

# HOW TO AVOID THE PITFALLS OF DEBT COLLECTION

by Anthony D'Agostino



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*Being aware of the course of action you are allowed to take can sometimes be the difference between successfully collecting a debt owed to you and finding yourself in a messy, or more importantly, expensive lawsuit.*

Collecting accounts receivable is a process familiar to every business. The fact that you will not always receive timely payments for goods or services is an ugly truth that has become more prevalent in our struggling economy. Given that many businesses will engage in the debt collection process, it is important to be aware of the proper means for collection and the laws applicable.

## The Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act governs how a creditor may collect a debt they are owed. A creditor can be any person or business that is owed an obligation to pay money stemming from any type of transaction. The Act sets out the do's and don't's in the debt collection process. Be careful. It is much easier than you would expect to find yourself in violation of the law when trying to get another business, a client, or anyone that owes you for that matter, to "pay up."

## The Pitfalls

Being aware of the course of action you are allowed to take can sometimes be the difference between successfully collecting a debt owed to you and finding yourself in a messy, or more importantly, expensive lawsuit. Be mindful of the line between collection and harassment. A collector cannot call a consumer or debtor before 8 a.m. and after 9 p.m., and calling repeatedly could land you in violation of the Act. When you are calling a debtor at their place of business and the debtor has communicated that such calls are prohibited by an employer, the calls must cease at that number.

## ANNOUNCEMENTS

### GOLAN & CHRISTIE IS PLEASED TO WELCOME A NEW ATTORNEY TO THE FIRM:

Anthony D'Agostino is a 2009 graduate of The John Marshall Law School. During law school, Mr. D'Agostino clerked for the Office of the Cook County Public Defender while studying business law and trial advocacy. Mr. D'Agostino completed his undergraduate work at the University of Illinois in 2006, earning his Bachelor of Arts degree in Economics and Psychology. Prior to joining Golan & Christie, Mr. D'Agostino worked as a volunteer for the Coordinated Advice and Referral Program for Legal Services Hotline.

Mr. D'Agostino's practice at Golan & Christie will focus on commercial litigation, debt collection, and reorganization and bankruptcy.



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An honest and straightforward approach is always best. Do not threaten legal action unless it has been actually contemplated. Also, seeking an unjustified amount will land your business, or you, in trouble. Always make sure that the amount you seek is permitted under the applicable contract and within the limits of the law.

As a general rule, if the means of collection could be construed as public embarrassment of the debtor, it will probably be in violation of the Act. Be sure not to issue any communication that, in plain sight, makes it obvious that the communication, letter or mailing pertains to debt collection. Also, compiling and publicizing a “bad debt” list, as you might have guessed, is a bad idea.

### So How Am I Ever Going to Get Paid

Aside from complying with the rules provided by the Fair Debt Collection Practices Act, there are several steps that you or your business can take to avoid some of the hassle involved with debt collection. Whenever you are entering into any type of agreement or contract in which you will be extending credit or providing goods or services on terms, be sure to evaluate the risk involved in the agreement or contract. When you are first making a deal, you can hedge your risk by incorporating certain provisions that may save you money down the road and make the collections process smoother.

Examples include requiring the payment of interest on the balance due, payment of attorneys’ fees and costs of collection in the event of non-payment, fixing the location where lawsuits may be brought, and being clear on how and when payment is due. To make the collection process as painless as possible, it is generally a good idea to consider adding some or all of these provisions to your standard invoice or customer agreement. You may also wish to have your form contracts reviewed by one of our firm’s experienced commercial litigators. Seeking professional help before a debt becomes a collection problem is certainly a wise investment. That way, in the event you do find yourself having to pursue a debt, you can be confident you have given yourself the best chance of collection, which is certainly more cost effective than struggling to enforce the obligation down the road, or worse, not seeing the debt collected at all.

## GOVERNMENT INCENTIVES TO HIRE NEW EMPLOYEES



On March 18, 2010 President Obama signed into law the Hiring Incentives to Restore Employment Act (the HIRE Act). As a result, beginning in the second quarter of 2010, employers can claim a temporary exemption from the Social Security taxes (6.2%) on wages paid to “qualified employees” during the period from March 19, 2010 through December 31, 2010.

A “qualified employee” is an individual who (i) begins employment after February 3, 2010 and before January 1, 2011; (ii) does not replace another employee unless the former employee voluntarily ended employment or was terminated for cause (including downsizing); (iii) was unemployed or worked no more than 40 hours during the previous 60 day period ending on the date the employee begins work; and (iv) is not a related party of the employer. In order to be eligible for the exemption, the “qualified employee” must complete IRS Form W-11 wherein the employee attests to the fact that he or she was unemployed (or met the 40 hours or less requirement) and states the date that employment with the employer commenced.

In addition to the exemption from social security taxes, the HIRE Act also provides for a worker retention tax credit where employers are entitled to a general business credit for each “qualified employee” that remains employed for 52 consecutive weeks. The amount of the credit(s) equals the lesser of \$1,000 or 6.2% of the salary paid to the “qualified employee” during such 52 week period. For employers who are calendar year taxpayers, the credit may be taken on their 2011 tax return. You can find the affidavit needed to be completed by the employee at <http://www.irs.gov/pub/irs-pdf/fw11.pdf>

Please call Donna F. Hartl or Justin W. Clark for further information and details about taking advantage of this program.



## EMPLOYMENT LAW ALERTS

### NEW OBLIGATIONS FOR EMPLOYERS UNDER HEALTH CARE LAW

The Patient Protection and Affordable Care Act, and the Reconciliation Act of 2010, became law at the end of March 2010. What employers want to know is which of the many provisions that will take effect over the next four years create additional obligations on them. Here are the highlights of a few, though certainly not all, of the provisions that may be important to you and your business:

#### **Mandatory Health Insurance for Employees**

Most of the provisions related to insurance coverage for employees do not go into effect until January 1, 2014. After that date, employers with 50 or more employees who do not provide health insurance will be required to pay a fine of \$2,000 per worker each year if any worker receives federal subsidies to purchase health insurance. Though the details are still a little unclear, it is likely that for purposes of determining the amount of the fine, the first 30 employees will not be counted. Employers with fewer than 50 employees who chose not to provide insurance, however, will not be penalized.

Employers with less than 25 workers will be able to receive tax incentives to provide insurance, if employees' have average wages below \$50,000 and the company pays for at least half of the premiums. From 2010 to 2013, tax credits of up to 35% of the premiums paid are available. Starting in 2014, the tax credit will increase to up to 50% of the premiums paid for up to two years.

Other provisions go into effect as early as September 2010, including the provisions which require employers to extend health care insurance coverage to include employees' adult children, up to age 26, and which require insurance companies to provide coverage to children with pre-existing conditions.



MARGARET GISICH



LAURA BALSON



#### **Break Time for Nursing Mothers**

One provision that has received little attention – and which applies to employers immediately – amends the Fair Labor Standards Act by requiring employers to provide unpaid breaks to nursing mothers to express breast milk. Although a number of states, including Illinois, already have laws that require similar breaks for nursing mothers, this is the first federal law to require such breaks.

Entitled “Reasonable Break Time for Nursing Mothers,” the provision requires an employer to provide break time for an employee to express breast milk for her nursing child each time such employee has need to express milk, for one year after the child’s birth. The employer is not required to compensate the employee for any work time spent for such purpose. The employer must also provide a place, other than a bathroom, for the employee to express breast milk. If these requirements impose undue hardship, an employer that employs less than 50 employees is not subject to these requirements. Furthermore, these requirements shall not preempt a state law that provides greater protections to employees.

Since its enactment in 2001, the Illinois Nursing Mothers in the Workplace Act has already required that Illinois employers provide reasonable unpaid break time each day to employees who need to express breast milk. The law also requires employers to make reasonable efforts to provide a room or other location, other than a toilet stall, where an employee can express her milk in privacy.

If you have any questions about these or other employment laws, contact Laura A. Balson or Margaret A. Gisich.



# newsletter

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**[www.golanchristie.com/news.html](http://www.golanchristie.com/news.html)**

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## A COLLABORATIVE APPROACH

The attorneys of Golan & Christie offer sophisticated legal services to you and your organization in a supportive and collaborative environment. We are as much business partners as legal counsel—problem solvers as well as legal experts.

We are highly knowledgeable, accessible and reliable. And we come highly recommended: Our Martindale-Hubbell Peer Review Ratings, along with our membership in the Leading Lawyers Network and inclusion in SuperLawyers, underscore our professional ability, integrity and ethical standards.

### OUR PRACTICE

*Our practice covers many aspects of law and business, with an emphasis on the areas listed below:*

- Business Law & Governance
- Commercial & Corporate Litigation
- Commercial Real Estate
- Employment Law
- Estate Planning & Taxation
- Finance
- Reorganization & Bankruptcy
- Property Tax Appeals

*Golan & Christie is pleased to announce a new addition to our extended family:*

Scarlett Jennifer Hendershot joined us on Sunday, March 29, 2010, weighing 6 pounds, 13 ounces and measuring 19.5 inches long.

Scarlett is the first child of Golan & Christie attorney Mike Hendershot and his wife. We wish the entire Hendershot family much health and happiness.