EMPLOYER OPTIONS TO ENCOURAGE COVID VACCINATIONS

Government contractors and "Large Employers" with over 100 employees could soon be facing federal regulations requiring that their employees either show proof of vaccination or undergo weekly COVID testing.

Although one federal court has stayed implementation of the OSHA Emergency Temporary Standard (ETS) applicable to Large Employers, and another has enjoined implementation of the Federal Contractor mandate, OSHA has requested that the 6th Circuit court of Appeals (where all cases challenging the ETS have now been consolidated) to lift the stay and allow the ETS to go into effect. It is expected that the injunction related to the Federal contractor Mandate will also be appealed. Ultimately, the fate of both the ETS and the Federal Contractor Mandate will likely lie in the hands of the Justices of the U.S. Supreme Court. Stay tuned!

OSHA and the CDC are strongly recommending that all employees be fully vaccinated against COVID-19 unless they require a medical or religious accommodation, and the EEOC has indicated that employers can require proof of vaccination as a condition of continued employment absent proof of the need for such an accommodation. Further, many employers have concluded that increased vaccination rates within their workforce are consistent with lower absenteeism and turnover as well as higher productivity.

At the same time, in an era when good employees are hard to find and retain and many employers are seriously understaffed, other employers may be reluctant, absent governmental requirements, to impose mandates for fear of losing existing employees and job applicants who are opposed to being vaccinated. These employers do have a variety of options to incentivize employees to become vaccinated.

In June, the EEOC indicated that employers have broad discretion on the size of vaccination incentives they may offer to employees who use third-party providers unaffiliated with the employer to obtain their vaccine (i.e., an employee's personal physician or pharmacy, or a state-run vaccination center). The EEOC explained that "requesting documentation or other confirmation showing that an employee received a COVID-19 vaccination in the community is not a disability-related inquiry covered by the ADA." However, the EEOC also cautioned that the incentive must not be "so substantial as to be coercive."

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In this issue of the Petrie + Pettit newsletter, we are pleased to welcome and introduce you to our newest attorney, Gary D. Koch. With nearly 20 years of experience, Gary joined the Petrie + Pettit team to assist primarily with our Real Estate Law practice group, focusing on landlord-tenant law. Gary has represented landlords for more than 10 years, he has spent his legal career handling a variety of debtor and creditor matters, and he is well versed on all facets of landlord/tenant law. Gary is a graduate of UW Law School (go Badgers!) and he earned his B.S. at Indiana University. Outside of work, he enjoys cycling, photography and finding new adventures with his family (wife, two kids, dog, cat and lizard). Gary is a wonderful addition to the Petrie + Pettit team and we know that you will enjoy working with him.

Please also join me in congratulating my dad, Jim Petrie, on 65 years of legal practice with our firm. What a milestone! Jim has been a teacher, mentor and inspiration to many attorneys through the years (me included). All of us at Petrie + Pettit are grateful for his guidance, wisdom, and steadfast support. Now in his 92nd year, Jim continues to assist select clients with their estate planning, probate and trust administration matters.

As always, we thank you, our clients and friends for your trust and confidence in the Petrie + Pettit team.

Laura J. Petrie

PRESIDENT

The Coronavirus Aid, Relief and Economic Security Act ("CARES Act") was signed into law on March 27, 2020, bringing many new wrinkles to the residential real estate rental practice. While several of its provisions have expired, specifically those regarding eviction moratoria, one particular provision lingers without an apparent sunset. Section 4024(c)(1) of the CARES Act requires that "[t]he lessor of a covered dwelling unit may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate." A recent interim rule promulgated by HUD, effective as of November 8, 2021, reiterates the 30-day notice requirement, and adds additional language necessary for notices terminating tenancy for many covered entities.

This raises two obvious questions: is my rental unit a covered dwelling unit; and what happens if I don't comply with the CARES Act – eviction is a state court remedy, after all.

Whether or not a property is a covered dwelling unit is an easy question to answer since the CARES Act (and the subsequent interim rule) defines "covered dwelling unit". While the definition is cumbersome, it essentially boils down to whether there's government funding or backing of the unit. We'd be happy to discuss your particular situation to determine whether your unit is in fact a covered dwelling unit.

The penalties for non-compliance with the CARES Act are less easily defined. There's no penalty provision in the Act itself. First, though, any eviction filed without providing the necessary time frame would likely be dismissed, as the notice terminating tenancy would be found to be invalid. Additionally, the Bureau of Consumer Financial Protection (CFPB) is tasked with enforcing the CARES Act with respect to evictions. In July, 2021, the CFPB issued an Enforcement Compliance Bulletin and Policy Guidance, stating ***"Bureau staff will be monitoring and investigating eviction practices to ensure that they are complying with the law. Evicting tenants in violation of the CDC Order, State, or local moratoria, or evicting or threatening to evict them without apprising them of their legal rights under such moratoria, may violate prohibitions against deceptive and unfair practices under the Fair Debt Collection Practices Act and the Federal Trade Commission Act."*** So, at a minimum, a faulty notice could be grounds for a dismissal of the eviction, and, at worst, investigation and sanction by the CFBP. Again, Petrie + Pettit can help you navigate these potential pitfalls to issue an effective notice, proceed with a proper eviction and minimize your risk. Please feel free to contact any member of our Landlord-Tenant team to discuss.

Gary D. Koch

ANNOUNCEMENTS

In early November, **DAVE MCCLURG** had the opportunity to meet with two separate Executive Agenda groups to discuss the federal vaccine mandates for federal contractors and "Large Employers" (defined as companies with over one hundred employees). Although one federal court has stayed implementation of the OSHA Emergency Temporary Standard (ETS) applicable to Large Employers, OSHA has requested that the 6th Circuit court of Appeals (where all cases challenging the ETS have now been consolidated) to lift the stay and allow the ETS to go into effect. Consequently, most Large Employers are taking steps to be prepared to comply with the provisions of the ETS should the stay be lifted.

On Saturday November 13th, **TRISTAN PETTIT** presented his 23rd Landlord Boot Camp seminar sponsored by the Apartment Association of Southeastern Wisconsin (AASEW), an all-day event covering everything that landlords and property managers need to know about residential Landlord-Tenant law in Wisconsin. For those who missed it, an on-demand version is available. See ***https://petriepettit.com/landlordbootcamp***.

RENEE RUFFIN NAWROCKI has been selected as a training coach for the Family Mediation Center's 2022 Mediation Training. Renee will work closely with the training participants in the areas of breaking through impasse, actively listening, and maintaining mediator impartiality and neutrality.

JIM PETRIE recently celebrated his 65th anniversary with the firm. He was gifted a framed, signed commemorative plaque to celebrate the milestone.

SHOULD YOU ADD A CHILD'S NAME TO YOUR FINANCIAL ACCOUNTS?

It's not uncommon for new clients to tell us that they've already "simplified their estate plans" by adding the name of one of their adult children to their bank (or other financial) accounts. Our immediate follow-up questions to them are: "What do you mean by that statement? Did you add your child's name to the account as an owner, as a signatory, as a power of attorney, or as a beneficiary?" The answers to these questions about your financial accounts make a big difference in what legal rights you may have transferred to your child now, during your lifetime, and whether ownership of the account will transfer outright to your child immediately upon your death. Knowing exactly how each of your financial accounts is currently titled and how each account will (or will not) transfer upon your death is very important to avoid unintended post-death consequences (when you are no longer here to sort things out).

JOINT OWNERSHIP: Adding a child (or other individual) as a joint owner to your account can be an easy way to give that person the ability to access your account while you're still living and also transfer ownership of the account to that person immediately upon your death without need for probate. It is important to understand that if you do add a child's name to your account as a joint owner, the legal presumption is that both owners (you and your child) have full control over the account while both of you are living. In other words, if you add a child as a joint owner on your account, it is presumed that you want that child to have immediate and unrestricted access to all funds in that account throughout your lifetime. Additionally, when you die, the surviving joint owner (your child in this example) is presumed to have survivorship rights to the entire remaining account balance. This means that your child will own the account upon your death without regard to what your Will and/or Revocable Trust documents may say about that account.

You may "rebut" this legal presumption by documenting that your intention is actually to provide your child access to the account during your lifetime "for convenience only" (such as to assist you with bill paying) and ***not*** to transfer/gift ownership of the assets in the account to that child. However, this requires evidence of your intent, and if there's any conflict among your children or other intended beneficiaries, lengthy and expensive court proceedings may be required to sort out exactly what was intended (since you will no longer be living).

Sometimes clients tell us that they've named a child as joint owner "to avoid probate" and that they have asked that child to share or split the account proceeds with their other children after their passing. You need to know that there's no guarantee (or legal requirement) that your child does indeed share the balance of this account with his or her siblings. And, even if your child does split the account balance with your other children after your passing, there may be gift tax consequences to your child for making such a post-death voluntary split of the account with his or her siblings. Rather than counting on your child to "do the right thing," creating unintended gift tax consequences for your child, and/or leaving the door open to post-death court proceedings to legally determine your intent, we recommend you make sure that your account ownership and/or beneficiary designations are exactly what you intend right now - while you are still living and have full capacity.

POWER OF ATTORNEY: If you don't want your child to be the sole owner of your account after your death, but you do want your child to be able to access your account during your lifetime to be able to assist you with bill payments, reviewing balances, etc., then you should consider naming that child as power of attorney instead of joint owner. A financial power of attorney document allows you (the "principal") to appoint your child (or other person/entity) as your "agent" to take actions on your behalf regarding your financial matters. Depending on the specific terms of your power of attorney document, this may include the ability to write checks, transfer balances, open or close bank accounts, and even change beneficiary designations.

An important difference between naming your child as power of attorney (agent) for a particular account versus naming that child as a joint owner of the account is that a power of attorney does not have a legal ownership interest in your account and must take actions regarding that account for your sole benefit. In addition, the legal authority of a power of attorney (agent) ends immediately upon your death. So, even if you name a child as power of attorney (agent) to assist you with management of a particular account during your lifetime, you may still name others as the "transfer on death" (TOD) or "payable on death" (POD) beneficiaries to receive the proceeds of the account upon your death.

Before you add your child's (or any other individual's) name to any of your financial accounts - whether as a joint owner or as a power of attorney - you should carefully think through what you are trying to accomplish, both during your lifetime and upon your passing. There are other titling and/or beneficiary options that may be equally as effective. If you have any questions about your important estate planning matters, please let our team know.

Laura J. Petrie

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EMPLOYER OPTIONS TO ENCOURAGE COVID VACCINATIONS ... continued from front cover

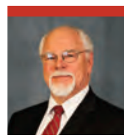
Recent guidance from the federal Departments of Labor and Health and Human Services has clarified one powerful incentive that employers may use to encourage employees to become vaccinated. This guidance, provided in the form of answers to Frequently Asked Questions ("FAQs") confirmed that employers may offer participants in a group health plan a premium discount (or impose a surcharge) based on their vaccination status if:

1. The reward (or penalty), together with the reward for other health-contingent wellness programs under the plan, does not exceed 30 percent of the total cost of employee-only coverage under the plan;
2. Eligible individuals are given an opportunity to qualify for a reward at least once per year; and
3. A reasonable alternative standard to qualify for a reward (or waiver of surcharge) is given to any individual for whom it is unreasonably difficult or medically inadvisable to satisfy the standard due to a medical condition.

Such alternatives could include allowing those individuals the ability to certify their continued compliance with all COVID-19 health and safety guidelines issued by the CDC or to attest that they will wear a face covering and socially distance as is recommended for unvaccinated individuals. Health plans must ensure that notice of any reasonable alternative standard is provided to individuals to satisfy the wellness plan regulations.

In sum, at employers offering group health plans now have the ability to incentivize plan participants to become vaccinated against COVID-19 by offering up to a 30% premium discount or surcharge based on the employee's vaccination status. Employers considering surcharges will, however, need to evaluate whether any such surcharge will affect the "affordability" of the coverage for purposes of compliance with the ACA.

If you have questions regarding these or other employment matters, please feel free to call or email.



David A. McClurg