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FOS NEWS - *Our clients come first*

Editor: Diane Slomowitz

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WANT MY CELL PHONE'S LOCATION? GET A WARRANT!

By Jacob A. Manian

Where we go says a lot about who we are, what we like, and what we do.

One thing's for sure these days—wherever we go, our cell phones go with us.

In addition to facilitating communications, modern cell phones essentially function as tracking devices.

They constantly and instantaneously communicate with the closest cell tower to us as we travel.

Each tower stores precise data indicating our movements, creating a digital map of our daily whereabouts.

Shouldn't that information be private, especially from the government?

The United States Supreme Court recently answered "yes."

The Court ruled that law enforcement officials must generally obtain a warrant to receive historical cell tower location information from cell phone companies.

In other words, if the government wants to use your cell phone to know where you've been, it must generally obtain a warrant.

In *Carpenter v. United States*, the Supreme Court observed that "cell phones and the services that they provide are 'such a pervasive and insistent part of daily life' that carrying one is indispensable to participation in modern society."

The Court, comparing cell tower location information to GPS tracking devices, expressed concern that the "time-stamped data provides an intimate window into a person's life, revealing not only his particular movements, but through them 'familial, political, professional, religious and sexual associations.'"

As such, the protection of a warrant is required under the Fourth Amendment.

The Supreme Court in *Carpenter* held that the government should have obtained a warrant before receiving 127 days worth of an alleged armed robber's cell tower location records, placing his phone at 12,898 locations.

The Court made clear that exceptions to the warrant requirement remain in place, including when responding to an ongoing emergency such as an active shooting, bomb threat or kidnapping.

The *Carpenter* decision signals the Supreme Court's recognition that cell phones are both uniquely pervasive in

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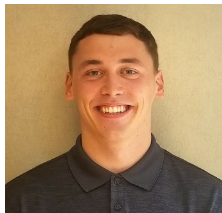
FOS Welcomes Robert Ollman, Jr.



FOS welcomes Attorney Robert Ollman, Jr. as an associate with the firm.

Robert provides legal services primarily within FOS's business group.

A Mequon, Wisconsin native, Robert received his law degree from Marquette University Law School.

Robert was a member of the Marquette Sports Law Review, participated in the 2017 Jenkins Honors Moot Court Competition, and received the CALI Award for appellate writing and advocacy.

Larsen Up and Coming Lawyer

FOS associate Bailey Larsen will be honored as a 2018 Up and Coming Lawyer by the *Wisconsin Law Journal* at a September 13, 2018 dinner at the Discovery World Pilot House.

The Up and Coming Lawyers award honors the "rising stars of Wisconsin's legal community," according to the *Wisconsin Law*

Journal.

Bailey joins FOS shareholders Jacob Manian, Laurna Kinnel and Michael Koutnik, who previously received the award.

EMPLOYERS - ABSENTEEISM POLICIES CAN RULE

By Lauren E. Maddente

Most employers are faced with employees who call in sick without notice, don't show up for work, or are unduly absent for other reasons.

Employers faced with this problem often wonder when they can legally terminate an employee for such misconduct.

This is important, because employees discharged for "misconduct" are generally ineligible to receive unemployment compensation benefits.

Wisconsin Statute 108.04(5) defines absenteeism, in the context of "misconduct" justifying the denial of unemployment, as occurring when an employee:

> is absent "on more than 2 occasions within the 120-day period before the date of the employee's termination, **unless otherwise specified by his or her employer in an employment manual** of which the employee has acknowledged receipt with his or her signature…."

What if an employer wants a different, and stricter, definition of "absenteeism" than in the statute?

Happily for employers, this past June, the Wisconsin Supreme Court gave employers the green light to do so.

In *Wisconsin Dep't of Workforce Dev. v. Wisconsin Labor & Indus. Review Comm'n*, an employer's written absenteeism policy stated that a probationary employee could be terminated if he or she did not "call in two hours ahead of time" if unable to work.

When a probationary employee failed to timely call before missing her shift due to sickness, she was fired.

The Supreme Court, relying on the statute's plain language, held that an employer can create such a policy, a violation of which constitutes "misconduct" for unemployment purposes.

The Court reasoned that the statute affords employers the option to opt out of the statutory definition and create their own absenteeism policies, even if they are stricter than the statute.

Even though this decision applies only to misconduct by absenteeism, for unemployment purposes, it is a win for employers.

Employers' employee handbooks may legally contain written absenteeism policies that are stricter than the statutory provision.

Employers are not, however, without boundaries.

Such policies must be included in an employee manual or handbook and acknowledged and signed by employee.

They cannot be buried in the depths of a manual that is never received or acknowledged by employees.

This case highlights the importance of well-drafted employee handbooks, and established protocols for their receipt and acknowledgement by employees.

Contact your FOS attorney for assistance with drafting, reviewing and/or updating your absenteeism policy and employee handbook.

Cell Phones (Continued from page 1)

society, and the collectors and storers of "detailed, encyclopedic and effortlessly compiled . . ." tracking information.

Given the realities of the current digital age, and to protect from governmental overreach, cell phone owners must be entitled to Fourth Amendment protections.

And that means a warrant.

FOS Is Top "Food From the Bar" Participant For Third Straight Year

For the third year in a row, FOS obtained a winning 100% participation rate in the "Food From the Bar" Campaign!

"Food from the Bar" is a friendly competition among local law firms and legal departments to benefit Feeding America Eastern Wisconsin.

The 2018 campaign raised over $15,500, collected 1,200 pounds of food, and volunteered nearly 200 hours at the Feeding America warehouse.

This translated to nearly 40,000 meals for those facing hunger in our community.

Pictured above with plaque are FOS shareholder Laurna Kinnel and associate Bailey Larsen.

IS YOUR ALIMONY DEDUCTION AT RISK?

By Bailey M. Larsen

Alimony payments – referred to in Wisconsin courts as maintenance payments – have always been a hot-button negotiating point in divorce agreements.

The recipient of the payments routinely points out that the classification of payments as alimony is beneficial to the payer, while adding income to the recipient, for tax purposes.

The new Tax Cuts and Jobs Act ("TCJA") may be swinging the negotiating pendulum in the opposite direction.

Before the new TCJA, payments that met the tax-law definition of "alimony" were deductible by the payer for federal income tax purposes.

Conversely, the recipients of alimony payments were required to report the payments as taxable income.

The TCJA dramatically changes the treatment of alimony payments for all divorce and separation instruments ("divorce agreements") executed after December 31, 2018.

The TCJA eliminates deductions for alimony payments required by post-2018 divorce agreements.

This change creates a potentially significant increase in taxable income for the former spouse saddled with making the alimony payments.

The TCJA also provides a reciprocal tax break for the recipients of affected alimony payments.

The law no longer requires the recipients to include the alimony received in taxable income.

The tax savings from being able to deduct alimony payments can be substantial.

The previously allowed alimony deduction was what the accounting world refers to as an "above-the-line" deduction – reducing your taxable income on a dollar for dollar basis.

Similarly, the tax savings from not being required to report alimony payments in income, for all alimony payments required by post-2018 divorce agreements, is equally as significant for the former spouse receiving the payments.

Given the new law, parties and their attorneys may have to rethink their "old" calculations and come up with a new plan moving forward in order to come to "new" workable settlement agreements.

Due to the significant economic effect of the change in the tax treatment of alimony after December 31, 2018, if you are in the midst of a divorce proceeding, the date of execution of the divorce agreement may be critical.

Your FOS family law attorney can help guide you through the new law and its effect on you.

Maddente 3 - Opponents 0

While FOS's litigation group specializes in complex civil and white collar criminal cases, FOS is no stranger to victories in more "routine" civil disputes.

FOS associate **Lauren Maddente**, for example, is one of FOS's go-to attorneys for small claims trials.

Lauren, sporting a 3-0 win record, achieved her most recent victory through vigorous cross-examination of her opponent, yielding the dismissal of the case against FOS's client and a rare award to the client of attorney's fees.

Justice, thy name is Maddente.

Princess Leia Never Looked So Good!

Princess Leia, a/k/a/ FOS shareholder **Matthew O'Neill**, handed out the awards at the Sixth Annual Terence T. Evans Humor and Creativity in Law Competition at the Eastern District of Wisconsin Bar Association's annual meeting.

The competition, created by Matt and other Eastern District members, honors the talent, wit and writing style of the late District Judge Evans.

"I know. Somehow, I've always known." Princess Leia.

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CAN'T YOU HEAR ME KNOCKING? WISCONSIN REVISES LANDLORD-TENANT LAWS

By Michael G. Koutnik

Wisconsin's landlord-tenant laws continue to evolve, with a new batch of changes now effective this year. Below are a few of the more significant changes.

Emotional Support Animals

An "emotional support animal" provides emotional support, well-being, comfort, or companionship for an individual, but is *not* trained to help an individual with a disability.

Under the new Wisconsin law, a housing facility that generally prohibits animals must permit an emotional support animal, if the tenant provides documentation from a health care professional licensed or certified in Wisconsin and acting within the license's/certification's scope.

Importantly, Wisconsin's law on emotional support animals contains more requirements for tenants than the federal government mandate, which only requires "reliable documentation" from a tenant.

Due to this inconsistency between federal and Wisconsin law, landlords would be well-served by continuing to follow the federal law.

This will avoid any potential exposure from Department of Housing and Urban Development, the agency tasked with overseeing housing laws.

Service of Notice

A landlord may now serve an eviction notice (e.g., the 5-day notice to pay or vacate) by certified mail.

The law also prohibits a court from requiring an affidavit of service for the eviction notice.

The process surrounding the service of an eviction summons and complaint, which follows the service of the eviction notice, remain the same.

Electronic Delivery

If agreed to in the lease, a landlord may now electronically deliver documents as to the landlord's accounting or disposition of a security deposit/refund, the promise to clean or repair the unit, and notice to enter the rental unit.