

BUSINESS LAW E-LETTER

A legal newsletter for clients and friends of DTC.

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“It is wiser to find out than suppose.” Mark Twain

Inside this issue:

OSHA ...a Primer	1-2
Tax Update	2
New Federal I-9 Legislation	3
Living Wills and Powers of Attorney For Health Care	3
About Donahue, Tucker & Ciandella	4
Contact us	4

OSHA ... a Primer

The Occupational Safety and Health Administration (“OSHA”) is a federal agency charged with the mission of assuring the safety and health of workers by promulgating and enforcing workplace and safety standards. Businesses must abide by applicable standards or face sanctions, including fines. In addition to the specific standards, employers are responsible for following OSHA’s general duty clause which states that employers shall furnish a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees.



As part of OSHA’s enforcement it may conduct inspections without advance notice. Following an inspection a compliance officer will report his findings to the area director who can then determine what citations and pen-

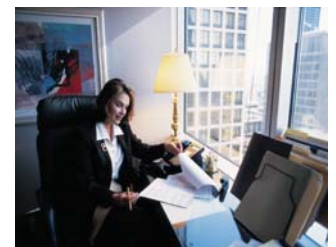
alties, if any, will be issued. Violations can include the following: “other than serious violation”; “serious violation”; “willful violation”; “repeat violation”; and, “failure to correct prior violation”. The OSHA standards cover a range of issues in the workplace. These areas include



recording and reporting occupational inquiries and illness and walking and working surfaces which mandate exit routes, emergency action plans and fire prevention plans.

The Hazard Communications standard provides employees with a “right to know” what hazardous chemicals they may encounter or are used in the workplace and how to protect themselves from such agents. Un-

der this standard an employer must develop and maintain an up to date written hazard communication program listing and labeling hazardous chemicals; maintain a file of material safety data sheets (MSDS) for each chemical; train employees on proper use and protective measures; and maintain detail records of the program and training provided. The supplier or manufacturers of each chemical should be asked for the relevant MSDS. This standard



does not apply to: packaged chemicals for sale to consumers in a retail establishment or drugs for personal consumption by employees while in the workplace.

In enforcing the workplace safety standards,

OSHA continued...

inspections can be unannounced and are often driven by an injury/fatality or an employee complaint. Although employers are afforded due process and may appeal findings of the area director if a citation is issued,



regulatory compliance and prevention of workplace hazards is by far the better solution.



OSHA has developed a web page which explains in more detail the various standards employers are

required to follow which is available at www.osha.gov. For further information, contact Attorney Douglas M. Mansfield.

Tax Developments

With tax time approaching, it is a good opportunity to review some recent developments in federal tax law and IRS regulations. The following is provided for informational purposes only. Individuals and businesses should contact their attorney or tax professional of choice for specific advice on their own taxes.



2004 Tax Year: - Sales tax deduction: Taxpayers who itemize deductions may claim a state and local tax deduction for either sales or income taxes on their 2004 and 2005 returns. IRS Publication 600 provides tables for determining the deduction amount, so taxpayers do not need to save receipts throughout the year. That publication and many others are available on the IRS web site: www.irs.gov.

-Revised Schedules K-1: The new Schedules K-1 for partnerships and S-corporations

are easier to use and scannable.

-Expense limit for SUVs: Businesses cannot take a first-year deduction of more than \$25,000 for certain SUVs placed in service after October 22, 2004 (down from \$100,000 for all vehicles). Businesses can depreciate the remaining cost.

-Clean Fuel Vehicle Deduction: The maximum amount of this deduction was due to drop at the end of 2004 and 2005, but has been retained at \$2000 through 2005. Publication IR-2004-125 has information on the deduction and the vehicles that qualify.

-January 2005 Tsunami Relief Contributions: Taxpayers who itemize their deductions may deduct contributions made during January 2005 to qualified charities for the relief of the victims of the Indian Ocean Tsunami, on either their 2004 or 2005 returns.

-2005 Standard Mileage Rate Set: The optional standard mileage rates for computing the deductible costs of using a car, van, pickup or panel truck, for business, charitable, medical or moving expense purposes are now: 40.5 cents/mile for all business purposes (up 3 cents); 15 cents/mile when computing the deductible for medical or moving



expenses (up 1 cent); 14 cents/mile for providing services to a charity.

Many businesses also use these rates to reimburse their employees for use of their vehicle for work purposes.

For further information, contact Attorney Katherine B. Miller.

New Federal I-9 Legislation

On October 30, 2004, President Bush signed into law new legislation that will allow employers the option of completing and storing I-9 employment verification forms electronically. The I-9 form is used by all employers to verify employment eligibility of employees. This new law will become effective on the date the Department of Homeland Security ("DHS") promulgates final implementing regulations or 180 days after signing, whichever comes first.

The Immigration Reform and Control Act ("IRCA") of 1986 required all U.S. employers to document that employees are eligible to work in the United States, as

well as confirm their identity with the information on their employment authorization documents. Employers were required to use Form I-9 in conducting employee verification. This new law, in addition to record retention for I-9 forms in paper form, allows storage electronically. Both methods are acceptable. The new law also allows, but does not require, the use of electronic signatures by both employees and employers of the I-9 document so the I-9 verification process can be completed on a computer. However, employers still must view the original documents presented by their employees to prove identity and work authorization so the process

cannot be completed remotely.

The new law will allow employers to transfer existing I-9 records to electronic format but will not otherwise change the retention requirements for previously completed I-9 forms, which must be retained by employers for one year following an employee's termination date or three years after his date of hire, whichever is longer.

The new law does not specify standards for electronic storage or signature. Presumably this will be included in the DHS regulations. In addition, the new law does not change any of the existing regulations gov-

erning audits of I-9 forms by government officials. The DHS regulations, however, may allow enforcement agents to request and view electronic versions of the I-9 forms if they are stored in that fashion by employers. Electronic storage and indexing will make it easier for employers to meet document production demands during an investigation, and limit disclosure to only those documents under review.

For further information regarding the new electronic I-9 legislation, contact Attorney Douglas M. Mansfield.

Living Wills and Powers of Attorney for Health Care

New Hampshire has two laws allowing decision making regarding an individual's health care after that individual is no longer able to actively participate in that decision making process.

The first of these laws is the Living Will statute, NH RSA 137-H. In enacting this law the New Hampshire legislature specifically declared that "the laws of this state shall recognize the right of a competent person to make a written declaration instructing his physician to provide, withhold, or withdraw life sustaining procedures in the event such person is in a terminal condition or permanently unconscious."

Once the person's attending physician and a

second physician have determined that either (1) the person will die whether or not life sustaining procedures are utilized; or (2) the person is in a permanently unconscious condition and life sustaining measures will only serve to artificially prolong the dying process, then the directives in the Living Will may be followed. The statute sets forth a specific format which is generally used by attorneys to ensure compliance with the statute's many safeguards and requirements.

The second of these laws is the Durable Power of Attorney for Health Care statute, NH RSA 137-J which authorizes an appointed person ("agent") to make almost all health care decisions on behalf

of the person appointing them ("principal") which the principal could make.

Because this document provides much broader powers and does not require the principal to be in a terminal or vegetative state, there are many more restrictions and requirements imposed



including limitations on who can be an agent, what the document must contain and how it must be signed. The statute also requires that a

disclosure form accompany the document which explains, among other things, that the principal can revoke the granted authority at any time.

Provided the Living Will and Durable Power of Attorney for Health Care are properly drawn and executed, they will help ensure that a person's desires with respect to medical treatment, including end of life decisions, are made consistent with their wishes. For further information on elder law or estate planning, contact Attorney Lizabeth M. MacDonald.

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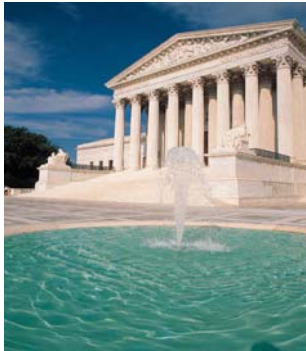


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Established in 1985, Donahue, Tucker & Ciandella, PLLC is one of New Hampshire's leading law firms, with offices in Exeter and Portsmouth. We are a full-service firm with our lawyers offering personalized representation to small businesses, large institutions and individuals. We represent and advise our clients in the areas which include general business and commercial law, municipal, development and real estate law, telecommunications, utility and internet law, employment and labor law, family law, environmental law, appellate, litigation, bankruptcy, and probate/estate planning.

Our attorneys provide affordable, quality legal services and personal attention to small and large businesses, agencies, boards, municipalities and individuals. Our focus on the client has enabled DTC to provide general counsel services, as well as special representation on specific matters to our clients. It allows us to be trusted counselors and advisors as well as advocates.

While situated on New Hampshire's seacoast, our clients come from throughout New England. We represent many firms and individuals relocating to New Hampshire from across the nation.

The materials contained in this newsletter are for informational purposes only and not for the purpose of providing legal advice or a comprehensive summary of recent developments in the law or treat exhaustively the subjects covered. For advice about a particular problem or situation, please contact an attorney of your choice. © 2005 Donahue, Tucker & Ciandella, PLLC

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