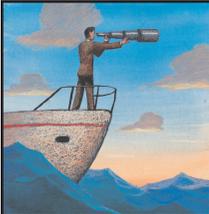




ATTORNEYS SERVING PRIVATELY HELD BUSINESSES AND THEIR OWNERS

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# Legal Advisory

IDEAS AND STRATEGIES FOR YOU AND YOUR BUSINESS / FOURTH QUARTER 2016

## EIGHT TOP SUPREME COURT CASES

**D**espite a vacancy on the bench, the U.S. Supreme Court handed down several significant rulings in its recently concluded 2015–2016 term. Accordingly, here is a brief overview of eight important new cases.

**1. Abortion clinics:** The top court struck down part of a Texas law that would have substantially reduced the number of abortion clinics in the state. Note that the Supreme Court had not heard a major abortion case since 2007.

**2. Immigration:** The Court was deadlocked 4-4 over whether up to 4 million unauthorized immigrants could be deported or should be allowed to work. In effect, this ruling affirms the lower court’s decision upholding a nationwide ban on the deferred action program.

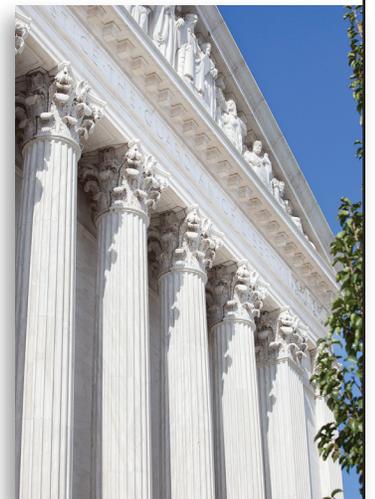
**3. Affirmative action:** It was determined that an affirmative action program at the University of Texas does not violate constitutional principles. Seven justices decided this

case because Justice Elena Kagan recused herself.

**4. Contraceptive coverage:** This case, which relates to a contraception coverage requirement under the Affordable Care Act at hospitals and schools with religious affiliations, was returned to the lower court for a compromise to be sought.

**5. Voting rights:** Under the Supreme Court’s ruling, state voting districts may be based on total population under the “one person, one vote” rule. There is no requirement for voting districts with roughly equal populations to have a comparable number of eligible voters.

**6. Unions:** In another 4-4 vote effectively affirming a lower court decision, public employees in California who choose not to join unions may still be required to pay union fees to facilitate collective bargaining. This is seen as a victory for organized labor.



*(see Eight Top Supreme Court Cases on next page)*

*inside*

### LIMITED LIABILITY COMPANY

Gaining popularity with business owners

### Lost Luggage Claims

### New Overtime Rules

### Successful Prenups

### Legal Briefs

## OVERVIEW OF LIMITED LIABILITY COMPANIES

In a recent article, we discussed the differences and similarities of C corporations and S corporations, two traditional business structures. But another form of business ownership has been growing in popularity: the limited liability company (LLC).

An LLC is sort of a hybrid entity that combines the limited liability feature of a C corporation and the tax benefits of a partnership or S corporation. The owners are technically referred to as “members.” Depending on state law, members may be individuals, corporations or other LLCs.

Unlike with a C corporation, there is no federal income tax on the corporate level. Thus, items of profit and loss are passed through to the members on their federal tax returns, just like with a partnership.

Although the laws vary by state, there are five basic steps for getting an LLC up and running.

**1. Choose the business name.** Your name must be different from the name of any existing LLC in your state, indicate that it’s an LLC, and avoid designations restricted or prohibited by your state. The name is approved when you register the business.

**2. File the articles of organization.** This document includes basic information such as your business name and address and the names of its members. It is often filed with the Secretary of State, but some states use other authorities.

**3. Create an operating agreement.** Although this is not required in many states, it can help you get started. An operating agreement generally focuses on the percentage of interests, allocation of profits and losses, and member rights and responsibilities.

**4. Obtain the necessary licensing.** Once your business is registered, obtain any licenses and permits you’ll need to operate the business. Of course, the regulations under state law will be based on the type of industry you are in.

**5. Announce your business.** Several states require a formal declaration about the LLC to be published in a local newspaper. Check with your state office.

As stated above, the LLC does not pay any federal income taxes, which are passed on to members. However, some states impose taxes on LLCs. Furthermore, special rules may apply to single-member LLCs. Consult your professional tax advisers.

Should you set up a business entity as an LLC? There are some distinct advantages. Notably, members are generally protected from personal liability for business actions. But protection is not absolute (e.g., where employees commit wrongful acts). On the other hand, the business may be dissolved if a member dies or leaves the company, barring other provisions.

Talk things over with your trusted advisers. 📌

## EIGHT TOP SUPREME COURT CASES

*(continued from front page)*

**7. Class actions:** A class action was brought by workers at a pork processing plant who said they were undercompensated because they did not receive overtime pay for time spent donning and removing protective gear. The Court said workers can rely on statistical formulas to establish the amounts owed.

**8. Crimes by juveniles:** The Court says its 2012 decision banning mandatory life-without-parole sentences for juvenile killers must be applied retroactively. As a result, prisoners currently serving life sentences without the possibility of parole for murders committed as juveniles could be released.

This publication will continue to monitor key developments in courts around the nation. Obtain guidance for your specific situation. 📌



### Soft Landing for Lost Luggage

Suppose an airline loses your luggage. Are you completely out of luck? Not necessarily.

Although the rules for lost luggage vary among carriers, you generally can pursue a claim for up to \$3,500 per passenger on domestic flights. (Other rates apply to international flights.) If you paid a checked baggage fee for your lost suitcase, the airline must refund your fee.

Finally, you may have to produce receipts to prove the value of lost items. Contact your legal advisers for more details.



◆ The duties test: The employee’s job duties must primarily include executive, administrative or professional duties as defined by the DOL regulations.

Prior to issuing the new final rule, the DOL had last updated these regulations a dozen years ago. At that time, it established the weekly salary level at \$455—which works out to \$23,660 a year—in addition to other changes, including carving out an exemption for highly compensated employees.

The Obama administration had set a goal of increasing the salary level test threshold to the point where inflation adjustments had been made over time. Subsequently, the DOL raised the current weekly level to

\$913—or \$47,476 a year—which is more than double the previous level. As things stand now, workers earning less than this amount will be entitled to overtime pay as non-exempt employees—regardless of their job responsibilities.

The new final overtime rule doesn’t stop there. The threshold will be adjusted for inflation every three years, beginning January 1, 2020.

Under yet another change, the annual pay threshold for highly compensated employees was increased from \$100,000 to \$134,004. Employees earning amounts above this threshold, regardless of whether their jobs would be classified as non-exempt under the “duties” test, may still be treated as exempt and are therefore ineligible for overtime pay.



Being forewarned is being forearmed: With the looming deadline of December 1, 2016, employers still have time to institute changes to bring themselves into full compliance. Be mindful that a substantial number of workers who previously didn’t qualify for overtime pay will be eligible going forward.

This turn of events may force employers to reexamine their payroll responsibilities and characterization of jobs. Rely on your professional advisers for counsel. 📁

## NEW OVERTIME PAY RULE TO DEBUT

The new “final rule” on overtime pay, which has been promised by the Department of Labor (DOL) for some time, was just as anticipated in the business sector as was the latest “Star Trek” movie by its rabid fan base. At long last, the DOL released the results this spring, although changes in the regulations do not formally take effect until December 1, 2016. That should give employers enough time to make the necessary adjustments.

The main rules for overtime pay are included in the Fair Labor Standards Act (FLSA). Notably, employees who are not exempt under the FLSA must be paid the overtime rate of one-and-a-half times their regular pay rate for hours worked in excess of 40 hours. Employers may be penalized for violating these rules.

Under long-standing regulations, the DOL generally requires each of the following three tests to be met for employees to be exempted from overtime pay:

- ◆ The salary basis test: The employee must be paid a predetermined salary that is not subject to reduction because of variations in the quality or quantity of work performed.
- ◆ The salary level test: The amount of salary paid must meet a minimum specified amount.

## TYING UP LOOSE ENDS WITH A PRENUP

**S**uppose you're going to be married soon. Or maybe another family member—for example, a son or a daughter—will be walking down the aisle. In any event, it should be a blissful occasion.

But you can't ignore reality. With close to half the marriages in this country ending in divorce, it is worthwhile to consider using a prenuptial agreement ("prenup" for short) for protection, especially when one of your long-term objectives is to preserve assets for the descendants of a prior marriage.

**Background:** Essentially, a prenuptial agreement is a legally binding contract between an intended bride and groom. The contract

lists each person's personal and real property and outlines a plan for distribution of that property in the event the marriage doesn't work out.

It may seem unromantic or miserly to take steps that will provide for an orderly divorce. But a prenuptial agreement actually may lessen pain and

suffering in the long haul. It can also offer financial protection to children of a prior marriage. For these reasons, prenups no longer have the same stigma that was attached to them in the past.

Usually, a prenuptial agreement can be prepared in about the same time it takes to prepare a will. As with a will, the agreement ensures that your property will be distributed in the manner you desire. In effect, this is a form of "marriage insurance."

The foundation of a successful prenuptial agreement is full disclosure of all assets. Both parties must be meticulous in listing everything of value that they own or in which they have an interest. Once that is done, the parties must agree on a fair distribution of these items after divorce. In many cases, particularly second and third marriages, the prevailing philosophy is "what's mine is mine and what's yours is yours."

However, where the respective wealth of the parties is substantially unequal, some compromise may be necessary. **Reason:** In some states, the assets of both parties are put into the same "pot" upon divorce. The couple then splits the assets equally. Thus, one spouse could walk away with substantially more than he or she had when the marriage was entered into.

This is not a do-it-yourself proposition. Consult an experienced legal adviser. 📄

## BRIEFS

◆ **Straight Talk**—A lawsuit relating to the movie "Straight Outta Compton" is being allowed to proceed. Jerry Heller, the former manager of the hip-hop group N.W.A, claims he was unfairly portrayed and is owed punitive damages. According to the film, Heller cheated the group out of royalties and made various other misrepresentations, but only a narrow claim remains.

◆ **Following Rules**—In a new case, a tech company required its employees to notify supervisors before missing work. The plaintiff, who had bipolar disorder, failed to do so. When his absence was explained, he was excused. But it happened again when the plaintiff was hospitalized, and no one notified the company. The California district court said the company could fire him.

◆ **Prayer at Work**—If an employee's religion requires him or her to pray during the workday, giving employees this ability is a reasonable accommodation. However, employers are generally not legally required to provide extra break time for praying. In addition, employees do not have to be paid for extra prayer breaks. Finally, an employer may choose to deny prayer break time when safety might be affected (e.g., for workers on an assembly line).

◆ **Required Minimum Distributions**—After an individual reaches age 70½, he or she generally has to take "required minimum distributions" (RMDs) from qualified retirement plans and traditional IRAs each year. The RMD is based on the account balances on December 31 of the prior year and life expectancy tables. Failing to take an RMD may result in a 50% penalty on top of the regular income tax owed.