



Navigating you through the various legal employment and business issues that your Company encounters as you journey to business success!

Navigational Beacon

A Simon | Paschal PLLC Publication.

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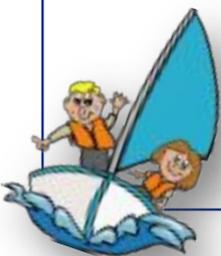
Honesty Is The Best Policy

Terminating an employee can be hard and awkward, but sometimes simply being honest and straightforward can save you from a potential lawsuit. Last year, the Fifth Circuit Court of Appeals decided that a Texas district court correctly rejected a plaintiff's age discrimination claim against her former employer when it held that the plaintiff failed to provide evidence of age-motivated misconduct. As a business owner or HR professional, the words "Fifth Circuit" should jump off the page. In business language, "Fifth Circuit" means potentially huge sums spent on legal fees and significant time spent in either a courtroom or attorney's office or both. Cases with damaging facts can open the door to unnecessary lawsuits but this situation often can be avoided or largely mitigated simply by telling the truth. In the case above, the former employer terminated the plaintiff, sixty-seven at the time, and informed her that her administrative position no longer was available. To the plaintiff's surprise, she later learned her job title remained on her former employer's payroll and the company was accepting bids for the position. The plaintiff reapplied but was rejected. [continued on Page 3]



Breakfast:

Join us on Tuesday, September 16, 2014 at 8:00 a.m. for our Quarterly Breakfast at our office (13601 Preston Rd., Ste. W870, Dallas 75240). We will provide breakfast and a chance to network followed by a short presentation on a relevant topic to your business. RSVP to info@simonpaschal.com.



Owning Multiple Business Entities

If you are a business owner that owns multiple entities, it is extremely important you take the necessary steps to prevent merging your distinct entities. It is also crucial that business owners maintain financial separation between their personal accounts and each entity they own.

Historically, Courts have disregarded the separate existence of corporate entities (“pierced the corporate veil”) when business owners commingled assets among their multiple entities or with their personal accounts. In such instances, business owners ended up subjecting distinct businesses to other businesses’ liability and sometimes even subjected themselves to personal liability. As a result, business owners lose the liability protection aspect that legal entities provide and, therefore, defeat the purpose of the legal entity. By being proactive and aware, business owners can avoid this unfortunate result.

Courts decide on a case-by-case basis whether or not a business owner commingled assets. Business owners can be held personally liable for business debts and lose their protective liability shield if there is evidence that the business owner treated an entity’s assets as his or her own. Furthermore, Courts also have found that if multiple businesses’ assets, accounts and resources are so commingled, those businesses can be considered a single entity and subject to liability as a whole. This includes employment law violations seemingly committed by only one entity.

As a quick illustration, a U.S. Court of Appeals held a business owner personally liable for his company’s \$30,000 debt when he treated the company’s assets as his own. The Court found that this individual commingled assets between his own personal accounts and his business. Further evidence also showed that this business owner intended to use money from the company to pay rent on space used by his other business.

It is essential to understand that commingling occurs when funds of property are combined in a common fund or account. A single financial entity can be found when two or more separate entities share the assets, accounts and resources of each other. Holding common bank accounts or drawing checks on the account of one corporation to pay an obligation of another is extremely dangerous. Additionally, business owners should never mix personal assets with business assets, as the legal results can be detrimental.

Other than keeping separate financials, there are other steps a business owner should take to maintain entity distinction and liability protection.

1. Keep the day-to-day operations of each business separate.
2. Maintain formal barriers between the entities’ management structures. For example, hold separate management and/or board of directors meetings.

Staying aware of the legal environment in which you operate is always savvy business ownership.



Another great Simon | Paschal client

Client Spotlight

Synergyst Research Group, LLC (Discovery Clinical Trials) is a study management company that provides essential administrative services to physicians, sponsors, and Clinical Research Organizations (CROs). They provide study start-up services, promotional services, marketing support, and on-site professionals. We are proud to have Synergyst Research Group, LLC as a client and we appreciate the faith they put in us. Check out more about this great company at www.synergystresearch.com and www.discoverytrials.com.



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The plaintiff later sued for age discrimination. While the employer ultimately won, it cost a lot of time and money. As a business owner or HR professional, the attempt to soften the blow of termination often creates unintended and unfounded lawsuits. Kind hearts and good intentions can unintentionally cost large sums of money. Firing an employee, giving him or her a false reason, and subsequently hiring an individual of the opposite sex, different age, religion or ethnicity, even innocently, can create the perfect story line for a former employer and his or her lawyer. Furthermore, a false reason for termination assists an employee in establishing the legal requirements of his or her case. Even if the motivation behind an employee's termination is not based on any form of discrimination, it is necessary to be aware of the legal repercussions of one's statements. Remember that Texas is an at-will state and employees can be fired for any reason as long as it is not discriminatory or otherwise illegal. It may not be easy, but just be honest with your reasons. A few uncomfortable minutes in a conference room could save you years and thousands of dollars.

UPDATE: US Supreme Court Decides Hobby Lobby Case in Favor of Hobby Lobby

On June 30, 2014, the US Supreme Court declared in a 5-4 ruling that closely held for-profit companies can avoid paying for contraception coverage required under Obamacare if it violates the owner's religious beliefs. This narrowly written opinion applies to companies with 5 or fewer owners who employ 50 or more employees. Additionally, to be exempt, those businesses also would have to prove a "sincere" religious belief. While the Court did not provide a test for "sincerity," this exception most likely is reserved for closely held businesses with heavily religious based operations. Such operations might include being closed on Sunday, playing religious music during hours of operation, and openly stating that the business is operated based on a set of religious principals.

Although the decision was narrow, the stage is set for challenges to other federal employment laws based on "sincere" religious beliefs. Although Justice Samuel Alito seemingly closed the door to such challenges, the opinion only explicitly does so with regard to federal race discrimination laws. We'll keep you posted.

Upcoming Speaking Engagements

On Tuesday, September 9th, we will be participating in DallasHR's Legal Exchange Conference. In addition to introducing the keynote speaker, we will present on "HR Compliance Audits That Prevent Legal Fees" and "The HR Detective: A Proper Investigation" during the Legal Roundtable portion of the Conference.

Then, from October 6 – 8, we will be presenting at the HR Southwest Conference in Fort Worth. Our topics include, "FLSA Update," "Disparate Impact Discrimination vs. Disparate Treatment Discrimination," "Preparing for Trial: Insight From an Employment Law Litigator," and "Say What?! How Your Handbook Differs From the Law and Is It Helping or Hurting."

All are open to the public (for registration) and we'd love to see some clients present!



Meet Simon | Paschal PLLC's New Intern

We have a new face around the office. Our new intern, Jonathan Aldaco, started in June and will be with us all summer long. Jonathan is a law student at the University of South Carolina but will start his third year of law school in the fall as a visiting student at SMU. Jonathan grew up in El Paso and attended Texas A&M University before law school (yes, we hired an Aggie). We're thrilled to have Jonathan on board. As one of his first tasks, Jonathan helped in preparing the articles in this quarter's newsletter.

The small print: The contents of this newsletter are not intended to provide specific legal advice and you should not take any action based on the content of this newsletter without seeking legal counsel. If you have specific questions, please contact a lawyer, preferably us!



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