EMPLOYMENT LAWSCENE ALERT: SUPREME COURT RULES THAT TITLE VII PROHIBITION ON SEX DISCRIMINATION PROTECTS GAY AND TRANSGENDER EMPLOYEES

Today, June 15, 2020, the United States Supreme Court issued a landmark ruling holding that an employer who fires an individual based on his or her sexual orientation or transgender status violates Title VII's prohibition against discrimination "because of . . . sex." In a 6-3 decision, the majority found that "[s]ex plays a necessary and undisguisable role" in a decision to terminate an individual for being homosexual or transgender, which is "exactly what Title VII forbids." Although the Court recognized that "homosexuality and transgender status are distinct concepts from sex . . . discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second."

Title VII requires the Court to apply a but-for test, under which an employer violates the law if the employment decision is based in part on sex. Therefore, the Court concluded that if you change *only* the individual's sex and it results in a different outcome, that is a violation of Title VII. So, the fact that a man who is attracted to men is treated differently from a woman who is attracted to men means that sex is the but-for cause of the decision. Justice Gorsuch, who wrote the majority opinion, analogized this to an employer firing female employees who were Yankees fans but not male employees who were Yankees fans. Sex does not have to be the sole or even the primary cause of the adverse action. There may be two or more reasons for the termination, but if a different outcome would have been reached if the individual's sex was changed, sex is the but-for cause of the decision. Therefore, because "homosexuality and transgender status are inextricably bound up with sex," a decision based on homosexuality or transgender status takes sex into account in a way that is impermissible under Title VII. Additionally, the Supreme Court did not find it persuasive that homosexual men and homosexual women would be treated the same. Instead, the Court stated that the focus of Title VII is on the individual and how the individual is treated.

The Court found that this decision is in line with prior precedent finding that the following instances violated Title VII where, if the plaintiff had been a different sex, they would have been treated differently: a policy where women with young children were not hired when men with young children were; a policy where women were required to make larger pension fund contributions than men because of longer overall life expectancies; and an instance where a male employee was sexually harassed by male coworkers. In each of these situations, the Court found that there was a violation of Title VII because the result would have been different if the individual was a different sex.

Finally, the Court dismissed arguments that this interpretation was not what Congress intended. First, the Court reasoned that the term "sex" was broad and that, where there are no statutory exceptions to a broad rule, it is not the Court's role to write in such exceptions. Additionally, the Court stated that, while this *result* may not have been what the drafters of Title VII anticipated in 1964, the *meaning* of sex has not changed, and the Court is bound to the plain meaning of the words contained in the statute.

The Supreme Court's decision does not change business-as-usual for Wisconsin employers. In 2017, the Seventh Circuit ruled that sex discrimination under Title VII includes discrimination based on sexual orientation. In addition, the Wisconsin Fair Employment Act prohibits discrimination on the basis of both sex and sexual orientation, and since at least 2015, the EEOC has taken the policy stance that sexual orientation and transgender status were protected categories under Title VII. The U.S. Supreme Court's ruling serves as a reminder for employers to stay vigilant about enforcing their anti-discrimination and anti-harassment policies and practices for all individuals.

EMPLOYMENT LAWSCENE ALERT: CARES ACT PROVIDES EMPLOYERS A TEMPORARY WINDOW TO ASSIST EMPLOYEES BY MAKING TAX-FREE STUDENT LOAN PAYMENTS

For the period from March 27, 2020 through December 31, 2020, the CARES Act permits employers to pay directly, or to reimburse employees for, up to $5,250 of qualifying employee student loan payments.

Like many CARES Act provisions, this new opportunity results from an expansion of an existing law or program. In this case, the ability for an employer to assist employees with student loan payments arises from an amendment to Internal Revenue Code Section 127, which governs Educational Assistance Programs (EAPs). Qualifying payments made as a fringe benefit under an EAP are excluded from the employee's income and are deductible to the employer.

The $5,250 limit is the amount that employers are currently permitted to contribute, tax-free, for tuition assistance under an EAP. Through the end of this calendar year, it is also the combined limit for student loan repayment assistance and any other education-assistance payments that an employee may receive.

Essential business employers seeking ways to reward or retain employees during the pandemic should consider whether tax-free payment of student loan debts would meet payroll and employee-acknowledgment objectives. If your company currently sponsors an EAP, student loan payments may now be made under the current EAP document. Companies wishing to newly implement an EAP in order to take advantage of this tax-favored student loan repayment assistance opportunity can do so by properly adopting a written plan document satisfying IRS content requirements.

Existing Educational Assistance Program Requirements

The existing tax code EAP rules remain in effect. To qualify for tax (and payroll tax) exclusion under Internal Revenue Code Section 127, an EAP must:

- provide benefits exclusively to employees of the employer;
- provide only qualified educational assistance benefits (and only up to $5,250 per employee);
- be documented as a separate written program established by the employer and disclosed to employees;
- be funded solely by the employer;
- not allow employees a choice between educational assistance benefits and cash (or other taxable remuneration); and
- not discriminate in favor of highly compensated employees ($130,000 in 2020) or provide more than 5% of total benefits in any year to 5%-or-more owners.

Additional Detail

The student loan payments made under an EAP must relate to education of the employee, not of their child or spouse. Employer payments may made be for principal or interest, but employees are not permitted to deduct any interest payment made by employers. Where appropriate, employers making student loan payments under an EAP may, therefore, wish for such payments to be allocated only to principal so as to maximize the tax benefit to employees.

Employers interested in providing tax-free student loan payment assistance to employees should consider doing so, either by amending the operation of an existing, or by adopting a new, EAP. Employers who may already be providing post-tax student loan payment assistance to employees can now temporarily convert this form of compensation into a pre-tax benefit, which will permissibly reduce both employee income taxes and employer payroll tax expenses.

O’Neil Cannon 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 employee benefits and fringe benefits as impacted by COVID-19-related business changes or legislation.

EMPLOYMENT LAWSCENE ALERT: WHEN ARE MY EMPLOYEES ENTITLED TO LEAVE UNDER THE FFCRA BECAUSE THEIR CHILDREN ARE HOME FROM SCHOOL OR DAYCARE?

As we previously covered here, the Families First Coronavirus Response Act ("FFCRA") requires that, with certain exceptions, employers with 500 or fewer employees must provide employees with leave in certain circumstances pursuant to the Emergency Paid Sick Leave Act ("EPSLA") and Emergency Family and Medical Leave Expansion Act ("EFMLA"). Both the EPSLA and the EFMLA require leave if an individual is unable to work or telework because they need to care for their son or daughter under the age of 18 if the child's school or place of care has been closed or if the childcare provider of such child is unavailable due to reasons related to COVID-19.

The Department of Labor ("DOL") has issued some additional guidance regarding leave under the FFCRA. Included is guidance specific to the need for leave to care for a child whose school or place of care has been closed or whose childcare provider is unavailable, further clarifying that (i) such leave is not available if another suitable person is available who can care for a child; (ii) such leave is not available to the extent that an employee can telework while caring for the child; (iii) such leave may be taken intermittently if the employee and employer agree to do so; and (iv) such leave may be taken for a child over the age of 18 if he or she has a disability and cannot care for him or herself due to that disability. The DOL also stated that employers should keep the following records for leave to care for a child whose school or place of care is closed: (i) the employee's name; (ii) the date(s) for which leave is requested; (iii) the reason for leave; (iv) a statement from the employee that he is she is unable to work or telework because of this reason; (v) the name of the child being cared for; (vi) the name of the school, place of care, or childcare provider that has closed or become unavailable; and (vii) a statement from the employee that no other suitable person is available to care for the child. This documentation will be necessary for employers who provide FFCRA leave to receive reimbursement of the costs of that leave through tax credits from the Internal Revenue Service ("IRS"). The DOL also stated that employers should consult IRS forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to support the credit.

The guidance published by the IRS for a leave requested based on a school closing or childcare provider unavailability includes all of the DOL information and also requires that the employee provide the **age** of the child. Additionally, if an employee claims that they are

unable to work or telework because of a need to provide care for a child older than 14 during daylight hours, the employee must also provide a statement that special circumstances exist requiring the employee to provide care. Although there is no specific guidance regarding what is considered a "special circumstance," a reasonable interpretation would be that it requires some specific reason outside of typical circumstances, such as a disability or medical condition, that the child is not able to care for him or herself. If additional guidance becomes available, we will provide updates.

Employers must request accurate and complete documentation from employees requesting leave under the FFCRA. If that leave is to care for a child over the age of 14 because his or her school or place of childcare is closed, special circumstances must exist in order for the employer to grant such leave. If such leave is granted without proper documentation and appropriate special circumstances, the IRS will deny the employer tax credit for the amount paid for such leave.

O'Neil Cannon 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 leave under the FFCRA.

EMPLOYMENT LAWSCENE ALERT: WISCONSIN EXTENDS SAFER AT HOME ORDER

Today, April 16, 2020, the State of Wisconsin has extended the statewide Safer at Home Order through May 26, 2020, with some minor changes. The full text of the Extended Order can be found here and an updated FAQ can be found here. The changes to the Safer at Home Order implemented by the Extended Order will go into effect on April 24, 2020 and will remain in effect until May 26, 2020 or until a superseding order is issued. During today's press conference, the Governor's Chief Legal Counsel, Ryan Nilsestuen, stated that, although the Governor needs the legislature's permission to extend the public health emergency, the Extended Order is legally permitted under the Governor's statutory authority.

Under the Extended Order, some businesses will be allowed to increase their services, including:

- Public libraries may now provide curb-side pickup of books and other materials.
- Golf courses may open, although scheduling and payment must be done online or by phone, and clubhouses and pro shops must remain closed.
- The "Minimum Basic Operations" that Non-Essential Businesses are allowed to perform are expanded to include deliveries, mailings, and curb-side pickup. Non-Essential

Businesses must notify workers whether they are necessary for the Minimum Basic Operations.
- Arts and crafts stores may offer expanded curb-side pickup of materials necessary to make face masks and other personal protective equipment.
- Aesthetic or optional lawn care and construction is allowed as long as it can be done by one person.

The Extended Order also includes additional safety practices for Essential Businesses and Operations, including:

- Essential Businesses and Operations must increase cleaning and disinfection practices, ensure that only necessary workers are present, and adopt policies to prevent workers exposed to COVID-19 or symptomatic workers from coming to work.
- Retail stores that remain open as Essential Businesses and Operations must limit the number of people in the store at one time, must provide proper spacing for people waiting to enter, and large stores (i.e., those with more than 50,000 square feet) must offer at least two hours per week of dedicated shopping time for vulnerable populations.
- Essential Businesses and Operations that are essential because they supply, manufacture, or distribute goods and services to other Essential Businesses and Operations can only continue operations that are necessary to those businesses they supply. All other operations must continue only as Minimum Basic Operations.

Additionally, the governors of Illinois, Michigan, Ohio, Wisconsin, Minnesota, Indiana, and Kentucky announced today that they will "work in close coordination to reopen the economy in the Midwest region." These governors stated that they would consider four factors when determining when to reopen the economy: 1) sustained control of the rate of new infections and hospitalizations; 2) enhanced ability to test and trace; 3) sufficient health care capacity to handle resurgence; and 4) best practices for social distancing. The governors indicated that reopening may occur in phases and that, although they will be coordinating, each state may take a different approach.

O'Neil Cannon 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.

EMPLOYMENT LAWSCENE ALERT: DOL ISSUES FFCRA REGULATIONS ON PAID LEAVE

Yesterday, the Department of Labor ("DOL") published its temporary rules regarding Paid Leave under the Families First Coronavirus Response Act ("FFCRA"). The 124-page temporary

rule, which is immediately in effect, provided much of the same information we have already seen under the questions and answers DOL has been publishing, but also clarified some additional matters. The highlights:

- What is a "Federal, State, or local quarantine or isolation order"?
    - This *includes* "shelter in place" and "safer at home" orders. However, if such an order does not prevent the employee from attending work or if, because of such order, the employer is closed, the employee is not eligible for paid leave. So, if a business is considered "essential" under state orders and employees are allowed to travel to work, employees would not be entitled to paid leave due to such order under the FFCRA. Similarly, if employees are able to telework, a "shelter in place" or "safer at home" order would not prevent them from working remotely and would not entitle them to paid leave. Finally, employers that are completely closed due to such orders also would not have to provide employees with paid sick leave if there is no work for the employee to perform.
- What does it mean that an employee has been advised by a healthcare provider to self-quarantine?
    - This includes advice that the employee self-quarantine because he or she has coronavirus, may have coronavirus, or is particularly vulnerable to COVID-19. This may include employees who are older, pregnant, or suffer from particular medical conditions. However, employers should not make an assumption that any individual is unable to work based on their protected class (e.g., age, pregnancy, disability).
- What does ability to telework mean?
    - This requires that the employer have work for the employee to perform, that the employer permits the employee to perform that work remotely, and there are no extenuating circumstances that would prevent the employee from performing that work.
- Who is an "individual" that the employee can care for and receive sick leave?
    - An immediate family member, a roommate, or a similar person with whom the employee has a relationship that creates an expectation that the employee would care for the individual if he or she self-quarantined or was quarantined.
- What does caring for a son or daughter whose school or place of childcare is closed mean?
    - This leave is not available if another suitable person is available who can care for the child during the period of leave.
- Can an employee take intermittent leave under the FFCRA?
    - In all situations, the employer and the employee must agree to intermittent leave; it is not required. Additionally, in instances where an employee is working at the employer's facility (i.e., is not teleworking), intermittent leave can **only** be used to care for a child whose school or place of childcare is closed or whose childcare provider is unavailable due to COVID-19.
- Can employers require that employees use other paid leave while on EFMLA?
    - During the final 10 weeks of EFMLA, an employer may not require the substitution of paid leave. During these ten weeks, the sides may agree that available paid leave can supplement the 2/3 pay, such that the employee receives full pay.

However, during the first two weeks of EFMLA, an employer **may** require substitution of paid leave. Therefore, employers can require that, during the first two weeks of EFMLA, employees use their paid sick leave under the FFCRA **and** any available paid leave, such that use of the additional leave would bring employees to their full wages. Employers should remember, however, that the tax credit will only be paid for 2/3 of the employee's wages, up to $200 per day.

- What are the notice requirements under the EFMLA?
  - Employers are not required to respond to an employee's requests for EFMLA with the Notices of Rights and Eligibility and Designation Notices as they must with normal FMLA. However, employers should have an FFCRA request form that requests information and documentation regarding the request for leave. This will allow employers to provide such information to the IRS so that they can receive the tax credits under the FFCRA. Additionally, employers must retain this documentation for four years.

O'Neil, Cannon, Hollman, DeJong and 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 FFCRA policies or leave request forms.

EMPLOYMENT LAWSCENE ALERT: ROADMAP EMERGES FOR CLAIMING THREE TYPES OF EMPLOYER TAX CREDITS ALLOWED UNDER COVID-19 STIMULUS LAWS

Under a flurry of recent legislation, Congress has created several tax credits to reimburse employers for paying certain types of wages during the COVID-19 outbreak in 2020. Until now, the precise mechanism for claiming these tax credits has been unclear. With the March 30 IRS issuance of guidance and a draft version of Form 7200, however, the process by which employers may realize the tax relief is coming into view.

With respect to tax credits for the cost of: (1) emergency paid sick leave; (2) expanded family medical leave; and (3) employee retention payments, we now know that eligible employers can reduce the amount of employer payroll taxes otherwise required to be deposited with the IRS. Specified payroll taxes can be reduced dollar-for-dollar by the amount of credit-eligible wages paid. The reduction in employer payroll taxes will be reflected on the employer's quarterly payroll tax returns, using the appropriate form from the 941 series. To the extent that the amount of the available tax credit exceeds the total amount of payroll tax deposits,

however, an employer may use Form 7200, entitled “Advance Payment of Employer Credits Due to COVID-19,” to request expedited payment of the excess credit amount.

Emergency Paid Sick Leave and Expanded FMLA Leave

We have previously described the emergency paid sick leave and expanded family medical leave required to be provided to qualifying employees between April 1, 2020 and December 31, 2020. These expanded types of leave were implemented by the Families First Coronavirus Response Act (FFCRA), which also provided for employer tax credits to reimburse employers for 100% of the cost of corresponding wages paid.

Employee Retention Credit

The newer employee retention credit (described in more detail here) is available to eligible employers under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and is designed to encourage businesses to keep employees on their payrolls.

The amount of the refundable employee retention tax credit is 50% of up to $10,000 in wages paid, per employee, between March 12, 2020 and December 31, 2020 by an eligible employer whose business has been financially impacted by COVID-19. Some limits based upon employer size apply to the number of employees for whom the credit may be claimed. The class of employers eligible for the credit *excludes* state and local government employers, as well as employers who take small business loans under the Paycheck Protection Program.

For purposes of the employee retention credit, an eligible employer of any size (including a tax-exempt organization) will be deemed to have been financially impacted by COVID-19 if:

1. the employer’s business has been fully or partially suspended by government order due to COVID-19 during a 2020 calendar quarter; and
2. the employer’s gross receipts are below 50% of the comparable quarter in 2019. Once the employer’s gross receipts exceed 80% of a comparable quarter in 2019, then eligibility for the credit is extinguished as of the immediately following quarter.

Note that while an employer is permitted to receive tax credits for emergency paid sick leave and expanded family medical leave under the FFCRA, as well as for the CARES Act employee retention payments, these tax credits cannot be applied to the same wages.

EMPLOYMENT LAWSCENE ALERT: DOL UPDATES

GUIDANCE ON FFCRA COMPLIANCE

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.

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 and 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

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.

EMPLOYMENT LAWSCENE ALERT: WISCONSIN AND CITY OF MILWAUKEE SAFER AT HOME

ORDERS ISSUED – EFFECTIVE MARCH 25, 2020

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 and 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.