



Seminars

HIPAA

Mark your calendar for our HIPAA seminar on Sept. 12 and Sept. 14 to be held at our office from 7:30 a.m. to 8:30 a.m.

Watch your mail for more information or email dwatson@akclaw.com to register in advance.

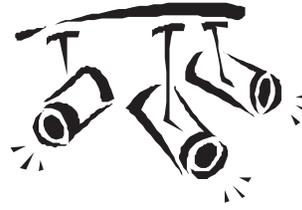
Nebraska FMLA Update 2006

Partners Sandra L. Maass, Tyler P. McLeod and Harvey B. Cooper will be presenting the Council on Education seminar which focuses on the most recent court decisions and legislative changes to FMLA.

August 25, 2006

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

To register, call 800-942-4494 or email registration@counciloned.com.



Attorney Spotlight

Congratulations to **John W. Herdzina** for being awarded the Certificate of Excellence for outstanding service to SCORE Chapter 40 (Service Corps of Retired Executives).

Howard J. Kaslow is serving on the Governance Council of the Institute for Holocaust Education.

Tyler P. McLeod graduated from Leadership Omaha Class 28.

This newsletter is published by the law firm of Abrahams Kaslow & Cassman LLP to inform our clients and friends about both legal developments and news about our firm. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. 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.

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Should You Incorporate Your Business?

Following fast on the heels of a decision to go into a particular kind of business is the decision about what kind of legal form it should take. The most common options are a sole proprietorship, a partnership, or a corporation. You may lean toward the corporate route because you like the sound of having "inc." after the company's name, but there are some more practical, business-like considerations to take into account.

More so than with some of the other structures for a business, starting a corporation means complying with formalities required by state laws. Once the shareholders (owners) of the business agree on some basic matters, such items are embodied in articles of incorporation that must be filed with the appropriate state agency. These essentials usually include:

- a corporate name;

- the number of shares that can be issued;
- the number of shares each owner will buy and for what contribution of cash or property;
- the nature of the corporation's business; and
- the identity of the directors and officers of the corporation who will handle day-to-day operations.

The fledgling corporation will also need bylaws, which constitute a procedural rule book for the company.

Decisionmaking

The bottom line here is that whoever holds a majority of the shares of a corporation has ultimate control over it. Usually it takes a majority of the shares to elect the board of directors, which is charged with making the "big picture" decisions. If a decision is momentous enough for the company's future, such

as a change in the articles of incorporation or whether or not to merge with another company, the shareholders usually have a more direct role in that they themselves must approve the decision by a certain margin of votes.

The board elects the officers of the corporation, typically including a president, vice-president, secretary, and treasurer. The officers may or may not be salaried employees or shareholders, and in some cases one person may hold more than one office.

Accountability

At or near the top of the list of characteristics favoring the corporate structure is the fact that, since the corporation is treated as a legal "person" separate from the people who own and run it, the shareholders as a rule are not personally liable for the corporation's debts. Instead, their risk is confined to their investment in the

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Welcome Chris



Christian R. Blunk

We are pleased to welcome Chris to the firm. Chris is of counsel with the firm and participates in both the business and litigation departments. Chris will continue to focus his practice on corporate law, estate planning and probate, business law and real estate.

In his corporate practice, Chris represents corporations, partnerships, LLC formations, as well as ongoing business law needs. He has handled numerous and various securities regulatory matters in exempt transactions, mutual funds, registered investment advisors and NASD arbitration.

Chris also has broad experience in estate planning and probate matters. His practice encompasses guardian and conservator matters, wills and trusts, special needs trusts, irrevocable life insurance trusts, and family limited partnerships.

Chris received his Bachelor of Science degree with distinction in business administration from UNL in 1980. He received his Juris Doctor from UNL College of Law in 1984. Chris is a member of the Omaha and Nebraska State Bar Associations and is a Fellow of the Nebraska Bar Association.

Business Update

(continued from front page)

company. To every rule there is an exception, however, and here the exception has the colorful legal name of "piercing the corporate veil." If the owners do not comply with the statutory requirements for running a corporation, or if they blur the lines too much between corporate and personal finances, the legal fiction of the corporation as a separate entity is ignored and the owners are on the hook for the corporation's losses.

Transitions

As a separate entity in the eyes of the law, a corporation does not go out of existence if one or more of its owners dies. Instead, a corporation stays alive until its owners decide otherwise.

Transfer of the ownership of the corporation is accomplished by selling its stock. New owners are added either when existing owners sell some of their stock or the corporation or the corporation itself sells more shares of stock. The smaller the enterprise, the more likely it is that the owners, for whom the corporation may be both either property and their employer, may agree to restrict the sale of the stock in order to maintain control.

The particular circumstances of each new business and the differences in the governing laws of the states make generalities difficult. That said, the factors on the debit side of the ledger for corporations include the costs of

setting up the corporate entity, the need for a separate tax return, and the burden of "double taxation." Double taxation means that the corporation is taxed on its profits, and the shareholders are then taxed on their dividends. On the credit side are limited liability for the owners and easy transfer of ownership.

Making the appropriate choice for a business form is one of the first, and one of the most important, decisions a new business will make. Whether choosing a corporate structure or some other form, make sure to consult with a qualified attorney. If you would like more information, please call 392-1250.

Helpful Hint

Another one of Murphy's Laws should be that if you get into an automobile accident the person that crashes into you will either not have insurance coverage or will not have enough insurance to cover your damages. Are You Protected? Nebraska auto insurance laws leave room for trouble.

When purchasing auto insurance for yourself or a family member, it is important to remember that purchasing the required minimums or slightly greater amounts of automobile insurance can leave a driver and passengers vulnerable and unprotected. Serious accidents resulting in hospital bills and lawsuits will, no doubt, require coverages above and beyond what minimum coverages provide. Purchasing adequate amounts of insurance will also protect motorists from deficiencies in other drivers' insurance policies.

Nebraska auto insurance laws require every driver to carry liability insurance coverage to insure against the cost of injury and damage a driver causes to someone else in an auto accident. Nebraska's minimum liability coverage requirement of 25/50/25 (\$25,000 per person for injuries caused to the other party, up to \$50,000 for all people in the other car, and up to \$25,000 for any damage caused to the other party's car and/or property). Motorists in Nebraska are also required to purchase uninsured/underinsured insurance. This compensates an injured motorist when

the at-fault driver either has no insurance or has inadequate liability coverage. The minimum requirements on these policies are 25/50 (\$25,000 for injuries per person and up to \$50,000 total).

Many drivers in Nebraska buy minimum liability insurance without further consideration, passively renewing their insurance each year because it is convenient and seemingly economical. Unfortunately, the required minimums typically do not cover the damages resulting from a serious accident. Serious injuries that are the result of an accident can lead to considerable hospital bills and large lawsuits. Whether you are trying to recover for your injuries or you are being sued, a proper insurance policy is vital for a favorable outcome.

Uninsured/underinsured insurance is often times called "peace of mind" insurance because it allows the policy holder to actively neutralize motorists who do not properly insure themselves. Motorists who do not have insurance are unlikely to own property or assets from which to recover. Often times, the at-fault driver's insurance policy is the only means available to compensate an injured motorist. Purchasing adequate uninsured/underinsured insurance provides protection to the driver who is not at fault when involved in an accident with an uninsured/underinsured driver.

For example, if Driver A has \$100,000 in property damage and injuries from an accident that Driver B caused, Driver A

can only recover from Driver B's insurance up to Driver B's policy limits. Driver A will only be compensated \$25,000 if Driver B has minimum liability coverage. If Driver B has no insurance at all Driver A collects nothing from Driver B's insurance and must then rely upon his own uninsured/underinsured insurance policy. If Driver A carries the increased coverages of \$100,000/\$300,000/\$100,000 uninsured/underinsured insurance policy, he or she may be able to collect an additional \$75,000-\$100,000 from his or her own insurance company as compared with the amount he or she would have recovered with a minimum coverage policy.

An additional advantage of purchasing larger amounts of coverage is made apparent in the event of a lawsuit. Purchasing larger amounts of insurance will provide a larger fund to compensate the other driver and his or her passengers in the event you are determined to be responsible for their injuries or damage, as well as providing your insurer with a greater incentive to argue the merits of your case. Insurance companies will provide legal representation up to the limits of the policy and the policy holder will be responsible for any amount of money the other party recovers over that limit.

Be aware of the limits of your insurance policy and remember that it takes more than minimum coverage to properly protect yourself in the event of an accident.

Employment Law Report

Can An Employer Properly Deduct From Employees' Wages Or Salary For Damage Or Loss To Employer's Equipment Under The FLSA?

The U.S. Department of Labor's Wage and Hour Division ("Wage and Hour") recently issued an Opinion Letter stating an employer may not deduct from salaries of exempt employees or require them to reimburse the employer for damage to or loss of company equipment without losing the employees' exempt status under the Fair Labor Standards Act ("FLSA"). The Opinion Letter was issued in response to an employer's inquiry as to the legality of its policy to fine exempt employees who damage equipment used in performing their jobs, such as cellular phones or laptop computers.

The FLSA provides an exemption from the minimum wage and overtime pay requirements for any employee employed in a bona fide executive, administrative, or professional capacity. An exempt position must meet all of the pertinent tests relating to duties and salary level. Compensation must also be made on a "salary basis," meaning the employee must receive full salary for any week in which the employee performs work, regardless of the quality of the work performed. Although exceptions to the salary basis rule permit deductions in certain circumstances, none of the

exceptions contemplate charging a fine for damage to or loss of company equipment. Wage and Hour concluded that deductions made to reimburse the employer for lost or damaged equipment would violate the salary basis rule's prohibition against reductions due to the quality of work performed and salaries would not be paid "free and clear" as required by the rule. Wage and Hour stated it is impermissible to either implement a policy for deductions from salaries or require employees to reimburse the employer directly.

Regarding non-exempt employees, Wage and Hour noted that the FLSA requires an employer to pay overtime at not less than one and one-half times the employee's full regular rate of pay, for each hour worked in the workweek in excess of forty hours, and deductions may not reduce overtime pay. Thus, an employer may not require an employee to pay for an expense of the employer's business if doing so reduces the employee's pay below any minimum wage or overtime premium that is due.

Wage and Hour did not address whether an employer may impose discipline for employees who cause damage to or loss of equipment. Employer's should examine their current policies regarding compensation deductions and employee conduct to insure that any deductions do not run afoul of Wage and Hour's interpretation of its regulations.

Giving Back

Over the past 60 years, the attorneys of our firm have been privileged to serve on boards and committees serving our community. Most of you know us as attorneys, but we also believe that public service is an essential part of life. AK&C has received so much from our community and we feel it is a privilege to give back. The following is a list of some of the organizations with which the AK&C and its members have been involved over the past year:

American Business Women's Association

Big Brothers/Big Sisters of the Midlands

Boys Town Hospital Trust Fund

Citizen Advocacy

City of Omaha Parks and Recreation

Creighton Prep High School Parents Board

Easter Seals

Girls Incorporated of Omaha

Governance Council of the Institute for Holocaust Education

Kiwanis Club of Omaha

Lied Learning & Technology Center for Childhood Deafness and Vision Disorders

National Conference for Community and Justice of the Midlands

Omaha Community Playhouse

Omaha Downtown Rotary

Omaha Estate Planning Council

Omaha Theater for Young People Guild

St. Cecilia's Catholic Church

St. John's Parish, Valley, NE

The Women's Care Center of the Heartland