EMPLOYMENT LAWSCENE ALERT: DOL UPDATES GUIDANCE ON FFCRA COMPLIANCE

O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

On Monday, March 30, 2020, the U.S. Department of Labor (DOL) issued further guidance for employers on the Families First Coronavirus Recovery Act (FFCRA). You can find the updated DOL guidance here.

For private sector employers, the updated DOL guidance does the following:

1. Updates Q #8 clarifying the regular rate calculation when it includes commissions, tips, or piece rates;
2. Updates Q #15 regarding what records employers need to keep when an employee takes paid leave;
3. Updates Q #16 regarding what information an employee must provide his or her employer when taking paid leave;
4. Adds Q #38 describing which employees are eligible for paid sick leave and expanded family and medical leave;
5. Adds Q #39 clarifying who is a "covered employer" that must provide paid leave;
6. Adds Q #40 clarifying who is a son or daughter;
7. Adds Q #41 and #42 explaining what employees should do if their employer denies them paid leave;
8. Adds Q #43 describing an employee's right to restoration to their job position after taking paid leave;
9. Adds Q #44 describing the amount of leave an eligible employee is entitled to within a 12-month period under the Family and Medical Leave Expansion Act (FMLEA);
10. Adds Q #45 explaining how much leave an employee can take under the FMLA over the next 12 months after taking leave under the FMLEA;
11. Adds Q #46 answering whether paid sick leave counts against other types of paid sick leave;
12. Adds Q #47 answering whether an employee can use paid sick leave and expanded family and medical leave together for any COVID-19 related reasons;
13. Adds Q#48 defining who is a full-time employee under the Emergency Paid Sick Leave Act;
14. Adds Q#49 defining who is a part-time employee under the Emergency Paid Sick Leave Act;
15. Adds Q #50 answering whether the definition of a covered employed under the FMLA applies to defining a covered employer under the FMLEA;
16. Adds Q #51 answering whether employees in a waiting period for health insurance coverage will have effective coverage if the waiting period expires while the employee

is on paid leave;
17. Adds Q #52-54 providing additional guidance to public sector employers;
18. Adds Q #55 defining who is a “health care provider” for purposes of providing advice for an individual to self-quarantine;
19. Adds Q #56 defining who is a “health care provider” as to who may be excluded by their employer from paid sick leave or expanded family and medical leave;
20. Adds Q #57 defining who is an emergency responder;
21. Adds Q #58 answering when the small business exemption applies to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and FMLEA; and
22. Adds Q #59 answering when a small employer is exempt from the requirements to provide paid sick leave or expanded family and medical leave.

We will continue to provide you with updates from the U.S. Department of Labor regarding FFCRA compliance as they are released.

PRACTICAL CONSIDERATIONS IN LIGHT OF EVICTION AND FORECLOSURE STAY

O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

On Friday afternoon, Governor Tony Evers and Secretary-designee Andrea Palm issued Emergency Order #15, a Temporary Ban on Evictions and Foreclosures. The Order generally prevents the commencement and continuation of eviction and foreclosure proceedings statewide for a period of 60 days commencing March 27, 2020. The Order raises some practical considerations for landlords and tenants alike.[1]

The Order contains several provisions that alter the traditional landlord-tenant relationship. Principally, landlords are prohibited from initiating measures to remove tenants from the leased premises. Landlords may not issue notices terminating tenancy, commence civil actions for eviction, or deliver writs of restitution to the sheriff. A narrow exception to this general bar applies. The bar does not prevent landlords from taking legal action based on non-monetary defaults if the basis for the termination of tenancy is that a failure to do so “will result in an eminent threat of serious physical harm to another person.” In that event, any notice served, action commenced, or writ delivered by a landlord must be accompanied by an affidavit from an individual with personal knowledge detailing the reasonable belief of eminent threat of serious physical harm that would result if action is not taken.

Importantly, the Order does not work to authorize a period of holdover for a tenant, nor does the Order relieve a tenant from any of its obligations under a lease, including a tenant's responsibility to pay rent.

While the Order works to prevent a near-term spike in eviction proceedings resulting from the economic effects of COVID-19, landlords' eviction-based remedies will be restored eventually. This underscores the importance, for both landlords and tenants, of finding practical solutions to potential rental problems.

One of the first things that landlords and tenants should consider is whether there is business interruption insurance available to cover rental payments. Business interruption coverage can be triggered by unforeseen events that cause business losses. Each policy is unique and should be carefully examined by a qualified professional to determine whether a claim can be made.

If business interruption coverage is not available, landlords and tenants will need to make alternative payment arrangements until each tenant's business stabilizes. The parties may wish to amend their leases so that payment for less than the current rental rate does not constitute an event of default. Repayment of the rental arrearage should also be specified so that parties have a clear understanding of the new terms of the lease. Because most leases contain a clause that requires any modifications of the lease to be in writing, parties to a lease should be careful to properly document all of their modifications in a lease amendment that satisfies the Statute of Frauds, Section 706.02, Wis. Stats.

Whether you are a landlord or a tenant experiencing lease issues as a result of the economic effects of COVID-19, our experienced legal team at O'Neil, Cannon, Hollman, DeJong & Laing S.C. can answer your lease questions and protect your interests.

[1] This article focuses on leasehold interests, but the Order also has practical implications for mortgagees and mortgagors. Mortgagees are prevented from commencing foreclosure actions and scheduling sheriff's sales, and sheriffs are prevented from conducting sheriff's sales and acting on writs of assistance. The only exception to this general bar is for abandoned property pursuant to Section 846.102, Wis. Stats. Mortgagees and mortgagors should consider how their remedies and statutory timelines may be affected by the Order.

TAX & WEALTH ADVISOR ALERT: BUSINESS TAX PROVISIONS IN CARES ACT

O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). This article summarizes the tax relief provisions for businesses other than the payroll tax relief provisions that are contained in the Act.

Modifications to Net Operating Losses (NOLs)

The use of NOLs for businesses will be expanded with two amendments to Internal Revenue Code (IRC) Section 172(a). One amendment repeals the taxable income limitation for NOLs and the other modifies the rules relating to NOL carrybacks.

Taxable Income Limitation

Old Law: IRC Section 172(a) provides that the amount of the NOL deduction is equal to the lesser of: (1) the aggregate of NOL carryovers to such year and NOL carrybacks to such year, or (2) 80% of taxable income computed without regard to the deduction allowable in this section. As a result, NOLs are currently subject to a taxable-income limitation and they cannot fully offset income.

New Law: The CARES Act temporarily removes the 80% taxable-income limitation to allow an NOL to fully offset income. This temporary provision applies to NOLs incurred in the 2018, 2019, or 2020 tax years.

Carrybacks

Old Law: Code Sec. 172(b)(1) provides that, except for farming losses and losses of property and casualty insurance companies, an NOL for any tax year is carried forward to each tax year following the tax year of the loss, but it cannot be carried back to any tax year preceding the tax year of the loss.

New Law: The CARES Act provides that NOLs from tax years after Dec. 31, 2018 and before Jan. 1, 2020 can be carried back to offset prior year income for 5 years.

Modification of Limitation on Losses for Taxpayers Other than Corporations

Old Law: In general, IRC Section 461 limits excess business losses on all noncorporate taxpayers—e.g., passthroughs and sole proprietors —to $250,000 ($500,000 married filing jointly). This limitation is effective for taxable years beginning after December 31, 2017and before January 1, 2026.

New Law: The CARES Act temporarily removes this loss limitation for noncorporate taxpayers so they can deduct excess business losses arising in 2018, 2019, and 2020. The CARES Act also allows the carryover of losses into subsequent taxable years.

Credit for Corporate Prior Year AMT Accelerated

Old Law: The Tax Cuts and Jobs Act of 2017 (TCJA) repealed the alternative minimum TAX (AMT) for corporations but provided that any corporation that paid AMT is eligible for an AMT credit under Section 53(b). The AMT credit can be applied against regular tax liability in later years, subject to certain reductions. Section 53(e) provides corporations with a refund for corporate AMT credits not used to reduce regular tax liability. For tax years beginning in 2018, 2019, and 2020, to the extent that AMT credit carryovers exceed regular tax liability, 50% of such excess AMT credit carryovers will be refundable.

New Law: With the CARES Act changes, corporations with AMT credits will be able to claim a refund for 100% of the credit in 2019.

Modifications of Limitations on Business Interest

Old Law: The TCJA modified IRC Section 163(j) to generally limit the amount of business interest allowed as a deduction to 30% of adjusted taxable income.

New Law: The CARES Act will allow taxpayers to deduct more interest expense by temporarily increasing the limitation on the deductibility of interest expenses from 30% to 50% for tax years 2019 and 2020. However, under a special rule for partnerships, the increase in the limitation will not apply to partners in partnerships for 2019 (it applies only in 2020).

Technical Correction for Bonus Depreciation for Qualified Improvement Property

Old Law: The TCJA amended IRC Section 168 to allow 100% additional first-year depreciation deductions (“100% Bonus Depreciation”) for certain qualified property. However, in the final draft there was a technical error that made property called qualified improvement property (“QI Property”) ineligible for 100% Bonus Depreciation.

New Law: The CARES Act provides a correction to this technical error under the TCJA, thereby making QI Property eligible for 100% Bonus Depreciation. This will allow taxpayers that make or have made improvements to their facilities to deduct those costs immediately

rather than depreciating those costs over a period of 39 years. The correction is effective as of the enactment of TCJA, (i.e. for property placed in service after Dec. 31, 2017) so taxpayers can amend returns for costs that were previously depreciated.

Modifications of Limitations on Charitable Contributions

Old Law: Under IRC Section 170(b)(2)(A), a corporation's charitable deduction cannot exceed 10% of its taxable income. Any excess is carried over for a period of 5 years.

New Law: Starting with the 2020 tax year, the CARES Act will increase the taxable income limitation from 10% to 25% allowing corporations to deduct more of their charitable contributions.

O'Neil, Cannon, Hollman, DeJong & Laing remains open and ready to help you. For questions or further information relating to the CARES Act, please speak to your regular OCHDL contact or attorney Britany E. Morrison.

CARES ACT PROVIDES FORGIVABLE LOANS TO SMALL BUSINESSES

O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

The CARES Act allows small businesses to receive forgivable loans of up to $10,000,000 to be used for payroll, rent, health benefits, retirement benefits, utilities and other expenses. This article summarizes the key provisions relating to the forgivable loan program, including the eligibility, use, and forgiveness requirements.

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic.

Eligible Borrowers

The CARES Act loan program covers any business, nonprofit organization, veterans' organization, or Tribal business that employs 500 or fewer employees. Some employers with more than 500 employees may also be eligible if they meet certain criteria.

Loans under this program do not require collateral or personal guarantees.

Loan Maximum and Permissible Uses

The CARES Act provides for:

- A maximum loan amount of $10,000,000.
- The loan amount is the *lesser of*:
- 2.5 times the average total monthly payroll costs incurred over the past year (excluding any compensation over $100,000 for each employee who makes more than that amount on an annualized basis), or for seasonal employers, the average monthly payroll costs for the 12 weeks beginning on February 15, 2019, or from March 1, 2019 to June 30, 2019;

plus the outstanding amount of any loan made under the Small Business Administration's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program;

OR

- For businesses that were not in existence during the period from February 15, 2019 to June 30, 2019:

2.5 times the average total monthly payroll payments from January 1, 2020 to February 29, 2020 (excluding any compensation over $100,000 for each employee who makes more than that amount on an annualized basis);

plus the outstanding amount of any loan made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program;

OR

    - $10,000,000.
    - Small businesses may, in addition to uses already allowed under the SBA's Business Loan Program, use the loans for:
    - Payroll costs;
        - **Including**: Compensation to employees, such as salary, wages, and commissions; paid leave, such as vacation, parental, family, medical, or sick leave; severance payments; payment for group health benefits, including insurance premiums; retirement benefits; state and local payroll taxes; and compensation to sole proprietors or independent contractors (including commission-based compensation) up to $100,000 in one year, prorated for the period between February 15, 2020 and June 30, 2020;[1]
        - **Excluding**: Individual employee compensation above $100,000 per year, prorated for the covered period; certain federal taxes; compensation to

employees whose principal place of residence is outside of the U.S.; and sick and family leave wages for which credit is allowed under the Families First Act;
    - Rent and lease agreement payments;
    - Utilities; and
    - Interest on any debt obligations incurred before February 15, 2020.

Loan Forgiveness

Loans made under the program may qualify for the CARES Act's broad loan forgiveness provisions. Indebtedness is forgiven (and excluded from gross income) in an amount (not to exceed the principal amount of the loan) equal to the following costs incurred and payments made during the eight-week period beginning on the date of the loan:

- Payroll costs, which include health insurance and retirement benefit payments;
- Interest payments on loans secured by a mortgage on real or personal property;
- Rent; and
- Utility payments.

The amount forgiven will be reduced based on (i) any employee terminations or (ii) reductions in salary or wages of any employee in excess of 25% during the eight-week period beginning on the date of the loan. Borrowers should be aware that detailed accounting and accurate recordkeeping will be critical during this period in order to take advantage of these loan forgiveness provisions.

If a loan is not forgiven, the loan's maturity date will extend up to 10 years from the date that the borrower applies to have the loan forgiven, and the maximum annual interest rate will be 4% per year. There will be no prepayment penalties.

Borrower's Application for a Loan

The loans will be available until June 30, 2020. An eligible borrower under the program applying for a loan must make a good-faith certification that:

- The loan is needed to continue operations during the coronavirus pandemic;
- The funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments;
- The applicant does not have any other application pending under this program for the same purpose; and
- From February 15, 2020 until December 31, 2020, the applicant has not received and will not receive duplicative amounts under this program.

The SBA is expected to provide further details on the application process in the next few

days.

Permission from Borrower's Current Lender

A borrower will likely need permission from any existing lender to obtain this loan because many loan agreements restrict a borrower's ability to incur additional indebtedness.

O'Neil, Cannon, Hollman, DeJong & Laing remains open and ready to help you. For questions or further information relating to the CARES Act, please speak to your regular OCHDL contact, or the author of this article, attorney Jason Scoby.

[1]Due to recent guidance from the SBA, uncertainty exists as to whether borrowers can include payments to independent contractors when calculating payroll costs on their Paycheck Protection Program applications.

TAX & WEALTH ADVISOR ALERT: IRC SECTION 139: HOW EMPLOYERS CAN MAKE TAX-FREE PAYMENTS TO EMPLOYEES FOR COVID-19 EXPENSES

O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

In response to the ongoing pandemic, on March 13, 2020, President Trump declared the coronavirus or COVID-19, a national disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This declaration put into play a little-known *existing* provision of the tax law –Section 139 of the Internal Revenue Code. Section 139 allows employers to assist employees during a federally declared disaster with "qualified disaster relief payments" that are tax-free to the employee and fully deductible to the employer.

Employers wishing to aid employees impacted by COVID-19 should consider taking advantage of the Section 139 disaster relief provision by familiarizing themselves with the Section 139 qualifications and adopting a Section 139 program to help their employees through these unprecedented times.

Background

Added to the Internal Revenue Code after the attacks on September 11, 2001, Section 139 allows employers to make tax-free "qualified disaster relief payments" to help employees in the wake of a qualified disaster. Section 139 is important because typically, under Section 102 of the Internal Revenue Code, any payment from an employer to an employee, even a "gift", is taxed to the employee as compensation. Section 139, however, provides that any amount received as a "qualified disaster relief payment" cannot be taxed to the employee as income. These payments are not subject to any federal withholding obligations and do not need to be reported on a Form W-2 or 1099. Significantly, any amounts paid as a "qualified disaster relief payment" are also deductible by the employer. In addition, in most cases, the exclusion will also apply for state income tax purposes.

A "qualified disaster relief payment" under Section 139 includes payments by an employer, not compensated for by insurance or otherwise, paid to or for the benefit for its employees to:

- reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster; and
- reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.

COVID-19 "Reasonable and Necessary Expenses"

Section 139 has been utilized in the past for other Stafford Act disasters, and it was clear that during a natural disaster, like Hurricane Katrina, employer expenses paid to employees related to property repair and replacement, temporary housing, and food would be covered. However, the situation with COVID-19 is unique in that Section 139 has yet to be invoked for a disease pandemic. The IRS has not issued any guidance specific to COVID-19 and thus it is not entirely clear what types of expenses during this time will be considered "qualified disaster relief payments."

Nevertheless, legislative history and a reasonable interpretation of the statutory text provides that the following payments or reimbursements from employer to employee should qualify under Section 139 provided the expenses are reasonable and necessary, relate to the COVID-19 pandemic, and are not otherwise compensated by insurance:

- Medical expenses of the employee not covered by insurance or otherwise (i.e. copays incurred for COVID-19 treatment);
- Health-related expenses other than medical expenses (i.e. over-the-counter medications used to treat COVID-19);
- Dependent care expenses, such as child care or tutoring expenses for an employee's

dependent due to school closures; remote learning or home schooling expenses, such as home internet, computer for use by a dependent, educational materials, subscriptions to online educational resources, etc.;
- Expenses associated with working from home, including home office set-up costs, computer, internet, printer, and cell phone costs, and even increased utility costs on account of the home office;
- Transportation expenses due to work relocation including costs associated with taking a taxi or ride-sharing app service from home due to mass public transport closures;
- Critical care and funeral expenses of an employee or a member of the employee's family, who dies from a COVID-19 infection; and
- Other living expenses due to an employee's know exposure to COVID-19 such as hand sanitizers and home disinfectant supplies.

"Qualified disaster relief payments" do not include nonessential, luxury, or decorative items or services. Additionally, Section 139 does NOT cover payments that are wage replacement payments such as sick pay, family medical leave pay, or any other type of salary or leave pay). As such, wage replacement payments will still be taxable wages and will remain subject to income and payroll tax withholding and reporting.

Section 139 does not impose limits on the amount of "qualified disaster relief payments" that employers can make to employees (either individually or in the aggregate). Moreover, Section 139 does not require that employees reach a certain period of employment in order to receive tax-free payments.

Employer Considerations

Section 139 does not require an employer to have a written policy or program for "qualified disaster relief payments", however, employers who wish to make "qualified disaster relief payments" due to COVID-19 should consider having one as a best practice. In addition, adopting a Section 139 written policy or program allows employees to be informed of the availability and parameters of such a program.

Any policy or program adopted by an employer in response to Section 139 should clearly document the features of the program, including the following:

- a description of who is an eligible employee;
- a listing of expenses that that will be subject to reimbursement or payment;
- a per-employee allowance for reasonable expenses (optional);
- the method for reimbursement/payment (i.e. whether an application is necessary); and
- the start and end date of the program.

Interestingly, Section 139 does not require employers to collect receipts or other proof of expenses incurred by employees. Nevertheless, employers should consider doing so to control costs and to avoid fraudulent claims from employees, even though implementing such aspect of the program may also lead to an increased administrative burden.

Conclusion

In this current environment, employers may wish to aid their employees affected by the COVID-19 pandemic. However, it is imperative that employers recognize that payments meant to aid employees during the COVID-19 pandemic could actually create an additional financial burden on their employees. Therefore, employers contemplating assisting their employees with payments during this time need to review the qualifications for Section 139 "qualified disaster relief payments" and consider adopting a Section 139 program. This little-known *existing* tax provision just might be the best way for employers to assist their employees during these uncertain times.

O'Neil, Cannon, Hollman, DeJong & Laing remains open during this time and is here to help. We encourage you to reach out with any questions, concerns, or legal issues you may have, including those related to COVID-19 or the drafting of a COVID-19 Section 139 expense plan.

EMPLOYMENT LAWSCENE ALERT: SAFER AT HOME FAQS AND COVID-19 RESPONSE PLANS

As we blogged about here, the State of Wisconsin issued a statewide Safer at Home Order, which came into effect at 8:00 a.m. on March 25, 2020. Since then, Governor Evers has published Safer At Home FAQs regarding that Order. Some of the highlights are:

- Individuals do not need special permission or documentation to leave their homes, but they must comply with the Order regarding when they are allowed to leave their homes.
- Essential Businesses and Operations, as defined in the Order, do not need documentation or certification to continue work that is done in compliance with the Order.
- Essential Businesses and Operations that remain open must comply with social distancing requirements.
- Businesses that are not Essential Businesses and Operations under the Order can request to be designated as essential by the Wisconsin Economic Development Corporation ("WEDC") at their website.

Although not explicitly included in the Order or the FAQs, the WEDC encourages businesses to follow best practices related to the development of a COVID-19 response plan. The WEDC

recommends that each company develop a written plan, unique to the operations under its control, that documents the identification and mitigation measures taken, including all engineering controls, administrative controls, and safe work practices, and that the company updates that plan on a regular basis for the duration of the COVID-19 Situation. Potential inclusions in such plan include:

- Discontinuations of in-person meetings.
- Body temperature scans.
- Reduction of on-site hours or staggered shifts.
- Staggered use of shared spaces such as bathrooms, lunchrooms, and breakrooms.
- Mandatory work from home for all but essential employees.
- Sanitization processes implemented throughout the company's facilities.
- Banning international and domestic travel and policies for employees returning from such trips.
- Banning all visitors.
- Employee reporting of COVID-19 symptoms and contact with individuals diagnosed with COVID-19.

O'Neil, Cannon, Hollman, DeJong & Laing remains open during this time and is here to help. We encourage you to reach out with any questions, concerns, or legal issues you may have, including those related to coronavirus or the drafting of a COVID-19 response plan.

EMPLOYMENT LAWSCENE ALERT: DOL ANNOUNCES THAT THE PAID LEAVE PROVISIONS OF THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT ARE EFFECTIVE APRIL 1, 2020

O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

In providing general guidance to employers, the U.S. Department of Labor announced that the paid leave provisions of the Families First Coronavirus Response Act ("FFCRA") are effective on April 1, 2020, and not on April 2, 2020 as widely reported. The Family and Medical Leave Expansion Act ("FMLEA") and the Emergency Paid Sick Leave Act ("EPSLA") provide that the requirements to provide paid leave under the FFCRA "shall take effect **not**

later than 15 days after the date of enactment of this Act." President Trump signed the FFCRA on March 18, 2020—15 days from March 18th is April 2nd. Obviously, the DOL has interpreted these enabling provisions of the FMLEA and the EPSLA to provide it authority to make these laws effective before April 2, 2020. Because the DOL is responsible for enforcing the paid leave provisions of the FFCRA, all covered employers should provide paid leave benefits under the FFCRA starting **April 1, 2020** to all eligible employees entitled to such paid leave.

INSURANCE COVERAGE FOR BUSINESS SHUTDOWNS RELATED TO COVID-19

O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

Some business insurance policies may provide coverage for a "business interruption" resulting from recent government orders requiring the suspension of business operations. On March 24, 2020, Governor Tony Evers and the Wisconsin Department of Health Services issued Emergency Order #12, Safer At Home Order, a copy of which can be found here. The Order is effective March 25, 2020. As a result of this Order, many local businesses are being forced to suspend operations. Most property insurance policies contain "business interruption" coverage triggered by covered losses that cause property damage. For example, if a business is forced to shut down due to a fire, there is often coverage not only for the cost of repairing the fire damage, but also for lost business income. In some cases, these business insurance policies may also provide limited coverage for business shutdowns resulting from communicable diseases like coronavirus (COVID-19). The insurance policy language providing this coverage varies significantly between insurance policies. Our firm's experienced insurance coverage attorneys are available to review business insurance policies to determine whether there may be coverage for business shutdowns resulting from the recent government orders. To arrange for a review of your insurance policies, please contact Attorney Doug Dehler or Attorney Patrick McBride at O'Neil, Cannon, Hollman, DeJong & Laing S.C.

BE MINDFUL OF DEADLINES DURING COVID-19 OUTBREAK

O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

Some court hearings and deadlines have been pushed back in response to the COVID-19 outbreak—but court functions have not stopped, and even in these challenging times, businesses and individuals should be mindful of deadlines.

One of the most important deadlines for an individual or business who has been wrongfully harmed is the deadline to file a lawsuit or initiate an arbitration proceeding. If this deadline is missed, it could result in dismissal of the claims.

In Wisconsin, jury trials have been rescheduled and deadlines to file appellate briefs have been extended. Many state circuit courts and federal district courts have also issued orders regarding deadlines in those specific courts. However, Wisconsin courts have not extended all deadlines, and neither the courts nor the legislature has addressed the filing deadlines found in contracts and statutes of limitations.

Whether in a few weeks or a few months, the public health emergency will end. In the meantime, it is important to be proactive about deadlines to avoid the risk of having a potential claim barred.

Please contact Christa Wittenberg or any other member of the Litigation Practice Group with any questions. O'Neil, Cannon, Hollman, DeJong & Laing S.C. remains dedicated to serving its clients, even through these turbulent times.

EMPLOYMENT LAWSCENE ALERT: WISCONSIN AND CITY OF MILWAUKEE SAFER AT HOME ORDERS ISSUED – EFFECTIVE MARCH 25, 2020

O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

The State of Wisconsin has issued a statewide Safer at Home Order, which will become effective at 8:00 a.m. on March 25, 2020, and will remain in effect until 8:00 a.m. on Friday, April 24, 2020, or until a superseding order is issued. The full text of the Order can be found here.

The Order requires all businesses in Wisconsin, except businesses the Order defines to be Essential Businesses and Operations, to cease all activities except Minimum Basic Operations. Essential Businesses and Operations means Healthcare and Public Health Operations, Human Services Operations, Essential Infrastructure, and 26 other categories of businesses. Healthcare Operations, which include hospitals, dental offices, eye care centers, personal care agencies, massage therapists, chiropractors, and veterinary care, among other entities, are exempt from the Order, so those businesses may remain open. Essential Infrastructure may also remain open, including, but not limited to, food production, distribution, and sale; certain types of construction; building management and maintenance; airport operations; operation and maintenance of utilities; and internet, video, and telecommunication systems.

Some of the other businesses and industries that qualify as Essential Businesses and Operations include stores that sell groceries and medicine; food and beverage production, transport, and agriculture; organizations that provide charitable and social services; gas stations and businesses needed for transportation; financial institutions and services; hardware and supplies stores; critical trades, including, but not limited to, plumbers, electricians, carpenters, cleaning and janitorial staff for commercial government properties, security staff, HVAC, and moving companies; bars and restaurants for consumption off-premises; supplies to work from home; supplies for Essential Businesses and Operations; transportation; home-based care and services; professional services such as legal, accounting, insurance, and real estate services; child care, subject to the March 18, 2020, DHS limitations; and manufacturing, distribution, and supply chain for critical products and industries.

Essential Businesses and Operations are encouraged to remain open, and to the greatest extent possible, should comply with social distancing requirements, including maintaining a six-foot distance from others, and use technology to avoid meeting in person, including virtual meetings, teleconference, and remote work.

All public and private K-12 schools must close, except for facilitating distance learning and virtual learning. Public libraries are closed for all in-person services but may continue to provide online services and programming. Schools and public libraries may be used for Essential Government Functions and food distribution. Places of public amusement and activity, salons, and spas must also close.

Businesses that are not considered Essential Businesses and Operations must cease all

activities, with the exception of Minimum Basic Operations and remote work. Minimum Basic Operations are the minimum necessary activities to maintain the value of the business's inventory, ensure security, process payroll and employee benefits, or for related functions and the minimum necessary activities to facilitate employees of the business being able to continue to work remotely. All businesses, even those that are considered non-essential, are permitted to continue allowing individuals to work from home.

Additionally, all individuals in Wisconsin are ordered to stay at home or at their place of residence, with certain exceptions. People may leave their homes for Essential Activities, Essential Government Functions, Essential Business and Operations, Minimum Basic Operations, Essential Travel, and Special Situations. Essential Activities include health and safety (e.g., obtaining medical supplies or medication, visiting a healthcare professional); obtaining necessary supplies and services (e.g., obtaining or delivering services and supplies such as food and household consumer products); outdoor activity that complies with social distancing (e.g., walking, biking, hiking, running); working at Essential Business Operations and performing Minimum Basic Operations; and caring for others. Essential Travel includes all travel related to the provision of or access to Essential Activities, Special Situations, Essential Governmental Functions, Essential Business and Operations, or Minimum Basic Operations; travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons; travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, or any other related services; travel to return to a place of residence from outside of Wisconsin; travel required by law enforcement or court order, including transportation of children pursuant to a custody agreement; and travel required for nonresidents to return to their place of residence outside of Wisconsin. All other public and private gatherings of any number of people occurring outside a single household or living unit are prohibited.

The statewide Order is enforceable by local law enforcement, including county sheriffs, and violation and obstruction of the Order is punishable by up to 30 days of imprisonment, or a fine of up to $250, or both.

The City of Milwaukee has issued a city-wide "Stay-at-Home" order, which will become effective at 12:01 a.m. on March 25, 2020, and which is substantially similar to the statewide Safer at Home Order. The Milwaukee Order can be found here.

O'Neil, Cannon, Hollman, DeJong & Laing is considered an Essential Business under both the Wisconsin and City of Milwaukee orders and remains open during this time. We encourage you to reach out with any questions, concerns, or legal issues you may have, including those related to coronavirus.