



## Can Your Facebook Posting Get You Fired?

Dawnmarie Souza, a paramedic for American Medical Response of Connecticut Inc., posted comments on her Facebook page on the same day she was suspended from work after refusing her supervisor, Frank Filardo's request to write up a report on a complaint about her own performance. Souza Facebook remarks sparked supportive postings from her co-workers to which Souza responded with additional negative comments. After the suspension, Souza was ultimately terminated. Since Souza was a union employee she requested union representation which Management rejected.

The Souza case caught the attention of the National Labor Relations Board which claimed AMR "illegally terminated [Souza] who posted negative remarks about her supervisor on her personal Facebook page" and that the company "maintained and enforced an overly broad blogging and internet posting policy." Further contending that [Souza's] Facebook postings constituted protected concerted activity, and that the company's blogging and internet posting policy contained unlawful provision, including one that prohibited employees from making disparaging remarks when discussing the company or supervisors and another that prohibited employees from depicting the company in any way over the internet without company permission. Such provisions constitute interference with employees in their right to engage in protected concerted activity.

AMR's response was that Souza was terminated "based on multiple, serious complaints about her behavior" which included her negative Facebook postings related to her supervisor. This case which some have called "groundbreaking" was scheduled for a hearing before an Administrative Law Judge on Tuesday, where the NLRB would have argued that Souza's firing was improper, in part because her Facebook postings about her supervisor, outside the workplace, were protected activities, even they were posted on the Facebook or the Internet.

Rather than participate in the hearing, AMR agreed to settle the case with Souza. The terms of the settlement which have not been completely disclosed are reported to include payments to Souza and conditions she must meet as well as AMR's agreeing to revise its "overly broad" policy regarding blogging, Internet posting, and communications between employees. This position has obviously concerned many employers.

Since Souza was a union employee, the legal community is questioning how this case will impact private employers in Pennsylvania. My perspective ... Most experts don't think it will have much of an impact. First of all remember than Souza was a union employee and a large part of the claims in her suit were that AMR violated the collective bargaining agreement. Most of us don't have collective bargaining agreements with our employers.

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## **PJR Law Blog**

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written by Peter J. Russo  
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New blogs are always being  
posted on legal issues and  
some on non-legal issues.

### **IMPORTANT OFFICE INFORMATION**

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# CHANGES IN SUPPORT LAW

## *DO THESE RECENT CHANGES EFFECT YOU OR YOUR SUPPORT ORDER?*

Federal law requires all states to have statewide support guidelines that are reviewed every four years. As a result of the review, amendments went into effect on May 12, 2010, which may change child, spousal, and alimony pendent lite (APL) payments for many Pennsylvanians. The main amendments are as follow:

The guidelines are now reflective of updated economic data, including the federal poverty level for one person (previously \$748.00 per month ad now \$867.00 per month). The general rule is that a person obligated to pay support should retain at least the amount of the federal poverty level to meet their own basic needs and motivate them to continue employment.

On the opposite side of the spectrum, the guidelines have been expanded to include all cases in which the parties' combined net monthly income is \$30,000.00 per month (previously \$20,000.00) or less. A formula has been set forth to deal with those exceptional cases in which the parties' combined net income is greater than \$30,000.00 per month.

The guidelines were further adjusted to reflect an assumption that children spend 30% of the time with the parent obligated to pay support and during that time the parent makes direct expenditures on behalf of the children. This amendment has presented much room for argument for deviations upward or downward depending on the individual circumstances of each case, such as where a parent spends less than 30% of the time with the children or, conversely where a parent incurs expenditures on the children during his/her parenting time, despite having infrequent overnights with the children.

There are, however, some additional built in reductions that, while not assumed, the paying parent will receive if he/she enjoys

40% or 50% parenting time. As a result, parents enjoying shared physical custody of their children may still have a support obligation, but that obligation should not be more than half of the combined net income of the parents. Also effecting parents enjoying shared physical custody, where the paying party has a higher income than the receiving party, the amount of support should be adjusted to ensure that the combined net income of the parties is allocated equally between them.

The amendments further clarify the difference between voluntary and involuntary reductions of income, as well as prerequisites for the trier of fact to impute an earning capacity where a party has willfully failed to obtain or maintain appropriate employment. A general rule is established to avoid the imputation of an earning capacity that is greater than the amount the party would earn from one full-time position and an unreasonable work regimen. It is made clear that support obligations are to be based upon the ability of a party to pay and that an imputed earning capacity should reflect a realistic ability to pay.

In regards to spousal support and APL, in requiring the duration of an award for either, the amendments require the trier of fact to consider the length of the marriage, with the intent to prevent the unfairness that arises where a spouse pays support over a substantially longer period of time than the parties were married with little or no offset for these payment in their divorce. Also, increases and reductions in support for mortgage payments shall no longer be applied after the entry of a final order on equitable distribution.

By Elizabeth J. Saylor, Esquire  
Visit Our Family Law Website  
[www.PJRLaw.com](http://www.PJRLaw.com)



## **Am I Entitled to My Unused Sick Leave and Vacation Pay?**

This is a common question asked by employees who have been terminated by an employer. Sadly, there is no specific Pennsylvania law which requires an employer to pay an employee for sick leave, vacation pay or provide severance pay. The employer only has an obligation to pay employees these benefits if the employer has a policy to pay such benefits or a contract with the employee to pay these benefits. If an employer has a handbook or written policy which provides for the payment of such benefits, the employer must follow its own rules for these kinds of payments.

If you think you are entitled to be paid for these types of benefits you can:

- a) Personally request payment from your employer
- b) Electronically file a request for payment utilizing the Pennsylvania Department of Labor and Industry – Here's a link to the fillable, submittable form <http://tiny.cc/pjrlawwage>
- c) Institute a legal action under the [Wage Payment and Collection Law, Act of 1961, P.L. 637, No. 329.](#)

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## Reverse Tax Audits

Know someone who owns or works for a company that pay a great deal of sales tax or use tax?

We can do a **FREE** audit of their sale and use tax payments to see if they are due a refund. There is **NO COST** to the business owner and **ANY** fee due is paid from any recovery obtained by us on the business's behalf. This is a **WIN-WIN** for any business paying a great deal of sales or use tax.

Call us for a **FREE** consultation.

## Some Reasons to Revise Your Will

- People named in your old will are deceased.
- New people should be named in your will
- Divorce or marriage.
- Change in guardians, personal representatives, or trustees.
- Children reach the age of 18.
- A substantial increase or decrease in the value of your estate.
- The acquisition or disposition of a significant asset.
- The passage of time is reason enough. You should review your will and estate planning documents every three to five years.

## Who Gets to Claim "OUR" Child on Their Taxes

We frequently get asked which parent gets to claim a child on their taxes. Communication is the first line of defense. If the parents don't discuss the matter and both parents file electronically, the one that files first will generally be accepted by the IRS. The second return will be rejected because the child's Social Security number will have already been used by that first return.

If the second parent is entitled to claim the child, the rejected electronic return can be converted into a paper return and filed by mail. If this is done, the IRS will start a review of both returns causing the IRS to review the relationship, age, residency; support, and joint return tests to determine if the child could be a qualifying child of more than one person.

While its possible for the child to be a qualifying child for more than one person, the IRS only allows one person to actually treat the child as a qualifying child. Some or all of the following tax benefits could be available for the parent who can claim the child as a qualifying child:

- The taxable exemption for the child.
- The child tax credit.
- The ability to file utilizing head of household filing status.
- The ability to utilize tax credits for child and dependent care expenses.
- The exclusion from income for dependent care benefits.
- The claim an earned income credit

Since the "other parent" cannot take advantage of any of these benefits, if the parents can't agree on which will use the "qualifying child" on their return, the IRS has established "Tiebreaker Rules" to determine which person can treat the child as a qualifying child to claim those tax benefits.

Some of the "Tiebreaker Rules" include:

If the child lived with both parents for the same amount of time during the tax year, the IRS will view the child as the qualifying child of the parent who had the higher adjusted gross income (AGI) for that tax year.

If neither parent can claim the child as a qualifying child, the child is viewed as the qualifying child of the parent who had the highest AGI for that tax year

If a parent can claim the child as a qualifying child but no parent actually does claim the child, the child is viewed as the qualifying child of the parent who had the highest AGI for that tax year, but only if that parent's AGI is higher than the highest AGI of any of the child's parents who can claim the child.

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[www.PJRLaw.com](http://www.PJRLaw.com)

## Our Community Involvement

***This Year's Jump Street's Derby Day Fundraiser is on May 7, 2011***

Our office is proud to be a part of Jump Street's 10th Annual Derby Day Celebration. This year's event will be held at the King Mansion on Front Street in Harrisburg, Pennsylvania beginning at 2:30 pm.

Guests will avail themselves of food, beverages, music, live and silent auctions, a \$10,000 Raffle and other games of chance and the opportunity to help one of the region's most far reaching arts based non-profit, [Jump Street](http://JumpStreet.org).

Sponsorship opportunities range from \$300 to \$5,000. Please feel free to contact the office so that you and your company can be a part of the region's most exciting UPSCALE lawn party of the year.



## Our Practice Areas

### Family Law

Divorce - Custody - Support - Adoption  
Property Agreements  
Name Changes - Visitation - PFA  
Collaborative Law

### Business Law

Business Startup - Business Litigation - Contract Disputes - Business Startup  
LLCs - S Corps - Contract Review & Negotiation Business Purchase or Sale

### Real Estate Matters

Buying or Selling - Residential or Commercial  
Title Insurance  
Agreement of Sale - Post Settlement Problems

### Employment Law

Workers' Compensation  
Unemployment Compensation  
HIPPA - Discrimination - Sexual Harassment  
PHRC - EEOC - Employment Agreements Employee Handbooks

### Wills & Estates

Wills - Power of Attorney - Living Will  
Probate - Trusts

### Professional Development

Our office recently co-sponsored a Time Management Seminar with [Action International Coach Thom Finn](#). Our host, [Sandy Sipe](#) and her team at the [Radisson Harrisburg / Hershey](#) did an amazing job to make us feel welcome. Thanks to all who attended.

If you or your company would like us to present a seminar for your office, church group or community group, please contact the office and we would enjoy the opportunity to further investigate how our staff can help you grow.

Please contact:

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