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Did You Know?

Bob Hawn will be speaking on B Corporations at the Santa Clara County Bar Association on March 20th at Noon.

The New B Corporations in California



Bob Hawn Esq.

In the past, many profit-driven companies in California which were interested in providing a positive social and environmental impact experienced the problem of maintaining a fiduciary duty to their shareholders while still being charitable and/or green. To

solve this issue, the state created two different types of corporations – the **“flexible benefit corporation”** and the **“benefit corporation.”** The new corporations offer businesses in California the opportunity to operate with a view toward increasing shareholder value *and* fulfilling socially beneficial goals.

The primary differences between the two corporations, also known as “B corporations”, lies in the flexibility allowed, and the extent of disclosure required. Greater flexibility means greater disclosure.

Purpose

The flexible benefit corporation has more freedom in defining alternate purposes for the corporation. It may engage in charitable and public purposes and, unless it is a professional corporation, add additional specific purposes.

The benefit corporation, on the other hand, is required to pursue a general public benefit as defined in detail in the statute. The general public benefit is also required to have a material positive impact on society as measured by standards developed by a third party. A director of a benefit corporation is subject to a duty of care, but is allowed to take into account the impact of a particular decision on a number of workforce, consumer, social, or environmental issues, and can consider interests of any other person or group. Unless formation documents provide otherwise, a director is free to change the weight the director gives to different impacts and considerations.

“...offering business in California the opportunity to operate with a view toward increasing shareholder value and fulfilling socially beneficial goals.”

Formation or Conversion

The flexible benefit corporation and the benefit corporation can be created at formation, or by merger, reorganization, or conversion. Examples include when a standard corporation is converted into a B corporation or where a standard corporation is merged into, or sells (Cont'd on page 2)



Success Story

SLG's client was owed a substantial six-figure sum by one of its customers who refused to pay. SLG successfully represented the client in obtaining a judgment for the full amount owed, including attorney's fees, costs, and interest. When the customer refused to voluntarily pay off the judgment, SLG successfully seized the full amount owed from the customer's bank account. As a result, SLG's client was able to recover money it had lost hope of collecting and was able to avoid undesirable cost-cutting measures.

The New B Corporations in California

(Cont'd from page 1)

all or substantially all of its assets to, a B corporation. Both require a 2/3 shareholder approval for changes. A company interested in changing its legal status to a "B corporation" should consult with a corporate law attorney to determine if a B corporation is the right option.

Disclosures Required

The flexible benefit corporation must meet the following disclosure requirements:

- Send an annual report to its shareholders within 120 days of the end of its fiscal year.
- Annual reports require a special purpose management discussion and analysis, which must include, among other things, analysis of management's effort towards achieving its special purpose.
- Current reports are also required 45 days after the corporation makes any expenditure, excluding compensation, made to further the corporation's special purposes, or withholds a similar planned expenditure.

Corporations with less than 100 shareholders are not required to prepare the above reports if 2/3 of the shareholders have provided unrevoked waivers. Subject to reasonable confidentiality requirements, the reports must be posted on the corporation's website.

Disclosures of the benefit corporation include:

- Delivering an annual report to each shareholder.
- The report must describe a number of issues, including the manner in which the benefit corporation's general public benefit was pursued, and an assessment of its performance. Management's efforts must be assessed against a third party standard to determine overall corporate social and environmental performance.

Annual reports for both types of B corporation must also be posted on the corporation's website, or provided free of charge.

This discussion is just the beginning. Each of the corporations have highly technical requirements which must be followed before a B corporation can be used.

Tax Corner

Partners in LLCs Found Individually Liable for Fraud Penalties

Partners of an LLC who maintained a "second set of books" when trying to evade taxes were assessed fraud penalties. The partners made the case that penalties could only be imposed against the LLC because the income belonged to the LLC. They also argued that the penalties should be waived because the LLC submitted an amnesty application and the partners should benefit from that.

However, penalties were imposed against the partners because the fraudulent acts caused an underpayment of their own tax liabilities. It was also determined that the LLC and partners were separate taxpayers, both with separate filing requirements and tax liabilities. Therefore, the partners had the opportunity to submit separate applications but did not.

[Source: Spidell's California Taxletter, January 1, 2012]



California's New Jobs Credit for Small Business

When filing your tax returns this year, don't forget to take a look at the New Jobs Credit to see if your business qualifies. The California New Jobs Credit provides a credit of up to \$3,000 for each net **increase** in qualified full-time employees hired during the taxable year for a qualified small business. A qualified small business is one that had 20 or fewer employees on the last day of the previously taxable year.

Qualified full-time employees include:

- Those paid wages for services of not less than an average of 35 hours per week.
- Salaried employees paid compensation for full-time employment during the taxable year.
- Employees certified as qualified employees in an economic development area.
- Employees whose wages are included in calculating any other credit.

The total amount the FTB has allotted for the credit is \$400,000,000.

[Source: Spidell's California Taxletter, January 1, 2012]

New Employment Laws for 2012



There are a host of new employment laws that went into effect in California on January 1st of this year. Below is a summary of some of the new laws:

Credit Checks - AB 22 prohibits employers and prospective employers from running credit checks on employees and potential employees. However, AB 22 does not apply to certain financial institutions or employees or applicants in managerial positions. Managerial positions are defined as “those who qualify for the executive exemption from overtime.”

Written Commission Agreements - AB 1396 requires all employers who use commission pay arrangements to put those agreements into a written signed contract. The contract must include the methods by which commission is computed and paid. The law went into effect on January 1st. However, employers have the entire year to create or revise commission agreements to comply with the new law.

Notice of Pay Details—AB 469 requires employers to provide new non-exempt employees at the time of hire with a notice stating several items, including the rate of pay and overtime rate, allowances, regular pay day, the name of the employer and any fictitious business names, the physical address of the employer’s main office, the telephone number of the employer and the name, address and telephone number of the employer’s workers’ compensation carrier.

Willful Misclassification of Independent Contractors - SB 459 implements new penalties of between \$5,000 and \$25,000 for the willful misclassification of independent contractors. Willful misclassification is defined as, “avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.”

Pregnancy Disability Leave - SB 299 requires all employers with five or more employees to maintain and pay for health insurance coverage as part of a group health plan for any eligible female employee who takes pregnancy disability leave, up to four months in a twelve month period.

Reminders and Other Items of Note



Mark Figueiredo was recently awarded the prestigious AV Preeminent Rating from Martindale-Hubbell. AV Preeminent and BV Distinguished are certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies. **Congratulations**

Mark! Tamara, Bob and Mark are now all AV rated attorneys.

Many of you know Krystle Warren in our office. She recently passed her notary exam and is now a Notary Public. Krystle is the second notary in our office. Please contact our office if you need a document notarized. **Congratulations Krystle!**



Maximum 401(k) Contribution Increased



The maximum 401(k) contribution has increased for 2012 from \$16,500 to \$17,000. Individuals born before 1963 can put in an additional \$5,500 as a catch-up contribution.

Mileage Rate

The standard mileage rate for 2012 will remain at 55.5 cents per mile.

Proposition 8 Fight Continues

Per the federal appeals court on November 17, 2011, the supporters of Proposition 8 can argue their case without the support of state elected officials. This is the next step in the dispute to determine whether or not Proposition 8 is unconstitutional. Until the issue has been decided, California does not permit same sex marriages.

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Dates To Remember



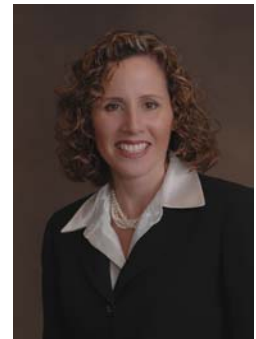
January 1	New Year's Day
January 16	Martin Luther King's Birthday – courts and government offices closed
January 23	Chinese New Year—year of the Dragon
February 5	Super Bowl Sunday
February 14	Valentine's Day
February 20	Presidents Day—courts and government offices closed
March 11	Daylight Savings Begins
March 17	St. Patrick's Day

Did You Know?

- The first New York Times Square ball was made of wood and iron.
- Cabbage is a popular New Year's Eve food because the leaves represent prosperity.
- The pressure in a champagne bottle is 90 pounds per square inch, about 3 times that of a car tire.
- 15% of US women send themselves flowers on Valentine's Day
- More than 35 million heart shaped boxes will be sold for Valentine's Day.
- 189 million stems of roses are sold in the US on Valentine's Day.



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your referrals!*

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