FOX | O'NEILL | SHANNON s.c.

FOS NEWS - *Our clients come first*

Editor: Diane Slomowitz

Volume 3, Issue 2
Summer 2011

GET OUT OF TOWN...

By Laurna Jozwiak

As parents know, it does not take long for the enthusiastic cries of "school's out for summer" to turn to "I'm booored!" As the days grow longer and hotter, thoughts often turn to getting out of town for a while. But, for separated or divorced parents, the real question might not be "where to?" but "can you?"

Whether it is a weekend trip or an entire week away, divorced or separated parents need to make sure that their summer dreams address the reality of co-parenting. Any time a planned vacation interferes with your normal placement schedule, it is important to proceed carefully.

The first step is to look at the terms of your temporary order, Marital Settlement Agreement or divorce judgment, to determine what, if any, agreements or orders were made regarding vacation. Many times, agreements allow parents a certain amount of vacation time each year. In this case, all a parent needs to do is coordinate with the other parent to schedule the time.

If your agreement or order establishes a timeline to exchange information about the scheduled vacation, or other travel details, make sure to do so. The best practice is to document all discussions in writing to avoid miscommunication or last minute problems.

Often, when negotiating placement, parents are only focused on the child's day-to-day schedule. If your agreement or order is silent on vacations, you will need to work with your ex to schedule trips that don't conflict with your regular placement schedule. Documenting agreements is important, but remember that any agreement must be approved by the court to be enforceable.

When a child travels out of the country with only one parent, that parent must have a "Permission to Travel" letter signed

Continued on Page 2

PUTZMEISTER TO THE RESCUE!

Who would have thought that a Sturtevant, WI company would be instrumental in trying to contain the damage at the Fukushima nuclear plant in Japan? Well, that was just the case with FOS client Putzmeister America, Inc., a manufacturer of truck-based concrete pumps.

Putzmeister's 95-ton concrete pump, one of the largest in the world, was transported by a massive Russian cargo plane to the Japanese plant, where it was used to pour water into the damaged reactors.

Mounted on a 26-wheel truck, the pump could be operated by remote control from as far away as two miles.

This was not Putzmeister's first call to the rescue in a world crisis. The 50-year old company helped remedy a damaged nuclear reactor at Russia's Chernobyl plant 25 years ago.

FOS congratulates Putzmeister on a job well done.

VERBAL COMPLAINTS – ONE MORE WORRY FOR EMPLOYERS

By Diane Slomowitz

You meet with an employee over his poor job performance, which he promises to improve. As the meeting ends, your employee complains that the company notice board is missing a required wage and hour poster. You promise to check out the board, which you do right after the meeting. The missing poster, hidden under other notices, is pulled out from underneath and placed in a more prominent spot.

Unfortunately, the employee's performance worsens, and you have to fire him/her. A few weeks later, you are served with papers stating that the employee is claiming retaliation under the Fair Labor Standards Act. The employee claims he was fired, not for poor job performance, but in retaliation for complaining about the poster.

You aren't worried. After all, complaints always have to be in writing, and the employee's complaint was oral. The claim should be dismissed, without the company having to prove the employee's inadequate performance (with the extensive documentation the company has, of course, been keeping).

Until just a few weeks ago, you would have been correct, but not any more. A written employee complaint has long been a condition to a retaliation claim, especially in the federal 7th Circuit Court of Appeals, which covers Wisconsin, but on March 22, 2011, the U.S. Supreme Court changed the rules.

The case that changed it all was Kasten v. Saint-Gobain Performance Plastics Corp., involving a Portage, Wisconsin company, whose employee orally complained about the location of time clocks. The Supreme Court rejected the 7th Circuit's prior rulings, holding that an employee does not have to write down a complaint about working conditions to receive statutory protection from retaliation.

What does this mean for employers? One big thing—from now on, employers must take oral complaints about working conditions just as seriously as written ones. In fact, companies should handle oral complaints with special care. Employers should document in writing every oral complaint, with its date, maker and content. Investigative and corrective action (if any is needed) should also be documented in writing.

Employees, of course, may occasionally claim retaliation over verbal complaints which the employer denies having received. That, however, is one of the problems inherent in oral, as opposed to written, complaints.

FOS attorneys can help your company prepare for such a dispute by helping create company policies and procedures for the recognition and documentation of oral complaints.

Get Out of Town…

Continued from Page 1

(notarized) by both parents. Therefore, if your travels take you further than Wisconsin, it is a good idea to get a letter from your ex consenting to the trip and take that, along with any custody and/or placement agreement you have, with you.

These considerations are important for parents who are currently going through a divorce to keep in mind. Being proactive and planning carefully is the best way to make sure that summer vacations go smoothly.

The attorneys at FOS can help make sure that nothing spoils your family's summer fun.

FRAN HUGHES ELECTED TO BOARD OF GOVERNORS

FOS attorney Francis J. Hughes has been elected to the St. Thomas More Lawyers Society of Wisconsin's Board of Governors.

The St. Thomas More Lawyers Society, an association of Catholic attorneys, sponsors charitable and enrichment events, including Youth Law Day and the Sandwich Project.

RESTRICTIVE COVENANTS ARE ENFORCEABLE. REALLY.

By Bill Soderstrom

When a key employee leaves a company, the impact can be disastrous. Add to this the fact that many employers, particularly in Wisconsin, continue to believe that a departing employee's covenant not to compete is simply unenforceable. This is based, I suspect, on a strong statutory restriction on employment covenants not to compete in Wisconsin. The statute, combined with the very skeptical eye cast on employment covenants by Wisconsin courts, has lead to any number of employment covenants being declared void. Bruce O'Neill, the long-term head of FOS's litigation department, could wallpaper his office with the court orders he has obtained voiding covenants.

Even so, it has never been true that all restrictive covenants are unenforceable. Well crafted covenants regularly pass the legal test. While there are hoops to jump through, drafting an enforceable covenant can be done without great difficulty.

An enforceable covenant cannot exceed two years in length; it must be a reasonable restriction on the employee; it must reflect the employer's protectable interest in the restrictions; and it must give "consideration" to the employee. Consideration can either be the offer of employment itself, or a bonus, promotion, or the like, in exchange for the covenant.

Lately, Wisconsin courts have interpreted covenants to favor enforceability. In the 2009 Star Direct, Inc. case, for example, the Wisconsin Supreme Court changed the way the employment covenants are reviewed, considerably increasing their likelihood of being upheld. Subsequent cases have taken a more employer favored approach. Overall, the trend is for the Wisconsin courts to be much more favorably disposed to enforce covenants than to void them.

Employment covenants can be essential to protect a business. While key employee departures are challenging enough alone, key employees taking important accounts can be ruinous.

The FOS team can help you implement an employment covenant program for your company.

WHAT'S THE PASSWORD?

By Al Young

I recently probated the estate of a young man who died unexpectedly.

John was tech-savvy. He paid his bills online and received all of his bank statements and investment account statements electronically.

John was single, and named his mother, Gail, as personal representative in his Will. One of the first questions I asked Gail was, "What did John own at the time of his death?" and she replied, "It is all on John's computer, but I can't get in."

No one knew the password to log on to John's computer, and no one knew John's user names or passwords to access his bank accounts and investment accounts online.

I expect that this will happen more often, as we become more comfortable banking and investing online and going green.

We have been told not to write down usernames and passwords for fear that the information might fall into the wrong hands. So what should you do?

One alternative is to create two documents. One should be a list of usernames for each login or account. The second should be a list of the related passwords. The documents should be printed and kept in separate files in the home or given to different family members. They could also be kept in a safe deposit box or another secure location. Another alternative is to save the information to a USB flash drive and then keep the flash drive in a safe deposit box or other secure location.

Whatever procedure you use, keep it up to date, and be sure to tell a trusted family member or advisor where to find this critical information. Planning ahead now will save time and money, and avoid unnecessary stress for your loved ones.

FOX O'NEILL SHANNON s.c.

622 N. Water Street
Suite 500
Milwaukee, WI 53202

Phone: 414-273-3939
Fax: 414-273-3947
www.foslaw.com

Fox, O'Neill & Shannon, S.C. provides a wide array of business and personal legal services in areas including corporate services, litigation, estate planning, family law, real estate law, tax planning and employment law. Services are provided to clients throughout Wisconsin and the United States. If you have any questions about these articles or any other legal topics, please call us at (414) 273-3939.

Postage

Address label

IN THIS ISSUE

FOS WELCOMES MATT O'NEILL

FOS is excited to welcome Matthew O'Neill to its litigation practice. In his 20 years of active trial and appellate experience, Matt has successfully prosecuted and defended many high profile lawsuits.

Matt is known for aggressively advocating for his clients, protecting their interests at trial court and in appellate courts. In addition to having numerous arguments before the Wisconsin Court of Appeals and the Seventh Circuit Court of Appeals, Matt argued before the Wisconsin Supreme Court in two leading cases involving minority shareholder rights. In another case, Matt was instrumental in obtaining the reversal of a $100 million verdict against a local utility.

Matt graduated from Notre Dame *cum laude* and *magna cum laude* from the Marquette University Law School. After completing law school, Matt held the coveted clerk position for then Wisconsin Supreme Court Chief Justice Nathan Heffernan.

A business litigation *Super Lawyer* (chosen by *Super Lawyer Magazine*) each year since 2006, Matt's continued high standards were most recently acknowledged by his election as President of the Federal Eastern District of Wisconsin Bar Association.

In addition to his litigation prowess, Matt brings to FOS additional depth in the specialty of election and campaign finance law. Matt has provided extensive legal services for both sides of the political spectrum, and has testified before Congress and the Wisconsin state legislature in this increasingly important area.

Matt stands ready to provide the high quality services which FOS' clients expect of this firm.

"I am elated to join a great firm like FOS, and will do my best to win every case."

- Matt O'Neill