A RECENT SUPREME COURT DECISION NARROWS THE SCOPE OF TRESPASSER IMMUNITY

A recent decision delivered by the Wisconsin Supreme Court has demonstrated that even a simple bar fight can have a drastic impact on Wisconsin's legal precedent. Such decision occurred in the case of *Stroede v. Society Insurance and Railroad Station, LLC*, where the court ruled that the off-duty employee who escorted a drunk patron out of a bar does not have immunity from the negligence lawsuit that followed when the patron fell down a flight of stairs and suffered injuries. *Stroede* sheds light upon the scope of immunity granted to "possessor[s] of real property" under Wis. Stat. § 895.529 against legal claims brought by injured trespassers.

The main facts of the case are as follows: David Stroede was drinking at a bar in Saukville, Wisconsin in 2014. Stroede became severely intoxicated and punched another bar patron. Initially, Stroede was removed from the bar by one of its on-duty employees. Jacob Tetting, an off-duty employee, was also in the bar that night having dinner with his family and witnessed Stroede attempt to re-enter the bar shortly after he was removed. Tetting grabbed Stroede by the shoulders and began to walk him out of the bar yet again. While escorting Stroede out, Tetting released Stroede near the bar's stairwell and Stroede tumbled down the stairs suffering serious injuries. Stroede, thereafter, filed suit against Tetting, the bar, and the bar's insurer.

Tetting argued that he was entitled to immunity under Wis. Stat. § 895.529, which states that "a lawful occupant of real property" has no duty of care to trespassers and because Mr. Stroede was a trespasser at the bar after he was initially removed for starting a fight, Tetting owed him no duty of care. However, the Court's decision hung on the determination of whether Tetting was an "other lawful occupant"[1] of the bar under the immunity statute. Ultimately, the Court found that because Tetting was simply a bar patron at the time Stroede was injured and he was not acting as an on-duty employee, he was not entitled to immunity.

Based on this ruling, off-duty employees are not entitled to immunity should they happen to injure a party trespassing at their place of employment. The application of *Stroede* is likely to be especially important in the future for employees of bars and restaurants. Thus, should a similar incident occur while you are enjoying a meal or a pint at your place of employment, let the on-duty employees handle the incident.

[1] Specifically, under Wis. Stat. § 895.529(1)-(2), an "owner, lessee, tenant, or other lawful occupant of real property" does not owe a duty of care to a trespasser of real property.

HEALTH CARE LAW ADVISOR ALERT: DON'T BE CAUGHT OFF GUARD BY FEDERAL "SURPRISE BILLING" LEGISLATION

The federal No Surprises Act was signed into law in December 2020 and becomes effective on January 1, 2022. Although similar state laws exist elsewhere, Wisconsin does not currently have a "surprise billing" law. As a result, many Wisconsin health care providers will need to take steps to ensure they are complying with the requirements of this new federal law, which will impact their billing and revenue cycle practices.

The Act's primary goal is to protect patients from surprise medical bills, including unexpected charges for out-of-network services. The Act protects patients in two important ways that providers should understand.

First, for emergency services, the law prohibits out-of-network providers from balance billing for amounts beyond what the patient would have been required to pay if the services had been delivered in-network.

Second, for certain non-emergency services, the law similarly prohibits out-of-network providers from balance billing beyond the patient's in-network obligations, but with an exception that allows some providers to balance bill if they give the patient written notice at least 72 hours before services are provided and obtain the patient's consent.

The 72-hour notice must comply with specific requirements. For example, it must disclose to the patient that the provider is out-of-network, give the patient a good-faith estimate of the out-of-network charges that will be incurred, and identify alternative providers who are available to the patient. But this 72-hour notice exception does not apply for certain types of out-of-network services provided at in-network facilities, including ancillary services (such as anesthesia), diagnostic services (such as radiology and lab), or any other services that the Secretary of Health and Human Services (HHS) may identify. Providers who violate the law's balance billing prohibitions face penalties from HHS of up to $10,000 per violation.

Beyond protecting patients, the Act also provides a framework for resolving certain billing disputes between out-of-network providers and health plans. Under the new federal law, within 30 days of being billed, private health plans that cover emergency services must pay at least a portion of an out-of-network provider's charges for covered emergency services, regardless of whether prior authorization was obtained. The same is true for out-of-network charges for covered non-emergency services rendered at in-network hospitals and facilities. The specific amounts that health plans must pay to out-of-network providers within this 30-day period will generally be determined based on the health plan's median in-network payment for the same or similar services. If the health plan's language excludes or otherwise does not cover the services being provided, then rather than make this partial payment, the health plan may issue a benefit denial within 30 days of being billed for the services.

Upon receiving the health plan's partial payment or denial letter, an out-of-network provider and health plan have 30 days to try to negotiate a resolution of any dispute. If the dispute is not resolved within this timeframe, the provider then has a tight window—four calendar days from the end of the 30-day negotiation period—to initiate an appeal using an Independent Dispute Resolution (IDR) process established under the new federal law.

The IDR process creates an independent review and expedited arbitration process. Within three days of initiating the IDR process, the parties must select a certified IDR entity to decide their dispute. Then, within 10 days of selecting the IDR entity, both the provider and the health plan must submit "final offers" to the IDR entity, together with any supporting materials that the IDR entity requires and any other information either party believes is pertinent to their dispute. The IDR entity will then select one of the two offers. The party whose offer is not selected must pay the costs of the IDR, which are expected to range from approximately $500 to $2,000 in most cases. Once an IDR entity makes its decision, the balance due must be paid within 30 days.

When deciding which "final offer" to accept, the IDR entity must consider a benchmark known as the "qualifying payment amount" (QPA) for the services at issue. As of January 1, 2022, the QPAs for various services are expected to be set at amounts that represent the median of the contracted (in-network) rates that the health plan paid for such services in the relevant market as of January 31, 2019, with an upward adjustment based on the consumer price index for urban consumers (CPIU). For 2023 and subsequent years, the QPAs for existing health plans will continue to be adjusted upward based on the CPIU. For new health plans formed after January 31, 2019, the QPAs may be calculated based on a different methodology approved by HHS, or pursuant to a database that HHS may set up in accordance with the Act.

The law mandates that an IDR entity consider the QPA when evaluating and deciding which of the competing "final offers" to approve. But there are other factors that IDR entities are also directed to consider, including the provider's training, experience and outcome measurements; the complexity of the case; the provider's teaching status; and any contracting rate history between the parties over the prior four years.

Finally, the Act requires that, effective January 1, 2022, providers must have processes in place to ensure they are regularly supplying updated provider information to health plans for use in directories that are made available to help patients identify in-network providers.

For additional information about the requirements of the federal No Surprises Act, please contact Doug Dehler by phone at (414) 276-5000 or by email at doug.dehler@wilaw.com.

EMPLOYMENT LAWSCENE ALERT: WHAT DOES THE CDC'S NEW MASK GUIDANCE MEAN FOR EMPLOYERS?

On May 13, 2021, the CDC announced that it had updated its guidance for individuals who have been fully vaccinated against the COVID-19 virus (i.e., individuals who received their final shot more than two weeks ago). The updated guidance states that individuals who have been fully vaccinated against COVID-19 are not required to wear masks or follow social distancing guidelines in most settings. Masks are still required for those who have not reached full vaccination. Masks are also still required for all individuals in certain places, including on public transportation, in transportation hubs, and at high-risk workplaces, such as healthcare, correctional facilities, and homeless shelters. Although this guidance was issued for individuals, the CDC has promised updated guidance for businesses and employers shortly, and some companies have already lifted their mask mandates for customers.

So, while this means that employers may soon be able to relax their mask rules for employees, there are a number of important considerations for employers.

Can an employer ask its employees if they have been vaccinated?

Yes. According to the EEOC, requesting proof of COVID-19 vaccination is not likely to elicit information about a disability, and therefore is not a disability-related inquiry under the ADA, which would otherwise need to be job-related and consistent with business necessity, and does not elicit genetic information protected by the Genetic Information Nondiscrimination Act. Additionally, HIPAA does not apply to employee health information collected or maintained by an employer in its role as an employee's employer. However, medical information regarding employees should be kept confidential and separate from an employee's general personnel file.

Does my company still have to comply with local mask ordinances?

Yes. The CDC guidance specifically says that individuals are still required to wear masks when required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance. Therefore, companies located in areas where there are currently mask ordinances in place must continue to follow such local or state laws.

What about OSHA and other safety concerns?

On January 29, 2021, OSHA published guidance that required all individuals to wear masks when in public and around other people and provided that employers should not distinguish between workers who are vaccinated and those who are not. However, OSHA has now stated that it is reviewing the CDC guidance, will update its guidance in the near future, and to "refer to the CDC guidance for information on measures appropriate to protect fully vaccinated workers." Therefore, employers should be able to rely on the CDC guidance related to mask mandates and social distancing for fully vaccinated employees. However, employers must remember that, consistent with the obligations under the OSH Act's general duty clause, they will need to continue to provide a safe workplace. Therefore, an employer that abandons all COVID-related safety protocols or permits all employees, regardless of vaccination status, to stop wearing masks may still be at risk of an OSHA complaint.

In summary, employers must continue to comply with local mask ordinances and should monitor OSHA and other guidelines to make sure that they are ensuring the safety of their employees. If an employer decides to allow fully vaccinated individuals to stop wearing masks, it should clearly communicate its policy, including how it will verify vaccination status, to its employees. As always, O'Neil Cannon is here for you. We encourage you to reach out to our labor and employment law team with any questions, concerns, or legal issues you may have, including those regarding COVID-19 and related issues.

TAX AND WEALTH ADVISOR ALERT: REMINDER–MAY 17 IS THE DEADLINE FOR MORE THAN JUST INDIVIDUAL RETURNS

The IRS extended the deadline for individual taxpayers to file and pay taxes to May 17, 2021 in Notice 2021-21. However, Monday, May 17 is the deadline for more than just individual returns. Here is a list of some other May 17 deadline items that IRS has noted:

- Individual return extension requests. Taxpayers can extend the deadline beyond May 17, 2021 by filing Form 4868, *Application for Automatic Extension of Time To File U.S. Individual Income Tax Return.* Filing an extension moves the filing deadline from May 17, 2021 to October 15, 2021. You can also get an extension by paying all or part of your estimated income tax due with Direct Pay, the Electronic Federal Tax Payment System (EFTPS), or a credit or debit card.
- Contributions to IRAs and health savings accounts. Taxpayers only have until May 17, 2021 to make 2020 contributions to individual retirement arrangements (IRAs), Roth IRAs, health savings accounts, Archer medical savings accounts, and Coverdell education savings accounts –even if they file for an extension.
- Self-employed persons retirement plan contributions. Self-employed persons have the opportunity to fund SEP and SIMPLE IRAs as well as solo 401(k) plans through the deadline for a timely filed extension.
- Withdrawals of any 2020 contributions to an IRA. Withdrawals of any 2020 contributions to an IRA, including excess 2020 contributions (if you didn't request a filing extension) are due May 17, 2021. Notably, this rule does not apply to the following retirement plans: 401(k), 403(b), SARSEP and SIMPLE IRA plans. That deadline was April 15, 2021.
- Retirement plan distributions. Notice 2021-21 also automatically postponed to May 17, 2021 the time for reporting and payment of the 10% additional tax on amounts includible in gross income from 2020 distributions from IRAs or workplace-based retirement plans.
- Payroll taxes for household employees. Form 1040, Schedule H (Household Employment Taxes) is due even if you are not required to file Form 1040 itself.
- 2017 unclaimed refunds. The law provides a three-year window to claim a refund. To get any unclaimed refund from 2017, a taxpayer must properly address and mail the tax return, postmarked by May 17, 2021. If a taxpayer does not file a return within three years, the money becomes property of the U.S. Treasury.
- Returns for calendar year tax-exempt organizations. Also due May 17, 2021 are forms in the 990 series, including Form 990-T, *Exempt Organization Business Income Tax Return*.
- Foreign trusts and estates. Foreign trusts and estates with federal income tax filing or payment obligations that file Form 1040-NR also have until May 17, 2021 to file or make payment.
- State individual income tax returns for most states. States issue separate guidance regarding any potential due date changes and do not always conform with federal updates. However, many states have announced that they will extend their tax deadlines to May 17, 2021 as well. For instance, Wisconsin announced the postponement of the 2020 personal income tax filing and payment due date to May 17, 2021. Interest and late-filing fees will apply beginning May 18, 2021. Nevertheless, if you need more time to file, Wisconsin offers an extension. Wisconsin does not have its own separate extension application, however, if taxpayers have an approved federal tax extension (Form 4868), they will automatically receive a Wisconsin tax extension. Filing a federal extension moves the Wisconsin filing deadline from May 17, 2021 to October 15, 2021.

O'Neil Cannon will continue to monitor federal and state law tax changes. For questions or further information relating to the tax filing deadlines, please contact Attorney Britany E.

Morrison.

THE WILAW QUARTERLY NEWSLETTER

Newsletter Article Highlights:

- Is Your Commercial Property Tax Assessment Too High?
- FEMA Launches COVID-19 Funeral Assistance Program
- $7.5 Million Debt Limitation for Small Business Debtors Extended
- IRS Says Restaurant Entertainment Expenses Fully Deductible
- American Rescue Plan Extends Tax Credits for COVID-Related Leave
- Corporate Practice of Medicine and Fee Splitting–Considerations for Telehealth Ventures

Firm News:

- Firm Elects Kelly M. Spott and Trevor Lippman as Shareholders
- Attorneys Christa Wittenberg and Dean Laing Published in the *Wisconsin Lawyer*
- Attorney Gumina's Article on Employer Covid-19 Vaccination Policies was Featured by *ABC of Wisconsin*
- Attorneys Marguerite Hammes and Grant Killoran Published in the *Wisconsin Lawyer*

Click the image below to read more.

WISCONSIN LANDLORD SUBJECTED TO TENANCY IN JAIL

In a published opinion, the Wisconsin Court of Appeals confirmed that landlords who fail to provide timely statements explaining the basis for withholding funds from a residential tenant's security deposit may be subject to criminal prosecution and potential jail time.

In *State of Wisconsin v. Lasecki,* 2020 WI App 36, the Wisconsin Court of Appeals affirmed a circuit court judgment convicting Lasecki, a landlord, of two misdemeanor counts of engaging in unfair trade practices for failing to either return his tenants' security deposits in full or provide statements to the tenants explaining why he was authorized to withhold funds.

Generally, the Wisconsin Statutes allow a landlord to withhold from a tenant's security deposit amounts reasonably necessary to pay for certain authorized categories of costs or damages. A landlord that withholds such amounts from a security deposit is required to deliver to the tenant any remaining balance in the security deposit within 21 days.

Although the Wisconsin Statutes make no mention of any further requirement on the part of a landlord who elects to withhold amounts from a security deposit, the Wisconsin Administrative Code applicable to residential tenancies requires landlords that withhold any portion of a security deposit to deliver to the tenant a written statement accounting for all amounts withheld.

Lasecki's troubles began when his tenants filed a complaint with the Wisconsin Department of Agriculture, Trade and Consumer Protection (ATCP) alleging that Lasecki withheld their security deposits but failed to provide them with a statement accounting for the withholding. After Lasecki failed to cooperate with ATCP's investigation into the tenants' complaint, the local district attorney's office became involved, eventually charging Lasecki for his failure to comply with the provisions of the Wisconsin Statutes and Administrative Code pertaining to the return of tenant security deposits.

A jury eventually found Lasecki guilty of the criminal charges brought by the district attorney. The circuit court thereafter awarded the tenants double their respective security deposits (as allowed by statute) and ordered Lasecki to a stayed sentence of 60 days in the county jail—14 days of which Lasecki served.

Lasecki appealed the jury verdict and order of the circuit court claiming that the circuit court lacked jurisdiction because the crimes of which Lasecki was convicted were "not known to law" and that no ordinary person would have sufficient notice that such conduct was criminal.

The Wisconsin Court of Appeals rejected Lasecki's arguments and instead affirmed his conviction, finding that the following framework within the Wisconsin Statutes and Administrative Code does provide notice that would enable an individual like Lasecki to know that his conduct was criminal in nature:

- Section 704.28 of the Wisconsin Statutes allows a landlord to withhold from a tenant's security deposit amounts reasonably necessary to pay for certain categories of authorized costs. This same section instructs landlords to deliver the full amount of any security deposit paid by tenant, less any authorized withholdings, within 21 days.

- While section 704.28 of the Wisconsin Statutes makes no mention of any requirement that a landlord provide a withholding statement to tenants, section ATCP 134.06(4)(a) of the Wisconsin Administrative Code provides that "[i]f any portion of a security deposit is withheld by a landlord, the landlord shall . . . deliver or mail to the tenant a written statement accounting for all amounts withheld."
- Section ATCP 134.01 of the Wisconsin Administration Code, entitled "Scope and Application," provides that chapter ATCP 134 "is adopted under authority of [Wis. Stat. §] 100.20.
- Accordingly, pursuant to section 100.26(3) of the Wisconsin Statutes, any person who intentionally refuses, neglects or fails to obey a regulation or order made or issued under section 100.20, shall, for each offense, be fined not more than $5,000 and imprisoned in the county jail for not more than one year.

After providing the above roadmap of how a landlord arrives at criminal liability for failing to provide a residential tenant with a security deposit withholding statement, the court of appeals' decision opines that an ordinary and reasonably prudent landlord would commonly consult with Chapter 704 of the Wisconsin Statutes (the landlord/tenant law chapter) and would also appreciate the need to understand landlord/tenant regulations set forth by the Wisconsin Administrative Code. The statutory and regulatory framework contained therein is, as the court put it, not beyond the comprehension of an ordinary landlord. As such, Lasecki had sufficient notice that his conduct could constitute a crime under Wisconsin law and the circuit court's verdict and order was affirmed.

The author of this article knows of no other instance in which a Wisconsin residential landlord has been criminally charged for failing to provide a security deposit withholding statement to a tenant. While most violations of this administrative code requirement are dealt with in civil proceedings, the court of appeals confirmed that such violations may also lead to criminal charges. Here, charges may ultimately have been brought against Lasecki in response to his failure to cooperate with the state's investigation into the consumer complaint filed by his tenants; however, the court's decision should impress upon all residential landlords in Wisconsin the importance of providing tenants with a statement of all amounts withheld from their security deposit.

HEALTH CARE LAW ADVISOR ALERT: DID THE UNITED STATES SUPREME COURT JUST

SUGGEST A CHANGE TO THE ESTABLISHED PUBLIC HEALTH CONSTITUTIONAL FRAMEWORK?

American law long has recognized the authority of government officials to address public health emergencies. Almost 200 years ago, the U.S. Supreme Court ruled that, under the 10th Amendment to the U.S. Constitution, the power to address public health emergencies generally is held by the states rather than the federal government. *See Gibbons v. Ogden*, 22 U.S. 1, 205 (1824) (recognizing the “power of a State, to provide for the health of its citizens”). And more than a century ago, the U.S. Supreme Court decided the seminal case on the power of the states to respond to a public health crisis in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905). There, the Court affirmed the constitutionality of a state statute authorizing local health boards to require that residents be vaccinated against smallpox or pay a five-dollar fine.

As the Court explained in *Jacobson*, the authority to respond to a public health crisis must be “lodged somewhere,” and it is “not an unusual, nor an unreasonable or arbitrary, requirement,” to vest that authority in officials “appointed, presumably, because of their fitness to determine such questions.” *Id.* at 27. The Court intermittently emphasized the necessity of the state public health regulation, as well as the utilitarian aspect of rules protecting the many at the expense of the few, but ultimately seemed to rely on the basic police power of the state to regulate public health as the basis for its decision. *Id.* at 26, 28, 29, 31. Thus, while the *Jacobson* decision shows the high level of deference courts may give to the actions of states faced with a public health crisis, it does not set forth a clear framework for today’s courts or governmental officials, in part because the decision arose before the development of modern due process jurisprudence.

In its recent decision in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. ___, 141 S. Ct. 63 (2020), the U.S. Supreme Court may have begun to minimize the impact of *Jacobson today*. There, the Court enjoined an executive order by New York’s governor establishing certain occupancy limits to combat the spread of COVID-19. The Court noted that although “[m]embers of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area … even in a pandemic, the Constitution cannot be put away and forgotten.” *Id.* at *3.

In a concurrence, Justice Neil Gorsuch distinguished *Jacobson from the case before the Court*, stating it “hardly supports cutting the Constitution loose during a pandemic.” *Id.* at *5 (Gorsuch, J., concurring). He noted that people affected by the mandatory vaccination order at issue in *Jacobson* could avoid taking the smallpox vaccine by paying a small fine or identifying a basis for exemption and stated that *Jacobson*’s imposition on individual rights therefore was “avoidable and relatively modest” and “easily survived rational basis review, and might even have survived strict scrutiny, given the opt-outs available to certain objectors.” *Id.* at *6. He concluded by calling *Jacobson* a “modest decision.” *Id.*

On the other hand, Chief Justice John Roberts quoted a line from *Jacobson* in his dissent, stating that “[o]ur Constitution principally entrusts ‘[t]he safety and the health of the people’ to the politically accountable officials of the States ‘to guard and protect.’“ *Id.* at *9 (Roberts, C.J., dissenting) (quoting *Jacobson*, 197 U.S. at 38). He concluded that “it is not clear which part of this … quotation today’s concurrence finds so discomforting.” *Id.*

Jacobson and the cases that followed it analyzing past public health emergencies continue to provide guidance today about how to administer public health measures to combat contagious diseases, including current COVID-19 programs. This established law has guided government officials, public health experts, physicians, the public, attorneys and the courts for over a century. But the SARS-CoV-2 virus that causes COVID-19 (and the vaccines and treatments for it) are new. The novel nature of COVID-19, as well as the significant advances in medicine and science since the *Jacobson* decision was issued over a century ago, may lead to new and differing public health jurisprudence governing public health measures to combat the spread of disease. While the recent discussion of the limits of public health authority found in the *Roman Catholic Diocese* does not change established public health precedent, the comments made in the decision suggest the Court may be open to some sort of change in the law in the future.

Grant Killoran is a shareholder in O’Neil, Cannon, Hollman, DeJong and Laing’s Milwaukee office with a practice focusing on complex business and health care disputes and is the immediate past Chair of its Litigation Practice Group. He can be reached at 414.291.4733 or at grant.killoran@wilaw.com.

TAX AND WEALTH ADVISOR ALERT: BREAKING–IRS SAYS RESTAURANT ENTERTAINMENT EXPENSES FULLY DEDUCTIBLE

Businesses can now claim a 100% deduction on restaurant meals through the end of 2022, the IRS announced. The IRS released guidance today, April 8, which temporarily allows businesses a full deduction for food and beverages purchased from restaurants, starting after December 31, 2020 and before January 1, 2023. Importantly, the full deduction only applies to food purchased from take-out and dine-in restaurants. The deduction does not apply to pre-packaged food or groceries. Additionally, food from third-party facilities operated by an employer isn't eligible for the deduction.

O'Neil, Cannon, Hollman, DeJong and Laing will continue to monitor federal and state law tax changes. For questions or further information relating to the tax filing deadline, please contact Attorney Britany E. Morrison.

EMPLOYMENT LAWSCENE ALERT: AMERICAN RESCUE PLAN EXTENDS TAX CREDITS FOR COVID-RELATED LEAVE

On March 11, 2021, President Biden signed the American Rescue Plan into law. Among a wide variety of other aims, the $1.9 trillion bill extended tax incentives for certain employers that chose to provide their employees with qualifying paid leave related to the COVID-19 pandemic.

In March 2020, the Families First Coronavirus Response Act ("FFCRA") was signed into law. The FFCRA contained two leave components: the Emergency Paid Sick Leave Act ("EPSLA") and the Emergency and Family and Medical Leave Act ("EFMLA"). Under the EPSLA, employers with fewer than 500 employees were required to provide employees with up two weeks of leave sick leave for six COVID-related reasons; and under the EFMLA, employers with fewer than 500 employees were required to provide employees with up to 12 weeks of leave if their children's school or child care facilities were closed due to COVID. Those employers could then offset the expense of such paid leave through tax credits. Mandated leave under the FFCRA ended on December 31, 2020, but in December 2020, the tax credits were extended through March 31, 2021 for employers with fewer than 500 employees that opted to continue to provide qualifying EPSLA and EFMLA leave.

The American Rescue Plan similarly gives employers with fewer than 500 employees the option, but not the obligation, to continue to provide EFMLA and EPSLA to employees through September 30, 2021 and provide employers with a 100% tax credit to offset the cost of such leave. The American Rescue Plan has also expanded the list of qualifying reasons for EPSLA leave to include time off to receive the COVID-19 vaccination and time off to recover from side effects of receiving the vaccination. Employers should be mindful to update their existing FFCRA leave forms to reflect these additional uses for leave. Finally, on April 1, 2021, for employers who opt to provide continued leave pursuant to EPSLA and EFMLA, employees are entitled to a renewed two-week bank of EPSLA leave, and if an employee's bank of FMLA has not otherwise renewed pursuant to the employer’s FMLA policy, the 12-week EFMLA leave bank would also be replenished.

Therefore, while the American Rescue Plan does not add any new obligations for employers, it does continue to provide incentives in the event that employers with fewer than 500 employees choose to provide COVID-related paid time off. As always, O’Neil Cannon is here for you. We encourage you to reach out to our labor and employment law team with any questions, concerns, or legal issues you may have, including those regarding COVID and related issues.

$7.5 MILLION DEBT LIMITATION FOR SMALL BUSINESS DEBTORS EXTENDED

On Saturday, President Biden signed into law the COVID-19 Bankruptcy Relief Extension Act of 2021. This act extends the $7.5 million debt limitation under the Small Business Reorganization Act of 2019 (SBRA) for another year, until March 27, 2022.

Last year, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide emergency assistance for individuals and businesses affected by the COVID-19 pandemic. The CARES Act temporarily increased the debt limitation under the SBRA from $2,725,625 to $7.5 million. The SBRA, which took effect on February 19, 2020, created Subchapter V of the Bankruptcy Code to provide a more streamlined and cost-effective reorganization option for small businesses. The $7.5 million debt limitation increase under the CARES Act was set to expire on March 27, 2021.

The COVID-19 Bankruptcy Relief Extension Act of 2021 extends the bankruptcy relief provisions of the CARES Act, which most notably includes the $7.5 million debt limitation under the SBRA, until March 27, 2022. As a result, small businesses with debts between $2,725,625 and $7.5 million will continue to be eligible for Subchapter V for another year.

For further information regarding the COVID-19 Bankruptcy Relief Extension Act of 2021 or insolvency concerns relating to bankruptcy or receivership, please contact attorney Jessica K. Haskell.