

Legal NEWSLETTER

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This publication is not intended to provide legal advice, but rather insight and awareness into legal issues that we feel could be useful to our clients and friends. Actual resolution of legal issues depends upon many factors, including variations of facts and state and federal laws.



WISCONSIN'S NEW LLC ACT

By Attorneys Keith Pilger and Alissa Thompson

The Wisconsin Legislature recently passed a new law governing limited liability companies in Wisconsin (the "Act"). The Act is primarily based on the most recent version of the Revised Uniform Limited Liability Company Act. The Act applies to all LLCs that are formed on or after January 1, 2023. Additionally, as of January 1, 2023, the Act will also apply to pre-existing LLCs unless they filed an election to be governed by the existing law by December 31, 2022. The following is a summary of some of the key differences between the previous law and the Act.

The Act has redefined the term "Operating Agreement" to include any agreement that is oral, implied, written, or any combination thereof that is between all members of the LLC, including a sole member, and pertains to the internal affairs of the company. The legislature also added a new definition for a "Written

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REBRANDING YOUR BUSINESS

By Attorney Jocelyn Donahue-Renfert

Has your business name changed or maybe your tastes have? You can change your business name. The steps below describe how to legally change the name of a Wisconsin corporation. When changing your business's name, it is always a good idea to meet with an attorney who can answer your questions and make sure you have taken all the right steps.

Choose a New Name. After you have a few ideas for your new business name, you will need to do some research to make sure the name you want is available. A basic internet search can be conducted to see what similarly named businesses already exist. The United States Patent and Trademark Office's trademark database should also be searched. The new name should avoid creating confusion with another live trademark and should not be too similar to an existing trademark that is used for products or services that are similar to your own. Though not required, it is also prudent to check the availability of related domain names for a business website if your business uses a website.

According to Wisconsin Statutes §180.0401, 181.0401, 183.0112 (2019-20) all business names need to be distinguishable from existing Wisconsin business names. You can check to see if your name is taken by searching the Wisconsin Department of Financial Institutions (DFI) Corporate Records. Additionally, your new name must contain one of the following words or similar words: corporation, incorporated, company, or limited, or you may use the abbreviation of one of the aforementioned words like, "LLC," "Inc.," or "Co."

Legally change your name by filing Articles of Amendment with the Wisconsin DFI. Depending on a business's operating agreement or bylaws, it may be necessary for shareholders, members, directors, or managers to pass resolutions consenting to the change. It should be noted that it is also possible for a business to use another name without legally changing the name of the business through the use of a trade name, sometimes known as a "DBA" or "doing business as ..." name.



Using a new trade name can change the branding of a business but does not change the legal name of a business. In Wisconsin, you can register your trade name with the DFI to protect your trademark. The name will be protected for 10 years and can be renewed. It is necessary to search the database to ensure your intended name is not already in use by others.

If a corporation is filing a return for the current year, there is a box on the return to notify the IRS of a name change. If a corporation is changing its name after filing its return, a notice can be sent to the IRS separately. Usually, a business that has only changed its name will not need a new EIN. The IRS provides information on EINs after name changes in this publication.

Your bank may allow for the name on the business's account to change or may require opening a new account.

Notify the Wisconsin Department of Revenue (DOR). Whether a business changes its legal name or adopts a DBA, the DOR should be notified. If adopting a DBA, the DOR will need the current name of the business, the EIN of the business, the new name of the business, and the date the name is to take effect. Any other business licenses and permits should also be updated.

Update Your Branding. Update websites, signs, and branded materials to be consistent with the new name. ◇

Lawyers where you live.

SOCIAL MEDIA RISKS WITH REGARDS TO LITIGATION

By Attorney Richard Fuller

Today social media use is an integral part of everyday life for many. There are numerous platforms people use for communication, such as Facebook, Instagram, Twitter, Snapchat, TikTok, emails, texts, etc. Electronic communications and interactions on social media can be easily done with the use of smartphones. Statistics show there are currently an estimated 6.8 billion smartphone users in the world.

While technology has made life more convenient and has offered new innovative ways to communicate, those communications can pose significant risks if anyone finds themselves in a lawsuit or a potential legal claim. Information contained within social media accounts, whether public or private, can be discoverable in lawsuits, and can be used against individuals in court. A few examples of how social media activities can impact or undermine claims in litigation include the following:

- 1) Personal Injury:** In a personal injury claim, an insurance company or defense attorney could discover the claimant posting pictures or videos showing them on vacation doing aggressive physical activities, such as skiing, kayaking, mountain climbing, while at the same time the claimant states that they are seriously injured and unable to perform basic activities of daily living. Even if the claimant attempts to explain that they are just trying to go on with their life and are in significant pain when doing these activities, these social media posts can undermine their entire claim.
- 2) Business Litigation:** Texts and emails can undermine a party's argument that they did not communicate with the other side, or that they did not have a contract or an agreement. Texts and emails can be severely damaging in any type of lawsuit because the parties who are writing those communications do not intend or expect them to be shown in court or used against them.



3) Family Law: Texts, emails and social media posts can be very damaging in divorce cases showing the activities of the parties for example, the negative or hostile interactions they have with each other, and/or with their children and whether they have engaged in inappropriate behavior.

4) Defamation: Posting defamatory content online about a business or another individual may expose the person who posted that content to a lawsuit for defamation.

5) Employment: Making comments about one's employer or job online may get someone fired or prevent that person from being hired by prospective employers. Social media posts, texts and emails may also be used in any dispute between an employer and employee regarding any claims, including those based on wrongful termination and/or discrimination. Social media posts by individuals showing photographs or videos of them doing activities that some may seem inappropriate, may also have a negative impact on the individual as far as their current or future employment.

6) Criminal Cases: Social media posts, videos or pictures can be used to support the prosecution of crimes. Additionally, information from smartphones and apps can also be used to track someone's location

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Operating Agreement” and the Act distinguishes what things may only be done via a written operating agreement.

Another difference is that the Act has altered the requirements for filing the Articles of Organization. The Act will now allow organizers to file their own form of the Articles of Organization with terms addressing more matters than previously allowed to be addressed. Moreover, the Articles of Organization will no longer be required to state the type of management style of the LLC. This will allow more flexibility for the LLCs to change their management style.

Additionally, the Act has clearly established that members of an LLC do not have authority as a result of simply being a member. In order to clarify the authority of a certain position, a certain individual, or to clarify certain limitations of authority for a position or person, the LLC may file a Statement of Authority, which will be effective for five years. LLCs will need to be cognizant of renewing, amending, and or cancelling the Statement of Authority as changes are made within the company.

Some other differences are; an individual may become a member without being required to make a contribution or acquire a transferable interest. Furthermore, the Act alters how LLCs that are taxed as partnerships are to handle distributions and voting power. In addition, the Act goes on to address and modify various other items, such as wrongful dissociation, priority of distributions of assets in the dissolution of the LLC, mergers, interest exchanges, conversions, and domestication. Most of these changes will not materially affect existing LLCs that have a well drafted written Operating Agreement.

We still recommend that all LLC owners seek the advice of one of our experienced business law attorneys to determine whether the Act will impact your LLC and to periodically review your Operating Agreement. ♦

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which could potentially impact the investigation of various crimes as well.

If someone deletes their social media posts and regularly deletes their emails and texts, will that help protect them from having this information used against them? The answer is: “It depends.” If someone keeps their posts, emails and texts private for the most part and routinely deletes them, that will be helpful in maintaining privacy. However, what typically happens in a lawsuit is that when a party files a lawsuit based upon a potential claim that they have against someone else, it is only after the filing of the lawsuit that they engage in what’s known as “discovery,” and it is at that time that they are able to uncover the treasure trove of texts, emails and any social media posts that the opposing party has. Even if the opposing party has deleted any potentially incriminating evidence prior to the lawsuit, today’s technology will allow vendors who have expertise to be able to retrieve deleted information that can be used against that party. Additionally, it may be possible to subpoena someone’s search history on Google or other platforms even if it is deleted from their smart device.

It is noteworthy that once a lawsuit begins, if a party intentionally deletes social media posts, emails or texts, that party can potentially be accused of destroying evidence which will negatively impact their position in the lawsuit. Therefore, deleting social media posts, emails or texts comes with a risk, and may be contrary to that jurisdiction’s laws if there is a potential claim or lawsuit pending.

In conclusion, one needs to be extremely careful of what they post, how they post it, and what they text and email and to whom, as there may be a risk of creating a permanent electronic trail of one’s activities which can have significant ramifications in the context of a lawsuit or other aspects of that person’s life.

If you are ever in a situation where your social media posts or electronic communications may be used against you in court please contact one of our experienced attorneys. ♦



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