

## Plan Before You Think You Need To

By: Michael B. Berzowski

On August 24, 2014, while doing some yard work, I lost my footing, fell and managed to break both bones in my lower right leg along with some cartilage and tendon damage plus some bone chips in the heel area. As a result of this experience I thought it might be a good idea for you to do some planning in the event that you experience a similar mobility robbing event.

Probably most important to stay in your communications loop is insuring that you can access your work computer systems at home. Included in this is checking to see if they are all accessible. I know that on occasion some may not be accessible, for example possible WorldDocs. Test your system.

Since an episode of this nature will generally require hospitalization, it would be a good idea to make sure that your health care power of attorney is current. Frequently health care providers may be somewhat reluctant to accept a stale power. Invariably that can happen at the worst possible time—you have an injury, stress, don't feel well, etc. In my case, I was able to communicate with the health care providers so this did not present a problem but it could have.

Related, another good idea would be to make sure you have a valid durable power of attorney authorizing someone to attend to your business and personal matters if you experience mobility problems. Here you have some choices. For example it can be broadly written to include the power to make gifts or narrowly written for example allowing someone to do everything you could do in connection with selling your house. If you like the idea of a durable power of attorney which is what we usually recommend but are worried about an abuse, you can always retain the actual document until the actual time for its use has arisen.

In both the case of a health care power and a durable power you should make sure that they are relatively current, that you know where they are physically located and easily accessible and finally someone knows of their existence so they can locate them in the case you are incapable of communicating with people.

Something else you should consider is preparing a list of passwords for both work and home. In my case I have a lot of business/personal passwords that I use usually only at work. This necessitated someone cleaning out one of my desk drawers and having the contents delivered to me at home so I could prepare lists of pass-

words that I am suggesting you prepare.

Last a mail delivery system. Notwithstanding the replacement of hard copy mail delivered to your work address by email there are still certain governmental agencies and others that use fax or "snail mail." A simple practice consists of having your assistant go through your mail everyday and send you an email letting you know what you received. You can then issue processing instructions.

While you are at it, you should do a pre-injury check of your tickler systems to see if they are operating so if you can not do something you can delegate it to another.

In a pinch it is possible to continue your business pursuits at home to include seeing clients, business associates, and volunteer activities. It's not perfect but it works. It will work a lot better for you if you consider following some of the suggestions mentioned above. Hopefully you will never have a problem—that's what I thought.



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## Wisconsin Supreme Court Rules that Unpaid Health Care Interns are Not Entitled to Whistleblower Protection

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Wisconsin's Health Care Worker Protection Act, Wis. Stat. § 146.997, prohibits certain health care employers from taking disciplinary action against any person who in good faith reports violations of state law, federal law or certain clinical or ethical standards. Although the Act prohibits disciplinary action against "any person," there are other provisions in the Act that suggest that only "employees" are protected. In *Masri v. State of Wisconsin Labor and Industry Review Commission and Medical College of Wisconsin, Inc.*, decided on July 22, 2014, the Supreme Court of Wisconsin decided that health care workers who are unpaid interns are not entitled to the protections of the Act. Despite recognizing the "importance of internships and the often mutually beneficiary relationship between interns and their supervising entity," the court

held that the Act only applies to "employees" and that unpaid interns are not "employees" entitled to whistleblower protection.

Asma Masri was a doctoral student at UWM and an unpaid "Psychologist Intern" at the Medical College of Wisconsin. Masri reported "clinical/ethical" concerns to an administrator. About five days later, the Medical College ended Masri's internship. Masri filed a complaint with the Department of Workforce Development alleging that she was protected by the Act and had suffered disciplinary action of the type prohibited by the Act.

After losing her case at the administrative levels, in the circuit court and the court of appeals – who all decided that Masri was not an "employee" because she did not receive any compensation or other tangible benefits – Masri took her case to the supreme court.

The court had to first decide whether the Act protects any person or just employees. Even though the express language of the Act prohibits disciplinary action against "any person" who makes a whistleblower report, the Act also uses the term "employee." For example, the Act states that "any **employee**" may report violations. For purposes of the Act, "disciplinary action" is defined as "any action taken with respect to an **employee**." Also, the Act states that an

**"employee** . . . may file a complaint" with the Department of Workforce Development. The supreme court relied on this language in the Act to conclude that only employees are protected by the Act.

Having concluded that the Act only protects employees, the court had to determine whether an unpaid intern is an "employee." Using the language of the Act and the "common, ordinary and accepted meaning" of "employee," the court concluded that the term "employee" means a person who receives compensation or other tangible benefits. The court noted that the remedies available for a violation of the Act "include back pay and compensation, neither of which would be appropriate for an unpaid intern." The court held that there is nothing in the Act that "evinces a purpose to protect unpaid interns."

Masri argued that even though she was not paid, her all-access security badge, office space, free parking and support staff were "tangible benefits" that made her an employee. The court rejected that argument and concluded that all of those things were "related to Masri's work as a 'Psychologist Intern' and had no independent value." Masri also argued that the "networking opportunities" that were available to her as an intern constituted a "tangible benefit." Again, the court rejected that argument by holding that those

"networking opportunities" were "not tangible, nor do they have any ascertainable value."

Although the court rejected all of Masri's arguments about what constituted a "tangible benefit" that might make an intern an "employee" under the Act, the court did not describe the type of "tangible benefits" that would suffice and specifically stated that it was not considering or deciding "what quantity of tangible benefits or compensation would cause an intern to be considered an 'employee.'"

Because the *Masri decision* is based, in large part, on the specific provisions of the Act, Wisconsin employers should be cautioned that the decision does not necessarily apply to other situations involving unpaid interns. However, the court's ruling in *Masri* that the common and ordinary meaning of "employee" is someone who works for some type of compensation or tangible benefits could be applied beyond the Health Care Worker Protection Act.

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**Comments?** We'd like to hear from you. Please send an email to the editor: Jennifer Waite Haas at [reporter@wbb-law.com](mailto:reporter@wbb-law.com).

## AT THE FIRM...

**Robert B. Teuber** is the Program Chair and a Presenter at the State Bar of Wisconsin's Tax School that was held in Madison on December 12th. He spoke on recent developments in foreign account disclosures and on representing taxpayers at the IRS appeals office. **Randy S. Nelson** spoke on Drafting Flexible Estate Plans after the American Taxpayer Relief Act.

At the 2014 Wisconsin Solo & Small Firm Conference at the Kalahari Resort in the Wisconsin Dells, **Randy S. Nelson** also presented *The New Wisconsin Trust Code: How Drafting Impacts Who Gets*

*What Information* and **Robert B. Teuber** also presented *Tax Challenges in a Time of Budget Cuts, Staff Reductions, and Expanded Responsibilities*. Both sessions offered 1.0 CLE credit to Wisconsin attorneys.

Weiss Berzowski Brady LLP welcomed new associate attorney, **Peter J. White** to the firm. Mr. White focuses on business law and tax law. He is also a Certified Public Accountant.

Weiss Berzowski Brady LLP also welcomed new members to the firm administration.

**Jennifer E. Ruditys** was hired as a Trust & Estates Paralegal.

During 2014, Weiss Berzowski Brady LLP hosted four conferences and seminars. The Business & Real Estate Conference was held on April 9th. The Estate Planning Conference was held on June 24th. The 32nd Annual Tax & Business Seminar was held September 17th. And the Employment Law Conference was held October 15th. Thanks to all our attendees!

Please see below for our tentative dates for 2015. More information will be available on our website closer to the event date.

[www.wbb-law.com](http://www.wbb-law.com)

## 2015 Tentative Event Calendar (\*dates subject to change\*)

**BUSINESS & REAL ESTATE CONFERENCE**  
April 22nd, 2015

**ESTATE PLANNING CONFERENCE**  
June 30, 2015

**33rd ANNUAL TAX & BUSINESS SEMINAR**  
September 16, 2015

**EMPLOYMENT LAW CONFERENCE**  
October 21, 2015



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