ARETHA FRANKLIN'S ESTATE: ARE HANDWRITTEN DOCUMENTS VALID WILLS?

Aretha Franklin's heirs are embroiled in a court battle due to several handwritten documents that the Queen of Soul wrote before her death. The issue at hand is: Are these handwritten documents valid wills under Michigan law?
Shortly after Aretha's death in August 2018, no will could be found, which meant that Aretha's assets would be distributed to her next of kin via Michigan's intestate law. Later, three separate handwritten wills were found in Aretha's home, leading to a dispute between Aretha's children in the Michigan probate court. One will was found in a notebook stashed under some couch cushions in Aretha's living room. The attorney for Aretha's estate submitted these handwritten wills to the probate court, even though he questioned whether these handwritten wills were valid under Michigan law. The documents lack the usual formalities of a Last Will and Testament–some of the handwriting is difficult to read, some verbiage is crossed out, and some notes are penned in the margins of these documents.

The validity of handwritten wills is often questioned because it is difficult to know whether the decedent really did write the document, whether that document truly conveys the decedent's last wishes, and sometimes, what the decedent's last wishes were.

Michigan Law May Honor Aretha's Handwritten Will

In Michigan, the general rule is that a will is valid if it meets three requirements: (1) it is in writing; (2) it is signed by the testator or, while the testator is present, by another at the testator's direction; and (3) it is signed by at least two witnesses within a reasonable time after seeing the testator sign or after the testator acknowledges the signature. At first glance at this statute, it would appear the handwritten wills of Aretha drafted in private do not comply with the Michigan statutory requirements.

However, Michigan recognizes an exception to the will requirements under what is known as a "holographic will." A holographic will is an informal will that is handwritten and signed by the testator, but there is no witness requirement or the need for lawyer involvement, thereby forsaking some of the execution formalities required under Michigan law. Michigan simply requires a holographic will to be dated, signed, and that the material terms of the will are in the testator's handwriting.

For any of Aretha's holographic wills to be upheld the proponents of her will need to establish she intended these documents to be her last will and testament. Michigan courts will declare a holographic will valid only if it can be demonstrated by "clear and convincing evidence" that the testator intended the document to be the decedent's will. Aretha's intent can be proven by using outside evidence such as the nature of the relationships with her sons or

even portions of the documents not in her handwriting. Aretha's intent may be difficult to prove, because of the informal and secretive nature of the handwritten wills. Even if Aretha's intent can be shown and a handwritten will is upheld by the court, a long and expensive court battle among her children will likely follow.

Wisconsin Law Does Not Allow Holographic Wills

Unlike Michigan, Wisconsin has taken a firm stance against holographic wills and will not uphold them as valid. In Wisconsin there are nearly identical will requirements to those in Michigan: (1) it must in writing; (2) the will must be signed by the testator or in the presence of the testator at the testator's direction; and (3) the will must be signed by at least two witnesses within a reasonable time after witnessing the signing of the will, after the testator's acknowledgment of their signature on the will, *or* after the testator's acknowledgement of the will. What is not identical is Wisconsin's acceptance of holographic wills. If the controversy was taking place in Wisconsin, Aretha's handwritten documents would not be held to be valid wills and Aretha's estate would be distributed to Aretha's next of kin via Wisconsin's default intestate rules.

Estate planning can be a challenging and stressful process that all too often ends in disputes such as this. Wisconsin residents should meet with an experienced estate planning attorney to ensure his or her will is valid under Wisconsin law.

For estate planning assistance contact Kelly M. Spott at 414-276-5000 or kelly.spott@wilaw.com.

EIGHTEEN OCHDL ATTORNEYS NAMED 2020 BEST LAWYERS IN AMERICA®

O'Neil Cannon is pleased to announce that eighteen lawyers have been named to the 2020 Edition of *Best Lawyers*, the oldest and most respected peer-review publication in the legal profession.
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. Its first international list was published in 2006 and since then has grown to provide lists in over 75 countries.

"For more than a third of the century," says CEO Steven Naifeh, "Best Lawyers has been the gold standard of excellence in the legal profession." President Phil Greer adds, "We are

extremely proud of that record and equally proud to acknowledge the accomplishments of these exceptional legal professionals."

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

We would like to congratulate the following attorneys named to the 2020 *Best Lawyers in America* list:

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

Since it was first published in 1983, *Best Lawyers* has become universally regarded as the definitive guide to legal excellence. *Best Lawyers* is based on an exhaustive peer-review survey. Over 54,000 leading attorneys cast more than 7.3 million votes on the legal abilities of other lawyers in their practice areas. Lawyers are not required or allowed to pay a fee to be listed; therefore inclusion in *Best Lawyers* is considered a singular honor. *Corporate Counsel* magazine has called *Best Lawyers* "the most respected referral list of attorneys in practice."

EMPLOYMENT LAWSCENE ALERT: DOCUMENTATION MATTERS!

If you call your employment lawyer and tell her that you want to terminate an employee for performance issues, one of the first questions will be “What documentation do you have?” Recently, the Seventh Circuit confirmed just how crucial documentation can be when defending an employment lawsuit.

In *Rozumalski v. W.F. Baird and Associates*, decided August 22, 2019, the employee had been sexually harassed by her supervisor, who was investigated by the employer and terminated once the investigation confirmed the allegations. However, after her supervisor’s termination, the employee was eventually terminated from her job and filed a federal complaint alleging that she had been retaliated against for her original sexual harassment claim and for other complaints stating that her previous supervisor who had been terminated had negatively influenced her new boss in retaliation. The company testified that the employee was terminated for legitimate, non-discriminatory reasons, namely, performance issues. The company stated that the employee struggled with her business development responsibilities, submitted a report that was grossly below company standards and required significant reworking, and was consistently late to work. These performance issues were documented in her written performance evaluation and listed as “needs improvement.” The employee then continued to receive negative performance evaluations, which provided specific examples to support the company’s concerns about her work, and was eventually placed on an Employee Improvement Plan. When she violated a term of her Employee Improvement Plan, she was terminated.

The Seventh Circuit acknowledged that a prior complaint of harassment could impact a victim long after the incident. However, it found that the employee’s new supervisor was not aware of her original harassment complaints until at least five months after the first negative performance review and, therefore, could not have been motivated by a retaliatory animus. Additionally, the individual who made the ultimate decision to terminate the employee’s employment did not know about the original complaints and was motivated solely by the employee’s violation of the Employee Improvement Plan. Finally, the Seventh Circuit observed that the employee’s complaints that her new supervisor was negatively impacted by her previous supervisor could not have been a basis for retaliation because her documented performance issues predated her complaints.

This case stresses the importance of employers properly documenting employee performance issues and creating honest performance evaluations that accurately describe and document employee performance issues. Performance evaluations should be focused on critical performance issues measured against the employer’s legitimate business

expectations. When an employee fails to meet a legitimate business expectation, the performance evaluation should reflect that deficiency. Too often, employers want to terminate underperforming employees without supporting documentation. For example, when an employee's most recent performance evaluations are reviewed prior to termination and there is absolutely no indication or evidence of poor or underachieving performance, the company's business records do not match the reality of the employee's performance, and the termination decision becomes more problematic.

The Seventh Circuit's decision could have been much different for this employer if the employee's performance issues had not been documented or had not been documented accurately. As demonstrated, good and accurate documentation is vitally important—it may be the difference for your company in winning or losing a lawsuit.

TAX AND WEALTH ADVISOR ALERT: TIME TO ACT ON ACT 368: WISCONSIN PASS-THROUGH ENTITY-LEVEL TAX ELECTION

In December of 2018, Wisconsin enacted tax legislation—Wisconsin Act 368—that specifically impacted LLCs, S-Corps, and partnerships ("pass-through entities"). The Act allows pass-through entities to make an annual election to be taxed at the entity-level, rather than at the individual level. This election may provide significant tax savings to Wisconsin businesses and their owners, but this election won't work for everyone. While the new Wisconsin law certainly brings some tax saving opportunities, there are election rules and potential issues that Wisconsin owners of pass-through entities must consider before deciding whether to make the election.

BACKGROUND

Historically, individuals were not limited in what they could deduct for state income and property taxes. However, starting in 2018, due to the Tax Cuts and Job Act, the deduction for state income and property taxes is now limited to $10,000. Wisconsin has attempted a creative approach with Act 368 to circumvent this limitation by allowing pass-through entities to be taxed at the entity-level. The idea is that the Tax Cuts and Job Act deduction cap applies to individuals and not businesses, so by allowing the pass-through entity to be taxed at the entity-level, the deduction is shifted from a capped deduction to an uncapped deduction.

TREATMENT

The new provision allows for pass-through entities to elect to be taxed at the entity-level which is a flat rate of 7.9% (the WI corporate income tax rate) rather than passing the income to shareholders to be taxed on their individual return (7.65% for individuals at the highest income tax rates). The entity-level tax would then be deductible by the pass-through on its Federal return resulting in a decrease of Federal income and corresponding Federal tax. Therefore, even though the entity-level rate is higher than the individual rate, this could still result in beneficial tax savings if pass-through owners were previously limited by the cap.

ELECTION

S-Corps can begin making the election beginning with the 2018 tax year, while partnerships and LLCs may make this election starting with the 2019 tax year. For S-corps, persons holding more than 50% of shares on the day of election must consent, while for partnerships, persons holding more than 50% of capital and profits interest on the day of election must consent. The advantageous feature about this election is that it is flexible, in that it can be made on an annual basis. Pass-through entities can opt in or out each year without limitation or penalty. Additionally, the election must be made on or before the due date or extended due date of the WI return.

POTENTIAL ISSUES

While this may sound like a straight forward decision to make the election for a Wisconsin owner of a pass-through entity, there are several potential issues to consider before making the election.

- *Tax Rate*: If taxpayers in pass-through entities are not subject to the top individual income tax rate of 7.65%, it is possible they may not receive enough of a benefit from the entity-level deduction to offset the cost of having to pay tax at a higher 7.9% rate.
- *Credits*: The only credit that pass-through entities may claim against the WI entity-level tax is the credit for income taxes paid to other states. The loss of the ability to claim manufacturing and agricultural credits in addition to research and development credits, for example, may outweigh the benefits of the election.
- *Loss Position:* The election would not be advisable for pass-through entities experiencing losses as there would be no deductible state taxes anyway and such losses would effectively be wasted.
- *Out -of-State Owners*: If the pass-through entities have a substantial number of out-of-state owners they may not benefit from the election if the owners are not allowed a corresponding exclusion or credit for the income tax being paid at entity-level in WI on their individual home state returns.

- *Lack of IRS Support*: There has been no guidance or reaction from the IRS yet, so there is a risk that future Federal laws or regulations could render this WI election ineffective. Other states have attempted workarounds and the IRS has made those ineffective by proposed regulations and notices. Although WI's workaround is a bit different than the state's that have tried, and there is support, there is still risk.
- *Legal Document Compliance*: The election may require amendments to the Wisconsin pass-through entities' operating agreement and formation documents. This should be discussed with legal counsel and the documents should be amended, if necessary, before the election is made.

Ultimately, pass-through entities in an income position that do not have any applicable WI credits or out-of-state owners have the best potential for tax savings. However, because the election does not have to be made until the extended due date, there is a real opportunity for Wisconsin owners of pass-through entities to analyze the above-mentioned issues with both tax advisors and legal counsel to determine whether the election is beneficial and/or worth the extra compliance costs before committing to the election.
If you are interested in learning more about Act 368 and WI's entity-level tax election or need assistance in tax and/or legal planning to take advantage of the election, please contact Attorney Britany E. Morrison at O'Neil Cannon to discuss how we are able to assist you in your needs.

IRS UNVEILS SIGNIFICANT VIRTUAL CURRENCY TAXATION ENFORCEMENT INITIATIVE

The Internal Revenue Service (IRS) recently announced that, by the end of August 2019, more than 10,000 taxpayers would receive mailed letters relating to virtual currency. The IRS is sending the letters to taxpayers who may have failed to report income, pay taxes, or properly report virtual currency transactions. For this purpose, virtual currency includes cryptocurrency and non-crypto virtual currency, including Bitcoin, Ether and JPM Coin.
There are three different types of letters being sent to taxpayers. Each of the three versions are intended to provide information to help taxpayers understand their tax and filing obligations and how to correct previous errors. However, the letters differ from one another in tone and in the response required by the recipient taxpayer.
Two of the letters invite taxpayers to voluntarily report and pay previously unreported virtual currency income, penalties, and interest. The other letter alleges likely noncompliance in stronger terms and requires specific action by a stated deadline. The text of this final letter indicates that the recipient should expect significant IRS scrutiny, as well as potential examination or enforcement action.

Three Letter Versions

- **Letter 6174** (available here) notifies a taxpayer that the IRS has information regarding a potential failure to report income from a virtual currency transaction. The letter provides information regarding the taxation and reporting rules which apply regardless of whether the taxpayer received a payee statement (such as a Form W-2 or Form 1999) for a virtual currency transaction. Taxpayers need not respond to the letter, but are advised to file amended tax returns or delinquent tax returns if a virtual currency transaction was not previously accurately reported on a federal income tax return.
- **Letter 6174-A** (available here) is worded nearly identically to Letter 6174. A key difference is that this letter informs the recipient taxpayer that the IRS is likely to send additional correspondence about potential virtual currency tax enforcement in the future.
- **Letter 6173** (available here) asserts that federal tax filing and reporting requirements appear to have been unmet by the recipient taxpayer for one or more of the tax years 2013 through 2017. The letter then directs the taxpayer to file amended tax returns. If the taxpayer believes that all tax reporting requirements have already been properly met, the taxpayer must formally respond to the IRS to attest to that position. Supporting detail and documentation must also be submitted. The taxpayer is required to sign the attestation under penalties of perjury that the submission, including all attachments, are true, correct, and complete. Any taxpayer-submitted information will be checked for accuracy against information received by the IRS from banks, financial advisors, and other sources. If a taxpayer does not respond to this letter within 30 days of the date on which the letter was mailed, the IRS will refer the account for audit.

Second Round of Additional Letters

In addition to the more than 10,000-letter initiative that the IRS publicly announced, as described above, some taxpayers are also reporting receipt of an apparent second group of letters in the form of a CP2000 Notice. The CP2000 Notice states that the IRS has received information from a third party that doesn't match information on the taxpayer's submitted tax return. The notices acknowledge that a virtual currency trading exchange, rather than the taxpayer, may have made the error. In any event, receipt of a CP2000 Notice indicates that the IRS is aware of a reporting discrepancy. A response to the letter is imperative and additional detail on responding is available here).

IRS Regards Virtual Currency as Property

The current IRS Virtual Currency enforcement initiatives conform to IRS guidance previously published in Notice 2014-21, which provides that virtual currency is treated as property for federal tax purposes. As is the case with any property, tax law requires reporting and taxation of amounts that are transferred for services or sold. Among other things, this means that:

- A payment made (or received) in virtual currency is subject to information reporting to the same extent as any other payment made (or received) in property.
- Payments using virtual currency made to independent contractors and other service

providers are taxable, and self-employment tax rules generally apply. Typically, payers must issue Form 1099-MISC.
- Wages paid to employees using virtual currency are taxable to the employee, must be reported by an employer on a Form W-2 and are subject to federal income tax withholding and payroll taxes.
- Certain third parties who settle payments made in virtual currency on behalf of merchants that accept virtual currency from their customers are required to report payments to those merchants on Form 1099-K, Payment Card and Third-Party Network Transactions.
- A taxpayer that successfully "mines" virtual currency (for example, uses computer resources to validate Bitcoin transactions and maintain the public Bitcoin transaction ledger) realizes gross income upon receipt of the virtual currency resulting from those activities.
- The character of gain or loss from the sale or exchange of virtual currency depends on whether the virtual currency is a capital asset in the hands of the taxpayer.

Expect Additional IRS Enforcement Efforts

The IRS has stated its awareness that because transactions conducted using the more than 1,500 known virtual currencies can be difficult to trace and have an inherently pseudo-anonymous aspect, some taxpayers may be tempted not to report virtual currency-related income to the IRS. The mailing of the more than 10,000 letters and the CP2000 Notices, to taxpayers believed to have engaged in unreported virtual currency transactions, is therefore likely to be only the first of many virtual currency enforcement actions. Additional IRS guidance is expected to be published on virtual currency reporting and taxation rules soon, updating the last official guidance issued in 2014

In the meantime, even taxpayers who do not receive a letter or notice should be aware that a failure to properly report the income tax consequences of virtual currency transactions could result in liability for tax, penalties, interest, and in some cases, exposure to criminal prosecution. Criminal charges could include tax evasion and filing a false tax return. Anyone convicted of tax evasion is subject to a prison term of up to five years and a fine of up to $250,000. Anyone convicted of filing a false return is subject to a prison term of up to three years and a fine of up to $250,000.

The attorneys of O'Neil Cannon can assist in reviewing, or responding to any of the three types of IRS Virtual Currency letters, the CP2000 Notices, and other tax-related notice or assessment letters received from the IRS.

IRS DECLARES SALES OF PROPERTY FROM ONE

SPOUSE'S GRANTOR TRUST TO THE OTHER SPOUSE'S GRANTOR TRUST TO BE TAX FREE TRANSACTIONS

In a recent Private Letter Ruling the IRS declared that sales of property between spouses and the spouses' grantor trusts do not trigger income taxation. This ruling validates a planning technique using special trusts called Spousal Lifetime Access Trusts (SLATS) and transactions between the spouses and these trusts. This type of planning is used to minimize or avoid estate tax and to protect assets from creditors and divorce. Please see PLR 201927003, Rev Rul 85-13, 1985-1 CB 184, and Code Sec. 1041(a).

EMPLOYMENT LAWSCENE ALERT: IRS EXPANDS LIST OF HSA-COMPATIBLE PREVENTIVE CARE SERVICES

The IRS recently issued guidance expanding the types of preventive care services that can be provided by a high-deductible health plan (HDHP), before the deductible is met, without eliminating a covered individual's eligibility to participate in a Health Savings Account (HSA). The new guidance was published on July 17, 2019 and took legal effect on that same day.

Employers who sponsor HDHPs should now consider whether any plan documentation or communication changes are required to implement the expanded preventive care coverage rules. Alternately, employers who have not previously adopted a HDHP should assess whether the new rules may now make the HDHP/HSA model a more attractive way to control health care costs.

Background

An HSA is a tax-favored account that may receive contributions from an employee, an employer, or both. HSAs are subject to various rules that govern the individual account holder's eligibility to make and receive contributions and whether or not withdrawals are taxable.

To be eligible for HSA contributions, an individual must be covered under a HDHP and may generally not have any health coverage other than HDHP coverage. Certain preventive care services, however, are not considered to constitute health coverage so as to disqualify an individual from HSA eligibility.

Previously, preventive care (within the meaning of the HSA and HDHP rules) has not included any service or benefit intended to treat an *existing* illness, injury, or condition.

The IRS is aware, however, that cost barriers for care have resulted in the failure by some individuals who are diagnosed with certain chronic health conditions to seek or to use effective and necessary care that would prevent exacerbation of such conditions. Accordingly, and in consultation with the U.S. Department of Health and Human Services (HHS), the IRS determined that certain medical care services received and items purchased, including prescription drugs, should now be classified as preventive care for someone with the corresponding chronic condition.

Newly Established HSA-Compatible Preventive Care

To address the stated concerns, the expanded list of HSA-Compatible preventive care expenses includes fourteen cost-effective items and services that are likely to prevent the worsening of eleven specified chronic conditions, as follows:

Preventive Care for Specified Conditions	**For Individuals Diagnosed with**
Angiotensin Converting Enzyme (ACE) inhibitors	Congestive heart failure, diabetes, or coronary artery disease
Anti-resorptive therapy	Osteoporosis or osteopenia
Blood pressure monitor	Congestive heart failure or coronary artery disease
Inhaled corticosteroids	Asthma
Insulin and other glucose-lowering agents	Diabetes
Retinopathy screening	Diabetes
Peak flow meter	Asthma
Glucometer	Diabetes
Hemoglobin A1c testing	Diabetes
International Normalized Ratio (INR) testing	Liver disease or bleeding disorders
Low-density Lipoprotein (LDL) testing	Heart disease
Selective Serotonin Reuptake Inhibitors (SSRIs)	Depression
Statins	Heart disease and diabetes

The IRS and HHS will together review the list approximately every five to ten years to determine whether any items or services should be removed or added.

Changes Arose from Executive Order and Policy Advocacy

The immediate impetus of the change is Section 6 of Executive Order 13877, “Improving

Price and Quality Transparently in American Healthcare to Put Patients First," which was signed by President Trump on June 24, 2019, and which mandated the issuance of guidance permitting HSAs to cover low-cost preventive care to help "maintain health status for individuals with chronic conditions."

The change also reflects the efforts of various health-policy advisors and advocates, who have long called for allowing first-dollar HDHP coverage for targeted, evidence-based, preventive services that prevent chronic disease progression and related complications.

Key HDHP Sponsor Issues and Next Steps

- In preparation for the 2020 open enrollment season, employer-sponsors of HDHPs should work to educate employees and dependents to assist them in understanding and benefitting from the new pre-deductible preventive care services.
- Sponsors of HDHPs should review whether or not existing plan documentation should be amended to encompass the expanded categories of covered care (or whether the current definitions remain legally sufficient).
- Because the out-of-pocket costs for some types of chronic care will now shift to the employer, sponsors of HDHPs should analyze whether the current deductible and premium levels are sufficient to meet the increased benefit expenses, or whether adjustments are warranted.
- Employers who offer both HDHPs/HSAs and on-site health clinics may provide only preventive care services in the on-site clinic in order to avoid jeopardizing employee HSA eligibility. Affected employers may now reconsider and expand the types of pre-deductible services to be provided to employees in the on-site clinic.
- Increased coverage of chronic condition expenses may increase the attractiveness of HDHP coverage to participants who are managing chronic conditions. The new rules may provide an opportunity to either increase future employee participation in, or to newly adopt, HDHP/HSA coverage.

THE WILAW QUARTERLY NEWSLETTER

Newsletter Article Highlights:

- Objecting to an Opposing Party's Request for Attorney Fees Can Have Ramifications
- United States Supreme Court Clarifies Standard on Sanctions for Violating Bankruptcy Discharge
- Not Feeling so SECURE: Proposed Law Could be Costly for Non-Spouse IRA Beneficiaries
- Creation of New Task Force Signals Increased State Scrutiny of Wisconsin Worker Classification
- The Five Objectives of Good Succession Planning

Firm News:

- The Firm Welcomes Britany E. Morrison
- Firm Wins Trifecta
- Attorney Dean Laing Named “Lawyer of the Year”
- Attorney Christa Wittenberg Wins 2019 Judge Terence T. Evans Humor and Creativity in Law Competition
- Attorney Grant Killoran Appointed Co-Chair of the Wisconsin Fellows of the American Bar Foundation

Click the image below to read more.

ERICA REIB REELECTED TO THE BOARD OF THE STATE BAR’S LABOR AND EMPLOYMENT SECTION

Attorney Erica N. Reib was recently reelected to the Board of the Labor and Employment Section of the State Bar. The State Bar of Wisconsin provides opportunities for lawyers to work on issues that matter to them and the public they serve. The Labor and Employment Section includes new and experienced attorneys who practice labor and employment law. The section keeps members up-to-date on recent developments in the law. The section also allows members to exchange information and opinions on various labor topics and legal issues in the workplace.

Erica is a member of O’Neil Cannon’s Employment Law Practice Group. She assists clients with employment discrimination litigation, non-competition and trade secret litigation, OSHA matters, wage and hour issues, NLRB and unfair labor practice matters, employment policy and agreement drafting and review, unemployment compensation, investigations and proper employment practices to avoid litigation. She volunteers her time at Marquette Volunteer Legal Clinic and Milwaukee Justice Center, and is a board member and legal committee chair at the Audio and Braille Literacy Enhancement, Inc.

If you would like to contact Erica, she can be reached at 414-276-5000 or erica.reib@wilaw.com.

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EMPLOYMENT LAWSCENE ALERT: THE EEOC HAS STARTED COLLECTING REQUIRED PAY DATA: DO YOU NEED TO REPORT AND ARE YOU READY?

On July 15, 2019, after a protracted legal battle, the EEOC began collecting employers' EEO-1 2017 and 2018 payroll data, which may be referred to as Component 2 data. The reporting requirement was originally announced by the Obama administration in 2016, but in 2017, the Trump administration stayed the collection of Component 2 data, citing the burden it imposed on employers. However, in March 2019, the U.S. District Court for the District of Columbia issued an order reinstating the requirement.

Therefore, between now and the deadline of September 30, 2019, all employers with 100 or more employees (both full-time and part-time) must submit the requisite information from calendar years 2017 and 2018 for all employees employed during the relevant "workforce snapshot period," which is an employer-selected payroll period between October 1 and December 31 of the reporting year. Employers, including federal contractors, that have less than 100 employees are not subject to these reporting requirements. Subject employers must provide the EEOC with the following data for employees in the workforce snapshot period: the employees' race/ethnicity and sex; the employee's EEO-1 job classification; the actual hours worked by non-exempt employees; actual hours worked by or proxy hours worked (e.g., 40 hours per week for full-time employees) for exempt employees; and Form W-2 payroll information. Such information does not have to be submitted for each individual employee but can be submitted by identifying, based on race/ethnicity and sex, the number of employees in each EEO-1 job category that fall into each of 12 EEO-1 compensation bands and the aggregate number of hours worked by all employees in each EEO-1 compensation band. The EEOC's stated purpose for collecting such information is to identify and remediate unlawful pay disparities in pay that are based on race/ethnicity and/or sex. Therefore, providing complete and accurate information in all categories is essential.

Employers subject to this requirement should have received correspondence via the U.S. mail and an email from NORC, the research group that is conducting the survey on behalf of the EEOC, notifying them of this obligation. Reminders are also scheduled to be sent in August and September. The EEOC has provided resources for filers at https://eeoccomp2.norc.org.