EMPLOYMENT LAWSCENE ALERT: U.S. SUPREME COURT AFFIRMS TIME SPENT CHANGING CLOTHES NOT COMPENSABLE WORK TIME

On October 14, 2013, the Employment LawScene™ brought you an article explaining that the Supreme Court would hear oral arguments in *Sandifer v. U.S. Steel Corp.*, a case out of the Seventh Circuit, to resolve disagreement among other circuit courts as to what constitutes "changing clothes" within the meaning of the Fair Labor Standards Act ("FLSA") for purposes of determining whether time spent "changing clothes" at the beginning and end of each workday is compensable work time.

The *Sandifer* case specifically focused on Section 203(o) of the FLSA, which allows employers and unions to collectively bargain over whether employees must be paid for time spent "changing clothes" at the beginning and end of each workday. The Seventh Circuit held that time spent putting on certain articles of protective gear fell within the definition of "changing clothes" under the FLSA and, accordingly, was not work time that employees had to be paid for pursuant to the parties' collective bargaining agreement.

On January 27, 2014, the U.S. Supreme Court unanimously affirmed the Seventh Circuit's holding that the time employees spent "donning" and "doffing" protective gear was not compensable under the FLSA when, "on the whole", the vast majority of the time was spent "changing clothes" and the employer and employees agreed that time was non-compensable under a collective bargaining agreement.

The U.S. Supreme Court noted that employees in *Sandifer v. U.S. Steel Corp.* were required to don and doff twelve (12) items of protective gear, nine of which fell within the definition of "clothes" under the FLSA (flame-retardant jacket, pants, hood, hard hat, "snood," "wristlets," work gloves, leggings, and steel-toed boots) and, therefore, were not compensable. Although the Court did not consider the other three items—safety glasses, earplugs, and a respirator—to fall within its definition of "clothes," it found that, "on the whole", a vast majority of the time was spent donning and doffing the other items that did fall within the definition and, accordingly, the time was not compensable. The Court instructed that in determining whether time spent donning and doffing certain protective gear is compensable under the Act, other courts should examine the time period at issue "on the whole" and determine whether the vast majority of donning and doffing time involves clothing items or non-clothing items as defined by the Court. If a vast majority of the time is spent on items that are "clothes," then the entire period should qualify as time spent "changing clothes" and should not constitute compensable work time under the FLSA pursuant to an applicable collective bargaining agreement.

The U.S. Supreme Court's decision in *Sandifer* makes clear that unionized employees are not entitled to compensation for time spent donning and doffing protective gear under the FLSA where a vast majority of time is spent "changing clothes" and where a collective bargaining agreement excludes such time from working time.

Click here to read the U.S. Supreme Court's complete decision in *Sandifer v. U.S. Steel Corp*.

EEOC OBTAINS VICTORY IN SEVENTH CIRCUIT IN PREVENTING JUDICIAL REVIEW OF PRE-SUIT CONCILIATION EFFORTS

In July, the Employment LawScene™ advised our readers that a federal district court granted the EEOC's motion to seek an interlocutory appeal before the Seventh Circuit as to whether the EEOC's alleged failure to conciliate prior to commencing suit is subject to judicial review in the form of an implied affirmative defense to the EEOC's suit. Title VII of the Civil Rights Act of 1964 requires the EEOC, prior to commencing suit against an employer, to "endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." 42 U.S.C. § 2000e-5(b). The federal district court granted the EEOC's motion for an interlocutory appeal because the Seventh Circuit had not yet directly addressed the issue and because there was a split between other federal circuits as to the scope of a court's review of EEOC's pre-suit conciliation efforts.

In a somewhat surprising decision, the Seventh Circuit became the first federal circuit court of appeals in the country to explicitly reject an employer's ability to assert an implied affirmative defense that the EEOC failed to comply with its conciliation efforts prior to commencing suit. The Seventh Circuit's decision also breaks ranks with the Second, Fourth, Fifth, Sixth, Tenth, and Eleventh Circuits who have all held that the EEOC's pre-suit conciliation efforts are subject to judicial review, despite the fact that these courts are divided as to the level of scrutiny to apply in reviewing the EEOC's conciliation efforts. The Second, Fifth, and Eleventh Circuits evaluate conciliation under a three-part inquiry whereas the Fourth, Sixth, and Tenth Circuits require instead that the EEOC's efforts meet a minimal level of good faith. The Seventh Circuit, based upon the plain language of the statute, rejected the notion that the EEOC's pre-suit conciliation efforts are subject to any level of judicial review or scrutiny.

The Seventh Circuit reasoned that the language of Title VII, the lack of a meaningful standard for the courts to apply, and the overall statutory scheme that Congress set forth in Title VII precluded a court from reviewing the EEOC's pre-suit conciliation efforts and likewise precludes an employer from asserting an affirmative defense on that basis. The Seventh Circuit found the language of Title VII made clear that conciliation is an informal process entrusted solely to the EEOC's expert judgment and that the conciliation efforts between the EEOC and an employer must remain confidential. The Seventh Circuit also found persuasive that there is no meaningful standard to apply is determining whether the EEOC's efforts to conciliate were sufficient. The Seventh Circuit even rejected applying a good faith standard because in applying such a standard, the court reasoned, a reviewing court could not help but to engage in a prohibited inquiry into the substantive reasonableness of particular settlement offers – not to mention using confidential and inadmissible materials as evidence. In rejecting the application of a good faith review standard, the Seventh Circuit found compelling that Congress granted the EEOC the unreviewable discretion on the choice to settle or not to settle. Finally, the Seventh Circuit held that the broader statutory scheme of Title VII in protecting individuals from unlawful discrimination trumps an employer's interests in asserting an affirmative defense based on the EEOC's failure to conciliate because, according to the Seventh Circuit, "the conciliation defense tempts employers to turn what was meant to be an informal negotiation into the subject of endless disputes over whether the EEOC did enough before going to court."

At least in the Seventh Circuit, which oversees the federal district courts in Illinois, Indiana, and Wisconsin, the manner in which the EEOC conducts pre-suit conciliation efforts may very well change as its efforts, and whether such efforts were conducted in good faith, are no longer subject to challenge by an employer or review by a court. This lack of oversight gives the EEOC wide-latitude and considerable leverage in negotiations with an employer prior to commencing suit. The question will become whether the EEOC will use that leverage and its relatively large litigation budget to force employers into needless litigation. Employers, on the other hand, as always will have to weigh the cost/benefit of surrendering to the EEOC's attempt to extract a high monetary settlement through the conciliation process versus the high cost of litigating against the EEOC. Given the Seventh Circuit's decision precludes judicial review of the EEOC's conciliation efforts, there will be no watchdog over whether the EEOC's pre-suit settlement demands are made in good faith and commensurate with the merits of a particular case.

The Seventh Circuit's decision and the clear split that now exists between other federal circuits on this issue provides a basis for the Supreme Court of the United States to address this issue and resolve the dispute among the different circuit court of appeals. We will let our blog readers know if the U.S. Supreme Court decides to hear this case to resolve this important issue.

PENDING LEGISLATION MAY MAKE FORECLOSURES MORE CHALLENGING FOR LENDERS

As reported in the Milwaukee Journal Sentinel, State Rep. Evan Goyke (D-Milwaukee) introduced five bills designed to alleviate what Rep. Goyke considers ongoing problems arising from the housing crisis that began in 2008. Lenders and their counsel would be wise to pay careful attention to a number of the bills in the package, as they could, if passed in to law, significantly affect future foreclosure actions.

Of particular concern to lenders is the proposal to require a plaintiff filing a foreclosure action to post a $15,000 demolition bond with the clerk of courts of the county in which the property is located. If the property in question must be demolished, the $15,000 would be applied to the cost of the demolition. Additionally, the $75 filing fee currently associated with a foreclosure action would be increased by $50. This fee increase would be used to install lighting at existing abandoned homes. Another bill in the package would give municipalities and lenders the right to enter foreclosed properties to address any potential problems. It is uncertain whether the bill is intended to create a requirement to do so.

Copies of the legislation can be read here. Further information about these bills, and the other bills included in the package, as well as the impact they may have on the decision to bring a foreclosure action, can be obtained by contacting any member of our firm's Creditors' Rights Practice Group.

SUPREME COURT MAY FORCE NLRB TO REVISIT PREVIOUS RULINGS

On Monday, January 13, 2014, the U.S. Supreme Court heard oral arguments in *National Labor Relations Board v. Noel Canning*, a case that could potentially result in hundreds of recent rulings by the National Labor Relations Board ("NLRB") being invalidated.

The NLRB is made up of five (5) sitting board members, who are appointed by the President to serve on the Board. Generally speaking, the NLRB has the power to issue rulings in labor disputes, which can then be challenged in court. NLRB rulings have the potential to shape

U.S. labor law and so selecting the individuals to issue those rulings is often a hotly debated political issue.

The issue before the Supreme Court in the *Noel Canning* case is whether a President can use his “recess appointment” power under the Constitution to fill vacant positions during congressional recess, which is what President Obama did in 2012.

Why does this matter? Because, in order for an NLRB ruling to be valid, the ruling must be issued by a “quorum,” which is three (3) confirmed Board members. Typically, the President nominates individuals for a Board seat and those nominations are then confirmed by Congress. In 2012, however, after the President’s nominations to three empty seats on the NLRB had been blocked repeatedly by Congress, the President made “recess appointments” to give the Board a quorum. Although the President does have the power under the Constitution to make “recess appointments,” Senators in 2012 were holding *pro forma* sessions every three days to prevent that from happening. So, the question becomes whether the Senate was actually in recess.

The U.S. Supreme Court’s review of the President’s recess appointments to the NLRB stems from the D.C. Circuit Court of Appeals’ decision in *Noel Canning*, where the court held that a president can only make “recess appointments” during the period between formal sessions of the Senate. The argument goes that the President did not have the power to make the recess appointments because the Senate was not actually in recess and, therefore, his appointments were invalid, leaving the NLRB without a quorum and without the power to issue valid rulings.

During oral arguments on Monday, the Supreme Court Justices expressed doubt and seemed skeptical of the Obama administration’s contention that it could bypass the Senate to make appointments during short congressional breaks. The Supreme Court’s decision in *Noel Canning* could have far-reaching implications and could potentially force the NLRB to revisit hundreds of rulings issued in recent years if the Supreme Court determines the President’s recess appointments were unconstitutional and the Board lacked a quorum to issue rulings.

We will keep you posted as to the final outcome of this case and its impact on the NLRB’s rulings and operations.

WISCONSIN’S "LEMON LAW" STATUTE HAS BEEN REVISED

Wisconsin's so-called "Lemon Law" statute, § 218.0171, Wis. Stats., has long been considered the most consumer-friendly Lemon Law in the country. The statute itself, and the numerous appellate court decisions which interpret it, made it extremely difficult for motor vehicle manufacturers who sold or leased new motor vehicles in Wisconsin to comply with the law on a pre-lawsuit basis and also made it very difficult to resolve lawsuits after they were filed. The revised law is intended to change this. The elimination of the double damages provision alone will create a much more level playing field for consumers and manufacturers. This and the other changes should hopefully result in a decrease in the number of lawsuits filed. Also, if a lawsuit is filed, the revisions to the law should make it more workable for manufacturers to resolve lawsuits, and encourage consumers' attorneys to do so as well.

Generally speaking, Wisconsin's Lemon Law was designed to protect consumers who purchased or leased new motor vehicles that turn out to be defective and the defects were not remedied within a reasonable period of time. If a new vehicle exhibited a warranty "nonconformity," a defect which substantially impaired the vehicle's use, value or safety, within the first year after the vehicle is delivered to the consumer and the consumer makes the vehicle available to the manufacturer or an authorized dealership for the necessary repairs, the manufacturer or dealership were required to make a reasonable attempt to repair the vehicle. If the manufacturer or dealership did not repair the vehicle after a reasonable attempt, such that the vehicle was "out of service" for at least 30 days due to warranty nonconformities or had a nonconformity that was subject to repair at least four times during that first year and the nonconformity continued, the consumer was entitled to request at his or her option that the manufacturer repurchase the vehicle and put the consumer back in the position he or she was in prior to purchasing the vehicle, or request that the manufacturer replace the vehicle with a comparable new vehicle. Significantly, the manufacturer was required to actually complete the vehicle repurchase or provide the comparable new motor vehicle within thirty (30) days from the consumer's request. That proved very challenging to manufacturers, especially when consumers were less than cooperative in providing all the necessary documentation and information which was necessary for the manufacturer to repurchase the vehicle or provide the comparable new motor vehicle.

If the manufacturer decided to comply with the consumer's request for a repurchase or a comparable new motor vehicle, but did not actually provide the refund or replacement vehicle within the aforementioned thirty (30) days, the consumer was entitled to file a lawsuit and, if successful, was entitled to recover double damages and reasonable attorney fees. Note that reasonable attorney fees were recoverable by consumers if they were successful with their lawsuit, but manufacturers were not entitled to recover their attorney fees if they were successful defending a lemon law lawsuit.

On December 13, 2013, Governor Scott Walker signed into law a revised Wisconsin Lemon Law. The following are highlights of the revised law, but a thorough reading of the revised statute here will be necessary to fully understand it and for consumers and manufacturers to be able to comply with it.

EFFECTIVE DATE: The new law takes effect for new motor vehicles which are sold or leased on or after March 1, 2014.

DOUBLE DAMAGES: Double damages have been eliminated and consumers are now only entitled to single damages if they are successful with their Lemon Law case.

OUT OF SERVICE: The prior law did not provide a definition of "out of service," but the Wisconsin Court of Appeals held that "out of service" "includes those periods when the vehicle is not capable of rendering service as warranted due to a warranty nonconformity, even though the vehicle may be in the possession of the consumer and may still be driven in the performance of other services by the consumer." *Vultaggio v. GM*, 145 Wis. 2d 847, 886, 429 N.W.2d 93, 97 (Ct. App. 1988). The new law creates a definition of "out of service" in paragraph (1)(g) as follows:

> "Out of service," with respect to a motor vehicle, means that the vehicle is unable to be used by the consumer for the vehicle's intended purpose as a result of any of the following:
>
> 1. The vehicle is in the possession of the manufacturer, motor vehicle lessor, or any of the manufacturer's authorized motor vehicle dealers for the purpose of performing or attempting repairs to correct a nonconformity.
>
> 2. The vehicle is in the possession of the consumer and the vehicle has a nonconformity that substantially affects the use or safety of the vehicle and that has been subject to an attempt to repair under sub. (2) (a) on at least 2 occasions.

DEFINITION OF MOTOR VEHICLE: The new law at paragraph (1)(bt) creates a separate definition for a "Heavy-duty vehicle," which means any vehicle having a gross weight rating or actual gross weight of more than 10,000 pounds. Different rules apply to heavy-duty vehicles, which are not addressed in this writing.

ELECTION OF REFUND: This section of the law is essentially unchanged and still requires the manufacturer to actually provide the refund to the consumer within 30 days.

ELECTION OF A REPLACEMENT VEHICLE: If a consumer requests a replacement vehicle, the manufacturer has 30 days to agree in writing to provide the vehicle or a refund of the full purchase price plus other taxes, fees and collateral costs. It then gives the manufacturer 15 additional days ("45 days total") to provide the comparable new vehicle or refund. The statute specifically states that "[u]pon the consumer's receipt of this writing, the manufacturer shall have until the 45th day after receiving from the consumer the form specified in sub. (8)(a)2. to either provide the comparable new motor vehicle or the refund." If the manufacturer agrees to provide a comparable new motor vehicle, the manufacturer retains the right to provide a refund if a comparable new motor vehicle does not exist or cannot be delivered within this 45-day period.

STATUTE OF LIMITATIONS: The prior law provided a six year statute of limitations based on contract law. The new law now specifies that the statute of limitations to file an action expires three years from the date the vehicle was first delivered to the consumer.

DAMAGES: Other than the elimination of double damages, this provision essentially stays the same and allows consumers who are successful at trial to recover pecuniary losses, together with costs, disbursements and reasonable attorney fees.

REQUIREMENT THAT CONSUMERS AND MANUFACTURERS COOPERATE: While the previous statute did not specify any such requirement, the new law at section 218.0171(7)(b) states that if a court finds that any party to the action has failed to reasonably cooperate with another party's efforts to comply with obligations under this section, which hinders the other party's ability to comply with or seek recovery under this section, the court may extend any deadline specified in this section, reduce any damages, attorney fees, or costs that may be awarded under par. (a), strike pleadings, or enter default judgment against the offending party.

SUMMARY

Hopefully the revised Lemon Law statue will help to facilitate what the law was originally intended to accomplish for both consumers and motor vehicle manufacturers.

NEW CHANGES TO WISCONSIN'S UNEMPLOYMENT INSURANCE LAWS TAKE EFFECT JANUARY 5, 2014

The Wisconsin Legislature recently enacted major changes to Wisconsin's unemployment insurance laws, a number of which will become effective on January 5, 2014. The most significant changes include an expansion of what conduct constitutes "misconduct" and establishes a new standard of "substantial fault," which if proven, can temporarily disqualify an employee for unemployment insurance benefits. Another significant change limits the circumstances under which an employee may be entitled to unemployment benefits following a voluntary resignation. These new changes can be found in Wisconsin's 2013-2015 Biennial

Budget Bill, 2013 Wisconsin Act 20 ("Act 20"). The Wisconsin Legislature recently enacted major changes to Wisconsin's unemployment insurance laws, a number of which will become effective on January 5, 2014. The most significant changes include an expansion of what conduct constitutes "misconduct" and establishes a new standard of "substantial fault," which if proven, can temporarily disqualify an employee for unemployment insurance benefits. Another significant change limits the circumstances under which an employee may be entitled to unemployment benefits following a voluntary resignation. These new changes can be found in Wisconsin's 2013-2015 Biennial Budget Bill, 2013 Wisconsin Act 20 ("Act 20").

Definition of Misconduct Wis. Stat. § 108.04(5) currently provides that claimants who are terminated for "misconduct" are temporarily ineligible for unemployment compensation benefits. Act 20 amends Wis. Stat. § 108.04(5) to incorporate the longstanding definition of "misconduct" that was set forth by the Wisconsin Supreme Court in Boynton Cab Co. v. Neubeck and Industrial Comm'n, 237 Wis. 249, 296 (1941). Boynton set a high standard for misconduct that was difficult for employers to meet. Act 20 incorporates, but further expands that standard to include actions and conduct that may not have been considered "misconduct" under the Boynton standard.

Act 20 also eliminates the stringent requirements relating to termination for absenteeism and tardiness (formerly set forth in Wis. Stat. § 108.04(5g)) and incorporates absenteeism and tardiness within the new definition of "misconduct." Pursuant to Wis. Stat. § 108.04(5)(e), absenteeism or excessive tardiness by an employee in violation of the employer's policy, if the employee does not provide both notice and a valid reason for the absenteeism or tardiness, constitutes misconduct.

This new definition of misconduct applies to new unemployment compensation claims filed on or after January 5, 2014.

Substantial Fault Act 20 also creates a new standard – the "substantial fault" standard – intended to cover conduct by an employee that does not rise to the level of misconduct, but can still temporarily disqualify employees for unemployment compensation benefits. An employee who is terminated for "substantial fault" of the employee connected with the employee's work, will be temporarily ineligible for benefits. "Substantial fault" includes acts or omissions over which an employee exercised reasonable control and which violate reasonable requirements of the employer. Substantial fault does not include: minor rule violations, unless the violation is repeated after the employee is warned; inadvertent errors by the employee; and any failure of the employee to perform work due to insufficient skill, ability, or equipment.

Voluntary Resignation/Quit Exceptions Act 20 changes the law with respect to the current statutory exceptions that allow an employee to voluntarily resign from employment and still collect unemployment benefits if the resignation involved certain circumstances. Act 20 eliminates 8 of the previously recognized exceptions and modifies four of the remaining exceptions. These changes will first apply to claims for unemployment benefits filed on or after January 5, 2014.

The following exceptions are no longer recognized under Wisconsin law and will no longer be valid reasons for an employee to collect unemployment benefits after he or she has voluntarily resigned employment:

1. Employee terminated his or her employment to accept a recall to work for a former employer within 52 weeks after having last worked for that employer.

2. Employee maintained temporary residence near the work terminated, maintained a permanent residence in another locality, and terminated the work and returned to his or her permanent residence because the work available was reduced to less than 20 hours per week in at least 2 consecutive weeks.

3. Employee left or lost his or her work because of reaching the employer's compulsory retirement age.

4. Employee terminated part-time work because of loss of other full-time employment makes it economically unfeasible for employee to continue part-time work.

5. Employee terminates work with a labor organization if termination cause employee to lose seniority rights granted under a collective bargaining agreement and if termination results in loss of employee's employment with the employer that is party to the collective bargaining agreement.

6. Employee terminated work in a position serving as a part-time elected or appointed member of a government body or representative of employees, employee was engaged in work for an employer other than the employer in which the employee served as the member or representative, and employee was paid wages in terminated work constituting not more than 5% of employee's base period wages for purpose of entitlement for benefits.

7. Employee owns or controls an ownership interest in a family corporation and employee's employment was terminated because of an involuntary cessation of the business of the corporation under certain conditions.

Employers should be sure to update their employee handbooks, policies, and procedures to reflect these new changes that will take effect January 5th. If you have questions about which policies you should update or would like assistance in reviewing your existing policies to ensure compliance with these updates, please contact us.

‘TIS THE SEASON: TIPS FOR AVOIDING LIABILITY RELATED TO EMPLOYER-SPONSORED HOLIDAY PARTIES

It is that time of the year again – the holidays are upon us! Along with the holidays comes holiday parties, which can bring your employees closer together and boost morale. While a fair amount of planning goes into venue, food, and festivities, employers should also plan ahead to avoid potential legal liability that can be associated with a company-sponsored party. The festive atmosphere combined with alcohol consumption can cause the potential for inappropriate behavior or claims relating to injuries suffered during or after the event.

In preparing for a company-sponsored holiday party, employers should take steps to:

1. Prevent Sexual Harassment. The best way to prevent sexual harassment is to educate your employees about your company’s anti-harassment policy and ensure that employees understand that harassment involving any employee, whether within or outside the office, will not be tolerated. To set the tone of the party in advance, you may consider reminding employees that, while they are encouraged to have fun at the holiday party, it is still a company-sponsored event and, accordingly, all company policies and rules apply.

2. Reduce the Risk of Alcohol-Related Accidents. Employers may be subject to potential liability for injuries caused by employees who consume alcohol at employer-sponsored events. Negligence and Respondeat Superior, which holds employers liable for acts of employees undertaken in the course of their employment, are two examples. Some states, like Illinois, also have “dram shop” or “social host” liability laws, which hold the provider of alcoholic beverages to intoxicated individuals liable for injuries those individuals may cause while intoxicated. To avoid potential liability under these types of theories, employers should promote responsible drinking and monitor alcohol consumption appropriately. Employers may also want to consider holding their holiday party at a restaurant or other off-site location where alcohol is served by professional bartenders who know how to recognize and respond to guests who are visibly intoxicated.

3. Minimize the Risk of Worker’s Compensation Liability. Generally speaking, worker’s compensation benefits may be available to employees who suffer a work-related injury or illness. In order to minimize the risk of liability for an employee injury or illness that occurs during an employer-sponsored event, employers should make it clear to employees that there is no business purpose for the event, that attendance at the holiday party is completely voluntary, and that they are not being compensated for their attendance at the event.

Employers should also consider that injuries or illness associated with contaminants found in food or drinks may create legal exposure if their food and beverage providers are not properly licensed – using a third-party provider who is licensed may reduce your risk of liability because these licensed providers are typically subject to inspections and protected by their own insurance coverage.

4. Prevent Wage and Hour Claims by Non-Exempt Employees. To avoid any confusion as to whether time spent at a company-sponsored holiday party is compensable time under federal and state wage and hour laws, employers should be sure that participation in the holiday party is completely voluntary, that the party is held outside working hours, and that employees are not performing any work during the party or are not under the impression that they are performing work functions at the party that could be considered compensable under applicable law.

If you have any questions about any of the information provided in this article or would like further advice on how to avoid liability at your company-sponsored holiday party, please do not hesitate to contact us.

NEW WISCONSIN CONSUMER PROTECTION LEGISLATION WILL AFFECT HOME IMPROVEMENT AND REPAIR CONTRACTORS

On July 5, 2013, a new piece of consumer protection legislation was enacted in Wisconsin. The new law, 2013 Wisconsin Act 24, takes effect on January 1, 2014. It creates Wisconsin Statute section 100.65, which is similar to a provision of the Illinois Home Repair and Remodeling Act. It will apply to consumer contracts for residential roofing, and for any other exterior repair, replacement and construction respecting one and two family dwellings. The new law's purpose is to protect consumers, whose homes have been damaged, from being taken advantage of by home repair contractors.

The new law gives the consumer the right to cancel a contract for exterior repairs within three days after being notified by his or her insurer that the consumer's property insurance claim for the damage to the home has been denied, in whole or in part. The contractor must give the consumer a specific written cancellation notice form in duplicate, attached to the consumer's copy of the contract. If the consumer cancels the contract, the contractor must refund any payments received within ten days. However, the contractor is not required to refund the reasonable value of any emergency services, acknowledged in writing by the consumer to be necessary to prevent damage to the property that the contractor had performed prior to the cancellation of the contract.

The law will prohibit contractors from offering to pay or to rebate to the consumer all or any part of their insurance deductible as an incentive to enter into a contract. It will also prohibit the contractor from offering to negotiate on the consumer’s behalf with the consumer’s insurance carrier.

The scope of the new law is very broad. It will affect all contractors that do any type of exterior repair, replacement or construction work on one and two family dwellings. This would, for example, include painters, roofers, remodelers, siding contractors, glazing contractors, patio and driveway contractors, and emergency repair contractors. The law imposes a fine of between $500 and $1,000 for each violation. Contractors will need to either revise or to completely redraft their contract forms in order to comply with the law.

ATTORNEY JASON SCOBY REAPPOINTED TO FOURTH CONSECUTIVE TERM AS CHAIR OF MBA’S CORPORATE, BANKING AND BUSINESS SECTION

Attorney Jason Scoby of O’Neil Cannon was recently reappointed to serve as Chair of the Corporate, Banking and Business Section of the Milwaukee Bar Association (“MBA”) for the fourth consecutive year. In this role, Attorney Scoby focuses on providing continuing legal education presentations and resources, as well as networking opportunities for attorneys and other professionals in the corporate, banking, and business field.

Some of the topics previously addressed and to be addressed in upcoming presentations include:

- Mergers and Acquisitions and Important Considerations when Buying or Selling a Business
- Issues in Commercial Loan Transactions
- Patient Protection and Affordable Care Act (commonly referred to as “Obamacare”)
- Choice of Business Entity and the Associated Business and Tax Implications
- Drafting Enforceable Non-Compete Agreements
- Antitrust Impact on Businesses
- Contract Drafting

If you would like further information regarding an upcoming MBA event, or if you are interested in making a presentation for the MBA's Corporate, Banking and Business Section, please contact Jason at jason.scoby@wilaw.com. He can also be reached directly at 414-291-4714.

Attorney Scoby assists clients on corporate and business-related issues. He focuses primarily on mergers and acquisitions, commercial loan transactions, and general corporate law (e.g. contract review, preparation and negotiation, and general business and legal advice to closely held businesses).

O'Neil Cannon, founded in Milwaukee in 1973, is a full-service legal practice that primarily focuses on providing business law and civil litigation services to closely-held businesses and their owners. The firm represents corporations, institutions and partnerships at all stages of the business life cycle, helping them start, grow and transition from one generation to the next. We also assist business owners with their personal legal needs including tax and estate planning, family law, and litigation-including personal injury litigation.

ENDA PASSES SENATE

On November 7, 2013, the U.S. Senate passed the Employment Non-discrimination Act ("ENDA") with a 64-32 vote. The bill would prohibit employers from discriminating against individuals based on the individual's sexual orientation or gender identity, similar to the way Title VII of the Civil Rights Act of 1964 prohibits other types of discrimination.

The bill now moves to the House of Representatives, where its passage is uncertain.

For more information about the Senate Bill (S.815), please **click here** to read our recent blog post regarding ENDA. Visit our blog for updates on ENDA and to find out whether it becomes law.