

Legal Update

January 2011

SIGNIFICANT CHANGES IN THE LAW

By Glenn A. Rice & Michelle L. Wolf-Boze

We wish our clients and friends continued health, happiness, and success in the New Year.

We also wish to congratulate founding FVLD member, Jon Vegosen, on his taking office, effective January 1, 2011, as Chairman of the Board and President of the United States Tennis Association (USTA) for a two-year term that will run through December 31, 2012. Jon has served on the USTA's Board of Directors for the past four years and for the past two years as the USTA's First Vice President. Jon will continue to practice law full-time while serving in his new leadership roles.

In keeping with FVLD tradition, in this *Legal Update* we discuss several significant new laws that may affect you and your business in 2011 and beyond.

Estate, Generation-Skipping Transfer and Gift Tax Changes in the 2010 Tax Relief Act

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Tax Act) signed by President Obama in the final weeks of 2010 made headlines because of its important changes to the estate, generation-skipping transfer, and gift tax laws. We will write more about the Tax Act in next month's *Legal Update*, but we highlight here some of its key changes.

Prior to the enactment of the Tax Act, estates for taxpayers who died in 2010 were not subject to any Federal estate tax, but they also could not benefit from old rules regarding the step up in tax basis. Also, during 2010, gifts were taxable subject to a lifetime gift tax exemption of \$1,000,000. The Tax Act, however, changed the estate tax landscape for 2010, 2011 and 2012 estates.

For 2011 and 2012 estates, the Tax Act sets a maximum estate tax rate of 35% and a \$5 million exclusion amount (which is indexed for inflation in 2012). It also revives the estate tax for 2010 estates, allowing an administrator of an estate to elect whether to be subject to the no-tax/limited step up regime or the \$5 million exclusion/unlimited step up regime. Administrators of 2010 estates must make the election within nine months of the date the Tax Act was enacted.

The Tax Act also sets a \$5 million exclusion amount for lifetime gifts and for generation-skipping gifts, and introduces the concept of "portability" into estate planning for 2011 and 2012. Portability allows a surviving spouse to take advantage of his or her deceased spouse's unused estate tax exclusion amount so that a couple with under \$10,000,000 in assets can avoid tax altogether even if one spouse owns most of the assets.

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Illinois Employee Credit Privacy Act

Effective January 1, 2011, Illinois joins a growing number of states that have passed laws to protect the privacy of credit histories of employees and job applicants. The Illinois Employee Credit Privacy Act (IECPA) generally prohibits employers from inquiring into or using an employee's or job applicant's credit history as a basis for employment decisions. Subject to certain limited exceptions, the IECPA bars employers from hiring, firing, determining compensation or other terms or conditions of employment, or otherwise discriminating against an individual, based on his or her credit history. The new law also prohibits retaliation or discrimination against any individual who files a complaint alleging a violation of the IECPA, or who participates in an investigation or proceeding concerning, or who opposes a violation of, the IECPA. The IECPA provides that a person who is injured by a violation of the law may sue for damages and injunctive relief and, if successful, will also be entitled to an award of costs and reasonable attorneys' fees.

The IECPA does not apply to financial institutions, debt collectors, insurance and surety companies, state law enforcement agencies, or state and local government agencies that require the use of credit histories. The IECPA also recognizes the following specific situations where a satisfactory credit history will be a bona fide occupational requirement, and an employer may therefore check an individual's credit history when making a hiring decision: (1) where state or federal law mandates bonding or security for the person who holds the position at issue; (2) the duties of the position involve custody of, or unsupervised access to, at least \$2,500 in cash or marketable securities; (3) the duties include signatory power over business assets of \$100 or more per transaction; (4) the job is a managerial position that involves setting the direction or control of the business; or (5) the position involves access to personal, financial or confidential information, trade secrets, or state or national security information.

Employers should review their employment policies and procedures to ensure compliance with the IECPA and consider providing training to managerial and supervisory employees regarding IECPA's requirements.

Illinois Family Military Leave Act

Effective January 1, 2011, the Illinois Family Military Leave Act has been amended to expand eligibility for unpaid leave benefits to employees who are grandparents or adult children of a person called to active duty for more than 30 days. The law previously limited eligibility for unpaid leave to spouses and parents of military personnel. Employers with over 50 employees must provide eligible employees up to 30 days of unpaid leave, while those with 15-50 employees must provide up to 15 days of unpaid leave. Employers with fewer than 15 employees are not covered by the law. An employee is not eligible for leave unless he or she has first exhausted all accrued vacation leave, personal leave, compensatory leave and any other leave that may be granted to the employee, with the exception of sick leave or disability leave. The available number of days of leave also will be reduced by the number of days an employee who is a spouse or parent takes time off as "qualifying exigency" leave under the federal Family Medical Leave Act due to the military service.

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Illinois Wage Payment and Collection Act

Beginning January, 1, 2011, amendments to the Illinois Wage Payment and Collection Act strengthen employee rights to enforce wage violation claims and impose more costly consequences upon employers that fail to timely pay earned wages. The law requires employers to pay employees compensation within specified time periods and to pay separated employees their final compensation (including wages, salaries, earned bonuses, and earned and unused vacation pay) on the day of separation if possible, or by the next regularly scheduled payday at the latest.

The amended law provides that employees may now bring a claim directly to court, bypassing the Illinois Department of Labor. Moreover, employees who prevail on wage claims will be awarded not only their unpaid wages, but also their legal fees and costs and 2% of the amount owed each month that the wages remain unpaid. The amended law also allows employees to file class action suits on behalf of similarly situated employees and further provides a cause of action for employees who are retaliated against for complaining about unpaid wages. Finally, the amended law provides for stiffer criminal penalties against an employer or agent of an employer who willfully refuses to pay wages that are due or falsely denies the amount or validity of a wage claim. In the face of these amendments, employers should be doubly careful to avoid wage payment disputes, especially when paying final compensation to departing employees.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Glenn Rice 312.701.6895 grice@fvldlaw.com, Michelle L. Wolf-Bozø 312.701.6819 mwolf-bozø@fvldlaw.com, or your regular FVLD contact.

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