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### Pennsylvania Legal Update

Fall 2010

#### Temporary Workers Have Broad Rights

In a recent case involving a serious injury sustained by a “temp” worker, the Pennsylvania Superior Court reaffirmed the principle that only the actual employer of an injured worker bears the benefits and

while she was working. The agency promptly notified the injured woman that she was entitled to wage and medical benefits. Not satisfied with the weekly amount of wage benefits offered by the agency, the injured woman filed a workers’ compensation claim, naming the factory as her employer.

The factory denied responsibility, claiming that the injured woman was not its employee but was employed only by the agency. At a hearing, the injured woman, the factory, and the agency came to a workers’ compensation benefits

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*Temporary employees have workers’ compensation benefits rights with the agency that pays and places them, and they have separate rights against third parties whose negligence causes them injury.*

the burdens of the Workers’ Compensation Act. But, in doing so, the court recognized a temporary worker’s right to raise claims against both the temporary services agency that hired her and the workplace where she actually worked.

The injured woman was hired by an agency that supplies temporary employees to businesses. On her second day of employment, she was assigned by the agency to report to work at a factory to operate a punch press. The employee’s right hand was amputated by the punch press

#### Debit Versus Credit Cards

When you are pulling out the plastic to make a purchase, will it be debit or credit? It makes sense to know how each works, and their respective advantages and disadvantages. The bottom line is that debit cards are fine for small and/or routine purchases, but credit cards, as a rule, are better for major purchases and online transactions because they offer more protections if something goes awry.

##### Debit Cards

A debit card is like an electronic check—the consumer is spending money that he or she already has. As compared with credit cards,

debit cards carry the potential for greater liability if the card is lost or stolen. Under federal law, liability is limited to \$50 for the fast-acting consumer who notifies the bank within two days after discovering an unauthorized transaction. After that, the cardholder could lose up to \$500, or even more in some cases. On its own, a bank may choose to waive liability for unauthorized transactions if the consumer has taken reasonable precautions, but, of course, this varies depending on bank policies.

For transaction errors, banks, as

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#### Sidewalk Liability

Pennsylvania law provides that property owners must keep their sidewalks in “a reasonably safe condition for travel by the public.” Whether a sidewalk is properly maintained and is safe is determined on a case-by-case basis, with an examination of the surrounding circumstances of each case.

In a recent case, a woman won damages against a small insurance agency after she fell, spraining her ankle, tearing her meniscus, and suffering bruises. Following a light snow, the woman had been on her way into the building to speak to one of the agency’s employees about a personal matter when she fell on an uneven portion of the sidewalk.

On appeal from a jury’s award of damages to the injured woman, the agency claimed that the defect in the sidewalk was “trivial” and that the injured woman was thoroughly familiar with the condition of the sidewalk because she lived in the neighborhood and regularly walked past the agency.

The appeals court recognized that the law imposes liability on property owners to maintain their sidewalks but does not create liability for the “elevations, depressions or irregularities” that are trivial. No “definite or mathematical rules” define what is trivial; it is decided on the facts of each case. Finding that a defect of only two inches can be unreasonably dangerous, the appeals court upheld the jury’s verdict. The court also noted that a pedestrian’s knowledge of an area of a sidewalk does not excuse an owner’s failure to maintain it. Pedestrians are not responsible for “keeping their vision continually

fixed on the ground” in front of them, although they are responsible for using reasonable care. A pedestrian who is familiar with a bad stretch of sidewalk can be found contributorily negligent by a jury, barring some or all of the pedestrian’s entitlement to damages.

If you own a sidewalk, Pennsylvania law requires that you keep it safe for pedestrian traffic. Repair

defects promptly, and post clear warning signs of dangerous conditions pending the completion of repairs. When walking on a sidewalk, assume that you have a reasonable obligation to look out for your own safety. Property owners are not strictly liable to pedestrians; instead, they are responsible only for conditions that are carelessly dangerous.

#### Dog Owner Sues SPCA

A dog owner won a lawsuit against the Society for the Prevention of Cruelty to Animals (“SPCA”) in a case that went all the way to the Pennsylvania Supreme Court. The dispute started when the SPCA seized the owner’s dogs, claiming that the dogs had been abused. Shortly after seizing the dogs, the SPCA euthanized them. The owner sued the SPCA, claiming improper interference with personal property and negligence. The SPCA defended the claim, arguing that it was entitled to full governmental immunity. The principles of governmental immunity drastically limit the circumstances under which federal, local, and state governments can be sued.

The SPCA is a private nonprofit corporation that has authority under Pennsylvania law to enforce the Pennsylvania Dog Law, including the authority to seize dogs, arrest owners, execute search warrants, and generally enforce all laws protecting animals. The SPCA is not

government-run or government-regulated; it hires and fires its own employees, elects its own officers and directors, and manages its own budget. The SPCA owns its assets, controls its income, and enacts its bylaws without any governmental intervention or involvement.

Because SPCA officers have arrest powers and the authority to seize dogs, the SPCA claimed it was more like government than a private business. The SPCA noted that, by law, it is entitled to and receives a one-half share of all fines collected for cruelty-to-animals violations. The SPCA argued that this sharing of fines “intertwined” the agency with government, making it an agent of government and giving it full governmental immunity from suits.

But the courts, including the Pennsylvania Supreme Court, disagreed, finding that whatever level of entanglement the SPCA may

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## Computer Equipment Permanently Seized by Police

Sometime after a Pennsylvania couple's romantic relationship had ended in high conflict, the man lost all of his computer equipment in a criminal forfeiture action.

The couple was in court repeatedly over the five years following the end of their relationship. The woman was granted a protective order. The man was investigated for separate criminal activity reported by the woman, but law en-

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*Generally, property seized in criminal proceedings is returned to the owner if it is not contraband or otherwise illegal.*

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forcers concluded that no charges were warranted. In the course of the investigation, however, the man's firearms were discovered and were seized as unlawful under federal law.

The man violated the protective order. He took to wearing a sweatshirt emblazoned with the woman's photograph and the words "Lying Skank." He vowed to maintain a crusade for justice to correct the court's granting of the original protective order.

Despite warnings from the local judge, the man persisted in his quest. In fact, he served a maxi-

mum sentence for violating the protective order, simply because he would not agree, in parole proceedings, to leave the woman alone. Shortly after his release from jail, the man sent a foreboding e-mail to the woman's sister, suggesting that if the sister had anything she "ever wished to say" to the man or woman, she should do it right away.

The e-mail address that the man used for himself was formed by the woman's initials and the word "killer." The man also created a MySpace social network website on which he identified himself as the woman's "terminator." He linked a rock song entitled "I Used to Love Her But I Had to Kill Her" to his MySpace site and posted numerous threatening references to the woman on the site.

The man was arrested for violating the ongoing protective order, and his computer and computer equipment were seized by the police. After the conclusion of the violation proceedings, the man petitioned the court for the return of his computer and computer equipment. Generally, property seized in criminal proceedings is returned to the owner if it is not contraband or otherwise illegal.

The trial judge initially decided that all of the computer equipment should be returned to the man because it was not illegal to possess computer equipment and the man simply could replace it with new equipment if he chose to do so.

The prosecutors appealed and won. The appeals court held that when computer equipment is used to "threaten and terrorize" another person, it falls within the definition of "contraband" and must be forfeited to the state.

While the facts of this case are dramatic and unusual, the legal principle is simple. Using a computer to commit a crime can justify law enforcement's seizure of the computer and related equipment, and the loss of the computer and equipment may well be permanent.

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## Dog Owner Sues

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have with government and law enforcement, it remains a separate, private entity. Only government agencies are entitled to governmental immunity. No amount of involvement with government can confer governmental immunity on a private entity.

The SPCA is a nonprofit corporation that protects animals and provides a vital service to local law enforcers in enforcing animal cruelty and animal management laws. Unless Pennsylvania law is changed, providing it with some independent immunity, the SPCA will remain vulnerable to lawsuits arising from its enforcement of animal laws.

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## Debit vs. Credit Cards

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a general rule, have up to 10 days to investigate after receiving notice from the cardholder, or up to 45 days in special circumstances. Pending the outcome of the review, banks generally must credit the account for the amount of the alleged error.

As with credit cards, debit cards offer convenience and an alternative to carrying cash. But, unlike credit cards, the consumer is not taking on debt when using a debit card. Nor is the consumer paying interest or an assortment of fees, assuming that the account is not overdrawn. It may be possible to avoid even the overdraft fees by linking a checking account to a savings account or a line of credit. A debit card can also be used to obtain cash without incurring charges that usually come with cash advances by means of a credit card.

When there is a problem with purchased merchandise, there is no right to withhold payment if the consumer has used a debit card, as might be an option with a credit-card transaction. Another drawback for debit cards is the practice of putting "holds" on funds. If the final amount is not yet known, a merchant may place a temporary hold on funds for more than is actually spent, which denies the consumer access to that amount until the hold is lifted later.

## Credit Cards

Federal law limits a consumer's losses to a maximum of \$50 if a credit card is lost or stolen, and also provides protection against credit-card billing errors. Unlike with debit cards, federal law also may allow the user of a credit card to withhold payment under certain

circumstances until a problem with purchased merchandise is rectified.

The most commonly cited drawbacks for credit cards concern fees, interest rate increases, and penalties. In addition to annual fees for some cards, there are usually fees for paying late and for exceeding the credit limit. Of course, unless a consumer is in an interest-

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## Temporary Workers

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settlement in which they agreed that the agency was the employer. As part of the settlement, the parties also agreed to raise the woman's wage benefit to an amount higher than was originally offered by the agency.

The injured woman then sued the factory for negligence and strict products liability on the ground that the punch press was dangerously defective. In response, the factory claimed that the woman was its employee and was barred by the Workers' Compensation Act from suing.

The superior court noted that employees are permitted to sue third parties for their work-related injuries. An employee injured by a dangerous machine can sue the manufacturer if the employer is not the manufacturer. An employee injured on a third party's property while working for a separate employer can sue the property owner for negligent maintenance of the property. Temporary employees can sue the businesses where they are placed, because they are not employees of those businesses.

free grace period, interest accumulates and adds to the overall debt, especially if the cardholder pays only the minimum amounts due each month. As any holder of a credit card can attest, having a credit card also makes overspending very easy, especially with high credit limits and enticements such as rewards programs.

The court held that the factory could not deny its status as the employer in the workers' compensation claim and then later raise the defense of employer status in the injured woman's suit regarding the punch-press machine.

Businesses sometimes hire temporary workers in order to avoid the many liabilities associated with employment. Properly structured, the use of temporary employees relieves an employer of liability for workers' compensation benefits, unemployment compensation, and all health insurance and retirement benefits. However, particularly when employers maintain dangerous equipment or have other workplace safety concerns, their use of temporary employees may result in broader liability exposure.

If you are considering hiring temporary employees, you should thoroughly assess your liability as a third party before taking temporary employees into your workplace. If you work as a temporary employee, you have workers' compensation benefits rights with the agency that pays and places you, and you have separate rights against any third parties whose negligence causes you injury.

*Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Pennsylvania law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*

## COLLEGE SAVINGS PLANS COMPARISON

	Who Can Contribute	Contribution Limit	Who Has Control	Qualified Distributions	Income Tax Considerations	What Happens to Unused Balances	Financial Aid Considerations	Other Considerations
<b>Personal Investment</b>	Anyone	-No limit. -May contribute cash and securities.	Account owner	No limitations	Taxed at the account owner's rate	Can be gifted to anyone	-May impact financial aid eligibility -Considered an asset of the account owner -Smaller portion of parents' assets are counted for financial aid.	Assets can be used for more than one child.
<b>Custodial Account (UGMA, UTMA)</b>	Anyone	-No limit. -May contribute cash and securities.	Custodian (Beneficiary gains control at legal age.)	Funds are set aside solely for the benefit of the beneficiary. (Funds are not exclusive to education expenses.)	A portion of earnings may be federally tax-exempt; some income may be taxed at the beneficiary's rate.	Must be used solely for that beneficiary	-May impact financial aid eligibility -Considered an asset of the student -Larger portion of student's assets are counted for financial aid.	Contributions are irrevocable.
<b>529 Prepaid Plan</b>	Anyone	-Maximum contributions vary in each state. -Contributions to purchase tuition credits must be cash only.	Account owner	Funds are set aside solely for qualified higher education expenses (may be limited to tuition in some states).	-Qualified withdrawals are not subject to federal income tax. -Earnings in the plan accumulate tax deferred. <sup>1,2</sup>	-Will vary by state -Generally, assets can remain or can be rolled into the account of another eligible family member.	-May impact financial aid eligibility -Considered an asset of the account owner -Smaller portion of parents' assets are counted for financial aid.	-All colleges are not eligible in each state -Residency requirements may apply.
<b>529 College Savings Plan</b>	Anyone	-Generous contribution guidelines. -Contributions must be in forms of cash.	Account owner	Funds are set aside solely for qualified higher education expenses.	-Qualified withdrawals are not subject to federal income tax. <sup>1,2</sup> -Earnings in the plan accumulate tax deferred.	-Will vary by state -Generally, assets can remain in the account indefinitely or can be rolled into the account of another eligible member.	-May impact financial aid eligibility -Considered an asset of the account owner -Smaller portion of parents' assets are counted for financial aid.	-Gift and estate tax benefits -Funds can generally be used at any accredited postsecondary school in the U.S. and some foreign schools.
<b>Coverdell Education Savings Account</b>	Anyone (Certain income limitations may apply.) <sup>4</sup>	-Cannot exceed \$2,000 per year per beneficiary. -Contributions must be in the forms of cash.	Account owner (minor at legal age, depending on the plan provider.)	Funds are set aside solely for the beneficiary's qualified education expenses, including primary and secondary education. <sup>5</sup>	-Qualified withdrawals are not subject to federal income tax. <sup>1</sup> -Earnings in the plan accumulate tax deferred.	Assets must be withdrawn by age 30. Unused balance can be rolled into a 529 plan or a Coverdell ESA for use by another eligible family member.	-May impact financial aid eligibility -Considered an asset of the account owner -Smaller portion of parents' assets are counted for financial aid.	Contributions must end once the child reaches 18.

<sup>1</sup> Withdrawals used for expenses other than qualified education expenses may be subject to federal and state taxes plus a 10% penalty.

<sup>2</sup> Contributions may be tax-deductible or eligible for a state tax credit in certain states for residents. Because tax issues for 529 plans can be complex, please consult with your tax advisor.

<sup>3</sup> Special gifting provisions allow a contribution of \$65,000 in a single year. The contribution will represent a \$13,000 gift for the current year and the next four years. In the event of the contributor's death within that five-year period, the portion of the original gift allocated to years following death will be considered part of the estate for estate tax purposes.

<sup>4</sup> The single filer phase out range is \$95,000 to \$110,000; joint filers, \$190,000 to \$220,000. (Single and joint filer surpassing the respective limitation ceilings are ineligible to contribute.)

<sup>5</sup> Scheduled to sunset, or expire, after 2010, unless extended by Congress.