

THE DUFFORD WALDECK QUARTERLY

A NEWSLETTER FOR OUR CLIENTS

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CHANGES TO PERIODIC REPORT NOTIFICATIONS

by Michael A. Kuzminski

Clients who own or manage Colorado entities (corporations, limited liability companies and certain partnerships), or clients who have out-of-state entities registered to conduct business in Colorado, should be aware of a significant change in how the Colorado Secretary of State provides notice of periodic report deadlines.

Historically, the Secretary of State has sent out an annual "postcard" reminder to every entity that it must file its periodic report with the Colorado Secretary of State's Office by the deadline on the postcard. On January 1, 2012 the Secretary of State eliminated postcard notifications in an effort to save costs, estimated at \$233,000 annually. Instead, clients with entities will have to either calendar and be responsible for these deadlines themselves or sign up for email notification from the Secretary of State.

If a client has already signed up for email notification, the Secretary of State's Office will email an electronic reminder that the periodic report is due along with instructions on how to file the report over the internet. Every electronic filing with the Secretary of State now includes a prompt asking the filer if he or she wishes to provide an email address to receive notifications from the Secretary of State, including reminders for filing periodic reports. Clients should

sign up for these notifications. According to the Secretary of State's Office, it does not sell or otherwise make filers' email addresses available to the public. The Secretary of State also provides a method to unsubscribe from the notice procedure if a filer wishes to change his or her email address or remove it from the email database for any reason.

If you have not already signed up for email notifications, please visit the Colorado Secretary of State's website at www.sos.state.co.us, click on the "Business and Licensing" link toward the top of the page, click on "Business Organizations," and under "Services," click on "E-mail notifications." From there, simply follow the prompts to provide an email address for notifications. Please feel free to contact us if you have any questions or simply contact the Secretary of State's Office at (303) 894-2200 for more information.

PROCEED WITH CAUTION WHEN TAKING ON AN UNPAID INTERN

by Matthew A. Montgomery

With summer break right around the corner, the market is about to be flooded with high school and college students looking for summer jobs. I still remember fondly some of the summer jobs I worked over the years: one summer I helped remodel kitchens and baths for a small company, another I ran the breaks for a rollercoaster at an amusement park, and yet another I spent moving office furniture. A summer job can be a

rewarding experience, and a great way to save up a little of what my grandmother would call “pocket money” for the school year ahead. However, there is also a potential legal issue lurking in the hiring of summer interns, particularly those who seek unpaid opportunities.

Each summer, our law firm receives at least one application from a law student who wants to volunteer as an unpaid intern. As tempting as this offer can be—especially in a troubled economy—it is very difficult to hire an unpaid intern without running aground of federal law—even if the intern *wants* to work for free, or will receive school credit. This is because the Fair Labor Standards Act (the “FLSA”) imposes a number of requirements on employers to help protect the rights of workers.

Under the FLSA, there is no permissible volunteering of services to a for-profit employer in the private sector. Instead, if an employer uses an unpaid intern, the employer must show that he or she qualifies as a “trainee;” otherwise, the employer is required to pay the intern at least minimum wage.

In the seminal case of *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947), the U.S. Supreme Court shed some light on who exactly qualifies as a trainee. There, the Court evaluated whether individuals who, as a pre-eligibility requirement for a railroad company participated in an unpaid training session for 7 to 8 days as yard brakemen, qualified as employees under the FLSA. Although the Court determined that brakeman performed “the kind of activities covered by the Act,” the Court held that the railroad itself received no “immediate advantage” from the work done by the trainees, and therefore, the brakemen did *not* qualify as employees.

Based on the reasoning in *Walling*, The U.S. Department of Labor’s Wage and Hour Division has articulated a six factor test to determine whether an intern qualifies as a trainee. Under this test, the following must all be true: (1) the training, even though it includes actual operation of the facilities of the employer, is similar to what would be given in a vocational school or academic educational instruction; (2) the training is for the benefit of the trainee; (3) the trainees do not displace regular employees, but work under their close observation; (4) the employer that

provides the training derives no immediate advantage from the activities of the trainees, and on occasion the employer’s operations may actually be impeded; (5) the trainees are not necessarily entitled to a job at the conclusion of the training period; and (6) the employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

Generally speaking, it is very difficult for an employer to show that its relationship with an intern meets all six elements of this test. Accordingly, an employer should think long and hard before hiring an unpaid intern this summer.

ATTORNEY BARBARA BUTLER JOINS FIRM

by Rob Pierce

We are pleased to announce that Barbara Butler has joined our firm. Barbara moved to Grand Junction from Limon, Colorado in 1991. She worked for the Mesa County Assessor’s Office, quickly rising to the position of Deputy County Assessor. While working for the Assessor’s Office, she also attended Colorado Mesa University, where she graduated second in her class. After graduation, Barbara attended law school at the University of Arizona, where she served as Editor-in-Chief for the Arizona Law Review and graduated cum laude in 2002. She returned to Colorado after graduation, securing a much-sought-after position as law clerk with the Colorado Court of Appeals. After her term as clerk was over, she returned to Grand Junction, where she quickly became a well known and respected member of the legal community.

Barbara’s practice will emphasize civil litigation, business formation, and real estate matters. Barbara’s solid reputation, diverse experiences, and longstanding roots in the Grand Valley convinced us that she would be a great addition to our firm. We are very happy to have her on board.

In her free time, Barbara enjoys working with Juan Carlos Productions, a business that she and some friends started several years ago to serve as clearinghouse to help artists in a variety of mediums find markets for their work. You can check out their artists at www.juancarlosproductions.com.