HGSUW News & Views

Hasselberg Grebe Snodgrass Urban & Wentworth
Attorneys and Counselors

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Our Firm Continues the Tradition of Community Involvement

We are pleased to announce that Associate Attorney Kevin O. Sheahan has joined the Board of Directors of Peoria non-profit LifeLine Pilots. LifeLine Pilots is based near the General Wayne A. Downing Peoria International Airport, and the organization coordinates free air transportation for children and others with medical needs. Kevin has long held an interest in aviation and previously spent six years in the Illinois Air National Guard.

Kevin joined our firm in 2017 after serving as a law clerk in the United States District Court for the Southern District of Illinois. His practice with our firm includes estate planning, municipal law, employment related matters, and general civil litigation. He is experienced in appellate matters and has argued before the Illinois Third District Appellate Court. Additionally, Kevin is active in the Peoria County Bar Association. He gave a presentation on the SECURE Act at the 2020 Estate Planning seminar, and he is currently the Vice-chair of the Young Lawyer Committee. Kevin lives in rural Tazewell County with his wife, Kelsey.

HGSUW Office COVID-19 Protocols

Our office remains open to serve our clients amid the pandemic, safely and in conformity with COVID-19 requirements for the health and safety of our clients, staff, and attorneys. We have implemented a mask policy as well as social distancing practices. We control elevator access to our floor and have sanitization stations readily available to clients and visitors. We ask that our clients wear masks while in our main suite areas, and it is within the discretion of individual attorneys whether masks will need to be worn further depending on the ability to maintain social distance while meeting. Following each appointment, we sanitize our conference rooms and restrooms. Whenever setting an appointment with an attorney, information will be sent to you outlining this information. We believe these measures, coupled with CDC and IDPH guidelines, are in the best interest of our clients, visitors, and our office.

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Continued Governmental Responses to COVID-19

As of the date of this newsletter, the following is a brief summary of some recent and evolving measures put into place by Federal, State, and Local governmental bodies to address the ongoing pandemic:

FEDERAL:

While Congress continues to negotiate an additional stimulus relief package to address hardships created by COVID-19, President Trump issued four (4) executive orders on August 8, 2020 as an effort to address what are seen by many as flashpoint issues:

Payroll Tax Deferment. The U.S. Treasury is instructed to halt the collection of certain payroll taxes from September 1, 2020 through December 31, 2020. Payroll taxes, also referred to as FICA, amount to approximately 6.2% of a worker's gross wages and are used to fund governmental benefits. However, at this time, the collection of these taxes has only been deferred and may be due from workers at a later time depending on whether any further relief action is taken by the Legislature.

Unemployment Benefits. Federal supplemental payments in the amount of $600.00 per week in unemployment benefits, in addition to existing State benefits under the CARES Act expired July 31, 2020. The current executive order re-authorizes the payment of supplement Federal unemployment benefits in the amount $300.00 per week provided state governments sign up for the program. The State of Illinois has applied for the additional $300.00 benefit payments and has been approved according to government officials.

Evictions. Federal agencies are directed to examine activities designed to prevent evictions, including statutory measures and identifying available funds to support those at risk. Effective September 4, 2020 and running to the end of the year, the CDC imposed a nationwide eviction moratorium, with limited exceptions.

Student Loans. Interest and payments on federal student loans have been suspended through December 31, 2020. Accordingly, federal student loan holders will not see an increase in their balance due or be required to make any payments towards their balance until the end of the year. However, it is not clear how this action affects students applying for forgiveness programs such as the Public Service Loan Forgiveness Program. Loan holders may continue to make payments, but it is not required.

STATE OF ILLINOIS:

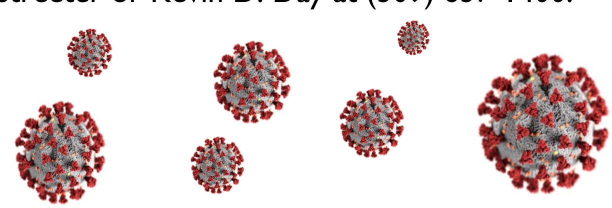
The State of Illinois is currently in Phase 4 (Revitalization) of the five (5) phase re-opening plan, with the state being broken down into eleven (11) regions. Several regions have crossed certain metric thresholds and further mitigating measures have been put into place by the Illinois Department of Public Health. No regions have fully reverted to the restrictions set forth in Phase 3.

Additionally, the Governor and the General Assembly, working through the Joint Commission on Administrative Rules, adopted emergency mask mandate rules requiring any individual over the age of 2 years old to wear a mask while in public and being unable to social distance. Any business or organization that fails to enforce the mask mandate may be subject to the following progressive penalties enforced by local agencies: (1) a warning in the form of a written notice warning; (2) an order to have patrons vacate the premises to comply with public health guidance; and (3) a fine ranging from $75.00 to $2,500 as well as being charged with a Class A misdemeanor.

LOCAL:

Local communities are on the public frontlines and continue efforts for enforce State of Illinois mandates, promote testing and contact tracing to contain outbreaks of COVID-19, publish data and provide guidance for health and safety, and support local residents through traditional services.

If you have any questions how governmental responses to COVID-19 impact you, please contact David L. Wentworth II, Charles J. Urban, William P. Streeter or Kevin D. Day at (309) 637-1400.



Businesses Face Legal Uncertainty as COVID-19 Lawsuits Begin

As the country settles into the new norm that is the COVID-19 pandemic, Illinois businesses face an uncertain legal landscape regarding the potential legal liability of COVID-19 transmission to customers. Under Illinois law, business owners generally owe a duty of "reasonable care" to customers on their premises. If you are scratching your head at this point and wondering what "reasonable care" means – you are not alone. What is, and what is not, reasonable care depends on the specific factual circumstances at hand, and it is something "reasonable" people can disagree upon. While the definition of reasonable care provides something for attorneys to argue about, it can be a source of frustration for business owners, particularly when in the midst of a nationwide pandemic.

According to the Chicago Sun-Times, over 200 COVID-19 related lawsuits have been filed in Illinois as of early August. In response to the rise of COVID-19 litigation, the U.S. Senate and many state legislatures have introduced bills that would make it more difficult to file suit. Instead of the ordinary negligence standard of liability (under Illinois law this is where the "reasonable care" standard comes from), such legislation often involves changing the standard to gross negligence or willful misconduct. In other words, under normal circumstances a plaintiff in Illinois could prevail in a premises liability lawsuit if the defendant business owner was merely negligent, that is, failed to exercise reasonable care. Under the heightened standard set forth in this proposed legislation, the plaintiff would be required to show that the defendant business owner was acting in a manner demonstrating gross negligence or willful misconduct – a much more difficult standard to prove.

This type of legislation has been introduced in the Illinois General Assembly (the Illinois "COVID-19 Immunity Act") but, as of this writing, it appears to have stalled in committee. The SAFE TO WORK Act introduced in the U.S. Senate appears to have stalled as well. However, such legislation has been passed in states *outside* of Illinois. For instance, on August 5th the "Georgia COVID-19 Pandemic Business Safety Act" went into effect, which provides that businesses are immune from COVID-19 lawsuits barring "gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm." Although Illinois Governor Pritzker issued an Executive Order earlier this year which provides specific legal protections for health care workers, whether legislation like that in Georgia will be passed in Illinois remains to be seen.

If you have any questions regarding COVID-19 liability, business law, or employment law, please contact David L. Wentworth II, Charles J. Urban, William P. Streeter or Kevin D. Day at (309) 637-1400.

NCAA Student Athletes Closer to Receiving Compensation

Although the novel coronavirus, COVID-19, has upended nearly every facet of life, our current transition to autumn still coincides with a return to "school" in some fashion for college students across the country. While learning may take place in a variety of different forms this academic year, college athletic programs remain an integral part of college life. In addition to the social, educational, and developmental opportunities collegiate sports provide, athletic programs typically generate significant revenue for colleges and universities nationwide. In 2018, the total revenue generated among all NCAA athletics departments was $10.3 billion. For years, this financial boon has raised considerable debate regarding whether collegiate-athletes should remain unpaid "amateurs" or receive direct financial compensation like professional athletes.

This debate, in part, has also caused some individuals, organizations, and states to reconsider the extent to which college-athletes should be allowed to profit from his or her own name, image, and likeness, as the athlete's play on the field and/or court often creates some individual monetary value. Over thirty (30) states have passed or introduced legislation challenging the NCAA's long-standing prohibition on athletes profiting from their name, image, and likeness. These laws, like Illinois House Bill 3898, which is currently pending before the Illinois House of Representatives, prohibit a college, university, conference, or athletic association, like the NCAA, from upholding any rule or limitation preventing a student-athlete from earning compensation from the student's name, image, and likeness. These laws also guarantee such earnings will not affect the student-athlete's scholarship eligibility.

In the wake of this legislation and social demand for student-athlete compensation, the NCAA Board of Governors announced in April it would support rule changes allowing student-athletes to receive compensation for third-party endorsements, both related to and separate from athletics. The Board of Governors also declared its support for compensation from other student-athlete opportunities, such as social media, student-owned businesses, and personal appearances, so long as such activities adhere to certain guiding principles established by the Board, which include, but are not limited to, the following: (1) student-athletes are to be treated similarly to non-athlete students, unless a compelling reason exists to differentiate; (2) the priorities of education and the collegiate experience shall be maintained; (3) compensation for athletic performance or participation is impermissible; and (4) student-athletes are students first and not employees of the university. Additionally, while student-athletes would be permitted to identify themselves by sport and school, they would be prohibited from using school and/or conference logos. The Board directed all three divisions to consider appropriate rules changes based on its recommendations, which could be implemented as soon as the 2021-2022 academic year.

Now, you may be asking, "How much do student -athletes stand to earn from these changes?" While this will vary considerably based on the demand for and marketability of the student-athlete's name, image, and likeness, the answer is potentially far more than you may think in a world where social media is prevalent. Blake Lawrence, the CEO of Opendorse, a social publishing platform that works with professional athletes, estimates certain high-profile college athletes could earn upwards of $500,000 annually. For example, he projects standout quarterbacks Trevor Lawrence of Clemson and Justin Fields of Ohio State could each earn over $400,000 from social media marketing and endorsements on Twitter and Instagram alone.

COVID-19 has impacted the analysis as to whether athletes are "amateurs" where special treatment - and heightened risks - exist when playing collegiate sports during a health pandemic.

As this is a developing area of law, we will provide subsequent updates on student-athlete compensation in future issues of HGSUW News & Views. If you have any questions regarding matters concerning education law, employment law, or regulatory law, please contact Charles J. Urban or William P. Streeter at (309) 637-1400.

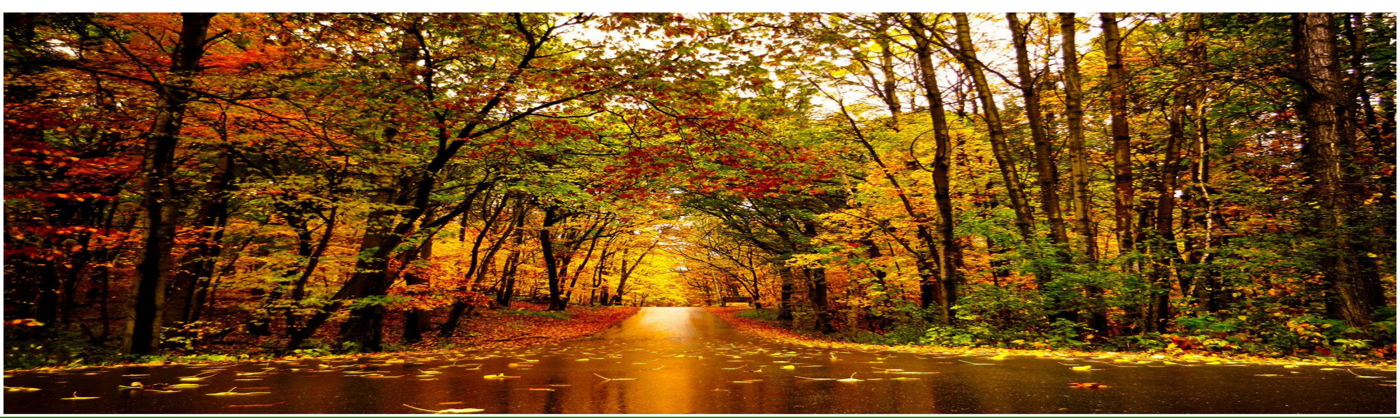
Changes to Retirement Benefits Under the SECURE Act

The Setting Every Community Up for Retirement Enhancement (SECURE) Act was on the fast track last year to make the most significant changes to the administration of retirement benefits when it flew through the House of Representatives in May 2019. It then hit a road block for months in the Senate but was finally passed by the whole Congress at the zero hour and signed into law on December 20, 2019.

Effective January 1, 2020, the SECURE Act is now officially the law of the land and affects retirement benefits in various ways. To start, the SECURE Act raises the required minimum distribution ("RMD") age for owners of qualified retirement plans from 70½ years old to 72. However, due to the ongoing pandemic, Congress temporarily suspended the RMD requirements for the Tax Year 2020 as part of the CARES Act. RMDs are the amounts that are required to be taken out of a qualified retirement account based upon the owner's life expectancy that will be subject to income tax. If RMDs are not withdrawn in any given year, the owner may be subject to an excise tax in the amount of 50% of the RMD amount. Under the SECURE Act, owners of plans are also allowed to continue making contributions to qualified retirement plans beyond age 72 so long as they are employed. The SECURE Act also potentially provides more employees access to retirement savings plans by offering small employers tax incentives to offer automatic enrollment for employees and allowing multiple employers to pool funds to offer retirement benefits to employees that may have never had that option due to the costs involved.

Another significant change under the SECURE Act comes on the back end when a beneficiary inherits a qualified retirement account after a loved one passes away. Under the prior law, any designated beneficiary, including spouses and children, were allowed to "stretch" their benefits over their individual life expectancies, which allowed each beneficiary to continue to defer income taxes and realize tax-deferred account growth. However, the SECURE Act eliminates the "stretch" provisions for all but certain classes of designated beneficiaries, referred to as Eligible Designated Beneficiaries, and requires all other designated beneficiaries to withdraw inherited benefits within 10 years after the death of the retirement account owner. Eligible Designated Beneficiaries are allowed to withdraw RMDs based upon their life expectancy and include a surviving spouse, minor children, disabled adults, chronically ill adults, and individuals less than 10 years younger than the account owner. Another minor caveat provides that minor children only includes the deceased account owner's children, not grandchildren. Furthermore, the stretch provision only applies to children while they are minors so a child must withdraw the remainder of the inherited benefit within 10 years after turning 18 years old.

If you have any further questions about the SECURE Act or other estate planning matters, please contact our experienced estate planning attorneys James R. Grebe, David B. Wiest, Kyle M. Tompkins, and Kevin O. Sheahan at (309) 637-1400 or visit our website.



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Hasselberg Grebe Snodgrass Urban & Wentworth is a 12-attorney full service law firm with individual lawyers concentrating in particular areas of the law. The firm serves clients throughout the State with a focus on Central and Southern Illinois. Practice areas include: Adoption Law, Administrative Law, Agricultural Law, Bankruptcy, Commercial Law, Corporate Law, Criminal Law, DUI/DWI, Elder Law, Estate Planning, Environmental Law, Family Law, Federal Taxation, Governmental Law, Insurance Law, Labor and Employment, Land Use, Litigation, Personal Injury, Probate, Real Estate, Traffic Violations, Trusts and Estates, Wills, Workers' Compensation, and Zoning.

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