

Know Your Business

Spring 2004

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 discussing recent developments in the law and related areas to keep you, the business owner, aware of the issues that impact your business.

Family and Medical Leave Act (FMLA)

It has now been ten years since Congress adopted the Family and Medical Leave Act, commonly known as the FMLA. Unfortunately for employers, the law has been interpreted more broadly than originally anticipated, and the number of lawsuits alleging violations is skyrocketing.

Here are some key facts about the FMLA:

- Applies to all employers with 50 or more employees;
- Provides eligible full and part time employees up to twelve weeks unpaid leave annually for a variety of family and medical reasons;
- Has been interpreted to provide leave of absences to employees for a range of conditions including in some cases asthma, high blood pressure, and migraines;

Employees may recover past and future wages and benefits, costs, liquidated damages and legal fees from employers who violate the Act.

Many of the claims brought against employers under the FMLA can be avoided with some basic planning. Covered employers must be sure to have an FMLA policy in place, to communicate the policy to employees and to maintain it in their employees' handbooks, and to train policy administrators to ensure compliance. If you are an employer with over 50 employees, please contact us to discuss whether you have sufficient procedures in place to avoid problems under the FMLA.

Statute of Limitations for Employment-Related Claims

Recently, a number of courts have approved language in employment agreements or employment applications shortening the period of time in which an employee can file a lawsuit or claim against the employer. While the time period (statute of limitations) on employment-related claims typically runs two years or longer, courts have approved provisions shortening the time to six months. It is important to note that these decisions concern claims brought under Michigan law. It has not yet been tested or decided by any court whether or not the shortened period will apply to claims brought by Michigan employees under federal law. We strongly encourage you to consider incorporating language in your job applications and written employment agreements to limit the time in which a separated employee can file a claim or lawsuit against the employer.



Please contact us if you are interested in obtaining additional language for your job applications or agreements with your employees.

Wage Deduction by Employers

Both state and federal law impose certain duties and restrictions on employers concerning withholdings from wages. Failure to abide by these rules can result in government audits, payment of back wages, and various sanctions. Employers should keep the following general rules in mind:

- **Deductions Required by Law.** State and federal payroll deductions are mandatory and are exempt from the other limitations listed here.
- **Deductions for Employee's Benefit.** Generally, deductions that have been elected by the employee for his or her benefit (such as automatic contributions to a retirement plan) are permissible in any amount provided the employee has given signed authorization.
- **Deductions for Employer's Benefit.** Generally, deductions for the employer's benefit (e.g., repayment for a loan or for damage caused to company property) require prior written consent for each payment. Withholding from consecutive paychecks – even if related to a single incident – requires prior written authorization for each check. Moreover, the authorization must be freely given and cannot be the result of coercion or threatened job loss or discipline.
- **Child/Spousal Support.** When withholding income in response to court-ordered support, the employer must make sure the amount withheld does not exceed 50% of disposable (net) income where the employee has other dependents, 60% where there are no other dependents.
- **Garnishment.** When responding to a garnishment order, the employer cannot withhold more than whichever of the following is smaller: (a) 25% of disposable income or (b) the amount by which disposable earnings exceed 30 times the federal minimum wage (you will use this only in high income cases).
- **Bankruptcy.** Under the bankruptcy rules, a debtor may voluntarily agree to any withholding he or she approves with respect to payment of obligations to the bankruptcy court. We have seen situations in which Chapter 13 debtors voluntarily agree to a sizeable withholding and a corresponding order is issued.

Prevent Fraud in the Workplace

Although there is no foolproof way to prevent fraud by your employees, there are some internal controls that you may consider.

- **Share the Work.** Separate office duties so that no single employee is in complete control of a sensitive area. For instance, have one person process accounts payable and another cut the checks. A back-up system or double-checking procedure with respect to accounts payable and checks issued would also be helpful.
- **Use Locks, Checks and Balances.** Set up a lockbox to receive payments, and ask one employee to follow a strict procedure recording them. Then ask someone else to check this document and deposit checks.



- **Make Them Take a Break.** We have found in the past that employees who have defrauded their employers dislike taking time off, so require (or at least strongly encourage) employees to utilize their vacation days. In this way, you or other employees can temporarily handle a vacation worker's duties and see if anything is amiss.
- **Maintain Mastery of Your Domain.** Although workers have a right to privacy—up to a point—don't allow anyone to keep locked desks or file cabinets that can't be accessed by you, the business owner. Occasionally call or visit your customers and/or vendors to discuss your workers. You may discover that some employees unduly influence dealings.
- **Get an Outside Opinion.** Sometimes it takes an objective eye to see what's wrong with a picture. Have your CPA perform an internal control review at your company or exercise such other controls or reviews as your CPA may deem appropriate with respect to your business.

Transportation, Travel and Entertainment Deductions

Many questions regarding the deductibility of transportation, travel and entertainment expenses are simple; however, many others are complex and difficult. The following is a brief summary regarding these deductions.

- **Transportation Expenses.** A taxpayer cannot deduct the cost of driving a car or using other means of transportation between his/her home and his/her main or regular place of work. Personal commuting expenses cannot be deducted, no matter how far from home to the taxpayer's regular place of work.

There are certain other transportation expenses that may be deducted. These include:

- traveling from one workplace to another in the course of taxpayer's business or profession;
- visiting clients or customers;
- attending a business meeting away from the taxpayer's regular workplace;
- traveling from the taxpayer's home to a temporary workplace when the taxpayer has one or more regular places of work.

Putting advertising on a car that is otherwise used for commuting or other personal use does not change the use of the car from personal use to business use. Similarly, taxpayers cannot deduct the cost of using a car in a non-profit carpool. However, a taxpayer who hauls tools or instruments in his or her car while commuting to and from work may deduct additional costs incurred in hauling the tools or instruments.

The taxpayer with an office in his or her home that qualifies as a principal place of business can deduct daily transportation costs between his or her home office and another work location in the same trade or business.

- **Travel Expenses.** Travel expenses are ordinary and necessary expenses of traveling away from home that are associated with a taxpayer's business, profession or job. A taxpayer is away from home if he or she has duties that require him or her to be away from the general area of his or her tax home substantially longer than an ordinary day's



work, and the taxpayer needs to sleep or rest to meet the demands of the work while away from home.

- **Temporary Assignment.** Many taxpayers work at their tax homes regularly and at another location occasionally. In many cases at the end of each work day it is impractical for such taxpayers to return to their homes from their temporary assignments. If a taxpayer's assignment is temporary, the individual's tax home does not change. The taxpayer is considered to be away from home for the entire time he or she is away from his or her main place of work. Thus, he or she can deduct any travel expenses that otherwise qualify for a deduction. Generally, a temporary assignment at a single location is one that is realistically expected to last, and does in fact last, for one year or less.
- **Meals.** Taxpayers may deduct the cost of meals, unless they are lavish or extravagant, when they are incurred during business travel or when the meal is business-related entertainment. Meal deduction may be determined by using either the actual costs of the meal or the standard meal allowance. Regardless of the method used, however, the taxpayer may deduct only 50% of the un-reimbursed cost of his or her meals.
- **Personal Travel Expenses, Domestic Travel.** For travel within the United States, the taxpayer can deduct all of his or her travel expenses if the trip was entirely business related. If the trip was primarily for business and, while at the business destination, the taxpayer extended his or her stay for a vacation, made a personal side trip, or had other personal activities, he or she can deduct his or her business-related travel expenses. These expenses include the travel costs of getting to and from the business destination and any business-related expenses at the business destination.
- **Travel Outside the United States.** If the taxpayer travels outside the United States primarily for vacation or investment purposes, the entire cost of the trip is a non-deductible personal expense. For time spent attending brief professional seminars or continuing education programs, a taxpayer can deduct his or her registration fees and other expenses that are directly related to the taxpayer's business. If the taxpayer travels outside the United States, all travel expenses are deductible if the trip is entirely for business. Even if the taxpayer did not spend his or her entire time on business activities, the trip is considered entirely for business if he or she meets at least one of the following exceptions:
 - The taxpayer has no substantial control over the trip.
 - The taxpayer was outside the United States for a week or less on a trip that combined business and non-business activities.
 - The taxpayer was outside the United States for more than a week and spent less than 25% of the total time outside the U.S. on non-business activity.
 - Personal vacation was not a major consideration of making the trip.
- **Conventions.** Taxpayers can deduct travel expenses associated with attending a convention if the taxpayer can show that attendance benefited the taxpayer's trade or business. However, such a taxpayer cannot deduct travel expenses for his or her family. If the convention is for investment, political, social or other purposes unrelated to the taxpayer's trade or business, the taxpayer cannot deduct the expenses.



- **Entertainment.** Taxpayers may deduct 50% of un-reimbursed business-related entertainment expenses associated with entertaining a client, customer or employee. Club dues and membership fees are not deductible. Generally, entertainment expenses are deductible if they are both ordinary and necessary and meet either the directly-related test or the associated test. To meet a directly-related test, entertainment takes place in a clear business setting where the main purpose of entertainment is the active conduct of business. To meet an associated test for entertainment purposes, including entertainment-related meals, the taxpayer must show that the entertainment is associated with the active conduct of trade or business and directly before or after a substantial business discussion.

This treatment is meant only to be a summary, and there are several other rules and terms affecting deductibility of transportation, travel and entertainment expenses. If you have specific questions regarding deductions of these types of expenses, please contact us.

The information contained in this publication is meant for informational purposes only and is not intended as legal advice. Laws and their application vary based upon a client's unique facts and circumstance, and Wright Penning & Beamer cannot accept responsibility for action taken upon reliance of this publication without further consultation and analysis. For questions, please contact us at (248) 477-6300 or at info@wrightpenning.com