

BWM&S

BURKE, WARREN, MACKEY & SERRITELLA, P.C.

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CHICAGO RACES FOR A CLEANER RIVER



On August 8, more than 600 people paddled 7 miles in the 5th annual Chicago River Flat Water Classic. The event began on the north side of the city, continued through downtown and finished at Ping Tom Park in Chinatown. Corporate team first heat competitors included BWM&S, Ryan Companies, LaSalle Bank, Bank One, and Boeing. The team from Marsh USA won the event in a time of 1 hr 15 minutes. The race supported Friends of the Chicago River.

Above left, BWM&S team members include Christina Yeager (front) and from left Brett Smith, Jack Wambach, Pat Bruks, Doug Wambach, Danielle Szakala, Joe von Meier, Cy Griffith and Steve Meinertzhagen.

TAX LAW

NEW RULING CREATES UNEXPECTED TAX PROBLEMS

Mergers and Other Combinations of Partnerships or Limited Liability Companies Affected

A new IRS ruling can create stunning and unexpected tax problems for partnerships or limited liability companies that hold appreciated property and that engage in a merger or other combination with another partnership or limited liability company.

The Internal Revenue Code generally allows a partner in a partnership or a member in a limited liability company to contribute appreciated property into the partnership or limited liability company without triggering tax on the

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LABOR & EMPLOYMENT LAW

READY OR NOT...

New OT Regulations May Catch Some Illinois Employers By Surprise

New regulations interpreting the Fair Labor Standards Act took effect on August 23, 2004. With these first changes in many years in overtime eligibility, the law attempts to

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Serial LLCs, Firm Responds to Client Billing Needs, And More...

PATRICK ENGINEERING EARNS SILVER

Back in 1979, Patrick Engineering was comprised of founder and president Daniel Patrick Dietzler (pictured), one employee and a lot of ideas. When people believe in their ideas, good things can happen. Today, Lisle-based Patrick Engineering celebrates 25 years of doing business throughout Chicagoland, across North America and around the world. Patrick has evolved into a full-service engineering consulting firm with more than 230 professionals working from seven offices in four states. The company specializes in engineering, planning, consulting, construction management and building design; clients include major corporations, key government agencies and public utilities across a range of industries. BWM&S's Terry Jeffrey incorporated Patrick in 1979 and continues to provide legal counsel. **B**



Daniel Patrick Dietzler

YEAGER JOINS LITIGATION TEAM

BWM&S welcomes Christina M. Yeager as an associate in its litigation practice. Ms. Yeager has represented clients in various litigation matters, including general commercial, product liability, insurance coverage and employment defense. Before joining BWM&S, Christina



Christina M. Yeager

practiced in the litigation group of a national firm in its Chicago and Jacksonville, Florida offices.

Ms. Yeager received her undergraduate degree, with high honors, from the University of Florida, graduating in 1993 with a double major in Political

Science and Russian. She was awarded her J.D. degree, with honors, from the University of Florida, where she was an Articles Editor on the Journal of Law & Public Policy. She is admitted to practice in Illinois and Florida.

Commenting on joining the firm, Christina said, "It is an honor for me to join the outstanding group of attorneys at BWM&S. I am especially excited to be associated with a firm that delivers the highest quality of service to its clients in a wide range of practice areas while maintaining a real sense of collegiality." **B**

AT MILLENNIUM PARK



Lou and Judy Orenstein together with BWM&S's Ed Lesniak and wife Kate Mallon stand in front "Cloud Gate" at a recent BWM&S sponsored event.

PROTECTING COMPANY TRADE SECRETS

Protecting company trade secrets, especially customer lists, is a top priority when drafting non-competition agreements and other restrictive covenants.

To receive the protections afforded trade secrets under the law, customer information must be sufficiently “secret.” Lists must be valuable to both the owner and the competition because of its relative secrecy.

What qualifies as “secret?” Generally, the term applies to information that is time-consuming, costly, and difficult to accurately replicate. However, what an employer does to protect the secrecy of its information is the most important factor in determining whether the information is truly a trade secret.

Below are a number of steps an employer should take to maintain the confidentiality of its information. Taking these steps will increase the chance of the information being classified as a trade secret.

- Mark the documents and material “confidential”;
- Require employees, contractors, and suppliers to execute confidentiality and nondisclosure agreements;
- Restrict access to documents and other material by keeping it under lock and key;
- Create passwords, and otherwise restrict access, to confidential information kept on computer systems;
- Limit access to the confidential information only to those who “need to know”;
- Enact policies to trace and retrieve copies of documents containing sensitive information; and
- Require employees to return documents during exit interviews.

By instituting these measures, companies will be able to protect the client relationships that they work so hard to develop. For more information concerning reaping the protections afforded trade secrets, contact Martin LaPointe at 312/840-7012, Kristin Lemmon at 312/840-7078, or your BWM&S attorney. **B**



Martin LaPointe



Kristin Lemmon

READY OR NOT

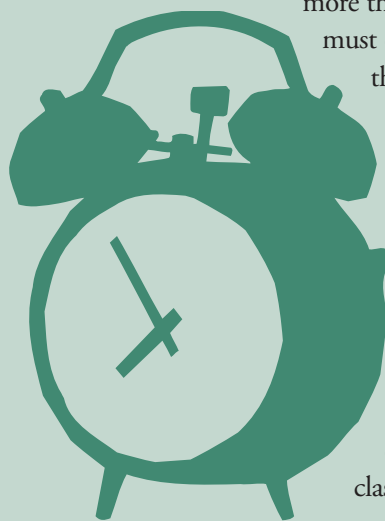
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clarify which white-collar workers are eligible for overtime pay, and which are exempt. The new regulations also set a minimum threshold: anyone earning less than \$23,660 annually automatically qualifies for overtime. This threshold replaces the previous minimum of \$8,060, which was last updated in 1975.

In issuing the new rules, the U.S. Department of Labor intended to simplify and update the regulations, better protect low-wage workers and reduce litigation. Whether the new regulations achieve those objectives remains to be seen, particularly in states like Illinois. Employers in Illinois and several other states face far more complicated compliance issues under the new regulations. Under the FLSA and its regulations, when state employment statutes are more favorable to workers, the state laws trump their federal counterparts. Illinois recently enacted a law that adopts the new federal overtime minimum threshold, but continues to use the old “duties tests” which were contained in the replaced federal regulations. In doing so, Illinois has chosen to pick from both the old and new regulations in a manner designed to weigh most favorably for the employee.

NEXT STEPS FOR ILLINOIS EMPLOYERS

Given the newly intertwined state and federal mandates, now more than ever before, employers must carefully analyze each of



their positions of employment to properly determine overtime eligibility. Written job descriptions do not provide conclusive proof of actual job duties, and classifying employees as “salaried” does not necessarily get employers off the hook. Incorrect classifications may result in expensive wage claims and

monetary penalties for employers.

If you have questions about the new federal and state overtime laws and how they may apply to your company’s workforce, please contact Martin LaPointe at 312/840-7012 or mlapointe@burkelaw.com. **B**

BULLETIN

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The Bulletin is written by the firm of Burke, Warren, MacKay & Serritella, P.C. to keep clients and friends current on developments in the law and the firm that might affect their business or personal lives. This publication is intended as a general discussion and should not be construed as legal advice or legal opinion on any specific facts or circumstances. It is meant as general information only. Consult an attorney with any specific questions. This is a promotional publication. ©2004 Editor: Cy H. Griffith, Director of Marketing; Legal Editor: Jay S. Dobrutzky, Esq.

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NEW RULING

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Terry Stein

amount of untaxed appreciation (the “Built-In Gain”) inherent in the value of the property at the time of the contribution. The contributing partner or member will be taxed on the Built-In Gain, however, if within 7 years after the contribution (the “7-Year Restricted Period”) either (i) the contributed property is distributed to another partner or member, or (ii) the

contributing partner or member receives a distribution of other property having a fair market value in excess of the contributing partner’s or member’s tax basis in his partnership or membership interest (if the amount of such excess is less than the amount of the Built-In Gain, only the lesser amount is taxed).

When a partnership or limited liability company merges into another partnership or limited liability company, for federal income tax purposes the terminating entity generally is treated as having (i) contributed all of its assets and liabilities to the continuing entity in exchange for an interest in the continuing entity and (ii) immediately thereafter distributed interests in the continuing entity to the partners or members of the terminating entity in liquidation of the terminating entity. Current Treasury Regulations had been widely interpreted as meaning that a merger of a partnership or limited liability company into another partnership or limited liability company does not re-start the 7-Year Restricted Period with respect to contributed property or increase the amount of Built-In Gain with respect to contributed property that will be taxed in the event a triggering distribution occurs. A new IRS ruling, however,

states that if the terminating entity holds appreciated contributed property and if the amount of Built-In Gain in that contributed property at the time of the merger exceeds the amount of Built-In Gain in the contributed property when that property was originally contributed to the terminating entity, then the original 7-Year Restricted Period continues to apply with respect to the original amount of Built-In Gain, and a new 7-Year Restricted Period will be imposed with respect to the excess Built-In Gain in the contributed property at the time of the merger, *and* if tax on this excess Built-In Gain is triggered by a distribution of the Contributed Property the tax will be imposed on the former partners or members of the terminating entity.

Under this new IRS ruling, some distributions that were previously viewed as tax-free will now be taxable. In some cases, a distribution subsequent to a merger will now be taxable even though the distribution would have been tax-free if carried out immediately prior to the merger. In other cases, a partner or member may be taxed on Built-In Gain even if that partner or member has not contributed any property for more than 7 years. Indeed, in some cases, a partner or member may be taxed on Built-In Gain even if that partner or member has never made any contribution of appreciated property.

If view of this new IRS ruling, any partnership or limited liability company that holds appreciated property and that has engaged in, or that plans to engage in, a merger or other combination with another partnership or limited liability company, should consult with a tax advisor before making any post-merger or post-combination distributions of property. For more information, please contact Terry Stein at 312/840-7055 or tstein@burkelaw.com. **B**