

2011 Legislative Amendments to Angel Tax Credit Requirements

The 2011 legislature made three significant changes to operation of the Minnesota Small Business Investment Tax Credit (“The Angel Tax Credit”) authorized by Minn. Stat. 116J.8737.

Businesses which meet the definition of a qualified small business can now qualify for the credit if they have received no more than \$4 million in equity investment (up from \$2 million in the original law).

Individuals who are members of an investment fund that also has pass-through entities (e.g., LLCs, S corporations) as members are eligible for the credit. Under the original law, all investors in a fund had to be real persons.

The law’s original requirement of a qualified business paying 175 percent of the poverty level wage to its employees was amended with regard to payment of interns who must be paid 175 percent of the federal minimum wage.

U.S. District Court in Minnesota Addresses Name Calling in Hostile Work Environment Claim Under Americans With Disabilities Act

On June 7, 2011 the United States District Court for the District of Minnesota handed down its decision in *Schwarzkopf v. Brunswick Corp d/b/a Life Fitness* [Civ. No. 10-2774 (RHK/JJK)] a case involving claims by a mentally disabled employee of hostile work environment, disability discrimination, constructive discharge, failure to accommodate, and retaliation. The claims were based in great part on remarks made to the employee by his supervisors characterizing him as “dumb,” “dummy,” “stupid,” “platehead,” and expressing that he was “crazy,” “paranoid,” and might “go postal.”

The court granted summary judgment for the employer on all but the hostile work environment claim on which the employer had argued that Schwarzkopf had not presented evidence of “harassment sufficiently severe or pervasive to affect a term or condition of employment.”

Continued...

In this issue:

- ▶ 2011 Legislative Amendments to Angel Tax Credit Requirements
- ▶ U.S. District Court in Minnesota Addresses Name Calling in Hostile Work Environment Claim Under Americans With Disabilities Act
- ▶ New Top Level Domain Names May Aid “Branding” But Only at Very Significant Cost
- ▶ National Labor Relations Board (NLRB) Releases Report on Social Media Cases Within Last Year



The court noted that there is a “hazy line” between illegal harassment and merely unpleasant conduct and cited case law that the discrimination laws are not designed to the workplace of vulgarity or rude conduct. But, the court continued, while some of the comments might tend toward simple teasing (e.g., the use of “dumb,” or “dummy”) the use of terms relating to his mental condition (e.g., “go postal,” “mental case”) “...are more significant” especially when they were directed to him by his supervisors and in the presence of co-workers.

The court concluded that “While a jury might not be persuaded that Schwarzkopf was subjected to a hostile work environment, the court concludes that he has proffered sufficient evidence to at least have it decide that question.”

New Top Level Domain Names May Aid “Branding” But Only at Very Significant Cost

On June 20, 2011 the Internet Corporation for Assigned Names and Numbers (ICANN) announced its intention to increase the number of top level domain names (like .com; .org; .net) from the current twenty two names by allowing registration of nearly any term as a new top level domain name. In theory this would mean that there could be an almost infinite number of new domains. The intent is to enable companies to register their business name or a business brand as a top level domain name in order to enhance their online business presence and better enable potential customers to find them.

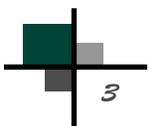
ICANN made clear, however, that applicants for new top level domain names are applying to operate a registry not merely to acquire a domain name. Companies applying will have to show that they have operation, technical and financial ability to operate a registry—either themselves or through a fee-for-service partnership with an existing registry. The fee to ICANN for the new top level domain name is a one time payment of \$185,000 per domain name plus \$6,250 per quarter.

National Labor Relations Board (NLRB) Releases Report on Social Media Cases Within Last Year

On August 18, 2011 the NLRB's Office of the general Counsel released Memorandum 11-74 detailing cases which had been submitted to its Division of Advice on issues associated with social media usage in the workplace. Most of the cases dealt with situations where employees were discharged for comments made on social media – especially Facebook – and whether the employees were engaged in protected or concerted conduct in those comments. The full memorandum is available at www.nlr.gov.

Importantly, a number of the cases dealt with the issue of employer social media use policies. The conclusion one draws from those cases is the need for very clear, thought-out, and detailed policies. For example, in one case an employer had a policy prohibiting employees from posting on social media anything that might violate the “..expectations as to privacy and confidentiality of any person or entity.”

The NLRB concluded that such a restriction was unlawful because it “offered no definition or guidance as to what the employer considered to be private or confidential.” In that same case, policies against postings that constituted “embarrassment, harassment, or defamation...of the (employer) or any employee, officer, board member, representative, or staff member” was deemed by the NLRB to be overbroad – and thus unlawful – since it would prevent expressions of “frustrations over a colleague’s conduct” and could lead employees to conclude that protected complaints about their working conditions were prohibited.



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Small Business Notes
are available on the
Department of
Employment and
Economic Development
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