

MAY 2013 NEWSLETTER

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**HOW AN EMPLOYER CAN PROTECT ITSELF
FROM AN EMPLOYEE'S FALSE
ACCUSATIONS IN SOCIAL MEDIA**

NEWS ALERT:

A. Free Online CLE/CPE LawLine Seminars

Pozzuolo Rodden, P.C. is pleased to announce the opportunity to attend an upcoming CLE/CEP seminar for free, either in person or via webcast, the first of which is:

“The Negotiation and Documentation of Commercial Financing Documents Including the Use of Convertible Loans with Put and Call Options”

Wednesday, May 15, 2013

New York, NY

Also available via Live Webcast

Presenter: Joseph R. Pozzuolo, *Esquire*
Pozzuolo Rodden, P.C., Philadelphia, PA

CEU
info: CE 2

Further Ed/LawLine.com
61 Broadway, Suite 1105
New York, NY 10006

5:00p- 5:30p- Registration

5:30p-7:30p- Course Instruction

Register at: www.pozzuolo.com Click **Seminars** and follow the link.

B. Joseph R. Pozzuolo, Esquire and **Jeffrey S. Pozzuolo, Esquire** will be presenting a CPE/CLE seminar for Penn State University, Doylestown Campus, entitled **“The Basics Of Estate Tax Planning After The American Taxpayer Relief Act of 2012”**. The seminar will take place on June 20, 2013 from 1-5pm. Please contact Theresa M. Bloom at: tmb17@psu.edu for reservations.

HOW AN EMPLOYER CAN PROTECT ITSELF
FROM AN EMPLOYEE’S FALSE ACCUSATIONS
IN THE SOCIAL MEDIA

Social media has become a constant presence in people’s everyday life with websites such as Twitter, Facebook, Google+, LinkedIn and various industry related online public forums becoming commonplace. Social media allows individuals to broadcast their every thought, from the mundane to the important, to thousands of others. This can lead to conflicts in employment when employees begin to publicize and vent their complaints about their employer or coworkers over various social media websites.

This could even lead to an employee making false accusations, including, but not limited to, false accusations of discrimination relating to product quality or the non-reporting of income.

Damaging accusations could easily be spread throughout the employer's community and quickly impugn the reputation of the employer and its products. False accusations made by an employee can arise from any type of situation, such as retaliation for not being promoted, mental instability, thoughtlessness, or possibly a distorted view of the situation. What, if anything, can the employer do to stop or minimize the damage from such employee's false accusations?

I. Prevention: Stop False Accusations Before They Start

Prevention is the best strategy for employers to minimize any possible false accusations by employees. The best way to do this is through having a code of conduct or an internet/social media policy, which all employees should sign and acknowledge as a condition of employment. These policies should give clear examples delineating the line between appropriate and inappropriate social media usage.

A social media policy should clearly state that actions on employer provided equipment (e.g. cell phones, laptops, or internet access) may be monitored or there may be an absolute prohibition of non-work related uses of such equipment. Additionally, the policy should state the investigative and disciplinary procedure for any employees found to be making false accusations, including possible termination and/or a defamation lawsuit with damages. Employees will have a clear guide of how violations of the employer's social media policy will be consistently handled by the employer.

However, employers must ensure that the policy complies with federal, state, and local law. The National Labor Relations Board ("NLRB") requires that such policies be narrowly tailored and do not generally ban an employee's ability to discuss the terms and conditions of their employment. Overly broad policies are prohibited, but a policy may contain language that the employee should be honest and accurate in their postings, quickly correct any mistakes and avoid posting rumors or knowingly false information. Furthermore, certain states, such as California and New York, have off duty protection laws that prohibit the firing of a worker for certain off duty activities. Thus, policies should be reviewed by an attorney to ensure the policy adequately protects an employer and does not violate any state and local laws or NLRB requirements.

Another preventative measure is to create an open channel to allow employees to communicate their frustrations internally to their employer without having to turn to a public forum, such as facebook, to vent. This allows an employer to identify employee complaints and remedy and improve the workforce without subjecting the employer to negative publicity and attention that occurs when frustrated employees use social media to voice their frustrations. While this may not remedy all employee complaints, it will provide both employers and their employees an avenue to work together and resolve any issues.

II. Damage Control: How To Minimize Damage From False Accusations

Even though the best way to minimize the risk is through prevention, if the false accusation has already been made, there are actions an employer can take to respond to such false accusations. An employer can take four general measures: (1) terminate the employee; (2) bring a defamation suit against the employee; (3) ignore the posts or accusations; and/or, (4) attempt to mediate or settle with the employee. Each approach can have various benefits and consequences and an employer's approach should be carefully tailored to best fit the situation.

An employer's first inclination may be to simply terminate the employee. However, depending on the situation, such actions could be construed as an unlawful retaliation and subject the employer to liability and litigation. The employee may be a part of a protected class due to his/her age, color, race, sex, national origin, religion, or medical condition. Additionally, many states protect employees from terminations due to certain "off duty" conduct and the NLRB will punish employers for limiting employees' "concerted actions" of discussing working conditions and wages. It is important to ensure terminating the employee will not subject the employer to liability.

The second option is to bring a suit for defamation against the employee to stop the employee from making further false accusations, require the employee to remove the false accusations already posted, and require the employee to pay monetary damages. However, employers should be cautioned that the time and cost involved in bringing a defamation suit may not justify the suit and the employer may not be able to meet it high burden to prevail on a defamation suit. Further, even if there are substantial monetary damages, the employee may not have the resources to pay any awards.

The third option is to simply ignore the accusations. The exposure of the accusations and the credibility of the accuser may be low enough that reacting to it will draw attention to the matter which was largely being ignored beforehand.

Lastly, an employer may try to mediate the situation and communicate with the employee. If the employee is simply upset about how a manager acted and a simple apology or explanation will cause a retraction of attacking posts, this may be the simplest option. However, the mediation may backfire, if the relationship with the employee has soured past the point of repair. Employers should be cautious not to admit any type of liability or fault during these mediations which could later subject them to liability.

Please contact the offices of Pozzuolo Rodden, P.C. if you wish to take preventative measures to protect against false accusations by employees or if you wish to take action due to any false accusations made against you.

- **QUESTION OF THE MONTH:**

- ARE THERE TAX BENEFITS TO MAKE A CHARITABLE DONATION DIRECTLY FROM MY IRA IN 2013?

The answer is yes. A smart and convenient way to make a large charitable donation, satisfy required IRA minimum distributions, rules, and receive income and estate tax benefits is to rollover funds from your IRA directly to a charity. This type of charitable donation has existed for some time and its permitted use was recently extended by the enactment of the American Taxpayer Relief Act of 2012. Thus, in 2013, individuals may make tax-free rollover contributions from their IRAs to a charity.

Of course, certain qualifications apply to these qualified charitable distributions (QCDs), including the following:

- You must be 70 ½ years of age to make the donation;
- The donation is limited to a maximum of \$100,000 in 2013;
- The transfer must be an outright cash transfer from your IRA directly to the charity (i.e. no annuities or trusts allowed); and
- The charity must be an IRS approved tax-exempt organization (donations to donor advised funds or supporting organizations do not qualify).

The tax benefits of making this kind of charitable donation include the following:

- You will not have to include the QCD in your gross income, which means you do not have to pay federal income tax on the amount of the QCD;
- The QCD will count as a required minimum distribution; and
- You reduce the size of your estate (for death tax purposes) by the amount of your donation and avoid a potential 40% federal estate tax on that amount. In other words, there is the potential of a double tax savings- income and estate taxes.

Who benefits most from this charitable giving technique? Individuals who do not otherwise take itemized deductions, or are subject to limitations on their itemized deductions, would be wise to donate to charity using a QCD. Although they cannot take a deduction for the amount of the QCD, that amount is not reported as gross income anyway. Taking a QCD is also good for those charitable individuals who must take a required minimum distribution from their IRAs but do not need the money. They can rollover that money to a charity. Finally, you may make the QCD from the taxable funds of your IRA, thereby preserving any nondeductible contributions you previously made to your IRA for later tax-free withdrawal.

Review your charitable goals and your financial situation with your financial, tax and legal advisors. Using your IRA to make a charitable donation may be an effective way to accomplish your charitable endeavors.

If there are any legal questions you would like this office to answer in the future, please email the question to us at info@pozzuolo.com. Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax and pension law, family law litigation.

UPCOMING CLE AND CPE SEMINARS FOR ATTORNEYS, AND CPA's - PLEASE JOIN US

A. Pozzuolo Rodden, P.C. is pleased to announce the opportunity to attend an upcoming CLE/CEP seminar for free either in person or via webcast the first of which is:

(1) "The Negotiation and Documentation of Commercial Financing Documents Including the Use of Convertible Loans with Put and Call Options" on Wednesday, May 15, 2013 in New York, NY from 5:30p-7:30p. Also available via Live Webcast.

(2) "How Middle Income Families Should Plan For Retirement" on Wednesday, June 12, 2013 in New York, NY from 5:30p-7:30p. Also available via Live Webcast.

(3) "Fundamentals of Starting a Business" on Wednesday, July 10, 2013 in New York, NY from 5:30p-7:30p. Also available via Live Webcast.

*To register free of charge please visit www.pozzuolo.com under Seminars and follow the link.

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PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: [http://pozzuolo.com/Pubs Articles.shtml](http://pozzuolo.com/Pubs%20Articles.shtml)

- **Corporate/Tax Articles**

- Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business
- Deferred Compensation Rewards And Retains Key Employees
- Design Buy-Sell Agreements For Maximum Utility
- How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend
- How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations
- How To Look, Act And Sound Like A Professional Corporation
- How to Structure a Suitable Buy-Sell Agreement
- How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool
- Money Purchase Pension Plan Falls Out Of Favor
- Protecting A Client's Business From Unfair Competition Using Restrictive Covenants
- Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules
- What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs
- Why An Employment Contract Is Mandatory

- **Estate Planning Articles**

- Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples
- College Funding Tool Offers Estate Planning Advantage
- Diversify Strategies For An Effective Estate Plan

- Divorce and Estate Planning
- Divorce Raises The Need For Performing An Estate Planning Review
- Drafting The Durable Power Of Attorney For Wealth Protection Purposes
- Estate Planning For Pet Owners
- Remarriage Situations Can Raise Special Estate Planning Considerations
- Six Proven Estate Planning Techniques
- Special Needs Trust - An Estate Planning Tool For The Disabled
- The Limited Liability Company -A Sophisticated Tool For Estate Planning
- Using Trusts To Maximize Family Protection And Minimize Estate Tax
- Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.