



Willson & Pechacek, P.L.C. Newsletter



General Edition

February 2005

You Don't Always Need a Lawyer

by Frank W. Pechacek, Jr.

From time to time, we will furnish legal information in our newsletters—not advice. Legal advice involves analysis of specific facts and the application of law to those facts based on the lawyer's training, experience, and exercise of legal judgment. The legal information we provide may be sufficient for you to make a decision or at least allow you to narrow your questions and focus on specific areas on which you want legal advice, thereby reducing the cost of legal services.

We have 20 different free pamphlets in our office waiting room. You can stop by and get any of those that are of interest to you. For example, one of the pamphlets is titled "How to Use Small Claims Court". Claims up to \$5,000.00 can be handled in Small Claims Court with or without a lawyer. The pamphlet

provides information on small claims proceedings. Judges make allowances for parties that appear as plaintiff or defendant without lawyers. You can also observe a Small Claims Court session.

Further, the Iowa Attorney General's office provides some services by contacting the consumer Protection Division, Hoover Building, Des Moines, IA 50319. Call 1-515-281-5926, or toll-free at 1-888-777-4590. On the Web, visit www.IowaAttorneyGeneral.org (click "protecting consumers"). For information about "Web" shopping, go to www.IowaAttorneyGeneral.org (click "protecting consumers"), or www.FTC.gov (click "for consumers").

Moreover, Iowa's three-day-right-to-cancel law applies to door-to-door sales or sales made away from a seller's usual place of business. However, most refund policies are up to individual retailers and most

require receipts before making refunds. Federal law requires sellers to ship purchases within 30 days unless a later date is specified. If there is a delay, the seller must give notice and a chance to cancel and offer a refund. The safest way to pay for mail order purchases is by credit card so that you can dispute the bill and withhold payment if necessary.

To "Get Answers from Uncle Sam", go to www.FirstGov.gov to find answers or e-mail your questions any time of day or night. Call 1-800-333-4636, Monday-Friday, 8:00 a.m. to 8:00 p.m. ET.

Finally, for social security information, contact the Office of Public Inquiries, Social Security Administration, Window Park Bldg., 6404 Security Blvd., Baltimore, MD 21235, toll-free at 1-800-772-1213, www.ssa.gov.

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Time is Money, Especially Overtime

by Bruce B. Green

The United States Department of Labor's new overtime rules went into effect on August 18, 2004. Now, workers making \$23,660.00 per year or less are entitled to overtime for

each week in which they work more than 40 hours. Employers must pay overtime to these workers even if they pay them on a salary basis. Conversely, almost all highly compensated individuals — those making \$100,000.00 or more annually — are no longer entitled to overtime.

For employees who make between \$23,660.00 and \$100,000.00, the Department of Labor has given some additional guidance on who is exempt from overtime, and who is not. Specific questions should be addressed to your

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Identity Theft

by Brett Ryan

Identify theft is an increasing risk in our information-based society. Identity theft occurs when someone wrongfully obtains and uses another person's personal data for their own economic benefit. This article briefly explains some precautions you can take to protect yourself from identity theft.

Personal data, such as your Social Security Number, bank account number, or credit card number, can be used by another to profit at your expense. Many people have had unauthorized persons take funds out of their bank accounts or take over their identities altogether, running up vast debts and committing crimes while using the victims' names. In many cases, victims suffer not only out-of-pocket financial losses, but substantial additional financial costs associated with trying to restore their reputations in the community and correcting erroneous information for which the criminal is responsible. These cases, and others like them, prompted Congress in 1998 to create a new federal crime of identity theft.

Many people do not realize how easily criminals can obtain their personal data. For example, criminals may watch from a nearby location as victims punch in their telephone calling card numbers or credit card numbers. Likewise, criminals often obtain personal information by listening in on conver-

sations over the telephone with a hotel or rental car company. Some criminals go through garbage cans or communal dumpsters to obtain copies of checks, credit card or bank statements, or other records that bear victims' names, addresses and even telephone numbers. These records can allow criminals to get control over accounts and assume victims' identities. In recent years, the Internet has become an appealing place for criminals to obtain identifying data, such as passwords or banking information.

With enough information, criminals can take over identities to conduct a wide range of crimes such as false applications for loans and credit cards, fraudulent withdrawals from bank accounts, fraudulent use of telephone calling cards, or obtaining other goods or privileges which the criminal might be denied if he were to use his real name. If criminals take steps to ensure that bills for the falsely obtained credit cards, or bank statements showing the unauthorized withdrawals, are sent to addresses other than the victims', the victims may not become aware of what is happening until the criminals have already inflicted substantial damage on the victims' assets, credit and reputation.

What to do to avoid becoming a victim of identity theft? To minimize the risk of becoming a victim of identity theft, do not give out your personal information to others unless you have a reason to trust them. Take a "need-to-know" approach to your personal data. While your credit card company may need your mother's maiden name to

verify your identity, someone calling you unsolicited does not. The more information that is printed on your personal bank checks, such as your Social Security Number or telephone number, the more personal data you are routinely giving to people who do not need it. If you receive applications for "preapproved" credit cards in the mail, tear them up before discarding so criminals do not retrieve the cards and try to activate them for their use without your knowledge. Some companies, when sending credit cards, have adopted security measures allowing card recipients to activate cards only from their home telephone numbers.

Check your financial information regularly, and watch for things that should or should not be there. If you are not receiving monthly statements or you notice charges or payments that you did not authorize, contact your financial institution immediately and let them know of the problem.

What should you do if you've become a victim of identity theft? If you think you've become a victim of identity theft, act immediately to minimize the damage to your assets, credit and reputation. The Federal Trade Commission (FTC) is responsible for receiving and processing complaints from people who believe they may

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How Does Your Credit Report Look?

by *Jamie L. Cox*

You would be surprised at the number of people who do not know the first thing about their credit report. A credit report is a factual record maintained by credit bureaus containing your credit payment history. It's provided to companies and individuals by credit bureaus to help a credit grantor decide whether to grant you credit. When you apply for any type of credit or financing, a credit report is generally obtained which contains information from at least one of the major credit bureaus (Experian, Equifax and Trans Union).

What is included on a credit report? It is amazing the amount of personal information that credit grantors know about you. Bankruptcies, judgments, divorces, liens, and satisfied judgments or liens all show up on your credit report as negative listings. Any time a creditor turns a delinquent account or bad check over to a collection agency, it shows up on your credit report as a very negative listing. Regular credit lines, auto loans, department store cards, credit cards, and mortgages are considered negative listings if they have a history of late payments, have been included in a bankruptcy, have been charged off, or have been put into repossession.

How long does negative information remain on a credit report?

Even though your creditor or the credit bureau can remove negative items whenever they choose, the

Fair Credit Reporting Act generally requires that items be taken off a credit report within seven years.

What are R1 and R9 Ratings?

These ratings are supplied by creditors and describe you as a borrower. "R" refers to a revolving credit account. A rating of "1" is good, and a rating of "0" means that there is not enough information or history to give you a rating. Any other rating ("2" through "9") is negative.

Who can access your credit report?

Landlords, utility companies, phone companies, hospitals, doctors, dentists, lawyers, courts, investigators, insurance companies, credit unions, finance companies, banks, mortgagors, retailers, department stores, credit card companies, car dealers, and anyone who can offer just cause or has access as a member of a credit reporting agency can access your credit report..

What are "excessive inquiries"?

Each time you apply for credit and a potential credit grantor looks at your credit file, an "inquiry" appears on at least one of your credit bureau files. Inquiries can also appear when an existing credit grantor reviews your credit periodically (to increase your credit line, etc.), or when you review your own credit report. These inquiries can remain in your credit history file for 24 months. A credit grantor may find what it considers "excessive inquiries", and reject your credit application. There are no guidelines or laws that govern the number of inquiries that constitute "excessive". Therefore, to protect yourself from excessive inquiries, do not give out

your personal information to a merchant (including address and drivers license) until you are ready to actually apply for credit.

Why should you check your credit report?

With identity theft on the rise, the number one reason to review your credit report at least once a year is to detect and stop fraud. Further, if you are buying a home or car, you should know ahead of time what appears on your report to help you shop for the best rate and take care of inaccuracies or past due balances. Likewise, if you are leasing or relocating, take your credit report with you because prospective landlords will be checking your credit, and you might just snag that great location by not having to wait for credit approval. In addition, if you are self-employed, you should check your credit before applying for merchant accounts and other business services. Moreover, any long or short term financial planning involves looking at your current financial position, which includes your credit report.

It is one thing to have bad credit, but it is another to have errors on your credit report through no fault of your own. Some companies neglect to properly report changes in account status. It is up to you to make sure your credit history is accurate. After all, if you do not watch out for your credit rating, nobody will! Beginning March 1, 2005, Iowa and Nebraska residents can obtain an annual free credit report by visiting www.annualcreditreport.com.

Lawyer ... (Continued from page 1)

On some occasions, the vast array of information you receive will still need lawyer assistance to do an analysis of what information best fits your specific circumstances.

Overtime ... (Continued from page 1)

legal counsel. However, it is important to remember that certain actions by an employer can destroy an otherwise valid exemption from paying overtime. For example, docking a salaried employee for missing less than a full day of work can destroy an otherwise valid exemption from overtime pay.

Theft ... (Continued from page 2)

be victims of identity theft. The FTC provides information and refers the complaints to appropriate entities, including the major credit reporting agencies and law enforcement agencies. You can contact the FTC by telephone at 1-877-ID THEFT (877-438-4338). Moreover, victims of identity theft should immediately contact the creditor or financial institutions with whom their information was fraudulently used. Everyone should take a more protective approach to their personal information to prevent potential identity theft. If you feel you have been the victim of identity theft, or would like additional information, contact the FTC or your attorney.

But They're My Records!

by Bruce B. Green

Recent amendments to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) now allow patients to examine and copy their health records, and request corrections. Prior to the amendments, medical providers could refuse access to medical records on the ground that the records belonged to the medical provider, not the patient. Under the new amendments, the medical providers must make the records available in most circumstances, but can charge a fee that is reasonable and "cost based". Detailed procedures are in place to appeal a medical provider's denial of access to medical records.

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