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From the President

The EEOC publishes on its website statistics relating to their enforcement activities. They tell us that in 2005, the EEOC received 4,449 charges of pregnancy-based discrimination. EEOC resolved 4,321 pregnancy charges in 2005 and recovered \$11.6 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation). This level of enforcement activity suggests that it is wise to understand at least the basics of the Pregnancy Discrimination Act (the "PDA") which is an amendment to Title VII of the Civil Rights Act of 1964. What follows is a general survey of its coverage.

The PDA covers employers with 15 or more employees. The PDA requires employers to treat women who are pregnant or affected by related conditions in the same way the employer treats other applicants or employees with similar abilities or limitations.

The protections of the PDA cover hiring, pregnancy and maternity leave, health insurance and fringe benefits. Employers may not refuse to hire a pregnant woman because she is pregnant, because of pregnancy-related condition or because of prejudices of co-workers, clients, or customers.

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. If an employee is unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee. Pregnant employees must be permitted to work as long as they are able to perform their jobs. Employers must hold open jobs for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave.

Health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Pregnancy-related expenses must be reimbursed on an equal footing with those incurred for other medical conditions. Amounts payable by an insurance provider can be limited only to the same extent as amounts payable for other conditions.

Pregnancy-related benefits cannot be limited to married employees. If an employer provides any benefits to workers on leave, the employer must provide the same benefits for those on leave with pregnancy-related conditions.

Caveat: This is a very general survey of the PDA. You should consult counsel regarding application of this statute to particular cases.

Steven C. Filipowski

Succession Planning For Business Owners



Lawrence G. Staat

A succession plan put in place now will provide certainty and liquidity to the value of your largest asset, your business.



On the balance sheet of a business owner, the asset with the largest value will usually be the owner's business. An estate planner will accept this value, assume illiquidity, and then propose to change the owner of the business in some way to minimize estate taxes and costs of administering the business owner's estate. A succession planner will probe further about the value.

A succession planner will ask two questions, and the business owner's answers will reveal the extent to which the business owner has a succession plan.

How certain is the value? While the current leader is "on the job," the value is as certain as it will be, subject always to business conditions. But at some time the current leader will not be there due to one of the four "D"s, namely, death, disability, distraction, or disinterest. Then, the value is certain only if the next leader is in position to assume the leadership role.

How liquid is the value? The value is liquid if the current owner can convert the business to cash. The source of cash may be insurance for some of the four "D"s (death or disability), but generally the source is the next owner, that is, a person in position to buy the business.

A succession plan will allow a business owner to provide solid answers to these questions. It will have two parts, a leader succession plan and an owner succession plan. In addition, an interim plan is needed to cover the period before the succession plan is in place.

Succession plans vary by many factors, but the most important factor differentiating succession plans is the type of business as determined by location of the business' goodwill. The location can be with the entity (entity goodwill business) or with the leader (personal goodwill business). The location is with the leader if it is likely that customers would follow the leader if the leader were to leave the business. Otherwise, the location is with the entity. Where the location is with the entity, the two parts of the succession plan can be separate. Where the location is with the leader, the two parts must be combined in order to preserve the business.

Leader Succession Plan The current leader and current owner together must locate and train the next leader. The succession planner must provide the tools to keep the next leader in place. These tools include an employment agreement with compensation tied to personal and business performance, a deferred compensation arrangement, and perhaps an ownership arrangement.

Owner Succession Plan The current owner must locate the next owner. The next owner could be an existing co-owner, the next leader, current employees through an ESOP, a strategic buyer, or a financial buyer. The current owner and the succession planner must work together to make the business attractive to the next owner. This means doing in advance the "due diligence" that will occur at the time of sale, such as complying with corporate formalities, eliminating special arrangements (eg., loans to insiders, relatives on payroll), formalizing vital relationships, formalizing rights to vital assets, and settling pending or potential claims against the business. This combined with the next leader puts the business in salable condition. Where the next owner has been located, it may be appropriate to enter into an arrangement designed to keep the next owner in place. The succession planner must provide the tools for this, including a purchase agreement, an option agreement, and a co-owners' agreement.

Combined Leader-Owner Succession Plan For a personal goodwill business, the next leader and next owner will be the same person, and the leader succession plan and owner succession plan must be combined. In addition, there will usually be special "earn in" arrangements that require coordinating the compensation paid to the current and next leaders.

Tax Consequences The succession planner must provide guidance on the income and estate tax consequences of the succession plan. The plan can be designed to defer or minimize seller's income taxes using techniques such as a tax-free reorganization, an ESOP, or personal goodwill. In a family context, the plan can be designed to minimize estate taxes using techniques such as valuation discounts and gifting.

Call to Action For certainty and liquidity of the value of a business, every business owner must have a succession plan, and the time to do it is now. To learn more about how our business succession planning attorneys can structure a plan for you, please contact me at 312.621.4400 or LStaat@SNSFE-law.com. ■

Lawrence Staat heads the firm's transactional practice groups.

You must ask yourself, "If I were to die tomorrow, who will take over my business?"



Jack L. Haan

New Federal Rules Obligates Diligence In Saving & Producing Electronic Information

On December 1, 2006, new federal rules of procedure became effective relating to "electronically stored information," or ESI, which will dramatically affect litigants in future lawsuits. These new rules impose an obligation on all parties to a lawsuit to preserve relevant ESI evidence on their computers and other electronic systems and to disclose and produce this information at the inception of the lawsuit without being asked to do so by other parties to the lawsuit.



Every party to a lawsuit now has a duty to preserve its ESI. This duty is triggered when the party first understands that litigation is "reasonably anticipated." In many cases this duty will arise well before the filing of a lawsuit. Thus, when a company officer or employee recognizes that a lawsuit may be forthcoming, the company has an obligation to preserve all evidence relevant to the potential lawsuit. Information that must be preserved and produced includes all ESI from "reasonably accessible sources", including e-mail, business databases, and computer files.

The penalties for failing to preserve ESI may be significant. Courts are empowered to impose sanctions against the offending party, including exclusion of critical evidence necessary to prove the party's claim or defense, dismissal of the party's claim or defense, issuance of jury instructions adverse to the offending party, and, ultimately, entry of judgment against the party.

Prepare now to fulfill your "preservation" and "production" obligations. Establish and institute a "Document Preservation Plan" and an "ESI Discovery Response Plan." These plans should be designed to preserve the ESI, minimize the risk of lost ESI, lessen the likelihood of business disruption while gathering and producing the ESI, and minimize the risk of incurring court sanctions. Among other things, these plans ought to require that key company personnel, and in particular, key IT personnel, and both in-house and outside counsel, know the company's operating systems and computer systems. When ESI preservation obligations arise in anticipation of litigation, a "litigation hold" must be implemented so that employees know that they may not delete ESI; and, the system must be monitored to ensure that the company's ESI preservation obligations are met. When effective preservation and discovery response plans are absent, litigation costs and risks will be higher. Implementation of such plans and good faith efforts in efficient administration of them will provide evidence of compliance with a litigant's preservation and discovery obligations.

SNSFE trial and dispute resolution attorneys are available to assist you in developing and implementing document preservation plans and ESI discovery response plans. Please call us with your questions. ■

For more information, contact Jack Haan at 312.621.4400 or JHaan@SNSFE-law.com.

A diligent party should prepare preservation and response plans now.

A Checklist for Detecting Stockbroker/Financial Advisor Abuse: WHAT INVESTORS (AND THEIR ACCOUNTANTS AND ADVISORS) SHOULD KNOW

Fortunately, most financial advisors are ethical, competent, and have their clients' best interests at heart. Nonetheless, thousands of investors lose money - in good markets and in bad - due to investment sales practice abuses and/or their advisors' failure to adhere to basic principles of modern portfolio theory (such as asset allocation). These investment losses can wreak havoc on investment portfolios, and investors - particularly retirees on a fixed income - can suffer dramatic declines in their net worth from which they'll never fully recover.



Ronald M. Amato



What should investors look for in trying to detect stockbroker/financial advisor abuse? This checklist is a starting point:

- Am I buying and quickly selling just to recognize small profits (or take losses), instead of holding for the longer term?
- Am I seeing trade confirmations, which confirm trades that the broker recommended, marked as "unsolicited"?
- Am I buying securities on margin, that is, with the use of borrowed money?
- Does my broker call me after he has placed a trade, and not beforehand?
- Does my portfolio contain more than 25% of my money in any one security?
- Have I received a letter from the brokerage firm to confirm that my account activity is appropriate, and asking me to sign and return the letter or call if I have questions? As a related matter, has my advisor's "boss" called me to discuss my account?
- Do I feel that my investments are too risky for my comfort level? For example, are my savings concentrated in volatile stocks, as opposed to invested in a balanced portfolio that includes fixed-income securities?
- Have I recently retired, relying on my advisor's expectation that my accounts would earn returns of 12% or more?

Notably, investors' trusted advisors - such as accountants and attorneys - often are in a position to discover unsuitable investments and/or financial fraud in their clients' investment portfolios. For example, at tax time accountants sometimes observe securities transactions that appear to have been excessive or simply did not make sense given their clients' objectives and needs. Even investment professionals sometimes detect abuse when reviewing the incoming portfolios of new clients.

The securities attorneys of SNSFE stand ready to review investment portfolios for signs of unsuitable investments and other indications of misconduct. ■

For more information, contact Ron Amato at 312.621.4400 or RAMato@SNSFE-law.com.

Investors who answer yes to any of these questions may be the victims of abuse and should seek legal assistance.

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Steven C. Filipowski, President

IMPORTANT NEWS:

Read about the new federal rules of procedure (which became effective on December 1, 2006) regarding electronically stored information in future lawsuits. See page 3.

upcoming events

Call 312.621.4400 for more information or to register.

See a full listing of upcoming events on our website at www.snsfe-law.com.

Webinar: January 31

The Evolution of Fiduciary Liability for Investment Losses -- ERISA Plans, Non-Profits and Institutions
April J. Lindauer
11:00 AM - 11:50 AM. Complimentary. 1 CPE credit.

Webinar: March 13

Avoiding Traps In Your Transition: Negotiating Your Bonus Arrangement and Employment Terms When Moving To A New Brokerage Firm
James J. Eccleston
11:00 AM - 11:50 PM. Complimentary. 1 CPE credit.

Seminar: April 5

2nd in a series of quarterly breakfast seminars designed for business owners and senior level executives.
Speaker TBD
7:30 AM - 9:00 AM. Complimentary.
National Bank of Commerce, 1640 W. Lake St., Addison, IL

SNSFE is pleased to announce that partners Henry N. Novoselsky, Lawrence G. Staat, and James J. Eccleston have been named Illinois Super Lawyers for 2007. Only five percent of Illinois attorneys are recognized as Super Lawyers each year.