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**THE LOCAL EFFECT OF
 THE EU'S GENERAL DATA PROTECTION REGULATION**

In May 2018, the European Union passed a regulation known as the General Data Protection Regulation, more commonly known as the GDPR. Superseding the Data Protection Directive, the GDPR was passed with the intent to harmonize data privacy laws across the European Union as well as to strengthen existing data privacy laws. Despite being an EU regulation, many US companies have been making efforts to comply with the Regulation, and for good reason. Under the GDPR, an organization may be fined up to € 20,000,000, or 4% of its annual revenue, whichever is higher, if the Regulation is violated.

All of this has left many US-based companies wondering: does this apply to me? Surprisingly, many more US companies are affected by the GDPR than one might think. For example, any organization with an “establishment” in the EU might be within the ambit of the GDPR if it collects or processes data using that establishment. Actually, that is one of the more straightforward examples. Read broadly, any organization that collects or processes data of individuals located within the EU may be subject as well. While that may not sound like it affects many organizations, that description includes any company that prompts users of its website to enter their information on a “contact us” page.

But having such a page is still not dispositive of whether the GDPR applies to you. If that page is in a foreign language, or if individuals residing within the EU are targeted as potential clients, it may be enough for the GDPR to apply to a company, although other factors are considered.

There are also third-party compliance requirements. If an organization is within the ambit of the GDPR, it cannot send any information on individuals residing in the EU unless that third-party organization is also in compliance with the GDPR. A simple way to illustrate this point is to consider a

company that sells marketing data on those residing in the EU. Even if the marketing company is in compliance with the GDPR, it cannot sell information to another organization unless that organization is also in compliance. This concept of third-party compliance further extends the reach of the GDPR to even more US based companies.

In the event that the GDPR does apply to an organization, compliance with the Regulation is not simple. The GDPR likely requires the organization to take significant steps to avoid violations. One overarching requirement is receiving affirmative consent and making sure individuals are fully informed of the data collection and storage process. This includes informing the individual that their information is being collected and stored, why it is being stored and used, information on how the individual can have the information erased, and who to contact if there are any questions about that data. Needless to say, any organization that has recently come within the scope of the GDPR will have to alter their practices and policies if it wishes to comply.

Many are unsure whether the GDPR applies to them and, as you may now realize, there are good reasons for that. While it may be tempting to wait and see how the Regulation will be enforced, it is important to keep in mind how substantial the penalties are. All things considered, it may be best for US organizations who believe there is even a chance the GDPR applies to them to get a definitive answer so that they may avoid the significant penalties allowed by the Regulation.

Article written by Dawn J. Lanouette, Esq. and Summer Associate Matthew Venuti. For more information, contact Ms. Lanouette at (607) 231-6917 or via email at dlanouette@hkh.com.

THIS ISSUE

- The Local Effect of the EU's General Data Protection Regulation.....1
- Opioid Replacement Now a Qualifying Condition for New York State Medical Marijuana Program.....2
- New York State Anti-Harassment Training.....2
- Announcements3
- Super Lawyers4
- Qualified Opportunity Zones: A New Tax Saving Tool for Investors and Developers5

*Happy Holidays
 from all of us
 to each of you!*

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OPIOID REPLACEMENT NOW A QUALIFYING CONDITION FOR NEW YORK STATE MEDICAL MARIJUANA PROGRAM

In July 2014, New York became the 23rd state, along with the District of Columbia, to legalize medical marijuana, when Governor Andrew Cuomo signed the Compassionate Care Act (N.Y. Pub. Health. L. § 3369 (2014)) into law. Originally, New York's medical marijuana program was considered one of the most restrictive in the country, with only ten qualifying conditions listed. These included cancer, positive status for HIV or AIDS, amyotrophic lateral sclerosis (ALS), Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathy, and Huntington's disease. Despite this rather narrow list of qualifying conditions, within the first six months of operation, over 5,000 patients were certified within the program.

Since its inception, the Department of Health has made significant strides to expand the medical marijuana program, including adding additional qualifying conditions. In late March 2016, chronic pain was added as a qualifying condition. Chronic pain has been loosely defined by the Department of Health as "any severe debilitating pain that the practitioner determines degrades health and functional capability." However, to qualify for medical marijuana treatment, there must be a showing that the individual "has experienced intolerable side effects, or has experienced failure of one or more previously tried therapeutic options" and that the pain has lasted or is likely to last longer than three months. Within two months of the addition of chronic pain as a qualifying condition, over 3,350 new patients were certified for the program, an 18% increase.

On November 11, 2017, Governor Cuomo signed a bill adding post-traumatic stress disorder (PTSD) as a qualifying condition for medical marijuana, indicating in a speech that this expansion was aimed at increasing treatment options for veterans suffering from the disorder.

The most recent, and perhaps most expansive, addition to New York's medical marijuana program is the inclusion of opioid replacement as a qualifying condition. In an emergency regulation, the Department of Health added "any condition for which an opioid could be prescribed" as a qualifying condition. Under the new regulations, a

registered practitioner may certify a patient to use medical marijuana as a replacement for opioid medication, so long as the underlying condition for which an opioid would otherwise be prescribed is noted on the certification. This language effectively removes the strict criteria previously placed on providers for prescribing medical marijuana for the treatment of chronic pain. Moreover, according to the FAQ section on the Department of Health website, a patient need not already be prescribed an opioid to be eligible for certification, so long as their underlying condition would support the use of treatment with opioid medication. The regulation also adds "opioid use disorder" as an associated condition, meaning that patients with opioid use disorder may use medical marijuana as an opioid replacement, as long as they are enrolled in a certified treatment program.



As the final regulation has not yet been adopted, it remains to be seen whether changes to the current program will be implemented, but the emergency regulation indicates that the Department of Health is pushing a move from narcotic medication toward medical marijuana. The above changes, as well as the significant number of other expansions to the medical marijuana program since its inception, raise the question of just how many other qualifying conditions will be added in the future, or whether we are moving toward general legalization of marijuana for adult use in the state. Stay tuned.

Article written by Kristin A. Hazlet, Esq. For more information, contact Ms. Hazlet at (607) 231-6821 or via email at khazlet@hhk.com

NEW YORK STATE ANTI-HARASSMENT TRAINING

As the year draws to a close, we want to remind you of New York State's requirements regarding anti-harassment policies and training and update you on the services HH&K can provide to you.

Every employer, regardless of size, must have an anti-harassment policy in place by the end of the year. The deadline for these policies was October 9, 2018. The Department of Labor has indicated it may assess fines during audits to employers who do not have a policy in place. Please contact us to assist you with completing this requirement.

In addition, employers who engage in competitive bidding, regardless of size, must have anti-harassment training completed by January 1.

- For small employers (fewer than 17 employees), HH&K still has 1 session scheduled on December 12. Employee training lasts one hour with supervisor training lasting an additional hour.
- For larger employers, HH&K has times available to conduct training either at your place of business or ours, or via webinar. We can conduct training in the early morning or in the evenings to accommodate your work schedule.

- We also understand some insurance companies are providing training for employees, but not for supervisors. We can conduct your supervisor only training.
- For all other employers, we are currently scheduling training for January, February and March of 2019.

Please contact Dawn Lanouette at dlanouette@hhk.com or (607) 231-6917 to discuss your training needs.



PROUD TO ANNOUNCE

**Alexander D. Racketa, Esq.**

Has been named a Partner in the Firm effective January 1, 2019. Mr. Racketa is a member of the Litigation and Real Property Tax Assessment and Condemnation practice groups. His practice touches on all aspects of the litigation process. He has provided assistance to clients with disputes pending in a wide array of forums, including administrative panels, trial courts, and appellate courts and in both New York and federal courts. These clients range from large corporations, LLCs and LLPs, to small partnerships and individuals. He also represents businesses and individuals with challenges to real property tax assessments. Other areas of practice include employment and non-compete litigation, construction litigation, and tort matters.

Alex is the author of several articles, including Takings for Economic Development in New York: A Constitutional Slam Dunk? published in the Cornell Journal of Law & Public Policy, 20 Cornell Journal of Law & Public Policy 191 (Fall 2010); and several articles in the Hinman, Howard & Kattell newsletter, including Hurricane Irene and Tropical Storm Lee Assessment Relief Act: Special Property Tax Relief Available; December 2012 and Flood Damage: Assistance and Options in September 2011.

Alex is quite involved in the local community and bar association. Alex is a member of the Board of Directors for the BCC Foundation. He is active in the Broome County Bar Association, and he is the former chair of the BCBA fundraising committee and member of the Law Day Committee. Alex is also the former Chairman of the Board of Directors and former President of the Binghamton Sertoma Club, and serves as assistant editor of the Hinman, Howard & Kattell newsletter. He is a member of the United Way Emerging Leaders Society of Broome County and was a member of the Broome Leadership Institute Class of 2013-2014. From 2015-2018, Alex has been recognized as a New York Super Lawyers Rising Star.

**Nir E. Gozal, Esq.**

Special Counsel Nir E. Gozal was quoted in his capacity as an officer of the Westchester County Bankers Association, in a 914 Magazine article on Business Banking in Westchester County: <http://www.westchestermagazine.com/914-INC/Q3-2018/Business-Banking-Westchester-Growth/>

Mr. Gozal is a member of the Banking & Financial Services Practice Group and is Special Counsel in our

White Plains office. His practice focuses on advising banks and other financial institutions on regulatory compliance and matters involving federal and state regulatory agencies. Nir has unique expertise in BSA/AML/OFAC and consumer compliance, and has represented financial institutions, their boards of directors, and executive officers in challenging conclusions in reports of examination and contesting enforcement actions. In addition, he provides ongoing counsel to bank boards of directors, executives, and compliance officers.

**Paul E. Pool, Esq.**

Paul E. Pool has joined Hinman, Howard & Kattell, LLP as Special Counsel at the firm's Binghamton and Hamilton offices. Mr. Pool is a member of the Residential Real Estate, Elder Law & Guardianship and Wills Trust and Estates Practice Groups and brings with him more than 40 years of experience. His practice focuses on real estate transactions, wills, elder law, estate proceedings, Article 81 Guardianship proceedings and criminal law.

Paul is a long time member of the Broome County Bar Association, has served on various committees for that association and its former Delegate to the New York State Bar Association. He has been a Rotarian since 1977, is past president of the Johnson City Rotary Club and is currently a member of the Binghamton Noon Rotary Club.

**Kevin J. Bloom, Esq.**

Kevin J. Bloom has joined Hinman, Howard & Kattell, LLP as Special Counsel in the firm's Saddle Brook, New Jersey office. Mr. Bloom is a member of the Commercial & Residential Real Estate and Litigation practice groups. Kevin specializes in residential and commercial real estate transactions, real estate litigation, creditor's rights litigation, and general civil litigation. He has experience in courtroom advocacy and appellate advocacy, and also regularly represents commercial clients in a transactional setting. Kevin also has a practice in the counsel of condominium association/cooperative clients on various litigation matters.

During law school, Kevin served as research editor on Rutgers Law Review. Kevin is a member of the Bergen County Bar Association, Young Lawyers Section, and the New Jersey State Bar Association.

**Kyle N. Darlow, Esq.**

Kyle N. Darlow has joined Hinman, Howard & Kattell, LLP as an associate attorney at the firm's Binghamton office. He is a member of the Commercial Litigation practice group focusing on Health Law.

Prior to joining the firm, Kyle obtained his Masters in Health Administration from Cornell University in order to gain a better understanding of the health care industry and major issues facing industry participants.

Kyle attended St. Thomas Law School in Miami, during which time he learned about health law and intellectual property law. Kyle is licensed to practice law in New York and Massachusetts. Before law school, Kyle attended Saint Louis University and received a B.A. in Political Science.

PRESENTATIONS



In October, HH&K presented the Labor and Employment Law Update 2018 with the Greater Binghamton Chamber of Commerce. Dawn Lanouette provided updates on Wage and Hour Laws, New York Paid Family Leave, recent Supreme Court and NLRB decisions and Sexual Harassment in the Work Place. Corey Barklow reviewed updates in the area of employee benefits including 2019 Affordable Care Act updates, Wellness Program updates, changes pertaining to the Tax Cuts and Jobs Act of December 2017 and changes in the areas of employer-paid moving expenses and employer-provided qualified transportation benefit and bicycle commuting expenses. Gary Tyler provided an overview and update to the New York State Workers' Compensation System. Sophie Bergman updated participants on the criminal law aspects of hiring including convictions, adjournments in contemplation of dismissal, sealing orders and certificates of relief. We want to thank the Greater Binghamton Chamber for inviting us to participate in this annual program.

2018 NEW YORK SUPER LAWYERS

What is Super Lawyers? 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. Hinman, Howard & Kattell is happy to announce that nineteen firm attorneys have been named in the 2018 listing of New York Super Lawyers—Upstate Edition and Metro Edition.



Banking:
James W. Orband, Esq.



Estate and Probate:
Jon J. Sarra, Esq.



Family Law:
Katherine A. Fitzgerald, Esq.



Banking:
David L. Glass, Esq.



Employment and Labor:
James S. Gleason, Esq.



Employment Litigation - Defense:
Leslie Prechtl Guy, Esq.



Personal Injury - Plaintiff:
Linda B. Johnson, Esq.



Environmental Law:
Kenneth S. Kamlet, Esq.



Elder Law:
Martin J. Kane, Esq.



Employment Litigation - Defense:
Dawn J. Lanouette, Esq.



Business/Corporate:
Erica L. Lawson, Esq.



Real Estate:
Lillian L. Levy, Esq.



Business Litigation:
Albert J. Millus, Jr., Esq.



Employment & Labor:
Dennis P. Sheehan, Esq.



General Litigation:
Paul T. Sheppard, Esq.



Workers' Compensation:
Gary C. Tyler, Esq.



"Rising Star"
General Litigation:
Tina Fernandez, Esq.



"Rising Star"
Business Litigation:
Daniel R. Norton, Esq.



"Rising Star"
Tax:
Alexander D. Racketa, Esq.

QUALIFIED OPPORTUNITY ZONES: A NEW TAX SAVING TOOL FOR INVESTORS AND DEVELOPERS

Skip this article if you don't generate a lot of income subject to capital gains taxes—or, if you're comfortable paying the full capital gains rate. But if you'd like to lower your capital gains taxes, read on.

Buried in the 2017 Tax Cuts and Jobs Act is a new addition to the Internal Revenue Code (§ 1400Z), which incentivizes long-term investments in economically distressed areas called "Opportunity Zones" ("OZ"). These OZs are census tracts that have poverty rates of at least 20 percent, or median family incomes no greater than 80 percent of the surrounding area, as well as areas adjacent to such census tracts. The objective of the OZ legislation was to boost private investment in underserved urban and rural communities by allowing a broad array of such investors to pool their resources to rebuild distressed neighborhoods. However, there are also substantial benefits to the investors.

The new code provision establishes 5, 7, and 10-year investment holding milestones which, if achieved, result in the deferral of capital gains tax, a step-up in basis, and even the possible permanent exclusion of capital gains. In order to reap these benefits, an investor must invest the gain realized on any third-party sale or exchange in a "Qualified Opportunity Fund" ("QOF") within 180 days of the sale or exchange. The capital gain can then be excluded from gross income (by attaching the requisite form to their tax return) until the earlier of the date on which the investment is sold or exchanged, or the end of 2026. This favorable tax treatment for gains in OZs is also expected to be applied at the state level.

The statute provides that the capital gain must be reported in 2026. Assuming the gain was held in a QOF for 5 years, the taxpayer will only be required to pay tax on 90% of the capital gain, or only 85% if held for 7 years. If the investment is kept in the QOF for 10 years, the investor will be able to step up his tax basis to fair market value, thereby excluding from taxation all capital gains income.

The statute defines a QOF as "an investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property." It must hold at least 90% of its assets in qualified OZ property (including stock, partnership interests, and business property). QOFs can invest equity into OZ businesses or real estate projects. Numerous QOFs have already been established. The high level of interest is shown by the 141 responses to recent inquiries from the Kresge and Rockefeller Foundations from fund managers across the U.S. who are creating QOFs.

In the Spring of 2018, the Treasury designated more than 8,700 OZs, located in every state and territory. 514 OZs have been designated in New York State, including 208 in Upstate NY, and 149 in the Southern Tier. Broome County alone contains 29 OZs—including 21 qualified census tracts, 17 low income communities (LICs), and 6 eligible non-LIC contiguous tracts. An Economic Innovation Group fact sheet on the OZ program is available.

Opportunity knocks. Will you answer?

Article written by Kenneth S. Kamlet, Esq. For more information, contact Mr. Kamlet at (607) 231-6914 or via email at kkamlet@hkh.com.

CONGRATULATIONS!



Congratulations to Marina Resciniti for passing the New York Bar Exam! Marina graduated from Syracuse University Law School in May and joined HHK as an Associate. Congratulations Marina on this milestone.

PRESENTATION

Dawn J. Lanouette, Esq.

Partner Dawn J. Lanouette presented at a number of events on the recent New York Anti-Sexual Harassment requirements including events held by Westchester County Bankers Association, Westchester County Association and the Greater Binghamton Chambers of Commerce.

Ms. Lanouette regularly presents at Hinman, Howard Kattell's sexual harassment training sessions for employers needing assistance in meeting the recent New York State requirements for harassment and discrimination training.



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