

# Briefly

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## Barrow & Grimm Soars to New Heights

by Allen E. Barrow, Jr.

After more than twenty-five years at the Main Plaza Building, we decided it was time for a change. So we sold our building and effective January 28, 2008, we've moved our offices to the Ninth Floor, 110 West 7th Street in Tulsa. Depending upon your age, you may remember our new location as the home of Cities Service, Bank of Commerce, Occidental Petroleum, or more recently, Vintage Petroleum and Hillcrest Medical.

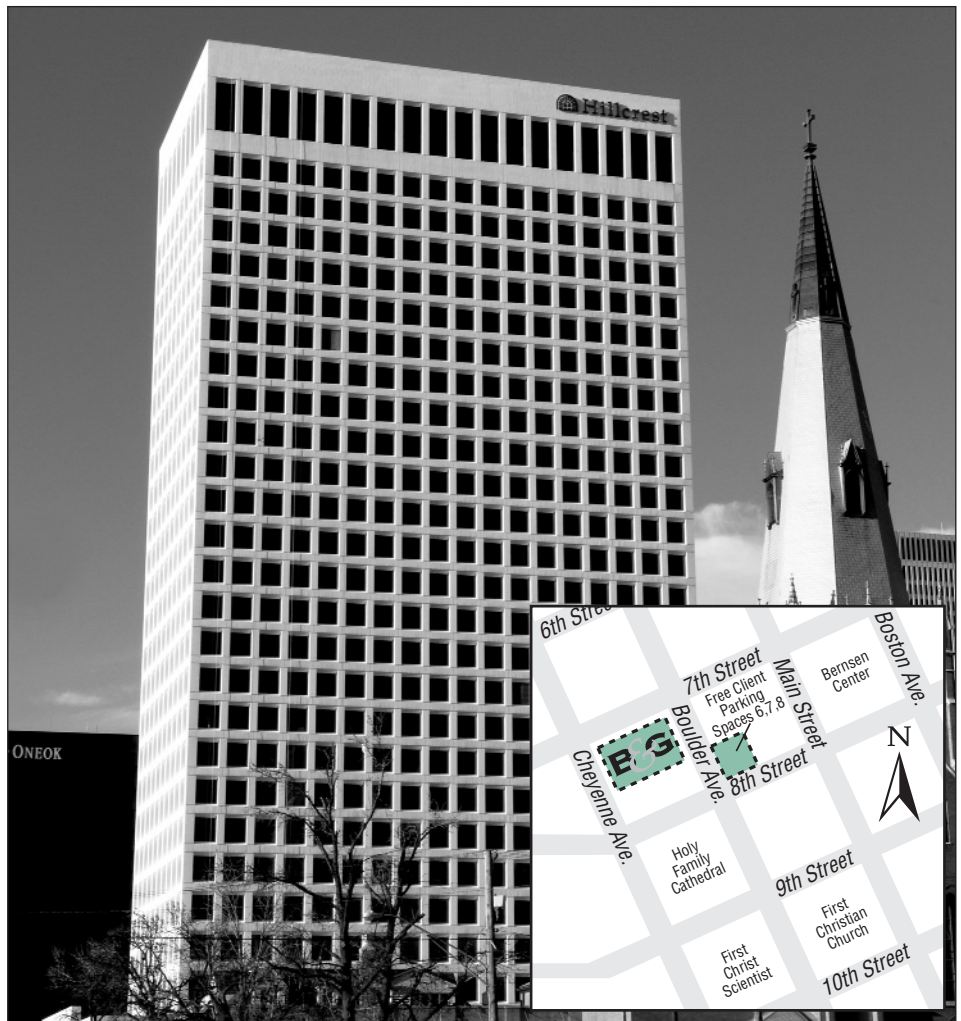


Allen E. Barrow, Jr.

The good news is that our new office is only one block west of our old location. And, more importantly, we will have more off-street client parking for your convenience. Please see the inset map showing our new location and client parking.

### We've raised the bar...to the ninth floor.

Although our former office served us well for many years, our new space has given us the opportunity to better design our layout to accommodate our growth and serve your needs. Now we will have more conference rooms for client meetings and state of the art technology for prompt and efficient delivery of legal



services. The attorneys within each specialty group are now in close proximity to each other, making it easier to coordinate your legal matters. We believe our new site will be a quantum leap into the future.

As you can tell, we are very excited about our new home! Please stop by to see us when you have a chance.



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## Solo 401(k) and Defined Benefit Plans

by Will Farris

The contribution and deduction limits for qualified retirement plans have increased for 2008 which makes it attractive to establish a plan for your company or for yourself if you have earned income from a source other than your company.



Will Farris

### Increased Contributions and Benefits Limited in 2008

*Increase in benefit and contribution limits - defined contribution plans.* The permissible maximum contribution on behalf of a participant in a qualified defined contribution plan (profit sharing or 401(k) plan) is \$46,000 for 2008.

*Increase in benefit and contribution limits - defined benefit plans.* The permissible maximum annual benefit of a qualified defined benefit plan in 2008 is the lesser of \$185,000 or 100 percent of compensation for the employee's highest three consecutive years of service. If a participant retires before age 62 or after age 65, the maximum annual benefit will be reduced

or increased, respectively

*Increase in benefit and contribution limits - qualified plans.* The maximum compensation that may be taken into account in determining a plan participant's account and benefits under qualified plans is \$230,000 for 2008.

*Increase in benefit and contribution limits - elective deferrals.* The maximum amount of compensation a plan participant can elect to defer with respect to 401(k) plans in 2008 is \$15,500.

Catch-up contributions for individuals age 50 or over. Increased dollar amounts on elective deferrals for employees age 50 or older are allowed for contributions made to 401(k) plans. The applicable dollar amount is \$5,000 for 2008.

Example: Jane, who is 55 years old, is the sole shareholder and only employee of an S corporation. She has \$100,000 of W-2 wages for 2008. If the company adopts a profit-sharing plan, it will be able to make an employer contribution of up to \$25,000 for Jane ( $25\% \times \$100,000$ ). If the company adopts a 401(k) plan with a profit-sharing feature, Jane will be permitted to make an elective deferral of up to \$15,500 and a

catch-up contribution of \$5,000.

Thus, with the 401(k) plan, the total contribution to her account can be as high as \$45,500 ( $\$25,000 + \$15,500 + \$5,000 = \$45,500$ ), instead of the \$25,000 available with an ordinary profit-sharing plan.

If Jane makes \$20,500 from a consulting job or from Board of Director fees, she could deduct the entire amount by contributing to a Solo 401(k) Plan in 2008 ( $\$15,500 + \$5,000$ ).

For a defined benefit plan designed by an actuary, a 55-year-old earning \$100,000 might be able to contribute and deduct that entire amount for several years. As a threshold, figure on at least five years of contributions averaging at least \$60,000 according to one source.

If you have earned income from consulting fees, board of director fees or other independent contract arrangements, you can set up a qualified retirement plan to deduct and defer tax on a substantial amount, if not all, of the income from these sources. Contact us if you are interested in a solo 401(k) or defined benefit plan.



### Biography

## Allison H. Loehr

Allison H. Loehr was admitted to the Oklahoma Bar in 2005. Her law practice includes primarily business law, civil litigation, estate planning, and health law.

Ms. Loehr attended Washington University in St. Louis, Missouri where she received her Bachelor of Arts in Molecular Biology in 1998. She then received her Master of Health Administration in 2001 from the University of Oklahoma Health Sciences Center. There she was awarded the Oklahoma Hospital



Allison H. Loehr

Association David J. Falcone Student of the Year Award for Outstanding Achievement and was a member of Phi Kappa Phi academic honor society. After receiving her Masters, she completed an administrative residency with Parkland Health & Hospital System in Dallas, TX.

Ms. Loehr received her Juris Doctorate in 2004 from the University of Tulsa College of Law. While in law school, Ms. Loehr served as a student intern for the Hon. Russell P. Hass and the Hon. Sarah Day Smith of Tulsa County District Court. Ms. Loehr also held several academic membership positions including: vice president and secretary for the Law & Medicine Society, Phi Delta Phi legal honor fraternity, and the Board of Advocates. Additionally, she received a Health Law Certificate for

her extensive study and coursework in health law and served as a clinical law student with the TU Legal Clinic's Health Law Project. Following completion of her J.D., Ms. Loehr went on to attend Benjamin N. Cardozo School of Law in New York, NY, where she received her LL.M. with emphasis in health law in 2006.

Ms. Loehr's professional associations include the Oklahoma Bar Association, Tulsa County Bar Association, and the American Bar Association.


### Bar Admissions:

Oklahoma, 2005  
United States District Court, Northern and Eastern Districts of Oklahoma, 2007  
United States Court of Appeals for the Tenth Circuit

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## Border Patrol or Employer?

by John E. Harper, Jr.

 f the numerous provisions included in The Oklahoma Taxpayer and Citizen Protection Act of 2007,

a/k/a House Bill 1804 ("the Act"), the most onerous fall squarely on the shoulders of the construction industry! The following scenarios and comments detail just a few of the pitfalls that await you, as employers, under the Act:



John H. Harper, Jr.

- Employers will be prohibited from transporting or attempting to transport any alien (whether the alien is an employee, subcontractor or even a hitchhiker) to or from a jobsite or elsewhere, if the employer "knows or is in reckless disregard of the fact" that the alien has entered or remained in the country illegally. The penalty? The person violating this provision, shall, upon conviction, be guilty of a felony. **Author's Comment:** The standard by which an employer's conduct is to be judged, "knows or is in reckless disregard of the fact," is patently vague and ambiguous; be careful who you let ride in your company's vehicles!
- No contractor or subcontractor, of any tier, may enter into a contract with any department, agency or instrumentality of the state or local government, unless the contractor or subcontractor registers and participates in an "electronic verification of

work authorization program" run by the federal government and actually verifies the work authorization status of all newly-hired employees.

**Author's Comment:** The Act fails to define "registration" or even the level of participation required to comply. Moreover, the reliability of the electronic verification programs, much less the information that is provided, is, at best, questionable. No means to address, much less resolve, questions that may arise during the verification process are provided.

- The Act creates a legal cause of action in favor of the discharged employee, if: (a) for any reason whatsoever (including, for example, illegal drug use on the job) the employer decides to fire or terminate the employee; and (b) on the date of the employee's discharge the employer also employed an unauthorized alien in this state. Under these circumstances, assuming the discharged employee cannot find comparable employment, the employer becomes liable for:
  - Six (6) months pay and benefits, plus liquidated damages in the amount of two percent (2%) for each day after the date of discharge, interest, attorney's fees and costs.**Author's Comment:** Whether an employee is fired for illegal conduct or simply let go upon the completion of particular project, it does not matter. If that employee does not find a comparable job within six months of being fired or let go and it comes to light that an

unauthorized alien was on your payroll, even through no fault of yours, you could end up owing that employee an entire year's salary and benefits, PLUS interest, legal fees and court costs! At the very least, you will be forced to defend, in court, the legal status of your minority employees. How's that for identity protection?

If an employer, though, who, on the date of the discharge in question, was enrolled in and used an approved "electronic verification of work authorization program" the employer will be exempt from liability. **Author's Comment:** This purported "safe harbor" provision is fraught with peril. See above!

- Lastly, all employers shall be required to withhold state income tax at the rate of six percent (6%) of the amount of an employee's wages or an independent contractor's 1099 compensation, if the employee or independent contractor fails to provide a valid Social Security Number, issued by the U.S. Social Security Administration. Any employer who fails to comply with these withholding requirements becomes liable for such taxes. **Author's Comment:** How is an employer to know if an employee's or independent contractor's Social Security Number is valid or not, if, through forgery or deceit, it otherwise checks out? Again, the Act is fatally silent.



Allison Loehner, continued from page 2

### Education:

Benjamin N. Cardozo School of Law,  
New York, New York, 2006  
LL.M. (Master of Laws), emphasis  
in health law

University of Tulsa College of Law,  
Tulsa, Oklahoma, 2004  
Juris Doctor

University of Oklahoma Health Sciences  
Center, 2001  
Master of Health Administration

Washington University, St. Louis,  
Missouri, 1998  
Bachelor of Arts, Biology

### Professional Associations:

Oklahoma Bar Association  
Tulsa County Bar Association

American Bar Association  
Oklahoma Health Lawyers Association

### Community Activities:

Attorney liaison for Tulsa Youth Court  
The Bridges Foundation –  
Human Rights Committee



*Briefly* is published for the clients and friends of Barrow & Grimm, PC. Its intent is to address current trends and issues as they relate to business, personal and legal concerns.

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## IN BRIEF...

- Will Farior is currently serving as Chairman of the Board of Trustees of St. Simeon's Episcopal Home in Tulsa. He also serves as a Trustee of the Oklahoma Bar Foundation and the Tulsa County Bar Foundation.
- Pete Stamper was the principal speaker at the membership meeting of the Associated Builders & Contractors of Oklahoma, held in September, 2007, at the Cattlemen's Steakhouse, in Oklahoma City. He discussed mechanics' and materialmen's lien rights and procedures.
- Brad Heckenkemper serves as a judge on the State of Oklahoma's Court on the Judiciary. The Court is comprised of eight senior Oklahoma judges from around the state and one member of the Oklahoma Bar Association. The court has responsibility for deciding disciplinary cases involving alleged improper conduct of state court judges while in office. Brad has also been elected as the Scholarship Chairman for the OSU Alumni Association's Tulsa Chapter. The Tulsa Chapter is the national association's largest alumni group supporting the University. Each year the Tulsa Chapter makes numerous awards for assistance in attending OSU to graduating Tulsa high school seniors who excel in the classroom and demonstrate leadership skills.
- Adam Marshall currently serves as the Budget Chairperson and member of the Executive Committee of the Tulsa County Bar Association. He also currently serves as the Chairperson of the Tulsa County Bar Association Young Lawyers Division.
- Brad Beasley currently serves as Chairman of The Summit League Basketball Championship (Men's and Women's Basketball Tournament) to be held at the UMAC March 8-11, 2008.



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The articles presented in Briefly are not complete discussions of all legal issues. Because recommendations will vary in every situation, please request a personal legal consultation.



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