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Employee Training Programs

Employee training, or lack thereof, is a key component in the prevention of costly employment-related lawsuits and, in the event a lawsuit is filed, is often an essential factor in determining whether and to what extent an employer may be liable for the actions of its employees.

We also find that trained employees lead to better-functioning, more cohesive workplaces.

We offer various training programs to our employer clients, including:

- HIPAA Compliance
- Discrimination/Harassment
- Drug-Free Workplace
- Employee Handbook Review
- Diversity and Inclusion
- ACA Reporting
- FMLA Administration
- COBRA Administration
- Fiduciary Duties
- FLSA Compliance

Any of our training programs can be presented in person or by webinar and are customized to fit your organization's specific needs. If there is a training topic of interest to you that is not listed above, let us know and we will do our best to accommodate your particular requests.

Please contact Ashley Trotto at (865) 546-7311 if you would like to schedule an employee training program or have questions about this service.

The Results Are In!

Kathy Aslinger, Bill Mason, and Ashley Trotto were selected to be included in the 2017 Tennessee Top Attorneys in the practice area of Employee Benefits/ERISA - Defense by *City View Magazine*. Our lawyers are humbled and honored to have been recognized for their accomplishments. To learn more about the award and the respective attorneys so honored, please see the full details in *City View Magazine* [here](#) and click on the attorneys below to view their full bio.



[Kathy D. Aslinger](#)



[William E. Mason](#)



[Ashley N. Trotto](#)

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What is Planned Giving?

By Michael R. Crowder, Esq.

“Planned giving” can be defined as the process whereby a donor makes a gift for the benefit of a charitable or nonprofit organization while simultaneously engaging in financial, tax, and estate planning for their own benefit. Planned gifts are typically a donor’s largest gifts to their favorite charities, and are usually separate and apart from a donor’s annual giving.

In 2015, charitable contributions in the United States totaled \$373.25 billion, a 4.1% increase from 2014. Bequests (a type of planned gift) made up 9% of those contributions, the third largest kind of charitable gifts after individual/annual contributions (71%) and contributions from foundations (16%). Bequests totaled \$31.76 billion in 2015, and are the fastest growing method of making charitable contributions, increasing by 30.4% from 2013 to 2015.¹ It is estimated that the value of the average bequest in the United States ranges from \$35K-\$70K.²

Bequests are gifts made at death via a person’s Will. They can be in either a stated dollar amount or a percentage of the deceased’s estate, and can be made outright at death or from any residuary funds after all other distributions are made. While bequests are the most common type of planned gift, comprising 80-90% of all planned gifts, there are many other vehicles for making planned gifts.

As just one other example, a Charitable Remainder Trust (CRT) is a trust which makes annual payments to the donor (or other designated person) for either a term of years (not to exceed 20 years) or for the donor’s lifetime; thereafter, a designated charity receives the remaining trust assets. A CRT is exempt from all taxes (unless it has unrelated business taxable income). This makes CRTs ideal for disposing of highly appreciated, low yielding property and reinvesting in assets with higher yield. Instead of paying capital gains tax on the sale of the appreciated property, the full fair market value is available for reinvestment, producing more income over the lifetime of the investment. Additionally, the donor has the added benefit of potentially taking a partial income tax charitable deduction when they fund the trust.

For those charitable and nonprofit organizations interesting in soliciting, receiving, and handling planned gifts, our firm stands ready to provide the technical support necessary to assist donors in crafting planned gifts; assist the organization in developing planned giving policies; and assist the organization in marketing the planned giving program to potential donors. If you need assistance in any of these areas, please contact us.



[Michael Crowder](#) works primarily in the firm’s estate planning, and business & corporate law practices. If you have any questions or concerns about charitable contributions, estate planning or probate administration, please contact Michael R. Crowder at (865)-546-7311 or email mcrowder@kmfpc.com.

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¹ Giving USA 2016 Annual Report; 2016 U.S. Trust Study of High Net Worth Philanthropy

² Activate Legacy Generations National ELI Training 2015 Fact Sheet

In the Spotlight

Attorney Spotlight: Briton S. Collins

What do you like the most about your areas of practice (or the business of law in general)?

My practice is focused primarily on litigation. Although it may sound cliché, I enjoy being a litigator because it allows me to help my clients resolve what are usually the most important and complex problems in their lives. I also enjoy the strategy of it all. Each day in the office is like playing 10 games of chess at once, only the games last for months or years at a time. I'm not very good at actually playing chess, but I've found I'm pretty good at the chess match that is a lawsuit.

Which case did you find the most rewarding to work on?

I recently assisted a 90-year old widow recover ownership of her home following some nefarious conduct by her family members. The excitement and gratitude she expressed after learning she wasn't going to lose her home was really special. Being a litigator can sometimes be very frustrating, because the system is not designed to always allow you to quickly and efficiently help your clients. This case reminded me that it is still possible to do that.

What is your favorite law-related quote and why does it resonate with you?

"The people's good is the highest law." - Cicero

As an attorney, I get to see the good and the bad of the law every day. Much of the bad comes from the effects of laws that were drafted with no real purpose and certainly without Cicero's words as a guiding point. The law (and lawyers) are meant to serve the people, but we've gotten away from that over the years. It is my hope that at the end of my career I can look back and say that I did my part to help turn back the tide and return purpose to the law.

What types of community-based, civic or other nonprofit activities do you participate in?

I am a member of the board of directors for Arc Knox County, which is a nonprofit that provides programs and services for people with intellectual disabilities in Knox County. I am also the chairman of the Tennessee Board of Court Reporting, which is the state board responsible for licensing and oversight of all of the state's court reporters. More informally, I am active with Legacy Parks Foundation, working on conservation programs along the Holston and French Broad Rivers. My wife and I are also supporters of the Humane Society of the Tennessee Valley.

What role does your family play in making you great at what you do?

My wife is also an attorney, so we naturally spend a lot of time "talking shop." Luckily for me, she is much smarter than I am. She is constantly challenging me and helping me to see things from different perspectives. I'd like to think I also show her a thing or two from time to time. We are very fortunate in that our jobs give us the flexibility and means to travel a lot, and we make it a point to take a big international trip each year. We've learned a lot in our travels, not the least of which is how fortunate we are to be able to call a great place like Knoxville home.



[Briton S. Collins](#) focuses his practice on civil litigation and appeals, construction law, and representing local governmental agencies. If you have questions or for more information, please call Briton S. Collins at (865)-546-7311 or email bcollins@kmfpc.com.

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Avoiding Employee Benefit Plan Surprises in Mergers and Acquisitions

By **Kathy D. Aslinger, Esq.**

The last several years have seen significant mergers and acquisitions activity, and that trend may continue in the near future. With so many important details to work out between the buyer and the seller, each side may be tempted to ignore employee benefit plans until after closing. Such an approach may, however, result in some unpleasant surprises.

The term “mergers and acquisitions” encompasses many types of transactions, but in its simplest form may be broken down into two types: asset sales and stock sales. In an asset sale, the buyer purchases only the assets and liabilities specified in the agreement, with any others remaining with the seller. In a stock sale, the buyer receives all assets and liabilities, even the undesirable ones, as they come with the stock ownership.

Although problems can arise in assets sales -- such as when the seller abandons its employee benefit plans following closing rather than winding them down in accordance with applicable rules and regulations -- most challenges appear following stock transactions in which the buyer does not complete a thorough examination of employee benefit plans as part of its due diligence review of the company or address what will happen to the plans in the stock purchase agreement. For example, if a buyer purchases the stock of a company with an underfunded defined benefit pension plan, then the buyer will become responsible for that unfunded pension liability. If a buyer purchases a company with a 401(k) plan that has not timely deposited employee deferrals or made the employer contributions required by the plan, then the buyer will become responsible for those corrections, including any fees or penalties due to the Internal Revenue Service or Department of Labor. When discovered prior to closing, the expenses can be addressed in the purchase price or by reserving amounts in escrow, or in extreme cases can cause the buyer to walk away and look for another opportunity with fewer headaches. When discovered after closing, the buyer has no choice but to address and correct the issues, sometimes at significant unanticipated expense.

Even if the plan itself has been operated properly, a buyer can find itself suddenly sponsoring two plans, with double the expense and compliance responsibilities. Had the seller terminated its plan prior to closing, IRS rules would permit the plan to distribute assets to participants as part of plan termination. After closing, however, the buyer cannot terminate one 401(k) plan and distribute assets if it sponsors another 401(k) plan, essentially leaving the buyer the options of maintaining two plans or merging its plans into one. Merging plans can present its own challenges, as certain benefits, rights and features of the merging plan must be protected.

Any potential buyer should consider the impact of a target’s benefit plans on the transaction well in advance of closing. As those who have experienced shocking surprises post-closing can attest, a little foresight and planning is well worth the expense.



[Kathy D. Aslinger](#) commonly assists clients with the due diligence review of employee benefit plans in mergers and acquisitions, as well as maneuvering through the complex world of audits, fiduciary liability issues, DOL and IRS compliance, HIPAA, COBRA, ERISA and state law obligations, and Affordable Care Act compliance. If you have questions or for more information, please call Kathy Aslinger at (865)-546-7311 or email kaslinger@kmfpc.com.

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ACA Reporting 2017: Are you Ready?

By **Ashley N. Trotto, Esq.**

Earlier this month, the IRS released draft instructions for Forms 1094-C and 1095-C for the 2017 tax year. As a reminder, the "C" forms are filed by large employers (those with 50 or more full-time or full-time equivalent employees) to comply with Code § 6056 and to provide the IRS with the information necessary to administer the Employer Mandate and the Exchange's premium tax credit program.

Let's all take a collective breath - the draft instructions do not include any substantive changes that will dramatically affect completion of the forms. To summarize, the IRS has made the following changes:

- All transition relief has expired and all references to the same have been removed.
- Form 1095-C specifically recognizes a safe harbor for de minimis errors in reporting dollar amounts on Line 15 (required employee contributions), excusing the employer from having to file a corrected return for minor errors (less than \$100).
- It has been clarified that there is no specific code to enter on Line 16 of Form 1095-C to indicate that an employee was offered minimum essential coverage and declined that offer (read: you can leave that line blank).
- The maximum annual penalty for late or non-filing/furnishing increased to \$3,218,500.

Although there could be further revisions prior to the publishing of the final 2017 Forms, this should give employers a reasonable idea of what is expected.

There is no indication, so far, that the deadlines for filing will be extended this year. Employers must file Forms 1094-C and 1095-C with the IRS by February 28, 2018 if filing by paper and April 2, 2018 if filing electronically (required if filing more than 250 returns) and must send a copy of Form 1095-C (or an alternative statement) to employees by January 31, 2018.

In 2015 and 2016, the IRS had a fairly lax reporting standard, allowing for an exemption from penalty if returns were filed on time but were incomplete or inaccurate so long as good faith efforts were made by the employer. As we move into 2017, we do not expect this kind of flexibility. Employers need to work hard to complete the forms timely and accurately.

If you have any questions about the changes made to the forms or completing the forms generally, please feel free to call me at 865-546-7311 or send me an email at atrotto@kmfpc.com.



[Ashley N. Trotto](#) practices in the areas of ERISA law, pension plans, and employment law. Ms. Trotto assists private, governmental, and nonprofit clients in the design, implementation, and maintenance of their employee benefit plans and also helps those clients navigate the complicated landscape of the FLSA, HIPAA, COBRA, FMLA, ADA, and other employment-related legislation. Ms. Trotto focuses much of her time on assisting clients with issues related to health plan compliance.

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