

your LAW

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You Have Been Laid Off—Now What?

Although some economic experts claim that the economy is rebounding, such statements don't provide much reassurance if you are unemployed or are worried about being laid off. If you lose your job, what do you need to know? What can you do to make sure you and your family are best provided for?

If you get called in to see your boss or human resources representative and told the worst, know that they are going to go over some important details to which you need to pay close attention. Although your boss and HR representative are likely talking from a prepared script, they will probably be reviewing significant information about any severance packages, the time line for your departure, and any continuing benefits. You may feel anger or sadness, but you should try not to say anything you may later regret. You won't be able to rewind time and get your job back. Focus on ensuring that you get the best possible deal. Ask about any rights you may have in banked vacation or sick days and any plans for allowing you to continue for a period to wrap up your work.

Know that, depending on the size of your company and the number of jobs being eliminated,

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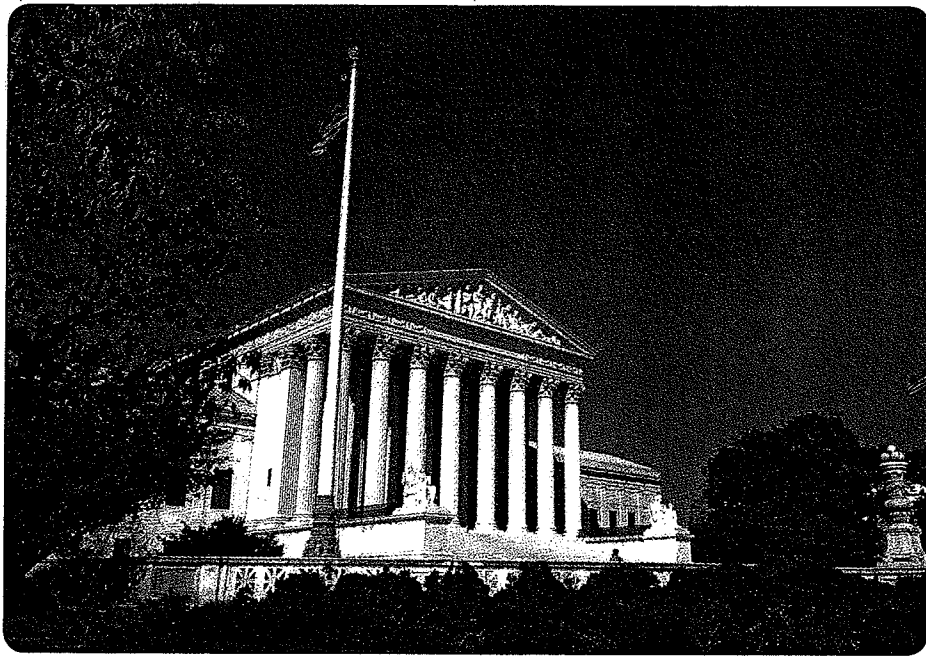
New Banking Regulations May Affect You

In response to the economic crisis of 2008 and 2009, the federal government spent much of this summer enacting various financial reforms designed to prevent future crises. You shouldn't simply assume that these regulations only affect big banks; some may hit you the next time you go to your dry cleaners.

One such reform deals with "swipe fees." These are fees paid by retailers to a bank each time the retailer "swipes" a credit or debit card issued by that bank. Banks justify these fees as paying for the infrastructure credit card technologies rely on. Although the individual fees are usually nominal, they can quickly add up, particularly when a business frequently conducts smaller transactions of less than \$10 or so.

The recent federal legislation included an amendment targeted directly at these fees in a reported effort to give small business owners a break. Under this new law, businesses can give a discount to customers who pay with cash or use cards that charge the business lower fees. Additionally, small business owners can now set a minimum amount that customers must spend before they can use a credit or debit card. (Some businesses had already set such limits, but they weren't always legal.) Lastly, the law allows the Federal Reserve to step in and regulate these fees going forward: the

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Supreme Court Update

The start of the fall brings with it a new school year, a new football season, and last but not least, a new Supreme Court term. The Supreme Court is the branch of federal government that usually receives the least amount of national attention. Not so last term. In addition to another changing of the guard with the retirement of Justice John Paul Stevens and the confirmation of Justice Elena Kagan, the docket itself was full of fireworks. There were a number of cases that were either controversial or with consequences for everyday citizens. Here, we give you a quick primer on two cases from each of these categories.

One of the most well-known cases of the 2009 term was *Citizens United v. Federal Elections Commission*. This case had two distinct phases; but at its heart, it involved a challenge to federal laws prohibiting corporations and unions from spending their general treasury funds on political campaigns in the weeks before an election. The Court eventually held that such prohibitions amount to an outright ban on political speech in violation of the First Amendment.

Although the *Citizens United* decision initially garnered much criticism, including from President Obama, its true impact won't be seen for years to come. In the near term, the biggest test of the new campaign rules will come this fall when corporations and unions, particularly those affected by health care or financial reform, have the opportunity to spend.

A second case that earned much attention from the very start dealt with an always controversial issue: gun control. In *McDonald v. City of Chicago*, a gun-shop owner and some Chicago residents challenged a local ordinance that forbade most city's residents from possessing a handgun. *McDonald* was the follow-up to a case from two years ago, *District of Columbia v. Heller*, in which the Supreme Court held that a Washington, D.C., ordinance that forbade most residents from keeping a handgun in the home for self-defense violated the Second Amendment right to bear arms. Because Washington, D.C., is not a state, it remained to be seen whether the Court would apply the same reasoning to gun control laws in all 50 states.

The Court's answer in *McDonald* was "yes." The Fourteenth Amendment makes the Second Amendment right to keep and bear arms fully applicable to the states and local governments. The Court asserted this fundamental right that is deeply rooted in our

nation's history and tradition and is necessary to the nation's system of liberty. So what does this mean for your state or community? While the case's full effect is still being assessed, it is likely that, in the future, to survive constitutional

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scrutiny, any state or local gun regulation will have to be carefully tailored to meet specific goals beyond the general goal of limiting the number of handguns within city limits. The city of Chicago has already enacted a new law to replace the one rejected by the Court. Whether this effort will pass constitutional muster is a battle for another day.

Two other cases received less media attention but will likely have more implications for your day-to-day life: *Doe v. Reed* and *City of Ontario v. Quon*.

Doe v. Reed involved a challenge to a Washington state law requiring, upon request, the disclosure and publication of the names and addresses of petition signers hoping to hold a statewide referendum to repeal a state law. A Washington state law requires at least 4 percent of state voters to sign a petition before a referendum can be held. Under another law, these names and addresses of the petition signers can be disclosed and published. In *Doe v. Reed*, this disclosure law was challenged on the grounds that it violated petition signers' privacy and First Amendment rights to free speech and association.

The Supreme Court determined that such disclosures do not, as a general matter, violate the First Amendment if the government has a particularly strong interest to justify them. In this case, the Court held that the state's interest in ensuring the integrity of the referendum process by combating fraud and catching simple mistakes justified the disclosure rules. So what does this mean for your community? Depending on your state, if you sign a political petition or other similar political document, there is a chance that your support of that political view could be made public, and in some cases, published in the media.

In another relatively low-profile case that may end up having a great effect on everyday life, the Court in *City of Ontario v. Quon* tackled questions involving technology, privacy, and workplace relations. Here, California's city of Ontario police force issued pagers to members of its SWAT

team, including Jeff Quon. The city had in place a written technology policy indicating that use of city-owned technology for personal business was prohibited, but that incidental or occasional personal use was permitted. This policy did not explicitly refer to pagers, but some officers were told that the pagers were covered by the policy. After a couple of months during which Quon and some other officers exceeded their monthly allowance of pager minutes, the city undertook a review of the accounts to determine whether police work required a greater monthly allowance. During the review, the city learned that the majority of the messages sent and received by Quon were not work-related, and

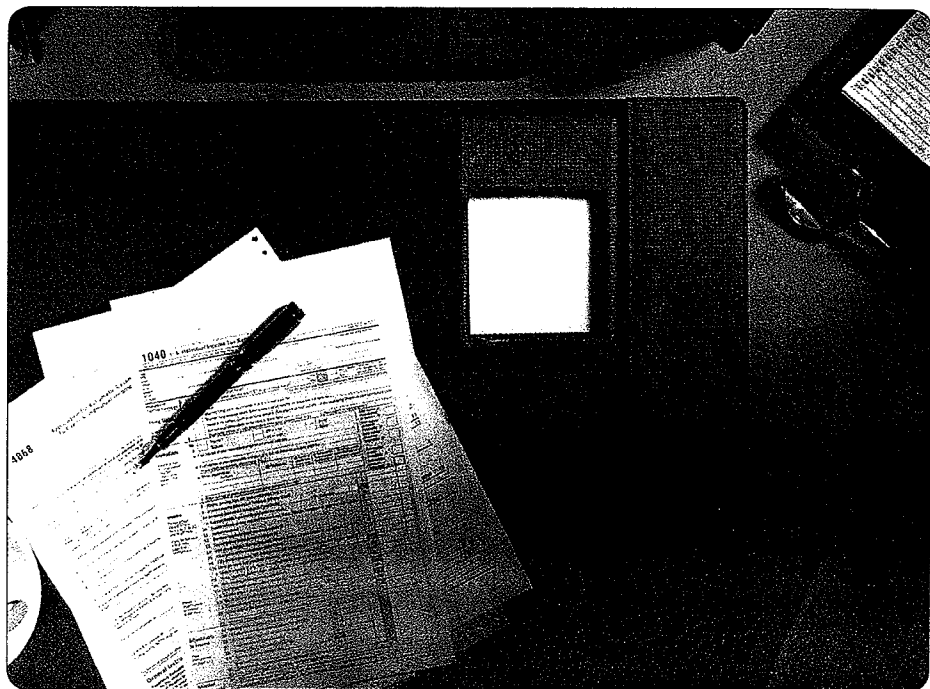
that a number were sexually explicit. Quon and those with whom he exchanged messages sued on the basis that the review violated their privacy rights.

According to the Court, the search of Quon's pager messages was reasonable given that it was motivated by a legitimate work-related purpose and not excessive in scope. However, the Court refused to spell out specifically whether, and to what degree, employees should have a reasonable expectation of privacy when using work-provided technologies. This means that if you use company email, or a company phone or other gadget, you should think twice before sending a message you wouldn't want your boss to see.

Overall, the 2009 Supreme Court term was one filled with interesting, and in some instances especially controversial, cases. However, perhaps most interestingly, this term showed that it isn't always the "headline" cases that have the biggest impact on our daily lives, but rather it can be those seemingly smaller cases that can really define how our rights and responsibilities play out on an everyday basis. v

Wills and Estate Taxes Are in Flux: What Does That Mean for You?

Although grim and certainly strange, the legal reality is that if you die before January 1, 2011, you might just save your family some serious money. When New York Yankees' owner George Steinbrenner passed away this summer, by dying during 2010 he saved his heirs a fortune. According to the *Wall Street Journal's* calculation, Mr. Steinbrenner's heirs may be spared about \$600 million in tax liability due to the timing of his death. But logic demands we ask—how can a year's difference make such a difference? To understand how this happened, you need to understand how federal estate taxes work. Every estate may pass on a certain amount of assets, referred to as the exempted amount, to beneficiaries without paying a federal estate tax. Any amount above the exemption will be taxed at a rate that is determined by the federal government and varies year to year.



The current strange situation began in 2001 when the federal government, in an effort to ease the tax burdens on large estates, passed a law that was intended to slowly increase the amount that would be exempt from federal estate taxes. For example, under the 2001 law, in 2002, an estate's first \$1,000,000 would be exempt; in 2004, \$1,500,000 was exempt; in 2006 it was \$2,000,000; and in 2009, \$3,500,000 was exempt. The 2001 law was set to expire in 2010 and then reset to pre-2001 rates in 2011; however, very few people thought Congress would actually allow the tax to expire—most assumed that by 2010, the federal government would create another system. But Congress failed to act, and the tax expired.

So, for anyone who dies during 2010, there simply is no federal estate tax—hence the massive savings for the Steinbrenner heirs. If things don't change, in 2011, the exemption limit will go back to \$1,000,000. Anything above that amount will be taxed by the federal government at a rate of 55 percent. Although \$1,000,000 is a pretty large estate, by the time you add in retirement accounts, a home, other real estate, investments, and any savings accounts, many American families may be affected by this change.

With 2010 being an election year, there is little chance of a major federal law getting into place by January 1, 2011, to provide immediate relief for the estates of those who die in 2011. Of course, you can avoid much of this tax liability through careful estate planning with your attorney using tools such as lifetime gifts, the marital exemption, trusts, and charitable gifts. Your attorney can help craft a plan that not only avoids taxes to the greatest extent possible, but also gives you the peace of mind that comes from knowing your family will be taken care of and your last wishes followed. v

state and federal laws may protect you. For example, the federal Workers Adjustment and Retraining Notification Act (WARN) protects workers, their families, and communities by requiring certain employers to give employees 60 calendar days notice before a plant closing or mass layoff. WARN is intended to allow employees to find new employment or retraining and to lessen the impact of such large-scale layoffs. If your employer violates WARN, you may be able to get back pay and benefits for the balance of the 60 days.

You likely didn't pay any taxes on the income or interest on your retirement accounts, but to continue to avoid such liability you need to leave the account alone until retirement age.

When you actually leave your workplace for the last time, consider what you take with you. Of course, any family photos or personal property belong to you, but be careful when packing up files or client lists. Very little of the work you did for your employer will actually "belong" to you. The last thing you want to do is walk out of your job and into a lawsuit by mistakenly taking something that your former employer views as its property and valuable.

Once you are formally unemployed, there are a number of important tasks to consider. First, what are you doing with any employer-sponsored retirement plans, particularly any 401(k) savings? Losing your job can quickly derail your retirement plans, but it doesn't necessarily have to. Immediately find out if you are vested in your plan, and if so, to what degree. To be "vested" in a retirement plan means that you permanently have rights to any payments made into the plan. Some employers fully vest employees immediately; others gradually vest employees over the course of two to five years. How vested you are will control your rights in any such accounts.

Although you may want to dip into your retirement accounts if money is tight, try to avoid doing so if possible. You likely didn't pay taxes on the income or interest on your retirement accounts, but to continue to avoid such liability you need to leave the account alone until retirement age. In this regard you have several options: leave the account with your old employer, roll it over to another plan (such as an IRA), or transfer it to a new employer's plan. If you do dip into that account, you will have to pay the taxes on any withdrawals and, depending on your age, additional penalties.

Another item on your "to-do list" should be making sure your family has health-care coverage. Again, you have a couple of options. First, at the time of your layoff, your former employer probably explained your rights under the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA gives workers and their families who lose their health insurance the right to continue benefits provided by their group health plan for a limited time under certain circumstances, including involuntary job loss. Note that COBRA coverage can be rather expensive—you will pay the fee your employer formerly paid for you—and the law only applies to certain employers. If applicable, you may want to see if your spouse's benefit package can include you and any children, and if so, when you can apply for coverage. Lastly, depending on your health, age, and the size of your family, you may be able to purchase coverage from private providers. Consider looking at membership-based warehouse programs (such as Costco or Sam's Club) or online. Of course, make sure that any private insurers are reputable and will give you the coverage you need.

Most importantly, your "to-do list" also likely includes "find a new job." When applying and interviewing for positions, you should talk honestly about your layoff. In this day of routine, no-cause layoffs, chances are you aren't the only candidate going through such an experience. And, most essential, you do not want to get caught making false statements on your resume or lying to a possible new employer. As your mother likely said: Honesty is the best policy.

Layoffs are stressful, but in most cases, both employers and employees try to do the best thing for all sides. Nevertheless, there is always a chance that your employer, perhaps inadvertently, may violate your rights. If you think you have been discriminated against during the layoff process, or that your employer in some other way broke the law, you have options. Consider talking to your lawyer or contacting the U.S. Department of Labor (www.dol.gov) to educate yourself about legal remedies. Likewise, if you are an employer facing the need to lay off workers, obtaining the advice of legal counsel ahead of time may be one of the best investments you will ever make. ✕

Like many things regarding your finances, your best protection still comes from understanding your own rights and responsibilities.

Reserve has been charged with determining the reasonableness and proportionality of such fees. What this means in practice and how it will affect consumers and small business owners is yet to be seen, but you may well notice the changes the next time you are at your dry cleaners or independent coffee shop.

The other major modification that consumers might notice involves the habit of banks to automatically enroll customers in their overdraft services. Such services, or "protection" as they are sometimes called, means that if you make a purchase using your debit card and don't have enough funds in your account to cover it, your bank will still allow the charge to go through. Of course, you will owe your bank the additional money and historically, a hefty fee. Often these fees could reach upward of \$35. This meant that a \$4 cup of coffee, if charged on a debit card attached to an account with only \$2 in it, could end up costing you \$37. Banks have explained that such services protect customers against the embarrassment and hassle of having a purchase denied, but critics have questioned the reasonableness of such high fees. Perhaps most controversial was the practice of many banks to automatically enroll their customers in overdraft protection services. In some cases, customers wouldn't know that their account was in a deficit until they received their statements, statements which might include numerous unexpected fees.

Under the new law, banks must ask before enrolling you in such overdraft programs. You may notice such questions when you log into your bank's ATM or the next time you open up your statement. If you do not opt into the service, you will not be subjected to any unexpected "courtesy" fees. On the other hand, if you try to spend more money than the account has, a merchant may decline it.

The goal of these sometimes controversial regulations is to protect consumers and small business owners; however, like many things regarding your finances, your best protection still comes from understanding your own rights and responsibilities and being as aware as possible of changes and developments in the law that may affect your bottom line. ✕