Willson & Pechacek, P.L.C. Newsletter

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Retirement Plans and Estate Planning

By Lee Rankin

In my last article I discussed the basic timeline for the required minimum distributions (RMDs) from a Qualified Retirement Plan (such as a 401(k) or 403(b)) or an Individual Retirement Account (IRA) for a retiree. So of course the next question is "what happens to the retirement plan when you die?" Retirement plans are known as "Payable on Death" or "Transfer on Death" accounts meaning that the designated beneficiary (or an estate if no beneficiary is named) becomes the owner of the retirement plan upon the plan participant's death. The rules for what a beneficiary can do with the retirement plan depend on who the beneficiary is.

Most folks will designate a spouse and children as their primary beneficiary and contingent beneficiaries, respectively. This covers most concerns as the spouse is given the most options with regard to an inherited retirement plan, including making it their own and be subject to the RMD rules as an owner. Children or any other living beneficiaries can use a different RMD table for inherited retirement plans, known as a stretch payout, which allows them to make payments over their lifetime (using the oldest beneficiary's age if there are multiple beneficiaries). If there is no named beneficiary and the participant dies prior to being old enough to be subject to the RMD rules, then the balance must be distributed over the next 5 years. However, if the participant was old enough, then the distributions must follow the RMD tables providing a little more deferral.

A retirement plan is a very important asset, so some planning might be necessary to avoid passing such wealth without a little guidance as to its use. In this instance naming a trust as a beneficiary is a useful idea. Whether formed during the plan participant's life or as a part of his or her will, a "See-Through Trust" is an eligible beneficiary which can qualify for the stretch payout of RMDs. Individual circumstances will obviously dictate how a trust will put the retirement plan benefits to use, but it does provide a great option to those who wish to provide for some control over how their retirement plan benefits will be utilized after their death.

If you would like to discuss how your retirement plan affects your estate plan, please do not hesitate to call us.

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

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Can I Ask That? A Few Questions that are Off-Limits in a Job Interview

By Jamie L. Cox

Most employers are aware that there are numerous obvious questions that are simply "off limits" and should not be asked of an applicant during an employment interview. For example: How old are you? Do you have a disability? Are you pregnant?

There are also many other questions that, on their face, may not appear to be discriminatory, but are still legally troublesome. These loaded questions either (1) imply that a protected characteristic win be a factor in the hiring decision, or (2) will elicit information that will put you on notice that the individual falls into a protected classification. Unfortunately, if you do not hire the applicant he or she will *assume* his or her answer to one of these questions was the primary reason for being rejected and file a discrimination charge.

Here are several legally risky questions one should avoid asking during an interview:

1. "Do you have kids?" Similarly, **"Are you planning on having kids?" "What kind of childcare arrangements will you make?"** Problem: gender discrimination; pregnancy discrimination; "caregiver" discrimination. Do you ask this of all applicants, or only female applicants? Instead, you could ask: "Are you available to work overtime on occasion?" "Can you travel? "What is your experience with 'x' age group?"

2. "Your last name is so unusual. What nationality is it?" Problem: national origin and/or ethnicity discrimination. Do you ask Caucasian applicant Michael Smith this? Nothing good can come from the knowledge you obtain from this question. Control your genealogical curiosity, and do not ask. Instead you could ask: "What languages do you read, speak or write fluently?" "After employment, can you submit a birth certificate or other proof of U.S. citizenship or other proof of the right to remain in or work in the U.S.?"

3. "Is your spouse ok with moving to _____ for the job?" Similarly, **"Will your spouse be ok if you have to travel a lot for the job?"** Problem: gender discrimination; sexual orientation discrimination; marital status discrimination. Do you ask this of all applicants, or only female applicants? What if they refer to their "partner" of the same gender, or that they are divorced? Now you have knowledge of something personal that is irrelevant to whether the applicant can do the job. Given that state and federal laws prohibit sexual orientation and marital status discrimination, in addition to gender discrimination, you face a triple threat.

4. "What year did you graduate from high school/ college?" Problem: age discrimination. Do you ask this of all applicants, young and old? Or just thoe who look older? One can easily approximate the applicant's age with this knowledge of a high school and/ or college graduation date. A savvy applicant will assume you asked it to figure out how old he is, and suspect age discrimination is at play. Instead, you could ask: "Are you over the age of 18?" "what are your long-term career goals?" "Are you over the age of 18?" "Are you younger than age ___, which is our company's regular retirement age?"

5. "Have you ever been arrested before?" Problem: race discrimination; arrest/conviction record discrimination. The federal EEOC has taken the position that asking about arrests and convictions *may* lead to a discriminatory "disparate impact" on minority candidates. Generally, asking about a past arrest that did not result in a conviction is very risky. Employers should be aware of the laws before asking these questions. Employers should only ask directly about crimes that relate to the employment; for example: "Have you ever been convicted of 'x' (fraud, theft, etc.)?"

Answers to the above "off-limits" questions are generally not relevant to whether the applicant can perform the job's essential functions. Bottom line - if there is no business reason to ask the question, and it often only leads to bad things (i.e. a lawsuit), do not ask the question.

(Unwanted Lists, cont from page 1)

nation's consumer protection agency. It is enforced by the Federal Communications Commission (FCC), and state law enforcement officials. You can place yourself on the National Do Not Call Registry at www.donotcall.gov.

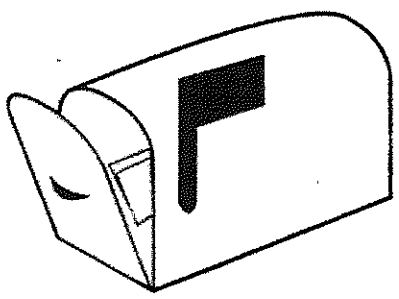
Placing your phone number on the National Do Not Call Registry will stop most telemarketing calls, but not all. Because of limitations in the jurisdictions of the FTC and FCC, calls from or on behalf of political organizations, charities, and telephone surveyors will still be permitted, as would calls from companies in which you have an existing business relationship, or to 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. DMA Choice is an online tool developed by the Direct Marketing Association to help you 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. 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, bank offers, and many others. However, it cannot stop bills, statements, 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. 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 for them 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 lists. When you register a name with the Deceased Do Not Contact List, the person's 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 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. The Email Preference Service (EMPS) allows you to remove your email from 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.



Willson & Pechacek, P.L.C.
Newsletter

Willson & Pechacek, P.L.C.
421 West Broadway, Suite 200
P.O. Box 2029
Council Bluffs, Iowa 51502
(712) 322-6000
Website: www.willsonpechacek.com
Email: info@willsonpechacek.com

Branch Offices:
Carroll, Iowa (712) 792-0001
Harlan, Iowa (712) 755-1111
Oakland, Iowa(712) 482-6999
Treynor, Iowa (712) 487-3444
Clarinda, Iowa (712) 542-2141

Is My Employee Entitled to Accrued Sick or Vacation Leave Upon Separation?

By Benjamin J. Wischnowski

On the one hand, neither federal nor Iowa law requires private employers to offer paid sick or vacation leave to employees. On the other hand, when the issue of accrued sick or vacation leave comes before the court, judges routinely require private employers to compensate former employees for this time. How can an Iowa employer reconcile what appears, at first blush, to be a legal contradiction?

The short answer: Courts enforce contracts. Although no statute expressly *requires* employers to offer paid sick or vacation leave, employers often *voluntarily* offer these benefits to employees upon hire. Generally speaking, once an employer offers these benefits—often set forth in an employee handbook—and an employee begins working with an understanding that he is entitled to those benefits, a contract has arisen between the parties. Therefore, when an employee is terminated, resigns, or otherwise discontinues employment, courts analyze the extent to which the parties formed a prior agreement as to the payment of accrued sick or vacation leave. Bear in mind that many, though not all, contracts are enforceable even if they are not in writing. An employer's common practices or policies, even if oral, could potentially be construed as a promise to pay accrued sick or vacation leave upon separation.

Regardless of whether an agreement is required to be in writing, you are almost always well-advised, as a practical matter, to commit agreements to writing in order to prevent future disputes and litigation. Please note that this article focuses solely on the legal duties of private employers, and also that this article does not address certain statutes (such as the Family and Medical Leave Act) that apply to mandatory *unpaid* leave for employees in various contexts. For assistance drafting an employee handbook that expresses your intentions as an employer, or for help interpreting an existing handbook to determine the respective rights and duties of employer and employees, you should consult with an attorney.