

EGBL LEGAL REPORT

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Armed forces overseas have legal protections here

by DANA M. NAUMAN

The deployment of servicemen and women around the country brings renewed need for awareness of laws that protect them.

The Uniformed Services Employment and Reemployment Rights Act, for example, grants certain reemployment rights to persons who have been absent from their jobs because of "service in the uniformed services." As defined in the Act, this term includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, fitness examinations for any of these types of duty and funeral honors.

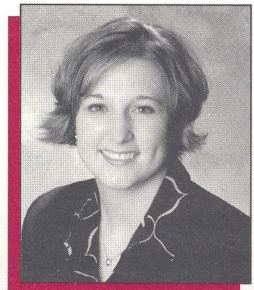
The Act, which applies to all employers, also prohibits employers from discriminating against servicemen and women in regard to initial employment, reemployment, retention, promotions or any other benefit of employment on the basis of their membership, service or obligation in a uniformed service. Servicemen and women are entitled to seniority and other rights and benefits that would have accrued had they remained continuously employed.

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Nauman joins EGBL

EGBL is pleased to announce that Dana M. Nauman has joined the Firm as an associate.

Dana is a 2003 graduate of the Drake University School of Law. Before attending Drake, Dana obtained her Bachelor of



Business degree from Western Illinois University in 1999. Dana, an Amboy native, was a member of Drake's Delta Theta Phi legal fraternity and received Dean's List honors several semesters.

Dana initially will concentrate her practice in civil litigation, family law, criminal law, and workers' compensation. We look forward to introducing Dana to our clients and friends.

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New Medicare bill may affect employers

by DOUGLAS E. LEE

While much of the attention surrounding the recently enacted Medicare Prescription Drug, Improvement, and Modernization Act of 2003 has focused on prescription drug coverage and an expanded role for private coverage under Medicare, the Act also contains provisions relevant to employers that offer retiree medical prescription drug coverage and health savings accounts.

Under the Act, employers offering retiree medical prescription drug coverage that is actuarially equivalent to the new Medicare Part D program can choose either a reimbursement of 28% of their qualified costs for such coverage between \$250 and \$5,000 or a wrap-around of the Medicare prescription drug coverage. This relief is estimated to save employers as much as \$1,330 per retiree participant annually.

The Act also will permit employers or individuals enrolled in high deductible plans to establish health savings accounts (HSAs) funded up to an annual maximum of the lower of (1) the health plan's annual deductible or (2) \$2,250 for those with individual coverage or \$4,500 for those with family coverage. Persons 55 and older can contribute

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A potpourri of what's new, what's old and what's changing

by GARY R. GEHLBACH

As we look to a new year, we naturally look at what's new, what's old and what's changing.

■ Standard mileage rate

The Internal Revenue Service has increased the optional standard mileage rate for use by employees, self-employed individuals and other taxpayers when computing the deductible cost of operating a passenger automobile for business purposes. For 2003 the rate is \$0.36. For 2004 the rate will be \$0.375. For the first time, beginning in 2004 taxpayers who use no more than four vehicles at the same time (is that safe?)



for business purposes may use the standard mileage rate. When computing deductible medical and moving expenses, the rate will increase from \$0.12 to \$0.14 on Jan. 1. Finally, the rate when providing services to a charitable organization will be \$0.14, an increase of two cents.

■ Social Security

The cost of living adjustment for monthly Social Security and Supplemental Security Income benefits for 2004 is 2.1%. The Social Security wage base will increase from \$87,000 to \$87,900. The applicable tax rate remains 6.2%. Therefore, the maximum annual contribution for this portion of FICA will be \$5,449.80. The other component of FICA is taxed at 1.45% and is assessed on all applicable wages without limit. These FICA contributions are made by each of the employer and the employee. Self-employed individuals, however, pay both the employer's and employee's portions.

■ Pension plan limits

Effective Jan. 1, 2004, the limit on the annual benefit under a defined benefit plan will increase from \$160,000 to \$165,000, while for the more common defined contribution plan the contribution limit will be \$41,000, an increase of \$1,000. The annual compensation limit for most plans will rise from \$160,000 to \$165,000. For those of us over 50, the catch-up contribution will be \$3,000, an increase of \$1,000.

■ Estate tax exemption amount

Called the estate tax deathtime exemption, this is the amount taxpayers may gift during their lives or upon their deaths without incurring an estate tax. If used while one is living, the exemption only applies after the annual gift tax exclusion. For taxpayers dying in 2003, the estate tax exemption is \$1 million. For taxpayers dying in 2004 or 2005, the amount will be \$1.5

million.

For eleven years, from 1986 through 1996, the estate tax exemption was \$600,000. With recent increases in the exemption, fewer and fewer of our clients require estate tax planning. Fortunately, the result is that our clients are free to structure their estate plans with their family and personal goals foremost in mind. More creative strategies are emerging, and clients are focusing on appropriate incentives for their children and grandchildren. Planning with trusts that truly reflect client desires rather than some stilted formula to minimize estate taxes has become *de rigueur*.

For those clients with significant net worths, the new estate tax exemption of \$1.5 million means that, with appropriate tax planning, married couples may shelter \$3 million from estate tax. Farm families materially involved with their farming businesses may still shelter in excess of \$4 million from estate tax.

■ Special use valuation

Of especial relevance to farming families, the maximum amount by which the taxable estate of a person dying in 2004 may be reduced under special use valuation is \$850,000, up \$10,000 from 2003. Those who own farmland and materially participate in the operation of the farm, or who have family members who do so, may be eligible.

■ Revised Illinois estate tax

As we previously reported, in 2001 Congress and the President, as part of a massive \$1.35 trillion tax reduction act, negatively affected most states' (including Illinois') estate taxes. Essentially, the credit against the federal estate tax for state death taxes is being phased out. Illinois and 37 other states, however, had tied their estate taxes to the federal estate tax by providing that the state estate tax would be the amount of the credit against the federal estate tax. With the abolition of this credit, states were left without an estate tax.

Many states, including Wisconsin, reacted quickly to the federal legislation by adopting an estate tax not tied quite so directly to the federal estate tax. Illinois finally did the same, but not until this summer. The changes in the Illinois estate tax law are effective for persons dying in 2003 and later.

The Illinois estate tax is now the credit against the federal estate tax that existed in 2001 before the federal act began phasing out this credit. Thus, when a decedent's estate is liable for estate tax, the total amount due to the federal government and the state of Illinois will be more than it would have been, sometimes significantly so.

Fortunately for Illinois taxpayers, the recently enacted Illinois legislation retains the new federal estate tax exemption (\$1.5 million for persons dying in 2004 or 2005), at least until the federal exemption exceeds \$2 million in 2009.

Potpourri continued on page 3

Armed forces . . .

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In order to be eligible for reemployment, a serviceman or woman must notify the employer as soon as possible that his or her duty has ended and that he or she is available to begin working again. Exact notice guidelines can be found at www.esgr.com. An employer need not reemploy a person, however, if the employer's circumstances have changed so greatly that reemployment is impossible or unreasonable or if no reasonable expectation of reemployment existed when the person left the employer.

Another law protecting service members and their families is the Soldier's and Sailor's Civil Relief Act. This Act provides in part that if a service member, prior to his or her entry in the ser-

vice (if a full-time service member) or prior to serving on active duty (for guard members and reservists), has incurred a loan or other financial obligation with an interest rate higher than 6% annually, the rate must be reduced to 6% while the person is serving on active duty.

This interest rate reduction applies regardless of whether the serviceman or woman is the sole debtor on the loan. It also applies to all types of indebtedness, including credit cards, except student loans. This Act also protects servicemen and women against court proceedings, foreclosure actions and non-compliance with contracts. More information about these protections is available at www.usmilitary.about.com/cs/sscra/.



Medicare . . .

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an additional \$500 in 2006, increasing by \$100 each year to a limit of \$1,000 in 2009 and beyond. High deductible plans are those with a deductible of \$1,000 and total out-of-pocket expenses not to exceed \$5,000 for individual coverage and twice those amounts for family coverage.

The HSAs are designed to either

belong to the employee and move freely from employer to employer or to be held directly by the employee. An employee can hold an HSA directly if an employer does not offer an HSA or if the employee chooses not to participate in the employer's health plan. Amounts can be funded by the employee or the employer and can be part of a Section 125 plan. HSAs and their earnings are exempt from tax, and HSA distributions for medical care are exempt from gross income.

HSAs may be transferred to a surviving spouse without tax as long as the spouse uses the funds in the account for medical care.

The Act also exempts payments from HSAs and other flexible spending accounts from the need to issue Form 1099s to health care providers paid from these accounts. This provision is retroactive to Dec. 31, 2002, eliminating the need to issue Form 1099s for 2003 reimbursements.



Potpourri . . .

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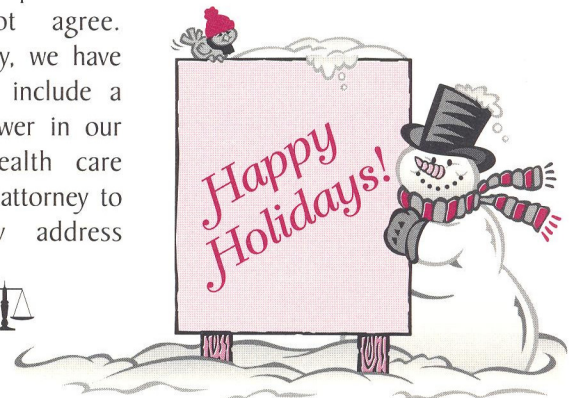
■ Medicaid planning

As fewer and fewer of our clients require estate tax planning, more and more are concerned with potential eligibility for Medicaid. Sometimes this involves asset transfers, but clients are cautioned to proceed carefully and with the knowledge that current look-back rules and the method for determining periods of ineligibility may change. To provide more flexibility for dealing with a spouse's or parent's possible future disability, we are counseling clients to consider special provisions in their powers of attorney.

For example, the statutory form of power of attorney for property or financial matters in Illinois does not give the agent the power to make gifts or to change the principal's beneficiary designations. Oftentimes, though, the other spouse or a trusted child should have these powers to take advantage of planning techniques for potential Medicaid eligibility. We are therefore discussing these powers with our clients and in many instances including additional powers in the standard powers of attorney.

■ Health Insurance Portability and Accountability Act (HIPAA)

Significant privacy provisions of this federal law took effect in April 2003. A concern has been expressed about whether a standard health care power of attorney is now sufficient for an agent to obtain health information about the principal from a health care provider. While we believe the Illinois statutory form of power of attorney for health care is adequate under HIPAA, we recognize some health care providers might not agree. Accordingly, we have started to include a special power in our clients' health care powers of attorney to specifically address HIPAA.



New "porting" rules bring opportunities, challenges

by DANA M. NAUMAN

Many people are aware of the new Federal Communication Commission rules that allow a cell phone user to keep his or her number when switching companies. Many people, however, are not aware that consumers soon will be able to move a landline number to a wireless phone, and *vice versa*. This process has been referred to as "porting" a number.

The FCC's deadline for implementing these rules was Nov. 24, 2003, but any wireless carrier outside the top 100 Metropolitan Statistical Areas has until

May 24, 2004, or six months after a request is received, whichever is later, to port a number. Dixon and its surrounding areas of course are not within the top 100 MSAs.

Some major companies are predicting that consumers who want to transfer a landline number to a wireless phone will have trouble doing so. Because telephone numbers are assigned according to geography, the feasibility of transferring landline numbers is unclear. The first three digits after the area code traditionally correspond to a specific neighborhood area known as a "rate center."

Because cell phone users roam freely from rate center to rate center, wireless companies do not assign numbers based precisely on where customers live.

While customers who move locally should not have any problems, those who move to another rate center may not be able to take their original landline numbers with them. The debate is on, and landline and wireless carriers are asking the FCC to clarify whether local phone companies must provide a landline number to a cell company that does not have similar numbers from the same rate center.



In Print and At the Podium

Mr. Lee recently addressed the Dixon Rotary Club about the importance of the First Amendment's guarantee of the freedom of speech . . . **Mrs. Heeg** has been asked to serve on the Legislative Committee of the Illinois Association of Mutual Insurance Companies, a committee that reviews and determines the Association's position on legislative issues . . . **Mr. Ehrmann**, the president of the Lee County Bar Association, earlier this month served as master of ceremonies for the Association's dinner honoring retiring Judge Tomas M. Magdich . . . Reporters from the Rapid City (S.D.) *Journal* and the Canandaigua (N.Y.) *Daily Messenger* recently interviewed **Mr. Lee** for articles dealing with First Amendment issues . . . **Mrs. Heeg** completed extensive Chapter 7 Panel Trustee training in South Carolina . . . **Mr. Gehlbach** has been nominated for election as President of the Lee County Industrial Development Association and is expected to be elected to this position in

January. **Mr. Lee** is expected to be elected Secretary of the LCIDA . . . **Mr. Lee** has been elected to the board of directors of the Dixon Area Chamber of Commerce & Industry. He previously served on the Chamber's board from 1995 to 2001 and was chair of the board in 1997 and 1998 . . . In recognition of National Newspaper Week, **Mr. Lee** wrote a column emphasizing the importance of press freedom. The column was published in the Dixon *Telegraph* and the Sterling *Gazette* and was posted on the web site of the First Amendment Center, www.firstamendmentcenter.org . . . As president of the Dixon board of education, **Mr. Lee** is authoring items for DPS News, an e-mail list serve service that provides information about school district news, staff achievement and student accomplishments. Interested persons can subscribe to DPS News for no charge at the school district's web site, www.dps.k12.il.us.



Deals and Decisions

Mr. Gehlbach is working with several clients on transfers of businesses. One transaction is designed to result in the Dixon client becoming the sole owner of a business he has managed for many years. Another matter involves the sale of a substantial Lee County business . . . **Mrs. Heeg** recently completed adoptions for three separate families . . . **Mr. Lee** is representing two employers with matters pending before the Illinois Department of Human Rights . . . As residential development continues to expand in the Dixon area, **Mr. Gehlbach** is work-

ing closely with the City of Dixon on behalf of a client who is seeking to develop a new residential subdivision north of Dixon with more than 150 lots . . . **Mr. Lee** recently helped the Lee County Industrial Development Association negotiate an option agreement with a developer seeking to market lots in the Lee County Business Park . . . **Mr. Lee** is representing five clients and serving as local counsel for three others in the mechanic's lien foreclosure action involving the unfinished electric plant outside Nelson, Illinois.

