# Seminar

### *Recent Developments Under The Wage Payment Act*

Including implications of *Roseland* on fringe benefit plans.

Our first seminar of 2007 will focus on recent changes in the Wage Payment Act.

Tuesday, February 20
or
Thursday, February 22

7:30 - 8:30 a.m.

8712 West Dodge Road, Suite 300

Continental Breakfast provided.

To register, call Debbie Watson at 392-1250 or email dwatson@akclaw.com.

# Attorney Spotlight

Sandra L. Maass joined the Omaha Women's Fund Board

Harvey B. Cooper joined the Greater Omaha Chamber Executive Dialogue Group Roundtable for Small Business Owners

Congratulations to Howard Kaslow and John Herdzina for being selected by your peers to be included in the 2007 edition of *The Best Lawyers in America* for Corporate Law. Howard Kaslow is one of a distinguished group of attorneys who have been listed in Best Lawyers for ten years or longer.



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ABRAHAMS
KASLOW &
CASSMAN LLP
ATTORNEYS AT LAW

First Quarter 2007

Legal
AK&C Perspectives

from Abrahams Kaslow & Cassman LLP

# Tax Treatment of Death Benefits From Employer-Owned Life Insurance

*by Howard J. Kaslow*

Death benefits received by a beneficiary of a life insurance policy generally do not represent taxable income to the recipient. However, the Pension Protection Act of 2006 (the "PPA") has introduced a new exception to this general rule that can have significant adverse consequences for an employer (corporation, partnership, limited liability company, sole proprietor, or other entity) which owns life insurance on the life of an employee.

The PPA provides that, with certain exceptions, in the case of a life insurance policy on the life of an employee issued after August 17, 2006, the proceeds of such life insurance in excess of the premiums paid will be taxable income to the policy owner (the employer) upon the death of the insured rather than being nontaxable. For this purpose, "employee" includes an officer, a director, and a "highly compensated employee" (as defined in the PPA).

There are many situations in which a corporation or other business might want (or be required) to own insurance on the life of an employee. Examples include (1) key-man life insurance obtained either at the initiative of the business or because of a lender requirement, (2) insurance to fund a deferred compensation or other retirement program for a key employee, (3) insurance to fund an equity purchase obligation arising upon an employee's death, and (4) insurance to fund a death benefit for an employee's family.

While there are important exceptions to the new rule established by the PPA, such exceptions come with very stringent requirements. The exceptions apply in the case where (1) the insured was an employee of the policy owner at any time during the 12-month period before the insured's death, (2) the insured is, when the insurance policy is issued, a director of a corporation which owns the policy, (3) the insured is, when the insurance policy is issued, a "highly compensated employee" or a "highly compensated individual" (in each case, as defined in the PPA), (4) the death benefit is paid to a family member of the insured, to an individual other than the policy owner who is the designated beneficiary of the insured under the policy, a trust established for the benefit of any such family member or designated beneficiary, or the estate of the insured, or (5) the policy proceeds are used to purchase an equity (or capital or profits) interest in the employer from any of the persons mentioned in (4) above.

For an exception to the new income-inclusion rule to apply, before the policy on an employee's life is issued (1) the employee must be notified in writing that the employer intends to insure the employee's life and also must be notified of the maximum face amount for which the employee could be insured at the time the policy is issued, (2) the employee must consent in writing to being insured under the policy and also must consent in writing to the continuation of the coverage after the employee terminates his or her employment with the policy owner, and (3) the employee must be informed in writing that the employee's employer will be a beneficiary of any proceeds payable under the policy upon the death of the employee.

The PPA also requires annual reporting to the IRS and recordkeeping by the policy owner.

Provisions of the Internal Revenue Code are complex and often very fact-specific; the provision of the PPA discussed above is no exception. Therefore, the foregoing information is presented only as a general overview of this topic and not as advice in a specific situation. We will, of course, be pleased to assist our clients in meeting the very technical provisions of the new provision in particular cases. Because of the advance notice and consent requirements mentioned above, proper timing of each step involved in the acquisition of employer-owned life insurance will be of critical importance.

If you have any questions, please call our office at 392-1250.

# Events

## Frederick Cassman Retires from AK&C

The firm and the Cassman family gathered at Happy Hollow Club in November to pay tribute to one of our finest attorneys. After 56 years with Abrahams Kaslow & Cassman LLP, Frederick Cassman has decided to retire.

The evening was filled with stories about Fred since joining the firm in 1950 as one of the founding partners. Frank Pospishil, John Herdzina and Howard Kaslow reminisced about Fred's career as a litigator, and paid special tribute to their mentor and friend.

Never one to not have the last word, Fred said, "no one had a party for me when I started with the firm, but now that I'm leaving, you give me a party!" He also said he has enjoyed all the years with AK&C and is now looking forward to traveling and spending more time with his family.

Fred poses in front of the picture which hangs in the foyer of the firm.

Fred Cassman with his son Bob, wife Molline, daughter Amy with her husband Sandy Friedman, Barb Wiesenbach (Bob's fiance) and son Joe.


Fred shows his Harvard pride with a t-shirt presented from John Herdzina which says "Harvard it's just one big party . . . with a $200,000 cover charge!"

## Engage - Women's Networking Event

The women attorneys of AK&C created a networking group called Engage at the end of 2006. The initial launch party was a small gathering held at *Come on into my Kitchen* and featured wine, appetizers and a cooking lesson from Chef and owner, Gene Cammarota.

Karen Prewitt from TKW Enterprises & Sandy Maass, partner at AK&C.

The twenty women who attended the event provided feedback on the types of forums they would like to see in a women's group. Based on their recommendations, our group will hold two events in 2007 to get women together in a social or educational environment. The main purpose of Engage is to provide an opportunity for women to meet their peers, share ideas, get educated on issues which affect women and have a little fun as well.

Chef and owner Gene demonstrates how to make shrimp with curry sauce.

If you would like to join Engage or have an idea for an event, please email Debbie Watson at dwatson@akclaw.com.

Susie Krause and Sandy Lane from Lutz & Company, P.C.

## Nebraska Supreme Court Holds Employers Must Pay Employees Accrued Vacation Upon Termination

On October 20, 2006, the Nebraska Supreme Court ("Court") held in *Roseland v. Strategic Staff Management, Inc.*, that "accrued vacation time, which is part of an employment agreement, is due and payable as wages upon termination of employment." In so holding, the Court specifically found that Strategic's policy, which provided for no payout of accrued but unused vacation time upon termination, was contrary to the Nebraska Wage Payment Act ("Wage Act"). The Court's decision overruled the Nebraska Court of Appeals' earlier ruling that Strategic's no payout policy was not contrary to the Wage Act. The Court's final, employee-friendly decision in *Roseland* has significant implications for employers with similar no payout policies.

In *Roseland* four former employees of Strategic were not paid for accrued vacation after their voluntary resignations. Strategic's employee handbook provided vacation for full-time employees depending upon the length of employment. For example, after 1 year of continuous employment, an employee was eligible for 1 week of paid vacation. The handbook also provided: "Upon termination, employees will not be paid for unused vacation time."

The Court noted the long-standing rule that vacation leave, if provided by terms of the employment agreement, is a fringe benefit which is included in the definition of wages under the Wage Act, and which must be paid upon an employee's separation from employment. The Court concluded that the payment of vacation pay was an "agreed to" benefit between Strategic and its employees and Strategic could not circumvent the payment of accrued vacation pay by refusing to pay vacation due to termination of employment. The Court concluded that the "no payout policy" was contrary to the Wage Act and, therefore, void and unenforceable.

*Roseland* makes it clear that once a fringe benefit is earned it must be paid upon termination of employment, regardless of any policy or agreement precluding such payment. The Court, however, did not discuss how its ruling would impact employer "use-it-or-lose-it" policies that take away unused but accrued vacation pay each year, or policies that do not permit pay out of other fringe benefits such as accrued but unused sick leave. Under the Wage Act, former employees may recover attorney fees and other damages up to 2 times the amount of the award. In light of *Roseland* and the potential for significant damages under the Wage Act, we suggest that employers review their policies concerning accrual and pay out of fringe benefits to determine if any modifications should be made and to properly assess any risk.

If you have any questions regarding the implications of *Roseland* on your employee policies, please contact our employment attorneys at 392-1250.

## 2007 HSA Amendments

In December 2006, President Bush signed the Tax Relief and Health Care Act of 2006, which includes provisions that will allow significantly larger contributions to health savings accounts ("HSAs").

Beginning in 2007, the maximum annual contribution that can be made to an HSA will be $2,850 for single coverage and $5,650 for family coverage. This is a big change from prior law where a participant's permissible maximum contribution was either the health plan deductible or the statutory amount, whichever was less.

The new law also paves the way for employers to replace first-generation consumer-driven health care plans with HSAs by allowing the rollover of balances from health reimbursement arrangements or flexible spending accounts into HSAs. The maximum contributions may now be made to employees' HSAs, regardless of when, during a plan year, they became eligible for coverage. Previously, mid-year enrollees in an HSA could receive only a pro-rated contribution to their HSAs.

Because the new law is effective January 1, 2007, employers offering HSA plans should promptly review the new law to evaluate the effects on the plan and to properly inform the organization's employees.

## Be Wary Of Seller's Remorse

With the recent housing market lull, many Sellers would happily follow through on a contract for the sale of their home. However, if a Seller should change his or her mind about the sale, he or she may be able to get away with rescinding the sale agreement and avoid the Buyer's common remedy of enforcing the sale.

This may occur when a married couple enters into an agreement for the sale of their home. The signatures of both Sellers must be on the sale contract and the signatures must be acknowledged before a Notary Public. Without the acknowledgment of both signatures, the Sellers could back out of the sale contract leaving the Buyer high and dry. The Buyer will have spent a lot of time, effort and emotional stress trying to purchase a home, yet end up the victim of Sellers' remorse.