80 YEARS
ABRAHAMS KASLOW & CASSMAN LLP
LEGAL Perspectives
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EMPLOYMENT LAW UPDATE

The FLSA on Interns & Training Programs

By Julie M. Ryan

Among other things, the Fair Labor Standards Act ("FLSA") sets forth federal requirements for minimum wage and overtime pay protections for employees. A company must be familiar with the ins and outs of the FLSA as applied to its workforce for its day-to-day business.

Failure to comply with the FLSA may subject your business to civil money penalties for noncompliance and potential litigation. For example, under the FLSA, employers who willfully or repeatedly violate the minimum wage or overtime pay requirements may be penalized up to $1,000 for each violation.

Many for-profit businesses offer internships, for a whole host of reasons that may range from helping to meet immediate operational needs and supporting educational initiatives for the local community to long-term business growth goals.

One of the items a company with interns will need to address is whether the internship position will be paid or unpaid and, if paid, at what rate and for how many hours per workweek. The answer to the initial question must involve an analysis of whether the intern is an "employee" under the FLSA. If the intern constitutes an "employee" under the FLSA, then that employee—even despite the internship position worked—is entitled to the minimum wage and overtime pay, among other FLSA protections and other protections under federal, state, and local laws and regulations. If the intern is not an employee under the FLSA, then the FLSA does not require the intern to be compensated.

Courts have considered the following factors when determining whether an intern or trainee is really an employee for purposes of the FLSA:

1.The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.

2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.

3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.

4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.

5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.

6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.

7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

For example, if the internship is tied to the intern's formal education program, then that is a factor that suggests the intern is ***not*** an employee under the FLSA.

When considering these factors, courts ask whether the intern or the employer is the "primary beneficiary" of the relationship. The intern is the "primary beneficiary" and no employment relationship is created under the FLSA when the tangible and intangible benefits that the intern receives from the position are greater than the intern's contribution to the business. Every situation is unique, and courts have stated that no one factor will determine the outcome.

If an intern does not qualify as an employee under the FLSA, the company still must do a similar analysis to determine whether the intern is an employee under various state and local laws and determine pay and work hour state or local law requirements, if any.

Interns are most likely considered employees under various Nebraska laws. For example, the Nebraska Fair Employment Practice Act, which prohibits certain employment discrimination, simply defines an employee as an "individual employed by an employer", and the Nebraska Wage Payment and Collection Act concerning payroll laws defines an employee as someone who is "permitted to work by an employer pursuant to an employment relationship"; neither Act explicitly carves out interns. As another example, under the Nebraska Wage and Hour Act, employers that have student-learners as part of a bona fide vocational training program must pay the student-learners at least 75% of the minimum wage rate that would otherwise be applicable. The Nebraska minimum wage rate is currently $12.00 an hour and will increase to $13.50 per hour on January 1, 2025.

For more information, please contact Julie M. Ryan at jryan@akclaw.com or 402.392.1250.

How to Protect your Intellectual Property

By Alex Montoya

In a world of fast-paced technological innovation, it is becoming increasingly important for new and established business owners to do everything they can to protect their intellectual property and, by extension, their brand identity.

There are many types of intellectual property and methods for protecting it, however, the focus of this article will be on trademarks and trademark registration.

Namely, this article will focus on (1) defining "trademark" and "service mark" (trademark for goods and service mark for services), (2) identifying the type of intellectual property eligible for trademark protection, and (3) introducing the process of registering a trademark with the United States Patent and Trademark Office (the "USPTO").

What is a Trademark?

A trademark or service mark is any logo or other identifying mark that helps customers distinguish the goods and services of one seller or provider from the goods and services of another. More specifically, a "mark" is any word, phrase, slogan, design, symbol, or combination of the above that identifies specific goods or services in the marketplace.

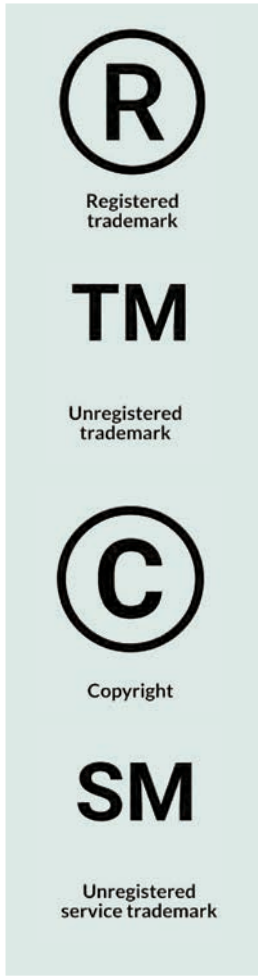
What Intellectual Property is Eligible Trademark Protection?

Trademarks are present in many if not all consumer items, brands, and services you use on a day-to-day basis (i.e. think of the words and designs associated with "Coca-Cola", "Starbucks", "Apple", and "Nike"). Trademarks often protect the names themselves (i.e. a standard wordmark) and the logos or designs that often accompany the name (i.e. Apple's famous apple with a bite removed or the recognizable "Nike Swoosh" on the clothes of famous athletes). To be eligible for trademark protection, the mark must be (1) unique or distinctive enough to clearly distinguish the source of the goods or services from other competitors in the market and (2) must not be confusingly similar to pre-existing marks. The more "fanciful" or "arbitrary" the mark is in relation to the goods or services it identifies, the more likely the USPTO will be to accept it and the easier it will be to identify in cases of infringement. If the mark simply describes the goods or services it relates to, then it is more likely to be rejected by the USPTO for being "merely descriptive" or "generic" (i.e. attempting to trademark "The Bookstore" for a bookstore).

Why Register a Trademark?

Though a mark may have certain "common law" rights associated with it after its first use in commerce (automatic rights established through judicial decisions), these rights are often limited. Filing an application to register a mark with the USPTO is often advised because it, among other things, affords the owner the ability to defend the mark in federal court and provides a record of ownership and use.

o learn more about potentially registering a trademark, contact Alex Montoya at amontoya@akclaw.com today.



My business is **closed.**

Do I still have to file for the Corporate Transparency Act?

By Payton Hostens

The Corporate Transparency Act ("CTA") requires most entities to file a beneficial ownership information report with the Financial Crimes Enforcement Network ("FinCEN").

Recently, FinCEN provided guidance about the reporting requirements for entities that have "ceased to exist".

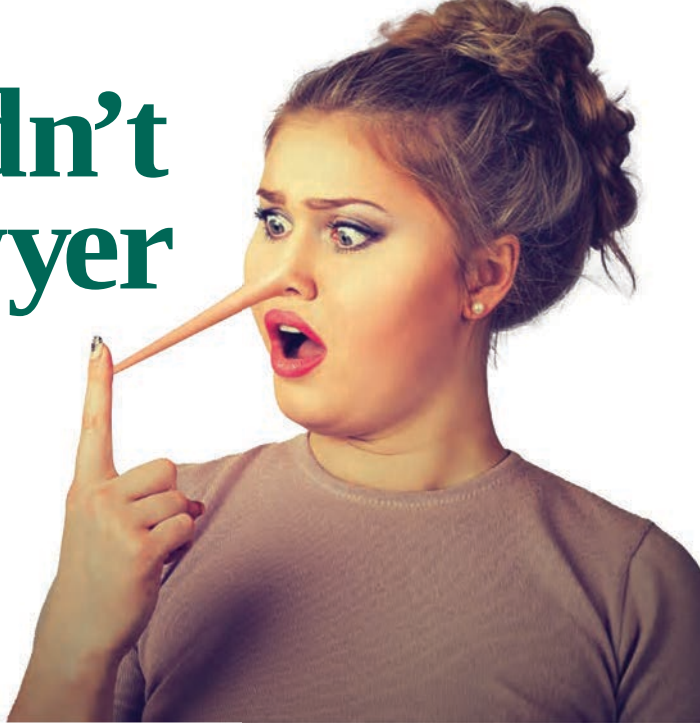
FinCEN instructs that an entity that ceased to exist as a legal entity before January 1, 2024, is not required to report its beneficial ownership information to FinCEN. However, **whether an entity has ceased to exist may not be as straightforward as it sounds.**

FinCEN makes clear that an entity ceases to exist only if it entirely completed the process of formally and irrevocably dissolving.

Generally, state law determines when an entity has completed this process. Many states provide a period of time where a dissolved entity continues in existence for the purpose of winding up its activities, such as paying debts and selling assets.

FinCEN takes the position that an entity has not ceased to exist until it has completed these winding-up activities. Therefore, **if an entity has stopped conducting business, but has not completed the state-required process for dissolving and winding up its activities, it has not ceased to exist for CTA purposes.**

Why You Shouldn't Lie to Your Lawyer



By Hallie Hamilton

If you are being sued or need to sue someone else, you will likely have in-depth conversations with your lawyer about what happened.

Lawyers generally figure out how your story fits with the law and then identify strategies to achieve the best possible outcome for you.

The early conversations you have with your attorney are of critical importance in shaping your litigation strategy.

The worst thing you can do in the information-gathering stage of your lawsuit is lie to your attorney. When you lie to your lawyer, you actively impact your lawyer's ability to do her job, which is to give you the best available legal advice in light of your circumstances.

The truth will eventually come out, and when it does, your legal strategy will be jeopardized.

Another thing to avoid is spinning the facts and trying to shade things in a way that paints them in a more innocent light. This is not as bad as lying, but will have all the same negative consequences as lying. Even slight tweaks matter, and they could impact the quality of the legal advice being provided.

The best thing you can do? Tell the truth. It sounds simple, but sometimes this is easier said than done. Your memory of the events may be imperfect and incomplete. Here are a few tips:

1. Don't be afraid to pause and consider the question before responding.
2. If you do not know the answer or do not remember, it is okay to say so.
3. Be candid even when you are worried a fact may hurt your case in the long run.

Most cases are decided by an aggregate of events and circumstances that tip the balance in favor of one party or the other. At AKC Law, the litigation team is here to help you tell your story and craft a litigation strategy aimed at achieving the best possible outcome for you.

If you or your business needs litigation advice, contact Hallie Hamilton at **hhamilton@akclaw.com.**

Additionally, FinCEN notes that an entity does not cease to exist unless the dissolution is permanent. In states where an entity is administratively dissolved for failure to file reports or pay required fees, there is often a simple process for reinstating the entity. The dissolution of these entities is not considered permanent, and the entity has not ceased to exist for CTA purposes unless and until the dissolution becomes permanent.

If an entity continued to exist as a legal entity for any period of time on or after January 1, 2024, then it is required to report its beneficial ownership information to FinCEN.

Similarly, if an entity was created on or after January 1, 2024, and subsequently ceased to exist, then it is required to report its beneficial ownership information to FinCEN, even if it ceased to exist before its initial beneficial ownership information report was due.

It should be noted that there is an exemption to the CTA's reporting requirements for "inactive entities" that is separate from the analysis of whether an entity has ceased to exist. In order to qualify for the inactive entity exemption, all six of the following criteria must be met:

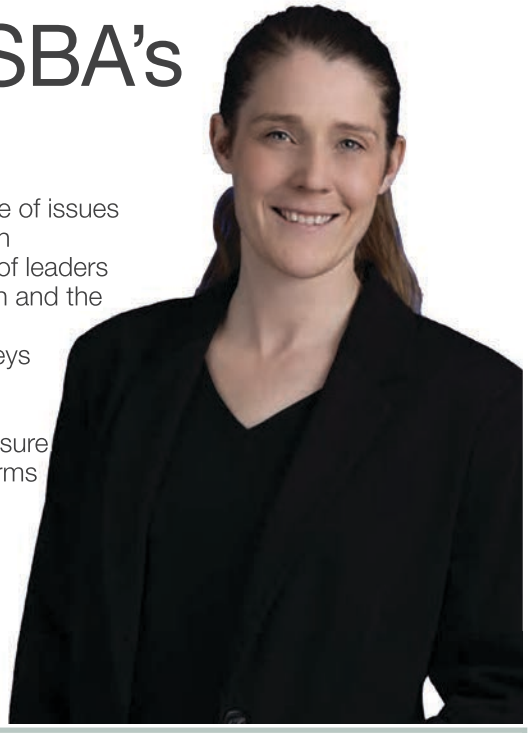
1. The entity was in existence on or before January 1, 2020.
2. The entity is not engaged in active business.
3. The entity is not owned by a foreign person, whether directly or indirectly, wholly or partially.
4. The entity has not experienced any change in ownership in the preceding twelve-month period.
5. The entity has not sent or received any funds in an amount greater than $1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve-month period.
6. The entity does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

The attorneys at AKC Law have been following the CTA closely and are committed to helping clients navigate the reporting requirements.

For businesses formed prior to 2024, your deadline to file Beneficial Ownership Information is January 1,2025.

If you have any questions or want to discuss whether your business is subject to the CTA, please contact Payton Hostens at (402) 392-1250 or **phostens@akclaw.com.**

Hallie Hamilton named to NSBA's 18th Leadership Academy



The Nebraska State Bar Association's Leadership Academy has selected 25 local attorneys for its 2024-2025 class, including Hallie Hamilton, a litigator at AKC Law.

Hallie specializes in Appellate Law, Civil Litigation, and Employment Law.

The NSBA Leadership Academy aims to enhance participants' leadership skills, enabling them to make significant contributions to both the legal profession and their communities.

The Academy's goals include:

- To nurture effective leadership with respect to ethical, professional and community service issues
- To build relationships among legal leaders from across the state and from across disciplines within the profession
- To raise the level of awareness among lawyers regarding the broad range of issues facing the legal profession
- To enhance the diversity of leaders within the legal profession and the community as a whole.

The Academy invites attorneys with two to twenty years of practice experience to apply. Participants are chosen to ensure a diverse representation in terms of geography, practice type, employment setting, gender, and ethnicity.

Monthly meetings will cover topics such as effective leadership, legislative issues, work-life balance, and public trust in the judicial system.

BEST LAWYERS IN AMERICA 2025®

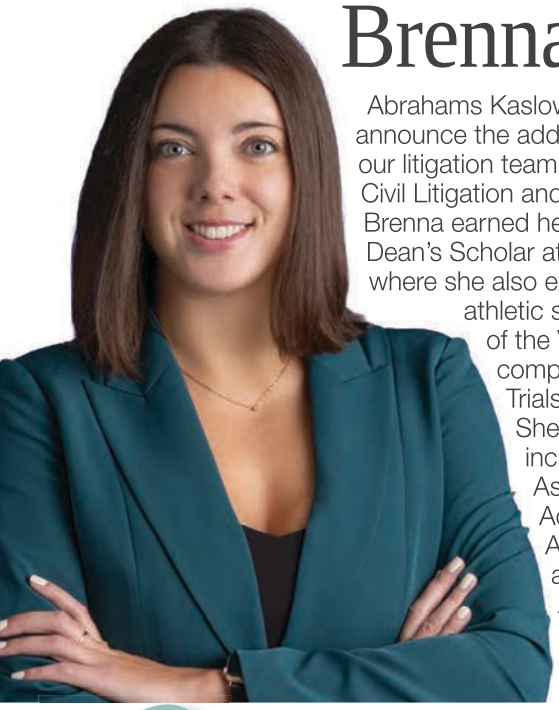
Each year, Best Lawyers publishes a list of the Best Lawyers in America®, and Ones to Watch® as rated by their peers. AKC Law is proud of our 12 attorneys who are recognized.

Harvey B. Cooper - Corporate Law
Andrew P. Deaver - Closely Held Companies & Family Businesses Law
Randall C. Hanson - Energy Law
John W. Herdzina - Corporate Law and Franchise Law
Nicole Seckman Jilek - Commercial Litigation & Personal Injury
Howard J. Kaslow - Corporate Law & Trusts and Estates
Timothy M. Kenny - Corporate Law, Municipal Law, & Real Estate Law
Thomas J. Malicki - Corporate Law & Trusts & Estates
David C. Nelson - Corporate Law and Mergers & Acquisitions Law
Robert M. Schartz - Corporate Law, Health Care Litigation, Insurance Litigation, & Medical Malpractice Defense

And our Best Lawyers in America Ones to Watch 2025®

Payton R. Hostens - Energy Law
Julie M. Ryan - Appellate Practice and Corporate Law

Brenna Bushey Joins Litigation Team



Abrahams Kaslow & Cassman LLP is pleased to announce the addition of Brenna M. Bushey to our litigation team, where she will specialize in Civil Litigation and Medical Malpractice defense. Brenna earned her undergraduate degree as a Dean's Scholar at San Jose State University, where she also excelled as a swimmer on an athletic scholarship. A two-time captain of the Varsity Swimming team, she competed in the 2016 Olympic Trials.

She received numerous accolades, including being named an Arthur Ashe Jr. Sports Scholar, earning Academic All-Mountain West Athletic Conference honors, and achieving NCAA Academic All-American status.

She graduated from Creighton University School of Law and was recently admitted to the Nebraska Bar Association. While at Creighton, Brenna was actively involved in the Student Bar Association, the Women's Law Student Association, and Law Ambassadors. She received a CALI Award of Excellence in International Law and was recognized with Pro Bono Distinction from Creighton and the Nebraska Supreme Court for her volunteer work with Legal Aid of Nebraska, the Women's Center for Advancement, and the Sienna Francis House. Brenna also participated in the Nuremberg to the Hague international criminal law program.

While in law school, Brenna gained practical experience as a law clerk at Abrahams Kaslow & Cassman, where her involvement in court hearings and depositions ignited her passion for litigation.

"The firm is thrilled to welcome Brenna to our team," said Robert Schartz, managing partner and leader of the litigation team. "Throughout her clerkship, Brenna demonstrated a strong commitment to hard work, values, and leadership. She will be a tremendous asset to our firm."

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