

Know Your Business

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You are an important client, friend or business partner of Wright Penning & Beamer. We value our relationship with you, and as a firm, we want to provide pragmatic information to help your business succeed and grow. "Know Your Business" is a firm publication including recent developments in the law and related areas to assist you, the business owner or manager, in being aware of various issues that could impact your business.

DO YOU KNOW HOW YOUR ELECTRONIC DOCUMENTS ARE MADE, DELETED OR SAVED? YOU SHOULD.

Most businesses know that litigation can be very expensive. The most expensive part of a lawsuit is typically "discovery" (the process by which the parties to a lawsuit request and exchange information and evidence from each other). But if you think it costs a lot to sort through file cabinets for responsive documents, imagine how much more it can cost when you have to sort through electronic files, including imbedded data or metadata that does not even show up on the computer screen.

E-discovery is not new, but it is fast becoming the norm rather than the exception. Nothing makes this fact clearer than the latest amendments to the Federal Rules of Civil Procedure, which for the first time explicitly include Electronically Stored Information (ESI) among the categories of discoverable information. Among other things, the amendments permit Judges to adopt timelines and specific rules to govern the disclosure of ESI. They also require the parties to identify ESI that may be relevant to the dispute and to discuss a discovery plan that addresses issues related to the disclosure or discovery of ESI.

Perhaps most important is a provision in the amendments suggesting that a party who has failed to take affirmative efforts to identify and protect potentially relevant ESI may be subject to sanctions for failing to produce or for destroying ESI. Note that sanctions can be imposed even where the failure was not intentional, or where ESI was destroyed pursuant to normal purging procedures.

Given the potential consequences for failing to identify and preserve ESI, it is crucially important that businesses take proactive steps to identify and preserve any potential relevant electronic data (including potentially unfavorable data) as soon as there is any reason to suspect a possible dispute. Likewise, businesses should carefully examine their data retention and destruction practices to make sure that electronic data is destroyed in a timely, consistent fashion, and also to make sure a hold can be placed on the destruction of potentially relevant data as soon as the business has reason to suspect a possible dispute.

ARE YOU FAMILY FRIENDLY, OR EMPLOYEE FRIENDLY?

If your answer to the above question is, "Aren't they the same thing?" you may be blind to perceived unfairness in your employment practices. According to the October issue of *HR Magazine*, unmarried, single adults constitute 40% of the people 18 and older in the United States. Increasingly, people marry at an older age, or choose to live together in an unmarried relationship, or live in a single parent household. In



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their efforts (which are laudable) to be more family friendly, employers may be perceived as unfair to unmarried employees or employees without children.

Writing for *HR Magazine*, business journalist Susan J. Wells offers as an example a company picnic paid for by employees, where each employee is asked to contribute a flat fee regardless of whether they are single or bringing a spouse and kids. Other examples include greater flexibility offered to employees with children, and the other growing disparity between the cost of single versus family insurance packages.

As the face of the workforce continues to change, reports Wells, an increasing number of employers are being forced to take a wider view of the types of benefits and programs offered in an effort to increase diversity, flexibility, neutrality and choice. According to one expert cited by Wells, 82% of U.S. households can be described as “non-traditional.” As this trend continues, employers will need to be increasingly mindful of the impact traditional benefit structures have on employee satisfaction.

COLLECTION SUITS ARE ON THE RISE.

As the region's economy continues to struggle, more and more businesses find themselves taking their customers to court for past due receivables. Here are a few pointers to increase your chance of a successful recovery in a collection case:

- Obtain and record security agreements and financing statements wherever possible.
- Keep receivables within sixty days. Anything past ninety is seriously at risk.
- Do not delay unnecessarily between a demand for payment and filing your lawsuit.

Just as the squeaky wheel gets the grease, the business that seriously monitors and addresses its receivables is far more likely to recover outstanding balances.