

ISSUE 28 - JULY 2022

OVB LAW & CONSULTING, S.C.

Monthly Newsletter - Your Legal Nook!



FIRM UPDATE:

Welcome to the Firm: Mary Purdy

Our new Law Clerk, Mary, is currently a rising 2L at Marquette University Law School and hopes to one day practice transactional business law.

As a law clerk, she loves to embrace her Nancy Drew investigative skills by finding the applicable law and applying the facts. She works tirelessly to draft our research memorandums and has a beaming smile on her face when she does!



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"THE OPERATING AGREEMENT MAY BE ADMINISTERED ORALLY, IN WRITING, IN A RECORD, OR IN ANY COMBINATION THEROF AND STILL BE LEGALLY BINDING"

- Attorney Samantha Huddleston,
OVB Law & Consulting, S.C.



New Legislation Affecting Wisconsin Limited Liability Companies

Many business owners are already familiar with limited liability companies (LLCs) and the benefits of operating a business through such entity rather than as a sole proprietor or corporation. Small businesses, in particular, favor the LLC option as it allows the company to separate its assets and liabilities from those of its owners. And while laws for organizing and operating an LLC are clearly set forth in Wisconsin's Statutes, the state legislature realized there are some inconsistencies between the law and the practicality of operating an LLC. These legislative changes will modernize the law surrounding LLCs and answer a lot of questions for business owners and attorneys alike, when dealing with LLCs.

Changes made to chapter 183 of the Wisconsin Statutes will take effect January 1, 2023. These changes will affect multiple phases of the LLC organizational process including filing the articles of organization, creating an operating agreement, and determining the management rights of the company. For example, under the new laws, when drafting the Articles of Organization, there will be no need to certify the type of management. Before this change was enacted, the entity application form required the organizer to decipher if the company would be manager-managed or member-managed within the Articles of Organization. This often led to additional paperwork and filings if the members of the company wanted to change the management structure later. This change will hopefully cut down on the extra paperwork and give companies more freedom when making these decisions.

Particularly notable are the changes in the requirements of a company's operating agreement. While we all know that an operating agreement must be written as the law currently requires, the new legislation indicates that moving forward, an operating agreement may be administered orally, in writing, in a record, or in any combination thereof and still be legally binding. This will have a huge impact on litigation involving member disputes, and what evidence or information can be used to prove a member's rights, obligations, or authority.

Not surprisingly, the Wisconsin Supreme Court case, *Marx v. Morris*, looks to have played a significant role in this legislation change. Especially as it relates to an LLC's member's fiduciary duty requirements. The new LLC laws will now require that fiduciary duties are outlined clearly in the operating agreement.

If you are considering starting an LLC or looking to better understand how these changes to the law might affect an existing LLC, consult with the attorneys at OVB Law & Consulting, S.C.



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Is "The Great Resignation" Here to Stay?

The American work environment looks substantially different now than it did pre-pandemic. There is a record number of people leaving their job after the COVID-19 pandemic, a movement that has been termed "The Great Resignation" by Professor Anthony Klotz of Texas A&M University.

As the country emerged from the pandemic, Professor Klotz predicted that employers would see a wave of employee resignations due to the pandemic's effect on how individuals viewed their jobs. Seeing their ability to work from home while child-rearing, cutting down drive times, and having more time to manage household tasks caused many to reevaluate their careers. In almost every way, working from home kickstarted the great resignation because it gave workers the ultimate flexibility that was rarely offered before the pandemic.

In 2019, the annual resignation rate drastically dropped due to the uncertainty of the job market. Then in 2020, when the pandemic hit and forced millions to work from home, employees did whatever they had to do to keep their jobs. This caused widespread burnout, leading to a record number of resignations and people, mostly women, leaving the workforce. The past 2.5 years has changed the goals of many employees. While employees used to seek career growth opportunities and higher salaries, many employees have shifted their priorities and prefer positions that offer remote work opportunities, better benefits, and more work-life balance.

Before hiring, employers should take an inventory of what their employees want, and what concerns might have forced previous employees out the door. Employers would also be wise to revisit their employee handbooks and policies to confirm employer expectations are clearly stated, ensuring that all employees know their expectations from day one. The autonomy that employees experienced during the "COVID-19 work-from-home" era will be hard to reel-in, but if employers make a conscience effort to try to meet their employees halfway, they may be better suited in the long run, if retaining top talent is a desire.

"IN THE PAST 50 YEARS, WAGES HAVE STAGNATED, WHILE AMERICAN PRODUCTIVITY HAS SKYROCKETED"

-Tony Kiene, "Over the Past 50 Years, American Wages Have Drastically Failed to Keep Pace With Productivity"



Do I Need to Hire an Attorney to Trademark my Business Name or Logo?

Do you need to? No. Will you gain a breadth of knowledge and have a higher likelihood of success if you do? Yes.

Federal trademark registrations protect rights to intellectual property such as a recognizable name, design, sign, or expression. The United States Patent and Trademark Office ("USPTO") is the government agency tasked with regulating and processing trademark registrations. While the process of filing a trademark application is fairly easy, the ins and outs of the approval process can open a complex can of worms.

Trademarks are a symbol of a business's identity, and they are intended to protect unique, distinct names, words, expressions, and drawings. A trademark provides identification for the offered goods and services, makes it easier for customers to distinguish the business from a competitor, gives the brand the right to protection in court, and much more.



Only when registering through the USPTO does a trademark get exclusive federal rights. This is an important concept considering multiple businesses across the U.S. might have the same name, or similar logos, for similar goods or services. For example, when two businesses file a trademark application for the same or similar name and goods, who should prevail? If an applicant is not careful and fails to do its due diligence, the applicant could end up with a rejected trademark application, even if there are ways that the trademark could be approved. Put simply, the details matter.

An attorney's assistance goes far beyond filing the application. Your attorney will also respond to the USPTO trademark examining attorney on your behalf to fight any refusals of registration. While an internet search may produce results for private companies that offer trademark services, one should be wary, as they may give inaccurate information and legal advice about trademark rights and the registration process. To ensure that you have the best chance at a successful registration, or to find out whether your mark can be registered according to the regulations, you should seek the advice of an attorney.



"YOUR TRADEMARK SUBMISSION CAN BE REJECTED IF YOU TAKE ADVICE FROM SOMEONE WHO IS NOT AUTHORIZED TO PRACTICE LAW BEFORE THE USPTO"

-USPTO, "Hiring a U.S.-Licensed Attorney"



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