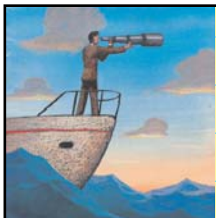

Legal Advisory

IDEAS AND STRATEGIES FOR YOU AND YOUR BUSINESS / SECOND QUARTER 2008

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HOW TO AVOID AGE BIAS CLAIMS

Age discrimination is a common problem for employers. If you are not careful, it can "poison" your workplace and lead to morale problems, decreased productivity and costly litigation.

The flagship federal law in this area is the Age Discrimination in Employment Act of 1967 (ADEA). It prohibits discrimination on the basis of age against employees age 40 or older. The ADEA was amended by the Older Workers Benefit Protection Act of 1990 (OWBPA).

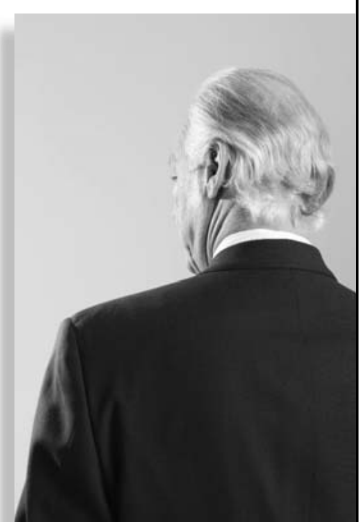
The key for business managers is to recognize the dangers and take steps to avoid age discrimination. This may include making an honest appraisal of your organization's culture, instituting training sessions, updating hiring procedures and renewing your commitment to provide a bias-free work environment.

Age discrimination may take place during the hiring process or in the course of employment.

Hiring Practices

The following are a few suggestions for avoiding age discrimination in hiring:

- Salary should not be based strictly on the age of applicants. Do not ask age-related questions during the interview process.
- Remove date of birth entries from your job application form. Concentrate on talent and work experience instead.



- Develop guidelines for evaluating job candidates. Apply them evenly to all applicants.
- Post job advertisements where they will be viewed by workers of all ages.
- Be sure that interviewers are familiar with the ADEA, the OWBPA and related laws.
- Whenever possible, use a selection committee comprised of people of various ages.

Employment Practices

Similarly, you may take these steps for workers currently employed:

(see *Age Discrimination* on next page)

Benefits of a "Buy–sell"

If you are a business co-owner or a partner in a partnership, it is vital to protect your family's interests in the event you should become disabled or die prematurely. Fortunately, you can resolve many issues by formulating a "buy–sell agreement."

Background: A buy–sell is a legally binding agreement that provides for an orderly sale of a business interest upon the happening of a specified event. Usually, the agreement is structured so the event is the death of a business owner, but the obligation to "buy and sell" may also be triggered by disability, retirement or some other significant occurrence.

There are three basic types of "buy–sells."

1. With a cross-purchase agreement, the surviving owners or partners essentially agree to buy each other out. Let's say that Zachary, Zelda and Zenon are equal owners in Triple Z Corporation. Under a cross-purchase type of agreement, if any one of the owners dies, the two survivors purchase the interest from the deceased owner's estate.

2. If you use a redemption agreement—also called an entity agreement—the business itself purchases the interest of the deceased owner. In certain circumstances, a cross-purchase agreement may be combined with a redemption agreement.

3. Finally, a buy–sell agreement may accommodate a sale of the business interest to key employees who know the operation inside-out. The key employees might be members of the family who are already employed by the business.

There are several instant benefits resulting from a buy–sell agreement.

- There is an obligated buyer for the business at a fixed price or formula upon the death or disability of the owner. In the absence of such an agreement, the estate or the disabled owner may be forced to sell the business at a "bargain basement" price.
- It provides a smooth transfer of the business in a manner agreed upon by the owners in advance of the triggering event. This can help minimize disruptions to customers or clients while the business is in the process of recovering.
- The proceeds from the sale of a deceased owner's interest can pay certain estate settlement expenses (e.g., estate taxes and administration costs). In addition, part of the proceeds may be allocated to help pay the living expenses of the deceased owner's family members. If the owner is disabled, the proceeds may be used to pay the family's living expenses.
- The price established in the buy–sell agreement may be used to provide a valuation for federal estate-tax purposes (with certain limitations).

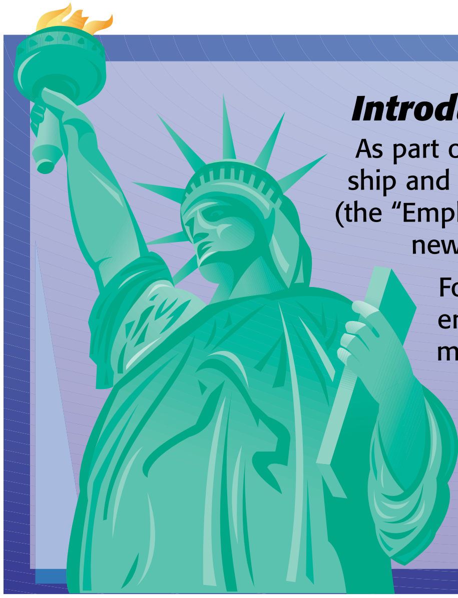
With professional assistance, you can have a buy–sell tailored to your specific needs. ✍

Age Discrimination Claims

(continued from front page)

- Provide training sessions for all jobs.
- Post your age discrimination policy on bulletin boards or in company media. The policy should cover, in writing, definitions, remedies, grievance procedures and anti-retaliation language.
- Focus on professional development for all employees in performance evaluations. Emphasize skills, abilities and potential of employees—not their ages.
- Try to team up workers of varying ages on projects so they can learn from each other.
- Encourage mentoring. Workers of any age may pass on the benefit of their experience, knowledge and expertise.
- Avoid age restrictions for promotions or training.

Finally, set a good example. Make it absolutely clear that discrimination of any kind will not be tolerated. ✍



Introducing the New Immigration Form

As part of an ongoing campaign to tighten immigration rules, the U.S. Citizenship and Immigration Services (USCIS) recently announced revisions to Form I-9 (the "Employment Eligibility Verification Form"). Employers are required to use the newly revised form as of December 26, 2007.

Form I-9 verifies the identity and employment eligibility of all newly hired employees. It also reverifies expiring employment authorization documents. The new I-9 form has been designed by the USCIS to remove documents that lack security protection against fraud, streamline the verification process and promote overall enforcement.

If your company fails to use the new I-9 Form, it is subject to fines and penalties. All prior versions of Form I-9, in English or Spanish, are no longer valid.

Seven Steps to Starting a Nonprofit

Suppose you are deeply committed to a charitable cause. In fact, you want to take your generosity further by establishing a nonprofit organization with a specific mission. But you must observe all the legal technicalities. There are seven basic steps to forming a nonprofit organization.

1. Decide on the nonprofit's name. The name must be different from any one already registered with the state. (Hint: Try to be descriptive.) Check with the appropriate state office to determine if the name is still available. For a relatively small fee, you may be able to reserve the name.

2. File articles of incorporation with the state. This documentation—which includes basic information like the nonprofit's name, address and telephone number—should have specific language that will help you obtain favorable tax status. If you are unsure of the procedures, seek professional assistance.

3. Apply for tax exemptions. You must submit the proper forms, along with a copy of the articles of incorporation and the requisite fee, to the IRS in order to secure a federal income tax exemption. In a handful of states, you must follow similar procedures on the state level. In other states, obtaining the federal tax exemption will also qualify your organization for a state tax exemption. Check on the requirements for your state.

4. Have bylaws drafted. The bylaws cover the rules relating to board meetings, voting on issues and selecting a board of directors and officers. Typically, the bylaws are adopted by the corporation's directors at the nonprofit's first board meeting. Make sure you are well prepared for this occurrence.

5. Appoint the board of directors. The board is responsible for making the main operational and financial decisions of the nonprofit. Depending on state law, you may be required to designate a specific number of board members (usually at least three).

6. Hold your first meeting. Besides adopting the bylaws at the first meeting, the board of directors will usually elect the nonprofit officers, record the federal and state tax exemptions and handle other pressing matters. After the meeting, ensure that the minutes are promptly filed in a binder.

7. Obtain licenses and permits. Check with your appropriate state office about licensing requirements for the organization. For instance, if you are planning to offer products for sale to donors, you will need a sales tax permit. In addition, some activities may require a zoning permit.

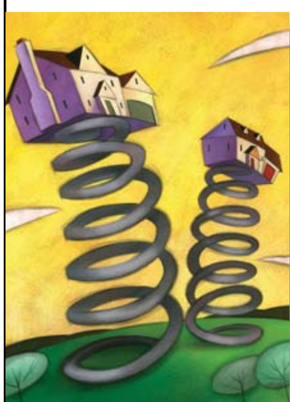
Before you know it, the nonprofit will be up and running. But you do not have to go it alone. You can rely on your legal advisers every step of the way. ✍

Overview of the New Mortgage Law

In the waning days of 2007, the Mortgage Forgiveness Debt Relief Act was signed into law. This new legislation was hailed by debtors caught in the subprime mortgage crisis. But the new law does more than you might think. It also creates some other tax breaks for homeowners. The following is a brief summary:

Debt forgiveness: Under the new law, up to $2 million of mortgage debt forgiveness on a principal residence is tax-free. Normally, this would represent taxable cancellation-of-debt (COD) income. The special tax exclusion is available for a three-year period beginning January 1, 2007, and ending December 31, 2009.

However, this new tax exclusion does not apply to taxpayers involved in a Title 11 bankruptcy.



Mortgage insurance: Prior to 2007, Congress had authorized a one-year deduction for mortgage insurance premiums as qualified residence interest. A deduction is available on your 2007 return for the full amount of insurance paid (for contracts issued after 2006) if your adjusted gross income (AGI) for the year does not exceed $100,000. But the deduction is gradually phased out and disappears entirely if your AGI exceeds $109,000. The new law restores the deduction and extends it for three years.

Home sale exclusion: The home sale exclusion allows you to realize a tax-free gain of up to $250,000 when you sell a home you have owned and used as your principal residence for at least two out of the five years before the sale. The $250,000 exclusion is doubled to $500,000 for married couples. However, prior to the new law, the $500,000 exclusion was available only if a husband and wife filed a joint tax return for the year of the sale.

The new law modifies this provision for surviving spouses. For sales after 2007, a surviving spouse may claim a $500,000 exclusion for a sale occurring within two years of death.

Co-op tax breaks: If certain requirements are met, the tenant-stockholders of a co-op are entitled to claim allocable deductions for mortgage interest and property taxes. The new law liberalizes the test used to qualify as a co-op for this purpose. This change applies to tax years ending after December 20, 2007.

The new law also includes several revenue-raising provisions. It increases the penalties for partnerships that fail to file returns, institutes a similar penalty for S corporations and, starting in 2012, adjusts estimated tax payments for certain large corporations. ✍

B R I E F S

Retaliation Factor—Be careful about muzzling employees who make complaints. This could be identified in a lawsuit as illegal retaliation. **New case**: A white police officer got in a shouting match with a co-worker over racial insensitivity. Their supervisor warned both officers they would be fired if they took the matter to a higher authority. **Result**: The Indiana District Court said the offended officer was entitled to a trial based on retaliation.

Hostile Environments—In a new case, a college secretary claimed a professor watched pornographic films in his office, which she could partially view from her desk. The secretary also discovered someone had visited porn sites on her computer. A lower court initially dismissed her lawsuit, which was based on a sexually hostile environment, but now the Second Circuit has reinstated it.

Trust Fee Deductions—The U.S. Supreme Court has just ruled that the 2%-of-adjusted-gross-income (AGI) deduction floor for miscellaneous expenses applies to most investment advisory fees paid by a trust. The trustee in this landmark case had argued that the fees qualified under a special tax law exception. However, the nation's highest court disagreed because the fees are the type that are commonly incurred by individuals.

No Moonlighting—Workers may be entitled to time off under the Family and Medical Leave Act (FMLA). But that does not necessarily mean they can work at another job. **One suggestion**: Impose a "no moonlighting" policy in your company manual. Be consistent about applying the ban across the board to all employees. This may prevent a particular employee from taking unfair advantage of the family leave law. ✍