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COUNSELORS AT LAW

Newsletter

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The Necessity of Corporate Record Keeping

By Michael Mattioni, Esquire and Jennifer Iacono, Esquire



for a corporation to maintain its corporate status, it must observe corporate formalities. An integral aspect of observing corporate formalities is the documentation of decisions and the decision making process. By losing corporate status, the shareholders may lose their liability protection. The loss of corporate status is devastating to any shareholder because liability protection is a key motive for forming a corporation.

If the shareholders fail to maintain proper formalities, it is possible that a court will disregard the corporate entity. This means that a shareholder may face personal liability for a debt that should have been solely a corporate debt.

For this reason, it is important for shareholders,

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Shareholders of corporations must be aware of record keeping requirements to gain the benefit of corporate status. Although often overlooked, documentation is a critical function of any corporation because it serves as the foundation for other activities.

Documentation is not just helpful, it is a necessity. In order

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Social Security Disability Benefits – The Application and Appeal Process

By Regina Parker, Esquire

Social Security Disability is a program of the Federal Government designed to provide monthly payments to disabled individuals. To qualify for Social Security disability benefits, you must have earned wages and paid Social Security taxes five out of the past 10 years. Aside from paying into the Social Security system, you must also be disabled. Disability under Social Security is based on your inability to work by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of twelve months or more. You may be a candidate for disability

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The Necessity of Corporate Record Keeping

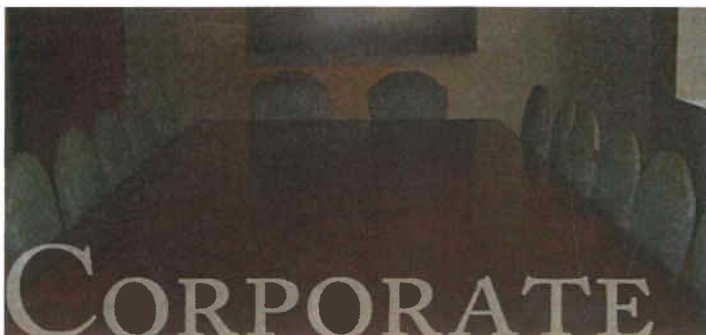
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especially sole shareholders of corporations, to observe corporate formalities. This includes holding annual meetings of shareholders and directors, and documenting the meetings in a corporate minute book. Other important actions include having a separate bank account for the corporation, keeping accurate records of expenses and income, and not commingling funds of the corporation with personal funds.

If the shareholders of a business hope to obtain the benefits of limited liability provided by utilizing a corporate framework, the shareholders must respect the separate identity of the corporation.

Other problems may also arise if records are not properly maintained. Salaries may be recharacterized as constructive dividends and subject to extra taxation; qualified pension plans and deductions could be disregarded; and shareholder loans could be disregarded and treated as constructive dividends. Record keeping is vitally important, even for the smallest corporation, if the shareholders want to receive the benefits of corporate status.

This article provides some general information regarding corporate law. Every situation is different. Anyone with questions or seeking to open a business should consult with an attorney or other professional.



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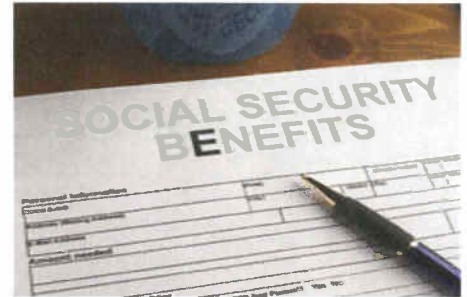
benefits if you cannot perform any work 8 hours per day, 5 days per week, including jobs that are considered to be sedentary in nature.

To initiate a Social Security disability claim, you must submit an application for benefits with your local Social Security district office, either online or at the local office. You must provide information about your medical condition, work history, and medical treatment. You should also be able to explain why you are unable to work. After submitting your application, you will receive an “Activities of Daily Living” Questionnaire which must be completed and returned in a timely manner, or your claim could be denied for lack of evidence. You may also want to consider consulting with an attorney to assist you with the application process.

Decisions on an application for benefits are usually made within 3-6 months from the date of filing. If you are approved for benefits, you will begin to receive payment along with a Notice of Award which will explain when you were found to be disabled and when you are entitled to collect benefits. It will also tell you what your monthly benefit will be. If, however, benefits are denied, the notice will explain that you have 60 days to appeal.

To appeal your decision in Pennsylvania, you will need to file a Request for Hearing Before an Administrative Law Judge (“ALJ”), within 60 days of receipt of your denial letter. After the appeal has been filed, the local Social Security Office will forward your appeal to the Office of Disability Adjudication and Review to schedule a hearing. The hearing is your opportunity to personally let the ALJ know why you cannot work and how your medical condition affects your life on a daily basis. The waiting period to receive a hearing date varies. In certain cases, you can expect to wait up to 12 months before receiving a hearing date. Prior to the hearing, it is important to obtain and provide the ALJ with updated medical information to support your claim. During the hearing, the ALJ will hear testimony from you and review your medical treatment and history. The ALJ may also subpoena impartial medical and vocational experts to appear and testify at your hearing.

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Judges typically issue decisions within 30 to 60 days following the hearing. If you receive a “Fully Favorable” decision, you have won your case and can expect to receive benefits. However, an “Unfavorable” decision means that you have been denied benefits. You then have the right to file a Request for Review of Hearing Decision/Order within 60 days of receipt of an “Unfavorable” decision. The case will then be transferred to the Appeals Council, which can either uphold or reverse the judge's decision. If you lose on the Appeals Council level, with the exhaustion of all administrative remedies, your recourse is to file a civil action in Federal Court.

Social Security is a program that is governed by case law, regulations, and statutes. The law is constantly changing. It is recommended that you consult with an attorney during all phases of the social security process.





Unemployment Compensation and the Inability to Work Due to Health Reasons

By Regina Parker, Esquire

In Pennsylvania, unemployment compensation is provided to workers who are separated from their employer through no fault of their own, typically through a layoff or termination. However, in certain cases, an employee may become unable to perform his or her job because of health reasons or certain medical conditions. In such cases, to become eligible for unemployment compensation benefits, the employee must inform the employer of his health limitation prior to quitting.

Consistent with Section 402(b) of the Unemployment Compensation Law (voluntary quit), employees with health restrictions are not required to initiate requests for alternative employment or accommodations, but are only required to inform employers of their limitations. 43 P.S. §802(b). The burden then shifts to the employer to offer suitable work and/or reasonable accommodations within the employee's limitations. The employee must also be able and available to perform under the suggested accommodations. If the employer does not offer suitable work, the employee may be eligible for benefits. The Law is clear that the employee must communicate the activities he is allowed to do to the employer, and he will be eligible for benefits if the employer has no work or fails to communicate the availability of work within the restrictions. However, if the employee does not even attempt to perform the modified work offered, benefits will be denied.

The Commonwealth Court in *Cullen v. Unemployment Comp. Bd. of Review*, 666 A.2d 772 (Pa. Commns. Ct. 1995), stated:

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Where an employee because of a physical condition, can no longer perform his regular duties, he must be available for suitable work, consistent with the medical condition, to remain eligible for benefits. However, once he has communicated his medical problem to the employer and explained his inability to perform the regularly assigned duties, an employee can do no more. The availability of an employment position, the duties expected to be performed by one serving in that capacity, and the desirability of that individual for service in that capacity are managerial judgments over which the employee has no control. As long as the employee is available where a reasonable accommodation is made by the employer, that is not inimicable to the health of the employee, the employee has demonstrated the good faith effort to maintain the employment relationship.

666 A.2d at 773. Under the Law, an employee has a duty to take reasonable measures to ensure that the basic employment relationship continues. If an employer offers any accommodations to the health problem, the employee must make reasonable efforts to perform the work before declaring an inability to do it.



Firm News and Updates

Eugene Mattioni, Esquire, ran and supported the Broad Street Run and the Wounded Warriors, 10 miles, in one hour and 52 minutes. The Broad Run draws 30,000 participants and it supports numerous charitable organizations. This year part of the proceeds will be used to revitalize Taras Shevchenko Park. For years the park was neglected due to lack of funding and staff shortages. The Park is near the start of the race at Broad Street and is named after the Ukrainian poet and activist Taras Shevchenko. The Wounded Warriors support men and women of the armed services who have been wounded in action.

Dawn M. Tancredi, Esquire, President of the St. Joseph's University Law Alumni Association, presented the GEM Award to Patrick Shea, Esquire, '79, and presented a law alumni scholarship to a student that is going to law school in the fall. The Gem Award is given annually to a graduate who has displayed great loyalty to the University and has focused his/her career on helping others.

Regina Parker, Esquire, has been re-appointed to serve as a member of both the Women in the Profession and the Minority Bar Committees of the Pennsylvania Bar Association for the 2011-2012 year. Ms. Parker has been appointed and has actively served as a member of these Committees since 2009.

Joseph F. Bouvier, Esquire, served as Chairman of the Greater Swedesboro Business Association's 17th Annual Golf Outing and Dinner on May 26, 2011. The event was successful in raising funds to assist the Business Association with its operations.

Eugene Mattioni, Esquire, Chairman Maritime Academy Charter School, took part of the cutting ribbon ceremony along with student government president to the Maritime Technical and Vocational Building. The Maritime Academy Charter School enrolls 800 students from 4th grade to 12th grade. The new building will house their maritime vocational and technical center to and in introducing young people to careers in the maritime industry.



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