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Bitcoin: Virtual Currency, Real Risk?

Just like the internet has cut out the middleman from retail transactions, Bitcoin promises something similar with finances—a currency that exists only online, without central banking authorities. Is that good or bad?

Mystery has surrounded the bitcoin digital currency from its start. Satoshi Nakamoto published an academic white paper in October 2008 describing digital currency and how it would work. He or she wrote the initial code under MIT open source and shortly thereafter left the project to other developers.

However, nobody knows for sure who Satoshi Nakamoto is. Anonymous sources recently “outed” Craig Steven Wright—a 45-year-old Australian computer scientist and inventor. The Econo-

mist magazine has interviewed Wright and concluded he may be Bitcoin's founder, but questions remain.

So What Exactly Is Bitcoin?

Bitcoin (upper case) is a specific digital currency technology, and a bitcoin (lower case) is a unit of that currency.

A person or business can use Bitcoin by downloading a mobile app or computer program that provides a digital wallet that allows a user to send and receive bitcoins.



You can buy or trade bitcoins, or earn them in a process called “mining.”

People called “miners” help verify transactions. These volun-

This Just In

The Employment Opportunity Commission can enter an employer's premises without a warrant or the employer's consent for investigations. So ruled a federal district court in Kentucky in *EEOC v. Nucor Steel Gallatin, Inc.* This ruling creates a precedent for other investigations.

The EEOC had requested an on-site visit to “interview witnesses, examine the facility, and obtain/request any additional information” for a discrimination case. A job applicant claimed Gallatin had rescinded a job offer after learning of his past history of disability. After some back and forth between the EEOC and Gallatin, Gallatin informed the EEOC it would not consent to an on-site visit “without a court order and/or valid warrant.”

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teers receive bundles of transactions to process. "The miners' computers perform complex calculations or 'proofs of work' that require billions of calculations per second..." Whichever miner completes the verification first earns bitcoins. (Source: *Befuddled by Bitcoin?* by Lloyd Takata and Joe Budzyn, Risk & Insurance, September 2, 2014.)

Validation of bitcoin transactions depend on a public ledger called a "block chain." According to Bitcoin.org, "This ledger contains every transaction ever processed, allowing a user's computer to verify the validity of each transaction." Further, "All transactions and bitcoins issued into existence can be transparently consulted in real-time by anyone....and [all] can be made without reliance on a third party and the whole system is protected by heavily peer-reviewed cryptographic algorithms like those used for on-line banking. No organization or individual can control Bitcoin, and the network remains secure even if not all of its users can be trusted."

What Are Bitcoin's Advantages?

Lloyd's of London says, "Bitcoin offers a low-cost, relatively fast means to transfer value anywhere in the world; the only real constraint is the availability of an internet connection. As such it offers a lower-cost alternative to established banking and money transfer systems, which require a bank account and/or the payment of fees."

In one of Bitcoin's most publicized advantages, it is relatively anonymous. Since there are no identifying card numbers, you can send payments without revealing your identity. Drug dealers and others have used Bitcoin to finance black market deals, but transactions do leave a digital trace that law enforcement could use.

What Should Businesses Know about Using Bitcoin?

Volatility: Value of all currencies vary over time. However, Bitcoin has greater volatility than many other currencies. For example, at time of press, the 30-day volatility of Bitcoin was 4.60 percent; major currencies have a volatility averaging between 0.5 and 1.0 percent. (Source: *The Bitcoin Volatility Index*) Companies that choose to hold onto their bitcoin payments rather than cashing them in can be subject to losses due to volatility.

Regulatory risks: Some countries have explicitly banned transactions using bitcoins; others consider bitcoin use a form of barter and regulate it accordingly.

Taxation: The IRS treats virtual currency as property for U.S. federal tax purposes. Among other things, this means that:

- ✱ Wages paid to employees using virtual currency are taxable to the employee, must be reported by an employer on a Form W-2, and are subject to federal income tax withholding and payroll taxes.
- ✱ Payments using virtual currency made to independent contractors and other service providers are taxable and self-employment tax rules generally apply. Normally, payers must issue Form 1099.
- ✱ The character of gain or loss from the sale or exchange of virtual currency depends on whether the virtual currency is a capital asset in the hands of the taxpayer.

Theft or loss: To steal bitcoins, a thief must access a cryptographic key to unlock a specific IP address to unlock the "wallet" where your

This Just In

EEOC brought suit against Gallatin. The court determined the EEOC must obtain pre-compliance judicial review before performing nonconsensual inspections of private commercial property. However, the approval need not always come in the form of an administrative warrant. Instead, the court's review process must provide a nonconsenting owner with safeguards roughly equivalent to those afforded under a traditional warrant procedure.

The moral? Before denying entry to the EEOC, consult an employment practices law attorney. Employment practices liability insurance can protect you from the costs of discrimination lawsuits. Please contact us for more information.

bitcoins are stored. Just like your online banking password, your key needs protection. Make sure to store it in a secure place and protect your computers from viruses and hackers.

Insurance: Most commercial property policies put very low sublimits or exclude coverage for cash and currency altogether. Some bitcoin exchanges and storage services insure their customers' deposits. Check documentation provided by your service, and also request details on the scope and security of the coverage. You'll want to know which insurer underwrites the coverage and how to file a claim.

Using or accepting bitcoins is a calculated risk at this point. Please call us for information on mitigating the risk of bitcoin and other types of transactions. ■

Have You Covered Your Most Important Asset?

So-called "time element" coverages protect your business's most important possession.



If someone asked you what your business's most important asset was, what would you say? Your client list? Your inventory? Your patents or trademarks? What about your income? Without it, no business can survive for long. But many businesses fail to adequately insure their income.

Business income insurance (also known as business interruption insurance) can provide the cash you need to survive when your business loses income due to an insured loss at an insured location. While you make repairs or recover, business income insurance can cover your payroll, continued operating expenses (such as rent), and lost net profits from the time your business shuts down until physical restoration of the property. Your business does NOT have to be profitable for coverage to apply.

Note the key phrases "insured loss" and "insured location" above. Business income coverage triggers when you have a loss covered by your business property policy. Keep in mind that your business property policy covers only losses due to "direct damage." If you lose income due to damage at another location, such as a key supplier, coverage would not apply. "Contingent locations" coverage can provide the coverage you need when property loss at a location other than your own, but that is critical to your operations, forces a shutdown.

The "Time Element" in Time Element Coverage

Business income policies usually have a 72-hour waiting period, meaning they will not pay for income lost in the first 72 hours after direct

property damage. You can buy additional coverage to reduce or eliminate the waiting period. Your "period of restoration," or time the policy allows for rebuilding, begins after the waiting period. The policy covers your income lost during this time, usually 30 days. However, you can buy additional coverage to extend your period of restoration for up to 360 days.

Extra Expense Coverage

Extra expense coverage can pay other costs you incur to stay in business and reduce business interruption losses. Extra expense coverage triggers immediately and requires no coinsurance. It can pay for restoration of damaged data files, guard services at a vulnerable location, temporary or overtime workers, cleaning, renting temporary space, and other expenses you incur as you revive operations after a catastrophe.

Unlike business income coverage, extra expense coverage has no waiting period. Your coverage begins immediately after the insured damage occurs. If your policy includes extra expense coverage, limits are included in the business income limit shown on your policy declaration page and do not increase that limit.

Most business income policy forms have a coinsurance provision. This requires the insured to buy insurance equaling net income and all operating expenses for a 12-month period, times the coinsurance percentage the insured selects. Coinsurance percentages range from 50

to 125 percent; the higher coinsurance percentage you select, the higher the premium credit your insurer will give.

Coinsurance percentages also affect how much your policy will pay at claim time. If you fail to maintain enough coverage, the insurer will pro-rate any claim payments, using the ratio of the insurance limit to the loss. Let's say your business property is worth \$1 million and has an insured property damage loss and no income at all during the period of recovery, losing a total of \$250,000 in income over three months. If you have \$750,000 in coverage, your policy would pay a maximum of 75 percent of your loss, or \$187,500, since you should have had at least \$1 million in coverage (\$83,334 in income per month times 12 months).

Insurers will waive the coinsurance penalty if your policy has an "agreed value" provision and you submit a business income worksheet to your insurer each year. In this case, your policy limit will be the agreed value, with no deduction for a coinsurance penalty.

Some business owner policies (BOPs) include business income coverage. However, time element coverages are one of the most complex types of property insurance and the "one size fits all" approach might not meet your needs. An experienced agent can help you estimate how much coverage you need and recommend additional coverages tailored to meet your specific circumstances. For more information, please contact us. ■

Transgender Employees: The Latest Discrimination Frontier

With the rights of same-sex couples to marry protected by federal law, transgender rights have become the latest frontier in nondiscrimination law. What laws pertain to transgender employees in the workplace, and what happens to employers that violate them?

The Transgender Law Center estimates that between 2 and 5 percent of the population is transgender, although little verifiable data exist. Title VII of the Civil Rights Act of 1964, the major federal employment discrimination law, prohibits employment discrimination based on race, color, religion, sex and national origin. Although the law doesn't specifically address sexual orientation or gender identity, the Equal Employment Opportunity Commission (EEOC) has held that these forms of discrimination are discrimination based on sex and therefore prohibited under Title VII.

Title VII applies to private employers with 15 or more employees. It also applies to all federal, state and local government agencies in their capacity as employers. Several states also have laws that specifically protect the rights of transgender individuals: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia, according to the ACLU.

The EEOC defines "transgender" as "...people whose gender identity and/or expression is different from the sex assigned to them at birth (e.g. the sex listed on an original birth certificate). The term transgender woman typically is used to refer



to someone who was assigned the male sex at birth but who identifies as a female. Likewise, the term transgender man typically is used to refer to someone who was assigned the female sex at birth but who identifies as male. A person does not need to undergo any medical procedure to be considered a transgender man or a transgender woman.”

To ensure your employment practices don't discriminate against lesbian, bisexual, gay or transgender employees, check the following areas:

Hiring practices: Unless gender is a legitimate qualification for a job (i.e., female or male model), avoid all references to a specific gender in ads, job descriptions and employee handbooks.

Dress codes: Dress codes that place an undue burden on one sex or gender (i.e., requiring women to wear heels or makeup, while not imposing similar standards on men) create a disparate impact. Disparate impact on the basis of sex or gender identity constitutes employment discrimination.

Restrooms: With laws over who can and cannot use restrooms in public schools in the news lately, employers should look at how they provide (or limit) access to restrooms and locker rooms in their own facilities. The case *Lusardi v. Dep't of the Army* involved a dispute over a transgender woman's access to a common restroom. On appeal, the EEOC held that:

- ✱ denying an employee equal access to a common restroom corresponding to the employee's gender identity is sex discrimination;
- ✱ an employer cannot condition this right on the employee undergoing or providing proof of surgery or any other medical procedure; and,
- ✱ an employer cannot avoid the requirement to provide equal access to a common restroom by restricting a transgender employee to a single-user restroom instead (though the employer can make a single-user restroom available to all employees who might choose to use it).

Benefits: Employment practices include the provision of benefits. To avoid discrimination, check the following:

- ✱ If you offer benefits to spouses, make sure the language in your benefit communications is non-discriminatory and applies equally to same-sex and opposite-sex spouses.
- ✱ Ensure your health plan does not discriminate in coverage on the basis

of sex or gender. In May, the U.S. Health and Human Services Department issued a final rule banning discrimination against transgender people in the healthcare system. A recently filed lawsuit, *Josef Robinson v. Dignity Health dba Chandler Regional Medical Center*, could rely on that rule. Robinson, a transgender male, claimed Dignity Health discriminated against transgender employees because its health plan does not cover medical treatments for sex reassignment surgery. As a result, Mr. Robinson had to pay thousands of dollars out-of-pocket for hormone therapy and a double mastectomy to treat his “gender dysmorphia.” Mental health professionals recognize this as a psychological condition caused by having a birth gender that is contrary to the one they identify with. The DSM-5, the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* that's the “bible” of mental health professionals, lists treatment options for gender dysmorphia as “counseling, cross-sex hormones, gender reassignment surgery, and social and legal transition to the desired gender.”

Employers found guilty of discrimination may have to pay the victim's legal fees. They might also have to pay compensatory and punitive damages in cases of intentional discrimination. Compensatory damages pay victims for out-of-pocket expenses caused by the discrimination (such as costs of a job search or medical expenses) and emotional harm suffered. Punitive damages punish an employer who has committed an especially malicious or reckless act of discrimination.

Maximum fines vary by employer size:

- 15-100 employees, up to \$50,000,
- 101-200 employees, up to \$100,000,
- 201-500 employees, up to \$200,000,
- More than 500 employees, up to \$300,000.

When in doubt whether a particular practice is discriminatory, contact an employment law attorney.

And make sure you have adequate coverage under an employment practices liability policy, since the commercial liability policy excludes coverage for employment practices. ■

Use Your Disaster Recovery Plan to Estimate Coverage Needs

How much business income and extra expense coverage do you need? Your disaster recovery plan can help you develop income-loss scenarios and analyze property exposures.

Take into account all possible sources of loss to your business, including losses that could result if an interdependent facility were destroyed — for example, destruction of your warehouse.

If your business depends on suppliers or key customers, you can purchase “dependent location” business income coverage on them. As with other business income coverages, policies will pay only if the income loss results from a covered cause of loss.

Don’t underestimate the time it may take to get back on line, or the impact of losing a key supplier or customer due to a disaster on their own premises. Determine whether stockpiling materials or supplies could reduce your exposure to a contingent loss.

How long could your business operate without power, telephone, cable, water and other utilities? Virtually all property policies exclude coverage for utility service failures that occur off your premises or from transmission lines. You can buy a policy endorsement to add coverage for business income lost due to a utility service interruption at a utility service property named in the endorsement. Coverage will apply to service interruptions caused by a covered peril.

Just like your property policy will not cover increased cost of construction to meet updated building codes, business income coverage will not cover any income lost due to the increased period of restoration required to rebuild to current codes. You can fill this coverage gap by adding an “ordinance or law” endorsement, which extends your period of restoration.

For more information on business income and extra expense insurance, please see the article on P. 2. ■

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