

# Legal NEWSLETTER

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## **HOW LONG WILL MY DIVORCE TAKE?**

*By Attorney Jeffrey Raymond*

Everyone who is going through a divorce wants the process to be over as soon as possible through either the granting of a final divorce decree or, in certain cases, reconciliation of the spouses. The uncertainty and emotional toll that accompanies almost all divorces results in people wanting the divorce done sooner rather than later. Unfortunately, the family court system rarely moves at a speed that will satisfy its participants.

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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.*

**ANDERSON O'BRIEN LLP**

# WILL YOU BE MY GUARANTOR?

*By Attorney Alissa Thompson*

One of the questions you may be asked in your lifetime is to be a guarantor. This request may come from a family member or even a friend that needs someone to be a guarantor for a lease, loan, etc. While your first thought may be to agree right away to help that individual but, there are many things you should consider prior to becoming a guarantor.

It is important to understand that as a guarantor you are making yourself financially responsible for the obligations of the individual if they fail to perform. Often the Landlord or Lender requires a personal guarantor to provide them an extra level of protection to ensure they are paid what they are owed. This likely means the Lender or Landlord is looking to protect their interests by having a more qualified person guarantee to fulfill those financial obligations of the individual in the event the individual is unable to satisfy the prescribed conditions.

Since you are making the commitment to be financially responsible for the obligations of another, you should consider some of the following items prior to becoming a guarantor. To begin with, you should consider the individual's financial situation. Are they reliable and dependable? Are they able to handle their own bills? These are questions you will want to consider, because depending on the individual's financial situation, you may be putting yourself at a greater risk than you are aware of.

In relation to knowing the individual's financial situation you should also take a second to consider your own financial situation. If you would not be able to handle the financial obligations of the individual, then you should not be their guarantor.

Additionally, you should be attentive to the underlying document that you are being asked to guarantee. If you are asked to be a guarantor on a lease, that is



typically only a year-long commitment. However, if you are asked to guarantee on a car loan or mortgage, then you could be taking on this extra financial responsibility for seven, fifteen, or even thirty years. Moreover, you should consider how this extra financial responsibility may impact your own debt to income ratio and thus your own ability to get a loan or mortgage in the future.

Another item you should consider is what type of guarantee the Landlord or Lender is expecting you to provide. Is it a limited or unlimited guarantee? If it is limited, then there is usually a set amount that the Landlord or Lender will be able to collect from you as the guarantor. However, if it is an unlimited guarantee then they would be able to recover the entire amount from you as the guarantor. It is very important to understand the type of guarantee that you would be providing before you become a guarantor.

In light of the substantial financial responsibility of becoming a guarantor, it is advisable to seek the advice of a business law attorney before executing any type of personal guarantor. An attorney will be able to analyze your situation and the requirements of the personal guarantee, in order to advise you on the risks with becoming a guarantor.

**Lawyers where you live.**

# RETURNING TO WORK AFTER A WORK COMP INJURY

By Attorney Bradley Yanke

Absent the lucky few, most Wisconsin workers are considered “at-will” employees. This means absent exceptions for unlawful discrimination (e.g. race, gender, age, religion, etc.), a worker can be fired for any reason, or no reason at all. However, worker’s compensation injuries are another exception to this “at-will” presumption that makes a work injury a protected category.

Under Wisconsin’s workers’ compensation law, Wis. Stat. § 102.35(3), an employer (at time of injury) who terminates, or unreasonably refuses to rehire, an employee after a work injury is subject to a penalty of up to one year’s lost wages. The purpose behind this law is to dissuade discrimination against employees who have been injured on the job and, assuming there is work available within the worker’s restrictions, make sure the injured worker gets back to work with his former employer. This is yet another outgrowth of the bargain struck between workers and employers under Wisconsin’s worker’s compensation regime: workers do not get to sue their employers or co-workers for injuries, but they are entitled to a system of no-fault benefits and job protections.

When returning to work, there is a distinction between returning while still healing with temporary physical restrictions versus returning to work with permanent physical restrictions. An employee must provide notice to their employer of any temporary (as well as permanent) restrictions. If the employer can provide work within the temporary restrictions at the same rate of pay, no temporary disability is owed; if the employer can only provide work at lower wages or less hours, the worker is owed temporary partial disability; and, if the employer cannot provide any work, the employee is owed temporary total disability.



If an employer terminates a worker while they are still healing, the worker has an unreasonable refusal to rehire claim.

When an injured worker reaches an end of healing or “healing plateau,” the treating physician may assign permanent physical restrictions along with any permanent disability percentage. If the worker is provided permanent work restrictions, they must provide the same to their employer. Under Wis. Stat. § 102.35(3), the employer must offer “suitable employment...within the employee’s physical and mental limitations.” If the worker’s permanent restrictions allow return to their same job at the time of injury, they should be offered it. However, the employer must offer any suitable position available even if different than the position the worker had at the time of the injury. Only when there is truly no work available within the worker’s restrictions can the employer refuse to rehire the injured worker. The employer, not the employee, bears the burden of proving the lack of suitable employment.

The above is not meant to suggest that there is an absolute unassailable right to return to work for

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Even if spouses have an agreement on all issues and timely file all the required paperwork, Wisconsin law dictates that a final divorce date cannot be scheduled for at least 120 days after the filing of the initial divorce petition. Beyond this requirement, the length of a divorce proceeding largely depends on the issues being contested. For example, if divorcing parents do not agree on issues concerning custody and placement of the children, the court will appoint a Guardian ad Litem to complete an investigation and provide a recommendation to the court on behalf of the children's best interests. Such investigations can take anywhere from a couple months to over a year to complete. Even when there are no issues concerning custody and placement, if spouses disagree on issues pertaining to the division of marital property or spousal support, many months may be spent requesting and exchanging financial documents, taking depositions and finding professionals to appraise assets and evaluate spouses' earning potentials. The most contentious divorces can take multiple years to reach a final divorce hearing date.

Those going through a divorce can take some steps to avoid unnecessary delays. Promptly collecting financial records, responding to discovery requests and filing the appropriate documents with the court is recommended to keep the process moving forward. Additionally, spouses who are willing to make reasonable compromises are more likely to reach a marital settlement agreement, which allows the spouses to secure a final divorce hearing date with the court. An experienced family law attorney can help divorcing spouses understand what is and is not reasonable under Wisconsin law in order to work towards such an agreement. Whether by agreement or contested hearing, an attorney can help spouses complete a divorce in a timely manner while furthering the interests of their clients. ♦

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the same employer following a work injury. When determining whether there is "suitable employment," the statute allows for consideration of "the continuance in business of the employer." This gives rise to the employer's argument that the nature of business or economic situation dictated its refusal to rehire the injured worker, not the work injury.

Unsurprisingly, these are highly fact-dependent issues and claims. Moreover, unreasonable refusal to rehire penalties are paid by the employer, not the work comp insurance company, which means they are hotly contested and litigated. The above is only a brief snapshot and is not meant to cover all the variations that accompany return-to-work decisions after a work injury; if you have questions, do not hesitate to reach out to one of our worker's compensation or employment law attorneys. ♦

## *Firm News*

### **NEW ATTORNEY - JASON M. SAUSSER**



Jason M. Sausser has joined our Firm as an associate. Before starting at Anderson O'Brien, LLP, Jason was the lead attorney of the corporate counsel division at a law firm in Milwaukee, where he provided a wide variety of legal counsel to small and medium sized businesses. After graduating from Western Michigan University with a Bachelor's in Secondary Education, Jason joined the Peace Corps and spent two years in Tanzania teaching English as a foreign language. Upon returning from the Peace Corps, Jason decided to go to law school at Marquette University Law School, where he graduated in 2021 with Academic and Pro Bono Society Honors. ♦



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