O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING ELECTS JB KOENINGS AND ERICA REIB AS SHAREHOLDERS

O'Neil, Cannon, Hollman, DeJong and Laing is pleased to announce that Attorney JB Koenings and Attorney Erica Reib were recently elected as shareholders of the firm.

JB has been with the firm since 2010, first as a law clerk and then as an attorney in 2011. He works with and advises clients on a wide range of business law matters, including form of entity selection and initial capitalization, raising funds through private equity offerings, securities compliance and broker/dealer matters, mergers and acquisitions, contract preparation and negotiation, and software, technology, and IP matters.

Learn more about JB Koenings by visiting his full profile.

Erica has been with the firm since 2014 and is a member of the Employment Law Practice Group. She assists clients with employment discrimination litigation, non-competition and trade secret litigation, 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.

Learn more about Erica Reib by visiting her full profile.

We are pleased to add both JB and Erica as shareholders.

BEWARE POTENTIAL EMPLOYMENT SUCCESSOR LIABILITY IN ASSET TRANSACTIONS

With Labor Day in the rearview mirror and the fall M&A deal season now upon us it is important to remember that, while most liabilities can be extinguished in an Asset Purchase Transaction, there are a few liabilities that cannot. This post will focus on one such liability – Federal Employment Liability.

Last spring, the Seventh Circuit, in *Teed v. Thomas and Betts Power Solutions, L.L.C.,* held that certain federal employment liabilities (e.g. ongoing Fair Labor Standards Act (FLSA) litigation) may flow from the seller through the asset purchase to the buyer despite language to the contrary in the purchase agreement.

In *Teed*, the seller was in receivership and embroiled in various FLSA litigation stemming from pre-sale activity. The buyer negotiated a clause in the asset purchase agreement absolving it of liability in this pending litigation and the state court approved the sale of the assets "free and clear of all liens, claims, encumbrances, and other interests of any kind."

After the acquisition, the plaintiffs moved to substitute the seller for the buyer in their ongoing FLSA cases. The Seventh Circuit determined that because a federal law was at issue, federal common law applied. The federal common law regarding successor liability is not as limited as most state's successor liability laws and, in *Teed*, the court held that the seller was liable under the doctrine of successor liability.

Successor liability is a complicated doctrine, particularly when federal laws are involved or the parties to a transaction are from more than one state. Not only do the successor liability laws vary from state to state, the Federal Circuits all have their own interpretations of it as well. Therefore, it is important to perform thorough due diligence of a target company and hire transactional attorneys who have employment law experience and are able to evaluate whether or not the liabilities can be contracted around or have the potential to attach to the buyer after the transaction is complete so that the proper indemnifications, escrow, or holdbacks can be negotiated into the purchase agreement.

As always, if you have any questions on this topic or employment law in general, please do not hesitate to contact us.

WISCONSIN'S CONCEALED CARRY LAW EFFECTIVE NOVEMBER 1, 2011

Please be advised that Wisconsin's Concealed Carry Law goes into effect on November 1, 2011. In just a few days, your employees and visitors, provided they receive a license, will be able to carry concealed weapons into your businesses and in your company vehicles unless you properly elect otherwise according to the new laws. As employers, you should be prepared to update your employee handbooks, enact new policies, and post the proper signs to accurately reflect your company's policies and to properly minimize the amount of risk you, your business, and your employees are exposed to. A detailed description of the new laws and how they affect employers is available on our website at this link.

If you have any questions about Wisconsin's new Concealed Carry Law, please contact either Joseph E. Gumina or J.B. Koenings at O'Neil Cannon at 414-276-5000. Either Attorney Gumina or Attorney Koenings can help advise you on the implications of this new law as well as assist

you with the drafting of the necessary policies and procedures to best protect your business from liability.

NLRB POSTING DEADLINE EXTENDED UNTIL JANUARY 31, 2012

The NLRB has delayed the deadline for employers to post a new controversial notice to their employees informing them of their rights, including the right to organize, under the National Labor Relations Act ("NLRA"). Previously, the deadline for posting this notice was November 15, 2011, but amidst employer confusion, the National Labor Relations Board ("NLRB") pushed the deadline back to January 31, 2012.

All private employers, including labor unions, must post the prescribed NLRB notice. The only employers exempt from this new rule are agricultural employers, those employers covered under the Railway Labor Act (such as railroads and airlines) and the U.S. Postal Service. It is important to note that this new rule affects all non-exempt employers whether or not that employer's workforce is unionized.

In addition to the above exempt employers, certain small businesses are also exempt from this rule. Such exemptions are based on a small business' annual sales volume by industry, ranging from $50,000 to $1,000,000 in annual sales volume. Do not assume you are exempt from this rule based on the size of your business until you verify the exact NLRB exemption limits for your specific industry.

Under this new rule, all employers covered by the new rule will be required to post an 11×17 inch notice in a conspicuous place where all such employee notices are customarily posted. If your employees work at multiple locations, notice must be posted at each location. For instances where your employees work at a different company, you are required to post notice there as well—if that company will allow it.

A sample notice is available at no cost from the NLRB through its website, either by downloading and printing it or ordering it by mail. Translated versions are also available and must be posted at workplaces where at least 20% of employees are not proficient in English. Additionally, if an employer customarily posts notices to employees regarding personnel rules or policies on an internet or intranet site, that employer will be required to post the NLRB notice on those sites in addition to the physical posting of the notice in the workplace. There are no reporting or record-keeping requirements under this new rule.

Failure to post notice in accordance with this new rule may be treated as an unfair labor practice under the NLRA and would expose an employer to a potential NLRB investigation. Penalties could range from the NLRB merely requiring that proper signage be posted; an extension of the normal 6 month statute of limitations for filing a charge involving other unfair labor practices; or even to the filing of an unfair labor practice charge against the employer.

If you have any questions about the new NLRB posting requirements, or if you need assistance in determining if your small business is exempt, please contact either Joseph E. Gumina or J.B. Koenings at O'Neil Cannon at 414-276-5000.