20 O’NEIL CANNON LAWYERS SELECTED AS 2025 BEST LAWYERS; ANOTHER 5 NAMED BEST LAWYERS: ONES TO WATCH

We are pleased to announce 20 of our lawyers have been included in the 2025 Edition of *The Best Lawyers in America*, and an additional five have been selected as 2025 *Best Lawyers: Ones to Watch*.

The following are the O’Neil Cannon lawyers named to the 2025 lists:

Best Lawyers in America

- Doug Dehler – Litigation – Insurance
- Jim DeJong – Corporate Law, Mergers and Acquisitions Law, and Securities / Capital Markets Law
- Seth Dizard – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Pete Faust – Corporate Law and Mergers and Acquisitions Law
- John Gehringer – Commercial Litigation, Construction Law, Corporate Law, and Real Estate Law
- Joseph Gumina – Employment Law – Management and Litigation – Labor and Employment
- Dennis Hollman – Corporate Law and Trusts and Estates
- Grant Killoran – Commercial Litigation and Litigation – Health Care
- JB Koenings – Corporate Law
- Dean Laing – Commercial Litigation, Personal Injury Litigation – Plaintiffs, and Product Liability Litigation – Defendants
- Greg Lyons – Commercial Litigation and Litigation – Insurance
- Patrick McBride – Commercial Litigation
- Joe Newbold – Commercial Litigation, Litigation – Real Estate, and Personal Injury Litigation – Plaintiffs
- Chad Richter – Business Organizations (including LLCs and Partnerships) and Corporate Law
- John Schreiber – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Jason Scoby – Banking and Finance Law, Business Organizations (including LLCs and Partnerships), and Corporate Law
- Steve Slawinski – Construction Law

Best Lawyers: Ones to Watch

- Emily Behn – Commercial Litigation
- Trevor Lippman – Litigation – Trusts and Estates
- Erica Reib – Labor and Employment Law – Management and Litigation – Labor and

Employment
- Kelly Spott – Trusts and Estates
- Christa Wittenberg – Commercial Litigation

About Best Lawyers

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.

Best Lawyers: Ones to Watch recognizes associates and other lawyers who are earlier in their careers for their outstanding professional excellence in private practice in the United States.

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

FTC NON-COMPETE BAN ENJOINED NATIONWIDE

On Tuesday, August 20, 2024, a Texas federal judge issued a nationwide injunction prohibiting the Federal Trade Commission from enforcing its rule banning non-compete clauses. The ruling states that the agency "lacks statutory authority" to enact the rule and that the rule is "unreasonably overbroad without a reasonable explanation." The FTC has the option of appealing the decision to the Fifth Circuit Court of Appeals. We will continue to monitor developments on this matter.

So, at least for now, employers can continue to enter into and enforce non-competes that comply with state law. Moreover, employers do not need to send out any notices about the enforceability of their current non-competes. As always, O'Neil Cannon is here for you. We encourage you to reach out with any questions, concerns, or legal issues you may have regarding your labor and employment policies and practices, including discussion and review of your existing or future restrictive covenants.

ATTORNEY JACOB LLOYD HAS JOINED O'NEIL CANNON

Attorney Jacob Lloyd, a *summa cum laude* graduate of Marquette University Law School, has

joined O’Neil Cannon’s Litigation Practice Group. He brings valuable experience from interning for Chief Justice Annette Ziegler of the Wisconsin Supreme Court and Chief Judge Diane Sykes of the U.S. Court of Appeals for the Seventh Circuit, providing him with a deep understanding of state and federal judicial systems. Additionally, Lloyd has volunteered with the Marquette Legal Clinic, the Afghan Asylum Project, and the Special Olympics of Wisconsin. We are pleased to welcome Lloyd to O’Neil Cannon.

O’Neil Cannon, founded in Milwaukee in 1973, is a full-service law firm that focuses on meeting the many needs of businesses and their owners. Our experienced attorneys work with businesses and their owners at all stages of the business life cycle, helping them start, grow, and transition their businesses. We also assist business owners with their personal legal needs, including tax and estate planning and family law. For more information about the services we provide, please visit our website.

ERICA REIB NAMED ONE OF WISCONSIN LAW JOURNAL’S POWER 30 EMPLOYMENT LAWYERS

Erica Reib leads O’Neil Cannon’s Labor and Employment Practice Group. She represents businesses in state and federal courts, administrative agencies, arbitrations, and mediations; assists clients with drafting, enforcing, and defending employment agreements, restrictive covenants, and employee handbooks; provides clients with day-to-day advice, counseling, and training on labor and employment matters; and supports clients with the labor and employment aspects of transactions.

THE POWERLIST

WISCONSIN LAW JOURNAL



ERICA REIB

O'NEIL CANNON HOLLMAN DEJONG & LAING

Erica Reib is the head of the Labor and Employment Practice Group with Milwaukee-based O'Neil Cannon Hollman DeJong & Laing.

Reib works on a broad range of labor and employment issues for companies, including employment discrimination litigation and employment policy.

According to Reib, her law practice has been very fulfilling.

"I enjoy helping companies solve problems to try to find solutions to employment law issues," Reib said.

Reib received her undergraduate degree from West Virginia University and graduated from Marquette University Law School.

She is admitted to practice with the State Bar of Wisconsin, Eastern District of Wisconsin, Western District of Wisconsin, 7th Circuit Court of Appeals, and the Northern District of Illinois.

Reib is no stranger to award recognition and has received awards for: Joseph E. O'Neill Prize for Student Writing, 2011; Martin J. Greenberg Award, 2011; Joseph E. Tierney Jr. Award, 2011; Editor-in-Chief of the Marquette Sports Law Review, 2010–2011; CALI Award, Employee Benefits, 2010; CALI Award, Professional Sports Law, 2010; CALI Award, Amateur Sports Law Workshop, 2010; and the Posner Pro Bono Society, Sports Law Certificate.

WHAT EMPLOYERS SHOULD DO REGARDING THE LOOMING EFFECTIVE DATE OF THE FTC'S NON-COMPETE BAN

As discussed previously, the Federal Trade Commission published a rule banning "non-compete clauses" in almost all cases involving employees, independent contractors, externs, interns, volunteers, apprentices, and sole proprietors who provide services to a person.

The rule is currently scheduled to go into effect on September 4, 2024. If the rule goes into effect, the majority of employers would not be permitted to enter into new non-compete clauses with any employees and will need to notify non-senior executives with existing non-competes that such agreements will not be enforced.

As expected, the FTC rule has faced legal challenges. On July 3, 2024, in *Ryan, LLC v. FTC*, a federal district court in Texas issued a preliminary injunction staying the FTC's implementation of its rule but *only* for the plaintiff and four plaintiff-intervenors in the case. The *Ryan* court intends to rule on the merits of the case by August 30, 2024, at which point the court could do one of three things: (i) allow the rule to go into effect; (ii) issue a nationwide injunction; or (iii) take some middle-ground approach. Another federal district court in Pennsylvania earlier denied a motion for a nationwide preliminary injunction against the FTC regarding its noncompete ban. The Pennsylvania federal district court's decision, however, has no precedential effect on the pending case before the federal district court in Texas.

Unfortunately, this leaves employers in a difficult spot–should they provide written notice regarding the unenforceability of their non-compete as required by the new FTC rule or should they do nothing and wait until all the legal challenges have played out? For now, employers should wait until at least August 30 when the federal district court in Texas is expected to rule. In the meantime, employers should compile a list of all current and former employees who have non-compete agreements still within their restricted periods and have the required written notices ready to go for such individuals in case a nationwide ban is not ordered by the federal district court in Texas.

As always, O'Neil Cannon is here for you. We encourage you to reach out with any questions, concerns, or legal issues you may have regarding your labor and employment policies and practices, including discussion and review of your existing or future restrictive covenants.

KELLY SPOTT ELECTED PRACTICE GROUP LEADER FOR THE TRUST, ESTATES AND SUCCESSION PLANNING GROUP

O'Neil Cannon proudly announces the election of Kelly Spott as the practice group leader for the Trust, Estates and Succession Planning Group, effective July 1, 2024.

"I am honored to have been elected as the new practice group leader for the Trust, Estates and Succession Planning Group," said Spott. "I look forward to leveraging my experience and passion for assisting families to further strengthen our services in estate planning and tax matters."

Spott has been a vital part of the O'Neil Cannon team since 2017, specializing in estate planning, succession planning, probate administration, trust administration, and inheritance litigation. She is licensed to practice in Wisconsin and Florida.

NAVIGATING TRUST LITIGATION: INSIGHTS FROM THE TONY BENNETT CASE

Nearly one year after Tony Bennett's death, his children are embroiled in a trust dispute. While Tony Bennett's fame and prominence are unique, the nature of this dispute is common. In the filing, Tony Bennett's two daughters accused their brother, Danny—who served as Tony's manager and also serves as the trustee of the Family Trust—of managing their father's trust for Danny's own benefit and that of his company. The action seeks an order for a full accounting and inventory of all property and assets so that they can be distributed in accordance with the terms of the Family Trust.

While much trust litigation revolves around the terms of a trust or its amendments, there are many situations that can lead to legal proceedings even when no one disputes the trust's terms. For example, a beneficiary may question why certain assets were not included in the trust or removed from the trust before a loved one's death. In addition, a beneficiary may question the actions taken by a trustee during their loved one's life and after their death. This is particularly relevant in high-profile cases like Tony Bennett's, where the management of substantial assets and legacy can be contentious.

In general, a trustee has a legal and fiduciary duty to uphold the terms and intentions of a

trust. Under Wisconsin's Trust Code, a trustee has a duty to keep "current beneficiaries and presumptive remainder beneficiaries who so request, reasonably informed about the administration of the trust." Wis. Stat. § 701.0813(1). Such information may include copies of trust documents, details about the trustee, and a list of the trust's assets, liabilities, receipts, disbursements, and the trustee's compensation. If you are a trustee seeking to uphold or administer a trust, or a beneficiary concerned about a trustee's actions, consulting with a knowledgeable attorney to evaluate your options is advisable.

Trevor C. Lippman is a shareholder at O'Neil Cannon and assists clients with all matters related to inheritance disputes, including questions about the creation and administration of trusts and wills. Lippman has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. To schedule an initial consultation with Lippman, call 414.276.5000 or email him at trevor.lippman@wilaw.com.

THE WILAW QUARTERLY NEWSLETTER

Newsletter Article Highlights:

- A Beginner's Guide to Trademarks: Part One—Trademark Basics
- Wisconsin Expands Child and Dependent Care Tax Credit
- FTC Bans Employee Non-Competes, but Legal Challenges Expected

Firm News:

- Attorney Emily Behn Has Joined O'Neil Cannon
- O'Neil Cannon Serves as Legal Advisor to Engendren Corporation in its Sale to Cummins Inc.
- O'Neil Cannon Ranked in 2024 "Best Law Firms"

Click the image below to read more.

EMPLOYMENT LAWSCENE ALERT: FTC BANS EMPLOYEE NON-COMPETES, BUT LEGAL

CHALLENGES EXPECTED

The administrative agencies are having a busy week! In addition to the DOL issuing an updated rule on the salary basis to be overtime exempt, on Tuesday, April 23, 2024, the Federal Trade Commission voted 3-2 on its long-awaited non-compete ban, which was initially issued as a proposed rule in January 2023. The FTC estimates that this rule will affect 2,301,874 employees in Wisconsin and increase wages of each of those employees by $524 annually.

Under the FTC's rule, which is scheduled to go into effect 120 days from publication in the federal register, "non-compete clauses" are banned in almost all cases involving employees, which is broadly defined as including employees, independent contractors, externs, interns, volunteers, apprentices, and sole proprietors who provide services to a person. Non-compete clauses are defined as "a term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from (1) seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment that includes the term or condition; or (2) operating a business in the United States after the conclusion of the employment that includes the term or condition." These limits do not apply to restrictions *during* employment, only post-employment restrictions.

Non-competes are still allowed in certain, very specific circumstances. For example, the rule states that it does not apply to non-competes entered into pursuant to a bona fide sale of a business. Additionally, *existing* non-competes with "senior executives" who made at least $151,164 in the preceding year and have policy-making authority at the business are not banned. Otherwise, *new* non-competes cannot be entered into with employees (whether or not they are senior executives), and employers will need to notify non-senior executives with existing non-competes that such agreements will not be enforced. The FTC has provided model language for such notice. The rule also does not cover not-for-profit organizations, such as non-profit hospitals, or non-competes in franchise agreements, although non-competes between franchisors or franchisees and their employees would still be subject to the rule.

The FTC non-compete ban does not necessarily ban non-solicitation or non-disclosure agreements. However, such agreements *could* be banned under the FTC rule if they "function to prevent a worker from seeking or accepting other work or starting a business after their employment ends." Non-solicitation and non-disclosure agreements are also subject to the FTC's section 5 prohibition against unfair methods of competition, irrespective of whether they are covered by the final rule.

The FTC's rule will soon be (or already is depending on when you're reading this) challenged in court by groups such as the U.S. Chamber of Commerce, asserting that the rule oversteps

the FTC's authority. Regardless of the ultimate implementation of the FTC's rule, employers will remain bound by Wisconsin's restrictive covenant statute, Wis. Stat. § 103.465, for all restrictive covenants with their employees and independent contractors that are not banned by the FTC. As always, O'Neil Cannon is here for you. We encourage you to reach out with any questions, concerns, or legal issues you may have regarding your labor and employment policies and practices, including discussion and review of your existing or future restrictive covenants.

EMPLOYMENT LAWSCENE ALERT: DOL ISSUES FINAL OVERTIME RULE WITH SIGNIFICANT SALARY THRESHOLD INCREASE

Under the Fair Labor Standards Act, non-exempt employees are entitled to overtime pay at 1.5 times their regular rate for all hours worked in a workweek in excess of 40. In order to be considered exempt, an employee must be paid a salary in excess of a certain amount and must perform certain job duties, generally of a bona fide executive, administrative, or professional. Currently, the salary basis is $35,568 per year ($684 per week), which was most recently updated in 2019.

On Tuesday, April 23, 2024, the Department of Labor announced its final rule, entitled *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Executives*, which significantly increases the salary thresholds below which employees are entitled to overtime compensation. This final rule is based on the proposed rule that was issued in September 2023 and the more than 33,000 comments the DOL received about that proposed rule.

Under the final rule, set to be effective July 1, 2024, the salary necessary to qualify as exempt from overtime compensation will increase to $43,888 annually ($844 weekly) on July 1, 2024, with an additional increase to $58,656 annually ($1,129 weekly) on January 1, 2025. Then, beginning July 1, 2027, the salary threshold will automatically update every three years. In addition, the salary threshold for highly compensated employees will be raised from its current level of $107,432 annually to $132,964 on July 1, 2024 and to $151,164 on January 1, 2025. The final rule does not change the job duties test, which will still need to be met in addition to the salary basis test in order for an employee to be considered exempt.

If this final rule goes into effect, it is estimated that more than 3 million workers will be affected. However, it is likely that the final rule will be challenged in court, just as other

updates to the salary basis test have been challenged (and sometimes struck down) in the past. Given the short timeline before the initial increase, employers should begin preparing now to evaluate what they will need to do if the final rule does go into effect on July 1, 2024. As always, O’Neil Cannon is here for you. We encourage you to reach out with any questions, concerns, or legal issues you may have regarding your labor and employment policies and practices.