

# Egbl LEGAL REPORT

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## New law enhances creditors' ability to collect debts

by MEGAN G. HEEG

A new state law designed to assist creditors in collection proceedings takes effect Jan. 1, 2008. This new law changes many existing statutes, including statutes governing wage garnishments and citations to discover assets.

Regarding wage garnishments, important changes include:

- the amount the employer is to withhold is mandatory, meaning judges no longer have discretion to reduce the amount;
- if an employer ceases to remit funds without a lawful excuse, the creditor can file a motion for conditional judgment against the employer for the balance due, requiring the employer to appear in court and explain why a final judgment should not be entered against it;
- even if a creditor fails to provide an employer with the quarterly certification of judgment balance, the employer

must continue to withhold the funds from the employee's wages, although the employer need not turn over the funds to the creditor until the employer receives the certification and



- employers now can charge a fee equal to two percent of each withholding.

Regarding citations to discover assets, the amendments clarify that financial institutions (including banks, savings and loans, savings banks and credit unions) "shall" disclose financial records pursuant to a citation, but "only after" the financial institution mails a copy of the citation to the institution's customer. The amendments also provide that in a citation to dis-

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## Work eligibility requirements test employees, burden employers

by DOUGLAS E. LEE

One of the unfortunate effects of the war on terror is the government's increased interest in determining whether an employer is employing illegal immigrants. Many of these investigations now are carried out by the Department of Homeland Security, and employers accordingly should be aware of their responsibilities and rights regarding the employment of non-U.S. citizens.

Under the Immigration Reform and Control Act of 1986, an employer may not knowingly hire or continue to employ a worker who is not authorized to work in the United States. This prohibition applies if the employer knows or should know the employee is not authorized to work in this country.

This prohibition is enforced in part through the requirement that employers complete an I-9 form for each of their employees. Section 1 of the form, in which the employee provides basic personal information and states he or she is authorized to work, must be completed before the employee starts working. Section 2, in which the employer verifies the employee's eligibility to work, must be completed within three

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# Rules regarding wage assignment must be strictly followed

by DOUGLAS E. LEE

Local employers increasingly are receiving wage assignments from cash advance and other companies that have loaned money to employees. The Illinois Wage Assignment Act strictly regulates wage assignments, and employers should not honor an assignment that does not comply with the Act.

To be effective, a wage assignment must:

- be signed by the employee;
- be dated;
- contain the employee's Social Security number;
- contain the name of the employee's employer as of the date the assignment was signed;
- state the amount of money loaned;
- state the interest rate;
- state the date each payment is due;
- contain the words "Wage Assignment" in bold-faced letters of not less than one-quarter inch in height at the top of the page and also one inch above or below where the employee signed the document and
- be written as a separate instrument and not as part of the loan or sale document.

The Act further provides that a demand for the employee's wages cannot be made unless the employee has been in default for more than 40 days and unless the creditor notified the

employee of its intent to enforce the wage assignment at least 20 days before serving the demand. The forms of the demand and of the notice of intent must substantially comply with the forms set forth in the Act.

If the employee believes he or she has a defense to the wage assignment, the employee must notify the employer in writing of the defense. This notification must be provided within 20 days of the date the employee receives the notice of intent or within five days of the date the employee receives his or her copy of the demand. The employee's notice of defense is not effective unless the employee also mails a copy to the creditor by registered or certified mail. If a notice of defense is served upon the employer, the employer must not honor the wage assignment.

If a notice of defense is not received and if the wage assignment, demand and notice of intent comply with the Act, the employer must withhold the statutorily required amount from the employee's wages. An employer may charge a \$12 fee for each wage assignment and apply that fee to the amount owed by the employee to the creditor. The assignment must be honored until the debt is paid in full or until the end of the payroll period that ends immediately prior to 84 days after service of the demand, whichever is earlier.

A wage assignment is not rendered invalid solely because the employee changes employers. A wage assignment remains valid against all future employers for two years from the date it is signed. In no event, however, can a wage assignment be enforced more than three years after it is signed.

An employer may not discharge or suspend an employee for assigning his or her wages.



## Eligibility...

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days of the day the employee begins work.

Employers must have I-9 forms for all current employees. Employers must keep I-9 forms for former employees for the longer of three years from the date of hire or one year after the termination of employment.

Many employers have sought to comply with the Act by using the national employment eligibility verification system, an electronic system that compares a new hire's I-9 information against Social Security and Department of Homeland Security databases. In August,

however, Illinois amended its Right to Privacy in the Workplace Act to prohibit Illinois employers from enrolling in this system until the federal agencies are able to respond to employers more timely. This amendment was to take effect Jan. 1, 2008. In September, however, the United States challenged the amendment in court, leaving employers unsure as to how to proceed after the first of the year.

Penalties for violating the Act can be significant – in some cases up to \$11,000 per unauthorized worker. Employers therefore should create appropriate policies and procedures for completing and maintaining I-9 forms and ensure that

employees with hiring responsibilities are trained in these policies and procedures. To test their systems, employers also should regularly conduct internal I-9 audits.

If an employer becomes the subject of an investigation, it should be aware that the government must give three days' notice before inspecting an employer's I-9 forms. An employer accordingly can ask an agent who appears without notice to return after three days. Employers can and should take advantage of this notice period to ensure their I-9 documentation is accurate and complete.



## Compliance with FSA rules requires good communication

by GARY R. GEHLBACH



An important player in every farming operation is the Farm Service Agency, which administers and manages federal farm commodity, credit, conservation, disaster and loan payments through a network of regional and local offices. As with any bureaucracy, effective communication with the FSA requires that farmers and their advisers understand the agency's rules and procedures.

Because many farmers own their land in revocable trusts, the FSA has developed procedures for identifying the owner of the land. If the farmer is a trustee of the trust, the FSA uses the farmer's Social Security number as the trust's taxpayer identification number. Therefore, when we assist in establishing a trust and transferring farmland to a farmer as trustee, we encourage the client to deliver a copy of the deed in trust to the local FSA office and to direct the FSA to continue using the client's Social Security number.

Farmers with a trust should take care that all of their farmland is in the trust. The FSA office cannot have some of a farmer's land registered in the farmer's name under the farmer's Social Security number, while other farmland is in the farmer's trust with the same federal taxpayer identification number.

An issue that has arisen recently with local FSA offices is documenting the signature authority of the trustee. For revocable trusts, the FSA is requesting a copy of the entire trust. However, it appears the FSA will accept only the first page, the signature page and the page or pages providing for signature authority, especially if those pages are part of a memorandum of certificate of trust signed by the farmer. In light of this FSA requirement, we have changed our procedures to incorporate in our memoranda of trust the requisite pages required by the FSA. Therefore, as soon as possible after establishing a trust and transferring farmland to the trust, the owner should deliver to the local FSA office copies of the deed in trust and the memorandum of trust that specifically includes as attachments the first and signature pages and the page or pages referencing signature authority of the trust itself.

When a farmer with a trust dies, the trust becomes irrevocable. At that time, the FSA office requires that a copy of the entire trust be provided. Also at that time, a separate federal taxpayer identification number is required, as the farmer's Social Security number is no longer able to be used for the trust after the farmer has died.



## Collection ...

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cover asset proceeding, the court can compel the debtor to resign membership in exchanges, clubs or other similar entities to enforce payment on the debt.

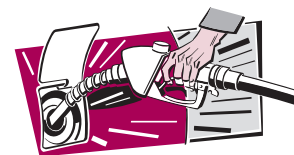
Other highlights of the amendments include:

- if a debtor fails to turn over personal property in response to a court order, and the creditor has a reasonable belief as to where the property is sequestered, the court can order the sheriff to "use reasonable force to enter" the location to recover the property;
- the process for enforcing federal judgments in the state court system has been simplified and
- a court now has the discretion to order that a debtor's personal property be sold other than through a sheriff's sale if another method is more appropriate.

Clearly, the amendments strengthen the existing collection processes, and, beginning Jan. 1, it should be a little easier for creditors in Illinois to collect their debts from those debtors who have the ability to pay.

## IRS increases mileage rate

The Internal Revenue Service recently announced that the standard mileage allowance will be increased to 50.5¢ beginning Jan. 1, 2008. This is an increase from the current 48.5¢. However, the rate for using a car to get medical care or in connection with a move that qualifies for the moving expense deduction will be 19¢ a mile, down from 20¢ a mile in 2007.



*Happy Holidays!*

# Real estate sellers must provide radon information

by DANA M. CONSIDINE

Beginning Jan. 1, 2008, a seller of a home, condominium or other residential property in Illinois must provide the potential buyer with information about radon exposure. The General Assembly passed the Illinois Radon Awareness Act to highlight the fact that radon is the leading cause of lung cancer in non-smokers and to encourage homeowners to have their homes

tested for radon. So far, the legislation does not require that property be tested for radon before it is sold.

The information about radon must be provided before the purchase contract is executed. As one might expect, there are exemptions within this new law as well. Transfers exempt from providing radon information are those made during the course of administering an estate or trust,

transfers from one co-owner to another, transfers to a spouse or a lineal descendant, transfers made pursuant to a court order or as the result of a foreclosure sale and transfers to or from a governmental entity.

Persons concerned about the presence of radon can contact the Illinois Emergency Management Agency (IEMA) for a free home test kit by visiting [www.radon.illinois.gov](http://www.radon.illinois.gov).



## In Print and At the Podium

**Mr. Ehrmann** is a candidate for Circuit Judge of the 15th Judicial Circuit, which covers Lee, Ogle, Stephenson, Carroll and Jo Daviess Counties. He is running on the Republican ballot in the primary on Feb. 5, 2008 . . . **Mr. Lee** recently was quoted in an Associated Press article about the Wisconsin attorney general's attempt to discourage residents of Crandon, Wisc., from speaking to reporters about a shooting that occurred in the small town. The article appeared in more than 100 newspapers across the country . . . As the longtime editor of the Illinois State Bar Association's *Real Property* newsletter, **Mr. Gehlbach** publishes issues on a monthly basis, authoring many articles of interest to real estate attorneys . . . **Mrs. Heeg** has been asked to continue 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 legislation effecting the association's members . . . **Mr. Lee** was quoted in *USA Today* regarding the NCAA's effort to prevent reporters from blogging from championship events . . . **Mr. Ehrmann** has been speaking

for the past few months at many Rotary, Kiwanis, Lions and similar clubs and organizations about his family's close relationship with Albert Einstein . . . **Mrs. Heeg**, a member of the board of directors of Forrester Mutual Insurance Company, joined with other farm mutual company representatives who traveled to Washington, D.C., to brief Illinois legislators on issues affecting the state property/casualty insurance industry . . . **Mr. Lee** has been re-elected as president of the Dixon Public School board of education and as president of the board of directors of Open Sesame Child Care Center. **Mr. Lee** also has been elected president of the governing board of the Lee County Special Education Association . . . **Mr. Gehlbach** has become a regular speaker at seminars for State of Illinois employees nearing retirement, presenting the essentials of estate planning . . . In his most recent commentary for the web site of the First Amendment Center, [www.firstamendmentcenter.org](http://www.firstamendmentcenter.org), **Mr. Lee** criticized a federal appeals court decision that limited student speech rights.



## Deals and Decisions

**Mr. Ehrmann** won a major case in the Illinois Supreme Court concerning the rights of a parent to decide matters for his or her child without interference by a court. This case was the subject of an article in the *Reader's Digest* in October 2007 and has drawn media attention from around the nation . . . In addition to his active real estate practice for clients throughout northern Illinois, **Mr. Gehlbach** is representing a Chicago suburban company that develops retail projects . . . In separate worker's compensation cases, **Mrs. Heeg** represented clients who suffered permanent injuries through employment, in one case obtaining a beneficial settlement after the employer denied the injury was job-related, and in another obtaining a significant award that

included an amount for future medical expenses . . . In October, **Mr. Lee** completed an eight-day jury trial in Ogle County, in which he defended the sellers of farm property against allegations they had not disclosed dump sites on the farm. The jury's award was significantly less than the sellers had offered in settlement before trial . . . In a personal injury action, **Mr. Lee** successfully represented the injured party, obtaining all of the available insurance proceeds plus an amount from the employer of the at-fault driver . . . **Mr. Badger** and **Mr. Lee** recently represented the Dixon Rural Fire Department in its litigation and negotiations with the City of Dixon over annexed territory.

