CECB Carnahan, Evans, Cantwell & Brown, P.C.

on the Subject

October 2017

CECB Banking and Financial Services Group

Andrew K. Bennett | John M. Carnahan | Frank C. Carnahan | C. Bradford Cantwell | Julie T. Brown | Joseph D. Sheppard, III | John E. Price | Christiaan D. Horton

CECB is pleased to announce Mr. Andrew K. Bennett as the Chair of our Banking and Financial Services Group. Mr. Bennett is a member of the Bank Counsel Section of the Missouri Bankers Association, which is made up of member attorneys from across Missouri who focus their practice on representation of financial institutions. CECB is an associate member and proud supporter of the Missouri Bankers Association. Other members of the Banking and Financial Services Group include John M. Carnahan, Frank C. Carnahan, C. Bradford Cantwell, Julie T. Brown, Joseph D. Sheppard, III, John E. Price and Christiaan D. Horton.

The Banking and Financial Services group at CECB provides a full range of services to financial institutions, including advice on formation, regulatory compliance, operations, mergers and acquisitions, complex commercial loan transactions, estate and trust administration, loan enforcement, and protection of creditors' rights, including bankruptcy representation in U.S. Bankruptcy Courts.

Our lawyers represent locally owned, regional, and national financial institutions. We work closely with our financial institution partners, understanding that prompt and professional attention is required to serve our clients' best interest.

Our lawyers represent financial institutions in proceedings in state and federal courts, involving foreclosure, collections, lender liability defense, and trust litigation. We also provide representation in mediation and arbitration proceedings. We have a proven track record that has resulted in substantial judgements, verdicts and settlements for our clients.

Our Banking and Financial Services group provides guidance and assistance with preparation of loan documentation, review of title reports, and UCC security interest perfection and priority matters. We have a thorough understanding of complicated Estate Planning strategies and entity formations that impact lender decision-making and risk analysis on a routine basis.

Defend Trade Secrets Act Greatly Benefits Employers

Andrew T. Peebles

On May 11, 2016, President Obama signed the Defend Trade Secrets Act of 2016 (the "DTSA" or the "Act"), representing the most significant trade secret reform legislation in several decades. The primary objective of the DTSA is to modernize and strengthen trade secret law in the United States. While the Act became immediately effective upon its passage, its provisions only apply to trade secret misappropriation occurring on or after the date of its enactment. For employers and business owners, the DTSA adds to the protections afforded to valuable trade secrets. However, there are also several provisions of the Act related to whistleblower protections and employee notification requirements that necessitate immediate action on the part of employers to ensure their businesses comply with this new legislation.

1. Strengthening of Trade Secret Protections

Trade secrets, as one form of intellectual property, provide great value to the economy and to companies themselves. It is estimated that nearly 80% of companies' assets are intangible, with the majority of them in the form of trade secrets. Trade secrets include everything from financial information and client lists to formulas, designs, procedures, and computer code. Trade secrets are worth around $5 trillion to publicly-listed American companies alone. As a result, these extremely valuable assets are frequently targeted for theft or misappropriation and need to be protected.

Before the DTSA was enacted, trade secret owners were limited to civil action under state law, which varies significantly

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from state to state, and which provides inadequate protection against trade secret misappropriation spanning multiple jurisdictions. Additionally, the federally enacted Economic Espionage Act of 1996 only provides for *criminal* penalties for trade secret theft. Therefore, one of the most important features of the DTSA is that it allows private companies to pursue a new *civil* cause of action under *federal* law to remedy trade secret misappropriation, providing trade secret owners the option to seek remedies in either federal or state court. As a result, the DTSA has strengthened the protections provided to a company's trade secrets by supplementing already existing remedies under state and federal law.

2. Remedies for Trade Secret Misappropriation

The DTSA provides for several types of potential remedies for the victims of trade secret misappropriation. For instance, a court may grant an injunction to prevent any actual or threatened misappropriation from occurring. However, such injunctive relief may not prevent a former employee from entering into another employment relationship or conflict with state law regarding restraints on trade. The DTSA also authorizes damage awards for any actual loss or unjust enrichment caused by trade secret misappropriation, which is the primary means to compensate a trade secret owner. Finally, at the court's discretion, an award of attorney's fees and punitive damages may be warranted when the misappropriation is found to be willful and malicious, was made in bad faith, or if a motion to terminate an injunction was made or opposed in bad faith. These stronger damage provisions provide added relief in cases of theft or misappropriation, and will help to guard against such action in the future.

3. Reasonable Measures to Protect Trade Secrets

It is important to note that, in order to obtain the protections and remedies offered under the DTSA, trade secret owners must take "reasonable measures" to protect their trade secrets. Because the commercial value of trade secrets depends on their confidentiality, owners must take an inventory of their trade secrets to assess whether sufficient safeguards are in place to maintain this secrecy. The failure to have adequate reasonable measures in place may foreclose remedies under the DTSA, as a court will assume that such unprotected information was not meant to qualify as a "trade secret". The types of reasonable measures that apply in each case will depend on the trade secret at issue, but could include the digital encryption of the asset to ensure that only certain trusted individuals have password access to the information contained therein. Thus, it is vital that trade secret owners examine the adequacy of the reasonable measures used to protect their secrets and periodically review those measures to ensure they will be able to take advantage of the DTSA's protections in the event of theft or misappropriation.

4. Whistleblower Protections and Employer Notification Requirements

Finally, and of particular importance for employers and business owners, the DTSA provides for specific protection and immunity to employees who disclose trade secrets in certain situations. First, employees are exempt from liability under the Act if they disclosed a trade secret "in confidence" directly or indirectly to federal, state, or local government officials, or to a lawyer, solely for the purpose of reporting or investigating a suspected violation of law. Second, an employee may disclose a trade secret in a complaint or other document filed during a lawsuit or other court proceeding, as long as such filing is made under court seal. Finally, if an employee files an anti-retaliation lawsuit against his or her employer, the individual may disclose a trade secret to his or her attorney, and may use the trade secret in related court proceedings.

To ensure that employees are aware of these new immunity protections, the DTSA includes an important new employee notification requirement. The law mandates that an employer provide notice of the Act's immunity protections in any contract or agreement with an employee that governs the use of a trade secret or other confidential business information. This notification applies to all such contracts entered into or updated after May 11, 2016 (the date of the DTSA's enactment) and includes employment agreements, non-compete agreements, confidentiality agreements, and other contracts commonly used by businesses. An employer that fails to comply with this notice requirement may be barred from receiving punitive damages or attorney fees in an action against an employee to whom notice was not provided.

Therefore, all employers need to ensure that any new or recently updated employment agreements adhere to this significant change in the law by including a standard notification clause regarding these whistleblower protections. The most direct way of providing the required notice is to incorporate the specific language provided in the DTSA legislation in all employment documents entered into or revised after May 11, 2016. Alternatively, employers can merely insert a cross-reference in all employment agreements to a company policy that includes the employer's procedures for reporting a suspected violation of law (such as the company's whistleblower policy), as long as such policy includes the information contained in the applicable DTSA provisions.

As can be seen, the newly enacted Defend Trade Secrets Act of 2016 greatly strengthens and modernizes trade secret law in a number of significant respects, which will help redress the theft and misappropriation of trade secrets in several situations. Trade secret owners now have a complementary federal cause of action to go along with existing state laws, and have additional remedies to combat misappropriation in court. However, to ensure that businesses are able to take full advantage of these added protections, employers and owners must ensure that they are in compliance with the DTSA's provisions, especially those pertaining to "reasonable measures" of protecting trade secrets, and to the new employee notice requirement outlined by the Act.

Best Lawyers in America

CECB is pleased to announce that two of the firm's attorneys, **Thomas D. Peebles, Jr.** and **Joseph "Chip" D. Sheppard, III** were selected by their peers to be among the elite professionals for inclusion in the 2018 edition of *The Best Lawyers in America.*

Since it was first published, *Best Lawyers* has become universally regarded as the definitive guide to legal excellence. Because *Best Lawyers* is based on an exhaustive peer-review survey in which more than 36,000 leading attorneys cast almost 4.4 million votes on the legal abilities of other lawyers in their practice areas, and because lawyers are not required or allowed to pay a fee to be listed, inclusion in *Best Lawyers* is considered a singular honor. *Corporate Counsel* magazine has called *Best Lawyers* "the most respected referral list of attorneys in practice."

Thomas D. Peebles, Jr. was selected for the 7th straight year for inclusion in *The Best Lawyers in America* in the practice area of Trusts and Estates. Mr. Peebles has concentrated his practice in estate planning and estate and trust administration matters since 1980.

Mr. Peebles has significant experience in the preparation of basic and sophisticated estate planning documents, and in wealth transfer planning for high net worth clients, closely held business owners and their families. He has been awarded an AV Rating from Martindale-Hubbell in recognition of his preeminent work in assisting his clients in achieving their estate planning goals and objectives. In 2004, Mr. Peebles was elected a Fellow of The American College of Trust and Estate Counsel in recognition of distinguished service in the practice of estate planning, probate and trust law.

In addition to being named to *The Best Lawyers in America* list, Tom has also been named on multiple occasions to the Missouri-Kansas *"Super Lawyer's list"* by *Law & Politics Magazine*, honoring him as one of the top 5% of practicing attorneys in Missouri and Kansas. In 2007, Mr. Peebles was elected by his peers as a Fellow in the American Bar Foundation. Membership as a Fellow in the American Bar Foundation is limited to one-third of one percent of the lawyers in America and is in recognition of a lawyer whose professional, public and private career has demonstrated outstanding dedication to the welfare of the community and to the traditions of the profession.

Joseph D. "Chip" Sheppard, III was also selected for the 7th time for inclusion in *The Best Lawyers in America* in the practice area of Litigation – Securities. Chip is a Shareholder in the Litigation and Transactional Practice Groups and concentrates his practice in the areas of business, corporate, employment, real estate, intellectual property, and securities.

A substantial portion of Mr. Sheppard's practice includes securities and other fraud and fiduciary duty related claims, both as an arbitrator and as counsel for the parties. Mr. Sheppard has tried a combined total of more than 50 arbitrations, state and federal trials, both jury and non-jury, in his areas of concentration. Other areas of concentration are various business transactions, acquisitions, real estate development and related litigation and probate litigation.

In 2005, Mr. Sheppard was elected as a Fellow of the American Bar Association, an honor bestowed upon less than .5 percent of the Bar and was selected in 2005 and 2006 and again in 2010-2017, to the "Super Lawyer" list by *Law & Politics Magazine* (top 5% according to peer review). In 2008, he Co-Chaired the Greene Countians for Fair and Impartial Judges Committee which was responsible for bringing the Missouri Court Plan to Greene County, was a finalist for Missouri Lawyer of the Year and received the Missouri Bar Association and Springfield Metropolitan Bar Association President's Awards in recognition of extraordinary service to those Associations and the legal profession. Mr. Sheppard is a former arbitrator for the American Arbitration Association, New York Stock Exchange, and has served as an arbitrator for the Financial Industry Regulatory Authority (f/k/a NASD) since 2000.

Coat Drive

CECB has joined with SW MATA and other area Law Firms for the 7th Annual Coat Drive to Benefit The Kitchen, Inc.

Over 1,039 coats and $49,570 has been contributed over the last 6 years.

Drop off new or gently used coats to our office between now & 12/21/17.

5 Steps to Take Following a Spouse's Death

Andrew T. Peebles

The death of a spouse can be one of the most challenging events that life has to offer. In addition to the emotional toll, an avalanche of legal and financial issues will arise that try to throw your life further into disarray. The goal of this article is to make the process a bit easier by providing those who have found themselves recently widowed with a checklist of the most important matters you must deal with after a spouse passes. While not all-inclusive, what follows is critical information that can save you precious time, money, and energy during a time when such relief would undoubtedly be welcomed.

1. Funeral Arrangements and Organ Donation

Obviously one of the tasks you will need to accomplish early in the process involves funeral and burial arrangements for your loved one. Determine whether or not your spouse prepared an advance health care directive or other document which outlines exactly how they wish to be buried and whether they desire for their body or organs be donated. Determine if the deceased pre-paid his or her funeral expenses to a funeral home. If not, have the executor of your spouse's estate pay these expenses out of estate funds. Prepare an obituary to honor the life and legacy of your late spouse. If possible, bring together key family members for an early conversation to ensure everyone is involved and on the same page during this process.

2. Gather Essential Documents

An important step is to obtain vital documents which are necessary to wrap up your spouse's final affairs. The death certificate is extremely important, as most financial institutions, governmental agencies, creditors, and other organizations will refuse to discuss your loved one's final affairs without it. It is recommended that you obtain at least five to ten certified copies from the Department of Health in the state in which your spouse died in order to provide one to each organization that previously dealt with your spouse's financial affairs.

It is also important to locate your spouse's Social Security card, birth and marriage certificates, insurance policies, final credit card and mortgage statements, deeds and titles to real property, automobile titles, stock certificates, and tax forms for the past three years. Additionally, if your spouse had an estate plan set up prior to death, it will be imperative to locate the originally executed documents.

3. Administer Your Spouse's Estate

Determine if your spouse created an estate plan prior to their death, whether that be a simple Will, Trust, or Health Care Directive. It is likely that your spouse named you as the executor of their estate, and therefore you will be responsible for wrapping up their final affairs. This process includes gathering all property owned by your spouse at his or her death, preparing an inventory and valuation schedule for the property, notifying all creditors of the estate, paying all debts and taxes owed by your spouse, and distributing their estate to the beneficiaries named in their estate plan. If your spouse did not create an estate plan (i.e. they died intestate), you will need to work with the local Probate Court in order to determine how the estate is to be distributed. Either way, it is important to contact an experienced estate planning attorney who can guide you through the process.

4. Notify Necessary Parties

It is important to alert all financial institutions, government agencies, subscription services, creditors, and other parties of your spouse's death. For example, notifying government assistance programs such as Social Security will ensure that any benefits owed to you as the surviving spouse are paid out. Contact any insurance company where your spouse owned a policy to notify them of your spouse's death, and claim proceeds payable to you. Inform the institutions and employers where your loved one maintained a retirement account, and determine if any benefits inure to your benefit. Talk with your financial advisor to determine the best method of accumulating benefits payable to you. For example, surviving spouses have the option of rolling over a deceased spouse's IRA into their own account to "re-start" the clock on taking required minimum distributions.

You should also make certain that all automatic withdrawals or deposits from your spouse's bank accounts are stopped immediately, cancel any credit cards, and close or re-title all bank accounts in the process. Contact utility companies and other service providers to change or discontinue service. It may be helpful to review your spouse's bank statements to identify other less obvious recurring charges that need to be cancelled, such as gym memberships, Internet accounts, or club membership dues. File a change of address with the post office to remove your spouse's name from all mailings, or re-route the deceased's mail to the executor of their estate. Notifying these parties will also serve to protect against identity theft and financial fraud by preventing thieves from collecting government benefits or opening accounts in the name of the deceased.

5. Update Your Personal Estate Plan

Finally, it is critically important to update your personal estate plan in a timely manner to avoid your assets being distributed in ways that you neither expect nor want. You will want to remove your spouse as a beneficiary of your estate and re-determine how your assets should be divided following your death. It will also be necessary to remove your spouse as executor of your estate, or as agent under powers of attorney, and name a new individual to act in those capacities.

Assets that allow you to name a beneficiary (life insurance policies, retirement plans, investment accounts/bank accounts, Beneficiary Deeds, etc.) are not controlled by a Will or Trust. Instead, they will be paid directly to the individual you have listed as your beneficiary. You likely named your spouse as primary beneficiary when you were married, so you will want to update the beneficiary designations on all assets that are payable on death to your spouse to ensure that they are removed.

Finally, if you and your spouse created a Qualified Spousal Trust during your lifetimes, it is important to realize that the creditor protection provided by the Trust ends once a spouse passes away. Therefore, if you work in a high risk profession (e.g. medical professional, attorney, etc.), it may be advisable to obtain liability insurance to protect yourself from any future claims.

Dealing with the death of a spouse can be a difficult process, but working with a professional and understanding what steps are involved can at least bring some comfort and order to a difficult situation. If you find yourself in this situation, know that the estate planning attorneys at Carnahan, Evans, Cantwell, and Brown are here for you, and ready to assist you during these trying times.

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Continuing Evolvement of ABLE Accounts Under Missouri Law

Courtney L. Fletcher

The Achieving a Better Life Experience Act of 2014 ("ABLE Act"), a part of the Tax Increase Prevention Act of 2014, was signed into law on December 19, 2014. The law allowed for states to establish their own ABLE programs under the federal guidelines. ABLE accounts are now open for enrollment in twenty-two states, including Missouri. Missouri Senate Bill 174 created the Missouri Achieving a Better Life Experience (ABLE) effective August 28, 2015. The Missouri Department of Social Services issued IM-96 on October 26, 2015, setting forth regulations regarding how ABLE funds would be treated and the impact of such funds on the eligibility for Mo. Healthnet, Food Stamps, Temporary Assistance and Child Care Subsidy. Since that date, eligible individuals with disabilities living in Missouri now have an option to set up an investment account, known as a STABLE account, that can be used to save and invest money without losing eligibility for certain public benefit programs.

One of the original purposes of the ABLE act was to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities in order to maintain their health, independence and quality of life. An ABLE account provides a less expensive and less complicated alternative to the creation and funding of a Special Needs Trust ("SNT") for the benefit of a disabled beneficiary. A SNT requires the involvement of professionals for its establishment, such as lawyers, trustees and possibly the probate court. With the establishment of the ABLE Act, a tax-advantaged investment account can be directly established by a disabled beneficiary or by the parents or legal guardian of such disabled beneficiary without the need of professional assistance.

The ABLE Act is modeled after college savings accounts under Internal Revenue Code ("IRC") Section 529. ABLE accounts are tax-advantaged investment accounts that allow for tax-free growth of the account so long as certain requirements are fulfilled. The requirements are fairly simple:

1. The beneficiary of the ABLE account must be diagnosed with a qualifying disability prior to attaining 26 years of age; however, the ABLE account itself does NOT need to be created prior to the beneficiary attaining 26 years of age. In order to be eligible, a beneficiary must be disabled (for purposes of the Social Security Administration guidelines) prior to attaining 26 years of age and must meet one of the following: (a) the beneficiary is entitled to receive Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") or (b) the beneficiary has a disability certification under 26 USC 529A e(2)A which is a certification made by the beneficiary or his/her parent or guardian via a signed doctor's letter that the beneficiary is blind or has an impairment expected to result in death or which will last at least twelve months **and** that such disability occurred prior to age 26.

2. Each beneficiary may only have one ABLE account.

3. The annual contributions to an ABLE account are limited to the federal annual gift tax exclusion amount (currently $14,000), and are considered a completed gift. Contributions must be in cash and not in kind. The amount of the account then grows tax-free.

4. ABLE accounts are disregarded for purposes of determining the beneficiary's eligibility for Supplemental Security Income ("SSI") and Medicaid (MoHealthNet). This is of great importance since this means that the funds held in an ABLE account are considered an exempt resource for SSI/MoHealthNet purposes.

5. The amount of funds that can be held in an ABLE account is capped at the 529 account maximum in the state in which the ABLE account is set up. Missouri's 529 account maximum is $325,000; however, it is important to realize that if a beneficiary receives SSI, then his/her eligibility for SSI will be suspended if the beneficiary's ABLE account exceeds $100,000 and will remain suspended until such time as the account falls below that amount. It is also important to note that the beneficiary's MoHealthNet eligibility will not be affected, even if the beneficiary's SSI is suspended.

6. As of the death of the beneficiary, the ABLE account authorizes a payback to the state for the cost of all Medicaid services (but not SSI) provided to such beneficiary **after** the date of establishment of the ABLE account (which is generally better than the payback which is allowed under a First Party SNT, but which is much worse than the "no payback" when a Third Party SNT is used). It is also possible to pay funeral expenses from the balance of an ABLE account at the death of the beneficiary prior to the satisfaction of the Medicaid payback claim.

The Missouri Department of Social Services ("DSS") has issued guidance providing that contributions and earnings credited to an ABLE account are not income, and thus are disregarded for benefit eligibility beyond MoHealthNet, including Food Stamps, Temporary Assistance and Child Care Subsidy program. In addition, the guidance from DSS provides a broad definition of "qualified disability expenses" with regard to qualified distributions made from an ABLE account and which are defined to include "any expenses related to the beneficiary's blindness or disability including the following: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring and funeral and burial expenses." IM #96 (10/26/15). This broad definition of "qualified disability expense" means that distributions from an ABLE account do not have to be limited to medical necessity and do not have to provide a sole benefit to the beneficiary. This is much more versatile than a First-Party SNT which requires that the trust must be administered for the "sole benefit" of the disabled beneficiary. In addition, distributions for housing from an ABLE account will not trigger an in-kind support and maintenance (ISM) reduction in benefits. This general rule that expenditures from an ABLE account are generally not subject to SSI's ISM rule,

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Missouri's New Law on Retaliatory Discharge Claims

Christiaan D. Horton

Missouri law on worker's compensation retaliatory discharge claims has been in flux. Over the years, our courts have struggled with the standards to be applied in cases of this nature. It is no secret--employment claims have become more prevalent in our litigious world. Employment law is ever evolving, and most litigators in this area spend significant time tracking cases and legislation to be sure that the advice they provide is based on the most current law and regulations that apply. Because our state legislature has recently adopted a new law that governs these claims, this article is intended to alert employers of the new paradigm that now controls how retaliation claims in the worker's compensation arena will be analyzed by our courts.

The Exclusive Cause Test (Old Law):

Employers are prohibited from discharging or discriminating against employees who exercise their rights under the Missouri workers' compensation law. Since at least 1984, the Missouri Supreme Court held that an employee who files a lawsuit claiming he was retaliated against in violation of the workers' comp law must prove the exercise of his rights (e.g., by filing a claim for benefits or reporting a covered injury) was the "exclusive" cause for his termination or other adverse employment action.

The language in the Missouri jury instruction requiring proof that an employee's workers' comp activity was the exclusive cause of the employer's action is no longer binding law. Section 287.780 of our Missouri Statutes once provided, "No employer or agent shall discharge or in any way discriminate against any employee for exercising any of his rights under this chapter."

The Missouri Supreme Court's 1984 ruling in *Hansome v. Northwestern Cooperage Co.*, laid out the elements an employee must prove to recover for retaliatory discharge under the old workers' comp law:

(1) His status as an employee of the company at the time of the injury;

(2) His exercise of a right granted by the workers' comp law (Chapter 287);

(3) The employer's discharge or discrimination against him; and

(4) An exclusive causal relationship between his action and the employer's actions.

A 1998 Missouri Supreme Court decision confirmed the exclusive cause standard in workers' comp retaliation cases, but this ruling was again revisited in 2014 and overturned.

The 2014 Missouri Supreme Court Case "Contributing Factor" Test (Overturned by Statute):

In 2014, our Missouri Supreme Court adopted a new test in worker's compensation retaliation cases. That standard was referred to as the "contributing factor" standard. The Court explained:

"Taking into account the statutory language and this Court's precedent in other discrimination cases, this Court holds that the "contributing factor" standard should apply to causes of action that arise pursuant to section 287.780. Adopting the "contributing factor" standard serves two purposes. First, the legislature's use of the phrase, *"in any way,"* is consistent with this Court's analysis of the "contributory factor" language articulated in *Daugherty, Hill*, and *Fleshner*. Therefore, application of the "contributory factor" standard fulfills the purpose of the statute, which is to prohibit employers from discharging or in any way discriminating against an employee for exercising his or her rights under chapter 287. Second, the standard now aligns workers' compensation discrimination with other Missouri employment discrimination laws.

Under this decision, a claimant must show that the filing of the workers' compensation claim was a **contributing factor** to the Employer's decision to discharge him--not the exclusive factor.

TEMPLEMIRE v. W & M WELDING, INC., 433 S.W.3d 371 (Mo. banc 2014);

The New Paradigm--Motivating Factor Test:

In response to the 2014 decision above, our legislature spoke loud and clear on the new standard that must be applied in worker's compensation retaliation cases. **Effective August 28, 2017**, our new law provides:

287.780. Discharge or discrimination because of exercising compensation rights prohibited--civil action for damages.

No employer or agent shall discharge or discriminate against any employee for exercising any of his or her rights under this chapter when the exercising of such rights is the motivating factor in the discharge or discrimination. Any employee who has been discharged or discriminated against in such manner shall have a civil action for damages against his or her employer. For purposes of this section, **"motivating factor"** shall mean that the employee's exercise of his or her rights under this chapter actually played a role in the discharge or discrimination and had a determinative influence on the discharge or discrimination.

(R.S.1939, § 3725. Amended by L.1973, H.B. No. 79, p. 401, § 1; L.2017, S.B. No. 66, § A, eff. Aug. 28, 2017.)

Now, employers may escape liability under this new standard by demonstrating that an employee's worker's compensation claim was not the "motivating factor" in the decision to terminate employment. This is a tougher standard for employees to meet indeed, but one thing is for certain--it will be tested.

If you have any questions or would like to visit in greater detail with us at CECB on employment law matters, we are ready to provide you the guidance you need in this evolving area of the law.

For Your Convenience…

Please feel free to utilize our wireless high-speed internet capabilities when visiting our office. Using your own personal laptop, you can connect to the internet in any of our conference rooms or in our reception area.

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Continuing Evolvement of ABLE Accounts Under Missouri Law

makes the ABLE account a helpful tool in supplementing the in-kind support and maintenance expenses of a beneficiary without causing the beneficiary a monthly benefit reduction.

It is important to note that any distribution from an ABLE account that is determined **NOT** to be a qualified disability expense will result in such distribution being treated as income to the beneficiary and will subject the distribution to the imposition of a 10% penalty. If the designated beneficiary is no longer disabled, then distributions during such time period will also fail to be qualified disability expenses, but ABLE account status can be reinstated if the beneficiary's disability returns.

The guidelines by DSS ensure that the benefits available from an ABLE account will make these type of accounts easy to set up and use. Since there is little formality involved, the beneficiary or his or her "Attorney-in-Fact" can retain control over the funds held in an ABLE account. Obviously, the ability to use an ABLE account will be limited by the amount of funds involved, but in a situation where there is an existing Uniform Transfers to Minors Account ("UTMA") or Uniform Gifts To Minors Account ("UGMA"), which need to be converted over to the disabled beneficiary once he or she attains the age of 21, or there are settlements or gifts from family, all of which total less than $14,000, the creation of an ABLE account is an easy-to-use option.

The ABLE account also allows for the creation of a fund to save for a large purchase (car, home, etc.), which would otherwise not be allowed under SSI rules. Also, if the funds are spent each year, then there is less of a risk of any Medicaid payback at the death of the beneficiary. ABLE accounts are also a vehicle for money in excess of the $2,000 MoHealthNet resource limit since these excess funds can be contributed to an ABLE account and will then be treated as exempt.

There are currently 300 ABLE accounts under the STABLE platform that have been set up in Missouri since the ABLE Legislation was passed. Since states differ on whether non-residents can open an ABLE account (Missouri does not allow a non-resident to open an account), it is possible that a Missouri resident may have established an ABLE account in another state; however, under federal law individuals are limited to only one ABLE account.

All in all, the adoption and evolution of ABLE accounts under Missouri law provide increased planning options to disabled beneficiaries and families of disabled beneficiaries. If you have additional questions regarding the use of ABLE accounts or whether the use of an ABLE account will work in your particular situation, please feel free to contact me to discuss those planning options!

Attorney Courtney Fletcher Selected As The Newest Member of the Special Needs Alliance

Established in 2002, the Special Needs Alliance (SNA) is a national, non-profit collective of many of America's leading disability and public benefits attorneys. Currently in 48 states, SNA members work to secure Medicaid and other public benefits for individuals with special needs. The SNA's mission is to help enhance the quality of life for people with disabilities by coordinating private resources with public benefit programs through special needs planning and trusts.

Membership to SNA is selective and competitive, and is extended by invitation only. Attorneys must meet specific criteria to ensure that SNA clients are served with the utmost professionalism and compassion. Criteria include a minimum number of years of practice in the special needs area and proven involvement with disability advocacy organizations. Many SNA attorneys have personal experience with individuals with special needs—either as a sibling or parent.

Courtney is a part of the Estate Planning Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. She concentrates her practice in the areas of estate planning and administration, probate, trusts and elder law, including Medicaid Planning, Special Needs Trusts, Digital Asset Planning and Veterans Benefits.

She is a member of The Missouri Bar, current President of the Greene County Estate Planning Council, a member of the National Academy of Elder Law Attorneys and a V.A. accredited attorney. She is a past director of the Missouri Chapter of the National Academy of Elder Law Attorneys and a past chairman of the Springfield Metropolitan Bar Association Probate and Trust Committee.

Attorney Jay Preston Selected to Leadership Springfield Class 34

We are pleased to announce that Jay Preston was recently selected to participate in Leadership Springfield Class 34. Leadership Springfield is a nine-month comprehensive community-based leadership program.

Mr. Preston is a member of the Litigation/Dispute Resolution group at CECB and concentrates his practice in the areas of business and civil litigation as well as real estate litigation.

Mr. Preston received his B.S.B.A., M.B.A and his law degree from the University of Missouri.

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- Business Organization and Planning
- Corporate
- Estate Planning
- Probate
- Trust Administration
- Transactions
- Local Government Law
- Real Estate and Construction
- Taxation
- Employee Benefits
- Banking
- Commercial Litigation and Dispute Resolution
- Environmental and Utility
- Economic Development
- Intellectual Property and Franchise
- Arbitration and Mediation
- Mechanics' Liens and Foreclosures
- Pension and Profit Sharing
- Employment
- Zoning and Land Development
- Wealth Strategies

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