

BUSINESS LAW *Legal Matters*

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Glitches on credit card receipts getting companies in trouble

A new federal "identity theft" law prohibits merchants from printing more than the last five digits of a credit or debit card number on a customer's receipt.

The law is triggering a lot of class actions against companies that haven't updated their receipt systems. For instance, many companies still print credit card expiration dates on receipts. The new law prohibits this practice and can easily lead to a lawsuit.

These suits are dangerous. The law imposes fines from \$100 to \$1,000 per willful violation. Multiply \$100 or \$1,000 by the number of receipts that most merchants provide, and you can quickly have a very large number.

(It's not entirely clear what makes a violation "willful," but a company is expected to know about the law and follow it.)

While the law clearly covers receipts



provided at the point of sale, some courts have even ruled it also applies to receipts mailed to customers who place phone orders, and even to acknowledgement e-mails sent to customers.

More than 300 lawsuits have been filed so far against companies ranging from mom-and-pop stores to national chains such as Ikea, 1-800-Flowers and Victoria's Secret.

A bill now in Congress (H.R. 4008) would eliminate class actions against companies that print a card's expiration date on a receipt. But that bill is still in committee, and it remains uncertain whether it will pass.

Some online merchants make customers waive their right to file a class action as part of the "terms of use" to which they must agree in order to use the website. It's not clear if such a provision would prevent a suit over a credit card receipt, but it wouldn't hurt to

\$100 million Starbucks verdict shows danger of ‘tip pools’

A recent \$100 million verdict against Starbucks for the way it required employees to participate in “tip pools” should jolt employers with all the force of a Venti extra-shot Caramel Macchiato.

Tip-pool lawsuits have been filed not only against restaurants, but also against hotels, transportation companies, delivery services, casinos and sports facilities.

Recently, many companies have been tempted to expand the number of employees who participate in tip pools. This can seem like a good way to save money, because the employer gets a tip credit against the minimum-wage requirements.

But a complex set of legal rules governs who can participate in a tip pool.

Federal and state laws are both in play, and often multiple laws overlap so the requirements are hard to follow. These rules cover who can participate (for example, hosts and hostesses, greeters, drink servers, kitchen staff, shift supervisors) as well as how much can be pooled.

Common mistakes include having



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employees participate in tip pools when they spend more than a certain percentage of their time performing tasks other than customer service, or when they exercise certain management or supervisory responsibilities.

A mistake can leave an employer on the hook under a variety of laws, including the failure to:

- * pay minimum wage, where an employee shouldn't have been subject to a tip credit;
- * pay overtime, where employees' participation affects their exempt status; and

- * make proper contributions to Social Security, Medicare, unemployment and retirement plans.

In some cases, managers can be personally liable for mistakes.

Another issue is whether a “service charge” or a “percentage sales charge” at an entertainment or function facility can be considered a tip. The federal Fair Labor Standards Act doesn't assume a service charge is a tip, but some state laws are different.

Also, while companies are not liable for sales tax on tips, in some cases they may be liable for sales tax on a service charge.

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Your business loan could mess up your estate plan

If you own a business and you plan to leave it to one of your children when you die, be aware that taking out a business loan or line of credit could affect your estate plan.

Many wills stating a child will inherit business assets don't specify whether the child will inherit the assets subject to any debts, or whether the child will inherit the assets free and clear and any debts must be paid off by the other heirs.

In the past – unless the will was clear – it was assumed the other heirs had to pay off any loans. But recently many states have changed their laws, and now say the child who inherits the business also inherits the debt. You can change these assumptions if you want, but you have to be very specific about it in your will.

In any event, it's wise to consider the effect of business loans on your estate plan, and make sure your will specifies exactly how you want your property to be divided.

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Supreme Court limits out-of-state taxes

A new ruling from the U.S. Supreme Court is good tax news for companies operating in multiple states.

The case involved a packaging company based in Ohio and doing business in Illinois. The company had a separate Ohio-based subsidiary with an unrelated information-technology business. When the company sold the subsidiary, it had a significant capital gain.

Illinois wanted to impose a tax on a

part of the capital gain because the parent company did business in Illinois, and the subsidiary was part of its operations.

But the Supreme Court unanimously sided with the company, saying the subsidiary was a separate entity that was unconnected with the larger packaging business. The subsidiary had its own separate management, was not functionally integrated with the parent business, and provided no economies of scale. Illinois had no right to tax it, the high court said.

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Employees can sue even if they're only 'perceived' as disabled

Employees don't have to be disabled to sue under the Americans With Disabilities Act. They merely have to be *regarded* as disabled by their employer. That's why it's essential – whenever you have an employee with any sort of impairment – to fully understand the nature of the impairment and not leap to conclusions about what the employee can and cannot do.

A recent case illustrates the potential problems.

An electrician at an aluminum can factory suffered a stroke. The stroke left him with vertigo and some problems with balance, and his doctor ordered him not to work high up on ladders or catwalks. He was otherwise cleared for work.

The stroke also left him with an



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apparently unsteady gait, and he appeared to have other problems with balance that didn't involve heights. His boss became afraid that he was a danger to himself and others if he worked around dangerous machinery, even if he wasn't on a ladder or catwalk. As a result, he was demoted to a janitorial job.

The man sued. A judge initially threw out the case, but a federal appeals court in Denver reinstated the man's lawsuit. Even if he wasn't actually disabled, the fact that the company regarded him as having a disability meant it could be liable if it acted improperly in demoting him.

The lesson is that you can't assume you know what work an employee is capable of doing. The Disabilities Act requires an employer be very careful before disqualifying an employee based on an impairment.

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Handwritten contract leads to \$10.5 million verdict

A contract an executive quickly scrawled on two pieces of notebook paper was not only binding, it was the basis for a \$10.5 million jury verdict. This case shows that a business agreement is enforceable even if it isn't in a formal document.

The chairman of a telecom company met at his office with a former employee who was considering starting a new venture. Unexpectedly, the chairman suggested he start the venture within the company. He took out two pieces of notebook paper and sketched out an

employment agreement that would pay the employee \$200,000 a year for five years plus a hefty cash bonus and shares of stock.

The pages were photocopied on a single sheet, and both parties signed. The handwritten agreement said, "The parties will complete formal contracts as soon as possible but this is binding." No formal contract followed, however.

Six months later, the employee was fired, and he sued. A jury said the handwritten contract was binding, and awarded him the value of the contract – \$10.5 million based on the current value of the stock.

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Employers brace for genetics privacy law

A company can't refuse to hire people because they are genetically disposed to develop a particular disease or condition – even if this would cause the company's health care costs to skyrocket.

The federal Genetic Information Nondiscrimination Act, recently signed into law by President Bush, also prohibits insurance companies from using genetic information to

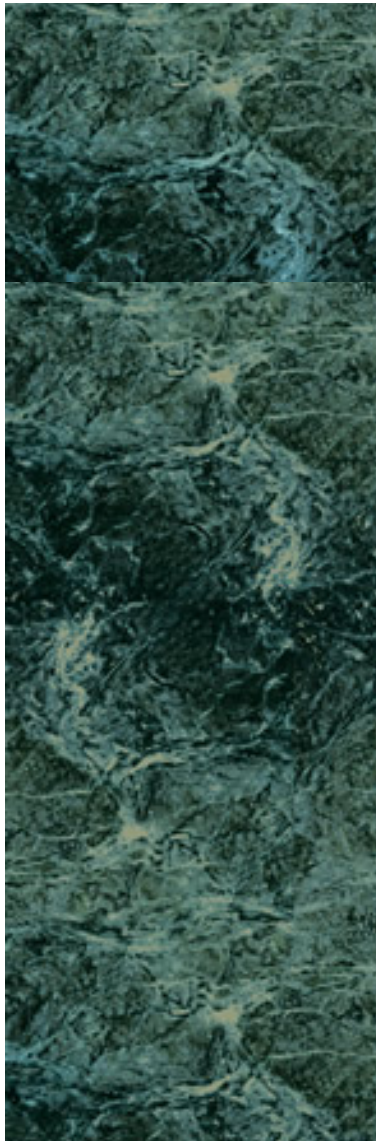


deny coverage or increase premiums. The new law imposes privacy and record-keeping restrictions on employers and insurance carriers accustomed to exchanging health care information freely.

The penalties for violating the law are big: Violators are exposed to penalties of up to \$300,000 per offense, as well as potential punitive damages and attorneys' fees.

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Employee could be required to work on Sabbath



For 10 years, a U.S. Postal Service letter carrier in Ohio was allowed to avoid working on Saturdays to accommodate his Jewish faith. But when budget constraints forced the Post Office to reduce staffing levels and require more carriers to work on Saturdays, other employees became unhappy with the man's arrangement. The accommodation was eliminated after union members voted to recommend its termination. The postmaster suggested he reserve some of his vacation time for



Saturday absences, and he use leave time as well as exchange days with other carriers. The man sued for religious discrimination under federal law. He claimed that being forced to take days off from work without pay reduced his compensation and his eventual pension. But a federal appeals court ruled against the man, saying the Post Office had acted reasonably under the circumstances. It said the Post Office never discharged or disciplined the man, and didn't use the requirement of working on the Sabbath as a way of denigrating his religion or forcing him to quit.

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