Legal Matters®

General
fall 2023

EPA continues focus on PFAS

In June, the U.S. Environmental Protection Agency (EPA) issued a final rule updating the Toxics Release Inventory (TRI) chemical list to include nine additional PFAS (per- and polyfluoroalkyl substances) subject to reporting requirements.

Earlier this year, the EPA also proposed a rule to establish a National Primary Drinking Water Regulation for six types of PFAS. The latter would set maximum contaminant levels for drinking water supplies, subjecting water utilities to monitoring, reporting, and treatment obligations.

The EPA is further expected to finalize a rule designating two PFAS (PFOA and PFOS) as "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act. That would give the agency the authority to mandate remediation actions or order companies to pay for the cost of remediation.

State laws

In addition to looming federal regulations, a number of states have already enacted their own PFAS restrictions. PFAS laws have been enacted in 24 states, banning their use in a wide array of consumer products, from carpeting to outdoor apparel and non-stick cookware. Twelve states have bans on PFAS in food packaging and four have restrictions on its use in personal care products.

About PFAS

PFAS are or have historically been used in various industrial and commercial applications, including firefighting foams, water-resistant fabrics, stain-resistant coatings, food packaging, and numerous other consumer products. Additionally, they have been utilized in certain industrial processes due to their unique properties, such as resistance to heat, water and oil.

Recently, PFAS have been dubbed "forever chemicals" because they don't break down in the environment or the human body. Studies have linked them to cancer, infertility and other diseases.

Next steps

The proposed regulations could have a significant impact on companies that use or have used PFAS. Companies that are currently

continued on page 3

HRBK Attorneys & Counselors
Hasselberg, Rock, Bell & Kuppler LLP

4600 N. Brandywine Drive, Suite 200
Peoria, IL 61614
Phone: (309) 688-9400 • Fax: (309) 688-9430
www.hrbklaw.com

Julie L. Galassi • Marci M. Shoff • Michael S. McKinley • Peter J. Lynch
Colt W. Johnson • Melinda L. Mannlein • Siobhan L. Smith • Bryant S. Lowe

Nursing home held accountable for dropping patient from mechanical lift

Having a close family member in a nursing home can be worrisome.

Most likely they are receiving high-quality care from people who are conscientiously devoted to their well-being. But not all nursing homes are well run, and even in facilities that are, things can sometimes go wrong.

If you have a loved one who has been hurt while under a nursing home's care, you should speak to an attorney who can investigate the situation on your behalf.

Take a recent case from Massachusetts. A resident of a skilled nursing facility was dropped from a mechanical lift onto her knees, causing her to suffer bilateral fractures. Though the lift was a two-person assist device, evidence shows that only one person was operating the lift at the time.

To make matters worse, the facility did not inform the resident's physician or her family of the full extent of her injuries, resulting in a 22-hour delay in her obtaining acute medical care and hospitalization.

The resident ultimately died from complications due to blunt force trauma to her lower extremities. Her family sought to hold the facility responsible on grounds of poor quality of care, short staffing, and failure to maintain a safe environment with appropriate procedures in place for obtaining emergency care. Those failures, according to the family, resulted in the wrongful death of their loved one.

The nursing home ultimately agreed to settle the case for a seven-figure sum, presumably deciding they were better off resolving the case out of court than risking an even more severe result before a jury.

We welcome your referrals.

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

Hair straighteners and relaxers linked to reproductive issues, cancer

For a long time, hair straighteners and relaxers have been a profitable part of the personal beauty product market.

However, recent studies published in the Journal of the National Cancer Institute indicate that certain chemicals used in these products, which include popular brands like Motions, Dark & Lovely, Soft & Beautiful, Optimum Care, Crème of Nature, Just for Me, Olive Oil and Brazilian Blow Out, could be linked to an increased risk of uterine cancer, breast cancer, endometriosis and assorted reproductive problems.

These types of products apparently heighten the risk of chemical exposure because the toxins in question are more easily absorbed through the scalp than through other parts of the skin. Additionally, hair straighteners and relaxers can cause scalp burns and lesions, which makes it even easier for the harmful chemicals to enter the body.

Meanwhile, there is strong evidence that the manufacturers of these products knew about the potential safety risks but opted not to warn consumers about them on the product labels.

Because the government categorizes these types of products as cosmetics, they are not required to receive approval from the federal Food & Drug Administration before being sold.

Still, other federal laws require companies to warn customers of risks that may be associated with their products, and it is illegal for companies to put harmful ingredients in their products. As a result, it's entirely possible that the manufacturers of these products have run afoul of the law.

If you or someone in your family is a user of these products, you should be aware of the risk and avoid using them going forward. Meanwhile, if you believe you or someone close to you has been hurt by one of these products, it is important to get in touch with an attorney who can explore what rights you might have.

How marriage and divorce could impact your student loans

The cost of a college education has skyrocketed over the past several decades, forcing many to take out costly loans to finance their degrees.

So, what happens when one or both members of a divorcing couple are saddled with student debt? Does each spouse take their own debt into their post-divorce life as "separate property?" Or might the debt be divided between them as "marital property?"

The applicable analysis is highly fact-specific and depends in large part on when the debt was incurred, what the parties expected and/or agreed on at the time, who benefitted from the degree in question, the length of the marriage, etc.

For example, if one member of a couple took out student loans to finance a medical degree or an MBA before the couple married, that debt is probably the sole responsibility of the spouse who took on the debt, even if the couple was already planning a future together when the decision was made and the other spouse benefited from the first spouse's increased earning power as a result of that credential.

But if the debt is incurred during marriage, it can get complicated.

Let's say one spouse takes on debt for an advanced degree after they're already married, and both members of the couple expect to enjoy the rewards. It's not unfathomable that in determining the marital estate a court might somehow divide the debt between them.

Similarly, if parts of the student loans were used to pay the couple's living expenses, such as groceries, rent or day care, a court might decide they should share in the debt.

Additionally, the debt might be subject to division if the spouse who sought the degree used it to start a business that then gainfully employed the other spouse.

On the other hand, if loans were used solely for educational expenses such as books and tuition or if the student spouse did not ultimately use the degree to obtain employment in a related field, a court might view it as that spouse's separate debt.

If a court does ultimately decide that student debt is part of the marital estate, some states will divide it equally and other states will divide it equitably based on what seems most fair to both parties.

Interested in learning more about how your state's laws might treat student debt in a divorce? Talk to an attorney where you live.

Environmental Protection Agency continues focus on PFAS

continued from page 1

using PFAS may need to find alternative compounds or processes. Companies that have used PFAS in the past may face legal claims due to environmental contamination, personal injury, or misrepresentation.

Businesses should work to understand how PFAS are used in their products today, as well as past production processes. An experienced attorney can help you gauge your legal risk. If your company is subject to a remediation mandate or injury claim, an attorney can help you understand your rights and obligations and represent the company in negotiations with the government or other parties.

HRBK Attorneys & Counselors
HASSELBERG, ROCK, BELL & KUPPLER LLP

4600 N. Brandywine Drive, Suite 200
Peoria, IL 61614
Phone: (309) 688-9400 • Fax: (309) 688-9430
www.hrbklaw.com

Retirement catch-up option at risk under SECURE 2.0

Employers have the option to allow employees aged 50 and older to make catch-up contributions to their retirement plans. In 2023, older workers can save an extra $7,500 — on top of the standard contribution limit of $22,500 — to boost their accounts before retirement.

However, the SECURE 2.0 Act, a massive update to workplace retirement law that was passed last year, is changing the way employees can make those contributions. Previously, participants could choose to make those catch-ups on a pre-tax basis or as part of a Roth IRA on a post-tax basis.

But beginning on January 1, 2024, the SECURE 2.0 Act requires that employees making more than $145,000 per year must make those catch-up contributions on a post-tax basis.

The rule has left employers with a number of questions as well as the significant logistical issues of administering the change by year-end. This is a major operational challenge for employers as it requires updates and coordination between payroll and recordkeeping systems. As such, a number of

retirement industry trade groups are pushing regulators for priority guidance, transition relief, or a delay in the effective implementation date.

According to data from Vanguard, an estimated 98 percent of plans offer catch-up contributions, but only 68 percent offer a Roth option. Some employers are considering eliminating catch-up contributions altogether rather than deal with the administrative burden.

The IRS has been working on guidance for these provisions, but it is not clear when it will be issued.