Looks different from prior newsletters?
We are converting to a mobile device friendly format.

DUNCAN LIQUOR LAW LETTER

June, 2016

A monthly newsletter for the clients of R.E. "Tuck" Duncan, Attorney at Law
Please forward as you deem appropriate.
~ ~ ~ ~ ~
This information is not to be considered legal advice.
Consult a competent attorney on specific questions.

In this issue:

THE D.U.I. ISSUE
U.S. SUPREME COURT: BIRCHFIELD V. NORTH DAKOTA
Kansas DUI cases this year
- - -
Miller Coors Blue Moon Suit
FDA Seminars on Menu Rules
Employees & Restrooms in the Workplace
Dave & Busters Wage Suit
Bacardi & Young's Market
and more....

"Wine is bottled poetry." -- Robert Louis Stevenson

The Supreme Court of the United States today released its

opinion in the case Birchfield v. North Dakota.

The central question in the case was whether, in the absence of a warrant, a state may make it a crime for a driver to refuse a chemical test to detect the presence of alcohol in the person's blood. It also determined whether such warrantless blood and breath tests are a violation of our Fourth Amendment right prohibiting unreasonable search and seizure.

The court struck down criminal penalties for refusing to submit to a blood test, however, refusal to submit to a breath test may still result in criminal penalties. In his opinion, Justice Alito stated:

"Motorists may not be criminally punished for refusing to submit to a blood test based on legally implied consent to submit to them. It is one thing to approve implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply, but quite another for a State to insist upon an intrusive blood test and then to impose criminal penalties on refusal to submit. There must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads."

On the question of warrantless BAC tests, the court ruled:
"Because the impact of breath tests on privacy is slight, and the need for BAC testing is great, the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. Blood tests, however, are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test...Because breath tests are significantly less intrusive than blood tests and in most cases amply serve law enforcement interests, a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving. No warrant is needed in this situation."

Chief Justice Roberts and Justices Kennedy, Breyer and Kagan joined Justice Alito in his opinion. Junior Justice Sotomayor filed an opinion concurring in part and dissenting in part, in which Justice Ginsburg joined. Justice Thomas also filed an opinion concurring in the judgment in part and dissenting in part.

Supreme Court makes new rulings on drunk driving arrests
Associated Press

12:53 PM, Jun 23, 2016

WASHINGTON (AP) - The Supreme Court on Thursday placed new limits on state laws that make it a crime for motorists suspected of drunken driving to refuse alcohol tests.

The justices ruled that police must obtain a search warrant before requiring drivers to take blood alcohol tests, but not breath tests, which the court considers less intrusive.

The ruling came in three cases in which drivers challenged so-called implied consent laws in Minnesota and North Dakota as violating the Constitution's ban on unreasonable searches and seizures. State supreme courts had upheld the laws.

While drivers in all 50 states can have their licenses revoked for refusing drunken driving tests, the high court's ruling affects laws in 11 states that go farther in imposing criminal penalties for such refusals.

Writing for the majority, Justice Samuel Alito said breath tests do not implicate "significant privacy concerns." Unlike blood tests, breathing into a breathalyzer doesn't pierce the skin or leave a biological sample in the government's possession, he said.

Alito compared blowing into a breath test machine to using "a straw to drink beverages," which he called "a common practice and one to which few object." He noted that the high court has previously declined to require a warrant for collecting DNA samples by rubbing a swab on the inside of a person's cheek or scraping underneath a person's fingernails to find evidence of a crime.

Six justices agreed with Alito's opinion on breath tests, though Justice Clarence Thomas wrote separately to say he would have found both tests valid without a warrant under the Constitution. Thomas called any distinction between breath and blood tests "an arbitrary line in the sand."

Other states that have criminalized a driver's refusal to take alcohol blood or breath tests include Alaska, Florida, Indiana, Louisiana, Nebraska, Rhode Island, Tennessee, Vermont and Virginia.

In all three cases before the high court, the challengers argued that warrantless searches should be allowed only in "extraordinary circumstances." They said routine drunk driving stops count as ordinary law enforcement functions where traditional privacy rights should apply.

State officials called the testing a legitimate condition on the privilege of using state roads. Prosecutors argued that it was too burdensome for police to obtain a warrant every time a driver refused a test because some rural areas have only one judge on call late at night or on weekends.

But during oral argument, some of the justices pointed out that even in rural states police can call a magistrate and get a warrant over the phone in just a few minutes.

Justice Sonia Sotomayor, joined by Justice Ruth Bader Ginsburg, wrote a

separate opinion saying she would have gone further and required search warrants for both breath and blood alcohol tests. She said said no governmental interest makes it impractical for an officer to get a warrant before measuring a driver's alcohol level.
"The Fourth Amendment prohibits such searches without a warrant, unless exigent circumstances exist in a particular case," she said.
The states garnered support from Mothers Against Drunk Driving, which argued that public safety is a compelling reason that justified the laws. But civil liberties groups said states can't criminalize the assertion of a constitutional right.
Adam Vanek, national general counsel for MADD, said his group was pleased "that the court recognized public safety concerns far outweigh the minimal privacy concerns when it comes to a breath test." Vanek said the group was hopeful that the court's decision would encourage other states to implement similar laws punishing refusal to take a breath test.

check out the scotus blog:

http://www.scotusblog.com/case-files/cases/birchfield-v-north-dakota/?wpmp_switcher=desktop

Opinion analysis: States prevail on breath (but not blood) tests without a warrant
Laws in twelve states that impose criminal penalties on suspected drunk drivers who refuse to take abreath test to measure the alcohol in their bodies got a nod from the Supreme Court today. On a day that saw the Court deadlock in two cases, six of the Court's eight Justices agreed that such laws do not violate the Fourth Amendment's ban on unreasonable searches. But today was not a complete victory for the states: seven Justices also agreed that laws which impose criminal penalties for failing to take a blood test violate the Constitution.
In an opinion by Justice Samuel Alito, the Court began by noting the dilemma in which states had found themselves. Drunk driving takes "a grisly toll," killing thousands of people every year and injuring scores more. To fight this problem, all fifty states have enacted laws that are known as "implied consent" laws: by driving on a state's roads, you are deemed to have consented to testing if you are suspected of drunk driving. States have also imposed tougher penalties on drivers who are guilty of driving under the influence. But these stiffer sentences created a problem of their own: drivers, particularly those who have had a lot to drink or have prior drunk driving convictions, may opt to refuse the tests, because the consequences of doing so may be less severe than what they would face if convicted of drunk driving. This quandary led twelve states, including North Dakota and Minnesota, to pass laws that would make it a crime to refuse alcohol

testing.

Under the Supreme Court's earlier cases, the Court explained, the alcohol testing is clearly a search for purposes of the Fourth Amendment, for which a warrant would normally be required. However, a search without a warrant does not violate the Fourth Amendment if it falls within one of certain exceptions. And dating as far back as the colonial era, the Court observed, police officers have had the authority to conduct a search of a person whom they are arresting. But, the Court added, there is no "definitive guidance" from the era in which the Constitution was drafted that sheds any light on whether the Founding Fathers would have allowed a blood or breath test of a suspected drunk driver in conjunction with his arrest. Without that guidance, the Court ruled two years ago in a case involving the search of an arrestee's cellphone, courts should instead look at the extent to which the search intrudes on the privacy of the person who is being arrested, as well as the extent to which the search is needed to promote "legitimate governmental interests."

For breath tests, the Court concluded, the balance weighs in favor of allowing them without a warrant. There is no real physical intrusion on the driver's body from the breath test, the Court explained. "The effort is no more demanding than blowing up a party balloon." Breath tests provide police with only one piece of information - the concentration of alcohol in the driver's breath - and police do not (because of the very nature of breath tests) retain a sample. On the other side of the equation, testing suspected drunk drivers is an important state weapon to fight drunk driving, while requiring a warrant to test every suspected drunk driver would swamp local courts without creating extra benefits - after all, the facts that would provide the kind of probable cause needed for a warrant would be "largely the same from one drunk-driving stop to the next," as would the tests themselves.

By contrast, the Court concluded today, blood tests do not pass constitutional muster. Although they too play an important role in the war on drunk driving, they are "significantly more intrusive" than breath tests: they require the technician taking the sample to pierce the driver's skin, extracting a sample that provides law enforcement officials with more information than a breath test, and which they can retain.

Justice Sonia Sotomayor agreed with the majority that the Constitution does not allow blood tests without a warrant, but she would have ruled that the breath tests also require a warrant. In an opinion that was joined by Justice Ruth Bader Ginsburg, Sotomayor acknowledged that states "must have tools to combat drunk driving." But she saw no reason why requiring a warrant for breath tests would thwart these efforts. Among other things, she noted, there is already a significant lag time between when police make a drunk-driving arrest and when a breath test is administered; police officers could easily seek a warrant during "this built-in window," she suggested.

Justice Clarence Thomas also parted ways with the majority, but for essentially the opposite reason as Sotomayor: in his view, neither the breath nor the blood test should require a warrant. Alcohol naturally dissipates from the driver's bloodstream over time, which in his view creates the kind of "exigent circumstances" for which the Supreme Court has carved out another exception to the Fourth Amendment's general warrant requirement. Therefore, Thomas concluded, once police officers believe that a driver is intoxicated, he reasoned, no warrant is needed to test the concentration of alcohol in his body.

Today's decision will mean different things for the three men - Danny Birchfield and Steve Beylund of North Dakota and William Bernard of Minnesota - who challenged their convictions. Birchfield fared the best: he was convicted for refusing to have his blood tested without a warrant, so his conviction will fall. Bernard's conviction will stand, because he was convicted for refusing to take a breath test. And Beylund agreed to (and then failed) a blood test after police had told him that he had no choice other than to take it. His case will now go back to the lower courts for them to consider whether his consent to the test was actually voluntary when, as the Court held today, the state could not actually require him to take the blood test.

More broadly, the Court's ruling upholding breath tests without a warrant likely will take much of the sting out of its ruling against the states on the blood tests, as we can expect to see police officers avoid this problem by resorting to breath tests whenever possible. And with the Court having given a fairly resounding seal of approval to the breath tests, I would also expect to see more states adopt criminal penalties for refusing the breath tests soon.

KANSAS DUI CASES THIS YEAR:

...

State v. Wycoff ___ Kan. ___, ___ P.3d ___, 2016 WL 756685 (Feb. 26, 2016) (Luckert, J.) (Stegall, J. dissenting) Case No. 110,393 Wycoff was charged with refusing to submit to an evidentiary test under K.S.A. 8-1025. The district court dismissed the charge, and the State appealed. The Kansas Supreme Court affirmed. The court held that K.S.A. 8- 1025 was facially unconstitutional because it violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

297 12 State v. Wilson ___ Kan. ___, ___ P.3d ___, 2016 WL 757547 (Feb 26, 2016) (Luckert, J.) (Stegall, J. dissenting) Case No. 112,009 The district court dismissed a charge against Wilson alleging he refused to submit to DUI testing in violation of K.S.A. 8-1025. The district court found that even though 8-1025 did

not violate the Fourth Amendment the statute still violated Wilson's due process rights and his Fifth Amendment privilege against compelled self-incrimination. The State appealed. The Kansas Supreme Court affirmed, albeit for different reasons than the district court. The court held that K.S.A. 8-1025 is facially unconstitutional because it violated the Due Process Clause of the Fourteenth Amendment.

State v. Ryce ___ Kan. ___, ___ P.3d ___, 2016 WL 756686 (Feb. 26, 2016) (Luckert, J.) (Stegall, J. dissenting) Case No. 111,698 Ryce moved to dismiss his charge for refusing to submit to DUI testing in violation of K.S.A. 8-1025, arguing that it was unconstitutional under the Fourth and Fourteenth Amendments to criminalize a driver's refusal to submit to testing. The trial court agreed, and the State appealed. Our Supreme Court affirmed, holding: (1) despite the implied consent in K.S.A. 8-1001, the Fourth Amendment still applies; (2) whether K.S.A. 8-1025 violates the Fourth Amendment depends upon the application of the consent exception to warrantless searches alone; (3) a person has the right to refuse testing under the Fourth Amendment; (4) a person has substantive due process rights under the Fourteenth Amendment to be free from unreasonable searches and seizures in violation of the Fourth Amendment; (5) under strict scrutiny test, K.S.A. 8-1025 is facially unconstitutional because K.S.A. 8-1025 violates a person's due process rights under the Fourteenth Amendment by punishing that person for refusing a search, which is a protected right under the Fourth Amendment.

State v. Tims 302 Kan. 536, 355 P.3d 660 (Aug. 14, 2015) (Rosen, J.) Case No. 109,472 Tims was charged with felony DUI based on one previous DUI conviction and one previous DUI diversion. After the district court granted Tims' motion to strike the diversion from consideration as part of his criminal history, the parties agreed to a bench trial and the State reserved the right to appeal the district court's exclusion of Tims' diversion from his criminal history. Tims was found guilty and his conviction was treated as a misdemeanor. The State appealed and the Court of Appeals reversed, finding that the district court erred in not considering Tims' uncounseled diversion as a prior conviction for sentence enhancement purposes and remanded the case for resentencing as a felony. On appeal, the Supreme Court affirmed, finding that Tims' Sixth Amendment right to counsel never attached during his previous diversion proceedings, that Tims knowingly and voluntarily waived his statutory right to counsel at that time, and

that his diversion could be used for DUI sentence enhancement. But despite affirming the Court of Appeals decision, the Supreme Court vacated the Court of Appeals' order remanding the case for resentencing because the Supreme Court considered the issue as a question reserved by the prosecution, which has no effect on the criminal defendant in the underlying case.

State v. Nece ___ Kan. ___, 367 P.3d 1260 (Feb. 26, 2016) (Luckert, J.) Case No. 111,401 Following his arrest on suspicion of a DUI, Nece agreed to take a breath-alcohol test after officers told him pursuant to an implied consent advisory form that he could be charged with a crime if he refused to submit to the test. Nece moved to suppress the results of the breath test, arguing that his consent was coerced and therefore involuntary given that police told him of possible criminal charges for refusing the test. On review, the Kansas Supreme Court affirmed the district court's decision to suppress the test results. Because the court found the criminal refusal statute unconstitutional in State v. Ryce, ___ Kan. ___, ___ P.3d ____, 2016 WL 756686 (Feb. 26, 2016), Nece could not constitutionally be convicted of refusal to submit to a blood alcohol test as the implied consent advisory was inaccurate. Thus, the court held Nece's consent was involuntary.

State v. Morales 52 Kan. App. 2d 179, 363 P.3d 1133 (Dec. 11, 2015) (Green, J.) Petition for Review filed Jan. 11, 2016 Case No. 113,730 In an early morning hour, a sheriff's officer saw a vehicle stopped on the side of the road with its lights on. The officer was concerned that the vehicle may have broken down so he approached the vehicle. As he got closer, the brake lights activated so he activated his emergency lights to make contact with the driver. The officer witnessed no traffic violations. The officer ran the vehicle tags before making contact to see if there were any "hits" concerning the vehicle. Upon making contact with the driver, the officer immediately smelled the odor of alcohol. Morales failed one field sobriety test, and also failed a preliminary blood test at the scene. Morales was charged with DUI, and he moved to suppress all evidence obtained from the stop. The officer stated the Sheriff's policy to check on vehicles was: (1) if they are occupied, to make sure everything is okay; and (2) to make sure the vehicle is not stolen or part of some other crime. The district court suppressed the evidence, stating there were no concise, specific, and articulable facts as to why the stop was needed. The court held this second prong of the policy was in violation of the community caretaking function because it was not totally divorced from detection, investigation, or acquisition of evidence. The court affirmed the district court's suppression of the evidence.

Dumler v. Kansas Dept. of Revenue 302 Kan. 420, 354 P.3d 519 (July 24, 2015) (Johnson, J.) Case No. 106,748 Dumler was arrested for DUI. Before taking the breath test, Dumler made repeated requests to speak with an attorney which the officer denied. After failing the breath test, Dumler did not repeat his request for an attorney. After his license was suspended, Dumler appealed arguing he should have been able to consult with an attorney. Both the district court and Court of Appeals affirmed the KDR's license suspension based on the timing of Dumler's request to consult with an attorney. Our Supreme Court remanded to the district court for it to determine whether Dumler's request was for a post-testing consultation. If Dumler's post-testing right to counsel was violated then the alcohol test should be suppressed.

MillerCoors Dodges Blue Moon 'Craft Brewed' Suit
Source: Law360

By Steven Trader
June 16, 2016

A beer enthusiast suing MillerCoors LLC for allegedly tricking drinkers into thinking its Blue Moon beer is "craft brewed" has come up empty, after a California federal judge on Thursday concluded that none of the supposed misrepresentations were actionable foundations for a claim.

For the second time in eight months, U.S. District Judge Gonzalo P. Curiel was unswayed by Evan Parent's proposed class action argument that MillerCoors hid from consumers the fact that it owned Blue Moon Brewing Co. by using packaging and advertising to convey that Blue Moon is a small independent microbrew, dismissing the suit for failure to show an actionable misrepresentation, and this time permanently with no leave to amend.

After Judge Curiel last October found that a reasonable consumer could not be misled by Blue Moon's internet presence because MillerCoors made several references to the beer on its own website, Parent responded with a number of new allegations about Blue Moon's advertising.

In an amended complaint, the beer aficionado took aim at videos on Blue Moon's YouTube channel, which contain images of beer being made in small, 10-barrel size brew tanks, inside of a small, brick building with signs that read Blue Moon Brewing Co., while holding out brewmaster Keith Villa as the company's

founder.

In reality, the beer is actually made in 80,000 gallon tanks, at massive MillerCoors factories in Colorado and North Carolina, and Villa is a MillerCoors employee, all false representations that the company makes to get drinkers to pay more for the alleged "craft beer," Parent argued.

But Judge Curial on Thursday said that Parent failed to point to any "specific or measurable claim capable of being proved false or of being reasonably interpreted as a statement of objective fact" made in the advertisements.

Sure, the video does show small brewing tanks, but nowhere in the video does it state that the brewery depicted is the only place in which Blue Moon is produced, the judge said. Also, the depiction of Villa as the "brewmaster" isn't actually false because he did invent the recipe in 1995, which Parent does not dispute, Judge Curial wrote.

"More importantly, nowhere in either 'The Story of Blue Moon' or 'Our Approach to Brewing' videos is it stated that Blue Moon originated from an independent brewery," the judge said.

Parent also alleged in his amended complaint that MillerCoors requires that retail establishments stock Blue Moon among the craft beers, and endorses third-party representations that misidentify Blue Moon as craft beer at places such as bars and concert venues.

But Parent had not pleaded any specific features of the alleged agreements between MillerCoors and distributors that would allow the beer maker to exercise "unbridled control" over retailers, which themselves contract with distributors, not MillerCoors.

"Plaintiff's allegations in this regard thus appear to be conclusory, and lacking in the factual content that would allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," the judge wrote, adding that the same goes for Parent's claim regarding third-party endorsements.

This appears to be the end of the line for Parent's claim, which began last April when he accused MillerCoors - the second largest brewing company in the U.S. - of violating California's Consumer Legal Remedies Act and laws over deceptive and misleading advertising and unfair competition by leaving the MillerCoors name out of Blue Moon products and advertisements, saying that he was duped

by the term "Artfully Crafted" on the product's label, as well as advertising that depicts the beer as one brewed in small batches by an independent brewer.

On Thursday, Judge Curial said that he had already given Parent a second shot at fixing his claims, and that another round of amendments would be futile.

Julie Hussey of Perkins Coie LLP, an attorney for MillerCoors, called it a great win "for a great client that was ready to fight to the end."

James Treglio of Clark & Treglio, an attorney for Parent, told Law360 on Thursday that they were reviewing the order and "exploring all our options."

Representatives for both Parent and MillerCoors didn't immediately return a request for comment on Thursday.

MillerCoors is represented by Julie L. Hussey, David T. Biderman, Julie E. Schwartz and Lauren B. Cohen of Perkins Coie LLP.

Parent is represented by R. Craig Clark, James M. Treglio, Dawn M. Berry and Veronika Snoblova of Clark & Treglio.

The case is Evan Parent et al. v. MillerCoors LLC et al., case number 3:15-cv-01204, in the U.S. District Court for the Southern District of California.

--Additional reporting by Emily Field. Editing by Stephen Berg.

BEER BRIEFS:

ABI ASKING DISTRIBUTORS TO WRITE THE DOJ. The word on the street is that A-B has asked its distributors to write to the DOJ to say that the SABMiller deal won't affect the competitive landscape in the U.S., and that the VAIP program is voluntary and does not affect craft brewers' access to market. I'm no lawyer, but not sure I'd want a discoverable letter out there if I were an indie distributor.

CALIFORNIA BILL LOOKS TO BAN TOBACCO IN C-STORES AND GROCERY STORES. There's a piece of legislation, SB 1400, making the rounds in California that would significantly cut state residents' choices on where to buy

tobacco. The bill's author State Senator Bob Wieckowski wants establishments that "generate 60% or more of gross revenue annually from tobacco-related products" to be the only eligible retail locations to obtain a license to sell tobacco, per KCRA.com. The legislation cleared the Senate floor last Thursday. If enacted, California's c-stores and grocery stores would obviously be shut out of the tobacco game. Sunil Tandel, whose family has owned the Fremont Market in Sacramento for 20 years, told the NBC affiliate that they'd likely "take like a 25% hit just from cigarettes-and then on top of that, whatever else that goes with it."

FDA to Hold Public Workshops Addressing Menu Labeling Final Rule

BY CHRISTOPHER M. LAHIFF ON JUNE 14, 2016POSTED IN FOOD SAFETY AND FDA

The US Food and Drug Administration (FDA) has announced a series of public workshops about menu labeling to help the industry comply with requirements to provide calorie and other nutrition information to consumers. The workshops will address the menu labeling final rule, which require certain chain restaurants and similar retail food establishments to give consumers nutrition information on standard menu items. The compliance date for these requirements is May 5, 2017.

These workshops are to continue FDA's dialogue with the industry about implementation of the menu labeling final rule and provide additional clarity on the requirements. Interested parties will have the opportunity to discuss specific menu labeling questions and concerns directly with FDA subject matter experts through pre-scheduled one-on-one sessions.

Upcoming Workshops

College Park, Maryland: July 7-8, 2016 - 8 am to 4:30 pm - Harvey Wiley Building, 5100 Paint Branch Pkwy, College Park, MD

St. Louis, Missouri: September 27-28, 2016 - 8 am to 4:30 pm - Robert A. Young Federal Building, 1222 Spruce St., St. Louis, MO

Oakland, California: A third meeting will take place in Oakland, California, later in 2016.

Registration and Meeting Information
Workshop attendees are encouraged to register online to attend the meeting in person and via live webcast. Attendees may also request a one-on-one session with FDA subject matter experts. The number of these sessions is limited, so early registration is recommended to facilitate planning of one-on-one sessions and due to limited seating.

- Register Online

http://www.cvent.com/events/fda-menu-labeling-public-workshop/event-summary-9c2bf00f110242d0aed321b9d3756a27.aspx?source=govdelivery&utm_medium=email&utm_source=govdelivery

For questions about registering for the meetings or to request special accommodations due to a disability, contact Cindy de Sales, The Event Planning Group, 8720 Georgia Ave., Suite 801, Silver Spring, MD 20910; Phone: 240-316-3207; Fax: 240-652-6002; Email:rsvp@tepgevents.com.
For general information about the public meetings, contact Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS-820), Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740; Phone: 240-402-2371.

Important Dates
Please note the following important dates:
College Park, MD Meeting - July 7-8, 2016

- 6/30/16 - Deadline to request special accommodation due to a disability
- 6//30/16 - Advance registration deadline for Maryland meeting

St. Louis, MO Meeting - September 27-28, 2016

- 9/13/16 - Deadline to request special accommodation due to a disability
- 9/20/16 - Advance registration deadline for Missouri meeting

Related Guidance

- Final Rule: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments

https://www.federalregister.gov/articles/2014/12/01/2014-27833/food-labeling-nutrition-labeling-of-standard-menu-items-in-restaurants-and-similar-retail-food?source=govdelivery&utm_medium=email&utm_source=govdelivery

- Guidance for Industry: A Labeling Guide for Restaurants and Retail Establishments Selling Away-From-Home Foods - Part II (Menu Labeling Requirements in Accordance With FDA's Food Labeling Regulations)

http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm461934.htm?source=govdelivery&utm_medium=email&utm_source=govdelivery

Brewery Trademark Coexistence Agreements

June 21, 2016 Danielle Teagarden

When trademark disputes pop up, often breweries agree to get along. In doing so, two beverage businesses can seek what's called a trademark coexistence agreement. This is an agreement that essentially sets forth trademark restrictions on both brands, as the businesses mutually form a plan to distinguish themselves in the marketplace. A trademark coexistence agreement might, for example, provide that one business will only use the trademark in the name of its brewery. In turn, the other brewery may agree to only use the trademark as a single beer name. These agreements can be between two breweries, or they might be between businesses in different product categories. For example, a trademark coexistence agreement may be between an energy drink company and a brewery, a distillery and a winery, and so on.

One boon of a trademark coexistence agreement is that it settles the matter between the parties, giving each confidence in moving forward using its brand. Another boon, however, is that a trademark coexistence agremeent may help both brands obtain a federal trademark registration.

Imagine this common scenario.

Brewery A applies for a trademark, we'll make up a mark and say the mark is GREEN PARADE.

Brewery A receives a trademark office action response. The response is an Office Action stating a Section 2(d) refusal to register the mark. The reasoning

behind the Office Action is that another brewery, Brewery B, has a registration for, say, "BLUE PARADER BREWING CO." The trademark examiner cautiously sees the closeness between GREEN PARADE and BLUE PARADER BREWING CO., and sees that both are on beer. The examiner believes there is a likelihood of confusion. Brewery A then has six months to respond to the Office Action and urge why confusion is not likely, else Brewery A may not be able to obtain its federal trademark.

Notably, though, he United States Trademark Office may refuse a trademark application when the two parties themselves don't necessarily see a problem. For example, Brewery B called BLUE PARADER BREWING CO. may have no problem with Brewery A's use of GREEN PARADE. Perhaps GREEN PARADE is the name of Brewery A's IPA, and that's it.

In this instance, Brewery A and Brewery B could hammer out an agreement between them that sets forth a plan to coexist in the marketplace. This is a trademark coexistence agreement. Typically, the document contains an ancillary agreement called a trademark consent agreement. The purpose of the trademark consent agreement is to concisely set forth the main terms of the coexistence agreement, in a way aimed toward presentation to the USPTO trademark examining attorney.

The trademark examining attorney can use the consent agreement as evidence there is not a likelihood of confusion. After all, if the mark owner itself does not see a problem, it makes sense to defer to that mark owner's judgment.

That said, the trademark examining attorney is not bound to accept the consent agreement. Sometimes, if the marks are just too close, even if the breweries agree, both may not be able to obtain a federal trademark registration. Of note, there was a recent matter where two breweries agreed to coexist. One brewery had TIME TRAVELER BLONDE, and the other brewery had just TIME TRAVELER. Despite a coexistence agreement and a consent agreement, the examining attorney believed the marks were nevertheless too similar. There was an appeal, and the Trademark Trial and Appeal Board agreed with the trademark examining attorney.

Here is a link to the decision of the Trademark Trial and Appeal Board.
http://ttabvue.uspto.gov/ttabvue/ttabvue-85826258-EXA-8.pdf

And here is a link to the consent agreement
http://tsdr.uspto.gov/documentviewer?caseId=sn85826258&docId=ROA20131231184700#docIndex=5&page=1

Woman gets prison in DUI crash; suit against bar that served her dropped

Amber Honaker was sentenced on June 21, 2016, to five years in prison after pleading guilty to being drunk when she slammed into another vehicle in South Barrington in December, killing one person and seriously injuring another. (Cook County Sheriff's photo)

Brian L. Cox and John KeilmanContact Reporter

A Palatine woman has been sentenced to five years in prison after pleading guilty to being drunk when she slammed into another vehicle in South Barrington in December, killing one person and seriously injuring another, authorities said.

Amber Honaker, 25, pleaded guilty in Cook County court earlier this month to aggravated DUI involving a death and great bodily harm in exchange for the five-year sentence, prosecutors said.

They said Honaker drank several shots of liquor at a Christmas party Dec. 4, then got behind the wheel with a blood alcohol level of 0.24 - three times the legal limit.

She was so drunk that she drove south in the northbound lane of Mundhank Road in South Barrington, believing the two-lane road was actually a four-lane highway, prosecutors said.

Honaker's vehicle crossed the center line and struck the vehicle in which Theresa and Joseph Miceli, of South Barrington, were driving, prosecutors said.

They said Theresa Miceli, 85, died five days later from her injuries and that Joseph, her husband of 66 years, was seriously injured. Honaker suffered a broken ankle and clavicle in the crash.

The case took an unusual turn in February when Tyler Heyward, who fathered a child with Honaker, sued the Ruth's Chris Steak House in South Barrington on behalf of the boy.

Heyward alleged the restaurant had served Honaker "copious quantities of intoxicating liquors" at the Christmas party, and because of the injuries she suffered and the possibility she would go to prison, the 1-year-old child had lost his main means of support.

DUI charges brought in crash that killed Barrington-area woman

A Cook County judge dismissed the lawsuit in April. Donald Nathan, Heyward's lawyer, said the state's "dram shop" law had recently been amended to prevent a dependent of the intoxicated person from suing the alcohol server.

"It's a damn dirty shame that that's the law," he said. "The restaurant should really watch to make sure the people who are over-served don't get into cars."

The attorney representing the steakhouse did not return a call for comment.

In a victim impact statement read in the courtroom before the sentencing, the

Micelis' daughter, Jeanne Seidel, told of the heavy emotional toll of seeing her mother partly conscious and "a bundle of terror" in the hospital in the days after the crash.

"My mom's eyes that looked so stern when I was in trouble, yet so kind when my world was upside down, now only stared at me in complete terror," she said.

She also said her family has had to help her father through endless rehab appointments as they struggle to "keep his spirits high."

"Now instead of taking time to absorb our loss, we roll into weeks of care with Dad," she said.

Joseph Miceli also wrote a victim impact statement in which he said that he and his family were seeking justice for his wife.

He said he was driving home with his wife after dinner when he "turned the corner for the final lap, and there was Ms. Honaker's speeding car coming at us in our lane."

"My children had to watch their mother suffer five days then die," he wrote. "I walk with a pronounced limp and have internal injuries that cannot be repaired. I know whatever sentence you give her will not compensate us enough for our loss, but please try."

Prosecutors said the Miceli family agreed to the five-year sentence before it was imposed, though several family members requested in victim impact statements that Honaker be sentenced to the maximum of 14 years.

Authorities also said Honaker will have to serve at least 85 percent of the sentence.

Kansas City mom in jail for allegedly buying alcohol for teenagersOne teen almost dies from alcohol poisoning

Tom Dempsey

9:17 PM, Jun 22, 2016

KANSAS CITY, Mo. - A mother is behind bars after police say she provided alcohol to a group of teenagers, one of whom almost died from alcohol poisoning.

According to police, 34-year-old Melissa Bardwell bought two bottles of liquor for her 14-year-old daughter and some of her friends on May 25.

"I just got off work," explained Melissa's daughter, Angel Harmon. "We were just all hanging out."

After spending time at the house and drinking, police say one of the friends became overly intoxicated.

"She started getting really drunk," said Angel. "She was falling. She had stuff all over her knees. I sent her back home. Cleaned her up. She puked and I had to change her."

Police said the teenager later passed out and was unresponsive. While Bardwell tried to drive the teenager back home after she became sick, police said the teenager fell out of the car. She was later rushed to Children's Mercy Hospital, where medical crews determined her blood/alcohol content to be around .225, nearly three times the legal limit for an adult in Missouri.

Police said she was diagnosed with life-threatening alcohol poisoning and had to be taken to KU Medical Center.

In court documents, the teenager who became sick told police she remembered drinking Jim Beam, falling down and eventually passing out. When she woke up, she was in the hospital with a breathing tube down her throat.

On Tuesday, police arrested Bardwell on charges of furnishing alcohol to a minor, child endangerment and proving tobacco to a minor.

Bardwell's mother, Senett Eckhart, is now taking care of her children and watching after her home. Eckhart says she was shocked when she heard about the crime.

"I think it's terrible," she said. "If it happened to one of my kids, I'd be in the same boat. I'd be demanding some answers."

Eckhart said as a parent, she would never serve alcohol to a child.

"I sure wouldn't buy alcohol for any kids. Never," explained Eckhart. "I never bought it for Melissa."

Weeks after the incident, Eckhart said she feels terrible for the teenage girl who got sick.

"I hope the little girl makes it OK and forgives Melissa," she said.

Bardwell is currently being held in the Jackson County Detention Center on $50,000 bond. She faces the possibility of up to seven years behind bars and a fine of up to $5,000.

Mass. Winery Owner Says Reinterpreted Regulations Might Put Him Out Of Business

The popularity of "family-owned" and "locally grown" has made Massachusetts farms a vibrant business.

With orchards, vineyards, a winery and restaurant, the Nashoba Valley Winery in Bolton could be a poster child for agritourism.

But suddenly the state's Alcoholic Beverages Control Commission (ABCC) has announced it won't be renewing all the farm's licenses for making and pouring alcohol. Its owner, Rich Pelletier, says that's going to put the family farm out of business, so he's taking the regulators to court.

A Hilltop Orchard In Bolton

It doesn't look like a place facing what the judge in the case has called "an existential threat."

On the hilltop orchard overlooking Bolton, the Nashoba Valley Winery has been a turnaround success from the failing business a developer once proposed turning into 52 acres of McMansions.

In 1995, Pelletier came to look at the old farmhouse for sale out front and ended up buying the whole property - orchard, winery and all.

He had never farmed before, never ran an orchard. Pelletier had run a restaurant before, however.

So he turned that farmhouse into a restaurant to promote the orchard, winery and store.

"Here's the vision," Pelletier says. "It's what they do in Napa. It's what's successful on the West Coast. We want to bring it to the East Coast."

He applied to the state's ABCC and obtained what's commonly known as a "pouring license" to serve his wine and beer at the restaurant.

To make wine as well as beer and spirits on the premises, Pelletier got three more licenses. They're called "farmer manufacturing licenses" because they were created with the intent of supporting local agriculture.

The business employs 50 people year round, 100 at peak season.

But this spring came a call from the ABCC. The commission informed Pelletier that Nashoba Valley Winery would not be getting all of its licenses for next year.

"If I file the restaurant license first, they won't issue me my farmer's licenses. And if I file my farmer's licenses first, they won't issue me my restaurant license," Pelletier says.

In a follow-up email, the ABCC pointed Pelletier to a section of state law that specifically prohibits owning a pouring license for a restaurant at the same time as owning a farmer's manufacturing license.

An Impractical Choice

In effect, the ABCC is giving Pelletier a choice. He can give up the pouring license and be left with a restaurant that can't sell his wine, or he can give up his manufacturing license and be left with a place called a winery that can't make wine.

Pelletier was stunned because every year for 16 years the same ABCC had been renewing his licenses like clockwork and without issue.

"The facts have never changed over the last 16 years," his attorney, John

Connell, says.
Without any change in the law, the ABCC has made an apparent about-face in its interpretation of the law as it applies to the Nashoba Valley Winery.
Pelletier says it's a death sentence for his business model.
"You know, every option I look at is not viable other than closing down the restaurant," he says.
Pelletier says the ABCC wouldn't tell him why it changed after 16 years. And it would not talk to WBUR, citing the court case as its reason.
But the principle of alcohol control, going back to the end of Prohibition, is that manufacturers, typically big breweries, should not own restaurants.
Pelletier and his lawyer argue that Nashoba Valley is not the same. It's a farm, they say, and the ABCC is ignoring a section of state law passed in 2004 with the express intent to promote farms and farming.
Connell points to Chapter 138, Section 12, Paragraph 2.
"[It] expressly allows farms to have the right to pour its own wine at locations on the farm," Connell says. "And that section would seem to specifically authorize Nashoba Valley to pour at least its own wine at multiple locations on the farm as the town of Bolton designates, which they have done."
This would seem to be a solution to the problem -- by allowing wine to be poured at the restaurant. But the ABCC's response, says Pelletier's lawyer, is that wine can only be poured in the building where it is made, and since the restaurant is 50 feet away, it is not the same premises.

'Unjust And Unfair'

For a small business Republican like Pelletier, this is what the party means when it attacks excessive government regulation it claims is killing small business.
"There isn't any question with respect to the Nashoba Valley case that this constitutes over-regulation," Michael Connolly, a former secretary of state. "And that's someone who's a lifelong Democrat who's speaking to that particular issue."
Connolly knows the ABCC from his 10 years on the Boston Licensing Board. He says it's never moved out of "the dark ages."
"And after all the money invested and what's taken place, I just deem it to be unjust and unfair," Connolly says.
ABCC did make one suggestion, Pelletier says. "Yeah, they suggested that I circumvent the law by putting the restaurant in someone else's name," he says.
This would get around the problem by creating a straw owner, but would create a whole other set of zoning and legal and business problems, his lawyer says.

In Suffolk Superior Court last week, Pelletier sought to restrain the ABCC from withholding the renewal of his current licenses. The

office of Attorney General Maura Healey, which defends state agencies and commissions, moved to dismiss Pelletier's complaint.

Because of the uncertainty whether he will have the proper ABCC licenses, Pelletier can not book weddings or functions for next year. So he's already losing money. He's already spent $15,000 in legal fees and there's a cloud over his million dollar investment.

"You know it's great that GE is coming into the state and we're willing to give GE thousands," Pelletier says. "I don't want any money. Rich Pelletier just wants to stay here and be left alone."

I ask him what he hopes the judge is going to do. He responds: "I hope he slaps them silly."

In its motion to dismiss, an assistant to Healey argues there is no controversy because Pelletier has not yet been denied any licenses. So he should wait until he has exhausted his "administrative remedies" before bringing the matter to court. By that standard, Pelletier will need to wait until his licenses are denied. That will come at the end of the year when, Pelletier says, he will already have been forced to close either his restaurant or his winery.

Dave & Buster's Agrees To Pay $2.1M To End Wage Suit

Source: Law360
By Kelly Knaub
June 9, 2016

A proposed class of servers for popular arcade-dining restaurant chain Dave & Buster's asked a California federal judge Thursday to approve a $2.1 million settlement in a labor suit alleging the chain did not pay proper wages or provide adequate breaks, saying the deal is fair and reasonable.

Under the proposed deal, a net settlement amount of about $1.3 million would be allocated to 2,350 current and former Dave & Buster's Inc. employees on a pro rata basis according to the number of weeks each class member worked during the class period, with at least 55 percent of that amount going to participating class members regardless of how many claims are submitted.

According to the motion for preliminary approval, the proposed settlement - which would resolve claims that Dave & Buster's failed to provide overtime

wages, pay minimum wage for work performed off the clock and provide meal and rest breaks for servers, in violation of federal and state law - would result in an average net recovery of approximately $560.

"An objective evaluation of the settlement confirms that the relief negotiated on the class' behalf is fair, reasonable and valuable," the servers said.

The servers' law firm, Capstone Law APC, is set to receive $700,000 in attorneys' fees under the proposed deal, with an extra $25,000 in litigation costs and expenses, according to the brief.

Additionally, about $40,000 in claims administration costs will be paid to the mutually approved claims administrator, $7,500 will go to the California Labor and Workforce Development Agency pursuant to the Labor Code Private Attorneys General Act, and $10,000 will be paid to named plaintiff Cheris Nunnally for her services on behalf of the class, the motion says.

The class is defined as all individuals who worked at California Dave & Buster's restaurants as servers between Aug. 2, 2009, and the date of the preliminary approval of the deal.

Nunnally, who worked as a server at Dave & Buster's from March 2011 to July 2012 in Irving, filed the complaint in San Francisco County Superior Court in August 2013 alleging the chain violated California state law with its labor practices.

In addition to accusing the chain of failing to provide overtime wages, pay minimum wage for off-the-clock work and provide breaks, Nunnally alleged the chain also failed to pay terminated employees all wages due at the time of termination, provide workers with accurate itemized wage statements and reimburse employees for business expenses. The complaint also brought a cause of action for unfair business practices and declaratory relief.

The case was initially transferred to the Orange County Superior Court in January 2014 and later moved to California's Central District last month. An amended complaint added violations of the Fair Labor Standards Act.

The proposed class said that although it maintained a strong belief in the underlying merits of the claims, it also acknowledged the significant challenges posed by continued litigation through certification or at the merits stage and that, when balanced against the risk and expense of continued litigation, the

settlement is fair, adequate and reasonable.

An attorney for the servers declined to comment. An attorney for Dave & Buster's did not respond to a request for comment.

Dave & Buster's is represented by Alaya B. Meyers and Maria R. Harrington of Littler Mendelson PC.

The servers are represented by Raul Perez, Melissa Grant, Arnab Banerjee and Ruhandy Glezakos of Capstone Law APC.

The case is Cherish Nunnally v. Dave & Buster's Inc. et al., case number 8:16-cv-00855, in the U.S. District Court for the Central District of California.

BACARDI AND YOUNG'S MARKET IN COURTROOM STANDOFF

Bacardi and its former distributor Young's Market are stuck in a legal standoff, specifically over the Oregon and Hawaii contracts. Recall, Bacardi preemptively sued all its distributors in January so that it could realign its distribution network with the soon-to-be Southern Glazer's Wine and Spirits [see WSD 01-09-2016]. Nearly all of the 30 lawsuits filed against former distributors have been settled, Young's Market is the only holdout. Bacardi is pushing for the case to either proceed or be settled, while Young's thinks it should be dismissed altogether.

Rather than deciding to sue Bacardi or follow the process for a declaratory judgment -- what Bacardi is seeking -- Young's has filed a motion to dismiss for failure to state a claim. Further, through its attorney, Young's has said it cannot promise it won't sue Bacardi in the future because it can't determine if it has been negatively affected by the distributor change. In response, Bacardi insists the very fact that Young's can't determine whether it will sue in the future or not is an admission that there is a case or controversy.

The latest in the back-and-forth between the two is a memorandum filed late last month by Bacardi in regards to a motion for discovery -- a motion Young's opposes. The memorandum once again tries to prove that a case exists and that Bacardi should be permitted jurisdictional discovery to further support the existence of a case, per court documents. However, Young's reply contends that the memorandum provides no new information and still fails to state a claim.

Essentially, the two are stuck in a kind of courtroom limbo as Young's will not agree to declaratory judgment nor will it promise not to sue Bacardi over the same issue at a later date.

DOJ READY TO APPROVE ABI - SABMILLER DEAL, WITH CONDITIONS

The deal is nearing completing folks. As widely expected, the DOJ is set to approve ABI's takeover of SABMiller, but with with concessions, according to Bloomberg, citing people familiar with the deal. Approval is on track for later this month, but the deal could include limits A-B's ownership of branches, and/or changes to its distributor incentive programs. Would the DOJ require ABI to divest of branches? Doubtful, but it may wish to cap their involvement in distributor ownership at some number (10% of total volume, as they've already agreed to?), and perhaps alterations or jettisoning of their voluntary VAIP distributor exclusivity incentive plan.

Some may ask, why would A-B even front a program like VAIP in the midst of a DOJ investigation? Maybe they created VAIP in order to take it off the table as a condition of the deal.... A bargaining chip? Just an idea that came to me in a cab last week. After all, A-B often plays chess while in the rest of the industry is playing checkers.

Transgender Employees and Restrooms in the Workplace: What Every Employer Needs to Know

Many employers may need to take a hard look at their workplace restroom policies for transgender employees. Earlier this year, the U.S. Equal Employment Opportunity Commission (EEOC) obtained an $115,000 settlement payment on behalf of a transgender employee who had been barred from using an employer's women's restroom. In an effort to accommodate the transgender employee in that case, the employer had previously provided the employee with access to a gender-neutral single-occupancy restroom. That was not enough, however. According to the EEOC, transgender employees have a right to use multi-occupancy workplace restrooms that correspond to the gender with which they

identify.

The EEOC's position raises several issues for employers. In addition, at least 19 states, the District of Columbia, and Puerto Rico now have laws that prohibit employers from discriminating against employees based upon their status as transgender. Here are a few questions nonprofit employers may be asking themselves, as well as suggestions for how to avoid costly litigation.

When Is an Employee Considered Transgender?

Picture this: an employee notifies an employer's human resources department that the employee is transgender. But has the employee had gender reassignment surgery? Has the employee legally changed his or her name? Has the employee begun hormonal therapy, and, if so, when will the therapy be complete? While these are common questions, they are largely irrelevant and, in some cases, illegal to ask an employee. The definition of transgender for most jurisdictions is simple: An employee is considered transgender when he or she identifies with a gender that is different from the one he or she was assigned at birth.

This means nonprofit employers should not require that an employee undergo medical procedures, legally change his or her name, or submit other "proof" before being considered transgender. Once the employee informs the employer that he or she identifies with a gender different from the one he or she was assigned at birth, the employer should consider the employee transgender.

What Restroom Access Must an Employer Provide to Transgender Employees?

Although the laws vary slightly across different jurisdictions, most transgender anti-discrimination laws require employers to provide transgender employees with the same level of restroom access as other employees. Accordingly, employers should permit a transgender employee to access worksite restrooms based upon the gender with which he or she identifies. Simply providing access to single-occupancy restrooms will not do.

What about Complaints from Other Employees?

Some nonprofit employers may find themselves caught between two or more employees' competing views about transgender employees' rights. It is not uncommon for an employer to receive a complaint from a non-transgender (also sometimes referred to as "cisgender") employee regarding the shared use of a worksite restroom with a transgender employee. However, such complaints do not excuse an employer's failure to provide transgender employees with equal restroom access, now that more and more jurisdictions consider transgender status to be akin to an employee's race, age, disability, or any other protected characteristic.

This rule highlights the importance of regular workplace training regarding anti-harassment, transgender sensitivity, and an employer's restroom policies. Among other things, proper training can prepare supervisors to respond to transgender employees' requests for restroom access. A supervisor's initial response is often a big factor in whether a discrimination claim will follow.

What about Single-Occupancy Restrooms?

Single-occupancy restrooms are a potential solution for many nonprofit employers. Such restrooms help provide a more private space for transgender and cisgender employees alike. As discussed above, however, access to single-occupancy restrooms is not sufficient to comply with most transgender anti-discrimination laws. If an employer does provide access to single-occupancy restrooms, the employer should post a sign that clearly informs employees that the single-occupancy restroom is available to any gender. At a minimum, the employer should not have signs indicating that a single-occupancy restroom is available to only one gender and not the other.

What about Multi-Occupancy Restrooms?

The harder questions often involve access to an employer's multi-occupancy restrooms. If an employer has multi-occupancy restrooms at its workplace, there is usually a potential access issue for transgender employees. There is at least one easy solution - make all workplace restrooms unisex. If an employer's restrooms are completely unisex, the potential discrimination issue typically disappears because anyone may access any restroom. The employer must simply ensure there is a private space available within the restrooms, such as a lockable stall, which most multi-occupancy restrooms already have.

In the alternative, employers must take other steps to ensure that transgender employees may access the single-sex multi-occupancy restrooms for the gender with which they identify. This often requires a discussion between the employer and transgender employee. Employers also should have a policy in place for how their managers will respond to a transgender employee's request for restroom access, as well as specific procedures for addressing other employees' requests or comments regarding transgender employees. Jokes, insults, or thinly veiled criticisms of an employee's transgender status, even if made by non-managerial employees, may support a hostile-work-environment claim against an employer.

What Are the Penalties for Not Providing Equal Restroom Access to Transgender Employees?

Not complying with the transgender anti-discrimination laws is often an expensive proposition. In the case referenced above, the $115,000 settlement included money for lost wages, emotional distress, and attorneys' fees. That case involved just a single employee. Larger employers with a higher proportion of transgender employees could face more costly class-action lawsuits. The potential awards for emotional distress damages can be particularly expensive because of the psychological harm transgender employees often suffer when they are denied access to the restroom of their choosing. Some laws also carry significant civil penalties. Employers in New York City, for example, may face a maximum penalty of $250,000 if they do not provide adequate restroom access to transgender employees.

Employers also may face non-monetary consequences. The settlement agreement

for the case noted above included a long list of non-monetary obligations for the employer, including regular transgender employee rights training for its workforce, the implementation of new bathroom-access policies, posting new bathroom signs at worksites, and annual reporting requirements regarding internal complaints of discrimination against or harassment of transgender employees.

* * * * * * * * * *

As the laws regarding transgender employees continue to evolve, nonprofit employers should proactively take steps to ensure that they are ready to respond to requests and comments regarding restroom access for transgender employees. Employers also should be mindful that different jurisdictions may have different requirements. Accordingly, it always is recommended that nonprofit employers consult with legal counsel about complying with anti-discrimination requirements for transgender employees.

R.E. "Tuck" Duncan, Attorney at Law LLC
785.233.2265 | tuckduncanlaw@yahoo.com
www.tuckduncanlaw.com