Willson & Pechacek, P.L.C. Newsletter

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Payment Changes For 2016 Iowa Biennial Reports

By Lonny L. Kolln II

The Iowa Secretary of State requires the filing of a Biennial Report in even numbered years for an Iowa corporation to remain in good standing. This year, the Secretary of State has started a new procedure whereby the Biennial Report fee must be paid by credit card or by check that will be electronically entered into their data system. This is a change because in the past, the payment could be sent in by mail after the filing of the report. Therefore, you should have received or will be receiving a letter with regards to making a $30.00 check payable to the Iowa Secretary of State for the filing of the report.

Once we have received the check, we will electronically file the 2016 Biennial Report and electronically process your $30.00 check through the Secretary of State's website. Upon filing of the report we will provide you with a copy of the 2016 Biennial Report for your records.

It is important that you do this immediately, as to avoid being administratively dissolved. The report must be delivered to the Secretary of State by April 1, 2016 to remain in good standing. If you have any questions with regards to changes to the filing of the 2016 Biennial Report or any other corporate questions please contact us for assistance.

"Keep Clean and Don't Get Stuck in the '*Minger* Sludge': File your biennial reports or pay from your own pocket."

By Paul S. Wilson

A recent case from the Iowa Court of Appeals is a reminder for shareholders of corporations to file biennial reports with the Secretary of State to maintain their corporate registrations. In *Minger Construction, Inc. v. Clark Farms, Ltd.*, the Court upheld a jury's decision to hold the sole shareholder of a corporation personally liable for damages resulting from a breach of contract. No. 14-1404, 2015 WL 7019046 (Iowa Ct. App. Nov. 12, 2015).

In *Minger*, Clark Farms, Ltd., entered into a contract to remove human and food grade waste, known as sludge, for a municipality. Clark Farms then failed to show up to remove the sludge, as required by the contract. Clark Farms was sued, and the jury decided that Clark Farms had breached its contract. The jury held Clark Farms liable for $78,272.36 in damages resulting from its breach of contract by failing to show up.

The story probably would have ended here if the sole shareholder of Clark Farms had maintained the corporate formalities required by law and filed every biennial report. The sole shareholder had missed just one biennial report for Clark Farms, however, which allowed the corporate registration lapse. The jury then decided to impose personal liability on the sole shareholder, based largely on Clark Farms' failure to maintain its corporate registration.

The sole shareholder argued that he had successfully applied for reinstatement, but this argument didn't matter to the jury. The jury found the sole shareholder personally liable for the damages. The sole shareholder was required to pay the damages with his own personal funds.

The bottom line for corporate shareholders is simple: if you fail to file biennial reports, you will be stuck paying for corporate liabilities out of your own pocket. Make sure to file your biennial reports—keep clean and don't get stuck in the "*Minger* sludge."

The Proposed New Overtime Pay Law: What it Says, What it Means, and What to do Now

By Jamie L. Cox

The Fair Labor Standards Act (FLSA) provides federal overtime wage protections for employees. Most employees covered under the FLSA must receive overtime pay of at least 1.5 times their hourly rate for hours worked in excess of 40 per week, unless otherwise exempted.

Current Law. To be "exempt" from overtime pay means that an employee is not entitled to overtime pay. Under current law, to qualify for that exemption, an employee must earn at least $455 per week ($23,660 per year). In other words, if an employee earns less than $455 per week, he or she is not exempt and must receive overtime pay.

In addition to this salary test, to be exempt an employee must also hold a "white collar" job (executive, administrative or professional position). To fall within the white collar exemption, an employee must meet the "duties test" for one of the white collar positions.

Highly compensated employees (HCEs) may also be exempt from overtime pay if they earn over $100,000 per year (which may include commission payments, nondiscretionary bonuses, and other nondiscretionary compensation), if they earn at least $455 per week in salary or fees, and if they "customarily and regularly" perform the duties of one of the white collar jobs.

What the proposed law says. The proposed updates to the FLSA focus primarily on the salary test currently in place for white collar employees to be considered exempt. Under the proposed rules, the standard salary level would be reset from $455 per week ($23,660 per year) to $970 per week ($50,440 per year). For HCEs, the total yearly compensation would be increased from $100,000 to $122,148. The proposed rules would automatically update the white collar salary level and the HCE compensation level going forward to assure that they accurately reflect economic reality.

Employers should also be aware that even though the proposed rules do not include any changes to the white collar "duties test", the Department of Labor (DOL) has suggested that such changes may be included in the final rules.

What the proposed law means. If the proposed rules are enacted, countless employees currently considered exempt will be non-exempt and must be paid overtime. The DOL estimates that employers will pay roughly $1.25 billion per year in additional wages as a result of this rule change.

Employers will be required to pay higher minimum salaries in order to satisfy the white collar overtime exemptions. For example, employees within the "executive" exemption (positions with management and supervisory responsibilities) must earn at least $50,440 per year to be ineligible for overtime pay, regardless of their duties. Employees with management or supervisory responsibilities earning less than the proposed salary threshold will be entitled to overtime pay.

The proposed rules, which include provisions for automatic salary level increases, also mean that employers must remain alert and up-to-date on future changes.

What employers should do now. First, employers should recognize that nothing is final yet. The proposed regulations are expected to go into effect sometime in 2016. For now, the best course of action is to become knowledgeable, stay informed, and work proactively to assure compliance with final rules that are developed over the coming months. Employers should review the overtime information on the DOL'S website (www.dol.gov). Employers should consider addressing the potential impact of 2016 changes on their budgets for salaries and overtime. Are employers willing to increase certain salaries to be in line with new thresholds? Will employers need to change their operations so that overtime will not be necessary?

Employers are strongly advised to conduct their analysis under the guidance of an experienced employment law attorney due to the complexity of potential issues and the availability of the attorney-client privilege to protect candid discussions involving legal advice and risk management.

New Technologies Bring New Challenges in Employment Law

By Paul S. Wilson

You may have noticed news coverage regarding labor disputes between the owners and workers of the Uber corporation in recent months. You may also just be wondering what is "Uber," and why does their labor dispute matter?

Uber is an alternative to traditional taxi services. Uber uses a smartphone application by which consumers submit a trip request that routes drivers, who use their own cars, to the location of the consumer. The driver then picks the consumer up and drives the consumer to his or her destination. And no one needs cash—the fare is exchanged entirely on the consumer's phone through the app.

This new technology has brought the distinction between independent contractors and employees to the forefront. The owners of these so-called "ridesharing" companies want to classify their workers as "independent contractors," but the workers want to be classified as "employees." On June 16, 2015, the California Labor Commission ruled that an Uber driver was an employee. The litigation is ongoing in federal court in California, and the drivers have been achieving legal victories such as gaining the court's approval for the case to proceed as a class action against the company.

This and other lawsuits prompted the U.S. Department of Labor to issue a new document on July 15, 2015, that gives guidance on this distinction. The Department of Labor is likely attempting to expand the definition of "employee" to cover as many workers as possible. Importantly, this new document repeatedly emphasizes the "striking breadth" and liberal application of the definition of "employee" under federal law.

Although this document does not have the force of law, it likely shows that the government is going to step up enforcement. This could limit employers' ability to use independent contractors depending on whether courts decide to follow the Department of Labor's guidance.

The Iowa Supreme Court uses the same six factors outlined in the Department of Labor guidance document, which are:

- the right of selection, or to employ at will;
- responsibility for the payment of wages by the employer;
- the right to discharge or terminate the relationship;
- the right to control the work;
- whether the party sought to be held as the employer is the responsible authority in charge of the work or for whose benefit the work is performed; and
- the intent of the parties.

These factors usually boil down to a determination of whether the worker is economically dependent on the employer or is actually in business for him or herself. If the worker is economically dependent on the employer, then the worker is an employee.

Here's why it matters.

Recent studies have suggested that as many as 31% of U.S. workers consider themselves "free agents," a term that includes independent contractors. Independent contractors don't get many of the benefits and protections that are given to traditional employees. Independent contractors aren't entitled to health insurance benefits, retirement benefits, minimum wage protections, overtime protections, or mandatory days off. On the other side, business owners reduce their exposure to liability for accidents, don't have to make worker's compensation payments or state unemployment insurance payments, don't have to deduct payroll taxes or withhold income tax, and have much greater flexibility to terminate an independent contractor.

Here are some tips for employers. If your company utilizes independent contractors, take steps now to determine whether those workers meet the test for independent contractor status. Employers do not escape liability if the individual simply agrees to be treated as an independent contractor. The worker must meet the requirements for that classification.

If you are a worker who believes you have been misclassified as an "independent contractor," denied benefits, or terminated, you should seek legal advice promptly to preserve your rights.

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Tax Refunds for Some Iowa Residents

By Lee Rankin

A recent U.S. Supreme Court case involving Maryland taxpayers is going to help some Iowa taxpayers. Residents of Maryland are subject to both a state income tax and a county income tax. For those residents that paid taxes to another state, the out-of-state tax credit was applied only to the state income tax and not the county income tax. The Court determined this was improper and as a result, Maryland taxpayers get a victory and tax refunds. Iowa residents are not subject to a county income tax, but many are subject to either a school district surtax or an emergency medical services (EMS) income surtax. While calculated differently than in the Maryland case, the State of Iowa's application of the out-of-state tax credit produced a similar result. Therefore, the State of Iowa had to change its calculation of the out-of-state tax credit which will allow some Iowa taxpayers an opportunity for a refund. Any Iowa resident who is subject to the school district or EMS surtax and who paid taxes in another state (except Illinois) may be eligible for a refund. Residents seeking refunds can do so by filing amended tax returns for the three most recent years.

If you would like us to review your returns to see if you are eligible or would like assistance with the filing of an amended return, please give us a call.