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## So your child is 18. **What now?**

**A**lthough parents often continue to treat 18-year-old offspring as dependents for tax purposes, and provide medical insurance for them as if they were minors, all the rules change with the arrival of that significant birthday. When children turn 18, they're considered adults under the law. A smart parent should take time to plan for the changed legal realities that accompany this milestone. Here are the documents you and your grown child need to put into place.

~ PERSONAL SERVICES  
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### **DURABLE POWER OF ATTORNEY FOR MEDICAL CARE DECISIONS**

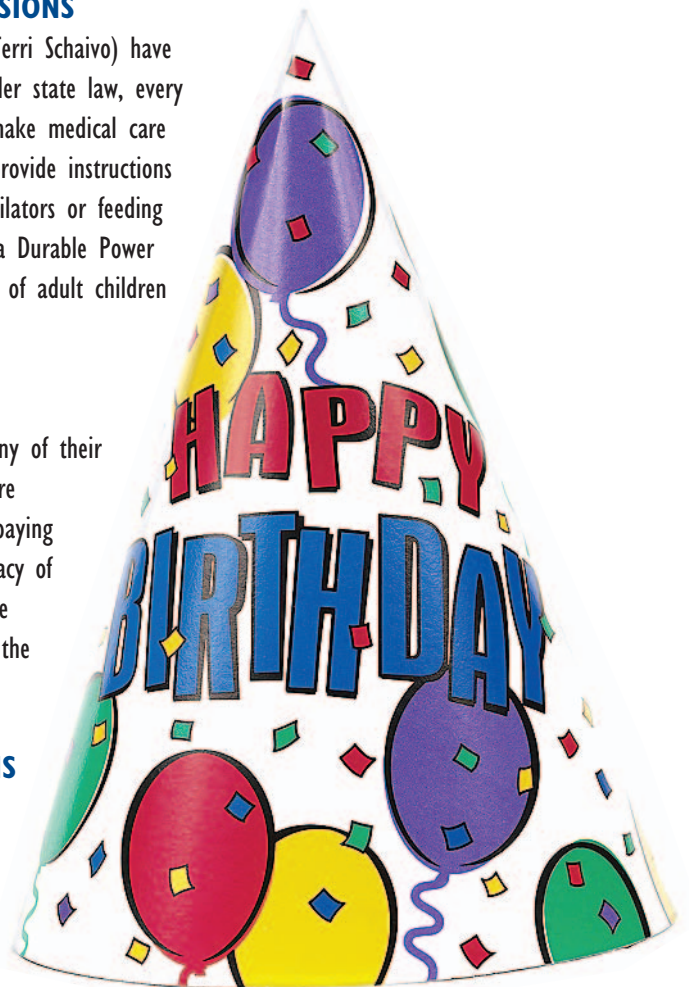
Over the past few years, several highly publicized cases (most recently that of Terri Schiavo) have made the importance of the Medical Durable Power of Attorney quite clear. Under state law, every adult may specify in a signed written document who they would like to have make medical care decisions for them in the event they're unable to. Such a document may also provide instructions about withholding or removing artificial, life-prolonging procedures (such as ventilators or feeding tubes) in circumstances where there is little or no hope for recovery. Without a Durable Power of Attorney, family members might disagree about who's in charge, and parents of adult children may be challenged or—worse yet—dismissed altogether.

### **MEDICAL AUTHORIZATION & WAIVER**

Parents of adult children are often surprised to learn that they cannot access any of their child's medical records or communicate with their child's physician and healthcare team—even if they're the providers of their offspring's medical insurance and paying the bills. Tough new federal legislation (HIPAA) put teeth into laws about the privacy of medical information. The answer is a signed authorization that permits medical care providers to communicate with an adult child's parents or the person named in the Durable Medical Power of Attorney.

### **DURABLE POWER OF ATTORNEY FOR FINANCIAL DECISIONS**

Your adult child may be short of assets, but if any bank accounts or holdings are in their sole name, the involvement of probate court is a certainty in the event of death or incapacity. The solution? A Durable Power of Attorney for Financial Decisions. This document, which assigns another person to stand in the adult child's shoes where money matters are concerned, can be an





# Michigan rolls out the welcome mat

Incentives help attract, retain business

Companies contemplating expansion, relocation, or renovation will soon have new reasons to give Michigan a serious look. Governor Granholm has made job growth a priority, and the state is putting together a new package of incentives designed to attract business development—especially high-tech and manufacturing. While we await those enticements, a review of Michigan’s existing perks is in order:

- **MICHIGAN ECONOMIC GROWTH AUTHORITY (MEGA)**

Revisions to MEGA have extended benefits to even more types of companies. Those engaged in manufacturing, research and development, wholesale and trade, or office operations may be eligible to receive a 20-year refundable tax credit against the Michigan Single Business Tax (SBT) when they add at least 75 jobs paying 150% of minimum wage or more and make certain capital investments.

The exact amount of SBT tax credits is dependent upon several factors including the economic impact on Michigan, size of the capital investment, and the amount of personal income produced by the jobs created.

- **INDUSTRIAL FACILITIES TAX EXEMPTION (IFT)**

Industrial companies, research and development laboratories, or office operations considering renovating or expanding their present facilities may qualify for this exemption, which forgives real estate and property taxes for up to 12 years and replaces them with a low-rate IFT.

The IFT ignores any value added to facility renovations and, in essence, cuts by half the amount the facility would otherwise pay in real property tax. Under certain conditions, it’s also possible to exempt a facility from the State Education Tax.

- **TAX-EXEMPT INDUSTRIAL DEVELOPMENT REVENUE BONDS**

Financing for large projects that involve land purchase, building, equipment acquisition, or infrastructure development may be available through these bonds, which—because their interest is exempt from federal (and sometimes state) tax—reduce the cost of borrowing 10 to 20 percent below prime rate.

- **TAX-FREE RENAISSANCE ZONES**

Intended to spur development in depressed areas, these zones exempt businesses from Michigan’s SBT, personal income tax, education tax, personal property tax, real property tax, and the cost of utility taxes.

- **BROWNFIELD CREDITS**

Companies willing to invest or locate in areas classified as functionally obsolete, blighted, or contaminated with hazardous waste are eligible for Brownfield credits. The program offers a SBT credit for a percentage of the cost incurred in demolition, restoration, improvement, construction, and the acquisition of equipment. In addition to SBT credits, some contaminated properties also qualify for Tax Increment Financing.

## UPDATE: IS MEGA IN JEOPARDY?

A recent decision by the 6th Circuit Court has put companies presently receiving MEGA tax credits or other tax incentives offered by the state in a wait-and-see mode. In *Cuno v DaimlerChrysler, Inc.*, the 6th Circuit struck down an Ohio Investment Tax Credit, holding that the incentive was really a form of economic protectionism that discriminates against companies not doing business in the state. The decision could affect similar tax credits offered by Michigan. While the court ruling allows the state to offer business subsidies, it did not clearly define the difference between tax credits and subsidies, and thus has left unresolved whether certain incentives, such as those offered by MEGA, are constitutional. The State of Ohio will ask the Supreme Court to review the decision.

*Other incentives—including community development block grants, tax credits for hiring youth, and tax abatement for certain geographic areas—add to Michigan’s business lure. Call us if you’d like more information.*



# Going after venture capital?

## 10 steps to help you succeed

*To attract venture capital financing for your new company, you've got to plan ahead, keep matters simple, and really sell yourself. Here are some suggestions for finding the right suitor and building a lasting partnership.*

### 1. Choose the right legal entity for your company

What's in a name? Plenty, if you're seeking favorable tax treatment and limited liability for prospective investors. While S-Corporations and Limited Liability Companies offer attractive pass-through tax treatment, their constraints on classes of stock and difficulties with equity compensation make them less appealing to investors. C-Corporations permit incentive stock options and provide for the creation of preferred stock—the class most venture capitalists want to purchase.

### 2. Document ownership

Investors want full disclosure of your company's capitalization and absolute certainty about how much of your business they will own. Be sure to adopt board resolutions approving stock issuances, document all stock issuances, keep a current stock ledger, and enter into shareholder agreements that clearly specify the disposition of stock upon transfers, death, disability, or termination of employment.

### 3. Secure employee documentation

Make sure your employees aren't bringing intellectual property to your company that doesn't belong to them—and that they're not subject to non-compete clauses from former employers. Likewise, have your employees sign confidentiality and non-compete agreements that assign intellectual property to your company.

### 4. Protect your intellectual property

Next to your company's people, its inventions are its most precious assets. If company founders have developed intellectual property prior to incorporating the business, have them assign property rights to the company. Employees should sign confidentiality contracts, and third parties should sign a nondisclosure agreement before having access to your technology. Consult with an intellectual property attorney to find out if your technology qualifies for copyright, patent, or trademark protection.

### 5. Keep good records

Your company's board of directors should approve significant transactions and agreements. Maintain thorough minutes of all board and shareholder meetings.

### 6. Comply with securities laws

You must comply with federal and state securities laws when issuing stock or granting stock options. Failure to do so may give your investors rescission rights—or subject you and your company to fines and criminal liability. Exemptions from the costly process of registration with the SEC are usually available if you're careful in selecting the investors to whom you offer stock. So be sure to seek competent legal counsel to advise you before you offer your company stock.

### 7. Prepare a good business plan

A solid business plan is an excellent tool for laying out your strategy, assessing your performance, and attracting potential investors. Time invested in creating a good plan can yield long-term returns.

### 8. Address tax issues

Grants of stock options or restricted stock, or the transfer of property or services in exchange for stock, may constitute taxable compensation. Recipients of your stock should consider filing a Section 83(b) election with the IRS. In doing so, they may elect to be taxed immediately on the difference between the stock's fair market value and the price they paid for it. An 83(b) election must be filed within 30 days of receiving the stock.

### 9. Don't give away too much

It could be a long haul from inception to IPO or sale of your company. Avoid giving up too much equity and hold on to as much ownership as you can.

### 10. Keep it simple

Stock should have as few rights as possible since venture capitalists may want them waived or eliminated before investing. Keeping it simple will minimize costs early on and give you the greatest degree of flexibility when negotiating with investors.

*Our firm has extensive experience in representing companies in venture capital transactions. Contact the author or David N. Parsigian, 734/ 668-7117, if you'd like some help.*

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*If you would like your name added to our mailing list, please call Joanne Theisen at 734/ 668-7755.*

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# Department of Labor implements **BIG** changes in alien employment certification



Labor Certification is the first and most critical step in the Permanent Residency (better known as greencard) sponsorship process. Before any sponsoring petitions or applications for a greencard can be filed with the Bureau of Citizenship & Immigration Services (CIS), employers first must prove to the Department of Labor (DOL) that they have tried in good faith to recruit a qualified U.S. worker to fill the position, but were unsuccessful.

*Problem is, the process has been cumbersome and confusing, involving both local State Workforce Agencies and federal DOL officials. Over time, that's created a nationwide backlog of more than 300,000 pending applications.*

Now the DOL has introduced a two-part plan to reduce the backlog of pending applications and streamline the system for processing new ones. These are welcome changes that should bring more certainty, efficiency, and workability to a process that has long lacked those traits.

## **BACKLOG REDUCTION**

To break the logjam, the DOL has established two national Backlog Processing Centers—one in Dallas, and the other in Philadelphia—and hired a private company to assist in the effort. Key features include:

- All State Workforce Agencies have been closed
- Any Labor Certification applications not already in process have been transferred to one of the two new processing centers
- The processing centers will implement a public system to allow outside tracking of case status and publish periodic progress reports
- All files will be logged and tracked in a national database by the date they were originally filed (Priority Date); and reviewed, processed, and approved in a “first-in/first-out” manner
- The DOL’s plan is to eliminate the entire backlog and close the two processing centers within two years, although actual funding from Congress came in short of budget requests
- Although the processing system has changed, the underlying Labor Certification laws and regulations remain the same

## **A STREAMLINED PROCESSING SYSTEM**

The DOL has implemented a new, online system for processing all new applications filed after March 28, 2005. Called PERM, the program is marked by significant changes, including:

- The Labor Certification application form can be completed and filed online at the DOL Web site

- The exact types of recruitment that an employer must document are somewhat more rigid and formally structured
- Recruitment evidence will no longer be filed directly with the application, but maintained in a special file with other evidence supporting the application to be used in the event the DOL elects to conduct an audit
- Absent an audit, the DOL has targeted a processing/approval goal for PERM applications of only 60 days. Although, because of mandatory pre-filing recruitment steps, the total time from start to final Labor Certification may be closer to six months
- To offset the heavy reliance on simple employer assertions of U.S. worker non-availability, the DOL plans to aggressively investigate employers they believe may not be fairly testing the nation's labor market before filing. The Department is developing profiles of suspicious companies and will have the authority to bar those companies found to have abused the Labor Certification system from future greencard sponsorship
- A Labor Certification application currently pending at one of the two Backlog Processing Centers can be converted to the new PERM system, provided the employer is willing to withdraw the old application, fulfill all new advertising and recruitment requirements, and re-file the application under PERM
- As with Backlog Reduction, underlying law has not changed, nor have the principal steps employers must take to prepare an application

It's important to keep in mind that Labor Certification is just the first of three steps in the greencard sponsorship process, and a quickly granted Labor Certification from the DOL doesn't imply a quickly approved final greencard. Following Labor Certification approval, the employer still must prepare and file with the CIS an I-140 Immigrant Petition. Once approved, the employee then must prepare and file with the CIS an I-485 Application to Adjust Status. Given current backlogs of available greencard numbers for people from certain countries, these additional steps could add anywhere from one to three years to the process, after DOL approval.

*If you would like more information, please visit our Web site, or call Miller Canfield Immigration Services at 248/ 519-9900.*

## Our immigration practice is expanding Christian Allen and Marc Topoleski join the firm

We're pleased to welcome two experienced attorneys to the Miller Canfield Immigration Practice Group. Christian S. Allen and Marc A. Topoleski bring substantial knowledge of immigration law, having founded Ellis Porter PLC of Troy, Michigan, a corporate immigration law firm.



Christian S. Allen

Both Allen and Topoleski have represented clients ranging from small, start-up companies to large, multinational corporations in various industry segments including automotive, engineering, information technology, and health care.

Allen is an adjunct professor of Immigration Law at Oakland University. He received his J.D., *cum laude*, from Tulane University Law School and his B.A., *summa cum laude*, from the University of Detroit Mercy.



Marc A. Topoleski

Topoleski earned his J.D. from Vanderbilt University School of Law and his B.A. in Economics, with high honors, from Michigan State University.

Allen and Topoleski are active members of the State Bar of Michigan and the American Immigration Lawyers Association.

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## Developments in Federal Criminal law will impact your company and your employees

*This is a time of major changes in the field of white-collar criminal law. The system for sentencing white-collar and corporate offenders has undergone a significant transformation, and the criteria for determining whether to charge a business organization with a crime have been revised as well.*

### SENTENCING LEEWAY FOR WHITE-COLLAR CRIMINALS

The U.S. Supreme Court recently held that Federal Sentencing Guidelines—once mandatory—are now to be considered advisory. The Court's decision likely will have an impact on the sentencing of white-collar offenders since it will permit federal courts to take into account a variety of factors that were once largely off limits. Issues such as an offender's community service, civic accomplishments, and employment circumstances may now weigh in favor of a more lenient sentence.

### CORPORATE COMPLIANCE PROGRAMS: KEY TO LESSENING EXPOSURE

Although no longer mandatory, Sentencing Guidelines are likely to continue to carry substantial weight with federal judges. Thus, business organizations should be aware of changes and pay special attention to recent amendments to the Guidelines concerning corporate compliance programs. Federal prosecutors often consider the existence of such a program when deciding whether to charge an organization with a crime. What's more, having a sufficient compliance program in place should mitigate an imposed sentence if a corporation is convicted of a crime. New amendments detail features required in a compliance program, including these:

- Board oversight of the entire compliance program, including yearly reports to the Board about the program's efficacy
- An officer or high-ranking employee charged with day-to-day responsibility for implementing the program
- Training of employees concerning the requirements and workings of the program
- Incorporation of applicable industry standards and codes of conduct
- Mechanisms to report violations of the program—anonymous tip lines, for instance

### WHAT OTHER ISSUES INFLUENCE CRIMINAL CHARGES?

Federal prosecutors also consider these other factors when deciding whether to seek criminal charges against a business:

- Nature and seriousness of the offense, including the risk of harm to the public
- Pervasiveness of wrongdoing, including complicity in, or condoning of, wrongdoing by corporate management
- History of similar conduct by the corporation
- Timely and voluntary disclosure of wrongdoing
- Swift remedial actions, including tightening a compliance program, dismissal of responsible management and termination of wrongdoers, payment of restitution, and cooperation with relevant government agencies
- Collateral consequences, including harm to shareholders, pension holders, and employees not personally culpable

*Both the recent amendments of the corporate sentencing guidelines, as well as the restatements of charging criteria, confirm that businesses of all sizes need to adopt and implement effective compliance and corporate ethics programs in order to minimize the risk of federal investigation and prosecution. Call us if you'd like some help.*

~ CRIMINAL LAW  
Matthew F. Leitman  
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# New high-tech device tracks goods and merchandise

*A retailer knows the whereabouts of each item in its massive inventory—from the point of manufacture, to purchase by a consumer. A government logs the history*

*of every transaction on each individual piece of currency. Weird science? Not really. These are just two potential uses of a new technology currently being tested known as RFID—Radio Frequency*



*Identification. Is RFID in YOUR company's future?*

**What is RFID?** An automatic identification system, RFID makes use of tags into which a microchip has been embedded. Affixed to an item, the microchip tag transmits a unique frequency and responds to a special radio frequency reader, allowing the user to access collected data stored inside, and track location. Smaller than a grain of sand, a RFID tag currently costs between 25 and 30 cents. But that cost is expected to fall to as little as three cents in the next few years—and many industries now are taking a closer look at the technology.

## What can RFID do?

- ✓ Retailers tracking in-store inventory can use RFID readers at the checkout counter—automatically charging a consumer's credit card for purchases. Some clothing manufacturers are exploring the idea of washable RFID tags.
- ✓ The European Central Bank is looking at embedding RFID technology into Euro bank notes to record each transaction, and prevent money laundering or forgery.

- ✓ RFID technology is expected to create efficiency in supply-chain management by tracking inventory from creation through any point in the distribution system.
- ✓ Tire manufacturers may store identification information into each tire, using RFID tags.
- ✓ RFID could help libraries track book and other materials on loan to patrons.
- ✓ During the SARS outbreak in 2002, one hospital in Singapore placed RFID tags into employee and visitor ID cards to help prevent spread of the disease.
- ✓ Some casinos have embedded RFID into chips to track a customer's gambling behavior and reduce employee theft.

## What are the legal considerations?

Businesses should address privacy concerns before jumping on the RFID bandwagon. Several privacy watchdog groups have understandably raised the issue of misuse of the technology. Possible solutions include disabling the RFID technology at the cash register to alleviate consumer concerns that items could continue to be tracked after purchase—or devising a way for consumers to deactivate the tags once a purchase has been made.

In light of national security and privacy concerns, there's been a call for regulation and global standardization of all tracking technology—including RFID, cellular, and satellite.

*We're ready to offer counsel on the legal issues related to RFID, or to assist in negotiating contracts with providers of the technology. Call us if you'd like some help.*

**MICHIGAN**

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important tool in the event of illness or injury—and helpful if your child is away studying.

**WILL AND/OR TRUST**

Even a young adult needs a will that designates who will receive assets. A will or trust will avoid the application of state *intestate* laws, which rarely result in distributing assets as your child might have preferred. In addition to spelling out asset distribution, a trust can avoid the involvement of probate court.

We are presenting a lecture series to high schools and other groups upon request. If you or your group are interested in learning more about these or other issues impacting adult children, please contact Gayla Houser, Director of Business Development, 248/ 267-3337.

**CLIENT ALERT** Supreme Court rulings address Title IX and age bias

Recent U.S. Supreme Court decisions extend the reach of two federal laws: one barring sex discrimination in education; and another prohibiting age discrimination in employment. Visit our Web site, [millercanfield.com](http://millercanfield.com), and click on Client Alerts in the Newsroom to learn more.



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