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# Legal NEWSLETTER

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*This publication is not intended to provide legal advice, but rather insight and awareness into legal issues that we feel could be useful to our clients and friends. Actual resolution of legal issues depends upon many factors, including variations of facts and state and federal laws.*



## **WISCONSIN EXPANDS ABILITY TO ACTIVATE POWER OF ATTORNEY**

*By Attorney Katherine Young*

Wisconsin is facing a shortage of primary care doctors, particularly in rural areas. According to a report by the Wisconsin Council on Medical Education and Workforce, there is expected to be a shortfall of 745 primary care doctors by 2035, in large part due to upcoming retirements. While the medical field may seem separate and distinct from the legal field, this looming shortage is already impacting certain laws.

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# A REMINDER ON FEDERAL DISCRIMINATION LAW

*By Attorney Brian G. Formella*

Fort McCoy in Wisconsin recently became the temporary home of thousands of Afghan refugees following the U.S. military withdrawal in Afghanistan. As of this writing, Wisconsin has been designated by the U.S. Department of State to permanently receive approximately 400 Afghan refugees within state boundaries. This means that many Afghan refugees may be applying for employment throughout Wisconsin. This situation presents a good opportunity for employers to review their obligations under federal law with respect to considering non-citizens for hire.

Under the federal Immigration and Nationality Act (INA), employers generally cannot make hiring, firing, recruitment or referral decisions based on a worker's citizenship status. Citizenship status discrimination generally occurs when an employer refuses to recruit, refer, hire or fire someone because of the person's citizenship or immigration status. One example of citizenship status discrimination is when employers limit jobs to U.S. citizens without legal justification.

Employers must use the Form I-9 to verify the worker's identity and permission to work within three days after the individual begins working for the employer. Federal law generally allows workers to choose which valid, acceptable documentation to present to their employer to prove their identity and permission to work in the U.S. regardless of their citizenship, immigration status or nationality. Employers that discriminate in this process against individuals with permission to work in the U.S. might violate the INA.

The U.S. Department of Justice recently issued a fact sheet on Afghan immigrants' employment rights. The fact sheet can be found here: <https://www.justice.gov/crt/page/file/1445236/download>. According to the sheet, some Afghan refugees may have received special permission to work in the United States. Some individuals



may have status as Special Immigrant Visa holders and may have permanent residence in the U.S. Other individuals, referred to as "parolees," can work in the U.S. if the U.S. Department of Homeland Security grants them permission to do so. In such instances, the refugee will be issued an Employment Authorization Document, often referred to as an "EAD" or Form I-766.

Refusing to hire Afghans with special immigration status may itself be a violation of the INA, subjecting the employer to investigation, complaint and fines from the U.S. government and prosecuted through the U.S. Department of Justice. If an employer is seeking employee applicants, it should avoid violating the INA by not implying that it engages in citizenship status discrimination. Examples of possible violations of the law include statements as follows: "H-1Bs or OPT Candidates Preferred;" "Only U.S. Citizens;" "Only Green Card Holders;" or "Must Present U.S. Birth Certificate."

For general or specific information about avoiding discrimination in the hiring process with respect to Afghan refugees or others who are not U.S. citizens, contact your employment law attorney and review your obligations under the INA. ♦

## Lawyers where you live.

# GO BUY AN UMBRELLA

*By Attorney Richard H. Fuller*

The above title is not encouraging you to buy something to protect you from the rain! It refers to purchasing an umbrella insurance policy to protect you and your family from liability claims, and to provide you with ample coverage for your losses due to injuries sustained in an auto accident. The typical cost for a \$1,000,000 umbrella policy can be as little as \$200 or \$300 per year. This is a bargain for an additional \$1,000,000 in protection.

As an attorney, not only do we represent clients, we also counsel them. One of my favorite topics to discuss with clients is having adequate insurance, including the purchase of “umbrella” coverage. This coverage refers to an extra layer of protection on top of your existing insurance coverage, of at least \$1,000,000 or more, to protect you in case you have personal liability in an auto accident or under your homeowner’s policy.

The umbrella you purchase should also include an endorsement to apply to your underinsured and uninsured motorist coverage on your automobile insurance policy. Some insurance companies may offer an umbrella policy you can purchase, and some may not. Some insurance companies may sell you an umbrella policy that applies to liability coverage only, for example, if you are at fault under your homeowner or auto policy. However, you need to consider being insured by a company that offers an umbrella policy that covers liability and has an endorsement to cover underinsured and uninsured motorist coverage in case you sustain serious injuries in an auto accident. You need to specifically ask for this and you need all three of these protections to have the best protection possible.



The reasons for having an umbrella policy are to simply provide a significant increase in insurance coverage for a very low cost.

In our practice, we see all types of auto accidents, and homeowner’s liability issues, and the first thing we ask our clients when they come to us is what type of insurance is available from the other party, and from our client. All too often we must tell our clients that the person who ran into them with their vehicle either had no insurance, or minimum insurance limits. We then look to our client’s insurance policy for potential additional coverage, and if they have low underinsured or low uninsured coverage, then there may be very little we can do to obtain compensation for our clients for their significant losses. Given the high cost of medical care, injured parties can easily sustain tens of thousands or hundreds of thousands of dollars in medical bills, in addition to significant wage loss and potential permanent disability preventing future earnings.

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*(continued from front page), Wisconsin Expands Ability...*

The Wisconsin legislature enacted 2019 Wisconsin Act 90 on February 5, 2020. The Act expands the provider types that can determine whether a person is incapacitated for purposes of activating a power of attorney for health care or declare that a patient has a terminal illness or is in a persistent vegetative state for purposes of invoking a living will.

Under prior law, an incapacity determination could only be made by two physicians, or by one physician and one licensed psychologist. Under the new law, an incapacity determination may be made by two physicians, or by one physician and one of the following individuals: i) a licensed psychologist; ii) a registered nurse who is currently certified as a nurse practitioner by a national certifying body approved by the Board of Nursing; or iii) a licensed physician assistant (PA) who a physician responsible for overseeing the PA's practice affirms is competent to conduct evaluations of the capacity of patients to manage health care decisions. The new law does not affect the other applicable criteria for determining that a person is incapacitated, including that the providers must still personally examine the patient and cannot be a relative or have a claim to a portion of the person's estate.

According to State Representative Patrick Snyder, who helped introduce the legislation, several communities in Wisconsin depend solely on advanced practice clinicians, like PAs and registered nurses, for their care because the closest physicians are many miles away and, for these communities, and others that rely heavily on advanced practice clinicians, the Act will allow for a continuity of care that was prohibited under prior law.

If you previously signed a power of attorney for health care or living will under the prior law, you may consider having your document reviewed and potentially updated, by a lawyer, if you wish to take advantage of this recent law change. ♦

*(continued from prior page), Go Buy an Umbrella...*

If you have an umbrella policy of at least \$1,000,000 that applies to liability and uninsured motorist coverage and underinsured motorist coverage, you will have a better chance of protecting yourself and obtaining full compensation for your injuries.

In summary, go buy an umbrella to protect yourself and your family. ♦



We are proud to announce that Attorney Nadine Davy has been named a 2021 Super Lawyer. Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. The selection process includes independent research, peer nominations and peer evaluations. Only 5% of all active attorneys, both public and private, comprise this list.

In addition, Attorney Brent Jacobson was listed as a 2021 Rising Star. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. Only 2.5% of the state's attorneys are selected as Rising Stars.



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