



FOS NEWS - Our clients come first

Editor: Diane Slomowitz

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SECURE ACT CREATES IRA ANXIETY



By Allan Young

The SECURE Act, enacted in December as part of the federal government spending bill, contains major revisions to the retirement plan rules.

Many changes are beneficial. For example, required minimum distributions (RMDs) can begin at age 72 rather than age 70½ for those born after June 30, 1949.

To pay for the changes, the Act accelerates when retirement plan account and IRA

beneficiaries (both "IRAs" for short) must take distributions.

For many years, a beneficiary who inherits an IRA could take RMDs over the beneficiary's life expectancy.

The Act eliminates RMDs, instead requiring that a beneficiary take a distribution of the entire IRA by December 31st of the tenth year after the IRA owner's death.

Five exceptions to the 10-year rule allow the following beneficiaries to take RMDs over their life expectancy:

- (a) the IRA owner's surviving spouse;
- (b) a child under the

age of majority;

(c) a disabled individual;

(d) a chronically ill individual; and

(e) an individual 10 years younger, or less, than the IRA owner.

The exception for a minor child allows RMDs over life expectancy only until reaching the age of majority.

Then, the child must take a distribution of the account over 10 years.

Because accelerating distributions over a 10-year period bunches them into fewer years, federal and state in-

come taxes will be paid earlier and at higher tax rates.

For those with smaller IRAs or multiple beneficiaries, the change may not be a concern.

For those with larger IRAs or few beneficiaries, the change can be very significant.

Planning to minimize the Act's impact involves many considerations.

These include:

- (a) converting part or all of an IRA to a Roth IRA;

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ACT FAST TO PROTECT YOUR EASEMENTS FROM EXPIRING



By Michael Koutnik

An easement is a nonpossessory interest in land giving the easement holder the right to use land, owned by another, for a particular use.

A common easement is a driveway easement, which gives a neighboring property owner access to that owner's property using the driveway

owned by a neighbor. In the Spring, 2017 issue, I described the need to re-record easements every 40 years. "Easements Don't Last Forever," accessible at <http://www.foslaw.com/wp-content/uploads/2017/03/Spring-2017.pdf>

That article accurately describes the law for easements recorded on or after July 1, 1980. However, easements recorded before July 1, 1980, are subject to a different timeframe.

Those expire at the earlier of (1) 60 years after their recording, or (2) 40 years after July 1, 1980—unless they are re-recorded before their expiration date.

This means that, depending on the date of a pre-July 1, 1980 recording, you may have little or no time to re-record and protect your rights.

For example, if your easement was recorded July 1, 1980, you must re-record it

by **June 30, 2020**, or it will expire. If it was recorded June 1, 1980, you must act by **May 31, 2020**.

Unfortunately, easements recorded in January and February 1980, but not re-recorded, have already expired.

FOS can help with specific re-recording requirements for pre-and post-July 1, 1980, easements.

SEVENTH CIRCUIT RESTRICTS DISABILITY CONSIDERATION TO PRESENT CONDITION



By Robert Ollman

Let's say you own a logging company.

You need to hire a new operator for heavy machinery, and the job is highly safety sensitive.

Tim, a qualified heavy machinery operator with 20 plus years of experience, applies for the position.

The interview goes well, and you offer Tim the position on the condition that Tim passes a medical exam.

Tim's exam concludes that he is in overall good health, though he is deemed obese.

You are concerned, however, that Tim's obesity may result in health conditions in the

future, such as sleep apnea, diabetes and heart disease.

You are concerned that one or more of these conditions could incapacitate Tim while he operates heavy machinery.

This could cause injury or worse to Tim, other employees, or bystanders.

Even though he does not currently have any of these conditions, you do not hire Tim.

Tim later claims you violated the Americans with Disabilities Act ("ADA").

Did you violate the ADA?

Not according to a recent Seventh Circuit Court of Appeals decision, *Shell v. Burlington Northern Santa Fe Railway Company*.

The ADA prohibits discrim-

ination against job applicants on the basis of a disability.

A disability includes being regarded as having an actual or perceived physical or mental impairment.

Before *Shell*, employers may have assumed that failing to hire an applicant because of a physical characteristic (such as obesity) that could lead to a future disability would violate the ADA.

The *Shell* court, however, determined that being "regarded as" having an impairment covers only current impairments, not non-disability conditions which could lead to a future disability.

Similarly, while obesity might logically be considered a disability under the ADA, *Shell* confirms that

obesity alone is not protected.

A claimant must provide proof that obesity was caused by an underlying physiological disorder or condition.

Whether other courts will interpret *Shell* narrowly or broadly is still an open question.

While the *Shell* court found in favor of the employer, the case highlights how complex and stressful it can be to make hiring decisions which comply with the ADA and other laws.

Your FOS attorney can guide you through these and other employment issues.

QUESTIONS?

CALL US
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SHEPHERD EXPRESS HONORS FOS

For the second year in a row, FOS was honored at the 2020 "Best of Milwaukee" event, sponsored by the *Shepherd Express* newspaper.

FOS was a finalist in the Best Business Firm, Best Estate Planning Firm, and Best Family/Divorce Firm categories.

FOS and shareholder **Jacob Manian** were finalists in the Best Criminal Defense Firm category.



(L-R) **Lauren Maddente, Kate Thompson, and Judy Janetski.**

FOS IN THE NEWS

FOS shareholder **Matthew O'Neill** will emcee the March 14, 2020 "ALS Evening of Hope" at Milwaukee's Discovery World. Matt is a member of the ALS Association Leadership Team.

FOS associate **Lauren Maddente**, for the third year, coached a Marquette University Law School moot court team in the William B. Spong tournament, held at William & Mary Law School in Williamsburg, Virginia.

PRO BONO WORK

FOS shareholders **Matthew O'Neill** and **Jacob Manian** and associate **Lauren Maddente** have been certified and named to the Wisconsin State Bar's Pro Bono Honor Society registry.

The Society recognizes attorneys who provide at least 50 hours of legal services annually for limited-means individuals or service organizations, and charge no fees or substantially reduced fees for their services.

EXPRESS YOURSELF

42 on 4/2



By *Laura Kinnel*

Viral expressions and catchphrases come and go at a rapid pace these days – seemingly catching the attention of the entire country at once.

Who wouldn't want to capitalize on that sort of popularity? Turns out, plenty of people do.

Take, for example, the quick, recent rise of the phrase "OK, Boomer."

Whether you find it hilariously concise or disrespectfully dismissive, there is no denying that the phrase appeared everywhere in the past few months.

And, in the wake of that spotlight, at least eight dif-

ferent applications were filed with the US Patent and Trademark Office to trademark the phrase.

The applications' focus range from card and board games, to clothing, to a reality TV show.

Proving, at the very least, that there is no limit to creative ways to capitalize on a viral sensation.

So, when can you trademark an expression or catchphrase?

Typically, to register a trademark, it needs to be unique and identified closely with the source of a certain product or service.

Popularity, then, can actually work *against* an application.

Trademarks, by their nature, are supposed to be distinc-

tively associated with a single company or individual as a source of certain goods or services.

If an expression is ubiquitous, an applicant will have difficulty demonstrating the mark is closely associated with it.

While not every viral sensation has long term staying power, there may be benefits to using popular expressions.

Even if you cannot legally register an expression as a trademark, that does not mean you cannot use it to promote your products, so long as it does not violate anyone else's rights.

If you have any questions about how you can use trademarks in your business, contact the attorneys at FOS.

We lost the great Bruce O'Neill to ALS in 2016. His beloved wife Peppy left us in 2018. In their honor, the extended O'Neill family hosts an annual movie-night ALS fundraiser at Times Cinema in Milwaukee.

Past movies included *Field of Dreams*, *The Natural*, and *Secretariat*. We have raised over \$15,000 to fight ALS and to help others suffering with the awful disease.

This year we will show *42 - The True Story of an American Legend*, another of Bruce's all-time favorites.

Even if you hate the Dodgers (my hand is up), who can resist the story of Jackie Robinson, the first African American player in the major leagues? Please join us for this joyous event.

SECURE act, cont. from page 1

(b) married couples disclaiming part of the account at the first death, in favor of children, who will have two 10-year distribution periods;

(c) if charitably minded, naming a charitable remainder trust as beneficiary; and

(d) naming a multi-generation see-through trust as beneficiary.

Planning around the Act, for 2020 and for the future, will be unique for each client.

First, review all IRA beneficiary designations to ensure that there is both a primary beneficiary and a secondary beneficiary.

Second, consider whether part or all of an IRA should be converted to a Roth IRA.

The Secure Act's impact on IRA and retirement plans is complex. Contact FOS for information and guidance.



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YOUR COMPANY HAS BEEN SERVED WITH A SUBPOENA. NOW WHAT?



By Jacob Manian

In the middle of an already hectic workday, a government agent shows up and serves your company with a subpoena.

Are you in trouble?

It is not uncommon for the government to serve a company with a subpoena duces tecum for documents, often as part of a broader investigation which may have little to do with your company.

For example, if the government investigates Vendor A, from which you buy prod-

uct, for tax fraud, it may want purchase orders/invoices between your company and Vendor A to help establish Vendor A's underreported income.

Even if your company has done nothing wrong, you should not just hand over documents.

You should immediately contact your attorney to guide you through very important steps.

First, ascertain which government entity issued the subpoena, because different rules and procedures can apply depending on state versus federal subpoenas.

Second, determine exactly

what the subpoena commands your company produce.

Does it require documents only, or must your company's records custodian also give sworn testimony before a grand jury or in court?

Third, understand how the subpoena fits into the government's broader investigation. Might the company or its employee(s) have potential legal liability?

If a company employee may have violated the law, even in the course of his or her duties, that employee may need a personal attorney.

An experienced attorney, immediately reacting to a subpoena, can contact the

government lawyer heading the investigation to discover any potential liability of the company or an employee.

Even if the company has no liability, additional issues may arise as to requested documents.

For example, would requested documents implicate privileged or confidential information; reveal private information subject to the Health Insurance Portability and Accountability Act ("HIPAA"); or reveal trade secret or proprietary information?

An experienced attorney is critical to avoiding the potential pitfalls in responding to a government subpoena.