



BECE Summer Edition©

June 2008

Comply with Federal Law on Employee Eligibility Verification

If you hire any employees, you are required to complete and retain a special federal employment eligibility form called a Form I-9 for each individual (both citizen and non-citizen) hired for employment in the United States. The U.S. Citizenship & Immigration Service in 2007 released its revised Form I-9. Employers using outdated forms are subject to fines and penalties. The 2007 Form I-9 need only be used with new employees and current workers needing re-verification of citizenship.

It is important for employers to understand that the following documents are **no longer acceptable for purposes of employment verification**:

- Certificate of U.S. citizenship (Form N-560 or N-561)
- Certificate of naturalization (Form N-550 or N-570)
- Alien registration receipt card (Form I-151)
- Unexpired reentry permit (Form I-327)
- Unexpired refugee travel document (Form I-571)

Acceptable documents include:

- U.S. passport (expired or unexpired)
- Permanent resident card or alien registration card (Form I-551)
- Unexpired foreign passport with a temporary I-551 stamp
- Unexpired employment authorization document that contains a photograph (Form I-766, I-688A or I-688B)
- Unexpired foreign passport with an unexpired arrival-departure record (Form I-94) bearing the same name as the passport and containing an endorsement of the worker's nonimmigrant status for nonimmigrant aliens authorized to work for a specific employer.

The Form I-9 must be kept by the employer either for three years after the date of hire or for one year after employment is terminated, whichever is later. The form must be available for inspection by authorized U.S. Government officials (e.g., Department of Homeland Security, Department of Labor, Office of Special Counsel).

The most recent version of the Form I-9 can be downloaded on the Internet at:

<http://www.uscis.gov/files/form/i-9.pdf>

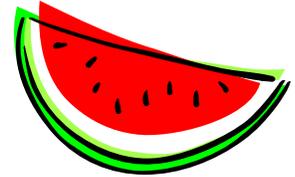
<http://www.uscis.gov/files/form/I-9Spanish.pdf>

Did you Know...

- It is fairly common knowledge that parents may nominate a guardian for their minor children. As of 5/14/2008, a parent may now nominate a guardian for an adult incompetent child. <http://www.lsc.state.oh.us/analyses127/h0160-rs-127.pdf>
- According to the IRS, economic stimulus payments ARE being issued to a decedent's estate if an income tax return was

filed by the deceased taxpayer before they died, by a surviving spouse, or representative for the decedent's estate.

- Effective July 18, 2008, there are new laws related to the creation and administration of agricultural security areas. <http://www.lsc.state.oh.us/analyses127/08-hb289-127.pdf>



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Recent Agricultural Law Developments:

- The Ohio Department of Agriculture has substantially modified the rules governing licensed agricultural commodity handlers that appear in Chapter 901:7 of the Ohio Administrative Code. Among the changes is new OAC 901:7-2-03, which now limits what can be contained on a scale ticket for state-licensed facilities. Additionally, scale tickets must now be initialed by the commodity tester. New OAC 901:7-2-09 requires licensed commodity handlers to use a new state-mandated delayed price agreement form for delayed price purchases. While these and other new rules became effective on February 19, 2008, a representative of the Ohio Department of Agriculture has indicated that the agency will not begin enforcing the new rules until after September 30, 2008.

- *Minster Farmers Coop. Exchange Co., Inc. v. Meyer* (March 26, 2008), 117 Ohio St.3d 459, 2008-Ohio-1259 – The Ohio Supreme Court ruled that notations on invoices and account statements setting interest rates different than the statutory rate [a variable rate, which is 8% per annum for 2008] are not en-

forceable. The Court found that such notations are not written contracts within the meaning of Ohio Rev. Code § 1343.03(A). The cooperative sought to enforce its invoice terms that provided for compound interest of 24% per annum. A number of Ohio courts had previously ruled that interest rate terms based on invoice notations were enforceable.

- *Meerland Dairy L.L.C. v. Ross Twp.* (2nd Dist. May, 9, 2008), 2008-Ohio-2243 – The appellate court invalidated a township zoning resolution that sought to redefine a large dairy farm as an “agribusiness” subject to township zoning authority. The court found that the statutory definition of agriculture contained in Ohio Rev. Code § 519.21(C) includes farming and dairy production without regard to the size of the operation. Thus, the Ohio statutory provisions prevailed over any definition created by the township.

- *Ohio Fresh Eggs L.L.C. v. Wise* (10th Dist. May 20, 2008), 2008-Ohio-2423 – The appellate court affirmed the decision of the Ohio

Environmental Review Appeals Commission (“ERAC”) vacating the Ohio Director of Agriculture’s order that revoked the permits to install and permits to operate of Ohio Fresh Eggs, L.L.C. The appellate court case centered largely on the standard of review used by ERAC when reviewing the Ohio Director of Agriculture’s decision to revoke the permits. The court found that ERAC is to use the so-called “reasonableness standard” and must “consider whether the factual foundation that underlies the Director’s action is ‘valid’ ... ERAC must engage in a limited weighing of the evidence.” The court concluded that ERAC did not err in finding it was unreasonable for the Director to ignore the testimony of the expert from Ohio Fresh Eggs in favor of the testimony of Dr. Neil Harl (Ohio Dept. of Agriculture’s expert).

Please contact David Barrett if you have questions about any of these recent developments.



Ohio LLCs Can Be Formed For Nonprofit Purpose

The flexible limited liability company (LLC) has become even more flexible with a recent enactment by the Ohio legislature. Ohio LLCs, as of June 20, may now be formed for a nonprofit purpose, thanks to some revisions in Ohio’s LLC and tax statutes.

This change expressly makes into law the desires and reality of practice. Nonprofit associations and charitable trusts are finding LLCs to be flexible tools to carry out their nonprofit purposes, just as for-profit entities have embraced the newest entity type on the block since it became available in Ohio in 1994.

To be exempt from Ohio taxes, the nonprofit LLC must be organized other than for the pecuniary gain or profit of its members, directors, officers or other private persons, and no part of its net earnings can be distributed to such persons during operations or at dissolution of the LLC. (Reasonable compensation for services rendered and payments made to further tax-exempt purposes are permitted.) These restrictions dovetail non-profit corporation provisions and IRS tax exemption provisions. The same IRS requirements apply as for nonprofit corporations and charitable trusts, along with some additional requirements for LLCs to ensure they

will comply with organizational and operational rules.

Exempt real and personal property cannot be struck from county tax-exempt lists simply because the property is transferred to a single-member non-profit LLC by a single nonprofit member or conveyed by a non-profit LLC to its non-profit member. Under the new Ohio law, single-member LLCs operated for a non-profit purpose are to be treated as part of the same legal entity as its sole, non-profit member. The non-profit member or its LLC may make filings or applications for exemptions or other tax purposes.

Ohio Trust Code Update

The Ohio Trust Code is now over one year old. If Trustees have not done so already, they should be providing an annual report to the beneficiaries. This duty extends only to the person who created the trust if the trust is still revocable; however, if the trust is irrevocable, the duty extends to current beneficiaries and others who request it. Some of these requirements can be waived if your trust is still revocable. The Ohio legislature has approved some amendments to the Ohio Trust Code, some of which are effective on June 20, 2008, and some which are expected to become effective in September 2008 under a new bill that is expected to be signed by the governor before you receive

this newsletter. Some of the people involved with getting the Ohio Trust Code enacted have put together an outline of administrative issues that might be helpful to trustees.

A copy of the outline is available on the "News & Resources" page of our firm website:

<http://www.ohiocounsel.com/news.html>

(continued from page 1) ... **DID YOU KNOW ???**

- The person creating a trust was required to sign a memorandum of trust for it to be valid. As of 1/17/2008, a memorandum of trust may be created by the trustee

<http://www.lsc.state.oh.us/analyses127/07-sb134-127.pdf>

Demolishers Beware!!

Before tearing down that old barn or shed, make certain you have satisfied the state and federal notification requirements regarding asbestos disposal. The Ohio EPA has adopted the National Emission Standard for Hazardous Air Pollutant (NESHAP) standard for Asbestos elimination. Any facility undergoing demolition requires a notification form to be provided to the Ohio EPA regardless of whether there is asbestos present in the structure. Renovation of a facility also requires notification if certain size guidelines are met. The Ohio Administrative Code does not contain an exemption for farm structures such as barns or sheds. The administrative code does contain an exemption for residential structures.

Ignorance of the asbestos removal requirements is not a defense. Violations can be costly!

notice must be submitted as early as possible before, but not later than, the following working day.

Before submitting any notice, a certified asbestos specialist must inspect the facility for asbestos materials. Ohio law prohibits any person not certified as an asbestos hazard evaluation specialist from inspecting and identifying asbestos for the purpose of determining the need for an asbestos abatement plan.

Some of the requirements of the notification form include the following:

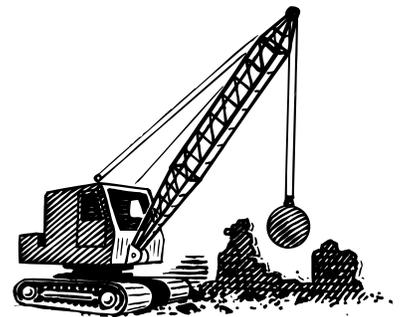
A complete facility description must be provided including the specific portion of the facility affected by the operations.

The notification form must be postmarked, delivered, or received by the Ohio EPA district office in the county where the operations will occur at least ten working days before operations are scheduled to commence. Phone notification of the demolition is not acceptable. An emergency demolition or renovation

- A declaration of whether any asbestos has been located in the facility
- The procedure to detect and analyze asbestos. All operation should have records of the inspection and accompanying analysis on-site during the demolition.

- The starting and ending date for the project.
- A description of the demolition or renovation that is scheduled to occur.
- Identify the waste disposal site and its actual location.
- Describe the procedures to be followed in the event unexpected asbestos is found.

An Ohio EPA representative indicated that many farmers violated the asbestos abatement provisions for the simple reason that they did not know they existed until it was too late. Unfortunately, ignorance of the NESHAP provision is not a defense when violations occur and penalties can be in the thousands of dollars.



Important Points Concerning Student Loans

Loans for college are becoming more difficult for prospective students to attain. The housing credit crunch has begun to spill over into the education lending area. Standards for loans are becoming more stringent, which could prevent students from borrowing at all. The costs associated with loans are also increasing. The following points are things to keep in mind when trying to negotiate the student loan minefield:

What seems like a simple good deed at the time could come back to haunt the co-signer.

- 1) Government subsidized student loan debt is usually not dischargeable in bankruptcy except for extreme hardship cases. Thus, do not anticipate an easy escape from student loan debt through bankruptcy.
- 2) Private lenders are shying away from the student lending area because they do not

enjoy the same bankruptcy protection and the number of defaults is increasing.

3) Congress has cut back on their federal subsidies to the tune of twenty billion dollars.

4) Private lenders are placing more reliance on credit scores than in the past. Thus a young applicant will experience more difficulty in attaining a loan on his/her own merits.

5) Non-student co-signors or guarantors need to beware because lenders often first seek to

recover funds from them when the student defaults. Thus, what seems like a simple good deed for a loved one at the time could come back to haunt the well-intended co-signer.



More ... DID YOU KNOW???

- ◆ Companies who collect sales tax have new rules requiring vendors to use origin-based sourcing for intrastate sales by January 1, 2010. <http://www.lsc.state.oh.us/analyses127/08-hb429-127.pdf>
- ◆ Effective June 20, 2008, there are new provisions related to intern architects and business entities that offer architectural services. <http://www.lsc.state.oh.us/analyses127/s0225-rh-127.pdf>
- ◆ If the benefits of a trust sound too good to be true, they probably are. The federal appellate court for the 6th Circuit, which hears cases out

of Ohio, in December 2007 affirmed a tax court decision imposing fraud related penalties on a couple who created sham trusts promoted by a company selling trust packages. The company promised a reduction of income tax by up to 70%. The court quoted Judge Learned Hand from a 1934 case where he stated, "Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes." However, taxpayers are not allowed to use illegitimate means of reducing tax liabilities.

- ◆ The Ohio Supreme Court and the Ohio Trust Code have provided support for "wholly discretionary trusts", which can provide some additional protections in Medicaid planning.

Ohio General Assembly Passes New Fence Law



Subject to Governor Strickland's approval, the Ohio General Assembly on June 10 enacted a comprehensive revision of Ohio's fence law applicable to livestock owners and their neighbors. Livestock owners, especially, need to become familiar with the new definitions, rights and responsibilities contained in the new law. For example:

- A "preferred partition fence" is defined as a partition fence that is woven wire fence, either standard or high-tensile, with one or two strands of barbed wire located not less than forty-eight inches from the ground or a non-electric high tensile fence of at least seven strands and that is constructed in accordance with

the United States natural resources conservation service conservation practice standard for fences, code 382. "Preferred partition fence" includes a barbed wire, electric, or live fence, provided that the owners of adjoining properties agree in writing, to allow such fences.

- As a general rule, all fields and enclosures in which livestock are kept or placed and that are bordered by a division line between adjoining properties of different owners shall be enclosed by a "preferred partition fence."
- A new "partition fence record" is to be maintained by county recorders that will permit landowners to file

affidavits with respect to matters addressed in the new law.

- The new law makes it a criminal offense to obstruct or interfere with anyone who is lawfully engaged in the construction or maintenance of a partition fence.
- Establishes new procedures for cost-sharing and enforcement of the fence law between adjoining property owners.

A copy of the new fence law can be found on our website at:

www.ohiocounsel.com

Professional Accolades:

- In April, David Barrett was elected vice president of the Ohio Agricultural Council.
- David Barrett was one of the select members of the Ohio legal community invited to be a member of the Ohio State Bar Foundation's 2008 Fellows Class. The Foundation's mission is promoting public understanding of the law and improvements in the justice system in Ohio. You can learn more about the Foundation on the Internet at:

<http://www.osbf.net>

Please visit our recently updated firm website!

<http://www.ohiocounsel.com>

Check back often for interesting news and links to more information between print editions!

Phone System updates:

Earlier in the spring, we experienced technical difficulties with our automated receptionist and voice mail system. We tried to make this outage as transparent as possible while the best office solution was being researched. We apologize for any inconvenience that this may have caused any of you. Your calls are very important to us!



Direct Attorney Telephone Numbers

We value your call, so please feel free to contact each of us on our direct lines at the following number or email address:

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If we are not available when you call, your call will roll over to either a receptionist or our voicemail.

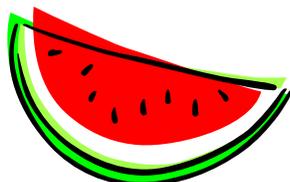
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*Is your Will and
Power of Attorney
up to date?*

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BECE

Our law firm provides a wide range of individual and business-related legal services, including a special emphasis on serving the needs of agricultural producers and agribusiness clients. Areas of emphasis include agricultural legal issues, business and estate planning, agricultural finance, commodities law, commercial transactions, environmental law, estate/probate administration, federal farm program issues, government regulation, land use planning and valuation, real estate, like-kind exchanges, income and estate tax law, litigation and dispute resolution.

We are located in Dublin, Ohio, a northwest suburb of Columbus.

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