

# KDDK

# ADVANTAGE

## Newsletter

Summer 2014

### Employee Benefits Law: Affordable Care Act

## I.R.S. Guidance on Affordable Care Act Adversely Affects Some Employers

by Mark S. Samila



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An employer may generally reimburse employees for substantiated employee-paid premiums for non-employer-sponsored hospital and medical insurance, with the payments excluded from employees' gross income. These are often called "employer payment plans."

In a recent notice, the I.R.S. stated that employer payment plans are considered group health plans that do not meet the requirements of the Affordable Care Act; such plans may

subject employers to a \$100/day/employee excise tax.

The notice does not appear to prevent employers from increasing employees' taxable wages to allow employees to purchase health insurance. However, if the employer is a "large employer" under the ACA, the employer would still be subject to the "pay or play" penalties for failing to offer health insurance coverage or health insurance coverage that is deemed affordable.

For additional information about this or any related area of law, please contact Mark Samila at [msamila@KDDK.com](mailto:msamila@KDDK.com) or (812) 423-3183. ♦

### Business Law: Registered Agents

## New Requirements for Forming and Organizing Businesses in Indiana

by Ashley R. Hollen



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Under Indiana law, newly-formed entities are generally required to designate a registered agent for the purposes of receiving service of process in Indiana.

As a result of recent legislative changes effective July 1, 2014, newly-formed entities including limited liability companies and corporations must file the registered agent's written consent to serve as registered agent or a representation that the registered agent has consented.

Additionally, a new business entity will also be required to keep its registered agent informed of the name, business address, and business telephone number of a person who is authorized to receive communications from the registered agent.

For more information about forming a new business, please contact Ashley Hollen at [ahollen@KDDK.com](mailto:ahollen@KDDK.com) or (812) 423-3183. ♦

*\*Editor's Note: Congratulations to Ashley Hollen (formerly Bess) on her recent marriage.*

### KDDK News

## KDDK Recertified in Meritas, a Global Alliance of Business Law Firms

KDDK has been awarded recertification in Meritas, a global alliance of independent business law firms. Meritas membership is selective and by invitation only, and Meritas is the only law firm alliance with an established and comprehensive means of monitoring and enhancing the quality of its member firms.

"KDDK attorneys are dedicated to continuing the legacy of legal excellence that began with our firm's founding in 1908. This requires a continual evaluation of factors including the quality of our work, the satisfaction of our clients, and our impact on our community," said Allison K. Comstock, a KDDK partner. "Meritas' Quality Assurance Program is not only valuable for our clients seeking legal expertise around the world; it also provides us with a framework to consistently monitor and address the quality of our services." ♦

### NOTE:

Full versions of these and other articles are available 24/7 under "News and Alerts" at [www.KDDK.com](http://www.KDDK.com).

News is posted regularly, so check back often!

**KAHN, DEES, DONOVAN & KAHN, LLP** (KDDK) is an experienced full-service civil law firm located in Evansville, Ind., dedicated to effectively serving the legal needs of regional, national and international clients including public and private businesses, manufacturers, educational institutions, healthcare providers, financial organizations, governmental units, and non-profit entities for more than 100 years.

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**Estate Planning: Proposed Changes****Proposed Estate and Gift Tax Law Changes**

by Shannon S. Frank



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President Obama's 2015 budget proposal includes significant changes to estate and gift tax laws. If adopted, these changes would affect Federal estate tax exclusion exemption amounts and tax rate caps; permanency of Federal estate tax exclusion exemption; portability of unused estate tax exclusion exemptions between spouses; and annual gift tax exclusion amounts and taxability.

Individuals must continue to monitor changes in estate and gift

tax laws and regularly consult with their estate planning advisors to review the impact on existing estate plans.

For additional information, please read attorney Shannon Frank's full blog on this topic at [www.KDDK.com/blog](http://www.KDDK.com/blog), or contact Shannon at [sfrank@KDDK.com](mailto:sfrank@KDDK.com) or (812) 423-3183. ♦

**KDDK News****Williams Elected BSA Regional President**

**Brian Williams**  
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Brian P. Williams, a Co-Managing Partner at KDDK, has been elected President of the Central Region of the Boy Scouts of America (BSA). The Central Region boasts approx. 465,000 youth members/participants in more than 21,000 units/posts.

"Boy Scouts of America has provided programming to help youth and young adults build character and become responsible citizens in a fun, engaging, outdoor environment for more than 100 years," said Williams.

"It's an honor to help lead the largest youth-serving organization in the world and be a part of this legacy."

Brian has practiced law for more than 30 years. He brings a keen understanding of people and organizations to his legal practice. He is an effective advocate for his clients in the court room or at the mediation table, as well as an effective advocate for a new business seeking to locate in the Southwestern Indiana region. ♦

**Health Care Law: Billing and Reporting****Uptick in Fraud and Abuse Investigations**

by Michael G. Smith



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Among the changes implemented by the Affordable Care Act are increased funding for health care fraud and abuse investigation, heightened screening and compliance requirements, increased penalties, and better data sharing between all federally-supported health care programs.

During fiscal year 2013, the Department of Justice ("DOJ") opened 1,083 new civil health care fraud investigations and 1,013 criminal health care fraud

investigations. Between fiscal years 2010 and 2013, these investigations accounted for an average annual recovery for the federal government of \$4 billion (money recovered on behalf of state Medicaid programs is estimated to be an additional \$1.7 billion annually). The average settlement amount per opened investigation is approximately \$2.85 million.

KDDK health care law attorneys have experience advising health care providers about proper billing and reporting procedures and defending providers facing federal investigations. For additional information, please contact Mike Smith at [msmith@KDDK.com](mailto:msmith@KDDK.com) or (812) 423-3183. ♦

**Labor & Employment Law: Email and Section 7****NLRB Decision Could Trigger Policy Changes**

by Joshua B. Gessling

The Administrative Law Judge in a recent case (*Purple Communications, Inc.*) applied an earlier case ruling (*Register Guard*) and held the employer could lawfully limit the use of its email systems for non-work purposes, including purposes of union organization. Shortly thereafter, the NLRB decided to review the ruling and posted a notice soliciting comments. The Board's deadline to submit briefs was June 16, 2014, and a decision may not be far away.

Should the Board reverse *Purple Communications* and overturn *Register Guard* – which would not be surprising – many employers would be required to reevaluate and revise employment policies. KDDK is watching this one closely...

If you have any questions as to how these legal developments might impact your business, please contact attorney Josh Gessling at (812) 423-3183 or [jgessling@KDDK.com](mailto:jgessling@KDDK.com). ♦

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