

Announcements

Attorney Thomas Frenn is currently serving as Vice Chair of the Board of Directors for Kids Matter, Inc., a Wisconsin non-profit organization focused on helping abused and neglected children. Kids Matter, Inc. was recently awarded the Wisconsin Cares About Kids Award by Governor Scott Walker and the Wisconsin State Public Defender's Office. The award recognizes individuals and organizations throughout the state that are making a difference in their communities. In furtherance of their mission, Kids Matter, Inc. works with foster parents and grandparents who are taking over a parenting role, they facilitate connections between health care providers and child welfare professionals, and they work to obtain paid summer internships and job training for particularly vulnerable youth.

Attorney Lindsey King was busy in February lecturing medical residents about the importance of understanding their employment contracts and compensation packages, including specialized areas like non-competes. She was at St. Luke's February 12 and 26, lecturing to Aurora's Radiology and Family Practice residents, and was at the Medical College of Wisconsin on February 19, addressing MCW's Psychiatric residents. If you or someone you know is interested in discussing your current or prospective employment contracts, please contact Attorney King directly at Lking@petriestocking.com or 414-276-2850.

Attorney Dave McClurg spoke to the Wisconsin Paranet Advisory Group on February 18, 2014. His presentation covered issues including Milwaukee County's recently passed "Living Wage" ordinance, employers' ADA/FMLA ob-

ligations with respect to workers with mental impairments, and the risks of misclassifying independent contractors. Dave McClurg also addressed the Metro Milwaukee Society of Human Resource Managers' Employment Practices Committee on February 19, 2014 about trends in unionization and new federal regulations affecting union elections and management responses to unionization campaigns. And on March 20 and 21, 2014, Dave will be speaking at the Milwaukee and Madison meetings of the Wisconsin State Bar's Labor & Employment Section about the re-emergence of the NLRB's "Quickie Election" Rule and the Department of Labor's proposed "Persuader Rule" which would significantly expand the scope of reporting requirements for employers and their labor counsel when advice is provided in response to Union organizing campaigns and collective bargaining negotiations.

Attorney Tristan Pettit spoke on Wisconsin's new landlord-tenant law (Act 76) for the Apartment Association of Southeastern Wisconsin on February 17, 2014 and for the Milwaukee Chapter of the Institute of Real Estate Management on February 20, 2014. Tristan Pettit will also present an all-day seminar entitled "Landlord Boot Camp: The ABC's of Residential Landlord Tenant Law In Wisconsin" for the Apartment Association of Southeastern Wisconsin at the Clarion Hotel on March 8, 2014. And on May 1, 2014, Tristan will be speaking to West Allis landlords as part of the West Allis Landlord Training Program. Topics to be covered on May 1st include: "Screening Rental Applicants" and "What Rental Documents You Should be Using with Your Tenants."

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March 2014



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Executive Report

Greetings to our clients and friends! This summer our law firm will begin its 120th year during which time we have developed a reputation for providing quality, comprehensive legal services to our clients at a reasonable cost. We are very proud of this achievement.

Since our founding in 1895, Petrie & Stocking has emphasized planning for the prompt and efficient transfer of property during life and after death while minimizing taxes. A number of our current clients are the 4th and 5th generation of families the attorneys at Petrie & Stocking have served over the years. In the past few years, there has been an unprecedented increase in family wealth for many as well as an elimination of the Wisconsin estate tax and a substantial increase in the US unified gift and estate tax exemption amounts.

Right now may be the best time to use available transfer tax planning techniques to benefit you and your estate. Estate planning isn't just about avoiding taxes; it is also about giving family wealth to the right people in the right way. If you are interested in determining whether 2014 transfer tax planning techniques would benefit you, please contact us to schedule an appointment to review your overall estate plans.



James R. Petrie
Chairman of the Board

4 Reasons To Do Estate Planning Regardless of the Size of Your Estate

1. **Naming Beneficiaries.** If you do not have a will or properly designated beneficiaries on all of your assets, the laws of state of your residence will determine who receives your assets following your death.

2. **Appointing a Guardian for Minor Children.** Your will is the only place to legally designate your wishes as to who will be the personal and/or financial guardians of your minor children following your death.

3. **Appointing a Health Care Agent.** If you become incapacitated and you have not designated an agent –

in writing - to make medical decisions on your behalf, costly and time consuming court proceedings will be required to appoint a guardian of your person.

4. **Appointing a Financial Agent/Trustee.** As with your health care matters, if you become incapacitated and you have not legally designated a POA (or Trustee) to make financial decisions on your behalf, court proceedings will be required to appoint a guardian of your estate.

Laura J. Petrie

2013 Tax Tidbits

2013 Income Tax Filing Tips

1. **You Still Have Time to Contribute to Certain Retirement Accounts for 2013.** April 15, 2014 is the deadline for making 2013 contributions to a traditional IRA (deductible or not) and to a Roth IRA. And if you have a Keogh or SEP and you obtain a filing extension to October 15, 2014, you can wait until then to make your 2013 contributions into those accounts. However, in order to start tax-free compounding interest, you should make those contributions as soon as possible.

2. **File and pay on time.** If you find that you will not be able to finish your return by April 15, make sure that you file IRS Form 4868 by April 15, 2014. Timely filing of Form 4868 will give you a 6-month extension of time (until October 15, 2014) to file your personal income tax returns. Note: when filing Form 4968, you need to make a reasonable estimate of your income tax liability for 2013 and pay any balance due.

3. **File Electronically.** E-filing works especially well if you expect a tax refund. You can expect to

receive your federal refund 3-6 weeks earlier if you file electronically, and if you have your refund deposited directly into your bank account or IRA, the waiting time will be even less. There are other advantages to e-filing. Because the IRS checks your return to make sure that it is complete, e-filing increases your chances of filing an accurate return. In fact, less than 1% of electronic returns have errors, compared with 20% of paper returns. Also, the IRS acknowledges receipt of your e-filed return, which helps you protect yourself from the interest and penalties that accrue if your paper return gets lost. Finally, if you owe money, you can file electronically and then wait until April 15th to send in a check along with Form 1040-V (or pay via credit card or direct debit).

2013 Audit Rate - Good News!

The IRS audited 0.96 percent of individual tax returns in fiscal 2013, declining for the second straight year and reaching the lowest rate since 2005.

Forming an LLC in Wisconsin



A Limited Liability Company (a/k/a "LLC") is a mixture of a partnership and a corporation. It is "a company-that is statutorily created in certain states-that is characterized by limited liability, management by members or managers, and limitations on ownership transfer." Blacks Law Dictionary 117 (2nd Ed. 2001).

The Wisconsin Department of Financial Institutions (WDFI) website makes it fairly easy to form an LLC online - simply by filing Articles of Incorporation for the new LLC. However, several decisions need to be made prior to filing the LLC's Articles of Incorporation which should be discussed with an attorney who has corporate experience.

First, you need to choose a name for your LLC: one that has not already been chosen by another Wisconsin business organization, and one that contains the words "Limited Liability Company," "Limited Liability Co." or "LLC." Next, you need to select a registered agent and enter a registered office address for the LLC. The registered agent can be a person or a corporation, LLC, limited partnership, or limited liability partnership that is acting as the registered agent. Third, you must decide whether management of the LLC will be vested in a manager or in the LLC's members. We recommend that you consult with your attorney to determine which form of management

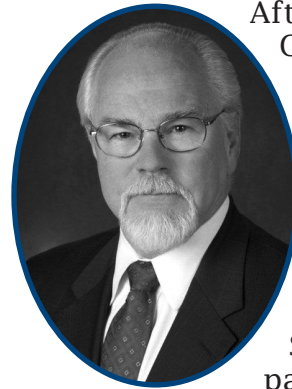
would be best for your LLC. Fourth, you need to indicate who is the LLC organizer, what is are physical and e-mail addresses for the LLC, and you must note who drafted the Articles of Organization document. Finally, once you electronically sign the document, review/proof the information one final time, pay the \$130 filing fee and press submit, you are done - your LLC has been organized in the state of Wisconsin!

Along with filing the LLC Articles of Organization, we recommend that you consider creating a corporate record book for your new LLC. The LLC corporate record book includes documents such as an LLC Operating Agreement, LLC Members' Agreement, Minutes for the LLC's Annual Meeting, and LLC Annual Reports. All Wisconsin Domestic and Foreign LLCs are required to file an Annual Report (along with a \$25 filing fee), with the WDFI which includes the name of the LLC, address of registered office, principal place of business, if management is vested in managers then the name and address of the managers, and a brief description of the nature of the LLC's business. By creating and maintaining a record book for your LLC, you can prevent future record-keeping headaches.

If you would like more information about forming LLCs, creating LLC corporate record books, or filing Wisconsin Annual Reports for your LLC, please give us a call.

James R. Shaw

President Obama Increases Executive Action On Labor & Employment Issues



After years of gridlock, President Obama declared in his recent State of the Union address that he will move forward on employment issues "with or without Congress." His first Executive Order tied to this declaration increased the minimum wage for workers under new federal contracts from \$7.25/hour to \$10.10/hour, in part to "help build momentum for a minimum wage hike for all Americans." This Order applies to new contracts and contract renewals where terms are changed. Following the President's lead, the Milwaukee County Board passed a "living wage" ordinance requiring the County and its contractors to pay workers at least \$11.33/hour. The 12-6 Board vote would be sufficient to override an anticipated veto by County Executive Abele. At the state level, Democrats have also proposed raising Wisconsin's minimum wage to \$10.10/hour, but Governor Walker opposes the bill, declaring: "I'm focused on helping people get jobs that pay far more than the minimum wage. You don't get that by forcing businesses to drive out young workers."

President Obama also declared "Wherever and whenever I can take steps without legislation to expand opportunity for more American families, that's what I'm going to do." Many saw this as a signal that the National Labor Relations Board (NLRB) would renew its efforts to advance labor friendly issues to counteract judicial invalidation of NLRB's rules requiring "Employee Rights" posters and "Quickie Elections;" and judicial reversal of NLRB's decision prohibiting arbitration agreements limiting class action claims. This

David A. McClurg

was confirmed on February 6th when the NLRB unveiled a Proposed Rule substantively identical to the "Quickie Election" Rule that was invalidated by a federal court last year because the NLRB did not have a proper quorum when the Rule was issued. The following provisions of the Proposed Rule have been sharply criticized by the business community:

- Quickie Elections - Union elections may be held as little as 10-15 days after a petition for election is filed with the NLRB (vs. 40+ days under the current rules), which would severely limit employers' opportunities to educate employees on the effects of unionization.

- Voter Lists - Within 2 days of receiving an election notice, employers must provide the union with contact information for all employees eligible to vote in the election. Failure to comply could result in setting aside an anti-union election result.

- Voter Eligibility - Hearings would be held within 7 days of receipt of the election notice to address voter eligibility and unit designation issues. Any objections not submitted in writing prior to hearing would be waived.

- Delayed Resolution of Challenges - If challenged voters constitute less than 20% of the proposed unit, resolution of the challenge would be delayed until after the election. This could encourage unions to improperly identify working supervisors as part of the unit to eliminate an employer's ability to use those supervisors to communicate the company's message to employees. Expect more action from the executive branch advancing issues important to labor unions. Mid-term elections are coming up.

Mistakes Creditors Make When Debtors File Bankruptcy



It is the dreaded Bankruptcy Notice! Someone who owes you money has filed a bankruptcy. What should (or shouldn't) you do now?

Don'ts

DO NOT, under any circumstances, call the debtor to "discuss" their debt. The Automatic Stay has gone into effect and any contact with the debtor regarding the money owed you is a violation of that Stay. "But," you say, "the debtor is my best friend." It doesn't matter. "The debtor is an employee!" "The debtor is my relative!" Still doesn't matter. You can contact the debtor about anything else, but NOT the debt owed you. Even if the debtor brings it up, you are in dangerous waters and should suggest that any discussions concerning the debt should be with the debtor's lawyer, in order to protect both of you.

Do's

DO call the debtor's lawyer. Ask what the debtor's intentions are with regard to your debt. The lawyer won't (can't) give you legal advice, but can tell you what the debtor intends to do. Do you have collateral? If so, they must return it to you, reaffirm your debt, redeem for the fair market value or provide for your payment in the plan (in a Chapter 13). Is there a co-signor? If so, depending on the Chapter, you may be able to seek payment from the co-signor immediately. Or perhaps you are the debtor's landlord and he or she is behind on the rent - the bankruptcy code

has special protections for you.

DO get a copy of the entire Petition for Bankruptcy. In order to file for bankruptcy protection, debtors must "lay bare" their financial lives. Perhaps when you lent the money the debtor had a classic car or a coin collection that you relied on. Is it on the Petition? If not, where did it go? Perhaps the debtor failed to disclose a part-time job that you have personal knowledge of. The Petition is a wealth of information for the creditor.

DO file a claim in a Chapter 13 case. I'm often surprised at the number of creditors who don't bother to file claims. Although the Chapter 13 Plan might indicate that unsecured creditors will only receive pennies on the dollar, any number of things can happen during a plan which result in those same creditors getting 20%, 50%, even 100% of the debt paid back, but ONLY if the creditor has filed a claim before the deadline.

Seek counsel!

The biggest mistake creditors make is not seeking the opinion of a qualified creditor's attorney. As a practical matter, if you are an unsecured creditor and your debtor files bankruptcy, your debt is most likely to be discharged. But there are circumstances under which it may be possible to object to discharge. For example, the entire bankruptcy filing may be faulty. Creditors have rights and opportunities, but only if they exercise them, and a good creditor's lawyer should be able to give you a quick review of your rights and options before the meter runs too high, or even begins to run at all.

Robert W. Stack

Are Strippers Employees or Independent Contractors?

Though you may never have considered this question before, nightclub "dancers" are not exempt from the Fair Labor Standards Act's wage and hour provisions if they are employees of the club where they "perform". For years, strip club owners around the country have classified strippers as independent contractors rather than employees, and for good reason. If a person performs labor for another and is legally considered to be an independent contractor, the recipient of the labor does not have to pay minimum wage, employment taxes or provide benefits that it provides to employees, nor

does it need to follow workplace discrimination laws. But as a series of recent cases illustrate, regardless of the type of work that is performed, the analysis of whether the relationship is one of employer/employee or independent contractor remains the same.

In several cases, nightclub owners have been found in violation of federal and state laws by improperly classifying strippers as independent contractors. In February, 2012, the Kansas Supreme Court ruled that dancers at the Club New Orleans in Topeka were employees rather than

independent performers contracted for talent. As such, the dancers were allowed to collect unemployment insurance. In November, 2012, strippers at the Spearmint Rhino chain in California secured a multimillion dollar settlement in a federal court class action which granted them employee status. And in the most recent case from September, 2013, Rick's Cabaret in midtown Manhattan was found liable to current and former strippers for failure to pay minimum wage. In each case, the dancers were determined to be employees of the nightclubs based primarily on the degree of control exer-

cised over their behaviors. In the Rick's Cabaret case, for example, the nightclub's guidelines required workers to dress in a particular manner. Rick's dancers were barred from chewing gum, wearing the same dress 2 days in a row or wearing any sort of body glitter. Moreover, Rick's dancers had to pay the nightclub a range of fees and share a portion of their tips with management, and failure to pay any of the fines or fees levied would result in the dancers being fired.

While the relationship between dancer and nightclub owner may not be of great concern to our readers, there is

an important lesson to be learned from these cases. All employers may be tempted to classify persons who do occasional work as independent contractors in order to avoid the legal obligations of being an employer. However, unless the relationship passes a strenuous multi-part test (that differs depending on which government agency is reviewing the relationship), it is likely that the relationship will be considered employer/employee, not independent contractor. If you have any questions about your current working relationships or are planning to begin a relation-

ship in which independent contractor status is a consideration, give your Petrie & Stocking labor & employment attorney a call.

Later this year, I will discuss another potential pitfall in the employer / employee relationship: when volunteers need to be paid.

Roger Pettit