

FALL 2008

# CERTIORARI

Journal of Consumer Advocacy



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## STATE TAX OBLIGATIONS?

# Clean Slate '08 Program Deadline November 14

The Oklahoma Tax Commission will offer a chance "to wipe the slate clean with past due Oklahoma taxes" until November 14.

Clean Slate '08 is a special program that began in mid-September and runs through November 14.

The program gives taxpayers with Oklahoma obligations for tax periods prior to January 1, 2008, an opportunity to clear up their tax debts without paying penalty, interest or other collections fees.

But there is a catch.

Taxpayers who do not take advantage of the Clean Slate '08 program - by paying overdue taxes or making payment arrangements - will be assessed double penalty on the tax debt at

the conclusion of the program. Penalty will be based on the original liability.

A number of state tax types are eligible for the waiver of penalty, interest, and fees through the Clean Slate '08 program. They include: income tax (individual and business), sales tax, use tax, withholding tax, franchise tax, mixed beverage tax, gross production and petroleum excise tax, gasoline and diesel tax, and bank "in lieu" tax.

To take advantage of the program, taxpayers must file all requested tax forms and reports related to their Oklahoma tax debts.

Find out more about Clean Slate '08 on the Internet by clicking [www.cleanslate08.org](http://www.cleanslate08.org) or call toll free 1-877-320-7612.

certiorari, (ser-she-eh-ra-re) noun [Latin, to be informed]; to be informed as a means of gaining appellate review; a common writ.

When at least four of the nine U.S. Supreme Court justices vote to hear a case, the court issues a writ of certiorari.

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## Journal of Consumer Advocacy

CONSUMER INFORMATION FOR THE CLIENTS AND  
FRIENDS OF FRASIER, FRASIER & HICKMAN, LLP

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### CASE FILE

## Settlement reached in nursing home abuse case

Rudolph Worner was 91-years-old but iving independently in Ft. Smith, Arkansas. His son had moved in with him, and along with Mr. Worner's daughter convinced their dad to finally quit driving.

In August 2006, Worner was admitted to the hospital not feeling well. Within weeks, he was receiving therapy and recuperating. But after months of mistreatment in a nursing home, he was dead.

Six days after entering the hospital, Worner was transferred to a specialty rehabilitation hospital for physical therapy and rehabilititation. Less than a month later, he was transferred to the Medi-Home nursing home facility but not before developing blisters on both heels.

At Medi-Home, Worner was to receive long-term rehabilitation and treatment. His heels had been treated at the hospital and he had been fitted with podus boots which help position the feet to prevent contractures and protect the heels from pressure. The standard of care requires nursing staff to daily remove the boots and inspect the feet for circulation and skin breakdown.

At Medi-Home, this did not happen. Worner developed blisters that were allowed to scab. Medi-Home nurses waited several days before contacting a physician, and then did not follow his orders to bring in a specialist.

After 35 days at Medi-Home, Worner was back at the regional hospital for treatment of his advanced wounds. He never recovered.

Worner's children hired Frasier, Frasier & Hickman, LLP, to investigate the case. The

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**The lawsuit eventually was settled out of court and the defendants demanded the amount remain confidential. Worner's family agreed.**

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firm found evidence of gross negligence and filed a lawsuit against Medi-Home, Inc., on behalf of Worner's estate.

The lawsuit eventually was settled out of court and the defendants demanded the amount remain confidential. Worner's family agreed.

"Mr. Worner's last days were an unfortunate tragedy. A man able to live independently mistreated to the point that he suffered greatly and never recovered," said Jim Frasier.

"Medi-Home was licensed by the state of Arkansas. But the same abuses happen in every state. Families must be diligent when loved ones a placed in institutions for care," Frasier said.

## VOTER

# November 4 Election to Decide Races

Voters will go to the polls on Tuesday, November 4, to elect the next U.S. president and vice president. Oklahoma voters also get to vote for U.S. Senator and Congressman, corporation commissioners, and a number of state legislative and county officials.

The polls will be open from 7 a.m. to 7 p.m. on Election Day, November 4. However, registered voters may vote "in person absentee" at county Election Board offices on the Friday, Saturday, and Monday preceding the election. The Tulsa County Election Board, at 555 N. Denver Ave., will be open from 8 a.m. to 6 p.m. on Friday and Monday; and 8 a.m. to 1 p.m. on Saturday.

The Frasier, Frasier & Hickman LLP firm urges its clients and friends and their families to vote in every election.

## WORKER

# Workers Have Right to Vote

Workers who properly notify their employer that they intend to vote must be given ample time to do so on Election Day. And when workers show that they actually did vote they cannot be subject to loss of pay or any other penalty for the absence.

Oklahoma law requires employers to grant their employees who are registered voters ample time to cast their votes. They also must pay employees for the time they are absent to vote.

### WORKERS MUST:

- Notify the employer at least the day before the election that they intend to exercise their right to vote.
- After voting, return to work with proof of having voted. If there is no form designated by the employer, have a poll official write a note that the employee voted, with the time, date, and official's signature.

### EMPLOYERS MUST EITHER:

- Adjust work hours so they do not begin before 10 a.m. or end after 4 p.m. – giving workers a three-hour window to vote after the polls open at 7 a.m. and before they close at 7 p.m.
- Grant employees sufficient time – at least two hours – during which to leave work to vote. The employer may select the hours the worker can be absent from work to vote.

These rights and obligations are found in the Oklahoma Statutes in Title 26, Section 7-101. And they are backed up by several Attorney General opinions. Violation of this law is a misdemeanor criminal offense with penalty for each violation ranging from \$50 to \$100.

## WORKER

# Employers Fudging on Workers' Compensation

By Steve Hickman

The question often arises: after an employee has been released from Workers' Compensation temporary total disability – or TTD – to go back to work, or is back at work on light duty, but has continuing medical appointments or physical therapy, will they draw TTD for those hours the employee misses work to attend follow-up doctor appointments or physical therapy?



Hickman

Some companies have taken the position, on the one hand, that the person has been released to go back to work and cannot draw TTD unless they are off three days or more again, and, on the other hand, since they are not at work, the employee must clock out and see the doctor or physical therapist "on their own time."

With the 2005 changes in Workers' Compensation, federal law has put a crimp in the employer's style. Employers were gleeful when the 2005 changes took away the employee's right to choose his own physician. Under the new law, the doctor is chosen by the company. Thus, all medical care, physical therapy, etc., is "at the direction of the employer." The federal wage and hour laws provide that whenever an employee is required to have medical attention "at the direction of the employer" and this attention is given during normal work hours, then the time is fully compensable as though the employee is at work.

So, in answer to the question, an employee, who is required to see a doctor or physical therapist related to his Workers' Compensation claim and sees a provider during normal work hours, is entitled to be paid regular wages.

One other caveat: this rule applies only to employees governed by the federal wage and hour laws. Over-the-road truck drivers and airline workers, for example, are not covered by those laws. However, with regard to American Airline employees, the issue has been arbitrated with a result in favor of the employee getting paid.

## General Election Early Voting by "In Person" Absentee Ballot

You can vote early, in-person at your County Election Board office on these days before the November 4 general election:

- Friday, October 31, from 8 a.m. to 6 p.m.
- Saturday, November 1, from 8 a.m. to 1 p.m.
- Monday, November 3, from 8 a.m. to 6 p.m.

All regular polling places will be open Tuesday, November 4, from 7 a.m. to 7 p.m.



After eight long years with George W. Bush in the White House, working people now have relief in sight.

The November 4 general election is a historic opportunity for working men and women to elect Senators Barack Obama and Joe Biden as president and vice president – and restore leadership which respects working Americans.

Under the Bush-Cheney Administration, the “Great Equalizers” of our society have been under attack. Bush II oversaw the dismantling of the once-great Middle Class. Good wages, decent working conditions, and public education have been eroded during his reign.

We need change in this country. But we need thoughtful change. Change that will restore the Middle Class by introducing tax relief where it belongs – not to the wealthiest persons in the country! We need leadership that will respect working people – not just corporate interests.

This is such an important moment in our nation’s history. There is no excuse to be absent on Election Day. Every registered voter should make sure they vote – and that their friends, neighbors, co-workers, and relatives vote.

Every vote counts.

—*Jim Frasier*

**“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.”**

**Franklin D. Roosevelt  
January 20, 1937**

**WORKER**

# FMLA Leave Abused by Employers

Frasier, Frasier, & Hickman, LLP, has been contacted on a number of occasions regarding abuse by employers of various provisions of the federal Family & Medical Leave Act.

Also known as FMLA, the Act requires employers to grant temporary, unpaid leaves of absence to workers encountering certain family and medical situations. FMLA protects the worker’s job, seniority, and other benefits.

Under FMLA employers may require workers to use accrued vacation, sick or personal leave time. Some employees have sick leave and vacation leave. In some instances, when the employee has gone out on FMLA, the employer has chosen to use the vacation pay first and the sick leave second.

What the law provides in this case is that the option is first the employee’s. An employee should elect to take sick leave. This process forecloses the company from burning up the vacation pay

**FMLA regulations can be accessed on the Internet at the U.S. Department of Labor website at [www.dol.gov/esa/whd/fmla](http://www.dol.gov/esa/whd/fmla).**

first. If the company were to try to force the issue after the employee elected sick leave and charge vacation pay first anyway, the employer would be acting illegally.

The second thing that sometimes comes up is where the employee is drawing short term disability or Workers’ Compensation temporary total disability, or TTD, benefits. The employer does have the right to claim FMLA leave while the person is out for Workers’ Compensation or otherwise.

Some employers try to push the envelope by also paying vacation pay to the employee. The employer’s purpose is so that the employee will have little or no vacation left when he or she comes back to work. This results in

the employee getting paid double for a period of time.

However, once the leave is being paid under some kind of substitute payment such as short term disability or TTD, the employer cannot also burn up vacation or other leave. The attempt to burn up the vacation or other personal leave in addition is simply an illegal move by the company.

The FMLA can be complicated. FMLA regulations can be accessed on the Internet at the U.S. Department of Labor website at [www.dol.gov/esa/whd/fmla](http://www.dol.gov/esa/whd/fmla).

However, the attorneys and staff at Frasier, Frasier & Hickman, LLP, can help. If you have questions, please call the office.