



# Biz-Law Briefing

A Practical Journal for Closely-Held  
& Family Businesses

Volume 2, Issue 2

4th Quarter, 2008

## Special Points of Interest:

- New Jersey's Paid Family Leave Act does not require a minimum number of employees for an employee to be entitled to paid leave.
- To prevent employee fraud and theft, look for significant factors or "red flags."
- New tax rules may apply to the gain from the sale of your vacation home.

## Inside this Issue:

Congress Brings Down  
the Hammer on Vacation  
Home Sales

Page 1

NJ Paid Family  
Leave Act: What You Don't  
Know Could Cost You

Page 1

Preventing Employee Fraud

Page 3

## Congress Brings Down the Hammer on Vacation Home Sales

by Gary R. Botwinick, Esq.

The recently enacted Federal Housing Bill had a surprise for owners of vacation homes planning to exclude some of the gain from a future sale. Under current law, a married couple can exclude the first \$500,000 of capital gain realized on the sale of a primary residence as long as the owners passed two tests: during the five-year period preceding the sale, the couple must have owned the home for at least two years (the ownership test) and lived in the home as the primary residence for at least two years (the use test). A single individual can exclude \$250,000 of such gain. In an effort to get a second bite at the apple, some individuals



would sell their primary residence and then move into their vacation home, use it as their principal residence for two years, and then exclude the gain on the subsequent sale of the vacation home.

After January 1, 2009, the ability

to exclude such gain will be significantly curtailed.

As a revenue-raiser to pay for the new housing bill, which included a first-time homebuyer credit, the rules now provide that some of the gain from the sale of the

*Continued on Page 2*

## NJ Paid Family Leave Act: What You Don't Know Could Cost You

by Andrew S. Berns, Esq. & Timothy J. Ford, Esq.

On May 2, 2008, New Jersey made history with the enactment of The New Jersey Paid Family Leave Act (the "NJPFLLA"). In doing so, New Jersey became only the third state in the country (joining California and Washington) to provide eligible employees a total of six weeks of paid leave in a twelve month period. According to this new law, (NJPFLLA, N.J.S.A. 43:21-25), your eligible employees are entitled to two-thirds of their regular weekly pay up to a maximum of \$524 per week. The new law doesn't replace or supercede any of the existing laws. Paid leave runs concurrently with the New Jersey Family Leave Act (the "NJFLA"), N.J.S.A. 34:11B-4, and the Federal Family & Medical Leave Act (the "FMLA"), 29 U.S.C.A. 2912. But there is one key distinction. Unlike the NJFLA and FMLA, the NJPFLLA applies essentially to all businesses, regardless of size. The Act does not require a minimum number of employees in order for an employee to be entitled to paid leave.

### Employee Eligibility Criteria

Your employees are eligible for paid leave if you (their employer) are subject to the Temporary Disability Benefits Law, which applies to any business that employs one or more individuals that:

1. Is or was paid at least \$1,000 in the current or preceding year.
2. Earned at least \$142.00 per week for 20 consecutive weeks, or
3. Earned at least \$7,200.00 in the 52 weeks prior to the leave.

*Continued on Page 3*

DISCLAIMER: This Newsletter and any information contained herein are intended for informational purposes only and should not be construed as legal advice. Seek competent legal counsel for advice on any legal matter. Any advice contained herein was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. Federal, State, or Local tax penalties. Unless otherwise specifically indicated herein, you should assume that any statement in this communication relating to any U.S. Federal, State, or Local tax matter was not written to support the promotion, marketing, or recommendation by any parties of the transaction(s) or material(s) addressed in this communication. Anyone to whom this communication is not expressly addressed should seek advice based on their particular circumstances from their tax advisor.

EINHORN  
HARRIS  
ASCHER  
BARBARITO  
FROST  
— PC —



**"Einhorn Harris is the only New Jersey law firm with the distinction of having four lawyers who have served as officers of the Family Law Section of the New Jersey State Bar Association."**

[www.einhornharris.com](http://www.einhornharris.com)

165 East Main Street  
Denville, NJ 07834-3010  
Phone: (973) 627-7300  
Fax: (973) 627-0869

## NEWS OF OUR FIRM

This quarter, our firm welcomes Paulyn J. Holandez as our newest associate. Her practice is focused in the areas of trusts and estates, and taxation, in the Closely Held Business Group. Previously, she worked as a Law Clerk for the Honorable Patricia K. Costello, Superior Court of New Jersey, Assignment Judge of Essex County. Ms. Holandez also served as a legal intern to the Honorable Renee J. Weeks, Superior Court of New Jersey, Chancery Division, Essex County. There she worked on General Equity and Probate matters, including guardianships, conservatorships and accountings. In 2007, Ms. Holandez completed an externship with the Internal Revenue Service District Counsel's Office, where she was primarily



**Associate**  
**Paulyn J. Holandez**

engaged in tax research in preparation of cases for litigation before the United States Tax Court. Ms. Holandez's professional experience further enhances the firm's commitment to serving its clients in the area of tax and estate planning.

In May, one of our partners, Tom Snyder, was sworn in as First Vice President, Family Law Section, of the New Jersey State Bar Association, at the NJSBA Annual Meeting and Convention in Atlantic City. Mr. Snyder will be the fourth attorney from the firm to serve in this capacity. Attorneys Patricia Barbarito, Ivette Alvarez, and Bonnie Frost, all served as past officers, and Einhorn Harris is the only New Jersey law firm with the distinction of having four of its lawyers elected by the membership.

### **The Firm's Closely-Held Business Group**

Standing l-r:

Timothy J. Ford  
Jason R. Rittie  
Andrew S. Berns

Sitting:

Theodore E. B. Einhorn  
Gary R. Botwinick



## Message from the Founding Partner of the Firm

Theodore E. B. Einhorn



This year, once again our attorneys consistently met or exceeded the expectations of their clients on many levels. Their individual achievements and the accomplishments of our practice area teams have been a source of great pride for me and for all of us here.

In the area of matrimonial law, Steve Haller, along with associate Jennie Osborne, successfully represented former New Jersey Governor, James McGreevey, in the trial of his custody and divorce case. The trial highlighted substantial issues involving joint custody, parenting time, celebrity goodwill valuation and employment evaluation. While many of the cases our attorneys handle address complex legal issues involving finances, property, custody, liability, criminal defense and more, this case was unique because of the intense television, radio and print coverage that accompanied the entire hearing. Because of the celebrity of the parties involved, the case had wide public exposure.

Such successes help us build on our strong reputation of excellence and achieving positive results for our clients. I look forward to meeting you in seminars, firm-sponsored events and as clients, so that we can share with you the knowledge and experience we have gained throughout this and previous years.

## Congress Brings Down the Hammer on Vacation Home Sales

*Continued from Page 1*

former vacation home will be taxable if you convert your vacation home to a primary residence after 2008. The portion of the gain to be taxed is based on the ratio of nonqualified use (the time the property is used as a vacation home after 2008), to the total

amount of time you owned the property. However, if you move into the vacation home and make it your primary residence before the end of this year, then the new rules will not affect the exclusion of gain on the subsequent sale. If you need tax advice in

connection with the sale of your home, or for any personal or business tax matter, contact Einhorn Harris. Our tax attorneys will help you plan ahead of time to reduce or eliminate taxes that might otherwise provide unpleasant surprises.

## NJ Paid Family Leave Act: What You Don't Know Could Cost You

*Continued from Page 1*

Under the NJPFLA, employees may take leave for any reason consistent with the NJFLA. As such, employees will be entitled to take paid leave in order to care for sick family members or a spouse (including domestic partners) or to care for a newborn or newly adopted child during the twelve month period following the birth or adoption. Like the NJFLA, and in contrast to the FMLA, the NJPFLA does not cover leave taken by an employee for his or her own serious health condition. Also, employees are entitled to take leave on an intermittent basis, as long as they give you adequate notice of fifteen days unless there are emergency or other exceptional circumstances. (This is consistent with the NJFLA and FMLA).

### **Employer Responsibilities under the Law**

As an employer, you may require that your employees first exhaust two weeks of sick, vacation or other paid time before receiving paid leave benefits. The law requires all employers to post a conspicuous notification in a form published by the commissioner of the Department of Labor and Workforce Development. Eligibility rules under the NJPFLA can be confusing. Before taking action on any request for paid leave, we recommend you undertake a sensitive analysis with a detailed evaluation by an experienced employment attorney.

### **How is the Program Funded?**

The NJPFLA will be funded by an employee payroll tax, with no contribution required by employers. Employees will notice payroll deductions beginning on January 1, 2009, with benefits beginning on July 1, 2009. In 2009, the expected payroll deduction will be approximately \$25 per year. This is expected to increase to \$33 in 2010. To receive benefits, both the employer and employee will be required to complete forms. Employers must provide employees with an employer-completed form nine days prior to leave. Employees must complete and submit the form to the state no later than 30 days following the commencement of the leave period.

### **EMPLOYER RIGHTS UNDER NJPFLA**

If your business employs fewer than 50 employees, than you may permanently replace employees who take leave under the NJPFLA. However, if you, as employer, meet the minimum number of employees threshold under the NJFLA or FMLA, then you are not permitted to terminate an employee for taking leave. The intent of the statute is to provide the employee with monetary compensation during periods of leave which is otherwise unavailable.

Although the legislature has attempted to limit ambiguity or confusion, it is inevitable that issues will arise that may result in a lawsuit. To avoid unnecessary litigation and to learn more about what your obligations are and what impact the law can have on your business, contact Andrew S. Berns, Esq. at Einhorn, Harris, Ascher, Barbarito & Frost, P.C. Our employment counsel can help you review employment policies and administrative procedures used in evaluating leave requests to ensure that your business complies with this and various other employment laws and regulations.



### **Attorney PROFILE**

*Gary R. Botwinick, Esq.*



Gary chairs the firm's Trusts and Estates/Taxation Group. He joined the firm in 1998, becoming

Partner in 2001. His career began in the IRS Manhattan District Counsel Office, where he tried civil cases before the U.S. Tax Court. Mr. Botwinick was named to the prestigious "40 Under 40" issue of the New Jersey Law Journal, and as a Fellow of the American College of Trust and Estate Counsel, the youngest lawyer in the State of New Jersey with that distinction. [gbotwinick@einhornharris.com](mailto:gbotwinick@einhornharris.com).

### **Attorney PROFILE**

*Andrew S. Berns, Esq.*



Andy is the Chair of the firm's litigation practice. The litigation practice includes

Commercial, Personal Injury and Workers' Compensation cases as well as other forms of business litigation including employment matters. Mr. Berns has tried cases for over twenty years in State, Federal and Administrative Courts. He has participated in litigation resulting in significant settlements and judgments in complex commercial, personal injury and employment matters through arbitration, mediation and trial or as an advocate on behalf of his clients. [aberns@einhornharris.com](mailto:aberns@einhornharris.com).

## Preventing Employee Fraud

*by Michael R. Ascher, Esq.*

Very few small business owners take adequate precautions against fraudulent conduct by their employees. There are many reasons why.

Managing and operating a small business is a difficult, arduous task. It requires an amazing amount of diligence in dealing with customers, vendors and other issues. Unfortunately, always looming in the background is the prospect of employee fraud or theft. In fact, research conducted by the Association of Certified Fraud Examiners estimates that businesses lose approximately 7% of annual revenues to fraud. Invariably, theft or fraud goes undetected for considerable periods of time. The effects of employee fraud and theft are staggering. They can put a small business on the brink of financial disaster.

Fraud often arises from the misuse and misapplication of an employer's resource or assets for personal gain. This behavior ranges from stealing an inconsequential amount of supplies to more sophisticated financial schemes. Employee fraud such as complex billing conspiracies, financial statement fraud, and manipulation of checking accounts can have a devastating effect on a business. Contrary to popular belief, employees who commit crimes against their employers are not typical seasoned criminals. In fact, most are otherwise law abiding citizens who turn to fraud because of

*Continued on Page 4*

### **Attorney PROFILE**

*Timothy J. Ford, Esq.*



Currently an Associate of the Firm, Timothy Ford practices in the areas of Complex

Commercial Litigation, Employment and Corporate Law. Mr. Ford is a Recipient of the American Bankruptcy Institute's Medal of Excellence, and is a member of the New Jersey State, New York State and Morris County Bar Associations. [tford@einhornharris.com](mailto:tford@einhornharris.com).



## Preventing Employee Fraud

*Continued from Page 3*

some significant life problem. Some employees are living beyond their means or are in financial trouble. Others have family members who are ill with extremely high medical expenses. Some employees have either addiction or gambling problems which require large sums of money to maintain. Some instances of employee fraud or theft are difficult to detect because the employees make a concerted effort to conceal the activity. Those schemes are most successful when the employee is given the most amount of trust and control over financial aspects of the business. Although fraud or theft can sometimes involve multiple employees, the usual situation involves a solitary employee who is motivated by pure financial need or a feeling of dissatisfaction with the workplace. Such employees may feel their efforts are not being recognized and will turn to fraud or theft as a passive-aggressive approach to address a perceived "injustice."

Most business owners feel that employee background checks and criminal checks will ensure the safety of their businesses. However, that is simply not true. In the vast majority of cases, the offending employee has no prior record and may have been a model employee for years. To prevent employee fraud and theft, an employer must look for significant factors or "red flags." Employees who attempt to defraud their employers may act irritable or become far more secretive. To avoid detection, they may attempt to exert more and more control over duties and projects. Indeed, one indicator of employee fraud occurs when an employee refuses to take vacation. The reason for that is simple and clear. The employee does not want anyone looking at his work product while he or she is away. Someone might uncover the scheme. There are many additional red flags which an employer can look for. These will be discussed in the next issue of Biz-Law Briefing.

DISCLAIMER: This Newsletter and any information contained herein are intended for informational purposes only and should not be construed as legal advice. Seek competent legal counsel for advice on any legal matter. Any advice contained herein was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. Federal, State, or Local tax penalties. Unless otherwise specifically indicated herein, you should assume that any statement in this communication relating to any U.S. Federal, State, or Local tax matter was not written to support the promotion, marketing, or recommendation by any parties of the transaction(s) or material(s) addressed in this communication. Anyone to whom this communication is not expressly addressed should seek advice based on their particular circumstances from their tax advisor. Biz-Law Briefing is a Journal distributed to closely-held and family-owned businesses ©Einhorn Harris Ascher Barbarito & Frost P.C. 2008.



**Attorney PROFILE**  
*Michael R. Ascher, Esq.*  
As partner with the firm, Mr.

Ascher applies his extensive trial experience gained as a Deputy Attorney General in the Division of Criminal Justice and as Assistant County Prosecutor, and his thirty years as a criminal defense attorney, to his work on significant cases on both the trial and Appellate level. Mr. Ascher serves as a member of the Morris County Criminal Practice Committee.  
[mascher@einhornharris.com](mailto:mascher@einhornharris.com).

*To obtain additional copies or to order a subscription, please contact us at:*  
**(973) 627-7300 or**  
**[www.einhornharris.com](http://www.einhornharris.com)**

Volume 2, Issue 2  
4th Quarter, 2008

Newsletter



Einhorn, Harris, Ascher, Barbarito & Frost P.C.  
165 East Main Street  
Denville, NJ 07834-3010

EINHORN  
HARRIS  
ASCHER  
BARBARITO  
FROST  
PC