Inside 2Q2018

ACC Association of Corporate Counsel
BALTIMORE

FOCUS

President's Message

Karen Davidson

Greetings and Happy Spring! We had a highly successful Women's History Month event at Cosima, in conjunction with our terrific sponsor, Womble Bond Dickinson US LLP. Despite having to change the date due to the late Spring snow storm, we had a great turnout and heard the interesting stories of the three women who run Cosima!

And, by the time you read this, ACC Baltimore will have enjoyed a tremendous day and evening of fun and networking with our annual Golf/Spa event in May. Bringing together our sponsors and members for a day of golf, including a clinic, and spa treatments, followed by cocktails and dinner at the Elkridge Club, is always a sign that Spring is well underway and Summer cannot be far behind!

We are looking forward to our Summer Social with our sponsor Womble Bond Dickinson, which is tentatively scheduled for June 14th—look for more details in your inbox shortly!

If you only attend our monthly lunches occasionally, please know there are many opportunities to become more involved in ACC Baltimore. We need members for our committees, and to work with our wonderful sponsors planning our year long series of lunching and learning. These committees are where our next level of leadership is generally found. In 2018, we have welcomed four (4) new Board members: Taren Butcher, Kimberly Neal, Noreen O'Neill, and Dan Smith. Your Board will have a retreat in early June, so please reach out with any ideas or suggestions you may have.

We want your input so that your Chapter delivers the programming you need in your in-house counsel role. Membership with the Baltimore Chapter connects you with a group of talented and collegial fellow counsel. It also gives you access to all that ACC Global offers, including education, model forms, small group sections, "quick hit" learning, listservs, and, of course, the Annual Meeting. This year make a point to come to Austin in October, and connect with in-house counsel from all over the world.

Best Regards,
Karen Davidson

If you ever want to share any other ideas or comments with the board, here is the current list of officers and directors:

Karen Davidson — President
Prabir Chakrabarty — President elect and Treasurer
Larry Venturelli — Secretary
Joal Barbehenn
Cory Blumberg
Taren Butcher
Dee Drummond
Dana Gausepohl
Joseph Howard
Kaidi Isaac
Raissa Kirk
Kimberly Neal
Noreen O'Neil
Christine Poulon
Daniel Smith
Whitney Washington Boles
Matthew Wingerter

Upcoming Events

June 14
Summer Social at Urban Axes
sponsored by premiere sponsor
Womble Bond Dickinson
6 – 8:30 pm

October 21-24
ACC Annual
Meeting,
Austin, TX

ACC Advocates for a Seat at the Table: General Counsel at the Executive Table and the Boardroom

By Mary Blatch, Director of Government and Regulatory Affairs, ACC
Stephanie Johnson, Manager, Public Policy and Advocacy, ACC

ACC has launched an exciting new initiative to ensure that general counsel have a seat at the executive table and in the boardroom. Based on our 2013 research report, *Skills for the 21st Century General Counsel*, it is clear that CEOs and boards of directors increasingly want the general counsel to contribute to corporate strategy. Additionally, when the general counsel has a seat at the executive leadership table, it shows that a company considers ethics, compliance, and other legal risk considerations to be top of mind.

Despite the clear benefits of securing a seat at the table for general counsel, ACC's Chief Legal Officers 2018 Survey (CLO Survey) indicates too many general counsel do not have a direct reporting relationship with the CEO and do not regularly attend board meetings. Globally, only 64 percent of general counsel report directly to the CEO, and 73 percent "almost always" attend board meetings.

The CLO Survey includes companies across the globe and of all sizes, but the statistics don't change greatly for US companies or even public companies. In the United States, 70 percent of general counsel report directly to the CEO and 76 percent almost always attend board meetings. Among public companies, 70 percent of general counsel report directly to the CEO and 80 percent almost always attend board meetings.

ACC believes that these numbers are too low. They indicate that too many general counsel find themselves without the information, access, and influence they need to fully contribute in order to ensure their company stays ahead of risk and maintains a healthy corporate culture. By advocating on this issue, particularly to boards of directors and institutional investors, we aim to improve the role and status of general counsel and promote ethics and compliance as vital aspects of corporate culture.

Starting a Movement

Last year, when the National Association of Corporate Directors (NACD) announced that the focus of its annual Blue Ribbon Commission Report would be corporate culture, ACC submitted a white paper detailing how executive reporting and board access for general counsel is a corporate governance matter. In "Leveraging Legal Leadership: The General Counsel as a Corporate Culture Influencer," ACC identifies five key indicators of a general counsel who is well positioned as a key ally in establishing a corporate culture of compliance and ethics:

1. The GC reports directly to the CEO and is considered part of the executive management team;
2. The GC has regular contact with the board;
3. The GC is viewed as independent from the management team;
4. The GC advises on issues outside the traditional legal realm, including ethics, reputation management, and public policy; and,
5. Business units regularly include the legal department in decision-making.

The ideas in ACC's white paper served as the basis for Recommendation #5 in the NACD Blue Ribbon Commission Report on Culture as a Corporate Asset, which instructs directors to assess whether the chief legal officer or general counsel is well positioned within management and in relation to the board.

In addition to having the role of the general counsel included as a recommendation in the NACD report, ACC has been creating other thought leadership on this subject. ACC partnered with the John L. Weinberg Center for Corporate Governance at the University of Delaware to film a video on the Seat at the Table topic. In addition to ACC President and CEO Veta T. Richardson, the video featured Gloria Santona, former McDonald's general counsel and current board member at Aon plc, and Weinberg Center Associate Director Ann Mulé. The Weinberg Center distributed the video to thousands of influencers in the corporate governance space.

SEAT AT THE TABLE

TAKE YOUR PLACE.

ACC and the Weinberg Center also worked together to interview Kenneth C. Frazier, president and CEO of Merck. Frazier highlighted the significance of a direct reporting line between the general counsel and the chief executive officer, stating that, "If the CEO isn't listening to the lawyers, neither will anyone else in the organization. Setting the appropriate tone from the top is essential."

In response to a public consultation of the United Kingdom Financial Reporting Council (FRC), ACC submitted comments urging a recommendation that general counsel report directly to the CEO and regularly attend board meetings. According to the Chief Legal Officers 2018 Survey, only 47 percent of general counsel in the UK report directly to the chief executive officer.

ACC staff have also engaged in speaking opportunities on the topic of general counsel influence. These include

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presentations at the SMU Dedman School of Law Corporate Counsel Symposium, NACD Philadelphia, the ABA Business Law Section Fall Meeting, and Ethisphere's Global Ethics Summit.

Most recently, we interviewed Teri Plummer McClure, chief human resources officer and senior vice president of labor for UPS. The Weinberg Center video, the interviews, and more are available at www.acc.com/governance. Also available on the website are a number of our media placements on this topic, including articles in Law360, Ethisphere Magazine, The Global Legal Post, Le Monde Du Droit, and the Financial Times.

What's Next?

As ACC seeks to further support our positions on the importance of the general counsel, we will be looking to leverage the wealth of data that comes from our annual CLO Survey and other research projects. We are also looking to take the initiative globally. Most areas outside of the United States have lower levels of direct-to-CEO reporting and board attendance among general counsel.

As an ACC member, you can help as well. We would love to hear from general counsel who do not currently report to the CEO or who did not report to the CEO in a prior role. Any stories that illustrate potential pitfalls of reporting arrangements where the general counsel does not have access to the CEO is helpful to us in creating case studies, and of course, we value your privacy and treat this information as confidential. Finally, if you have connections in the company directory or institutional investor communities, you can be of assistance as we look for additional avenues of communicating our message to these constituencies.

Be sure to check out our activities at www.acc.com/governance. For more information about ACC's Seat at the Table initiative or if you would like to discuss other issues relevant to ACC advocacy, please feel free to contact the author at m.blatch@acc.com or 202-677-4775 or email our team at advocacy@acc.com.

ACC News

2018 ACC Annual Meeting: Exclusively for In-house Counsel

The 2018 ACC Annual Meeting, the world's largest gathering of in-house counsel, is scheduled for October 21-24 in Austin, TX. In less than three days you can choose from over 100 substantive sessions to fulfill your annual CLE/CPD requirements, meet leading legal service providers and network with your in-house peers from around the world. Group discounts are available. Visit am.acc.com for more information.

Drive Success with Business Education for In-house Counsel

To become a trusted advisor for business executives, it's imperative for in-house counsel to understand the business operations of your company. Attend business education courses offered by ACC and the Boston University Questrom School of Business to learn critical business disciplines and earn valuable CLE credits:

- Mini MBA for In-house Counsel, June 4-6, September 12-14, and November 7-9
- Finance and Accounting for In-house Counsel, September 5-7
- Project Management for in-house Law Department, November 14-15

Learn more and register at www.acc.com/businessedu.

Are You Conducting Diligence on EVERY VENDOR and Third-party that has Access to Your Systems or Data?

Your vendors are now prime targets for data breaches and small vendors can provide easy access for hackers. Even cleaning crews, HVAC vendors, and food distributors, to name a few, can all lead to data breaches, but are often overlooked in the vendor diligence process. ACC's Exclusive third-party due diligence service should be in your arsenal. Visit www.acc.com/VRS for more information.

New to In-house? Are you prepared?

The ACC Corporate Counsel University® (June 20-22, Philadelphia, PA), combines practical fundamentals with career building opportunities, which will help you excel in your in-house role. Come to this unrivaled event to gain valuable insights from experienced in-house counsel, earn CLE/CPD credits (including ethics credits) and build relationships and expand your network of peers. Register at ccu.acc.com.

ACC Chief Legal Officers 2018 Survey

The ACC Chief Legal Officers Survey offers an opportunity to get data that supports the imperative for the CLO to report directly to the CEO. Other notable findings include what keeps CLOs up at night, reporting structures, how CLOs view the future of departmental budgets and staffing, litigation and contract workload, and where data breaches and regulatory issues have the greatest impact. Download it today at www.acc.com/closurvey

Over-retention of personal data is an egregious violation of the GDPR and data protection laws. Meet your requirements in 45 days with Jordan Lawrence's proven standards, models and frameworks that are relied on by hundreds of your corporate counsel peers. Demonstrate compliance. Reduce risks. Learn more today: Data Minimization Service

A Guide to Due Diligence Preparedness - a free eBook from Wolters Kluwer and effacts. To help you prepare for a due diligence, download our due diligence guide that includes a helpful checklist to rate your current readiness and identify where you need to improve your company's legal data governance. For more visit www.WoltersKluwerLR.com.

Paid Sick and Safe Leave, Three Months In

By Donny English and Andrew Baskin, Jackson Lewis

On February 11, 2018, the Maryland Healthy Working Families Act (the "Act") took effect, taking by surprise many employers who expected the General Assembly to delay implementation following its override of Governor Hogan's veto. Broadly speaking, the Act requires employers to permit employees to accrue up to 40 hours of paid sick and safe leave ("SSL") per year. Today, employers still struggle over how best to reconfigure their SSL policies to satisfy the new law.

Now that the dust has settled on implementing new SSL policies, what are some of the most common challenges facing employers?

Front-Loading vs. Accrual

Often the first decision facing employers is how to manage the accrual and tracking of SSL. Employers can either allow employees to accrue one hour of SSL for every 30 hours worked during the year, or front-load employees with their full allotment of SSL at the start of each year.

Front-loading carries the advantage of not requiring employers to track accrual hours during the year. Additionally, the Act does not require carry-over of SSL to the next year if the employer front-loads the time at the start of each year. If the employee accrues time gradually, the employer must allow them to carry-over unused SSL hours from year to year.

On the other hand, hourly accrual grants employers more predictability in judging when employees might use SSL. Employees also have the ability in this instance to accrue greater than 40 hours of SSL due to the carry-over requirement (but no more than 64 hours at any one time). If employers choose to use the accrual method, they also have to make sure that employees can use time when they accrue it. For instance, employers who award accrued SSL once a month may accidentally violate the Act, because employees are unable to use their accrued time prior to that monthly award.

Multi-State Employers

The paid SSL provisions of the Act only apply to employers with 15 or more employees. However, the Act does not state whether those 15 employees must work in Maryland. As a result, multi-state employers with a small presence in Maryland faced initial confusion over whether they had to modify their SSL policy. The Department of Labor, Licensing, and Regulation ("DLLR") has since issued a Frequently Asked Questions guide which clarified that only employees whose "primary work location" is in Maryland will count towards the 15 employee threshold, and only those employees are required to receive paid SSL.

Unionized Employers

The Act provides only a narrow exemption for unionized employers. Unionized employers in the construction industry only can include a waiver of the Act in their collective bargaining agreement. For all other unionized employers, any collective bargaining agreement renewed or entered into after June 1, 2017, must account for the Act's requirements.

Montgomery County Sick Leave

While many employers have focused solely on implementing the Act, they also have to keep in mind the different requirements contained in Montgomery County, Maryland's Earned Sick and Safe Leave Law. For example, in Montgomery County, an employer with just five employees must provide for paid SSL (15 employees are required under the Act). Additionally, the employer must permit employees to accrue up to 56 hours of paid SSL per year (rather than up to 40 hours under the Act).

Employers with Montgomery County employees must decide if they want two separate SSL policies, or if they want to extend Montgomery County's more generous policies to all of their employees working in Maryland.

Future

Employers should continue to monitor ongoing developments with the Act, including the release of any future guidance or regulations from DLLR to ensure that their policies and practices are in compliance with the Act.

Donny English is a principal and employment trial attorney at Jackson Lewis P.C.

What to Do When You Find Yourself in the Data Breach Club

By Veronica Jackson, Miles & Stockbridge

More and more companies are likely wondering what they should do in the event that they are faced with a data breach that exposes the personal data of their employees or customers. Data security incidents involve complex legal issues that must be navigated carefully to reduce the risk of improper (or unnecessary) breach notification, attention from state and federal regulators, and potential class actions related to the exposure of personal information. There are several key steps a company should take upon discovery of a data breach. While these steps are numbered, many of them must happen both immediately and simultaneously.

First, immediately contact your company's incident response team pursuant to your Written Information Security Plan (or "WISP"). Second, contact law enforcement and any relevant insurance carriers to assist with coverage of costs for the data breach response effort and to prevent waiver of potential coverage for tardy notice. Third, quickly assess the scope of the breach (i.e., whether the breach is ongoing, whether data was acquired or simply accessed by the hacker, who suffered a breach of their personal information, what type of information was exposed, and the likelihood that the affected persons will suffer harm as a result of the breach). Fourth, stop the breach, if possible, through remedial data security measures, possibly with the assistance of a forensic IT consultant to bolster your company's security systems. Organizations that have already suffered from a breach especially must consider what additional safeguards (including employee training) should be implemented to avoid another breach in the future. Fifth, analyze data breach compliance requirements by identifying the jurisdictions of residence for the affected population and assessing what notification requirements are triggered by each applicable statute.

Data breach compliance requirements also may be triggered by the regulatory framework covering the type of information that was exposed (*i.e.*, HI-TECH and HIPAA compliance for personal health information). For affected persons residing in Maryland, for example, notification is not required if, after the requisite investigation, the business determines that personal information has not been or is not likely to be misused. (Documentation of that conclusion, however, must be retained by the entity for three years.) In instances where notification is required, even for just one Maryland resident, notice must first be sent to the Maryland Attorney General's data breach notification department. Maryland also recently amended its notification statute to, among other changes, require that companies make any requisite notices within forty-five days from when the company determines that notice is required. In the District of Columbia, on the other hand, there is no "likely harm" exception to the notification requirement and notice to the Attorney General is not required. In instances where 1,000 or more residents are receiving notice at a single time, both Maryland and the District of Columbia require that notice be sent to all nationwide consumer reporting agencies regarding the timing, distribution and content of the notices.

Finally, prepare a data breach response plan that attempts to mitigate potential harm to the affected population and complies with applicable data breach requirement statutes and regulations. Since the Supreme Court's decision in *Spokeo v. Robins* attempted (but failed) to clarify the legal standard for what constitutes sufficient harm to a person affected in a data breach for legal standing purposes, a Circuit split has emerged. Because it remains unclear what level of risk for future harm or actual harm is required (short of actual identity theft), efforts to minimize the risk of identity theft and other subsequent harm, as well as providing free preventative services to affected people, are valuable tools that may provide a defense against subsequent litigation stemming from the data breach. Many organizations elect to provide an affected population with identity theft prevention services that monitor their credit and also aid them in any credit repair efforts they may need should they fall victim to identity theft. State attorneys general also look at whether an organization is providing such services to affected persons and for how long when reviewing data breach response notifications.

Veronica Jackson is a lawyer in the Labor, Employment, Benefits & Immigration Practice Group of Miles & Stockbridge. She is a Certified Information Privacy Professional by the International Association of Privacy Professionals. In the area of data privacy and security, Veronica counsels clients through incident response efforts, privacy law compliance, privacy policies and training.

Disclaimer: This is for general information and is not intended to be and should not be taken as legal advice for any particular matter. It is not intended to and does not create any attorney-client relationship. The opinions expressed and any legal positions asserted in the article are those of the author and do not necessarily reflect the opinions or positions of Miles & Stockbridge, its other lawyers or ACC Baltimore.

15 Steps to Successful Entity Management

By CSC Entity Management℠

Overview

Careful management of legal entity portfolios is essential to successfully identify, execute, and monitor necessary governance and compliance activities, ranging from staying on top of filing dates and statutory updates, to reacting to changes in jurisdictional rules.

Inconsistent or incomplete entity management can increase the risk of loss of good standing and the costly reinstatement fees that go along with it. Poor entity management can also threaten the success of transactions like mergers and acquisitions.

In this white paper, we'll provide an overview of the steps required to properly manage a legal entity portfolio. Topics include entity formation, entity record keeping, qualification, business licenses, Uniform Commercial Code (UCC) considerations, and entity dissolution.

1. Define the business objectives

Before tackling the task of entity management, it is important to clearly define the business objectives. This will help determine your next steps.

For example, are you forming a new entity? Are you trying to determine whether to qualify to do business in another state? Are you preparing for a merger or an acquisition?

Clearly defining plans will help to drive next steps, such as choosing an entity type, determining the need for qualification, or outlining the compliance tasks needed to prepare for a merger or acquisition.

2. Choose an entity type and jurisdiction

If you are forming a new entity, use the business objectives to determine the entity type—corporation, limited liability company, partnership, etc.—that best suits your needs. Ask these questions to help determine the appropriate entity type:

- Who will own the business?
- Who will make management decisions?
- Will the owner assume personal liability for any debt incurred by the business?
- Are there any restrictions or characteristics of a particular entity type that could impact the business activity? (For example, certain entity types may give rise to double taxation.)

Once you have selected the entity type that is best suited for your business activity, select the jurisdiction(s) where the entity will do business. When choosing a jurisdiction, keep in mind such factors as where the company is located, where its customers are located, and whether it may be best served by a particular jurisdiction because of tax law or corporate governance regulations.

It's important to understand the tax implications of your choice of entity and jurisdiction. Your accounting or tax department can help identify tax obligations and advantages.

The shareholders will need to approve the entity formation. It may also be necessary to escrow funds if you are using the entity for transactional purposes.

3. Select a registered agent

You will need to name a registered agent or designate a registered office address for your entity. A registered agent is a business or individual that you appoint to receive service of process (SOP) and other state correspondence on behalf of the company. Most states require entities to name a registered agent upon formation, and require you to provide the name and address of the agent on the articles of incorporation/formation.

If your business is likely to require significant online marketing or supply chain management, you may also want to choose an accredited domain name registrar to officially register your website URL. Look for a registrar that is accredited by the Internet Corporation for Assigned Names and Numbers (ICANN).

4. Check for name availability

Conduct a corporate name availability search in the business name registry in the jurisdiction you have chosen to confirm that your company name is available.

If a company name is already registered in your jurisdiction, or if the state believes that the name could be confused with a name that is already registered, your entity filing will be rejected and you will need to select a new name and resubmit the filing.

It is also a good idea to check the availability of domain names and trademarks related to your business objectives. UCC and real property searches can help determine domain name availability. Your registered agent service provider can assist with these searches.

5. Reserve a corporate name

Consider filing a name reservation to protect your desired name for up to 365 days. Although not a requirement for formation, this step could save you time and trouble later.

If you find that your name is not available, you may be able to get consent from your state to use a similar name, or you may need to choose a fictitious name.

Be aware of naming restrictions in your jurisdiction(s). Most states restrict the use of specific words such as bank, finance, trust, cooperative, credit union, insurance, or savings, and instead require a "corporate indicator" in the name, like Inc. or LLC.

Once you have filed formation documents, consider protecting your company name in foreign state jurisdictions by checking name availability and reserving your name in those jurisdictions too.

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6. Obtain supporting documents

Find out which supporting documents your jurisdiction requires for formation/qualification. For example, you may need to obtain such documents as a certificate of good standing or its equivalent, certified copies, a tax status certificate, a "bring-down" letter, a legalized authenticated document, and an apostille.

If your company decides to do business outside of its state of formation, you will be required to present a certificate of good standing from your home state as evidence of your company's status in order to qualify to do business in foreign states.

During closings, you may need to provide lenders with good standing certificates.

7. File formation/qualification documents

Once you have confirmed name availability and gathered the necessary documents, you are ready to prepare and file articles of incorporation/formation, or qualification documents. Be sure to follow your jurisdiction's guidelines carefully so that your filing is received and approved timely.

You will also need to prepare and file industry-specific licenses and supporting documentation with the necessary governing authorities at the federal, state, county, and municipal levels. There are more than 160,000 jurisdictions in the United States that issue licenses, and each has its own rules and regulations, making it complicated and time consuming to determine which licenses you need to operate your business. Your service provider can help identify and expedite the licenses and permits needed.

Plan to register relevant domain names and trademarks and file a UCC financing statement at the time you form your entity.

NOTE: It is critical to develop and document a process for preparing, completing, and tracking your company's filings and renewals, including the responsible parties and required resources.

8. Register for an EIN number

You will need to obtain a federal Employer Identification Number (EIN), also known as a Federal Tax Identification Number, from the Internal Revenue Service.

Your jurisdiction may also require a state tax ID number for reporting state sales taxes and other purposes. Check with the state's corporate division to learn whether you need additional state or local tax ID numbers.

9. Organize foundational documents

It is essential to create and organize all foundational documents for each entity formed, and to perform other corporate governance activities to make sure that the entity remains in good standing. Tasks include:

- Draft the entity bylaws/operating agreement
- Create stock/membership certificates
- Draft resolutions for corporate actions, banking resolutions, delegation of authority, intercompany agreements
- Name officers and directors
- Appoint independent directors

Use standardized formats for all materials. This will simplify your ongoing management responsibilities.

10. Maintain corporate governance data

Conduct periodic or annual shareholder and board meetings as required by your jurisdiction and your entity's governing documents. Establish a system to record, distribute, and archive corporate activities and documents such as minutes, consents, capital contributions, and dividends.

Meeting compliance and comprehensive recording keeping demonstrate that proper entity procedures have been followed, which is critical to keeping your company in good standing and the corporate veil intact.

Entity record keeping has become increasingly complex and laborious as the rules and regulations impacting corporate governance have increased and become more complex. An entity management solution can be invaluable in helping you manage and maintain your corporate governance data.

11. Monitor your corporate entity portfolio

Establish procedures to monitor your corporate entity portfolio for status changes, including tracking your domain renewal deadlines.

You should also carefully monitor your UCC portfolio for changes in financing statement status, debtor financing, debtor corporate status, and debtor bankruptcy, as changes may require additional action to protect assets or ensure that financing contracts remain in good standing.

12. Complete annual filings

Be sure to complete all annual filings correctly and timely, and pay annual report fees, renewal fees, and franchise taxes on time. Annual filings may include:

- Annual reports
- Corporate annual tax returns
- Licensing renewals
- UCC financing statement continuations
- Domain name renewals

Many companies outsource this highly administrative renewal process, allowing their employees to focus on more substantive work.

13. Update corporate documents

Changes to your entity's structure must be approved by the board. Decisions should be recorded using resolutions or written consent, and the appropriate filings, such as corporate amendments or amended certificates of authority, should be filed in the entity's jurisdiction.

Likewise, be sure to register additional domains or trademarks as they are developed for use by the company, and update UCC financing statements in the case of continuations, rights assignment, termination, releases, or to add a party to a statement.

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14. Dissolve an entity or withdraw from a jurisdiction

If you decide to dissolve an entity or withdraw an entity from a jurisdiction, you must follow the formal legal steps required to "wind up" the entity. Winding up typically involves these steps:

- File tax returns
- Obtain a tax clearance
- File voluntary dissolution or withdrawal documents
- Retire domain names and trademarks
- Terminate UCC financing statements

Internationally, the process of dissolving or withdrawing an entity can be much more complex. Be sure to research the requirements for the dissolution process in the country(ies) where your entity operates or does business.

15. Manage entity documents and records

Each of the tasks outlined in this paper requires proper management and archival of documents and records in a centralized and secure location.

Designate and train the parties responsible for recordkeeping, and establish clear protocols for day-to-day management of all legal entities and legal eSecurity. A clear chain of command, as well as comprehensive and secure recordkeeping, are critical to maintaining your entity in good standing.

Conclusion

Proper entity management requires careful planning and continued diligence to ensure that entities remain in good standing from formation through dissolution.

Implementation of an entity management system is sound practice to maintain your entities' data and documents.

CSC Entity Management℠ is the industry's most capable entity management system for receiving, indexing, and safeguarding all of your corporate entity data. Every time you conduct a corporate transaction with CSC®—from annual report filings and business license renewals to service of process—your entity and jurisdictional data are automatically added to your online portfolio.

You'll get a clear view of your company-wide governance and compliance activities, as well as valuable insight into the health and status of all your entities.

Shawe Rosenthal Exclusive - More from the DLLR on Earned Sick and Safe Leave

By Fiona W. Ong and Lindsey A. White, Shawe Rosenthal LLP

Shawe Rosenthal has been closely monitoring the implementation of Maryland's Healthy Working Families Act, which requires employers to provide earned sick and safe leave (SSL). Maryland's Department of Labor, Licensing & Regulation has been issuing some guidance and FAQs on their website, which we have previously discussed in our February 2018 E-Update, but there are still many, many questions. Our firm developed a long list of such questions, to which the DLLR has responded and which we would like to share with you. Some particularly notable points from the DLLR's responses include the following:

- The law provides that an employer is not required to modify an "existing paid leave policy" that permits an employee to accrue and use leave under terms and conditions equivalent to the law. The DLLR states that if such an existing policy contains notice requirements that are more onerous than the law's provisions (e.g. 14 days' advance notice for scheduled SSL, rather than the statutory 7 days), those requirements violate the law because they may interfere with the employee's use of SSL. (Q&A No. 6c).
- The law contains an exemption for employees who work on an "as needed" basis in the health and human services industry, as long as (1) they can accept or reject the shift, (2) they are not guaranteed to be called on to work, and (3) they are not employed by a temporary staffing agency. According to the DLLR, employees who must work a certain number of shifts in a certain period of time (e.g. 1 shift a month) are "guaranteed" to be called into work and therefore do not meet the statutory exemption. (Q&A No. 8).
- Under the law, an employer can deny SSL if notice is not provided and the absence will cause a "disruption to the employer." According to the DLLR, a "disruption" is more than a minor inconvenience. (Q&A No. 16).
- In providing the required statement of available SSL with each paycheck, if an employer has clearly communicated in writing to employees that it will refer to SSL as "PTO," it could reference "PTO" rather than SSL. (Q&A No. 18). Note, however, that if only a portion of PTO is allocated towards SSL, this may not be acceptable.
- The DLLR suggests that if requested verification is not provided, the employer cannot deny SSL for that instance even though it could deny it

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for future requests for the same reason. (Q&A No. 22).

- The DLLR says that employers may require employees to use available SSL if they are absent for an SSL reason, even if the employee would prefer not to do so. (Q&A No. 23).
- The DLLR says that an employer may have a neutral policy that is uniformly enforced, such as a requirement that an employee work the day before a holiday in order to be paid for the holiday. (Q&A No. 24).

Also of note, a colleague at another organization asked the DLLR about the situation where an employee does not have enough SSL to cover a full day absence, and received the following response: "If the employee does not have sufficient SSL to cover the absence, the employer can use their attendance management procedures for the time not covered by SSL hours." In other words, the employer may count the unprotected portion of the absence as an occurrence under the attendance policy, for which discipline may be imposed.

We note that the DLLR is fully aware of the many questions that are still arising as employers continue to struggle with compliance. Regulations are forthcoming, but in the meantime, DLLR Secretary Kelly Schulz has been encouraging businesses to reach out to the DLLR with questions and with feedback on the FAQs, which the DLLR will take into consideration as it moves forward. Questions and comments may be directed to small.business@maryland.gov. (Despite the e-mail address, they are taking questions from all sizes of employers).

If you have any questions about this information or would like to speak with a Shawe Rosenthal attorney, please visit our website at www.shawe.com. You may also email shawe@shawe.com or call 410-752-1040. If you would like to subscribe to our e-communications, please contact Liam Preis at lp@shawe.com.

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