ATTORNEY JOSEPH GUMINA RECENTLY QUOTED IN THE DAILY REPORTER

Attorney **Joseph Gumina** was quoted in The Daily Reporter on February 17, 2022, in an article titled “In absence of federal mandate, many companies still encouraging vaccination for employees.” In the article, Gumina, who leads OCHDL’s labor and employment practice group, discusses what some employers are doing to encourage their employees to get vaccinated. For some construction companies in Wisconsin, the answer was a cash incentive. “The most common cash incentive that I have seen is $100,” said Gumina “Cash incentives are only one of the ways companies have tried to encourage vaccination. Some have brought COVID-19 vaccination clinics to their offices to make it easier for employees to get shots. Others have offered workers an additional day of vacation for getting vaccinated,” Gumina said. “I have seen one employer try to encourage its workforce to become vaccinated by informing them that they would not be permitted to return to the office from remote working unless they are fully vaccinated,” he added. Whichever course you take, remember OCHDL is here 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 workplace safety issues arising from or related to COVID-19.

ATTORNEY JIM DEJONG FEATURED ON WISN AM 1130

Attorney Jim DeJong was recently featured on *Money Sense* presented by Ellenbecker Investment Group on WISN AM 1130. On the show, Jim provided an overview of the implications of the COVID-19 pandemic on the M&A market. He discussed what a business owner planning to sell a business should be doing now to prepare the business to attract qualified buyers and to obtain the best price. Jim also discussed the importance of business succession planning.

The recording can be accessed here.

THE WILAW QUARTERLY NEWSLETTER

Newsletter Article Highlights:

- Determining the Citizenship of Businesses
- Why Buy-Sell Agreements Are Necessary Even If You Don’t Plan to Sell Your Company Soon
- U.S. Supreme Court Issues Stay of OSHA’s Vaccination-or-Test Rule
- New Federal Regulations Take Aim at Health Care Provider Billing

Firm News:

- Firm Elects Britany Morrison and Nicholas Chmurski as Shareholders
- Super Lawyers Recognition
- Greg Lyons is Honored as Attorney of the Year by the Top 100 Registry
- Joseph Gumina Recently Quoted in the Milwaukee Business Journal
- Grant Killoran Published by the Association of Corporate Counsel
- OCHDL Ranked in 2022 “Best Law Firms”

Click the image below to read more.

GREG LYONS IS HONORED AS ATTORNEY OF THE YEAR BY THE TOP 100 REGISTRY

Attorney Greg Lyons is being honored as 2022 Attorney of the Year in the State of Wisconsin and is being featured by the Top 100 Registry in its Top 100 Lawyers magazine. The award distinguishes the highest level of competence and dedication in the field of law according to the Top 100 Registry. The Attorney of the Year is determined by the Top 100 Registry’s board of esteemed legal advocates. This is the second “Lawyer of the Year” award recently for

Greg. He was also recognized by Best Lawyers® in the practice area of Litigation–Insurance for 2022. Both recognitions are significant, as only one lawyer is honored in his or her location and practice area.

“I am honored to be chosen by my colleagues and experts in the legal field for these awards,” Greg said. “My goal has always been to obtain the best results for my clients in a cost efficient manner.”

Greg represents clients in the prosecution and defense of complex commercial litigation. His extensive experience in commercial litigation has prepared him to successfully represent large corporations as well as small businesses and individuals. He also devotes a large portion of his practice to individuals in inheritance litigation. Greg has successfully litigated many will contests and trust disputes throughout Wisconsin. He has accomplished tremendous results on behalf of trustees, personal representatives, and power of attorneys in large complicated disputes. Greg has appeared in state and federal courts in numerous jurisdictions. He is a member of the Wisconsin state and federal courts, the Seventh Circuit Court of Appeals, and the United States Supreme Court. Greg also serves as the chairperson of the firm’s Ethics Committee.

AN EDUCATIONAL BUSINESS SERIES FOR SUCCESS: WHY BUY-SELL AGREEMENTS ARE NECESSARY EVEN IF YOU DON’T PLAN TO SELL YOUR COMPANY SOON

Long before a closely-held business is readied for sale, it should be protected by the owners creating a buy-sell agreement. In short, every co-owned business needs a buy-sell, or buy-out agreement the moment the business is formed or as soon after that as possible. A buy-sell, sometimes called a buy-out agreement, protects business owners when a co-owner wants to leave the company (and protects the owner who is leaving). It also contemplates dealing with unforeseeable catastrophic events, such as owner death or disability. We recommend business owners create a buy-sell agreement as soon as the business is formed because, as is often said: “It’s a lot easier to get an agreement in place when everyone’s in agreement.”

We have broken down the key elements and thinking that go into a buy-sell agreement into a series for business owners to find success.

PART 1 – PROVIDING A MARKET FOR THE OWNERSHIP INTEREST OF THE CLOSELY-

HELD BUSINESS UPON A SPECIFIED “TRIGGERING EVENT”

Being able to work with people you know and trust in a closely-held business can be an invaluable experience, but among the many practical advantages is that the partners hold a great deal of control over their own companies. With fewer government regulations restricting their actions and decisions, owners can choose what to do with their profits—pay themselves, donate to charity, reinvest, etc.—and they generally enjoy the freedom to try out new ideas and pursue higher risk, higher yield options that might not fall in line with a corporate shareholder’s more conservative judgment.

That said, the many pluses of closely-held companies do come with some minuses, and one of those is the potential inability to sell the business or some of its ownership interests when necessary. That time may come for a variety of reasons, both unexpected and planned from death and illness to retirement, and the so-called “triggering event” can wreak havoc on the enterprise.

More on Triggering Events

Most commonly, a buy-sell agreement kicks in at the death of an owner and requires the surviving owners or the company to purchase the deceased owner’s interest from their estate. Death isn’t the only possibility of a triggering event, however. Any number of situations could arise that could send a business into disarray, including the following:

- Sudden illness, disability, or incapacitation
- Retirement
- Divorce
- Termination of the employment of the owner within the company
- Bankruptcy or insolvency of the owner in question
- Lack of desire of owner to continue in business

The reality is that without a buy-sell agreement in place, closely-held businesses run a high risk of not being able to be sold, either in whole or in part, when a triggering event happens. The best course of action to prepare for this scenario is to create a buy-sell agreement and provide a method for valuing the business within the agreement so you can avoid potentially catastrophic consequences to your business later.

The Importance of a Buy-Sell Agreement

Having an exit strategy in place, notably in the form of a buy-sell agreement, is an excellent way to help ensure your business doesn’t go under when a triggering event occurs. A buy-sell agreement that has already been agreed to in advance, independent of emotions that could be heightened during challenging times, can help resolve matters quickly and in the best interests of the business.

Having a buy-sell agreement in place when emotions are running high is also beneficial for valuation purposes. Even if you can come to a reasonable, fair value, it can be even more challenging to get a potential buyer to agree with you on the acceptable sale price, especially depending upon the circumstances of the triggering event.

Valuing the business during the calm times provides not only an unbiased valuation, but also a market for the ownership interest in the enterprise upon a triggering event that is specified within the buy-sell agreement. Quite simply, having a buy-sell agreement in place ahead of time can mean the difference between a successful passing on of the business and its folding; the agreement can provide a market for what may be an otherwise unmarketable interest that no one would want or perhaps even be able to buy. While drafting a buy-sell agreement helps put a number to the value of each business owner's interest, it also makes sure that the remaining owners have complete say over who their next partner will be or even whether they want anyone else in the business at all. Moreover, with a buy-sell agreement in place, surviving or remaining owners are less likely to have grounds to pursue litigation—which can be expensive, time-consuming, and end up harming or even destroying the business.

Check out our next article in our business series covering what type of exit strategy needs to be considered in a transition.

If you have questions about your company's succession, please contact a member of our Estate and Business Succession Planning team.

ATTORNEY GRANT KILLORAN PUBLISHED BY THE ASSOCIATION OF CORPORATE COUNSEL

Attorney Grant Killoran recently published an article for the Association of Corporate Counsel's (ACC) resource library. Headquartered in Washington, D.C., the ACC is a global legal association serving the needs of in-house legal counsel around the world.

The article, entitled "Ten Considerations Regarding State Government Public Health Powers to Mandate COVID-19 Protective Measures and Vaccination in the United States," discusses the existing public health law framework in the United States and summarizes recent decisions by the United States Supreme Court arising from cases challenging public health measures to combat the COVID-19 pandemic.

Read the full article here.

O’NEIL CANNON ELECTS BRITANY E. MORRISON AND NICHOLAS G. CHMURSKI AS SHAREHOLDERS

O’Neil Cannon is pleased to announce that Attorney Britany E. Morrison and Attorney Nicholas G. Chmurski were recently elected as shareholders of the firm. Britany has been with the firm since 2019. Prior to joining OCHDL, she worked at a “Big Four” public accounting firm utilizing her certified public accounting license to help clients manage regulatory compliance risks and enhance returns. Britany focuses on helping clients effectively manage one of their most significant costs—taxes—by advising clients on a variety of federal, state and local, private wealth, employee benefit, real estate, tax-exempt and controversy tax matters. Britany has recently been selected for inclusion on the 2021 Wisconsin Super Lawyers Rising Stars List.

Learn more about Britany by visiting her full profile.

Nick has been with the firm since 2017 and is a member of the firm’s Business Law and Real Estate and Construction Groups. Nick focuses his time helping businesses and developers acquire, sell, and lease real estate. Nick also works closely with issues related to creditors’ rights, including business receiverships and bankruptcies. Nick has also recently been selected for inclusion on the 2021 Wisconsin Super Lawyers Rising Stars List.

Learn more about Nick by visiting his full profile.

Both Britany and Nick are tremendous additions to the shareholder group, and we are proud to have them on our team.

ATTORNEY JOSEPH GUMINA RECENTLY QUOTED IN THE MILWAUKEE BUSINESS JOURNAL

Attorney Joseph Gumina was recently quoted in the Milwaukee Business Journal published on January 14, 2022, in an article titled “Employers relieved that SCOTUS ruling nixes potential for costly employee COVID-19 tests: Attorneys.” The article outlines the Supreme Court’s recent ruling against OSHA’s vaccination-or-test rule that would have required large employers, starting February 9, to mandate employee vaccinations or require weekly

COVID-19 testing of unvaccinated workers.

In the article, Gumina discusses what employers should expect and what he has experienced in his management-side employment practice. “The surge in Omicron variant cases might cause some employers to take temporary measures including shutdowns to keep their workforces healthy,” Gumina said. “They’ve had to adjust and change to address COVID-19 in the workplace on a moment’s notice,” noting the ongoing adjustments employers have made throughout the pandemic on how they operate. Being mindful that OSHA still retains several enforcement tools in its arsenal to address COVID-19 in the workplace, Gumina stated: “I think employers should remain vigilant in making sure they create a safe work environment for all employees.”

For more information on the ruling, read our previous article detailing the decision.

EMPLOYMENT LAWSCENE ALERT: U.S. SUPREME COURT ISSUES STAY OF OSHA’S VACCINATION-OR-TEST RULE

On January 13, 2022, the Supreme Court of the United States issued a split decision (found here) staying the Occupational Safety and Health Administration’s (OSHA) Vaccination-or-Test Emergency Temporary Standard (ETS) that would require employers with 100 or more employees to either impose a mandatory vaccination policy or, alternatively, mandate that unvaccinated workers wear a face covering while at work and be subject to a COVID-19 test every seven days. The decision was issued *per curiam* by the Court with conservative Justices Neil Gorsuch, Clarence Thomas, and Samuel Alito issuing a separate concurring opinion and the Court’s three liberal Justices, Stephen Breyer, Elena Kagan, and Sonia Sotomayor, all dissenting.

The Court found in its decision that OSHA’s vaccination-or-test rule operated “as a blunt instrument” across businesses of all different kinds without “distinction based on industry or risk of exposure to COVID-19.” In exercising its authority under § 655(c)(1) of the Occupational and Safety Health Act (OSH Act) to issue an emergency temporary standard, the Court found that OSHA can only exercise the authority that Congress had provided to it. OSHA’s ETS would have required 84 million Americans to either obtain a COVID-19 vaccine or undergo weekly medical testing at their own expense. The Court found that OSHA’s exercise of such authority under § 655(c)(1) “is no ‘everyday exercise of federal power,’” but, rather, “a significant encroachment into the lives—and health—of a vast number of employees.” The

Court held that OSHA had overstepped its authority in issuing its vaccination-or-test mandate because the OSH Act empowers OSHA to set *occupational* safety standards in the workplace, but not broad public health measures. Because COVID-19 can and does spread at home, in schools, during sporting events and everywhere else that people gather, the Court ruled that, while COVID-19 is a hazard, it is not an *occupational* hazard in most workplaces. The Court stated that by "[p]ermitting OSHA to regulate the hazards of daily life—simply because most Americans have jobs and face those same risks while on the clock—would significantly expand OSHA's regulatory authority without clear congressional authorization." The Court concluded that, while "Congress has indisputably given OSHA the power to regulate occupational dangers, it has not given that agency the power to regulate public health more broadly."

The Department of Labor quickly issued a statement (found here) from the U.S. Secretary of Labor, Marty Walsh, appearing on OSHA's website addressing the Department of Labor's disappointment in the Court's decision. Secretary Walsh rejected the Court's premise of its ruling that OSHA did not have the authority established by Congress to enact the ETS. Secretary Walsh stated:

> OSHA promulgated the ETS under clear authority established by Congress to protect workers facing grave danger in the workplace, and COVID is without doubt such a danger…We urge all employers to require workers to get vaccinated or tested weekly to most effectively fight this deadly virus in the workplace. Employers are responsible for the safety of their workers on the job, and OSHA has comprehensive COVID-19 guidance to help them uphold their obligation.

Secretary Walsh, in his statement, reminded all employers that OSHA will do everything within its authority to hold employers accountable for protecting workers under its arsenal of enforcement tools, including under OSH Act's General Duty Clause.

For now, the case heads back to the U.S. Court of Appeals for the Sixth Circuit where that court will determine the final disposition of the applicants' petitions for review of OSHA's ETS. Depending on the action of the Sixth Circuit, the case could head back to the Supreme Court of the United States for final disposition. We will keep you updated as matters develop in this ongoing case.

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 workplace safety issues arising from or related to COVID-19.

EMPLOYMENT LAWSCENE ALERT: U.S. SUPREME COURT HALTS OSHA'S VACCINATION-OR-TEST EMERGENCY TEMPORARY STANDARD

The U.S. Supreme Court just issued a decision blocking the Occupational Safety and Health Administration's Emergency Temporary Standard that would require employers with 100 or more employees to impose either a mandatory vaccination policy or, alternatively, mandate that unvaccinated workers be required to wear a face covering while at work and be subject to a COVID-19 test every seven days. The Court's three liberal Justices, Stephen Breyer, Elena Kagan, and Sonia Sotomayor all dissented. This is a breaking story and we will provide updates as soon as possible.