



Law Notes



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Legal Humor

At the height of a political corruption trial, the prosecuting attorney attacked a witness. "Isn't it true," he bellowed, "that you accepted five thousand dollars to compromise this case?" The witness stared out the window, as though he hadn't heard the question. The prosecutor again bellowed, "Isn't it true that you accepted five thousand dollars to compromise this case?" The witness still did not respond. Finally, the judge leaned over and said, "Sir, please answer the question." "Oh," the startled witness said, "I thought he was talking to you."

ASPECTS OF THE NEW CONCEALED CARRY PERMIT LAW THAT AFFECT BUSINESSES

By Thomas R. Howard

The Minnesota Senate and House have recently passed, and the Governor has signed, a law that will allow any person not disqualified by law, and who goes through the mandatory training, to carry a concealed weapon. This law has raised issues for many people, including business owners. Two concerns for them may be: (1) What does a business owner need to do to prevent persons licensed to carry concealed weapons from bringing those weapons into their business premises? (2) What rights do business owners have to restrict the rights of their employees to bring concealed weapons to work?

The law states that a business owner may order any person carrying such a firearm on or about his person or clothing to leave the premises if the person knows there has been a "reasonable request that firearms not be brought into the establishment." A "reasonable request" means that a request has been made by "prominently posting a conspicuous sign at every entrance to the establishment containing the



following language: '[YOUR BUSINESS NAME HERE] BANS GUNS IN THESE PREMISES'." This notice must be displayed "prominently," which means that the sign must be readily visible and within four feet laterally of the entrance, with the bottom of the sign at least four to six feet above the floor. The sign must also be "conspicuous," meaning that the lettering must be in black against a bright, contrasting background that is at least 187 square inches in area, and the black lettering must be in "Arial" typeface at least one and one-half inches in height.

Another provision of the new law states that, after you have given employees the "reasonable request" by publishing the required sign, the "requester or its agent" must personally inform the person of the posted request

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and demand compliance with the notice of the ban.

Important definitions include the definition for a “private establishment,” which is defined as a “building, structure, or portion thereof that is owned, leased, controlled, or operated by a non-governmental entity for a non-governmental purpose.” This does not grant the owner or operator of a private establishment the right to prohibit the lawful carrier in possession of firearms in a parking facility or a parking area.

If you are a landlord, you may not restrict the lawful carrier in possession of firearms upon rental property.

If you wish to restrict employees from bringing concealed firearms into your business, you will have to comply with all of the posting and notice requirements of the law and you should inform each employee, both verbally and by a distributed memorandum, that you are posting such a ban and that you are requesting each employee not to bring concealed weapons into the workplace, whether they have a license to carry or not.

There are several areas of this law that will have to be worked out as experience is gained in the application and enforcement of this statute. At a minimum, if you wish to ban such firearms in your business establishment, you should comply with the posting and personal request portions of the statute and make it part of any employee manual that you have. You should also post a notice of the ban and your request on any bulletin board or other area that contains such notices for your employees.



CHILD SUPPORT MODIFICATION

By Julie M. Pawluk

Many of you, whether you pay or receive child support, will at some time be involved in a child support modification action. This is an action that is strictly controlled by Minnesota Statutes, so it is important to understand the requirements.

The Court will not modify child support unless one or more of the following are shown:

1. Substantially increased or decreased earnings of a party (normally the person paying support, the *obligor*);
2. Substantially increased or decreased need of a party or the children;
3. Receipt of AFDC assistance; or
4. A change in the cost of living for either party.

In addition, this “substantial” change *must* make the terms of the prior order unreasonable and unfair.

Extraordinary medical expenses of the children or substantially increased or decreased childcare expenses may also result in a change in the division of those expenses between the parties.

The most common circumstance is a change in the obligor’s income. The court will presume that there has been the required “substantial” change, and presume that this change makes the prior order unreasonable and unfair, if the obligor has increased or decreased income since the last order setting child support, and if the change in income would result in child support that is *at least 20% and at least \$50.00 per month higher or lower* than the current support order.

This type of modification is different than the cost-of-living adjustment (COLA), which has different considerations and is normally much easier to obtain.

A request to modify child support is made by serving and filing a motion and affidavit (sworn statement), followed by a

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hearing. After reviewing the motion documents and hearing the oral arguments, the judge will then make a decision.

It is also important to understand that the court will not normally make the modification retroactive prior to the time that the motion for modification was served. Thus, if a modification is warranted and you are the party seeking the increase, it is important to bring your motion as soon as possible. Even if the obligor had the substantially increased income for a year or more, the court will only order the increase effective as of the date the motion was served on the other party. This is also important if you are the *obligor*, requesting a *decrease* in your support obligation. For instance, if you have been laid off from your job, you will want to bring your motion as soon as possible, because the judge cannot reduce your support prior to the time that you serve your motion. Do not make the mistake of thinking that because your income has decreased that your support will automatically decrease. The support obligation remains as is, regardless of the facts, until



there is a new court order.

REPORTING DEADBEAT PARENTS

By Michael J. McNamara

A relatively little-known federal law was passed in 1996 which requires all employers to report new *and* rehired employees to a designated state agency which gathers information about “new” employees and “rehired” employees in order to determine compliance with the The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), whose purpose is to monitor the movement and employment of parents who are obligated to make child support payments.

PRWORA requires Minnesota employers to submit the following information about newly hired and rehired employees to the Minnesota New Hire Reporting Center: Name, address, social security number, date of hire, state of hire, and, if available, the date of birth of the employee. Of course, the employer also provides its company name, mailing address, and federal tax identification number (FEIN).

An employer failing to report either new or rehired employees is subject to a state-imposed fine of \$25.00 for each employee *intentionally* unreported and \$500.00 for each employee *intentionally* unreported if the employer has “conspired” with the employee to avoid reporting. These fines, however, cannot be imposed unless the state has first given the employer a “Notice of Noncompliance” by certified mail.

Employees who must be reported to the Minnesota New Hire Reporting Center include



full-time, part-time, temporary, and seasonal employees.

“Rehired” employees include those who have been off the employer’s payroll for more than 90 days. Additionally, governmental agencies must report *independent contractors* to the Reporting Center and private employers are encouraged to do so. The report of new or rehired employees must be made within 20 days of the hire *and applies whether or not the employee actually owes child support.*

Employers with locations in other states may report all of their newly hired or rehired employees to the Minnesota New Hire Reporting Center. In that case, those employers *must* submit reports electronically or by magnetic tape, contact the Reporting Center for data specifications and file lay-out requirements, and notify the federal government by registering online at <http://www.acf.dhhs.gov/programs/cse/newhire/employ/emult.htm>.

Finally, employers may contact the Minnesota New Hire Reporting Center by telephone at (651) 227-4661 or (800) 672-4473; or by United States Mail at P.O. Box 64212, Saint Paul, Minnesota 55164-0212; or online at <http://www.mn-newhire.com>.

NEW SELLER DISCLOSURE LAW

By Chad E. Henderson



On January 1, 2003, a broader Seller Disclosure Law went into effect. The law now requires a home seller to disclose to a buyer anything wrong with the house that could "adversely and significantly" affect the buyer's interest in the property. Prior to this law, even though attorneys would typically recommend to a seller that they disclose any problems or defects they had with the house, it was not legally required. The statute allows compliance with the law in three ways:

1. The seller makes a full disclosure of the property's condition;

2. An inspection of the home is made by a qualified third party and that inspection report is provided to the prospective buyer; or

3. The seller and buyer agree in writing to waive the inspection requirements.

The law contains other details that more fully explain the disclosure requirements. There are exceptions to what must be disclosed and some of those exceptions are:

1. That a home was occupied by an owner or occupant who is suspected to have HIV;
2. The property was the site of a suicide, accidental death, natural death, or perceived paranormal (ghost) activity.

Sellers can be liable for damages in the event they do not disclose in good faith problems of which they have actual knowledge or if they do not comply with the law in the other ways noted above.

The intent of the law is to protect a home buyer while shielding the real estate agent from lawsuits over conditions their clients did not disclose. Transfers between relatives or those related to divorce or inheritance are not covered by the law.

It is always best to get proper legal advice whether you are selling or buying a home to avoid

expensive and time-consuming problems with what is, for most people, their largest investment.

Henderson, Howard, Pawluk & McNamara is a full service law firm with offices in Brooklyn Center, MN. We are committed to providing quality legal representation in the following areas:

- **BANKRUPTCY**
Individual and business.
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- **CRIMINAL LAW**
DWI, misdemeanor, traffic, license revocation, felony and juvenile matters.
- **FAMILY MATTERS**
Divorce, child custody, child support and post-decree actions, adoptions and paternity.
- **PERSONAL INJURY**
Automobile accidents, products liability, slip and fall, dog bite, and other accidents involving injury or death.
- **REAL ESTATE**
Residential and commercial, purchase agreements, property closings and title opinions.
- **WILLS AND ESTATES**
Wills and trusts, probate and estate administration, guardianships and elder law.

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