

LEGAL PERSPECTIVES



Firm Celebrates 75 Years



The law firm of Abrahams Kaslow & Cassman LLP began in 1944 when Milton R. Abrahams and Ben E. Kaslow combined their legal practices. Both were graduates of Creighton University's School of Law. In 1949, Frederick S. Cassman, a graduate of Harvard Law School, joined the firm.

2019 Marked 75 years serving Nebraska and Iowa as a business law firm. Our entire team looks forward to the next 75!

Front row Left to Right: Nancy Barrett, Cindy Suster, Nicole Marsicek, Tina Alban, Nicole Seckman Jilek, Pete Langdon, Harvey Cooper, Chris Estwick, Tim Kenny Center: Randy Hanson, Craig Fry, Tom Malicki, Katie Glissman, Tyler Johnson and Rob Scharzt Back row: Gary Schweitzer, Lori Jackson, Tim Mulliner, Dianna Cupps, and Jennifer Swenson and Andy Deaver Not pictured: Howard Kaslow, John Herdzina, Dave Nelson, Rebekah Todd and Lacey Ternus.



1st Quarter 2020
WINTER
NEWSLETTER



WAGE & HOUR UPDATE by Peter Langdon and Harvey Cooper

DOL Updates Regular Rate Calculation

Starting January 15, 2020, companies that employ hourly, nonexempt workers who work overtime will have more flexibility calculating overtime payments. Recently, the Department of Labor ("DOL") issued final rules regarding the extent to

which an employer can exclude certain benefits and compensation from an employee's regular rate of pay. An employee's regular rate is the basis for calculating an employee's overtime payments.

Under the Fair Labor Standards Act, an employer is required to pay hourly, nonexempt employees overtime for all hours worked in excess of 40 hours in a workweek. The overtime rate equals one and one-half times the employee's regular rate. So, what type of compensation is included in an employee's regular rate?

Generally, all compensation for employment is included in an employee's regular rate. Under the new rules, the DOL clarifies which compensation and benefit items an employer can exclude in calculating an employee's regular rate, which results in paying out a smaller amount for overtime pay. It is now clear that the following items can be excluded from an employee's regular rate:

- Occasional payments for unused leave, vacation time, including paid time off, and paid sick leave;
- Certain sign-on and longevity bonuses;
- Employer-provided office coffee and snacks;
- Discretionary bonuses;
- Certain tuition benefits;
- Adoption assistance;

- Employee reimbursements for amounts the employee incurs on the employer's behalf for the employee's own benefit or convenience, such as credentialing exam fees and organization membership dues;
- Certain employee travel expenses;
- Providing gym access, gym memberships, & fitness classes;
- Discounts on employer retail goods and services;
- Wellness programs and on-site specialists;
- Contributions to benefit plans for accident, unemployment, legal services, or other events that could cause future financial hardship or expense;
- Parking benefits; and
- Payments for certain penalties the employer incurs under state and local scheduling laws.

Calculating an employee's regular rate can become complicated quickly. It's important to understand what you can exclude from that calculation to avoid inadvertently paying employees more than you intend.

Equally as important is understanding what you need to include. To stay compliant and up to date on changes in employment law, contact: Peter Langdon plangdon@akclaw.com, or Harvey Cooper hcooper@akclaw.com at 402-392-1250.

AK & C ABRAHAMS
KASLOW &
CASSMAN LLP
ATTORNEYS AT LAW

Omaha's Business Law Firm for Over 75 Years.



ESTATE PLANNING

Gaining Control of Your Family's Future



Andrew Deaver, adeaver@akclaw.com
Business & Estate Planning Attorney

A new decade has dawned, and we find ourselves living in very uncertain times. Whether it is situations in far off corners of the world, in our nation's capital, or even in our own town, the number of things that seem out of our control feels higher than usual. The gravity of this can lead us down two very different paths. The first path leads to paralysis, fear and apathy. But the second path leads to grasping firmly the few things we can control and focusing our efforts and attention there. The list of things we can control may be short, and it is different for everyone, but one item on all our lists is the plan for how our family will be taken care of when we eventually pass away. Controlling this single item can feel especially important for those of us who have young children.

Parents with a minor child need to decide who will take care of the child if both parents pass away. They also need to determine when and how the child will receive the assets the parents have worked hard to accumulate, including the proceeds of any life insurance policies.

An estate plan is designed to handle these considerations and more. Parents can use their will to nominate someone to act as their child's guardian if both parents pass away. The guardian is the person who will likely take a younger child into their own home and raise them as part of their family. If the child is older, the guardian will make appropriate living arrangements for them, whether that is with the guardian or another family member or friend. By nominating a guardian in their wills, the parents choose who will make decisions with respect to raising their child. If no guardian is nominated in the parents' wills, state law sets out a default list of the people who have priority to take care of the child. The default person is usually a close family member, but it may not be the family member the parents would have chosen.

If both parents pass away while the child is still a minor, the parents can use their wills to create a testamentary trust (or use a living trust) to hold the assets for the child in trust until the child reaches the age of majority or longer. While the assets are held in the trust, a person called a "trustee" manages the assets and distributes them for the child's benefit. By utilizing a trust, the parents get to choose who the trustee will be and when their child is entitled to receive large distributions. For example, the parents could choose that the child receives one-half of the assets when they turn 25 and the other half when they turn 30.

If there is no testamentary or living trust, the court becomes involved to transfer or administer the assets for the minor child. A custodian or conservator, who the parents did not get to choose, will manage the assets. When the child reaches the age of 19, they will receive their entire inheritance with no required supervision. If a conservator is appointed, the conservator will have annual, onerous reporting requirements to the court.

With so many events and happenings occurring in our modern times, it seems there is very little we can do. But we can exercise what control we have to protect the people who matter the most to us, especially our children. Abrahams Kaslow & Cassman is here to help. Please contact Andy Deaver or one of the other members of our estate planning team to discuss how best to accomplish this and find a little peace of mind.



AKC Law launches updated web site

If you have *never* visited AKClaw.com, we hope you will log on and get to know us a little better. If you *are* familiar with our web site, we hope you will go back and experience our much more interactive and informative design!

We had several fundamental business reasons to redesign and update our site:

- 2019 Marked our firm's 75th year of serving the Omaha business community, and we have just developed a strategic plan for Abrahams Kaslow & Cassman LLP's future. We wanted our web site to reflect our values as a company and put us in a position to serve our clients the best we can.
- AKC Law has always been a full-service business law firm - and we still are! But our emphasis is on eight specific areas of practice.
 - Corporate & Business Law
 - Energy Law
 - Franchise Law
 - Real Estate Law
 - Employment Law
 - Estate Planning & Probate
 - Special Needs Trusts
 - And Litigation

Our new web site enables us to go into detail about each of these areas, tell you more about the attorneys who practice each type of law, and give you direct and easy access to make contact and ask questions.

- We are growing and changing! We've hired new Attorneys, a new Paralegal, and a new Marketing Director. We wanted to give you a way to get to know them, and all of their accomplishments. Our new website includes lots of photos and information about our staff to give you a better idea of who you are working with!
- We have lots of creative energy and ideas. Our new web site needed to reflect an updated, fresh, and modern look and feel. It also needed to be easy to keep updated, and incorporate responsive design so that you can navigate our site easily no matter what size your screen is, or what type of device you are using.

We hope you take a few minutes to visit AKClaw.com and take a look around. Then, take a minute to let us know what you think!



EMPLOYEE BENEFITS UPDATE:

Strengthening Retirement Under the SECURE Act

Peter M. Langdon
Employment & Tax Attorney

As a part of the federal government's end-of-year spending bill, President Donald Trump signed the Setting Every Community Up for Retirement Enhancement ("SECURE") Act. The SECURE Act is intended to strengthen retirement security for individuals across the country. The changes that Congress is implementing represent significant updates that are noteworthy on several fronts. Below is a brief summary of some of the most significant changes included in the SECURE Act:

- **Lifetime Income and Annuity Products.** Plan fiduciaries are now able to take advantage of a safe harbor to satisfy the prudence requirement in selecting insurers to offer certain annuity products or lifetime income contracts. The new rules remove ambiguity as to the applicable fiduciary standard and remove a barrier to offering lifetime income benefit options.
- **Required Minimum Distributions.** Generally, under prior law, individuals had to begin receiving required minimum distributions from 401(k) plans and IRAs at the age of 70.5. However, beginning January 1, 2020, individuals are permitted to begin receiving required minimum distributions at age 72.
- **Maximum Age for IRA Contributions.** Beginning in 2020, the maximum age for making IRA contributions is eliminated. Individuals can now continue to contribute to an IRA past the age of 70.5.
- **Elimination of Stretch IRAs.** Pursuant to the new rules, beginning this taxable year, beneficiaries of an IRA or 401(k) plan account are required to receive all the account assets within ten (10) years of the death of the IRA owner or the plan participant. Previously, the beneficiary could elect to receive those assets over his or her lifetime.
- **Simplified 401(k) Safe Harbor Plan Design.** Beginning January 1, 2020, non-elective contribution 401(k), safe harbor plans will see greater flexibility. Those plans are no longer required to provide the safe harbor notice to participants, but employees are still permitted to make or change an election at least once per year. The SECURE Act permits amendments to non-elective status any time before the 30th day before the end of the plan year. Additionally, Employers may still amend their safe harbor plans even after 30 days before the end of the plan year if the amendment provides for a non-elective contribution of at least 4%, and the plan is amended no later than the close of the following plan year.
- **Automatic Enrollment Arrangement Rate Limitation.** Employers are permitted to implement what is referred to as an automatic enrollment arrangement for employees. This arrangement permits employers to automatically defer amounts from employee compensation into a retirement plan. Under prior law, an employer could automatically defer up to 10% of an employee's compensation. The SECURE Act now increases that limitation to 15%.
- **Long-term, Part-time Employees.** Beginning for plan years in 2021, plans will be required to allow part-time employees to participate who have had at least 500 hours of service for three (3) consecutive years.

- **Increased Tax Credit for Small Employers.** Small employers that implement a retirement plan are eligible for an increased tax credit, beginning for tax year 2020. A small employer is one that employed less than 100 employees in the previous tax year. The tax credit that a small employer can claim is increased from \$500 to \$5,000.
- **Consolidating Form 5500.** Plans that have certain common features, such as the same fiduciary under ERISA and the same plan year, among other features, will be eligible to file a consolidated Form 5500. This change will reduce administrative costs, which is intended to enable small employers to sponsor retirement plans and strengthen retirement savings. The consolidated Form 5500 will be available before January 1, 2022.
- **Birth or Adoption Withdrawals.** Effective tax year 2020, individuals can take penalty-free withdrawals from retirement accounts for any qualified childbirth or adoption distributions up to \$5,000. Notably, such amounts are subject to income tax unless repaid to the plan.
- **Prohibition on Credit Card Loans.** Retirement plan loans can no longer be made through credit cards or other similar arrangements. This modification is intended to make certain that plan loans are not used for routine and small purchases.

The SECURE Act contains many more specific and intricate provisions.

If you have any questions regarding the administration of your retirement plan or if you have any questions that relate to your retirement plan account and planning for the future, it is important you understand the new rules under the SECURE Act. To stay compliant and up to date on changes in the area of employee benefits, contact Peter Langdon at 402-392-1250 or by email at plangdon@akclaw.com.

THE SECURE ACT...

- INCREASES THE AGE PARTICIPANTS IN 401(K) PLANS MUST BEGIN WITHDRAWING MONEY FROM THEIR ACCOUNTS FROM 70 1/2 TO 72 YEARS-OLD.
- ALLOWS SMALL EMPLOYERS TO FORM GROUPS AND JOINTLY OFFER 401(K) PLANS.
- GIVES PARENTS THE ABILITY TO WITHDRAW UP TO \$10,000 FROM 529 PLANS EDUCATION SAVINGS PLANS TO HELP FINANCE STUDENT LOANS.
- REQUIRES EMPLOYERS TO OFFER 401(K) PLANS TO SOME PART-TIME EMPLOYEES.



• Nicole Seckman Jilek recently represented a beneficiary of a trust in a trust dispute. At trial, Ms. Jilek was successful at removing the co-trustees of the trust, received an award of damages for the trust and a surcharge against the former co-trustees. She also received a significant award of attorney's fees for her client to be paid by the former co-trustees.

• Rob Schartz won a Motion for Summary Judgment in federal court. In this case, our client was sued for discrimination in awarding contracts to outside vendors. The judgment dismissed all claims against our client.

• Nicole Seckman Jilek recently defended an employer in three race discrimination cases in federal court filed by three former employees. Ms. Jilek successfully obtained a dismissal with prejudice for the employer in all three cases.

• AKC Law was selected as one of Nebraska's Best Law Firms as reported in U.S. News & World Report and Best Lawyers. AKC Law is regionally ranked in 4 practice areas.

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

The U.S. News – Best Lawyers® “Best Law Firms” rankings are based on a rigorous evaluation process.



New Faces

Timothy R. Mulliner joined AKC Law's Business, Employment, and Litigation Teams after a decade in private practice in Nevada. He has a broad range of experience, including banking, real estate, employment, and construction matters. He has extensive experience in the financial services industry, representing banks, mortgage companies, and other financial institutions in both litigation and compliance matters. He has also represented healthcare organizations in and out of litigation, focusing primarily on compliance matters and fraud investigations.

Tim's employment law practice includes representing clients of all sizes before administrative agencies, state and federal courts on matters including discrimination, wage and hour, business torts, and breach of contract cases in a range of industries. He regularly counsels employers, financial institutions, and other clients on their compliance policies and procedures to minimize their exposure to litigation. Tim's representative matters demonstrate additional areas of practice and some of the many cases he has resolved in his clients' favor through trial, arbitration, and other alternative dispute resolution. Tim is admitted to the Nebraska State Bar Association (Inactive status awaiting reactivation) and the State Bar of Nevada.



Timothy Mulliner

David C. Nelson joined AKC Law's Business Law Team. Dave has a wealth of knowledge on drafting, reviewing, revising, and negotiating complex contracts and also has experience in managing local counsel on litigation, arbitration, mediation and settlement of claims.

Dave is known for his ability to navigate and complete complex projects and has extensive experience counseling clients on issues including:

- Real estate purchases and sales
- Business acquisition and divestiture agreements and due diligence
- Title insurance
- Surveys
- Zoning
- Commercial and industrial property leasing
- Equipment leasing
- Trademark, copyright, software and technology licenses
- Formation of for-profit and non-profit entities
- Loans
- Warehousing, consignment, transportation, and supply of products
- Construction

Dave is admitted to the Nebraska State Bar Association and the U.S. District Court of Nebraska.



David Nelson

Congratulations!

In December, **Peter Langdon** received his Master of Laws in Taxation (LL.M.) from Villanova University's Charles Widger School of Law. An LL.M. is an advanced, graduate legal degree that provides a detailed knowledge of the field of tax law.

Pete is eager to put his degree to work in his practice which focuses on Employment, Corporate, and Commercial Law. He is also a member of the AKC Energy Law Team. Taxation is an important aspect of each of these fields of law.

He received his Bachelor of Arts degree from the University of Nebraska-Lincoln in 2014, where he studied Political Science, History, and English. He earned his Juris Doctorate from Creighton University School of Law in 2017.



Peter Langdon

Christopher O. Estwick, an Associate at AKC Law, was selected to be a member of the 2019-2020 Nebraska State Bar Association Leadership Academy. The mission of the Leadership Academy is to develop the leadership skills of the participants which helps them make greater contributions to the legal profession and their community. This year-long honor provides monthly sessions on topics like: effective leadership, legislative issues, and public trust and confidence in the judicial system.

Chris Estwick is a member of AKC Law's Business department. His practical business perspective and interest in learning about diverse industries and how they operate, make his choice of practicing Business and Corporate Law a natural fit.

His work focuses on Mergers and Acquisitions – which includes Corporate Transactions, Commercial Finance, Intellectual Property, and Real Estate Law.

For more AKC news, visit our website at [AKClaw.com!](http://AKClaw.com)



Chris Estwick (circled) and the other members of the 2019-2020 NSBA Leadership Academy class

Abrahams Kaslow & Cassman LLP
8712 West Dodge Road • Suite 300
Omaha, NE 68114
402.392.1250 AKCLAW.com

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 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 nbarrett@akclaw.com. The Nebraska Rules of Professional Conduct for Attorneys require the following statement on law firm newsletters:

This is an advertisement.