5 million
2007	\$ 1 million	\$ 2 million	45%	\$ 225,000	\$ 1,350,000
2008	\$ 1 million	\$ 2 million	45%	\$ 225,000	\$ 1,350,000
2009	\$ 1 million	\$ 3.5 million	45%	\$ 0	\$ 675,000
2010	\$ 1 million	(repealed)	35% (gift tax only)	\$ 0	\$ 0
2011	\$ 1 million	\$ 1 million <sup>2</sup>	55% <sup>3</sup>	\$ 680,000	\$ 2,045,000

<sup>1</sup> Less any gift tax exemption already used.

<sup>2</sup> The GST tax exemption is indexed for inflation.

<sup>3</sup> The benefits of the graduated estate and gift tax rates and exemption are phased out for estates/gifts over \$10 million

Source: U.S. Internal Revenue Code

In 2007, Nebraska overhauled its estate and inheritance tax laws. Nebraska's estate tax was repealed effective January 1, 2007, thus putting Nebraska back in line with the federal estate tax structure.

Effective this year, assets in excess of \$40,000 received by a lineal descendant because of an individual's death are generally subject to a 1% Nebraska inheritance tax.

Although no assets that pass to a surviving spouse are subject to taxation, the tax assessed on assets received by more remote family members is higher, and the exemption amount is lower than that of a lineal descendant. The recent changes also result in tougher penalties for failure to timely address inheritance tax matters.

As you can see in the chart below, Nebraska simplified the inheritance tax rate, but, at the same time, raised rates on transfers to non-immediate family members. The farther the relation is removed, the higher the tax.

If you have any questions about estate and inheritance tax laws or estate planning, please contact one of our attorneys.

Nebraska Inheritance Tax Rates and Exemptions

Year	Immediate Lineal Family	Remote Family	Other
2007	1% on amounts greater than \$10,000	6% on amounts greater than \$2,000 but less than \$60,000; 9% on amounts greater than \$60,000	6% on amounts less than \$5,000; 9% on \$5,000 - \$10,000; 12% on \$10,000 - \$20,000; 15% on \$20,000 - \$50,000; 18% on \$50,000 - up
2008	1% on amounts greater than \$40,000	13% on amounts greater than \$15,000	18% on amounts greater than \$10,000

# Employment Update

## EEOC Guidance (continued from page 1.)

childcare leave requests may violate Title VII due to gender-based stereotypes.

- *Discrimination against women of color.* Women of color who are caregivers may face multiple types of discrimination. For example, a Latina working mother might be subjected to discrimination based on stereotypical notions about working mothers and hostility toward Latinos.

- *Caregiver stereotyping under the ADA.* The ADA prohibits discriminatory treatment of an employee due to his or her relationship with a disabled individual. This provision of the ADA may be violated if, for example, an employer refuses to hire a job applicant whose wife has a disability because the employer assumes that the applicant would need frequent

leave due to his family caregiving responsibilities.

- *Pregnancy discrimination.* Employers should not make pregnancy-related inquiries, and the EEOC will treat such inquiries as evidence of discrimination if an employer subsequently subjects a pregnant worker to an adverse employment action. Further, a pregnant worker who is temporarily unable to perform some job duties must be treated the same as other workers who have similar temporary restrictions due to non-pregnancy conditions.

- *Hostile work environment.* Employers may be liable if workers with caregiving responsibilities are subjected to offensive comments or other harassment because of race,

sex (including pregnancy), association with an individual with a disability, or another protected characteristic and the conduct is sufficiently severe or pervasive to create a hostile work environment.

- *Retaliation.* Retaliation occurs if the employer's actions would dissuade a reasonable worker from making or supporting a charge of discrimination. The Enforcement Guidance states that family caregivers are "particularly vulnerable" to retaliation.

The complete guidance is available online at [www.eeoc.gov/policy/docs/caregiving.html](http://www.eeoc.gov/policy/docs/caregiving.html).

Please contact one of our attorneys at 392-1250 if you have any questions regarding EEOC guidance or employment law issues.

## DOL'S Proposes New FMLA Rules

In February 2008, the Department of Labor published its proposed changes to its FMLA regulatory scheme. These proposals, if implemented, would be the first substantive change to the FMLA since 1994. Employee and Employer groups have been lobbying for changes since that time and the DOL finally issued the proposals after years of suggesting that new rules would be issued. The proposed rules were open for comment through April 11, 2008 and the DOL has indicated its desire to implement the new rules by the end of President Bush's term.

It is not necessary for employers to make any changes to their policies at this time given the proposed rules have not been implemented. However, employers may want to examine what is in store as some of the proposed changes benefit employers while others benefit the employee. Examples of changes beneficial to employers include:

- Employers will be permitted to contact an employee's health care

provider directly to clarify or authenticate a vague medical certification.

- Employers may provide a job description to the employee's health care provider for consideration in providing medical or fitness-for-duty certifications.

- Employers will be permitted to provide the employee's absence schedule to his/her health care provider to confirm whether the employee's pattern of intermittent leave is consistent with the medical condition.

- Employees on intermittent leave may be required to provide fitness-for-duty certifications every 30 days if reasonable safety concerns exist.

- Employers and employees will be permitted to voluntarily settle FMLA claims without approval from the DOL or the courts.

If you have any questions about the proposed rules or your current FMLA policies, please contact one of our attorneys.

## Employment Law Update

This seminar is being offered through Sterling Education. Sandra L. Maass and Tyler P. McLeod will be presenting.

**Date:** May 29, 2008

**Time:** 8:30 a.m. - 4:30 p.m.

**Place:** Hilton Omaha - 1001 Cass St.

### Agenda:

Employment Law Developments  
Immigration Compliance Issues  
Privacy in the Workplace & Conducting Internal Investigations  
Wage & Hour - FLSA  
Harassment in the Workplace  
Developing FMLA Compliance and more!

Email [dwatson@akclaw.com](mailto:dwatson@akclaw.com) if you would like to receive a brochure on the seminar. You will receive \$50 off the seminar price charged by SES.