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FMLA LEAVE AVAILABLE TO WORKING PARENTS TO ATTEND SCHOOL IEP MEETINGS

MARK WEIKER

Now that the school year has begun, working parents may find themselves in the familiar tug-of-war between being a good employee and a good parent. This is more challenging for parents of students with disabilities, as visits to school may be more frequent for a variety of reasons, including but not limited to communicating with teachers, supplying medication, addressing behaviors, and attending special education meetings. As for the latter, the good news is that parents can use federally protected workplace leave to attend a meeting to discuss the Individualized Education Program ("IEP") of a child.

FMLA Leave

In 2019, the U.S. Department of Labor, Wage and Hour Division ("the DOL") issued guidance on whether an employee may take leave under the Family and Medical Leave Act ("FMLA") to attend an IEP meeting. FMLA provides that an eligible employee may take up to 12 weeks of job-protected, unpaid leave per year "to care for the spouse, son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition."

IDEA for Special Education and Related Services

A separate federal law, the Individuals with Disabilities Education Act ("IDEA"), requires public schools to develop an IEP for a student who receives special education and related services, with input from the child, the child's parents, teachers, school administrators, and related services personnel. Under IDEA, "related services" may include audiology services, counseling services, medical services, physical and occupational therapy, psychological services, speech-language pathology services, and rehabilitative counseling, among others.

DOL Conclusion

Considering both statutes, the DOL instructed that attendance at IEP meetings does qualify as FMLA-covered leave, so long as the employee's son or daughter suffers from a "serious health condition" as defined in FMLA. "Serious health condition" is defined as "an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider." This definition covers many primary and secondary students with disabilities.

Intermittent Leave

Under FMLA, an employee may use the protected leave intermittently or on a reduced leave schedule when necessary because of their family member's serious health condition. This means that eligible employees may take leave as-needed, for portions of a workday, rather than for a full day or series of consecutive days. FMLA-covered employers should consider these federal protections as the school year begins.

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SUCCESSFUL SUCCESSION PLANNING ALLOWS TIME TO EXPLORE OPTIONS, CONSIDER TAX CONSEQUENCES

EVAN COCHRAN

Business founders and owners often don't start thinking about succession planning until it's too late. Death, illness or sudden plans to retire are the typical triggers of such thinking and questions like, "What can I do now?"

For sole proprietorships and closely held companies, that question should be asked years earlier. The key to succession planning is planning ahead.

By starting the succession planning process earlier, founders and owners can better choose the selling option best suited for them and their business, while also anticipating – and mitigating – potential tax consequences for themselves and their business heirs.

Already have a blueprint for succession and the future sale of your business? Great. But if not, here are some considerations.

First decide who will be the future owner of the business. You can sell it internally to other co-owners who are not ready to retire, or to a key employee or employees.

You could opt instead for generational ownership. Many successful companies have been handed down through generations. (Grandpa and Grandma started the business, sold it to their children, who now wish to pass it on to their children, and so on.) The issue here is making certain the next generation is ready and willing to take over immediately, or whether their ownership should be phased in over a period of years.

The third option is to sell the company to a third party, including individuals, larger companies and private equity groups. From a big picture perspective, selling to a third party usually results in more money to the seller.

But a successful succession plan isn't just about who will own your company in the future. It also ensures the plan is a success in terms of efficiency, economics and business continuation. That's why good succession planning rarely happens overnight; it requires substantial planning that is best started a couple of years prior to retirement or desired exit date.

One chief reason for starting early is that the owners of many closely held companies don't understand the potential tax consequences of their succession plan, as well as the potential for positive tax opportunities.

There is always a layer of tax involved in any business transaction. That is why it is critical for sellers and buyers to understand the relationship between estate planning and succession planning. For example, a properly executed generational ownership change can bring significant estate tax savings opportunities to business owners with large estates.

The current estate tax exemption is around $12 million per person, so it's unlikely to impact many family-owned businesses. But if, it drops significantly in 2026, as expected, more family-owned business owners will have some potential tax savings opportunities with the proper planning in place.

Business owners also need to be aware that there are potential tax consequences when selling, or giving, a company to an employee. It's not always as simple as giving them an outright ownership interest in the company, and the IRS may scrutinize whether to treat the transaction as income to the employee. You might view it as a gift, but there is legal precedent that concludes this is no different than giving an employee a check for X amount of dollars – which triggers income tax considerations.

For founders and owners worried about losing control of their company via succession planning, it's important to note that if done properly, there are mechanisms that can be put in place to ensure you have full control over the company's day-to-day operations and decision-making until you are ready to fully let go.

The bottom line is that the best succession plans are those that were actually planned, years in advance. Don't wait until you're ill, tired of working, or ready to retire to start planning. Without the time to adequately explore your options, you might end up with a succession nightmare.

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