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Legal Connections

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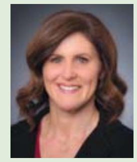
NOVEMBER 30, 2018

"The holiday season can be stressful. Minimize work stress by creating clear business policies and ensuring that your employees understand company expectations."



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THE SEASON OF GIVING: AWARDING HOLIDAY PAY TO EMPLOYEES

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The holidays are fast approaching, and many employers often ponder what to do about "holiday pay". What is it? When is it owed? For the most part, the answers are actually quite simple. Below addresses some of the most common questions and misconceptions about paying private sector employees located in Ohio at the holidays:

Neither the Fair Labor Standards Act, nor Ohio law, require a private employer to pay an employee who works any specific day of the week, holiday or otherwise, more than that employee's regular rate of pay. Assuming the employee is not exempt from overtime pay requirements, that regular rate is only multiplied by 1.5 for hours worked over 40 in a designated workweek, regardless of whether any of those work days are holidays.

Similarly, an Ohio employer is not required to close for business on a holiday. For example, many retail stores are now open for business on Thanksgiving Day. This practice is not only completely legal, but any employee that works on Thanksgiving Day is required by law to only receive their regular hourly rate (or regular salary) for working that day, unless they are working overtime as a non-exempt employee. In addition, any regular call-off and scheduling practices of the employer can be enforced. One potential issue for employers to consider are the requirements of federal and/or state anti-discrimination laws, which may require an employer to accommodate an employee's sincerely-held religious belief in the form of unpaid leave on a religious holiday.

An Ohio employer is also not required to pay its non-exempt employees for any time they are not working. If the employer closes for business in observance of a holiday, the employer is not required to pay its employees anything for that missed day of work, unless the employee is exempt from overtime requirements, and then the employee must receive their regular salary or risk losing their exempt status (at least for a time). If an employer chooses to pay its non-exempt workforce for a holiday on which the business is closed, the employer may condition that pay on attendance requirements for the day before and after the holiday to discourage call-offs.

Finally, if an Ohio employer provides its non-exempt employees with holiday pay, for a day on which no work is performed, the hourly equivalent does not count toward the employee's 40 hours per workweek for overtime purposes.

Essentially, "holiday pay" is an invention of employers over the years who wish to provide additional benefits to their employees. It is not a legal designation by the FLSA or Ohio law. Any policies and practices regarding holiday pay should be communicated to employees clearly in writing, to inform employees of the employer's expectations and avoid any confusion around this time of the year. As always, if your business employs someone in another state, always check that state's wage payment laws for compliance.

THE FAIR LABOR STANDARDS ACT

does not require payment for time not worked, such as vacations or holidays. These benefits are a matter of agreement between employer and employee.

Source: U.S. Department of Labor

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Join us for the 2018 Ohio Supreme Court Year in Review on Dec. 12, followed by a cocktail reception! Register now at cbalaw.org

HOW HEALTH CARE EXPENSES CAN BANKRUPT A SMALL COMPANY

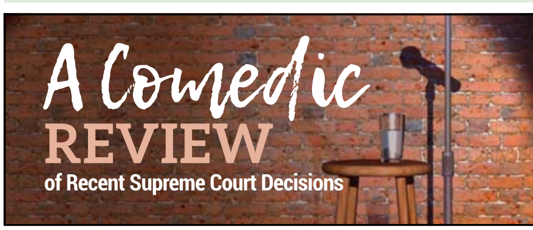
Many small companies are owned by one or two business owners who provide much of the labor and financial resources to create a successful business. If they are fortunate, they may have children, employees or friends who may wish to purchase the business. There are two scenarios which often surprise business owners. Most business owners are careful in maintaining health insurance for themselves and their spouses. They also maintain disability and life insurance.

- **What if the business owner requires long-term nursing home care?**
- **What if the owner's spouse requires nursing home care?**

Your health insurance or Medicare may cover up to 90 days of a long-term nursing home stay. Thereafter, standard health care insurance policies will not continue to pay for nursing home care. If you purchase long-term care insurance or a life insurance policy with a long-term care rider, you are protected to the greatest degree possible.

WILLIAM BROWNING
Isaac Wiles
Burkholder & Teetor LLC

If you have not purchased this type of insurance and a health care crisis occurs, your business is a "countable asset" for Medicaid purposes. Medicaid allows certain protections for the well spouse, allowing him or her to retain the car, the house and up to $124,000 of "countable assets". In Ohio, these assets include your family business. Succession planning in these circumstances is imperative. A carefully drafted Buy-Sell Agreement would also be helpful. Implementing such a plan becomes much more difficult if you have a stroke or your spouse has been diagnosed with early onset dementia. Without insurance, this planning is very complex and requires the best efforts of both a skilled business lawyer and elder law attorney.



December 13 8:50am-4:10pm @ the CBA

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Presented by Joel Oster, the "Comedian of Law," this class will entertain, inform, and take you through some unbelievable case studies based on real ethics and professionalism charges. Lunch included. 6.0 CLE hours (with 3.0 Prof. Conduct).

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