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A Professional Limited Liability Company

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Civil Unions - Helpful Tips for Employers.

The new law (RSA 457-A) which permits same sex couples to enter into civil unions in New Hampshire became effective on January 1, 2008. Soon the question of how to handle an employee who enters into a civil union and would like to obtain benefits for their civil union spouse is likely to arise. Are you ready, employers?

As you may not be aware, the federal Defense of Marriage Act (DOMA) was enacted in 1996. DOMA provides that the definition of the term "spouse" in any federal law applies only to opposite sex spouses. This law precludes mandatory extension to parties to a civil union of benefits and obligations of employers, which arise out of or are regulated by federal statutes, such as federal taxes, ERISA, COBRA, Social Security, veteran's benefits, and immigration. In other words, since the federal government does not recognize same sex marriages, federal government benefits are not provided to same sex couples. The individual states can choose to recognize same sex marriages or unions and thereby can provide couples with some benefits that opposite sex married couples receive.

RSA 457-A, by giving same sex couples the rights of a civil union on the State level, pro-

vides same sex spouses with some of the rights to which opposite sex married spouses are entitled. However, the



newly enacted RSA 457-A lacks specificity in certain areas and makes some of these employer issues difficult to navigate. Keep in mind that it is likely that many of these issues will have to be litigated in order to obtain an interpretation of the law in a specific application. There do appear to be several areas in which it may be likely that New Hampshire employers will be required to extend benefits to partners to a civil union.

It is likely that benefits that are not governed by ERISA or DOMA must be offered to civil union spouses to the same extent that they are offered to opposite sex spouses. These include benefits such as bereavement leave, sick leave, crime victim leave, travel benefits, moving expenses,

memberships, workers' compensation benefits, survivor's benefits and back wages. It is probably an issue for litigation whether a member of a civil union would be permitted to take leave under the Family and Medical Leave Act, as that is a federal act and therefore governed by DOMA.

In the real world, there are many issues that could arise regarding civil unions that could potentially put the employer at risk of lawsuit. For example, if an employer asks for "proof" that the employee or potential employee is a member of a civil union, the employer could be accused of discrimination and may be in violation of New Hampshire's Law Against Discrimination (RSA 354-A). In other words, if the employer asks for "proof" of a civil union, it must also ask for "proof" of a marriage. Otherwise, asking for proof could be interpreted as discrimination, as you would be treating members of a civil union differently than married people.

Navigating the new world of civil unions is likely a difficult task for all New Hampshire employers, as the best legal guidance employers have is based on the laws of other states.

For additional information on this matter, please contact **Attorney Jessica L. Singer**.

Update - NH Workers' Compensation Coverage.

In our October 2007 issue of *Commerciu* we reported to you a recent change in New Hampshire's Workers' Compensation statute that closed the prior exclusion corporations, and limited liability companies had to exempt three executive officers or members of an LLC from the requirements of obtaining Workers' Compensation insurance coverage. This bill, HB 471, became law on September 14, 2007, requiring that corporations and limited liability companies obtain Workers' Compensation coverage for every person on a work site.



This law, which did away with the prior exclusion, was to have the potential to impose a signifi-

cant financial burden on certain corporations and LLCs in the form of increasing their respective Workers' Compensation



premiums. A contractor who was found to have violated this law would have been subject to a penalty of \$2,500 and an additional fine of \$100 per employee for each day they were not in compliance with the law.

As of January 2, 2008, both New Hampshire's House and Senate adopted HB 692, repealing that portion of the prior law that had done away with the

exclusions. Having been signed into law by the Governor, HB 692 will once again allow corporations and limited liability companies to exclude up to three executive officers or members from the compulsive coverage requirements of the Workers' Compensation statute. HB 692 allows those corporations and limited liability companies that previously purchased coverage to comply with HB 471 to cancel the additional coverage and recover a pro rata share of the premium paid that reflects the unexpired portion of policy premium for which no insurance coverage will be provided. This new law will not alter HB 471's requirement for Workers' Compensation coverage on public sites.

For further information, please contact, **Attorney Douglas M. Mansfield, Esq.**

Choice of Entity for your Business.

There are many choices for the type of legal entity for your business in New Hampshire. There are pluses and minuses to each one, so the right one depends on many factors, including your type of business, your desire to limit personal liability, ease of management, tax considerations and your long term plans regarding exit or succession. The following are some basic considerations about sole proprietorships, corporations and limited liability companies ("LLC's"). Partnerships will be considered in a later article.

Sole Proprietorships: This

form of doing business is the simplest, but it can have the most risk for the sole owner. The owner has personal control over running the business, but is also personally responsible for all obligations and liabilities of the business. There are no legal formalities required to start a sole proprietorship, but to protect your trade name, you must register it with the NH Secretary of State.

Corporations: There are two kinds of corporations: "C" corporations and "S" corporations, referring to subchapters

of the Internal Revenue Code. Both are formed by filing Articles of Incorporation with the NH Secretary of State. Both are separate from their owners (the shareholders) and provide them with protection from liability and from responsibility for debts and contracts of the corporation. Management is handled by an elected Board of Directors and Officers. The C corporation pays tax on its income, and the shareholders pay tax on any dividend income received, resulting in two bites by Uncle



Choice of Entity for your Business cont.

Sam. The S corporation files an "election" to be taxed under subchapter S of the Internal Revenue Code and becomes exempt from federal income tax, so only the shareholders pay tax on the S corporation's income, eliminating the double tax bite with a C corporation.

Limited Liability Companies: These are a recent hybrid, which combine the corporate and partnership forms of doing business, providing the members of the LLC with

both protection from personal liability for the company's debts and obligations (like a corporation) and flexibility (like a partnership). Members do remain liable for any of their own acts of negligence or crimes, however. LLCs are created by filing a Certificate of Formation with the NH Secretary of State. LLCs can be as small as one person ("single member LLCs"). The members of the LLC execute an Operating Agreement to govern the management of the LLC.

There is a great deal of flexibility here to allow the members to run the company as they choose. This flexibility has made LLCs very popular in New Hampshire. The members can choose either to be taxed at the corporate level or, like S corporations and partnerships, have income "passed through" to the members to be taxed to them individually.

For further information, please contact, **Attorney Katherine B. Miller, Esq.**



Changes to the Comprehensive Shoreland Protection Act

Effective April 1, 2008, significant changes to the Comprehensive Shoreland Protection Act, RSA 483-B ("the Act") will impact many New Hampshire property owners and business having structures and uses within 250 feet of the "natural mean high water level" of "Great Ponds" and "4th Order Streams" and the "highest observable high tide line" of "Tidal Waters". The identity of such water bodies can be confirmed via the NH Department of Environmental Services ("DES") website:

<http://www.des.state.nh.us/cspa>. In the Dover area, this covers the tidal portions of the Cocheco, Bellamy, Salmon Falls and Piscataqua Rivers and the non-tidal portions of the Cocheco, Bellamy and Salmon Falls Rivers within Dover, Madbury, Rollinsford, Somersworth and Rochester.

As of April 1st, a permit will be required for most site work, construction of new structures or expansion of existing structures within 250 feet of the



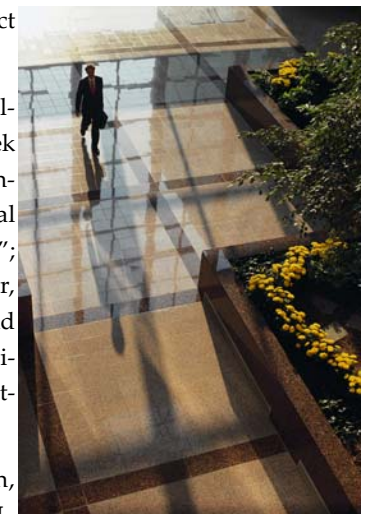
"reference line" of these water bodies. While there are a complex set of factors under which the DES will evaluate these permits, the Act basically establishes a 50 foot setback from the reference line in which very little can occur: no new structures are to be added, existing natural ground cover is to remain, and pesticide/herbicide applications are prohibited. Limited tree removal based on a "point system" is allowed within the 50 foot setback

area; but such removal may impact the amount of impervious coverage allowed within the 250 foot setback area. The standard limit for impervious coverage is 20% of the area within the 250 foot setback; but this limit may be expanded to 25% or 30% if certain "green development" factors are shown to be met.

When considering any work within 250 feet of these water bodies, property and business owners should confirm the impact of the Act early in their planning.

Additionally, the Act allows municipalities to seek exemption of certain downtown areas that have "special local urbanized conditions"; and the Cities of Dover, Somersworth, Rochester and possibly other area municipalities are currently evaluating that option.

For further information, please contact, **Christopher L. Boldt Attorney, Esq.**



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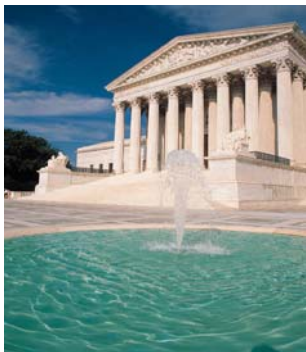
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Established in 1985, DTC Lawyers is one of New Hampshire's leading law firms, with offices in Exeter and Portsmouth. We are a full-service firm with our lawyers offering personalized representation to small businesses, large institutions and individuals. 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.

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