

LEGAL PERSPECTIVES



How we are navigating the “New Normal”

Abrahams Kaslow & Cassman LLP exists to serve our clients. That’s why we want to assure you that we are closely monitoring the global coronavirus (COVID-19) outbreak and taking precautionary measures to promote the health and safety of our clients, business associates, attorneys, and staff. As you know, the situation changes almost daily which leads us to believe that this will continue to be a very fluid situation. Policies may be modified as time passes, but our goal is to keep our office open and fully operational.

We are committed to providing superior service to our clients and are taking active steps to prevent any interruption in our business processes. We have a dedicated team that frequently meets to closely monitor, assess, and respond to the COVID-19 situation as it develops.

In the event that we must close our office, our attorneys and staff are well-equipped to work remotely. We appreciate your patience and understanding as we take steps to ensure uninterrupted service to our clients.

Our goal is to keep you updated with relevant information, tools and guidance. We will continue to closely monitor the situation and implement additional measures to support our clients as the need arises. For ongoing updates, please follow us at akclaw.com or on our Facebook and LinkedIn pages. If you have any questions, we encourage you to contact us at 402.392.1250 or by e-mail at attorneys@akclaw.com.



2nd Quarter 2020
SPRING
NEWSLETTER

STAYING UP-TO-DATE ON DEVELOPMENTS

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TEMPORARY BAN ON RESIDENTIAL EVICTIONS

On March 25, 2020, Governor Ricketts issued an Executive Order temporarily prohibiting residential eviction hearings. No eviction hearings will take place until after May 31, 2020 if a tenant can demonstrate they (a) have suffered a loss of income resulting from COVID-19, or (b) missed work to care for a relative or child due to school and childcare closures. Landlords are not permitted to evict a tenant on the basis that any resident of the property has a suspected or confirmed COVID-19 diagnosis. This Executive Order does not change or effect a tenant’s obligation to pay rent. For more information, contact our Real Estate Team at 402.392.1250



FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The federal government recently passed the Families First Coronavirus Response Act in response to the COVID-19 outbreak. The new legislation will significantly impact business operations, primarily as it relates to paid leave. Read the entire article on akclaw.com or speak with a member of our Employment Team for further details.

PAYCHECK PROTECTION PROGRAM

Read more about the \$350 billion loan program included in the CARES Act on page 2 of this newsletter. Any additional regulations or changes made by the Small Business Administration or the Treasury Department will be updated as they are available on akclaw.com



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Omaha’s Business Law Firm for Over 75 Years.

CARES Act

Small Business Assistance under the Paycheck Protection Program



By Thomas J. Malicki

The Paycheck Protection Program was enacted as part of the CARES Act recently passed into law in connection with the COVID-19 stimulus package. This program will provide \$349 billion to be allocated to the Small Business Administration (SBA) to guarantee loans to qualifying small businesses. The information set out below is intended as a brief overview of the program. There have been frequent changes to the rules due to the fluidity of the economic crisis caused by COVID-19, so some of the information set out below may be altered by future regulation. Businesses are advised to seek accounting and legal assistance prior to making any application under the program to determine how the program applies to their specific business situation.

Who is Eligible?

With some exceptions, any business with 500 or fewer employees, including non-profits, sole proprietors, independent contractors, and self-employed persons.

Business must have been in operation on February 15, 2020.

When Can I Apply?

Small businesses and sole proprietorships can apply during the period from April 3, 2020 through June 30, 2020.

Independent contractors and self-employed individuals can apply during the period from April 10, 2020, through June 30, 2020.

The loans under the program will be provided on a first-come, first-serve basis, so potential borrowers are being encouraged by the Treasury to apply as soon as possible.

How Do I Apply?

An applicant must submit a completed loan application along with required payroll documentation supporting the requested loan amount to an SBA approved lender. A small business can only apply for one loan.

What is the Maximum Loan Amount?

The maximum loan amount is 2.5 times your business' average total monthly "payroll costs" (capped at \$10 million).

What are Payroll Costs?

- Salaries, wages, commissions, etc. (capped at \$100,000 per year for each employee).
- Group healthcare insurance premiums, retirement plan contributions, and parental, family, medical, or sick leave.
- Certain other employment-related expenses and taxes.
- Independent contractors do not count as employees.

How do I Calculate the Loan Amount?

Example 1: No employees make more than \$100,000

Annual Payroll: \$120,000

Average Monthly Payroll: \$10,000

Multiply Average Monthly Payroll by 2.5: \$25,000

Maximum Loan Amount: \$25,000

Example 2: Some employees make more than \$100,000

Annual Payroll: \$1,500,000

Compensation Amounts in Excess of \$100,000: \$300,000

Subtract Compensation Amounts in Excess of \$100,000 from Annual Payroll: \$1,200,000

Average Monthly Qualifying Payroll: \$100,000

Multiply Average Monthly Qualifying Payroll by 2.5: \$250,000

Maximum Loan Amount: \$250,000

Is any Collateral Required?

No collateral or personal guarantees are required.

What can the Loan Proceeds be Used For?

Payroll costs, mortgage interest, rent, and utility payments during the 8-week period commencing on the loan origination date (payment for items other than payroll costs are subject to certain restrictions and may impact loan forgiveness - *See Can the Loan Amount be Forgiven?* below).

Can the Loan Amount be Forgiven?

In general, if the loan proceeds are spent on eligible expenses, and there are no reductions in employee headcount or wages paid, then the loan amount (and any accrued interest) will be forgiven in its entirety. However, if more than 25% of the loan proceeds are used for expenses other than payroll costs, then such excess amount will not be forgiven. In addition, the amount of loan forgiveness will be reduced if any reductions in employee headcount or wages paid are not restored by June 30, 2020.

Loan Forgiveness is not automatic; the borrower must request it.

Any amount of loan forgiveness will not be taxable to the borrower.

What are the Loan Repayment Terms if the Full Loan Amount is not Forgiven?

Any loan amounts not forgiven will need to be repaid under the following terms and conditions:

Term of Loan: 2 years

Fixed Interest Rate: 1%

Deferred Payments: No principal or interest payments due for 6 months

Prepayment Penalty: No prepayment penalty

For more information, please call 402.392.2150 to speak with Tom Malicki or one of our other business attorneys.

The Impact of the CARES Act on People with Special Needs

By M. Tyler Johnson

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act, otherwise known as the CARES Act. The CARES Act will provide recovery rebates of up to \$1,200 per adult or \$2,400 for a couple plus an additional \$500 for each qualifying child.

The full rebate amount is available to persons making up to \$75,000 and to couples making up to \$150,000. For greater amounts the rebate begins to phase out by \$5 for every \$100 in excess of \$75,000 for individuals and \$150,000 for couples. Individuals with income exceeding

\$99,000 and couples with income exceeding \$198,000 with no children are ineligible.

Eligibility is based upon income shown on a person's 2018 or 2019 tax return. According to the IRS, it will calculate and automatically send the recovery rebate to those eligible using the information provided from their last return.

For those who are not typically required to file a tax return, such as those who receive Social Security benefits, the IRS will use the information provided on the Form SSA-1099 in order to calculate and send the recovery rebate.

The Social Security Administration (SSA) announced that for those receiving Supplemental Security Income (SSI) who did not file a tax

return for 2018 or 2019 and who did not receive a Form SSA-1099, the SSA will share data on these individuals with the Treasury to notify potentially eligible individuals and provide necessary materials to apply for the payment.

For those receiving Social Security benefits or other benefits or assistance under other federally funded assistance programs, the recovery rebate will not be counted as income and will be excluded from countable resources for 12 months.

For more information, contact our Special Needs Trusts Attorneys: Tyler Johnson at tjohnson@akclaw.com or, Andy Deaver at adeaver@akclaw.com



Ensuring Compliance with the California Consumer Privacy Act

It's not just for California Businesses

By Christopher O. Estwick

The California Consumer Privacy Act (“CCPA”) went into effect on January 1, 2020. The CCPA is a landmark data privacy law that substantially expands the rights of California residents with respect to commercial uses of their personal information.

In order to be subject to the CCPA, a business must transact business in California (whether through a physical presence or e-commerce) and satisfy one of the following requirements: (1) have annual gross revenues of \$25,000,000 or more, (2) possess the personal information of at least 50,000 consumers, or (3) derive at least 50% of its annual revenue from the sale of consumers’ personal information. Enforcement of the CCPA is not limited to California businesses.

A California resident may submit a request to a business covered by the CCPA and obtain the following information:

- The categories of personal information collected about the individual;
- The categories of sources from which the personal information of the individual is or has been collected;
- The business or commercial purpose for collecting or selling the personal information of the individual;
- The categories of third parties with whom the covered business shares the individual’s personal information; and
- The specific pieces of personal information the covered business has collected about the individual.

The CCPA also provides consumers with the right to request that the covered business delete the personal information it has collected for that particular consumer and the right to “opt-out” of having their personal information sold or disclosed for business purposes. Moreover, consumers have the right not to be discriminated against for exercising their rights under the CCPA, although covered businesses may offer financial incentives to consumers who

agree to the sale of their personal information.

Within 45 days of receiving a consumer request, a covered business must verify the identity of the consumer making the request, provide the requested information, and/or delete the consumer’s personal information. Covered businesses must provide the requested information for the 12-month period immediately preceding the consumer request. Notably, the definition of “personal information” under the CCPA excludes publicly available information, de-identified information, and aggregate consumer information. Covered businesses must maintain records of consumer requests and their responses to such requests for 24 months.

The California Attorney General’s office will be primarily responsible for the enforcement of the CCPA by civil penalty. However, the CCPA notably provides consumers a private right of action against covered businesses that don’t comply with the CCPA under certain circumstances, which would allow consumers to sue non-compliant covered businesses for damages. Enforcement of the CCPA will begin on July 1, 2020.

Businesses that are subject to the CCPA need to begin compliance efforts immediately. It will be necessary to revise businesses’ websites and online privacy policies to reflect the new requirements of the CCPA. Businesses will need to implement a system in which they review and verify consumer requests and take appropriate action within the timeframe provided in the CCPA. The CCPA has initiated a domino effect in which states across the country have introduced similar privacy laws expanding consumers’ rights relating to the commercial use of their personal information, including one such bill that was introduced in the current session of the Nebraska legislature. To ensure compliance with the CCPA and stay up to date with other consumer privacy laws, contact Chris Estwick at (402) 392-1250 or by email at cestwick@akclaw.com.

Is your Business Website ADA Complaint?

By Peter M. Langdon

Increasingly, individuals are filing lawsuits alleging that a company’s website is not accessible for individuals with disabilities.

Typically, this will take the form of a blind individual filing a lawsuit because a business’ website is not compatible with the individual’s screen reader. Under the Americans with Disabilities Act (“ADA”), businesses that maintain a website are generally required to ensure that disabled individuals, such as those who are blind, are able to navigate that website.

Liability could arise in the event that a disabled individual is unable to successfully navigate a company’s website. The law varies from state to state under this area of the ADA. For example, in some states, a company’s website is only subject to the ADA if the website is sufficiently connected with the company’s physical location. In other states, the ADA applies to a company’s website even though the company does not have a physical location in the state. Businesses should make certain they are aware of the law in the states in which they are operating. Additionally, a best practice is to always make certain your website is accessible and navigable for disabled individuals. This can be done by contacting a web service provider who is able to make sure the necessary structures are in place for disabled individuals to access and navigate your website.

If you have any questions regarding the ADA and its application to business websites you can contact our employment team or reach out to Peter Langdon at 402.392.1250 or by email at plangdon@akclaw.com.

More resources include:

Web Content Accessibility Guidelines - <https://www.w3.org/WAI/standards-guidelines/wcag/>

Web Accessibility Evaluation Tools List - <https://www.w3.org/WAI/ER/tools/>





New Faces

Samuel R. O'Neill joined the Litigation Team at Abrahams Kaslow & Cassman LLP in March 2020. Before joining the firm, he practiced estate planning, litigation, family law, and criminal law for a firm in York, Nebraska. Sam received his B.A. in Political Science and History from the University of Nebraska at Lincoln. He earned his J.D. from the Nebraska College of Law with a concentration in litigation and is a graduate of the Dan Jewell Trial Institute. He is a member of the Nebraska Association of Trial Attorneys and a member of the Nebraska State Bar Association.



Samuel R. O'Neill

Since graduating from law school, Sam has been lead counsel in several trials and has successfully argued in front of the Nebraska Supreme Court. As a litigator at AKC Law, he will work in general civil litigation including commercial, landlord tenant, and personal injury matters, along with the more specialized practice areas of medical malpractice and political subdivisions.

In his estate planning practice, Sam prides himself on providing clear and practical advice to clients and their families. He has also developed expertise in asset protection, estate settlement, and probate. Sam works to reduce the risk of fiduciary disputes, but when disagreements occur, he has thoughtful strategies to effectively represent individuals, trustees, executors, administrators, guardians, conservators, and beneficiaries connection with estates, trusts, conservatorships and guardianships.

Nebraska Online Notary Public Act:

How It Helps & How It Doesn't



Andrew P. Deaver

On April 1, 2020, Nebraska Governor Pete Ricketts immediately effected Nebraska's Online Notary Public Act ("Act"). The Act allows for an online notary public to electronically notarize most documents without being in the actual, physical presence of the person whose signature is being notarized. This new means of notarization allows businesses and individuals greater flexibility as they adjust to operating in an environment complicated by social and physical distancing concerns.

However, the Act does not apply to the execution and notarization of wills, codicils, and testamentary trusts. The execution of these documents must still be notarized via the traditional, in-person practice. At this point in time, the present public health situation does not remove the legal necessity of a notary public being in the actual, physical presence of a person executing his or her will, codicil, or testamentary trust.

Abrahams Kaslow & Cassman LLP continues to serve our clients in these uncertain times. The firm is actively taking steps to register certain of its members as Online Notary Publics. The firm is continuing to work with our clients to accomplish traditional, in-person will, codicil, and testamentary trust executions and notarizations, while vigilantly following ever-changing best-practice safety guidelines. Even with everything that is going on, moving forward in business and life never stops. Just as it has for the past 75 years, AKC Law is here to help.



For over 75 years, the attorneys at AKC Law have been helping families with their estate planning needs. Because of this, we have developed a special emphasis on helping parents of children with special needs.

Our attorneys are experienced in establishing Special Needs Trusts and are members of the Academy of Special Needs Planners ("ASNP"). ASNP is a nationwide network of attorneys and financial planners who work together to stay current on legal developments and to share cutting-edge techniques in planning for individuals with special needs.

For more information contact:

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