

# EMPLOYMENT LAWSCENE ALERT: PREGNANT AND NURSING EMPLOYEES HAVE NEWLY EXPANDED RIGHTS

On December 29, 2022, President Biden signed the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) and the Pregnant Workers Fairness Act (PWFA) into law. Both expand the protections for pregnant, postpartum, and nursing employees, who may also have protections under the Pregnancy Discrimination Act, the Americans with Disabilities Act, and the FMLA.

The PUMP Act expands the 2010 amendment to the FLSA that required employers to provide a nursing mother reasonable break time to express breast milk for up to one year after childbirth and to provide a place other than a bathroom for the employee to express breast milk, shielded from view and free from intrusion from coworkers and the public.

Although significant, the 2010 amendment only entitled non-exempt workers to protection because it only covered those workers who were entitled to overtime pay under the FLSA. The PUMP Act expands the protections of break time to nurse and a private place to pump to all exempt and non-exempt employees, which is estimated to cover an additional nearly nine million workers. In addition to expanded coverage, under the PUMP Act, employees have a private right of action to bring suit against employers that do not comply with the Act.

The PUMP Act applies to all employers covered under the FLSA; however, if an employer with fewer than fifty employees can demonstrate that compliance with the break time requirement would impose an undue hardship, the employer may be exempt. Undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, or structure of the employer's business.

The required break time for pumping under the PUMP Act does not have to be paid unless either (1) the employer provides compensated breaks for other employees during similar break times, (2) the employee is not completely relieved from duty during the break, or (3) the break is otherwise required by law to be paid. However, exempt employees may not have their salaries reduced due to breaks covered by the PUMP Act. The PUMP Act requires the pumping space to not necessarily be permanent but does require that the space be available "each time such employee has a need to express the milk." If an employer does not currently have any eligible employees, the employer does not have an obligation to provide a space, but employers should consider where they will make space if an employee becomes eligible. It is crucial that the space to express breast milk not be a bathroom.

The PWFA requires employers with fifteen or more employees to engage in an interactive process with pregnant and postpartum applicants and employees and to make reasonable accommodations for any limitations related to pregnancy, childbirth, or related medications, unless such accommodation would pose an undue hardship to the employer. Additionally, employers may not deny employment to, take adverse action against, or retaliate against applicants or employees who request a reasonable accommodation or engage in other protected activity under the PWFA. Much like the ADA, employers and employees must engage in an interactive process to determine what accommodations are necessary for the individual employee; employers cannot unilaterally decide what accommodations are appropriate.

Prior to the end of 2023, the EEOC will issue final regulations related to PWFA. The EEOC has already provided examples of potential accommodations that may be appropriate under the PWFA, including longer and more flexible breaks to eat, drink, and use the restroom; schedule flexibility, including to deal with morning sickness; exemption from strenuous activities; leave for medical appointments and to recover from childbirth; and closer parking. On June 27, 2023, the EEOC began accepting complaints under the PWFA, which also has a private right of action.

In addition to becoming familiar with the new requirements under the PUMP Act and PWFA, employers should review their policies in order to make sure that they comply with the expanded requirements of the laws. As always, O'Neil Cannon is here for you. We encourage you to reach out with any questions, concerns, or legal issues you may have.

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## **TAX AND WEALTH ADVISOR ALERT-SECTION 1202 STOCK: AN ATTRACTIVE TAX BENEFIT FOR INVESTORS IN SMALL BUSINESSES**

Investors in small closely held businesses looking for ways to reduce their tax liability might want to consider taking advantage of Section 1202 stock, also known as Qualified Small Business Stock. Section 1202 of the Internal Revenue Code offers a tax break for individuals who invest in certain qualified small businesses.

So, what exactly is Section 1202 stock? In simple terms, it refers to shares of stock issued by qualified small businesses that meet specific criteria outlined in the tax code. The main advantage for investors holding these stocks lies in the potential exclusion of a portion of their capital gains from taxation upon the future sale of these stocks.

Under Section 1202, eligible investors can potentially exclude up to 100% of their capital gains from the sale of qualified small business stock held for more than five years. However, it is important to note that the tax benefits provided by Section 1202 are subject to certain limitations and restrictions. For instance, the exclusion of capital gains is limited to the greater of \$10 million (\$5 million for married taxpayers filing separately) or ten times the investor's basis in the stock. Also, the exclusion only applies to investments made after August 10, 1993. Despite these limitations, Section 1202 stock can result in substantial tax savings and provide a significant incentive for individuals looking to invest in startups or small businesses.

To qualify for these tax benefits, the small business must meet certain requirements. First, the company should be a domestic C corporation. Additionally, the business must have total gross assets of \$50 million or less at the time the stock is issued.

Another crucial condition is that the company must be engaged in an active trade or business. The Section 1202 exclusion does not apply to any business primarily providing professional services such as health, law, engineering, architecture, accounting, actuarial science, performing arts, athletics, banking, insurance, financing, leasing, and investing fields, any business operating a hotel, motel, or restaurant, or any business that is primarily holding assets for investment. However, there are exceptions for certain technology-focused businesses that meet specific criteria.

Notwithstanding these limitations, Section 1202 stock remains an attractive tax benefit for investors in small businesses. Investors should plan carefully to determine whether their investment qualifies for the Section 1202 exclusion, and to understand the specific requirements and limitations of this tax benefit. As with any tax-related matter, it is crucial to consult with a qualified tax attorney before making investment decisions. A tax attorney can help navigate the complexities of Section 1202 and ensure compliance with all applicable regulations.

Overall, Section 1202 stock can offer a significant tax break for small business owners and investors. By taking advantage of this provision, investors can potentially reduce their tax liability and support the growth of small businesses.

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**EX-ATTORNEY CONVICTED OF STEALING MORE THAN \$800,000 FROM ELDERLY VICTIM WITH**

# DEMENTIA

The United States Attorney's Office from the Southern District of Ohio recently issued a press release that highlights how elderly individuals suffering from dementia may be vulnerable to financial abuse. The press release can be found [here](#).

As the release explains, the attorney defrauded his client—an elderly woman in her 80s—over the course of seven years, between 2012 and 2019. The attorney's law license was revoked in 2015. The attorney stole the funds using a myriad of methods, including utilizing his role as the victim's power of attorney and status as a lawyer to transfer money to himself, to force the victim's signature on a revocation of a family member's separate power of attorney, and to cash out the victim's U.S. Treasury Bonds and life insurance policies. The attorney was sentenced to five years in prison and ordered to pay \$882,502 in restitution.

This tragic story underscores the difficulties in flagging and investigating alleged financial abuse when the victim is not capable of protecting his or her own interests. It also rebuts the assumption that some courts and attorneys make in inheritance litigation that one only needs to look back a year or two prior to the victim's death to evaluate whether elder financial abuse of the victim may have occurred. Here, the victim suffered dementia for at least seven years.

If you or a loved one suspects that an elderly person with dementia is being taken advantage of, you should consider reporting elder abuse. There may also be options to pursue an investigation through a civil action. For example, in Wisconsin, there are routes to seek court review of an agent's conduct under a financial power of attorney.

Trevor C. Lippman is a shareholder at the law firm of O'Neil Cannon. Lippman assists clients with all matters related to inheritance disputes, including questions surrounding the creation and administration of trusts and wills. Lippman has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. To schedule an initial consultation with Lippman, call 414.276.5000 or email him at [trevor.lippman@wilaw.com](mailto:trevor.lippman@wilaw.com).

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## TAX AND WEALTH ADVISOR ALERT: THE PITFALLS OF PAYABLE ON DEATH ACCOUNTS

Payable on Death (POD) accounts are offered by banks and other financial institutions to

permit an account owner to designate a beneficiary to receive the funds in a savings, checking, CD, or similar account, upon the account owner's death. If there is a POD beneficiary on a joint account, the named beneficiary will receive the funds upon the death of the last account owner (see our previous article discussing the drawbacks of joint accounts [here](#)). Some financial institutions will allow the account owner to name multiple beneficiaries. A POD account is an easy way to transfer the account assets upon the account owner's death: the beneficiary or beneficiaries can withdraw the funds by simply providing a death certificate, without a probate or other court proceeding.

While POD accounts offer a streamlined transfer of assets upon death, they limit planning opportunities for the account owner and may create unnecessary complications. The designation of a POD beneficiary assumes that the beneficiary will survive the account owner, which is not always the case. If a POD beneficiary on an account dies before the account owner and the beneficiary designation has not been changed, the default in Wisconsin law provides that under certain circumstances, the descendants of that POD beneficiary will inherit the account. Consider the example of Jane who designated her daughter Sue as the POD beneficiary on her bank account. If Sue predeceases Jane, upon Jane's death, Sue's children would be entitled to Jane's bank account. Now assume that Jane designated her two children as beneficiaries: Sue and John. If Sue predeceases Jane, Sue's share will still go to her children, unless John can prove in court that Jane intended that he receive the full account. Another complication is that under Wisconsin law, if Sue predeceases Jane, and John presents the bank with Jane and Sue's death certificates, the bank can pay the full account to John instead of paying half of the account balance to Sue's children. If this sounds confusing and contradictory, it is!

Another downside is that financial institutions can interpret POD provisions differently. You may set up accounts at different financial institutions that are not handled the same way upon your death. In some cases, the financial institution's interpretations may not withstand a legal challenge.

Additionally, a POD beneficiary is not required to pay your estate expenses, including funeral costs, from the account. This could create a hardship for your family or other loved ones if the POD beneficiary refuses to pay for your funeral or other final debts.

Finally, a will or trust does not override a POD designation, so it is essential to coordinate your POD designation with your estate plan. A POD naming your revocable trust does not have the risks discussed above and is often an important step in your estate planning. But if you create an estate plan and forget to change your POD designation, your POD designation will control the disposition of the assets in that account, regardless of what your will or trust states.

When it comes to estate planning, it is crucial to be aware of the potential pitfalls associated

with POD accounts. In order to ensure your accounts and other assets are disbursed according to your wishes, contact our [Estate and Succession Planning Group](#). Additionally, if you have a dispute over the payment of POD accounts, our [Inheritance Litigation Group](#) can assist.

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## **CHAMBERS AND PARTNERS RECOGNIZES FAUST AND O'NEIL CANNON FOR M&A EXCELLENCE**

Attorney Pete Faust and O'Neil Cannon's mergers and acquisitions team have been named by Chambers and Partners as among Wisconsin's best deal lawyers.

O'Neil Cannon is one of only seven Wisconsin law firms ranked by Chambers in the mergers and acquisition/general corporate category.

Faust, the firm's president and managing shareholder, is one of 23 Wisconsin lawyers individually honored by Chambers in the same category.

In addition to Faust, O'Neil Cannon's mergers and acquisitions team includes JB Koenings, Britany Morrison, Chad Richter, Jason Scoby, James DeJong, Dennis Hollman, Nicholas Chmurski, Michael Kennedy, Samuel Nelson, and Nancy Wilson.

Chambers is a London-based research firm that ranks the top lawyers and law firms in 185 countries. More than 200 Chambers researchers interview thousands of lawyers and clients as part of an in-depth analysis of the leading lawyers and law firms.

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## **O'NEIL CANNON SERVES AS LEGAL ADVISOR TO I3 PRODUCT DEVELOPMENT IN ITS SALE TO HELIOS TECHNOLOGIES**

O'Neil Cannon advised i3 Product Development (i3) in its recent sale to Helios Technologies (NYSE: HLIO). i3, a custom engineering services firm with over 55 engineers, specializes in electronics, mechanical, industrial, embedded, and software engineering. Its solutions are used across many sectors, including medical, off-highway, recreational and commercial marine, power sports, health and wellness, agriculture, consumer goods, industrial, sports,

and fitness. i3 has business locations in both Sun Prairie and Middleton, Wisconsin.

Helios Technologies is a global leader in highly engineered motion control and electronic controls technology for diverse end markets, including construction, material handling, agriculture, energy, recreational vehicles, marine, and health and wellness.

Josef Matosevic, Helios' President and Chief Executive Officer, stated, "The acquisition of i3 Product Development will turbocharge our efforts to be the most innovative company focused on the intersection of the hydraulics and electronics markets. This flywheel acquisition fits into our technology roadmap strategy like a glove and will continue to make us incredibly tough for our competition to follow."

The O'Neil Cannon deal team was led by Attorney Chad Richter with assistance provided by O'Neil Cannon attorneys Britany Morrison, Nick Chmurski, Erica Reib, Sam Nelson, and Michael Kennedy.

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## **TAX AND WEALTH ADVISOR ALERT: POWERS OF APPOINTMENT - A TOOL TO ADD FLEXIBILITY INTO AN ESTATE PLAN**

A power of appointment is a legal instrument that grants an individual (the "appointee") the authority to decide how a particular asset or assets will be distributed upon the death of the individual who created the power (the "donor"). The appointee can exercise this power during their lifetime or in their will, and they can direct the asset to be given to any person or entity they choose.

When selecting the type of power of appointment to include in an estate plan, the donor generally has two options: 1) a general power of appointment, or 2) a limited power of appointment.

A general power of appointment allows the appointee to direct the asset to an entity or individual of their choosing without restriction. In contrast, a limited power of appointment restricts the appointee's choices to a specific group of people or entities.

Powers of appointment can be useful in estate planning for several reasons. First, they provide flexibility in the distribution of assets. The donor can create a power of appointment that allows the appointee to redirect the asset if the original beneficiary is unable to receive it for any reason, such as if they pass away before the donor or if they disclaim their

inheritance.

Second, powers of appointment can be used to address changes in circumstances that occur after the estate plan is created. For example, if the donor's family circumstances change, they can create a power of appointment that allows the appointee to redirect the asset to a different family member or to a charitable organization.

Third, powers of appointment can be used to minimize taxes. By creating a power of appointment, the donor can direct the asset to be distributed in a way that minimizes the tax burden on their estate and the estate of the ultimate beneficiary.

In conclusion, powers of appointment can be a useful tool in estate planning. They provide flexibility, allow for changes in circumstances, and can minimize taxes. However, it is important to work with a qualified estate planning attorney to ensure that powers of appointment are created and implemented correctly to achieve the intended goals.

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## **ATTORNEY SETH DIZARD TO RECEIVE 2023 JUDGE DALE E. IHLENFELDT BANKRUPTCY AWARD**

The Eastern District of Wisconsin Bar Association announced that attorney [Seth Dizard](#) has been selected as the recipient of the 2023 Judge Dale E. Ihlenfeldt Bankruptcy Award. This honor will be presented to Dizard during the EDWBA's annual meeting May 25 at Saint Kate – The Arts Hotel.

The Judge Dale E. Ihlenfeldt Bankruptcy Award recognizes individuals who have demonstrated outstanding work in the practice of bankruptcy and insolvency law in the Eastern District of Wisconsin.

To learn more about how Dizard and O'Neil Cannon can assist you or your business, please visit our [Banking, Receivership and Creditors' Rights](#) page or contact us at 414-276-5000.

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## **ESTATE PLANNING ATTORNEY ERIC PETERSON**

# JOINS O'NEIL CANNON

Attorney Eric Peterson, a 2016 graduate of Marquette University Law School, has joined O'Neil Cannon. He is a member of the firm's Estate and Succession Planning Practice Group, where he will assist clients in all matters relating to estate planning, succession planning, and trust administration. Eric's experience provides him a deep understanding of the intricacies in preserving and distributing assets for individuals and families. With a personalized approach, Eric is dedicated to helping clients navigate the complexities of estate planning and crafting comprehensive strategies that align with their goals and wishes. We are very pleased to welcome Eric to O'Neil Cannon.

O'Neil Cannon, founded in Milwaukee in 1973, is a full-service law firm that focuses on meeting the many needs of businesses and their owners. Our experienced attorneys work with businesses and their owners at all stages of the business life cycle, helping them start, grow, and transition their businesses. We also assist business owners with their personal legal needs, including tax and estate planning and family law. For more information about the services we provide, please visit our [website](#) or contact your O'Neil Cannon attorney.

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## THE WILAW QUARTERLY NEWSLETTER

### Newsletter Article Highlights:

- Employee Retention Credit: Maximizing COVID Relief by Supplementing PPP
- The Death of Lisa Marie Presley Leads to Brewing Trust Dispute
- Spousal Lifetime Access Trusts, A Powerful Estate Planning Tool for Complex Estates

### Firm News:

- Christa Wittenberg Elected to the Firm's Board of Directors
- O'Neil Cannon Serves as Legal Advisor to Diamond Vogel, Inc. in Acquisition of Subsidiary of The Sherwin-Williams Company
- O'Neil Cannon Ranked in 2023 "Best Law Firms"

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