

DONAHUE, TUCKER & CIANDELLA, PLLC



Exeter Office:

Water Street Professional Building

225 Water Street

PO Box 630

Exeter, NH 03833

(603) 778-0686

Portsmouth Office:

Kearsarge House,

104 Congress St., Suite 304

Portsmouth, NH 03801

(603) 766-1686

www.dtclawyers.com

A Professional Limited Liability Company

Volume 2, Issue 2 / December 2005

Updating Beneficiary Designations

Employee benefits commonly include 401(k) plans, retirement plans and group life insurance, all of which require the employee to designate a beneficiary in the event of the employee's death. In addition, an employee may have an IRA or pension benefits from a former employer which are also governed by beneficiary designations.

A beneficiary designation specifies the primary and contingent beneficiary to whom the property is payable upon the death of the owner.

401(k) plan or signs up for life insurance may no longer be the person to whom the owner wishes to receive the property upon his or her



death.

For example, life changes such as marriage, divorce, birth or death often call for beneficiary designations to be updated. Failure to keep beneficiary designations current may lead to unintended results, such as payment of benefits to parents or siblings rather than to a spouse or children. Moreover, if primary and contingent beneficiaries are no longer alive, the property will pass to a beneficiary designated under the terms of the plan, rather than according to the terms of the employee's will or the laws of intestacy.

People often mistakenly assume that life insurance or 401(k) benefits will be governed by the terms of their will. Unless the owner designates his or her estate as the beneficiary, the property will pass directly to the person(s) named in the beneficiary designation, not necessarily a good result if the beneficiary is a minor child. In addition, there may be tax or other advantages to having the property pass under a will or to a trust rather than directly to a beneficiary.

For all of these reasons, it is important to review your beneficiary designations to make sure that the beneficiaries listed are the persons to whom you want your benefits payable upon your death. Likewise, your beneficiary designations should be coordinated with your estate plan, including your will and any trusts.

For further information, contact Attorney Haden P. Gerrish.



For many reasons, the beneficiary designated at the time the employee subscribes to the



Inside this issue:

Updating Beneficiary Designations	1
Upcoming Events	1
Intellectual Property for Businesses	2
Workers' Compensation Insurance Requirements	2-3
Dealing with Employee consumer information under new FTC regulations	3
About Donahue, Tucker & Ciandella	4
Contact us	4

Upcoming Events. February 9, 2005 and February 23, 2005

Attorneys Douglas M. Mansfield, Haden P. Gerrish and Christopher T. Hilson will be holding a Business Law Brown Bag Luncheon event at DTC's Portsmouth Office at 12:00 noon on [February 9, 2005](#) and DTC's Exeter Office at 12:00 noon on [February 23, 2005](#). Topics to be discussed will include Non-competition Agreements, Recent Bankruptcy Changes and Thresholds for Number of Employees for Various Employment Laws. To register please call Diane Chigas at 603 778-0686. Space is limited. Bring your own lunch and see you there!

Intellectual Property for Businesses.

All businesspeople, whether in for-profit or not-for-profit organizations, should bear in mind that one of an entity's most precious assets is its intellectual property. Businesses are made up of both tangible assets, such as equipment and property, and intangible assets, including business goodwill and intellectual property. Intellectual property includes trade and service marks, trade names, copyrights and patents. This article briefly covers trade and service marks and trade names. A future article will address copyrights and patents.

Trade and service marks: Trade and service marks are defined by federal law to cover words, names, symbols or devices used by a manufacturer or provider of services to identify and distinguish the goods and services

from those manufactured or provided by others. An example of a trademark is "Kodak." An example of a service mark is "Amazon.com." Trade and service marks are registered with the Federal Patent and Trademark Office. Registration of your mark minimizes the chance that a competitor uses a mark that is confusingly similar to your own in selling competing products or services. Trademarks can also be registered with the New Hampshire Secretary of State (for 10 years), although the rights of an owner of a federally registered mark are superior to those of an owner whose mark is registered only with the State.

Trade Names: A trade or commercial name includes the names of individuals and entities as well as names used to identify a particular business, including a d/

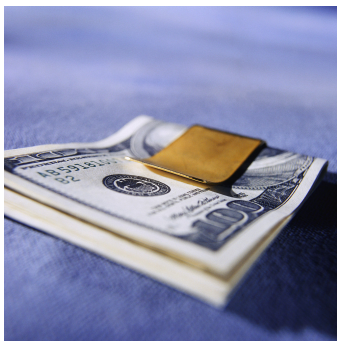
b/a. Trade names are registered with the Secretary of State for 5 years. Trade names may be similar to trademarks, for instance, "Xerox" is a trademark and Xerox Corporation is the trade name. On the other hand, trademarks and trade names may be different. For example, "Ivory" is a trademark and Proctor & Gamble Company is a trade name.

Our office can assist with checking the availability of trade or service marks or trade names at the state and federal levels, and business owners should consider consulting with an attorney on ways to protect their valuable, though intangible, intellectual property.

For further information, contact Attorney Katherine B. Miller.



Workers' Compensation Insurance Requirements.



In recent months, New Hampshire businesses have been audited to verify that these employers have workers' compensation insurance in force. Pursuant to NH RSA 281-A, workers' compensation insurance is mandatory in the State of New Hampshire for all businesses that have employees, either full-time or part-time, and including family members. This statutory insurance can be obtained through your insurance agent, or you may self-insure by providing the Labor Commissioner with proof of financial ability to pay compensation and receiving permission from

the Commissioner. Each employer must demonstrate compliance with the coverage provisions of RSA 281-A by posting the "Notice of Compliance" in a conspicuous location at the business.

A corporation or limited liability company may elect to exclude up to three executive officers or members from the workers' compensation insurance requirement. In order to do so, the requisite form must be submitted to the Department of Labor.

Failure to comply with the Department of Labor

requirements regarding workers' compensation insurance will result in civil, and possibly criminal, penalties. The Labor Commissioner has the right to assess civil penalties against employers who fail to secure workers' compensation insurance, and may take into account prior history of the employer relating to compliance with the Department of Labor's rules and New Hampshire statutes. The civil penalty can be between \$100 and \$2,500, based on documented non-compliance, plus \$100 per day, per employee for each day of non-compliance. This

Workers' Compensation Insurance Requirements Cont.

can quickly add up to thousands of dollars in civil penalties. In addition, the Commissioner may initiate a proceeding in Superior Court to restrain and prohibit an employer from conducting business in New Hampshire for so long as the employer fails to comply with the statutory requirement to maintain workers' compensation insurance.

Also, any employer, individual, or corporate officer that is required to secure payment of compensation under RSA 281-A but fails to secure such payment shall be guilty of a misdemeanor. (NH RSA 281-A:7, VI)

We encourage you to contact the Department of Labor at (603) 271-3176 or visit their website at www.labor.state.nh.us to

learn more about the workers' compensation insurance requirement.

For further information, contact Attorney Elizabeth M. MacDonald.



New FTC Rule Addresses Disposing of Employee Consumer Information.

The Federal Trade Commission (FTC) has implemented new rules requiring employers obtaining consumer reports to "take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal". The intent behind this new rule, which was promulgated by the FTC pursuant to the Fair and Accurate Credit Transaction Act (FACT Act), is to reduce the risk of consumer fraud and related harms, including identity theft. This new rule went into effect on June 1, 2005.

The consumer information that is covered by this rule includes any reported information provided to an employer by a third party consumer reporting agency, which conducts a background check for purposes related to current, former or prospective employees, and any compilation of such information. Such information may be in

paper or electronic form.

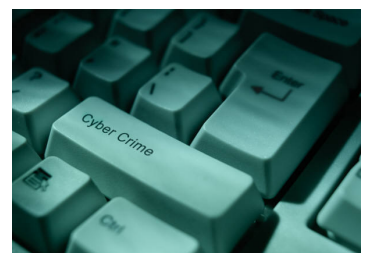
The rule creates a "reasonable measures" standard in protecting against unauthorized access to or use of consumer information in connection with its disposal. The rule does not require that an employer destroy records. Rather, if records are destroyed or purged, the rule requires that the employer take such "reasonable measures".

The FACT Act does not define "reasonable measures", however the rule contains several examples of disposal methods that would satisfy the requirement. These include: 1) Establishing and complying with policies to burn, pulverize or shred consumer report information so that the information cannot be read or reconstructed; 2) Destruction or erasure of electronic files or media containing consumer report information so that the information cannot be reconstructed; or 3)

Conducting due diligence before hiring a contractor to dispose of material identified as consumer information consistent with the rule. Such due diligence would include checking references, making sure the contractor is certified by a recognized trade association, and conducting an independent review of the entity's disposal security policies and practices.

This rule applies to physical discarding of consumer information as well as data stored on a computer that is to be donated or transferred to another party. Employers found in violation can be subject to damages and a claimant's attorney fees. Employers should carefully review their record retention and destruction policy and ensure a written policy is in place that is followed and complies with applicable law.

For further assistance, contact Attorney Douglas M. Mansfield.



DONAHUE, TUCKER & CIANDELLA, PLLC

A Professional Limited Liability Company



Locations:

Exeter Office:

Water Street Profes-
sional Building 225
Water Street
PO Box 630

Exeter, NH 03833

(603) 778-0686

Portsmouth Office:

Kearsarge House,
104 Congress St.,
Suite 304
Portsmouth, NH 03801
(603) 766-1686



Attorney **Lizabeth M. MacDonald**
Email: lmacdonald@dtclawyers.com
Tel: (603)778-0686 Ext. 540



Attorney **Douglas M. Mansfield**
Email: dmansfield@dtclawyers.com
Tel: (603)778-0686 Ext. 512



Attorney **Michael J. Donahue**
Email: mdonahue@dtclawyers.com
Tel: (603)778-0686 Ext. 501



Attorney **Katherine B. Miller**
Email: kmiller@dtclawyers.com
Tel: (603)778-0686 Ext. 509



Attorney **Denise A. Poulos**
Email: dpoulos@dtclawyers.com
Tel: (603)766-1686



Attorney **Haden P. Gerrish**
Email: hgerrish@dtclawyers.com
Tel: (603)778-0686 Ext. 5239



Paralegal **Elizabeth A. Wiedmann**
Email: ewiedmann@dtclawyers.com
Tel: (603) 778-0686 Ext. 517

For more information contact one of the following attorneys in our **business practice group**:



We're on the web, at
www.dtclawyers.com

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

For back issues of the *Commercium* newsletter please go to our website at www.dtclawyers.com.