



Willson & Pechacek, P.L.C. Newsletter



Volume 6 Issue 3

November 2001

Employment Rights of Our Military Men and Women

by Bruce B. Green

Given the events of September 11, 2001, the heroic men and women sworn to protect our country — the National Guard and Reservists — are being called to serve. Will their jobs be there when they return? As an employer, do you have any obligations to re-employ these men and women after they complete their duty?

The Uniformed Services Employment and Re-employment Rights Act of 1994 protects the employment status and benefits of people who

serve our country. This law prohibits discrimination against past and present members of, and applicants to, the National Guard and Reserve. Under federal law, employers cannot deny initial employment, re-employment, retention, promotion or any benefit of employment to any person because of his or her voluntary or involuntary service in the National Guard or Reserve.

What does this mean if you or one of your employees is called to active duty? First, the

employee must be given advance notice of the impending service, if possible.

Upon completing a period of service, the returning employee must notify the employer of his or her intent to return to work. The type of notice depends on the length of service. For example, if an employee is required to serve thirty days or less, he or she must simply report back to work before the next regularly scheduled work

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Choosing the Business Entity That's Right for You

by Douglas D. Murray

Choosing the best organizational structure for your business is one of the most important decisions you will make as a business owner. Your choice of entity will have a significant impact on your tax liability and your personal exposure to lawsuits against the business.

While there is not enough space to discuss all of the relevant issues that are applicable for every situation, some of the most important factors that should be considered are as follows: (i) limited liability - does the

business entity offer you any protection for your personal assets from business debts and lawsuits; (ii) tax benefits - does the business offer you any tax advantages that would otherwise not be available to you; (iii) transferability - will you be able to easily sell, gift, or otherwise transfer a share of the business to your family members or third parties. Since many of the formal business entities available for business owners provide limited liability protection and easy transferability, the choice

between the different types of entities often comes down to tax considerations. The following is a brief discussion of some of the options available to you as a small business owner.

Sole Proprietorships. Generally, you are automatically treated as a sole proprietor unless you choose another format. While sole proprietorships are the easiest form of business to run, they offer you the least in terms of liability protection and tax advantages.

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Why You Need A Will

by Robert B. Lundholm

Did you know that if you do not have a Last Will and Testament, one has been prepared for you? In the absence of a will, your property will pass by state law known as the statutes of descent and distribution, or the statutes of intestate succession. The

Iowa Legislature has determined your probable intent and decided who will receive your assets after you die.

If you are survived by your spouse only, or your spouse and children, all of whom are children of your spouse, your

spouse is entitled to your entire probate estate. Things get more complicated if you are survived by your spouse and one or more children who are not the children of your surviving spouse. In that case, your surviving spouse would receive one-half (1/2) of the value of the estate, and if that

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Business . . . (Continued from page 1)

Partnerships. Unless you are a limited partner, you will generally be personally liable for all debts and lawsuits against the partnership, and since each partner is considered an agent of the partnership, you can be bound by another partner's actions. Partnerships do not pay federal or state income taxes as profits or losses pass through to the individual partners. While interests in a partnership can be transferred, technically the death or withdrawal of a partner from a partnership will terminate the partnership. With limited liability companies now offering limited liability for the owners, partnerships are now rarely used as a formal business structure.

Corporations. A corporation can protect an owner's personal assets from liability from creditors and lawsuits. Also, the stock of a corporation can be easily sold or passed on to the owner's heirs. While all corporations can generally help you save FICA taxes, the actual tax advantages of a corporation will depend upon whether you choose to be a "C" corporation or an "S" corporation. When a

business incorporates, it automatically becomes what is known as a "C" corporation. To be an "S" corporation, you must apply to the IRS for "S" status. The only distinction between these two is their tax treatment.

◆ **"C" Corporations.** With this format, your corporation is a separate taxpaying entity. It files its own tax return and it pays income taxes on its earnings. In many cases, a "C" corporation offers more tax benefits than any other entity. One important example is that a "C" corporation can deduct the cost of certain tax-free employee fringe benefits for owner-employees, such as health insurance. Another example is the graduated income tax brackets for a "C" corporation which allows you to utilize a 15% federal tax rate for taxable income up to \$50,000.00.

◆ **"S" Corporations.** An "S" corporation is strictly a creation of the tax law, for all other purposes it is treated like any other corporation. Like a partnership, an "S" corporation is a pass-through entity for tax purposes. Unlike "C" corporations, "S" corporations face strict

limits on the tax-free fringe benefits that they can provide to their owner-employees. In addition, there are strict limits on the number and types of shareholders an "S" corporation may have and on the type of stock that it may issue. If you are interested in the benefits of an "S" corporation, the limited liability company may be a better choice as there are fewer restrictions.

Limited Liability Companies. Limited liability companies (LLCs) combine the features of a corporation and a partnership. Like a corporation, an LLC provides limited liability to its owners, called "members". Most LLCs are set up so that they have the same pass-through tax treatment of a partnership. The LLC is often attractive to a business owner because he or she can retain control of the business by acting as the manager or controlling member while still being able to enjoy limited liability. Also, unlike an "S" corporation, you can generally share LLC profits in any manner that you wish regardless of the ownership percentage of the members, and you are not restricted in the number or type of members.

Pension Plans Not Always "Safe" Following Divorce, Recent Caselaw Developments

by M. Brett Ryan

The U.S. Supreme Court recently decided a case which may have a dramatic impact on the disposition of insurance policies and pension plans provided by employers.

David Egelhoff, a Washington resident, was married to Samantha Egelhoff. While married, David designated his spouse as the beneficiary of a life insurance policy and a pension plan provided by his employer which were subject to the Employee Retirement Income Security Act (ERISA). Shortly after the couple divorced, David died intestate (i.e., without a will).

Under Washington law, the des-

ignation of a spouse as a beneficiary of a nonprobate asset (which included a life insurance policy or employee benefit), is automatically revoked upon divorce. David's children contacted the plan administrator seeking the funds from their father's insurance and pension, but the administrator refused to release the funds to anyone but the named beneficiary, Samantha Egelhoff.

The Court stated that ERISA required an administrator to administer the plan "in accordance with the documents and instruments governing the plan." The state statute was expressly pre-

empted by the ERISA statute because it had to do with the administration of an ERISA plan, as it required the administrator to choose between ERISA provisions and state law in determining the proper beneficiary.

In making its ruling, the Supreme Court determined that statutes which "automatically" remove a divorced spouse as a beneficiary do not apply to benefit plans offered by an employer that are subject to ERISA. Anyone in this situation should contact their attorney or plan administrator to ensure that the proper beneficiaries are listed.

Military . . . (Continued from page 1)

period. If, however, service lasts for more than 30 days, an employee must normally submit an application for re-employment. The application is due within 14 or 90 days after completion of service, depending on the length of service. Failure to timely report or apply for re-employment can result in the returning employee being subject to the employers' regular policies regarding absenteeism.

If the returning employee timely reports back to or re-applies for work, the employer must usually re-employ him or her except under extraordinary circumstances — for example,

when the employer can prove that it is impossible or unreasonable to re-employ the returning worker because of changed circumstances. Employers can also refuse to re-employ a returning worker if his or her cumulative length of absence, including all previous absences, exceeds 5 years. However, there are numerous exceptions that can extend this period well beyond 5 years.

Upon re-employment, the returning employee is entitled to the seniority and seniority-related rights and benefits that he or she had as of the day service commenced. He or she may also be entitled to the additional seniority and related

benefits that would have been attained but for the service-related absence. In addition, the worker is entitled to all other rights and benefits (not tied to seniority) if these benefits are generally provided by the employer to workers on leave. These can include employee stock ownership plans, bonuses, insurance coverages, severance pay, supplemental unemployment benefits, vacations and opportunities to select work hours or location of employment. Special rules exist for health and pension plans.

To learn more about this federal law, contact your attorney or the Veteran's Employment and Training Service.

Wills . . . (Continued from page 2)

portion is less than \$50,000.00, he or she would receive so much additional property that is necessary to make his or her share \$50,000.00.

The portion of your estate not passing to your surviving spouse, or in the event you have no surviving spouse, the entire net estate, will be distributed according to the statutory scheme. The first to receive distribution are your surviving children and the issue of deceased children. If you have no surviving issue, your estate will be distributed to your parents in equal shares. If one parent does not survive you, the entire net estate will go to your

surviving parent, and so on.

The statutory scheme follows a table of consanguinity which assigns degrees of familial relationships. In some cases, a part of your estate could go to a second cousin or a first cousin twice removed, someone you may hardly know. Why should you allow the Legislature to decide who receives the fruits of your labors? You should be the one to make the decisions regarding your own property. Good professional advice in preparing your Last Will and Testament can eliminate these uncertainties and provide peace of mind knowing that your loved ones will receive their legacy as determined by you.

New Branch Office

To better serve our clients, Willson & Pechacek law firm recently opened a branch office in Harlan, Iowa. The office is located at 1121 7th Street in Harlan and the telephone number is 712-755-1111.

Douglas D. Murray, a partner with the firm, will be at the Harlan office every Tuesday morning from 8:00 a.m. until noon. Other appointments may be made upon request.

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

Willson & Pechacek, P.L.C.

Newsletter

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