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# Willson & Pechacek, P.L.C.

## Newsletter



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**General Issue**

**SEPTEMBER 2018**

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### **Syngenta Settlement**

A Settlement has been reached with Syngenta over class action and individual lawsuits related to the sale and marketing of its Agrisure Viptera and Duracade corn seeds. The Settlement may affect your rights if you are: (1) a Corn Producer; (2) a Grain Handling Facility; or (3) an Ethanol Production Facility. To stay in the Settlement and get paid, submit an eligible Claim by October 12, 2018. A Claim can be filed by going to [www.cornseedsettlement.com](http://www.cornseedsettlement.com). If you have any questions about filing a claim, please contact our office for additional assistance.

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### **Losing Corporate Limited Liability**

*By Paul S. Wilson*

**A** corporation failing to hold annual meetings or failing to file biennial reports with the Secretary of State may lose its limited liability. Limited liability protection is one of the main motivations for people to consider forming a corporation. Limited liability means that if the corporation is sued, only the assets of the corporation are at risk and not the shareholders' personal assets, such as funds in their personal bank accounts, vehicles and homes.

However, limited liability protection is not absolute. Courts may hold shareholders of corporations personally liable for judgments against the corporation under a doctrine

called "piercing the corporate veil." If a court pierces the corporate veil, the shareholders of the corporation lose their limited liability protection.

Courts will pierce the veil if the corporation has failed to follow the corporate formalities required by law.

One such formality required by law is the annual meeting. Under Iowa law, "a corporation shall hold annually, at a time stated in or fixed in accordance with the bylaws, a meeting of shareholders...." Iowa Code § 490.701(1). Similarly, under Nebraska law, "a corporation shall hold a meeting of shareholders annually...." Neb. Rev. St. § 21-253(a).

Courts have pierced the corporate veil and held shareholders

personally liable for simply failing to file one biennial report. *Minger Const., Inc. v. Clark Farms, Ltd.*, 873 N.W.2d 301 (Iowa Ct. App. 2015). In that case, the corporation did not file one biennial report and the shareholder was required to personally pay a judgment of \$78,272.36 when his corporation breached a contract with a third party.

The bottom line for corporate shareholders is simple: make sure to follow all corporate formalities, including remembering to schedule your annual meeting every year and maintaining written minutes of the meeting. Otherwise, you may lose your limited liability protection and have to pay judgments from your own pocket.

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## Employment Discrimination 101

By Paul S. Wilson

**H**ere at the law firm, we often receive phone calls from people who want to sue their employer for employment discrimination, a hostile work environment, or wrongful termination. Some examples of typical questions include:

- When my boss has told me multiple times that I'm getting promoted, and she instead gives it to her daughter, is that illegal?
- I was suspended from work because of false accusations and was asked to leave my department: do I have a legal claim?
- My coworkers seem to hate me, want to get me fired, and, at every meeting, they have negative things to say about me. What can I do to stop this hostile work environment?

Both Iowa and Nebraska are "at-will" employment states. This means if the parties have not entered into an employment contract, an employer is free to fire an employee for any reason as long as she doesn't fire the employee on the basis of a protected characteristic, as defined by law, such as race, color, religion, sex (including gender identity, sexual orientation, and pregnan-

cy), national origin, age (if you are 40 or older), or disability.

Similarly, a hostile work environment claim requires an employee to show unwelcome conduct based on a protected characteristic such as race, color, religion, sex, pregnancy, national origin, or disability. Importantly, petty slights, annoyances, arguments, favoritism, and personality conflicts will not usually rise to the level of a hostile work environment.

If you believe an employer has treated you differently based on a protected characteristic, you need evidence to prove your employer's motivation. Direct evidence of the employer's motivation is always best. Typically, this type of evidence will be statements by your manager or supervisor showing her bias against individuals based upon a legally protected characteristic.

Often, there is no direct evidence. An employer is unlikely to openly admit to illegal conduct. Therefore, employment claims usually have to be proven by circumstantial evidence.

For example, in order to prove a claim for age discrimination in hiring, an employee must show, through direct or circumstantial

evidence, that the employer did not hire the employee because he belongs to the protected class of persons over the age of 40.

The bottom line, unfortunately for would-be plaintiffs, is that employment claims are hard to prove. The law offers relatively little protection to employees, and only the most egregious examples of employer misconduct are actionable. The three examples of questions listed at the article's beginning would not be good claims against employers without some proof of discriminatory intent.

On the other hand, plaintiffs do sometimes win these cases. If you believe you have been discriminated against in the workplace on the basis of a protected characteristic, do not hesitate to contact one of our firm's attorneys.



## Removing Yourself from Unwanted Mailing, Telephone, and Email Lists

By Lonny L. Kolln II

**A** question that we receive often is how to remove oneself from unwanted mailing, telephone, and email solicitations. Although there is nothing that will remove you from all types and forms of solicitations there are many things that you can do to limit unwanted solicitations.

To remove yourself from unwanted telephone calls, you should register your phone number with the National Do Not Call Registry which gives you an opportunity to limit the telemarketing calls that you receive. Once you register your telephone number, telemarketers covered by the National Do Not Call Registry have up to 31 days from the date you registered to stop calling you. The National Do Not Call Registry is managed by the Federal Trade Commission (FTC), the nation's consumer protection agency. It is enforced by the FTC, the Federal Trade Commission and state law enforcement officials. You can place yourself on the National Do Not Call Registry at [www.donotcall.gov](http://www.donotcall.gov).

Placing your phone number on the National Do Not Call Registry will stop most telemarketing calls, but not all. Because of

limitations in the jurisdictions of the FTC and FCC, calls from or on behalf of political organizations, charities, and telephone surveyors will still be permitted, as would calls from companies in which you have an existing business relationship, or those to whom you have provided an express agreement in writing to receive their calls. However, if you ask a company with which you have an existing business relationship with to place your number on its own do not call list, it must honor your request. You should keep a record of the date you make the request.

The way to remove yourself from direct marketing mailings is to visit [dmachoice.org](http://dmachoice.org). DMA Choice is an online tool developed by the Direct Marketing Association to help manage your mail. The site is part of a larger program designed to respond to consumers concerns over the amount of mail they receive, it is also an enhancement of the DMA's Mail Preference Service created in 1971. DMA's Mail Preference Service has been in existence since 1991. It stops most new direct mail solicitations, reducing mail volume by up to 80%. This website will allow you to request to stop any type of mail solicitation. This includes credit

card offers, catalogs, magazine offers, donation requests, retail promotions, notices, and political mailings. DMA Choice offers several alternatives to limiting the amount of mail you receive. You can limit the type of mail you receive from an entire category or by a specific company.

To prevent direct mail from being sent to a deceased individual, you must register for the Deceased Do Not Contact List. The information on this list is updated and sent to DMA member companies each month, and they are required to honor it, so you should see a decrease in mail from these companies within three months. The information is also provided to some companies that are not DMA members. So most marketers have the opportunity to remove the deceased individual's name from their mailing list. The Deceased Do Not Contact List was created in October 2005. It was created for the sole purpose of removing names and addresses from marketing list. When you register a name with the Deceased Do Not Contact List, the persons name, address, phone number and email address is placed on a special do not contact list. All DMA members are required to eliminate these individuals from their prospective

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**Willson & Pechacek, P.L.C.**  
Newsletter

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**Branch Offices:**

**Carroll, Iowa (712) 792-0001**  
**Clarinda, Iowa (712) 542-2141**  
**Harlan, Iowa (712) 755-1111**  
**Oakland, Iowa (712) 482-6999**  
**Onawa, Iowa (712) 423-1652**  
**Treynor, Iowa (712) 487-3444**

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campaigns. The service is also available to nonmembers of DMA so that the marketers may take advantage of this service to eliminate names. A new, updated file is distributed to all members at least once every three months.

Although most email solicitations are actually spam and not from legitimate companies, you can also limit legitimate commercial email requests on [dmachoice.org](http://dmachoice.org). The Email Preference Service allows you to remove your email from a national list. You will continue to receive emails from groups or advertisers who do not use

EMPS to clean their list. Although registration with EMPS will help reduce the number of emails you receive, it will not stop all commercial emails. Email of a business to business nature received at your place of employment is also not affected through the registration with EMPS.

Through the use of these steps, it is possible to limit, although not eliminate, unwanted telephone calls, direct mailing, and email solicitations. If you have any questions with regard to these lists, please contact us.

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Carroll Office– New Location

To better serve our clients, Willson & Pechacek's Carroll branch office has relocated to 514 North Court Street in Carroll, Iowa. The telephone number is 712-792-0001.

Lonny L. Kolln II, a partner with the firm, will continue to be at the Carroll office every Tuesday from 10:30 a.m. until 12:30 p.m. Other appointments may be made upon request.

In addition to the Carroll office and its main office in Council Bluffs, Willson & Pechacek also has branch offices in Clarinda, Harlan, Oakland, Onawa, and Treynor, Iowa.

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