



FOS NEWS - Our clients come first

Editor: Diane Slomowitz

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A CHALLENGING 2020, WITH HIGH HOPES FOR 2021



By Francis Hughes

When my year-end article was published in this newsletter's 2019 Winter issue, no one anticipated that in a few short months, the COVID-19 pandemic would turn our lives upside down.

We didn't know then that we should have included hand sanitizer, disinfectant wipes and masks in our holiday gift bags.

Or that Zoom, Skype and other video conferencing platforms would become our, our families' and friends', and our businesses' new best friends.

We didn't know then that many of us, and many of our businesses, could be so physically and economically threatened.

Nonetheless, when the pandemic came to our doors, FOS immediately responded so that we could protect our employees while continuing to serve our clients.

We instituted hygienic and safety precautions and protocols for those working in the office.

We implemented remote-work assignments where appropriate, providing remote workers with suitable equipment to ensure FOS's continued provision of quality and efficient legal and support services.

We kept and are committed

to keeping our employees safe. And we kept and will keep our office open and productive.

FOS did not miss a step in responding to our clients' legal issues, including those regarding the impact of COVID-19 on our clients and their businesses.

We affirmatively acted and continue to act to keep all clients informed of fast-breaking COVID-related legal developments benefiting or otherwise affecting our clients.

When legislation, regulations or guidelines were or are enacted or released, FOS issued and continues to issue informative Client Alerts via social media posts and emails.

FOS's website's News and Views page, [foslaw.com/news-views](https://foslaw.com/news-views), contains a complete and continuing collection of Client Alerts regarding the pandemic and other legal news and legal issues.

If you don't currently follow FOS on LinkedIn ([linkedin.com/company/fox-o%27neill-&-shannon-s.c.](https://linkedin.com/company/fox-o%27neill-&-shannon-s.c.)) or on Facebook ([facebook.com/pages/category/Lawyer---Law-Firm/Fox-O'Neill-Shannon-SC-248811035173781/](https://facebook.com/pages/category/Lawyer---Law-Firm/Fox-O'Neill-Shannon-SC-248811035173781/)), I invite you to do so.

FOS's entire Spring, 2020 newsletter was devoted to the pandemic's actual and potential legal impacts on our clients.

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FOS NAMED A "BEST PLACE TO WORK"



For the second consecutive year, FOS has been honored as a "Best Place to Work" by the Milwaukee Business Journal. FOS received this award based on the nomination, individual responses to detailed questionnaires, and independent comments by FOS employees.

FOS is particularly grateful to be recognized by its employees and the Business Journal during the challenges of the COVID-19 pandemic. For FOS, this award confirms what FOS members already know - that FOS really is the best place to work.

## CAN EMPLOYERS MANDATE THAT EMPLOYEES GET THE COVID-19 VACCINE?



By Robert Ollman

Since the beginning of the COVID-19 pandemic, the government and private businesses have been vigorously working to create a safe and effective COVID-19 vaccine.

It seems promising that one will be available to the public in 2021.

When a vaccine becomes available, employers and employees will be faced with an important question: can an employer require that an employee be vaccinated as a condition of employment?

As with all things COVID-19, the short answer appears to be, in most circumstances, probably.

Mandatory employee vaccination is not new. For example, hospitals have long required employees to obtain annual flu shots, to protect the employees and their patients.

At some point, federal and/or state governments will issue guidance or requirements regarding COVID-19 vaccinations and employment.

Until then, employers can obtain some guidance from the Equal Employment Opportunity Commission’s H1N1 technical assistance document “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act,” which deals with mandatory flu shots.

While this document was updated in 2020 to refer to the pandemic, COVID-19 vaccinations are not ad-

dressed.

The guidance does address flu vaccines, stating that an employer can require its employees to receive flu shots, so long as the employer considers legally required religious and medical accommodation requests.

An employer contemplating mandatory COVID-19 vaccinations should consider whether such a policy is necessary for its business, whether workable alternatives to a vaccine, such as remote work, facial coverings, and social distancing are available, and whether the employer will pay for vaccinations.

Even if an employer can legally require its employees to get vaccinated, the employer may, after balancing the relevant costs, benefits, and risks, choose to encour-

age, rather than require, vaccinations.

Relevant considerations would include costs to pay for vaccinations, the employer’s potential liability if an employee has an adverse reaction to a vaccine, potential liability for employee infections without a vaccination mandate, and the loss of employee goodwill and potential lawsuits over required vaccinations.

Since the beginning of the pandemic, employers have had to constantly adapt to unforeseen changes at the workplace.

As we all count the days until a safe and effective vaccine is available, employers should consider the impact of a future vaccine on its employees and operations.

### *High hopes for 2021, cont.*

With this knowledge, we guided and continue to guide clients through appropriate actions as to the Paycheck Protection Program loans and loan forgiveness, expanded family and medical leave, and employers’ pandemic-related obligations to their employees.

At the same time, fully open for business, we served and continue to serve all of our clients’ legal needs. Business transactions, real estate closings, and employment disputes did not vanish with the pandemic.

Civil lawsuits and criminal proceedings continued, although under more protective procedures.

And given the obvious health threats, many clients created their first estate plans or updated existing plans.

Our attorneys continued to be recognized during 2020 for their knowledge, expertise, and integrity.

Shareholders **Matt O’Neill** and **Jacob Manian** and of-counsel **Ken Barczak** were named to the list of 2019 Super Lawyers (Matt to the Wisconsin Top 50 and Milwaukee Top 25), and share-

holders **Mike Koutnik** and **Laurina Kinnel** were named to the list of 2019 Super Lawyers Rising Stars.

**O’Neill** was named a “Leader in the Law” by the *Wisconsin Law Journal*. **O’Neill, Koutnik and Manian** were named “Best Lawyers in America.”

**Kinnel** received the Association of Women Lawyers Pro Bono award mere weeks after she had her second baby, future lawyer Alexander.

To top it off, FOS was named a “Best Place to Work” for the second consecutive year by the *Business Journal*.

We are grateful to our clients for allowing FOS to spend 2020 doing what we do best: providing the high-quality legal services upon which you rely.

We all hope that 2021 will bring an end to the health and economic threats and sadness which rattled 2020. Whatever happens, however, come 2021, FOS will continue to serve our clients, whenever the need exists, for whatever legal issues arise.

Thank you for your trust in us. We look forward to continuing our partnership with you in 2021.



## DON'T GET FLEECE THIS HOLIDAY SEASON



By Lauren  
Maddente

In addition to spreading socially-distanced holiday cheer, as the end of 2020 approaches, businesses and their employees should be particularly vigilant to avoid falling victim to cyber scams.

Scammers know that small business owners and human resource professionals can be overwhelmed by year-end deadlines during any December.

The impacts of the COVID-19 pandemic, including remote work arrangements and related operational disruptions, have made businesses particularly susceptible to cyber hacks and other cybercrimes.

With the ever-increasing technological advances, many cyberattacks are relatively easy for scammers to carry out.

Businesses should be proactive to avoid common scams identified by the Federal Trade Commission, including:

**Fake Invoices.** Scammers create fake invoices addressed to your company, that look “just” like they are for products or services used by and supposedly sold to your business. One common example is a fake invoice for maintaining your company’s website.

**Utility Company Imposter Scams.** Scammers pretend to be calling from a utility company, indicate a bill is late, and ask for wire instructions so the bill can be paid immediately.

**Government Agency Imposter Scams.** Scammers impersonating representatives from government agencies threaten to suspend your company’s business licenses if certain, often costly, actions aren’t taken. For example, some businesses have been scammed into purchasing Department of Labor compliance posters that can be downloaded for free.

**Phishing.** The all too common scam starts with a phishing email which looks like it came from a trusted source, contact or client, right down to its company logo and “email.” These emails often taking the form of a routine password update, seek passwords, financial authorizations or other confidential information.

**Ransomware.** Increasingly common is the use of malware to lock a company’s entire file system and hold it

for ransom until a demanded amount is paid.

**Fake Check Scams.** Here, a scammer, after purposefully overpaying an invoice with a bad check or other phony device, asks for the “overpayment” to be wired to a third-party co-conspirator. Often, by the time the business or its bank discover the fraud, the third-party, and the company’s money, are long gone.

As 2020 comes to a close, employers should be extra cautious in reviewing and investigating correspondence, emails, and suspicious phone calls for cybercrimes. Employers should notify employees of common cyber scams, how they occur, and how to protect against them.

If you receive a questionable written or oral communication or believe you may have been subject to cyber fraud, contact your FOS attorney.

### FOS LAWYERS ARE SUPER!

FOS congratulates FOS shareholders **Matt O’Neill**, **Jake Manian**, and FOS of-counsel **Ken Barczak** for being named to the list of 2020 Super Lawyers.

Matt received special recognition as part of the Super Lawyers Wisconsin “Top 50” and Milwaukee “Top 25.”

FOS also congratulates shareholders **Laurna Kinnel** and **Mike Koutnik** for being named to the list of Super Lawyer Rising Stars. All five attorneys are formally recognized in the De-

ember 2020 Super Lawyer edition of *Milwaukee Magazine* as top Wisconsin 2020 attorneys.

This is the fifteenth year in which Matt and Ken have achieved this honor, the fourth year for Laurna and Mike, and the first for Jake, who was previously named as a Rising Star.

Super Lawyer is a rating service that uses independent research and peer nominations/evaluations to select lawyers from more than 70 practice areas statewide.

### MATTHEW O’NEILL—LEADER IN THE LAW

Fox, O’Neill & Shannon congratulates litigation shareholder **Matt O’Neill** for being recognized as a 2020 Leader in the Law by the *Wisconsin Law Journal*.

According to the *Wisconsin Law Journal*, this award is awarded to those of Wisconsin’s top legal professionals who possess outstanding leadership, vision and legal expertise.

Matt was honored at a virtual awards ceremony in September, 2020.

In addition, a profile of

Matt was published in a special section of the *Wisconsin Law Journal*.

Matt’s profile can be accessed at: <https://foslaw.com/wp-content/uploads/2020/09/MWO-Leader-in-Law-PDF.pdf>

### KINNEL AWL AWARD

Rounding out FOS’s recent awards streak, the Association of Women Lawyers awarded its 2020 “Pro Bono” award to FOS shareholder **Laurna Kinnel**.



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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 do not want to receive future newsletters from Fox, O'Neill & Shannon, S.C. please send an email to [info@foslaw.com](mailto:info@foslaw.com) or call (414) 273-3939.

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**SBA ISSUES NEW GUIDANCE FOR PPP BORROWERS CONSIDERING A "CHANGE OF OWNERSHIP"**

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*By Michael Koutnik*

- Merges with another entity.

A borrower satisfying its loan obligations before a transaction has no restrictions in changing ownership.

If the loan is still outstanding, the borrower's PPP lender must approve the transaction.

The borrower must complete and submit a forgiveness application and related documentation.

The borrower must also establish an escrow account with its PPP lender, to be funded by the borrower with an amount equal to the outstanding loan balance.

When the forgiveness appli-

cation is approved, the escrowed funds are released to the borrower.

If only a part of the loan is forgiven, the escrowed funds will be used to repay any loan balance and interest, with the rest disbursed to the borrower.

If the borrower cannot apply for forgiveness or escrow the outstanding loan balance with its PPP lender and the transaction is a sale of more than 50% of the company's equity or assets, the borrower's PPP lender must obtain the SBA's prior approval, submitting the following:

- Why the PPP borrower cannot fully satisfy the note;

- Details of the requested transaction;
- A copy of the executed PPP note;
- Any letter of intent and purchase/sale agreement stating the responsibilities of the PPP borrower, seller (if not the borrower), and buyer;
- Any existing PPP loan of the buyer, with SBA loan number; and
- All owners of 20 percent or more of the buyer.

The SBA will issue a decision within 60 days of receiving the required information.

The SBA has issued new rules for Paycheck Protection Program (PPP) borrowers considering selling their business.

The SBA considers a PPP borrower's ownership to change when it:

- Sells at least 20 percent of the ownership interest (stock, membership interests, etc);
- Sells at least 50 percent of the company's assets (as measured at fair market value); or