O'NEIL CANNON ATTORNEYS RECOGNIZED AS BENCHMARK LITIGATION STARS

O'Neil Cannon is proud to announce that attorneys Doug Dehler, Grant Killoran, Dean Laing, Greg Lyons, Patrick McBride, Joe Newbold, Steve Slawinski, and Christa Wittenberg have been selected as Benchmark Litigation Stars in the 19th edition of Benchmark Litigation.

Based on extensive research and feedback from peers and clients, Benchmark Litigation Stars are recognized as the nation's most respected and accomplished litigation practitioners. Inclusion as a Benchmark Litigation Star reflects each attorney's outstanding reputation, deep litigation experience, and consistent success on behalf of clients.

Benchmark Litigation is a leading guide to the world's foremost litigation firms and lawyers, widely relied upon by in-house counsel and legal professionals nationwide.

O'NEIL CANNON WELCOMES ATTORNEY NATHAN ECKLEY

O'Neil Cannon is pleased to announce that Nathan Eckley has joined the firm as a member of its Trust, Estates and Succession Planning Practice Group. Eckley brings more than 20 years of experience advising individuals, families, and closely held businesses on estate planning, trust and probate administration, real estate, and corporate matters. His practice spans everything from foundational estate planning to sophisticated, multi-generational succession strategies, with a focus on continuity, asset preservation, and effective transitions for family and business interests. Licensed to practice in Wisconsin and Illinois, Eckley is known for providing practical, coordinated guidance tailored to each client's unique personal, business, and legacy goals.

O'Neil Cannon, founded in Milwaukee in 1973, is a full-service law firm focused on meeting the diverse legal needs of businesses and their owners. Our experienced attorneys work with businesses at every stage of the business life cycle, helping them start, grow, and successfully transition. We also represent businesses and individuals in a wide range of other matters, including litigation, tax and estate planning, and family law. For more information about the services we provide, please visit our website.

EMPLOYER NEW YEAR'S RESOLUTION #4—DUST OFF THOSE EMPLOYEE HANDBOOKS

We've made it to the last week of January and our last employer resolution: reviewing and updating the company's employee handbook. While this may seem like the simplest resolution, it will actually require careful thought and review. A handbook is more than just a list of "dos and don'ts." It is an employer's first line of defense in litigation and an important tool for setting company culture. Employers need to look at both whether their handbooks address their *actual* policies, practices, and values that are implemented in the workplace and whether their policies are legally compliant. Even if you updated your handbook a year or two ago, the legal landscape has potentially shifted, requiring updates.

When considering handbook updates, pay particular attention to the following areas, some of which may be affected by the NLRB's 2023 *Stericycle* decision, which now presumes that rules that could be "reasonably interpreted" to chill an employee's rights are unlawful. Although *Stericycle* could be overturned under the current administration, for now, it is good law, and running afoul of it could put employers in the NLRB's crosshairs.

1. Conduct and Civility: General requirements to "act professionally" or "be positive" are under fire. The NLRB often views broad "anti-disparagement" or "civility" rules as a way to prevent employees from complaining about their supervisors or workplace safety.
2. Confidentiality: While employers have a right to protect trade secrets and confidential information, employers cannot prohibit employees from discussing "terms and conditions of employment," which include their pay, benefits, and workplace grievances. Employees who have access to trade secrets and confidential information should be required to sign, at a minimum, a separate non-disclosure agreement, as most employee handbooks are structured to not be enforceable contracts.
3. Social Media and Communications: Policies that broadly ban "detrimental" posts about the company often fail the *Stericycle* test. These rules must be specific and include clear "safe harbor" language.
4. Recording: Blanket bans on taking photos or recordings in the workplace (often intended to protect privacy and confidentiality) can be seen as an attempt to prevent employees from documenting unsafe working conditions or labor violations.
5. Leave Laws: Many state-specific leave laws have been implemented in recent years, and employers with locations in multiple states, or even remote employees working from their homes in different states, should ensue that they are compliant with all applicable laws such as sick time and family leave.
6. Accommodations: While employers hopefully have solid policies and procedures in place for addressing accommodations for disabilities, the need to carefully address religious accommodations is becoming increasingly important. Both of these policies and processes should be addressed clearly in the employee handbook.

Resolution: Dedicate Time to Your Handbook Review

Handbook reviews are not the most exciting project, and in the busy day-to-day, it's an easy task to push off for months or even years. But an outdated handbook can cause confusion among your employees or even lead to litigation due to inaccurate, inapplicable, or impermissible policies. In 2026, dedicate the required time to reading and reviewing your employee handbooks to make sure that they are up to date and legally compliant.

As always, **O'Neil Cannon** is here for you. We encourage you to reach out with any labor and employment questions, concerns, or legal issues you may have, including assistance with drafting and reviewing employee handbook.

EMPLOYER NEW YEAR'S RESOLUTION #3—ADDRESS ARTIFICIAL INTELLIGENCE

Another week, another resolution. This time, we're addressing the AI elephant in the room. While the use cases for AI are myriad, the legal landscape is somewhat unknown and rapidly developing. But, for better or worse, employees *are* using AI. So, from trade secret risks to proposed legal oversight, employers need to address AI now.

1. **Stop Wondering If It's Happening and Start Managing It**

The biggest mistake an employer can make is assuming their workforce isn't using AI because they haven't "authorized" it yet. They're potentially using it to polish emails, summarize complex contracts, and draft performance reviews.

If you don't have a clear AI use policy, you have an unmanaged risk. Your resolution should be to audit which tools are being used and implement a policy that clearly defines approved and prohibited platforms and approved and prohibited uses.

2. **Protect Your Trade Secrets**

We often think of trade secret theft as a "bad actor" with a thumb drive, but in 2026, your secrets are more likely to "walk out the door" through a ChatGPT prompt. Under the Defend Trade Secrets Act and the Wisconsin Uniform Trade Secrets Act, it is required that reasonable efforts must be taken to maintain the secrecy of information that is a trade secret. Every time an employee feeds a sensitive proposal or proprietary code into a public AI model to clean it up or summarize it, that data may be used to train the model, arguably making it ascertainable to others and, therefore, not secret.

In addition to implementing a clear policy, employers should consider updating their confidentiality agreements and training staff on the risks (and consequences) associated with inputting confidential and proprietary information into open-source AI platforms.

3. **Commit to the Human Oversight**

In Wisconsin, the Governor's Task Force on Workforce and Artificial Intelligence has been tasked with gathering and analyzing information to produce an advisory action plan to identify the current state of generative AI's impact on Wisconsin's labor market; develop informed predictions regarding its opportunities and impact for the near term and into the future; identify how these workforce opportunities and impacts may touch Wisconsin's key industries, occupations, and foundational skillsets; explore initiatives to advance equity and economic opportunity in the face of these changes; and based on these findings, recommend policy directions and investments related to workforce development and educational systems to capitalize on the AI transformation.

Although the Governor's Task Force on Workforce and Artificial Intelligence may not result in specific legislation, some states, such as California, are implementing laws that prohibit employers from relying exclusively on AI for hiring, firing, or disciplinary actions. Even without an AI-specific law, AI algorithms are susceptible to implicit bias, which employers must avoid to remain in compliance with general employment laws such as Title VII and the Wisconsin Fair Employment Act.

Employers should ensure employment decisions are, at a minimum, reviewed and validated by a human so that an actual person can explain the reasoning behind any AI-assisted outcome.

Ultimately, AI is a tool, not a replacement for sound management or legal compliance. The goal for 2026 isn't to stop using AI; instead, the goal is to require employees to use it responsibly. By being intentional and proactive this year, employers can enjoy the benefits of AI without accidentally falling victim to its employment law pitfalls.

As always, **O'Neil Cannon** is here for you. We encourage you to reach out with any labor and employment questions, concerns, or legal issues you may have, including assistance with AI policies.

EMPLOYER NEW YEAR'S RESOLUTION #2—COMPREHENSIVE WAGE & HOUR AUDIT

As we start the second full week of January, we bring employers a second employment law resolution: a comprehensive wage and hour audit. So, even if you're sticking to your commitment to less screen time in 2026, this is worth a read.

In addition to lawsuits brough by individuals, either on behalf of themselves or on behalf of a class of similarly situated employees, the Department of Labor remains focused on enforcement of the FLSA. In fiscal year 2025, the DOL recovered more than $259 million in back wages for nearly 177,000 employees. Between government scrutiny and the persistent threat of class-action litigation, employers must be proactive. To mitigate risk, focus your audit on two primary areas: classification and the regular rate.

1. Exempt vs. Non-Exempt Employees

Misclassification remains one of the most common—and expensive—mistakes an employer can make. Under the FLSA, the default rule is that every employee is entitled to overtime pay (1.5 times their regular rate for hours worked in excess of 40 in a workweek). The employer carries the burden of proving that an employee fits into a specific exemption to the payment of overtime.

To correctly classify an employee as exempt under the FLSA, they generally must meet two criteria:

1. The Salary Basis Test: The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed. The salary must, as of today, be at least $684 per week.
2. The Duties Test: Just because an employee is paid on a salary basis doesn't mean they are exempt. They must also meet the duties test, meaning that their actual job duties must primarily involve executive, administrative, professional, outside sales, or high-level computer-related tasks. The duties test requires a fact intensive inquiry that does not simply rely on a job title.

2. The Regular Rate

Even if you know an employee is entitled to overtime, calculating the correct overtime pay can be challenging, as it is 1.5 times the *regular* rate, not the *hourly* rate. The FLSA defines the regular rate as the hourly rate actually paid to the employee for "all remuneration for employment." This must include things such as non-discretionary bonuses, shift differentials, on-call pay, and commissions, but it can exclude discretionary bonuses, gifts, benefit contributions, and paid time off.

Resolution: Audit Now, Before the DOL Does

Misclassifying an employee as exempt when they should be non-exempt or miscalculating the regular rate is a costly mistake. It doesn't just result in liability for the unpaid overtime; it often brings along liquidated damages (double the back pay), attorneys' fees, and potentially a multi-year look-back period for a class of similarly situated employees. Even a well-meaning employer can find themselves facing significant monetary penalties based on calculation errors or reliance on job titles or outdated job descriptions.

Don't wait for a DOL investigator to knock on your door or a plaintiff's attorney to send a demand letter. Make 2026 the year you audit your wage and hour practices.

As always, **O'Neil Cannon** is here for you. We encourage you to reach out with any labor and employment questions, concerns, or legal issues you may have, including assistance with wage and hour audit and litigation.

EMPLOYER NEW YEAR'S RESOLUTION #1—GET YOUR I-9S IN ORDER

It's January, and we all know what that means—New Year's resolutions. While many of us will stop going to the gym by the end of the week, we're bringing you a month of employment law resolutions that we hope you keep all year long. First up: the Form I-9.

I-9s are (or should be) completed at the time of hire and then, usually, shoved in a personnel file, never to be thought of again. And, if the form was filled out perfectly, and your retention process is in order, that is sufficient. But perfection is aspirational, and all too often, errors lurk in the initial completion, required reauthorizations, and the retention schedule of these forms.

Given increased federal scrutiny of work authorization, January 2026 is the ideal time to review your I-9 processes and engage in an I-9 audit.

Why Do I Need to Do This?

For years, many employers viewed I-9 compliance as a simple and routine paperwork hurdle. However, several factors make 2026 a high-stakes year for employment eligibility:

1. **Increased ICE Enforcement:** Immigration and Customs Enforcement has significantly ramped up its workplace inspection activity. If your documents aren't in order, you could not only risk losing workers but also face significant monetary penalties.
2. **Increased Fines:** Civil penalties for I-9 violations are adjusted annually for inflation. For 2026, even simple paperwork errors (missing dates, signatures, or checked boxes) can result in fines ranging from hundreds to several thousand dollars *per form*. This potential liability snowballs quickly.

Your 2026 I-9 Audit Checklist

Conducting a self-audit—often with the assistance of legal counsel to maintain privilege and ensure accuracy—allows you to correct errors in "good faith," which can serve as a powerful mitigating factor if ICE ever serves a Notice of Inspection.

1. Retention Review

Don't keep what you don't need. While you need to have a Form I-9 for each current employee, you are not required to keep them forever after the employee no longer works for the company. You are required to keep I-9s for former employees for the longer of (1) three years after the date of hire; and (2) one year after the date of termination. Purging forms outside this window reduces your overall exposure.

2. The Forms: Are They Filled Out Correctly?

Section 1: The Employee's Responsibility

Check that the employee completed Section 1 no later than their first day of work. Common errors include missing signatures and failure to check a status box (e.g., "A citizen of the United States").

Section 2: The Employer's Responsibility

Ensure this was completed within three business days of the hire date. Verify that the document titles, issuing authorities, and expiration dates are filled in and, if the documents were retained, match the documents presented.

Supplement B (formerly Section 3): Reverification

While Sections 1 and 2 are the focus during onboarding, Supplement B—the section used for reverification and rehires—is often where an audit reveals the most significant compliance gaps. Because this section is only filled out "as needed," many employers fail to track the specific triggers that require its completion. There are three primary scenarios when Supplement B must be filled out:

1. **Reverification:** When an employee's temporary work authorization or employment authorization document is about to expire, you must reverify their eligibility no later than the date the current authorization expires. Because reverification is solely about *work authorization*, you only need to review a List A or List C document (not a List B document). Asking for more documents than required—or asking for specific documents of your choosing—can inadvertently trigger a claim of discrimination. You do not need to reverify U.S. citizens or noncitizen nationals, nor do you typically need to reverify Lawful Permanent Residents.
2. **Rehires:** If you rehire a former employee within three years of the date their original Form I-9 was completed, you have a choice: You can either complete a brand-new Form I-9 or simply complete Supplement B on their original form.
3. **Legal Name Changes:** While not strictly mandatory under federal law, USCIS highly recommends using Supplement B to document an employee's legal name change to ensure your records match your payroll and tax filings.

3. Making Corrections

If you find an error, never use white-out and never backdate. The proper procedure is to:

- Draw a single line through the incorrect information;
- Enter the correct information;
- Initial and date the change (using the date of the correction); and
- Provide a brief explanatory memo.

For major errors, it is often best to complete a new form and staple it to the old one.

Resolution: Be Proactive, Not Reactive

The goal of a 2026 I-9 audit isn't just to fix the past—it's to protect the future. Use this audit to identify where your processes may be breaking down. Is the HR team properly trained? Are you getting alerts about work authorization expiration? Are you purging records when appropriate?

By resolving to audit your I-9s now, you are ensuring that if a Notice of Inspection arrives in your inbox this year, your response will be one of confidence, not panic.

As always, **O'Neil Cannon** is here for you. We encourage you to reach out with any labor and employment questions, concerns, or legal issues you may have, including assistance with I-9 self-audits and responses to Notices of Inspection.

WHAT EMPLOYERS NEED TO KNOW ABOUT NO TAX ON OVERTIME

The One Big Beautiful Bill Act, signed into law on July 4, 2025, introduced a temporary federal income tax deduction for "qualified overtime compensation." Under this provision, eligible employees can deduct a capped amount of their overtime pay from their federal income taxes. However, it is the employer that must track and report the necessary information.

What Can Be Deducted?

The deduction does not apply to *all* overtime compensation. It only applies to the premium portion of overtime required under the FLSA. Under the FLSA, non-exempt employees who work more than 40 hours in a workweek must be paid at a rate of time and one-half (1.5 times) their regular rate. The deduction applies only to the extra *half*—the premium paid *in excess* of the regular rate.

- Example: If an employee's regular rate is $20/hour, the FLSA overtime rate is $30/hour. Only the $10/hour premium qualifies for the deduction. The regular $20/hour portion of that pay is not deductible.

Importantly, any additional overtime premium required by either state law or a collective bargaining agreement or voluntarily agreed to by the employer (e.g., double time on holidays) does not qualify for the federal income tax deduction.

Employer Reporting

An employer's payroll system must be updated to segregate and track the specific premium amount of FLSA-required overtime so that overtime premium information can be reported properly.

The new law is retroactive to January 1, 2025, but the IRS acknowledges that system updates take time. Therefore, the IRS has issued guidance providing penalty relief for the 2025 tax year for employers who are unable to file returns showing the new separate accounting.

Because new forms have not been finalized, employers must provide employees with the total qualified overtime compensation by a "reasonable method," as defined by the U.S. Secretary of the Treasury, such as reporting the amount in Box 14 of the Form W-2; providing a separate year-end statement; or making the information available through an employee online portal.

This transition penalty relief will not be available for the 2026 tax year and beyond (the overtime deduction is currently scheduled to sunset after 2028), so employers will be required to provide all necessary reporting. The IRS has released a draft W-2 indicating that the total amount of qualified overtime compensation must be reported in Box 12 using a new, specific code (i.e., draft code "TT"), although this draft is subject to change before it is finalized. Employers should immediately begin working with their payroll provider (or internal team) to confirm that they have everything in place to handle this new mandatory W-2 field for the 2026 tax year.

Educate Employees (Carefully)

Employees will undoubtedly have questions, especially as their paystubs or W-2s begin to look different. Employees with questions about claiming the deduction or assessing their ultimate tax liability should be directed to their own tax professionals. The employer's sole obligation is to properly identify and report the qualified overtime amount on the employee's W-2.

Classification Risk

The new tax benefit potentially makes the value of being a non-exempt, overtime-eligible employee more financially advantageous. Therefore, employers should perform an audit of their exempt classifications. A misclassification that leads to an employee missing out on this tax-advantaged income could heighten the risk of a lawsuit under the FLSA.

The new "No Tax on Overtime" rule is a complex addition to the wage and hour landscape. As always, **O'Neil Cannon** is here for you. We encourage you to reach out with any labor and employment questions, concerns, or legal issues you may have.

ATTORNEY GREG LYONS RECOGNIZED AS A 2025 NOTABLE LITIGATOR AND TRIAL ATTORNEY BY BIZTIMES MILWAUKEE

O'Neil Cannon is pleased to announce that Greg Lyons has been selected for the 2025 *Notable Litigators and Trial Attorneys* list by *BizTimes Milwaukee*. Chosen from nominations across the region, Lyons was recognized for his leadership, litigation experience, and commitment to serving the Milwaukee community.

The special section will appear in the print edition of *BizTimes Milwaukee* and online at BizTimes.com. We congratulate Lyons on this well-earned honor and appreciate the impact he continues to make for our clients and our community.

O’NEIL CANNON WELCOMES ATTORNEY MAX STEPHENSON

O’Neil Cannon is pleased to welcome Max Stephenson to its Family Law practice group. Stephenson helps clients navigate the legal and emotional complexities of family transitions, including divorce, child custody, paternity, post-judgment modifications, guardianships, and injunctions. Known for his approachable style and practical, personalized strategies, he also brings deep experience in LGBTQ+ family law. His commitment to clients and the community is reflected in his leadership and volunteer work with organizations such as the American Cancer Society and the LGBT Chamber of Wisconsin.

O’Neil Cannon, founded in Milwaukee in 1973, is a full-service law firm dedicated to serving the wide-ranging needs of businesses and their owners. We represent corporations, institutions, partnerships, and closely held companies at every stage of the business life cycle, helping them start, grow, and transition from one generation to the next. In addition to our strong focus on business law and civil litigation, we assist business owners with their personal legal needs, including tax and estate planning and family law.

SUPER LAWYERS RECOGNIZES 28 O’NEIL CANNON ATTORNEYS

Each year, *Super Lawyers* surveys the State of Wisconsin’s 15,000 attorneys and judges, seeking to recognize the State’s top attorneys. Recently, *Super Lawyers* published its lists for 2025, which include the Top 10 Attorneys in Wisconsin, Top 50 Attorneys in Wisconsin, Top 25 Attorneys in Milwaukee, Super Lawyers (consisting of the top 5% of attorneys in Wisconsin), and Rising Stars (consisting of attorneys who are 40 years old or younger or who have been in practice for 10 years or less).

Super Lawyers, who previously referred to the firm as “the Milwaukee mid-sized powerhouse,” recognized twenty-eight of our attorneys.

Those attorneys are the following:

- Dino Antonopoulos:
    - Super Lawyer
- Nick Chmurski:
    - Rising Star
- Doug Dehler:
    - Super Lawyer
- Jim DeJong:
    - Super Lawyer
- Seth Dizard:
    - Top 50 Attorneys in Wisconsin
    - Top 25 Attorneys in Milwaukee
    - Super Lawyer
- Maura Falk:
    - Rising Star
- Pete Faust:
    - Top 50 Attorneys in Wisconsin
    - Super Lawyer
- John Gehringer:
    - Super Lawyer
- Joseph Gumina:
    - Super Lawyer
- Jessica Haskell:
    - Rising Star
- Mike Kennedy:
    - Rising Star
- Grant Killoran:
    - Super Lawyer
    - Top 50 Attorneys in Wisconsin
    - Top 25 Attorneys in Milwaukee
- JB Koenings:
    - Super Lawyer
- Dean Laing:
    - Top 10 Attorneys in Wisconsin
    - Top 50 Attorneys in Wisconsin
    - Top 25 Attorneys in Milwaukee
    - Super Lawyer
- Trevor Lippman:
    - Rising Star
- Greg Lyons:
    - Super Lawyer
- Patrick McBride:
    - Super Lawyer
- Jason Meehan:
    - Rising Star
- Joe Newbold:
    - Super Lawyer
- Erica Reib:

    - Rising Star
- Chad Richter:
    - Super Lawyer
- Ryan Riebe:
    - Rising Star
- John Schreiber:
    - Super Lawyer
- Jason Scoby:
    - Super Lawyer
- Steve Slawinski:
    - Super Lawyer
- Kelly Spott:
    - Rising Star
- Christa Wittenberg:
    - Rising Star

Super Lawyers is a national rating service that rates attorneys in all 50 states. The selection process utilized by *Super Lawyers* is multi-phased and includes independent research, peer nominations, and peer evaluations. One court recently had this to say about *Super Lawyers*:

"[T]he selection procedures employed by [*Super Lawyers*] are very sophisticated, comprehensive, and complex. It is abundantly clear . . . that [*Super Lawyers* does] not permit a lawyer to buy one's way onto the list, nor is there any requirement for the purchase of any product for inclusion in the lists or any quid pro quo of any kind or nature associated with the evaluation and listing of an attorney or in the subsequent advertising of one's inclusion in the lists."

We are proud to be one of the few firms in Wisconsin with more than 50% of its attorneys recognized by *Super Lawyers.*