

Issue 32 - November 2022



OVB LAW & CONSULTING, S.C.

NEWSLETTER

Monthly Newsletter - Your Legal Nook!



Firm Update:

Congratulations Attorney Samantha Baker on her recent Legal All-Star Award for Rising Young Lawyer!

OVB Law & Consulting, S.C. is a silver sponsor and is looking forward to celebrating her achievements at the award ceremony!



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At the Wisconsin Solo and Small Firm Conference, Attorney Emil Ovbiagele sat on a panel to discuss considerations in attorney compensation.

He was joined by Attorney Julie Bogle (left), and Attorney Christopher Dodge (right) at the Kalahari Resort in Wisconsin Dells.



HOW TO USE THE FAMILY AND MEDICAL LEAVE ACT

Employees eligible for FMLA receive unpaid, job-protected leave for specified family and medical reasons. So, who is eligible for FMLA leave? To be eligible, an individual must work for a covered employer. Typically, an employer with over 50 employees would be covered by law. If a business does not have 50 employees, it may still be covered by state family and medical leave laws.

Additional qualifications must be met individually before FMLA can be considered. First, the employee must have worked for their employer for 12 months or more. It is important to note that these months do not need to be consecutive. Seasonal workers may qualify. Secondly, in those 12 months there needs to be over 1250 hours worked which averages out to around 24 hours per week. Third, the employer must have 50 workers within a 75-mile radius of the requesting individual’s worksite. If an employer has over 50 employees, but they are not within 75 miles, the FMLA leave would not be granted for the requesting individual.

If one does qualify for the broad terms of the leave above, the following reasons will qualify you to use leave: you, a spouse, child, or parent is pregnant or has a serious health condition that is an emergency, chronic, or consecutive. This will include the birth of your child or for the placement of an adoptive or foster child.

Once all of the above requirements are hit and the employer is notified, they will notify you if you are eligible for leave within 5 business days. If eligible, they must provide the rights and responsibilities per their leave terms and any medical certification requests. Within 15 days of the certification being requested, the individual must provide completed and thorough medical certification documentation. The documentation should include health care provider contact information, when the health conditions began, how long the condition is expected to last, appointment information, and if the leave will be used continually or intermittently. After FMLA is designated, communication between employer and employee must remain to keep updated and aware of the situation.

At OVB Law & Consulting, S.C. we are familiar with the requirements for FMLA leave, and are ready to advise both employees and employers on how to exercise or apply their rights. If you are uncertain about FMLA or rights associated with the leave, please contact our office.





QUALIFYING FOR FMLA

When requesting or taking FMLA, employees should first consult with their handbook to ensure compliance with their employer's procedures.

For example, an employer can legally still require an individual to use their paid leave before their unpaid time off. Additionally, employers may require certain procedures and forms to complete a request for time off. Once notified of FMLA leave needed, 30 days' notice to an employer is **REQUIRED**. If the need for leave is known about less than 30 days beforehand, notify the employer as soon as possible.

Employees must give employers enough information regarding their medical concern to allow the employer to make a knowing determination of whether FMLA leave should be granted. Although an employer does not need to know a specific diagnosis, the information given must indicate the leave is due to an FMLA protected condition and there are accommodations at the request of the doctor. Communicating effectively with an employer may be the difference between the leave process running smoothly or not getting approved. This also means if the medical conditions change, and the leave needed changes, the employer must be updated as soon as possible.

FMLA leave may be taken in a block form, in part time, or in smaller time frames. For example, if a doctor requires reduced working hours to allow for recovery after surgery, an employee may seek to utilize FMLA to cover the reduction of hours. When appointments are the issue, the Employee's Guide to the Family and Medical Leave Act recommends trying to schedule the treatment at a time that minimizes the disruption to the employer. Approved FMLA time off should not and will not be used against an individual for considerations in hiring, promotions, or disciplinary actions.

Approved FMLA leave may entitle employees to certain rights upon returning to work. If you are concerned your rights have been violated or are unsure of how FMLA rights apply to your situation, you should consult an attorney to discuss your options.



STARTING IN 2023 ORAL AGREEMENTS BETWEEN MEMBERS OF AN LLC MAY BECOME BINDING WITH THE SAME FORCE AND EFFECT OF A WRITTEN OPERATING AGREEMENT



BENEFITS OF A WRITTEN OPERATING AGREEMENT FOR YOUR LLC

Operating agreements are crucial for forming and protecting an LLC. They serve to outline the financial and functional decisions while also offering protection from legal action taken against the business entity or any of its members. There are many different rules, regulations, and provisions to consider when starting your business. An operating agreement is specific to each entity and outlines the rights, interest, and limitations of the members of the LLC. Although operating agreements before January 1, 2023 will need to be in writing, after this date, new legislation indicates that an operating agreement may be administered orally, in writing, in a record, or in any combination thereof and still be legally binding.

Although oral agreements will be legally enforceable soon, misunderstandings or ambiguity may jeopardize the integrity of the business. Operational conditions and business arrangements handled in writing can best be referred to in the event of a disagreement. When a business does not have an operating agreement, the default rules of the state are applied in a court of law.

There is a general set of principles set forth in the agreement, just like any legally binding contract. The operating agreement establishes structure, distributive shares, allocation of profits and losses, voting rights, and what to do in case of dissolution or if there needs to be a transition in ownership. Having these items addressed in a written agreement will help to ensure all members understand how the company will be governed and their respective rights and obligations to one another and to the company. Dissolution or transfer in ownership should be clearly articulated in the agreement as to keep the process as civil as possible.

Creating an operating agreement is crucial to avoiding or mitigating disputes among the members of a company. Mistakes may happen or relationships may weaken during the course of the business, but having an airtight operating agreement will help to outline what practices should be followed. Contact an attorney to help guide through the process of starting up a business to ensure protection from possible legal action. The attorneys at OVB Law & Consulting, S.C. are specialized in business law and will help guide you through the drafting process to ensure that your company has an operating agreement that achieves the goals of its members.

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