ATTORNEY JESSICA HASKELL NEW CHAIR OF THE MBA BANKRUPTCY SECTION

Attorney **Jessica K. Haskell** was recently selected as the new chair of the Bankruptcy Section of the Milwaukee Bar Association. The Bankruptcy Section of the Milwaukee Bar Association is focused on providing continuing legal education seminars and engaging section members. Jessica is a member of O'Neil Cannon's Banking, Receivership, and Creditors' Rights Practice Group. She represents court-appointed receivers, secured and unsecured creditors, financial institutions, and corporations in state and federal court. Jessica is pleased to be selected as the new chair and looks forward to being involved with the Bankruptcy Section in her new role.

ANNE HECHE'S WILL CONTEST: A CAUTIONARY TALE

The circumstances involving Anne Heche's estate are a stark reminder of the uncertainties that may exist following the death of a loved one and the issues that can arise even when someone *thinks* they have their estate plan in place.

Heche's (Possible) Will

When the Emmy Award-winning actress died after a fiery car crash in August 2022, she left behind two sons. After her death, her former partner, James Tupper, the father of the younger of Heche's sons, came forward with a document—reportedly an email from 2011—that he said names him as the administrator of Heche's estate.

In response, Heche's older son, Homer Laffoon, filed a petition to assume control over Heche's estate. In doing so, Laffoon also said that the 2011 document is not a valid will because it does not meet requirements under California law.

More specifically, Laffoon argued, in part, that the document does not qualify as a valid will because it does not contain Heche's signature and was not observed by two witnesses as required by California law. Because there is a question as to whether Heche had a valid will, a probate court must decide the issue before her assets can be distributed.

State law varies on the requirements of a valid will, so let's look at what is required in Wisconsin.

What is a Valid Will in Wisconsin?

First, for a valid will in Wisconsin, the testator (the person making the will) must have the capacity to create a will, which means the person must be at least 18 years old, of sound mind, and acting on their own volition.

For a will executed in Wisconsin to be valid, it must be written down and signed by the testator, or with the assistance of another person with the testator's consent and in the testator's conscious presence, and signed by two witnesses. If a witness to the will is a beneficiary of the will, his or her interests will most likely be limited to what he or she would have received had the testator died without a will, through intestacy law.

Proving a Will in Wisconsin

In Heche's situation, a judge must decide whether Tupper's proposed 2011 document is a legally valid will. Without a valid will, Heche will have died "intestate," and the probate court will distribute Heche's assets according to California law.

Similarly, when a Wisconsin resident dies, his or her estate will be distributed under Wisconsin intestacy law unless a will is admitted to probate. Depending on the circumstances, it might be appropriate to investigate the circumstances surrounding the purported execution of a will by the testator and/or the witnesses prior to waiving any rights to challenge the proposed will.

Our inheritance litigation team has a wide array of experience in handling will disputes—whether investigating the authenticity of the document itself, analyzing the legal sufficiency of a proposed will, or investigating concerns over lack of legal capacity and undue influence. If a court finds that a document does not meet the legal requirements of a valid will, the decedent's estate may be distributed under a testator's previous estate plan or under Wisconsin intestacy law.

Anne Heche's situation is another reminder of the unfortunate complications and issues that may arise following the death of a loved one.

Trevor C. Lippman is a shareholder at the law firm of O'Neil Cannon Trevor assists clients with all matters related to inheritance disputes, including questions surrounding the creation and administration of trusts and wills. Since graduating from University of Wisconsin Law School in 2013, Trevor has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. Trevor prides himself on protecting the rightful legacies of those who have passed on and seeks to understand each client's unique concerns. To schedule an initial consultation with Trevor, call 414.276.5000 or email Trevor directly at trevor.lippman@wilaw.com.

OCHDL IS PLEASED TO ANNOUNCE THAT NANCY WILSON HAS JOINED THE FIRM

Attorney Nancy L. Wilson, a graduate of the University of Wisconsin Law School, has joined O'Neil, Cannon, Hollman, DeJong and Laing. She will join the firm's Estate and Succession Planning Practice Group, where she will assist clients in all matters relating to estate planning, succession planning, and trust administration. In addition to her legal experience, Nancy has also served as Chief Operating Officer for a large consumer electronics distributor and Vice President of Operations for a manufacturing company. She has also owned and operated an accounting and consulting business, credit reporting agency, and various retail stores. Nancy's experience and familiarity with running a business provides her with in-depth knowledge of her business client's needs. We are very pleased to have Nancy join OCHDL.

OCHDL, 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 types of services we provide, please visit our **website** or contact your OCHDL attorney.

TAX AND WEALTH ADVISOR ALERT: HOW JOINT ACCOUNTS CAN RUIN YOUR ESTATE PLAN

As individuals grow older, they are often inclined to add a child to their financial accounts to assist them with paying bills and managing assets. While this strategy is convenient, it can lead to financial abuse and can also derail estate plans.

A joint account is a financial account with one or more owners, who both have rights of survivorship. Upon the death of one owner, the balance of the account passes to the surviving owner without probate, regardless of whether the surviving owner contributed to the account or not. The balance of the account will not pass according to the deceased owner's estate plan and the surviving owner has no legal duty to abide by the deceased owner's estate plan. The surviving owner can legally liquidate the account and cannot be held liable for doing so.

If you mistakenly add a joint owner to your financial account, it can be extremely difficult to prove that the joint account was instead set up as a “convenience account” for the sole purpose of making it more “convenient” for the joint owner to pay your bills and manage your assets. To prove a joint account was a convenience account, the legal presumption that the surviving owner of the joint account should receive the balance of the account must be overturned. This proof relies heavily on factual circumstances and requires a showing of clear and convincing evidence that the original owner did not have a donative intent when initially creating the joint account.

Instead of adding an individual as a joint owner of your financial account, we recommend adding your agent under your financial power of attorney. A financial power of attorney allows a person to perform financial transactions on your behalf, without having any legal ownership over your financial accounts. More importantly, a financial power of attorney also terminates upon your death. In other words, when you pass away, the account will either pass to the beneficiary listed on your account or to your estate—as originally intended. If you already have a revocable trust in place, your revocable trust can be named as the beneficiary of the account and the account will then pass to your trust upon death, thus avoiding a probate proceeding.

It is important to note that while it is better to add an agent under a financial power of attorney to a financial account, a financial power of attorney can also be dangerous in the hands of a bad actor, and it can be difficult to hold an agent accountable. It is vital to choose a trustworthy agent, such as a spouse or close family member. Avoid selecting an agent who has a history of financial trouble, drug, or gambling problems. Always consult with an estate planning attorney when establishing a financial power of attorney and adding an agent to financial accounts.

Here at O’Neil Cannon, our Estate and Succession Planning Group can create a comprehensive estate plan for you and assist you with properly retitling your bank accounts, setting up beneficiary designations, and adding your agent under your financial power of attorney as an authorized user of your accounts. Our Inheritance Litigation Group can also assist you in holding a bad actor liable if you believe that your loved one’s joint account should be a considered a convenience account or if your loved one was taken advantage of by his or her agent under a financial power of attorney.

TAX AND WEALTH ADVISOR ALERT:

UNDERSTANDING COMMON NOTICES INDIVIDUALS RECEIVE FROM THE IRS

Although tax season may end for many individuals after returns are filed on April 15, for others it may be just the beginning. Many people receive a notice from the IRS as they process returns. These communications from the IRS are common and aren't necessarily a sign of trouble. If you receive a notice, read it carefully, address it promptly, and consider whether you should contact a lawyer.

Most notices from the IRS are regarding incomplete or incorrect information on taxpayer's tax forms, but there are plenty of other reasons the agency might be contacting you. The IRS website notes that the IRS sends notices and letters to individuals for the following reasons:

- You are due money.
- You owe money.
- You need to provide additional information or clarify part of your tax return.
- You need to verify your identity.
- Your tax return has a processing delay.

Each notice or letter contains a lot of valuable information, so it is particularly important that you read it carefully. Any communication you receive from the IRS will have a code on the right side at either the top or the bottom. The codes on notices begin with CP. The codes on letters begin with LTR. Here are some common notices the IRS sends out, identified by code.

CP2000 Notice

The IRS sends taxpayers this notice when the information they have on file does not match the information provided on the tax return. There might need to be an adjustment to your tax forms.

For example, your employer originally sent you a W-2 with incorrect information. They later sent an amended W-2, but you used the incorrect W-2 when completing your taxes.

If the notice alerts you to a discrepancy in your tax filing, it will explain how the IRS determined the error. You can either agree and sign off on the proposed changes or explain why you disagree, including providing relevant documents. You typically will be given 30 days to respond.

CP3219A Notice

If you fail to resolve the issue highlighted by a CP2000 Notice, the IRS sends a CP3219A Notice. Known as the Statutory Notice of Deficiency, this form gives you 90 days to reply.

Like a CP2000 Notice, you can either agree or disagree with the changes when you respond.

Failure to reply to this notification can bar your ability to appeal and contest the issue in Tax Court.

CP3219N Notice

When the IRS has not received your tax return, they will send you this notice. You have 90 days to reply. If you believe you did not have to file a return but receive this notice, you should contact the IRS.

CP501 Notice

The IRS sends this to remind taxpayers that they have 21 days to pay any outstanding tax. If you cannot pay what you still owe, you can see if you qualify for a payment plan.

CP501 Notices are generally the first notice sent. If you do not reply within 15 days, the IRS will then send a CP503 notice. If you receive a CP503 notice but believe you have resolved the issue, you should contact the IRS for confirmation.

If you fail to respond to this notice, the IRS can levy interest and penalties as well as file a Notice of a Federal Tax Lien. Like other notices, you can disagree with the IRS's calculations. You should be prepared to offer documentation to show their error.

CP14 Notice

This communication closely relates to CP501. It lets you know that the IRS believes you underpaid the amount due on your taxes.

Similar to a CP501 Notice, failure to respond in the required time period can result in additional penalties and accruing interest.

Timely Action

If you have received communication from the IRS, you should act promptly.

Failure to act in a timely manner can cause serious problems. Additional fees and interest can accrue on unpaid tax. If you disagree with the IRS's determinations, failure to reply may bar you from appealing the decision.

It is especially critical to respond to an IRS notice if you're unable to pay the full amount you owe on your taxes, because the agency may allow you to arrange a payment plan.

Beware of Scams

There are scammers out there who will send fake IRS letters and notices in an effort to obtain your personal information or even a check. Whenever you get a communication from the IRS, examine it carefully to make sure it is legitimate. If you are unsure, contact the IRS directly or reach out to a tax professional or attorney for guidance.

Contact Qualified Tax Attorneys

If you have received a notification from the IRS, contact Attorney Britany Morrison at one of Wisconsin's premiere law firms, O'Neil Cannon

---

TAX AND WEALTH ADVISOR ALERT: HOW DOES LIFE INSURANCE WORK WITH AN ESTATE PLAN?

We must always expect the unexpected. We can be careful and prudent in our daily lives, but there are certain things that are out of our control, like death. In the event of your untimely death, are you able to provide ongoing support to your loved ones and important causes? By securing life insurance and establishing a comprehensive estate plan, you can help protect your family and loved ones and support your charitable causes after your death.

What is Life Insurance?

Life insurance is a contract with an insurance company that provides a sum of money to a designated person or entity upon the death of the insured person. Some policies also contain provisions that permit a payout upon a specific event, such as a terminal or critical illness. Buying life insurance is a common way for people to plan for the future of their families, loved ones, businesses, or other causes. It is important to understand what type of life insurance suits your needs.

What are the Different Types of Life Insurance?

There are two main types of life insurance that an individual can purchase: term life insurance and permanent life insurance.

- Term life insurance – This type of life insurance provides a death benefit upon the death of the covered insured during a specific, fixed period, often 1 to 30 years. The policy will pay out benefits to the designated beneficiary if the insured dies during the policy's term. Term life insurance is often purchased by individuals who want coverage for specific reasons in the event of their death, such as taking care of minor children or paying off a mortgage. Term life insurance is more affordable than permanent life

insurance, as it only offers benefits for the term of the policy. If you have a small estate that is simple to manage, then term life insurance might be your best option.
- Permanent life insurance – This type of insurance provides a death benefit upon the death of the covered insured and a cash value that the covered insured may be able to access during their life. Common forms of permanent life insurance are whole life, universal life, variable life, and variable universal life insurance. Permanent life insurance is commonly purchased by individuals who have large estates that are complex to manage. While permanent life insurance is more expensive than term life insurance, its potential benefits can be much greater. If you have a special-need heir, large assets that are difficult to divide, or high estate taxes that will burden the beneficiary, then permanent life insurance might be your best option.

For both types of insurance, it is important to pay the premiums. With term life insurance, the policy typically lapses if you fail to pay a premium and your beneficiaries will obtain no benefit upon your death. With permanent life insurance, the contract may provide different choices if you fail to pay the premiums.

Make sure to work with an experienced estate planning attorney and your insurance agent to evaluate your situation and determine what type and level of insurance are best for you and your loved ones. Your current decisions can benefit future generations if you plan appropriately.

What are the Most Common Benefits of Having Life Insurance?

There are several important benefits that can be realized with the appropriate type and level of life insurance. Some of the most common benefits of life insurance include:

- Taking care of loved ones
- Maximizing wealth
- Paying off mortgages or other debts
- Securing a long-term legacy
- Protecting a business long-term
- Putting wealth into important causes
- Leaving a gift to charity

It is important to secure a policy that meets your long-term goals. Make sure you consider your choices so your plan is the best fit for you.

What is an Estate Plan?

Estate planning is the process of thinking about what will happen to your money, property, and other possessions after you die. Estate planning can determine how your affairs will be handled in the event that you become unable to care for yourself. Estate planning may also include planning for the long-term succession of a business. A goal of estate planning often is to minimize the amount of taxes and other expenses that arise upon death. Your personal

goals and wishes should drive the type of estate plan you create. There are different mechanisms to develop a comprehensive estate plan, which can include:

- Will
- Trusts
- Powers of appointment
- Determination of property ownership and retitling of property
- Gifts
- Powers of attorney

A comprehensive estate plan should be tailored to your needs and your desires and should not be a cookie-cutter form document.

How Can Life Insurance Work with an Estate Plan?

The appropriate life insurance policy can be a significant part of your estate plan. Often, individuals simply designate a family member as the beneficiary of a life insurance policy without considering their overall estate planning goals. This can result in unintended consequences such as unequal distribution to beneficiaries or tax implications. Designating the right beneficiary on any insurance policy is important to achieve your estate planning goals.

TAX AND WEALTH ADVISOR ALERT: IRS REMINDS INDIVIDUAL TAXPAYERS OF SEPTEMBER 15 DEADLINE FOR THIRD QUARTER ESTIMATED TAX PAYMENTS

The IRS has reminded taxpayers who pay estimated taxes that the deadline to submit their third quarter estimated tax payments is September 15, 2022. The fourth and final estimated tax payment for tax year 2022 is due January 17, 2023. Taxpayers not subject to withholding, such as those who are self-employed, investors, or retirees, may need to make quarterly estimated tax payments. Taxpayers with other income not subject to withholding, including interest, dividends, capital gains, alimony, cryptocurrency, and rental income, also normally need to make estimated tax payments.

In most cases, individual taxpayers need to make estimated tax payments if they expect their tax liability to be at least $1,000 for the tax year 2022, after subtracting their withholding and tax credits. Special rules apply to some groups of taxpayers, such as

farmers, fishermen, casualty and disaster victims, those who recently became disabled, recent retirees, and those who receive income unevenly during the year.

To compute estimated tax, individuals must determine their expected Adjusted Gross Income (AGI), taxable income, taxes, deductions, and credits for the year. While calculating their 2022 estimated tax, it is helpful for taxpayers to use their income, deductions, and credits for 2021 as a starting point. Taxpayers can avoid underpayment penalties by making payments of at least 90% of the tax expected on their 2022 income tax return, or by making payments of at least 100% of the tax shown on their 2021 income tax return. The IRS may waive such penalties for underpayment due to unusual circumstances, but not willful neglect.

Additional information regarding individuals that need to make Federal and Wisconsin estimated tax payments and how to make such payments can be found here. For questions or further information relating to estimated tax payments, please contact Attorney Britany E. Morrison.

OCHDL IS PLEASED TO ANNOUNCE THAT SAM NELSON HAS JOINED THE FIRM

Attorney Samuel D. Nelson, a *magna cum laude* graduate of Marquette University Law School, has joined O'Neil, Cannon, Hollman, DeJong and Laing. Sam will join the firm's Business Law Practice Group, where he will be assisting clients in a wide variety of business law matters. While in law school, Sam was a research assistant to Dean and Professor Joseph Kearney at Marquette University Law School and a board member for the Marquette University Law Review. He also volunteered for both the Milwaukee Justice Center and the ABA Legal Answers Clinic. We are very pleased to have Sam join OCHDL.

OCHDL, 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 types of services we provide, please visit our **website** or contact your OCHDL attorney.

---

19 OCHDL LAWYERS SELECTED AS 2023 BEST LAWYERS®; ANOTHER 4 NAMED BEST LAWYERS: ONES TO WATCH

We are pleased to announce 19 of our lawyers have been included in the 2023 Edition of *The Best Lawyers in America,* and an additional four have been selected as 2023 *Best Lawyers: Ones to Watch*.

The following are the O'Neil, Cannon, Hollman, DeJong and Laing lawyers named to the 2023 lists:

Best Lawyers in America

- Douglas P. Dehler – Litigation – Insurance
- James G. DeJong – Corporate Law, Mergers and Acquisitions Law, and Securities / Capital Markets Law
- Seth E. Dizard – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Peter J. Faust – Corporate Law and Mergers and Acquisitions Law
- John G. Gehringer – Commercial Litigation, Construction Law, Corporate Law, and Real Estate Law
- Joseph E. Gumina – Employment Law – Management and Litigation – Labor and Employment
- Dennis W. Hollman – Corporate Law and Trusts and Estates
- Grant C. Killoran – Commercial Litigation and Litigation – Health Care
- JB Koenings – Corporate Law
- Dean P. Laing – Commercial Litigation, Personal Injury Litigation – Plaintiffs, and Product Liability Litigation – Defendants
- Gregory W. Lyons – Commercial Litigation and Litigation – Insurance
- Patrick G. McBride – Commercial Litigation
- Joseph D. Newbold – Commercial Litigation
- Chad J. Richter – Business Organizations (including LLCs and Partnerships) and Corporate Law
- John R. Schreiber – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy

- Jason R. Scoby – Corporate Law
- Steven J. Slawinski – Construction Law

Best Lawyers: Ones to Watch

- Trevor C. Lippman – Litigation – Trusts and Estates
- Erica N. Reib – Labor and Employment Law – Management and Litigation – Labor and Employment
- Kelly M. Spott – Trusts and Estates
- Christa D. Wittenberg – Commercial Litigation

About Best Lawyers

Best Lawyers has published their list for over three decades, earning the respect of the profession, the media, and the public as the most reliable, unbiased source of legal referrals.

Best Lawyers: Ones to Watch recognizes associates and other lawyers who are earlier in their careers for their outstanding professional excellence in private practice in the United States.

Lawyers on *The Best Lawyers in America* and *Best Lawyers: Ones to Watch* lists are divided by geographic region and practice areas. They are reviewed by their peers on the basis of professional expertise, and they undergo an authentication process to make sure they are in current practice and in good standing.

EMPLOYMENT LAWSCENE ALERT: SEVENTH CIRCUIT HOLDS THAT LIGHT DUTY POLICY DID NOT VIOLATE THE PDA

On August 16, 2022, the U.S. Court of Appeals for the Seventh Circuit issued a decision in *EEOC v. Wal-Mart Stores East, L.P.* (found here), holding that Wal-Mart did not discriminate against pregnant employees by reserving temporary light duty positions only for those employees injured on the job. The Equal Employment Opportunity Commission (EEOC) commenced its action against Wal-Mart in 2018 by claiming that Wal-Mart's denial of temporary light duty work to pregnant women violated Title VII of the Civil Rights Act of 1964 (Title VII) and the Pregnancy Discrimination Act (PDA). The federal district court granted Wal-Mart summary judgment dismissing the EEOC's lawsuit. The EEOC then appealed the federal district court's dismissal of its case to the Seventh Circuit. The EEOC argued that

accommodating all employees injured on the job by providing these employees a temporary light duty position and not providing a similar accommodation to pregnant employees constituted a clear case of sex discrimination in violation of Title VII and the PDA. The Seventh Circuit disagreed.

If this fact scenario sounds vaguely familiar, it should, because in 2015 the U.S. Supreme Court addressed similar facts in *Young v. UPS*. In the *Young* case, the U.S. Supreme Court decided whether the PDA allows an employer to have a policy that accommodates some, but not all, workers with non-pregnancy related disabilities but does not accommodate pregnancy-related conditions. In *Young*, UPS offered temporary light duty positions to not only employees injured on the job, but also for other reasons, including those employees who had lost their Department of Transportation certification. The employee in *Young* argued that employers who provide work accommodations to non-pregnant employees must do the same for pregnant employees who are similarly restricted in their ability to work. The U.S. Supreme Court, however, rejected the employee's interpretation of the PDA since it essentially would give pregnant employees an unconditional "most-favored-nations" status because pregnant employees would have to receive the same accommodations that any other employee received *for any reason*. Congress never intended to provide pregnant employees such broad protections.

Instead, the U.S. Supreme Court in *Young* held that a pregnant employee can establish a case of pregnancy discrimination relative to an employer's application of its light duty policy by showing, among other things, that the employer provided light duty positions to others (i.e., non-pregnant employees) similar in their ability or inability to work. If an employee can establish this critical element of her *prima facie* case of discrimination (the "first step"), then the burden shifts to the employer (the "second step") to articulate a "legitimate, nondiscriminatory" business reason for denying the accommodation. An employee can then overcome the employer's legitimate business reason by showing (the "third step") that the employer provided favorable treatment to some non-pregnant employees whose circumstances cannot be distinguished from that of pregnant employees.

In defending its temporary light duty program before the Seventh Circuit, Wal-Mart presented a legitimate business reason by arguing that its program is part of its overall worker's compensation program to bring injured employees back to work as soon as possible while limiting the company's "legal exposure" under Wisconsin's worker's compensation statute and to avoid the cost of hiring people to replace the injured employee. The Seventh Circuit found that offering temporary light duty work to employees injured on the job for these reasons was a "legitimate nondiscriminatory" and neutral justification for denying light duty accommodations to individuals not injured on the job, including pregnant women. According to the Seventh Circuit, Wal-Mart's articulation of a legitimate nondiscriminatory reason supporting the business purpose of its temporary light duty program then shifted the burden to the employee to provide sufficient evidence that Wal-Mart's policy imposed a significant

burden on pregnant employees and that the employer's legitimate business reason was not sufficiently strong to support that burden.

The EEOC argued, however, that Wal-Mart did not meet its burden under the second step (making the third step unnecessary) because the PDA and the *Young* decision required employers to do more than simply establish that their light duty policy was designed to benefit a particular group of non-pregnant employees. Instead, the EEOC argued, the PDA and the *Young* decision required employers to meet a higher burden under the second step by requiring employers to explain *why* pregnant employees are excluded from the program, just not articulate a justification that the program benefited a particular group of non-pregnant employees when, according to the EEOC, Wal-Mart's light duty program could have easily accommodated pregnant employees. The Seventh Circuit rejected the EEOC's argument and called it a stretch to hold that the Congress intended such a heightened burden under the PDA.

The Seventh Circuit held that its decision was consistent with the requirements of the PDA that provides that pregnant women must be "treated the same" as others "similar in their ability or inability to work." The Seventh Circuit also found that its decision was aligned with the U.S. Supreme Court's holding in *Young* because unlike Wal-Mart's policy, UPS's light duty policy seemed to accommodate almost every other group of employees with lifting restrictions, not just those inured on the job (like Wal-Mart's), who were similar to pregnant employees in their ability or inability to work. Wal-Mart, on the other hand, limited application of its light duty policy exclusively to those employees who were injured on the job. The Seventh Circuit stated that the EEOC fell short in establishing disparate treatment discrimination because the EEOC could not offer evidence of comparators who were similar to pregnant women in their ability or inability to work and who benefited from the light duty program, other than employees injured on the job.

In designing a temporary light duty policy for employees injured on the job, employers should be mindful that it is important to develop a strong "legitimate and nondiscriminatory" basis that properly articulates the business reason why the policy is designed to protect a limited class of employees (*e.g.*, employees injured on the job) to the exclusion of others in order to avoid claims of sex discrimination under Title VII and the PDA when pregnant employees are denied accommodations under the policy. It is also important for employers to consistently apply their temporary light duty policies in a non-discriminatory manner by allowing only employees for which the policy was legitimately designed to seek accommodations under the policy— specifically, those employees suffering on-the-job injuries. Also, making exceptions to a temporary light duty policy designed to benefit employees injured on the job or designing a light duty policy that applies to broad categories of other employees can make such a policy susceptible to a claim of sex discrimination under Title VII and the PDA if it does not treat pregnant women the same as other employees not so affected but similar in their ability or inability to work.

As always, O’Neil Cannon is here for you to protect your interests. We encourage you to reach out to our labor and employment law team with any questions, concerns, or legal issues related to temporary light duty policies in the workplace.