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THE ILLINOIS Manufacturer

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Spring 2011

Report card on Illinois' Spring 2011 legislative session

Employers have few tools to stem FMLA abuse

Making it right: Manufacturing productivity challenges increasing

ERIC ABBEY / *OWNER*
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It is critical that employers become familiar with the few tools they have to limit FMLA abuse, while at the same time understanding employees' rights under the Act.

Columns

The Illinois Manufacturer **is underwritten by Constellation Energy, Inc.**

Mission Statement

The object for which the Illinois Manufacturers' Association was formed is to strengthen the economic, social, environmental and governmental conditions for manufacturing and allied enterprises in the state of Illinois, resulting in an enlarged business base and increased employment.

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Share your company news with IMA . . .

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President's Report

GREGORY W. BAISE

The real work begins now

While the politics of the possible dictated the ultimate outcome, lawmakers understand that the business community will always be looking for more improvements, and we now have a somewhat shorter checklist.

When the Illinois House of Representatives gave final approval to significant reforms of the state's Workers' Compensation (WC) system on the final day of the spring session, it didn't signal the end to the quest for reform of Illinois' WC system, but rather the beginning.

But first, some thoughts on the "bigger picture" concerning this very complicated issue:

- **Runaway Workers' Comp costs are finally on lawmakers' radar screens.** Illinois businesses are burdened with some of the highest costs in the nation when it comes to WC claims. While taxes on employers, like individuals, were raised by Springfield earlier, the "frictional" costs of conducting business in Illinois (like WC) have largely been ignored. No more.
- **The "not enough reform" mantra failed to work.** Often in Springfield, legislation is voted against under the guise of not going far enough. And the naysayers tried that this time, discounting such things as an estimated $500 million annual savings as not being important, or disputing the independent findings concerning the savings. But those who really care about employers and jobs recognized these reforms as a step toward evening the playing field. And lawmakers who were willing to walk away from the table and lose the half billion-dollars are going to have to explain themselves to constituents in new legislative districts next Fall.
- **The roadmap for future WC improvements has been drawn.** The reform package that passed was the result of long and arduous discussions where such vital cost drivers as causation were rightfully demanded by some to be the first and foremost needed improvements. While the politics of the possible dictated the ultimate outcome, lawmakers understand that the business community will always be looking for more improvements, and we now have a somewhat shorter checklist.

Is this legislation better than what we have now? Absolutely! Unlike the 2005 reforms, this legislation attacks the areas that have increased costs. Carpel Tunnel awards will be reduced on average 40 percent. Medical fess will be cut 30 percent, and major changes will occur at the Illinois Workers' Compensation Commission.

In addition, we'll be closely monitoring the insurance industry work comp ratings when they're released later this summer to make sure that the reductions in the medical fee schedules and mandatory application of AMA standards to determine disability are reflected in the rates for 2012 and begin to drive down the costs of coverage.

Is our work done? Absolutely not. There is still much to do in the area of Workers' Compensation reform and we agree with those critical of HB 1698 that there is much work remaining ahead of us. Nevertheless, the provisions of HB 1698 are significant as evidenced by the broad bipartisan support shown by the Illinois Senate vote. The bill is far from perfect, but in the legislative process, pursuit of the perfect is often overshadowed by practical reality.

I could not end this message without thanking some key people for their unwavering support and drive to see this legislation passed. From Senate President John Cullerton, who first invited the IMA and other business groups to meet last November and begin earnest talks to reform the system, to Senate Minority Leader Christine Radogno who personally attended every negotiating session and invested her political capital in encouraging members of her caucus to support the final bill. The bill sponsors, Sen. Kwame Raoul and Rep. John Bradley, maintained focus during the hundreds of hours of meetings to craft a bill that could garner the votes necessary for passage. We also thank Governor Pat Quinn and his Department of Insurance Director Michael McRaith for lending their exceptional expertise and solid statistical information that was the foundation in drafting the components of the bill.

Finally, House Speaker Michael Madigan applied his legendary skills to persuade undecided members of his caucus to support the reform effort. It is safe to say that without his personal attention, the bill would not have passed.

So for now, Workers' Compensation reform in Illinois has begun and the next, more difficult phases of implementing reform will become our primary focus. No, we aren't done . . . but we're off to a good start. ■

Gregory W. Baise is President and Chief Executive Officer of the Illinois Manufacturers' Association. He may be reached at 630-368-5300, or via email at gbaise@ima-net.org.

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Legislative Report

MARK DENZLER

Perfection or political reality?

Unlike previous years, in the 2011 negotiations, employers were not forced to pay higher benefits in exchange for receiving potential cost savings.

For the past two weeks, debate has raged about the Workers' Compensation reform package that recently passed the General Assembly with support from the Illinois Manufacturers' Association along with nearly three-dozen trade associations, local governments and many individual companies. At the crux of the issue is whether the reform package — valued at an annual savings to employers of at least $500 million — was worth attaining or whether reform advocates should have taken an "all or nothing" approach. The IMA and our Board of Directors believed strongly that while HB 1698 was not a perfect bill, it was clearly not in the best interest of our member companies to walk away from a half billion-dollars in yearly savings that sat on the table in the final hours of the Spring legislative session.

In making a decision of this magnitude, the IMA Board of Directors actively participated in a half dozen conference calls in the waning days of session to receive updates and analyses, and provide direction to IMA staff based on the most recent political intelligence. Many key factors were taken into account before the IMA chose to endorse this critical reform of Workers' Compensation. These factors include the fact that previous administrations and General Assemblies had been loath to take up the issue because the entrenched interests of, arguably, the five strongest advocacy groups (business, trial lawyers, unions, doctors, and hospitals) in Springfield sat on opposite sides of the issue. We had to consider the new political map, drawn by Democrat majorities and taking effect in the 2012 election, and whether that would help or hinder our future efforts. Were there ramifications for other bills supported by the business community? Unlike previous years, in the 2011 negotiations, employers were not forced to pay higher benefits in exchange for receiving potential cost savings. This package was all about reducing costs for employers. If we had opposed this package, there's no telling when we might have another opportunity to save employers hundreds of millions of dollars in annual Workers' Compensation costs.

The ultimate factor and question involved the content of the Workers' Compensation package. HB 1698 makes several meaningful reforms that will improve the system and reduce costs including:

- Requiring the use of American Medical Association standards by physicians and arbitrators for the first time in Illinois history. No longer will doctors and arbitrators be able to use their own subjective judgment when determining impairment and making awards.
- Imposed a 30 percent reduction in the Medical Fee Schedule. While a cut of this size to hospitals and doctors seems draconian on its face, the facts support our case. Illinois has the second highest fee schedule in the United States and will continue to have the second most expensive fee schedule even after this reduction. For example, the Illinois fee schedule currently allows $7,387 for an outpatient hernia procedure — compared to a median payment of $2,652 among other states.
- Allows for the creation of PPO networks of physicians and hospitals to allow employers to direct medical care for the first time in Illinois. Creation of these networks will eliminate the problem of "doctor shopping" by injured workers.
- Eliminates lifetime wage differential payments provided to injured workers. Under the new law, these payments will only be made until a worker is 67 years of age, or five years, whichever is later. This provision alone will save tens of millions of dollars.
- Carpal tunnel awards are capped at 28 weeks. Under current law, Illinois awards for carpal tunnel injuries average 40 weeks. So even if every injured worker received the maximum benefit, it would still represent a 30 percent decrease in costs.
- Strengthens utilization review by making it both prospective and retrospective to ensure that medical treatments are proper and medically necessary.

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Report card on the Spring legislative session

While the 2011 Spring legislative session of the Illinois General Assembly will be remembered for significant reforms to the Workers' Compensation system in Illinois, there were thousands of additional bills and amendments that impacted the manufacturing sector or general business community. The Illinois Manufacturers' Association tracked and commented on hundreds of bills before the legislature. Here is a brief recap of some key issues debated this year.

Pension reform

Last year, the 96th General Assembly enacted sweeping pension reforms impacting prospective state employees, teachers, judges and lawmakers that were signed into law by Governor Pat Quinn and took effect on January 1, 2011. New state workers now participate in a defined contribution plan and are no longer eligible to enroll in a defined benefit plan. This year, lawmakers took aim at reforming the pension system for current state workers but fell well short in their efforts to modernize the pension systems and address the looming $85 billion deficit that currently exists. Lawmakers left town without even taking a vote on this proposal in the face of strong opposition from teacher unions and state employees.

Under a proposal (HB 512) released by House Minority Leader Tom Cross and Speaker Michael J. Madigan, all state workers (including judges, lawmakers, university employees and teachers) would be required to choose one of three pension plans: (1) remain in the current pension plan but pay a significantly higher contribution level set by actuarial study, (2) move to the new pension plan with reduced benefits while paying the current contribution level, or (3) move to a 401k style plan.

The IMA strongly supported these pension reforms which are necessary to eliminate the pension debt and ensure that pensions remain solvent. Rep. Cross and Speaker Madigan have pledged to continue working on the issue over the summer with the hope of a vote in the Fall veto session. Senate President John Cullerton and unions continue to believe that HB 512 violates the Illinois Constitution that prohibits pension benefits from being diminished. Ultimately, if this legislation becomes law, the Illinois Supreme Court will make the final determination as to its constitutionality.

Research and development tax credit

In a disappointing move, the General Assembly, in an 11th hour political decision, postponed calling legislation for a vote that would reinstate the state's Research and Development tax credit, which is a top priority for the IMA. The R&D Credit lapsed on January 1, 2011, because of previous inaction by the Governor and General Assembly despite pledges of support. More than 450 companies call Illinois home for their R&D activities. Failure to reinstate the credit will leave Illinois as one of few states not to offer a credit, placing thousands of good paying jobs at risk.

Similarly, the legislature's delay in reinstating the Net Operating Loss provisions of the Tax Code is leaving manufacturers and others facing the possibility that the income tax increase enacted this past January will have a "double-whammy" affect on businesses which suffered losses during the recent recession. They will not be able to spread those losses over subsequent years. Last year, the Governor and lawmakers temporarily suspended the NOL provision for a period of four years in an effort to generate revenue to balance the budget.

Both the House and Senate leadership have pledged to address a host of tax issues in the Fall veto session.

Enterprise zone reauthorization

Legislation to reauthorize Illinois' nearly 100 enterprise zones for an additional 20 years was similarly mired in end of session politics following unanimous passage of the measure in the State Senate. Rep. John Bradley (D-Marion), the House sponsor, met with proponents, including the IMA, to add transparency and accountability requirements to SB 1633. Since the first set of enterprise zones are set to expire in 2013, many believe it is imperative to pass the reauthorization so the renewal process can move forward unimpeded. Enterprise zones have become a significant tool for economic development. Allowing the provisions of the law to expire again places Illinois at a competitive disadvantage.

Energy and environment

For the second time in six months, lawmakers stopped a measure designed to authorize a new "clean coal" facility in downstate Illinois financed by higher electric rates on residents and businesses. The legislation would require that businesses be forced to pay higher electricity costs for the next 30 years in order to finance construction of the facility owned by Tenaska, the sixteenth largest privately held company in the United States. According to an independent report commissioned by the Illinois Commerce Commission, power from the Tenaska facility will cost 500 percent more than current market prices and will add $286 million annually to commercial and industrial electric bills. After being handily defeated by the Senate in the January veto session, proponents came back for one more try but were unable to garner the necessary votes to pass SB 1653. It was held in the House.

While Tenaska failed to advance, SB 1652 (Jacobs/McCarthy) passed the House and Senate by narrow margins and now moves to Governor Quinn's desk. This proposal, backed by Commonwealth Edison and Ameren, seeks to streamline the Illinois Commerce Commission ratemaking process as these utilities invest billions of dollars in infrastructure updates and smart grid technol-

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- Allows for the appointment of all new arbitrators who will be held to higher ethical and legal standards and be required to take continuing education courses in AMA standards and utilization review. Rotating panels will ensure that one arbitrator will no longer decide all of the cases in a particular jurisdiction, which helped lead to the problems at Menard Prison.

It's relatively easy for those outside of the political realm, those who don't fully understand the politics that permeate Springfield, to demand stronger changes from Governor Quinn and the General Assembly. The IMA, along with a united business community, supported a stronger bill containing primary cause language earlier in the legislative session that failed to pass out of the Senate. On that point, the IMA fought and lost. Instead of walking away and accepting the status quo, the IMA seized the opportunity to continue fighting for positive changes that would save employers money and begin to reform the system.

Unfortunately, we don't live in a perfect world where we get to rule by fiat — we operate in a political world full of elected officials who have conflicting views of legislation — better known as a democracy. Ultimately, any piece of legislation needs to gain the support of 60 members of the House and 30 members of the Senate for passage. Achieving success on any piece of legislation takes determination, skill, judgment and usually, compromise.

There are generally two lessons that can be learned from watching and participating in the legislative process. First of all, those who plant a flag in the ground and refuse to compromise are often left holding an empty bag. Secondly, elections matter and the folks that are elected to public office make real decisions on a daily basis that impact our families and businesses. If you don't like the way public officials are acting, then get involved.

At the end of the day, the IMA is proud of the changes in the Workers' Compensation system recently passed by the General Assembly. Are they perfect? No. Would we have liked more? Absolutely. However, we fought until the closing hours of the session and came away with a half billion-dollar victory for employers who have been forced to pay outrageous workers' compensation costs for the past forty years. We'll gladly take these savings today and continue fighting for more reform tomorrow. ■

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ogy. In the face of opposition from Attorney General Lisa Madigan and some business groups, including the IMA, who are concerned about the potential cost impact on consumers and businesses, the measure was amended from its original version to ensure that rate reviews would not be prospective and to include some consumer protections. Despite this amendment, opposition remains and the Governor has publicly threatened to veto the measure.

A third energy facility, Leucadia, passed both chambers with slightly larger margins. The IMA opposed this synthetic natural gas plant that will also increase electric costs for all consumers. However, unlike Tenaska, SB 1533 (Trotter/Colvin) did not place an arbitrary cap on residential customers and shift the major burden onto commercial and industrial ratepayers.

Environmentalists scored a victory when the legislature agreed to expand the number of products covered by the E-Waste Law enacted just two short years ago. Proponents assuaged the opposition of a number of individual manufacturers and were able to overcome opposition from the business community. Under SB 2106, a number of additional products, including laptops, facsimile machines, VCRs, portable digital music players, video game consoles, scanners and others, were added to the products that would be prohibited from being placed in a landfill. The bill mandates that any costs associated with local collection of such devices mandated by the legislation to be borne solely by the manufacturer of the product under a "market share" approach. Governor Quinn is expected to sign SB 2106 into law.

Finally, the IMA helped negotiate a new air permit streamlining bill that will require the Illinois Environmental Protection Agency to eliminate nearly two-thirds of air permits needed by small sources and significantly reduce bureaucracy and red tape. As a result, companies will find it easier to apply for permits and receive them in an expedited manner that will not delay needed projects. The EPA will create a new Web portal allowing on-line permits and will provide draft permit reviews during the process. As part of SB

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IMA Business Day 2011 (May 4th) afforded the IMA Board of Directors the opportunity to lobby legislators at the Capitol. Here, the Board meets with Senate Minority Leader Christine Radogno (upper left) in her State Capitol office.

DONNA SMITH

Achieving greater profitability in 2011

No doubt about it, 2010 was a tough year. The federal government posted a budget deficit of $1.29 trillion for fiscal year 2010, the second-highest deficit on record. While the Illinois unemployment rate continues to decrease, the state is still trending around nine percent unemployment. And recently, the crisis in Japan has raised concerns that supply chain disruptions could hinder U.S. manufacturing.

According to a recent article from *Bloomberg News,* commodity prices are rising due to increased demand from growing economies of Asia and Latin America. Escalating distress in Libya and conflicts in the Middle East have driven crude oil prices up, as evidenced by the New York Mercantile Exchange oil futures increasing by about 10 percent this year. And the Institute for Supply Management-Chicago Business Barometer recently reported production may have hit its peak in February with new orders and production slipping from 71.2 in February to 70.6 in March.

Yet not all the news is bad. Our economy is growing, albeit slowly, and the Fed expects continued growth through the end of 2011. Corporate earnings are improving, with the S&P 500 projected to finish the year with double-digit gains. And analysts are optimistic about hiring in durable goods manufacturing (non-durable goods manufacturing remains unchanged) this year.

Making sense of today's market may seem like a never ending quest. Yet, amid the uncertainty lies opportunities for smart manufacturers to affect positive change and position themselves to emerge from the recession all the stronger.

Simplify your cash flow

Today's headlines about job creation, health care costs, tax increases, etc. are enough to keep any CEO awake at night. But sometimes it is the seemingly "little things" that really impede growth. Ask yourself, how many hours a day are you or your staff "dealing with the books?" My guess is too many, with that time better spent working with customers, innovating new products, addressing the serious challenges facing the manufacturing industry and strategizing for your company's future. In 2011, smart companies are looking at their entire treasury management function in order to assess:

- **Do I have too many bank accounts?** Some companies have separate accounts from various banks for payroll, payables, disbursements and other functions. This can lead to unnecessary fees, lost time toggling between banks and accounts and unreliable levels of service from your various bank providers. Consolidating accounts may help streamline cash flow, as well as save you time, money and headache.
- **Are we as efficient as possible with collections?** If your finance team spends their days ripping open envelopes, tearing payments from stubs and manually filling out deposit slips, then they aren't spending time on more strategic activities. Depending on the type and frequency of your receivables, your company may be better served by electronic deposit options.
- **Do we have optimum flexibility to manage our vendor payments?** The same tools for collecting payments efficiently can be applied to disbursements as well. In addition to the added flexibility, many companies who utilize an electronic platform report increased security, control and negotiating power with partners.

Brace yourself for increased "costs of doing business"

Today, many business owners are breathing a sigh of relief that Congress extended bonus depreciation for companies that reduces the out-of-pocket cost of capital expenditures to January 1, 2012. Yet, they'd be wise to remember that if anything is certain these days, it's uncertainty. Given our country's substantial (to put it mildly) debt, it seems probable that federal taxes will eventually increase, and if you haven't already, you should be preparing for the Illinois General Assembly bill that raises corporate income tax from 4.8 percent to seven percent. With the benefit of time, how will your com-

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PROFITABILITY

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pany prepare, and plan for future costs? Wise companies in the manufacturing industry will be working closely with their tax and financial advisors throughout 2011 in order to address this reality.

There are certain things you can do to prepare for uncertain costs, including:

- Networking with peers and neighboring businesses to leverage their experiences and form partnerships to reduce costs (e.g., share freight)
- Reducing costs by renegotiating vendor agreements (e.g., competitive bidding)
- Avoiding additional fixed costs (e.g., salaries, long-term rental agreements)

Moreover, employers must find ways to reign in catapulting health care expenses. Yet, doing so can challenge employee morale and loyalty, especially if changes are perceived as a "take away." But controlling health care costs doesn't always have to have a dramatic downside. For example, many of Associated's clients are opting for consumer-directed health plans (CDHPs). These plans are generally less expensive and place more responsibility for managing health care costs on the shoulders of employees. While plans like this aren't right for every company, a number of our clients are finding it to be a fair balance between cost control and providing a valuable benefit.

Look for growth opportunities

Though many reports indicate manufacturers have improved their cash positions considerably, there is still a reluctance to purchase new capital equipment until manufacturers have clearer signals about consumer demand. But I'd argue that now is the time to prepare for that demand, especially with banks' appetite for lending improving every day. With rates at historical lows, many companies are in an ideal position to make strategic growth investments via acquisitions, purchasing new equipment or making investments in customer service offerings, just to name a few. Asset-based lending can also be a great solution for businesses needing additional working capital to meet increasing sales.

Among banks, competition for high-quality borrowers is fierce. Yet at the same time, empowered borrowers are also carefully scrutinizing their bank in return. If your company is in the market for additional capital, make sure you get all the information you need to make a smart borrowing decision. For example, what level of service will you get from your bank? Will they be there for you if you hit a bump in the road? What other value-added services do they provide? And, critically, how stable is your bank? At Associated, following the repurchase of $262.5 million of TARP preferred stock on April 6, 2011, our total capital to risk ratio is 17.11 percent, making us one of the most capitalized banks in the industry.

To address these issues and more, take the time to meet with an experienced commercial banker. Every day, sophisticated banks are partnering with companies in the manufacturing industry to address the very real challenges and opportunities of operating in today's environment. As the light at the end of the tunnel grows brighter and brighter, you'll be glad you did. ■

DAVID B. RITTER & SONYA ROSENBERG

Social media update: It's time to give your policies a fresh look

Years since they first became popular, social networking sites still have many employers scratching their heads. Is it better to allow employees to access Facebook and Twitter from work or to prohibit these sites altogether? Is it fair game to check out a job candidate's social media accounts and make the hiring decision based on what is posted there? And what about that dreaded case of the disgruntled employee who decides to share with the world what he really thinks about his job and/or his boss? Can he be fired? Although the law is notoriously slow to catch up with new technology, recent legal developments and the application of some established legal principles provide good insight on what employers should and should not do when it comes to their employees' use of social networking sites.

The most recent legal developments in the social media arena have come from an interesting place, the National Labor Relations Board (NLRB), the federal agency charged with protecting employees' rights to engage in union-related activity. The NLRB has taken a hardline approach to social media, targeting employers' policies and practices governing their employees' use of social networking sites.

In October 2010, the NLRB filed an unfair labor practice complaint against an ambulance service company, American Medical Response of Connecticut, Inc., for firing its employee, Dawnmarie Souza, after she posted offensive comments about her supervisor on Facebook. The comments at issue in *NLRB v. American Medical Response* were outrageous by any employer's standards: Ms. Souza called her supervisor a "scumbag" and a "dick." But the company's decision to fire Ms. Souza landed it in NLRB's crosshairs, when it filed a lawsuit alleging that the company violated Ms. Souza's right to engage in protected activity under the National Labor Relations Act (NRLA), which, among other things, protects employees' rights to discuss their wages and working conditions. Additionally motivating the NLRB lawsuit were the company's policy on internet usage, which broadly prohibited employees from discussing the company on the internet without first obtaining the company's permission, and that Ms. Souza made her comments in response to her supervisor denying her request relative to Union representation. As part of the settlement in the case reached in February 2011, the company was required to revise its policies to bring them into compliance with the NLRA, and to enter into a separate, undisclosed agreement with Ms. Souza. Whatever the details of that separate agreement, it is clear that the NLRB's action resulted both in monetary loss and negative publicity for the company.

In April 2011, the NLRB announced its intent to pursue

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Baxter: Inspiring tomorrow's

Baxter's commitment to education in Illinois will help ensure that the state continues

Illinois has long been a hub for groundbreaking biotechnology research and development, thanks to several world-renowned academic, government and non-profit research institutions. In addition, more than 170 pharmaceutical, medical device and agricultural biotech and biofuels companies call Illinois home. With 57,000 employees statewide, Illinois is in the top-tier for bioscience employment, according to a 2010 study by Battelle and the Biotechnology Industry Organization. The state ranks seventh in bioscience research and development and third in awarding bioscience-related degrees.

As one of the Chicago area's largest science- and technology-based companies, IMA member Baxter International Inc. has maintained a strong presence in northern Illinois since its founding in Morton Grove in 1931. In 1933, Baxter opened its first manufacturing facility in a renovated automobile showroom in Glenview, where six employees produced complete lines of five intravenous solutions in glass containers. Since then, the company has been responsible for the first commercial kidney dialysis machine, the first concentrated clotting factor to treat hemophilia and many other medical breakthroughs. More recent "firsts" include the first protein-free recombinant factor VIII for hemophilia and the first cell culture-derived pandemic flu vaccine. Today, with more than 5,100 employees at locations in Deerfield, McGaw Park, Round Lake and Buffalo Grove, Illinois has the largest U.S. presence of Baxter employees.

As part of the company's commitment to supporting the needs of communities where employees live and work, Baxter has a responsibility to ensure that current students as well as future generations have the opportunity to learn and be inspired by math and science. In 2008, the company launched Science@Work: Expanding Minds with Real-World Science, a multi-year partnership with Chicago Public Schools (CPS) to support teacher training and student development in biotechnology. The program represents the first philanthropic contribution to biotech education in CPS history.

Juan Salgado, president and chief executive officer, Instituto Health Sciences Career Academy (left, in suit) and IHSCA Principal Patricia Munoz-Rocha (right, in suit) discuss career goals with freshman students.

Instituto Health Sciences Career Academy (IHSCA) freshman student Juan Carlos Carrera observes IHSCA science teacher Paul Shafer demonstrating how to use a microscope to examine mold spores with IHSCA students Ana Coria, left and and Daisy Padilla, right.

"Math and science education plays a crucial role in developing today's students into tomorrow's innovative scientists, engineers and physicians," says Robert L. Parkinson, Jr., Baxter's chairman and chief executive officer. "Baxter's support of teacher training and student development in healthcare and biotechnology sets the foundation for the region's biotech discoveries for years to come."

Reaching thousands of students

Since the program's inception, Science@Work has reached more than 56,000 students and 650 teachers in 213 schools. Baxter has hosted 45 biotechnology events for teachers and students including lab tours, lectures, career days and problem-based learning projects, including an experiment to help students understand how easily bacteria are transferred from humans to objects.

In 2010, Baxter provided start-up funding and hands-on support to open the Instituto Health Sciences Career Academy (IHSCA), Chicago's first charter health science career academy, dedicated to preparing students for healthcare careers. The school, which will serve 600 students when fully enrolled, focuses on providing Latinos with education and preparation to pursue careers that meet the nation's healthcare needs. The school will help to address the shortage of Latinos in the healthcare field and support Chicago's efforts to provide high-quality education options. IHSCA provides students with a rigorous college prep curriculum for success in competitive colleges and universities,

science and technology leaders

to build on its reputation as a center of scientific excellence for years to come

and offers the opportunity for students to earn professional certification for high-wage entry-level positions in the healthcare field. It also offers job shadowing and internship programs in an effort to prepare students for success.

Currently operating in an older facility on the city's southwest side, IHSCA broke ground in February 2011 on a new 100,000 square-foot educational center in Chicago's Pilsen neighborhood. The center will house nine laboratories outfitted for various science experiments, and is expected to receive Leadership in Energy Efficient Design (LEED) Silver Certification. Baxter scientists, researchers and other employee volunteers lecture, sponsor lab tours and provide career advice to students throughout the year.

IHSCA is the third school to receive Baxter's support as part of Science@Work. In 2009, the company helped open Muchin College Preparatory High School in downtown Chicago, attended by underserved students from more than 40 zip codes. Baxter also helped establish the Biotechnology Center of Excellence at Lindblom Math and Science Academy in Chicago's Englewood community in 2008. Lindblom students have toured Baxter's Round Lake facility and attended career days at the company's headquarters in Deerfield. In 2010, Baxter continued its work with Lindblom, providing in-depth biotechnology teacher training and lesson plan assistance to 90 CPS high school teachers.

Hands-on employee engagement

One key aspect of Baxter's commitment to education is providing students and teachers with opportunities to experience science first-hand, through interactions with Baxter professionals. These employees share their expertise in hopes of enabling future generations to advance medicine, technology and engineering. In October of last year, Baxter hosted a career day at Muchin College Prep. Twenty-one Baxter professionals spent the day educating Muchin's 550 freshmen and sophomores — many of whom will be the first in their families to graduate high school and attend college — about the countless career opportunities available in the healthcare field. Speakers from functions across the company, including engineering, environment, health and safety, human resources, marketing, quality, and research and development led interactive sessions with groups of students, providing information on the academic and technical requirements of careers in healthcare and sharing personal stories about their own career journeys.

In December of 2010, Baxter also hosted 75 students from several Chicago-area public high schools at the Illinois Science + Technology Park in Skokie, Illinois for Science@Work Day, a hands-on science workshop and career panel. The day featured interactive laboratory demonstrations and exercises to help students understand the varying factors considered when engineering a medical device. The cornerstone of a five-month problem-based learning volunteerism project designed to improve student achievement and increase college and career readiness, the day provided several Baxter scientists with the opportunity to help students and teachers think critically about science.

Instituto Health Sciences Career Academy freshman students Ana Coria (left) and Daisy Padilla (right) examine mold spores under the microscope as part of the school's robust science program.

"Many of the major global challenges of the day — such as climate change, a lack of quality healthcare and the need for alternative energy sources — depend on the ability of this generation to apply science and technology to find solutions. At Baxter, we feel a responsibility to provide budding young scientists with the knowledge and skills to help ensure that innovation has a rich future in Illinois," says Norbert Riedel, Ph.D., Baxter's chief scientific officer, who was recently appointed to Governor Pat Quinn's Illinois Innovation Council — a team of business, academia and research and development experts who identify strategies that the state should pursue to foster innovation and economic growth. ■

Baxter and its Foundation contribute nearly $80 million in 2010

In 2010, combined giving from Baxter and The Baxter International Foundation, the philanthropic arm of Baxter, totaled nearly $80 million. In addition, employees recorded more than 163,000 hours volunteering within their communities. Most of those hours were civic engagement, such as organizing food drives and building homes through Habitat for Humanity, and local education needs such as mentoring students in science education and teaching through Junior Achievement. Employees at each Baxter site select local volunteer activities to undertake and organizations to support that are the most relevant and have the highest impact in their community.

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ANTHONY G. HOPP

The lesson of triclosan: Keeping your product off the "list"

Triclosan is a broad spectrum antimicrobial agent first introduced over 40 years ago. It is the active ingredient in hundreds of antibacterial soaps, hand sanitizers, mouthwashes, toothpastes and deodorants. By any measure, triclosan has been a hugely-successful product. Increasingly over the past several years, however, triclosan has come under regulatory, legal and commercial scrutiny. Triclosan has begun to appear on retailers' and manufacturers' lists of products they promise never to use or sell. Here we will briefly describe the controversy surrounding triclosan and outline some suggestions that may help keep your products from ending up on such a "list."

The triclosan controversy

Critics of triclosan claim that it is an endocrine disruptor and potential carcinogen. They allege that studies in mice, rats and frogs have reportedly demonstrated that triclosan can cause low birth weights, liver toxicity, inhalation toxicity and disruptions to thyroid hormone signaling functions. Biomonitoring studies have indicated that triclosan is present in the bodies of 75 percent of the people tested and ecological studies reportedly show that trace amounts of triclosan are present in rivers, lakes streams and sometimes drinking water.

In April 2010, the FDA issued a consumer bulletin stating that, while triclosan is not currently known to be hazardous to humans, animal studies suggest that it can alter hormone regulation. FDA announced that it would undertake a safety review of triclosan, to be completed sometime in 2011.

On January 5, 2010, Congressman Edward Markey (D-Ma.) issued letters to the administrators of the FDA and the EPA asking them for information regarding their plans to further regulate triclosan. A few months later, he issued open letters to thirteen major manufacturers asking them to voluntarily remove triclosan from their products, stating:

"There are simply too many troubling questions about triclosan's effectiveness and potentially-harmful effects, for these products to remain in everyday use."

U.S. Representatives Louise Slaughter (D-N.Y.), Barbara McCollum (D-Minn.) and Raul Grijalva (D-Ariz.) sent a letter to the commissioner of the FDA in November, 2010 calling on FDA to ban the product, based on concerns about triclosan's alleged impact on human health and the public water supply.

In late 2010, a plaintiff filed a statewide class action against Dial Corp. in the United States District Court for the Southern District of Illinois. The plaintiff claims that purchasers of triclosan-containing products were defrauded by Dial's claims that triclosan is a safe, effective antimicrobial agent. The case remains pending. At the same time, consumer blogs and environmental groups have declared that triclosan is a dangerous endocrine disruptor and have loudly called for the FDA to ban it or for manufacturers to remove it from the market.

The market reaction

Understandably, retailers and consumer products companies have begun to react to claims of health concerns regarding triclosan, and have started to remove the product from their shelves. Whole Foods has listed triclosan as "one of the five worst environmental pollutants in your beauty products." Boots PLC, the UK's largest consumer pharmacy chain (similar to Walgreen's or CVS in the U.S.) has placed triclosan on its "priority substance" list, and plans to phase it out. One manufacturer, Method Cleaning Products, has placed triclosan on its "dirty ingredients" list, and states "Method chooses not to use the ingredients in our products due to the potential hazards they pose to human health and/or the environment." Colgate-Palmolive has announced that it will keep triclosan in its mouthwashes and toothpaste, but will remove it

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Employers have few tools to stem FMLA abuse

By James A. Spizzo & Michelle T. Olson, Vedder Price PC, Chicago

Imagine that one of your employees tells your Human Resources Director that her adult daughter has lupus. As a result, the employee claims she will need to be periodically absent from work to attend doctor's visits and assist with other health care and grooming needs. Upon the HR Director's advice, the employee applies for intermittent leave under the Family and Medical Leave Act ("FMLA" or the "Act"). As part of her application, she submits a medical certification from her daughter's doctor, which outlines the nature and duration of her daughter's condition, and her leave is summarily approved.

Over the next year, the employee is often absent from work. On occasion, she provides notes from her daughter's doctor explaining the reasons for her absences. One year later, she re-applies and is approved for another year of intermittent FMLA leave. At the beginning of the second year, however, the HR Director begins to have doubts about her need to be frequently absent from work. He notices that she is often gone on Mondays and Fridays, and sometimes stays home to bathe or feed her daughter, when these activities could take place before or after work. He suspects that she is abusing her FMLA leave, and in the process leaving the company short-staffed with little notice. He presents the aforementioned facts to you, the owner of the company, and asks for your advice. What should you do?

Many employers have difficulty finding a balance between complying with the terms of the FMLA and preventing employee abuse. This balance is particularly hard to strike when managing an employee who takes intermittent FMLA leave, whether for his or her own serious health condition or the serious health condition of a family member. Unfortunately, the FMLA provides employers with few tools to limit employee abuse. It is therefore critical that you understand the tools you do have and know how to use them. Here are some things to keep in mind when dealing with intermittent leave requests and some suggestions as to how to approach the hypothetical discussed previously.

Get a medical certification

A medical certification is your best weapon in preventing intermittent leave abuse. Employees must have a medical need for intermittent leave, and a certification is proof of it. When the employee requests FMLA leave, or you learn that the employee's leave might be for an FMLA-qualifying reason, you must notify the employee within five business days of his or her eligibility for leave. The employee must then secure a medical certification for the leave and return it to you within 15 calendar days, unless it is not practicable under the circumstances despite the employee's good-faith efforts. The Department of Labor has a sample certification you can use, which sets forth all of the required information.

Before you approve the employee's FMLA request, it is critical that you ensure that the certification is complete and sufficient. Doctors are often in a hurry and do not fill in all of the required information. The certification must set forth the reasons for the employee's work restrictions, why the employee cannot do his or her job except intermittently, and the likely duration of the intermittent leave. You may also seek an estimate of the frequency and duration of the episodes of incapacity.

If you cannot read or understand the doctor's writing on the certification, you may contact the doctor's office for clarification, but only after you provide the employee with an opportunity to cure any deficiencies. If you receive an incomplete certification or one that is vague or nonresponsive, advise the employee in writing what additional information or clarification you need. The employee has seven calendar days to get the certification completed and return it to you. If the resubmitted certification is still insufficient, you may deny FMLA leave protection until a sufficient certification is obtained. A certification that is not returned at all means the employee has no FMLA protection.

Remember, you may not request additional information from the health care provider directly, and you must give the employee a chance to correct any deficiencies in the certification. However, if you get the employee's permission, you may have a company doctor or nurse or a human resources employee speak with the employee's doctor in an effort to better understand the condition, the need for leave and possibly scheduling treatment around the employee's work schedule.

If you have doubts about the

validity of the certification, you can require a second opinion at the company's expense. This second opinion may be from a health care provider of your choice, as long as you do not employ the provider on a regular basis. If the second opinion differs from the first opinion, you may require a third opinion, again paid for by the company. The third health care provider must be jointly approved by you and the employee, and his or her opinion is final and binding on both parties.

In the hypothetical discussed, the HR Director failed to thoroughly review the employee's medical certification. This was a mistake. The HR Director should have ensured that the certification was complete and the answers contained therein were sufficient. He/she should have also verified the authenticity of the certification with the health care provider. By blindly approving the employee's request, the HR Director limited the company's ability to challenge the nature and duration of the employee's leave. Additionally, the company waived its most powerful tool in the battle against FMLA abuse, namely, withholding FMLA protection until the employee complies with the terms of the Act. A better approach would have been for the HR Director to review the medical certification, identify any deficiencies, provide the employee with an opportunity to cure and withhold FMLA approval until the certification was complete and sufficient. The HR Director should have also sought a second medical opinion, if needed.

You have some negotiating power

A need for intermittent leave does not mean an employee suddenly gets to set his or her own work schedule. An employee seeking intermittent leave for purposes of foreseeable treatment or medical procedures, including office visits, must make a reasonable effort to schedule the treatment so as not to unduly disrupt the employer's operations. Employees may be asked to consult with their employers prior to the scheduling of treatment to work out a schedule that best suits the needs of both the employer and the employee. If the employee fails to make a reasonable effort to do this, the employer may initiate the discussion and request that the employee make the proper arrangements. The parties are obliged to discuss and attempt to agree on an acceptable schedule.

The statements contained in the employee's medical certification give you the information you need to have this conversation. Use the certification to create a schedule that the employee will stick to — if possible. This will cause less confusion and fewer problems in the long run. This includes having the employee try to schedule appointments or treatment during off-duty time or on his or her days off. Depending on the employee's or the employee's family member's health condition, it may not be possible to create this much certainty in the situation. But you have the right to try.

This was another area in which the HR Director in our hypothetical could have done better. He/she should have sat down with the employee at the onset of her leave and outlined the company's expectations. The parties should have discussed what care giving activities the employee could accomplish during non-work hours and agreed to a practicable schedule. Additionally, each time the employee used intermittent leave, the HR Director should have made a limited inquiry about the reasons. You are entitled to verify that the employee's absence is for a reason stated in the original certification. The HR Director should have ensured that each time the employee was absent it was for a reason outlined in her medical certification.

Request recertification

An employer may generally request recertification of an FMLA-qualifying condition every six months. The employee must pick up the cost of the recertification. You may ask for a recertification sooner if the nature of the employee's absence changes — for example, if the employee requests an extension of the intermittent leave or if the duration or frequency of the absences changes significantly (e.g., if the certification gives the employee one or two days off for migraines, but the employee starts taking four days). You may also seek recertification if new information casts doubt on the employee's reasons for the leave or the validity of the certification. For example, if an employee's leave coincides with scheduled days off and is always on Mondays or Fridays, the timing of the leave could cast sufficient doubt on the employee's stated reasons so as to justify a request for recertification.

The HR Director discussed above, therefore, should closely monitor the days on which the employee is absent to determine whether recertification is warranted. Although you cannot request a second or third opinion for recertification, you can provide the health care provider with a record of the employee's absences and ask if the need for leave is consistent with that pattern. In this case, recertification may be justified given the employee's tendency to be absent on Mondays and Fridays.

In some circumstances, when an employee's leave is foreseeable, an employer may temporarily transfer an employee to an alternative position for which the employee is qualified during the period of intermittent leave. Of course, the reassignment must not be punitive and the new position must have equivalent pay and benefits. Once the FMLA leave is over, however, the employee must be reinstated to the same or an equivalent job as he or she had before the leave request.

Keep records

As with any FMLA leave situation, employers should keep thorough records of all intermittent leave. This includes time off for doctor's appointments or retroactive designation of days off that should have been for FMLA reasons. You will want to make sure you know how much leave the employee has taken, and ensure that you record the employee's allotted FMLA time. FMLA leave should be "accounted for" in increments no larger than the shortest period of time accounted for in other types of leave, as long as that is not greater than one hour. And, if the employee takes half a day off, you need to let him or her come back to work for the other half, unless he or she works in an industry where returning mid-day is not practical, such as, possibly, airplane pilots or train conductors.

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FMLA ABUSE

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If the employee has exhausted any paid leave, which you should require to run concurrently with FMLA leave, an employer may dock the employee's pay for the intermittent absences. This includes salaried exempt employees, and can be done without destroying the exemption. While employees are entitled to ask you how much FMLA leave they have exhausted while on intermittent leave, they may not ask any more often than every 30 days and only if they actually took leave during that time period. If you tell them verbally how much FMLA leave they have exhausted, be sure you follow up in writing. Here's another reason it is important to keep these records — if an employee does not actually work 1,250 hours in the leave year, then he or she is not eligible for FMLA leave the next year.

Managers, supervisors, and human resources employees may be individually liable

As if the threat of a lawsuit or Department of Labor complaint were not enough of an incentive to ensure that your company is complying with the requirements of the FMLA, a recent decision from the U.S. District Court for the Eastern District of Pennsylvania should grab your attention, as well as the attention of other managers and supervisors. In *Narodetsky v. Cardone Indus., Inc.,* the court held that the FMLA's definition of "employer" was broad enough to encompass the actions of a president/CEO, a human resources director, a human resources representative, a benefits manager and a plant manager, holding all five liable under the Act.

The facts are instructive, if for no other reason than to show how individual managers may find themselves in hot water when handling an FMLA claim. After the *Narodetsky* plaintiff was diagnosed with a leg injury that required surgery, his wife called the company's benefits manager and requested short-term disability leave for him. Shortly thereafter, members of the human resources department conducted a forensic search of the plaintiff's computer, uncovering an e-mail he allegedly forwarded to a former employee, in violation of company policy. Three weeks later, the human resources director, human resources representative and plant manager terminated the plaintiff for sending the prohibited e-mail. The plaintiff filed suit, claiming he was terminated for requesting FMLA leave and alleging that members of the human resources department searched his computer with the goal of finding a reason to justify his termination.

In evaluating the merits of personal liability under the Act, the court noted that other circuits had upheld liability where the individual in question had authority to hire or fire the plaintiff or had sufficient control over the terms and conditions of the plaintiff's employment. According to the court, in the present case, all five individual defendants exercised sufficient control to warrant personal liability under the Act. The president/CEO had operational control over the company; the human resources director and representative and the plant manager had authority to fire employees, as evidenced by their presence at the plaintiff's termination meeting; and the benefits manager participated in the decision to terminate the plaintiff. Thus, all five were personally liable under the Act.

The *Narodetsky* court is not alone in upholding personal liability; two circuit courts considering the issue have opined that individuals may be held liable as employers under the FMLA. See *Mitchell v. Chapman,* 343 F.3d 811, 827 (6th Cir. 2003) ("This Court has interpreted the [Fair Labor Standards Act's] 'any person who acts, directly or indirectly, in the interest of the employer' language to impose liability on private-sector employers. The presence of identical language in the FMLA tends to support a similar finding.") (internal citations omitted); *Darby v. Bratch,* 287 F.3d 673, 681 (8th Cir. 2002) ("[T]he plain language of the statute . . . includes persons other than the employer itself."). Lower courts have come to the same conclusion. See, e.g., *Cantley v. Simmons,* 179 F. Supp. 2d 654, 658 (S.D. W. Va. 2002) ("[I]ndividual liability is permitted under the FMLA."); *Richardson v. CVS Corp.,* 207 F. Supp. 2d 733, 741 (E.D. Tenn. 2001) ("The majority of courts that have considered the issue have found that individuals can be subject to liability under the FMLA."); *Morrow v. Putnam,* 142 F. Supp. 2d 1271, 1275 (D. Nev. 2001) ("[T]he plain language of the FMLA clearly contemplates individual liability.").

In light of these and other cases, employers are advised to proactively limit their FMLA liability by, for example, including only necessary personnel in employment decisions and training human resources personnel on the litigation risks. Employers should also review their insurance policies to ensure that liability coverage extends to managers and other key personnel. Employees named as individual defendants in an FMLA lawsuit will expect indemnification from the company and require access to their own legal counsel. Any settlement between the company and the plaintiff should also address claims against individual managers. Failure to extend protection to individual managers, therefore, could result in damages to a company co-defendant and substantial personal damages to the employee, not to mention very strained relations within the company.

To conclude, it is critical that employers become familiar with the few tools they have to limit FMLA abuse, while at the same time understanding employees' rights under the Act. Summarily approving FMLA requests robs you of the few opportunities you have to keep employees honest. At the same time, taking action forbidden by the Act could lead to liability not only for the company, but for individual employees involved in the decision. As always, employers are advised to consult with counsel before attempting to navigate the challenges posed by the FMLA. ■

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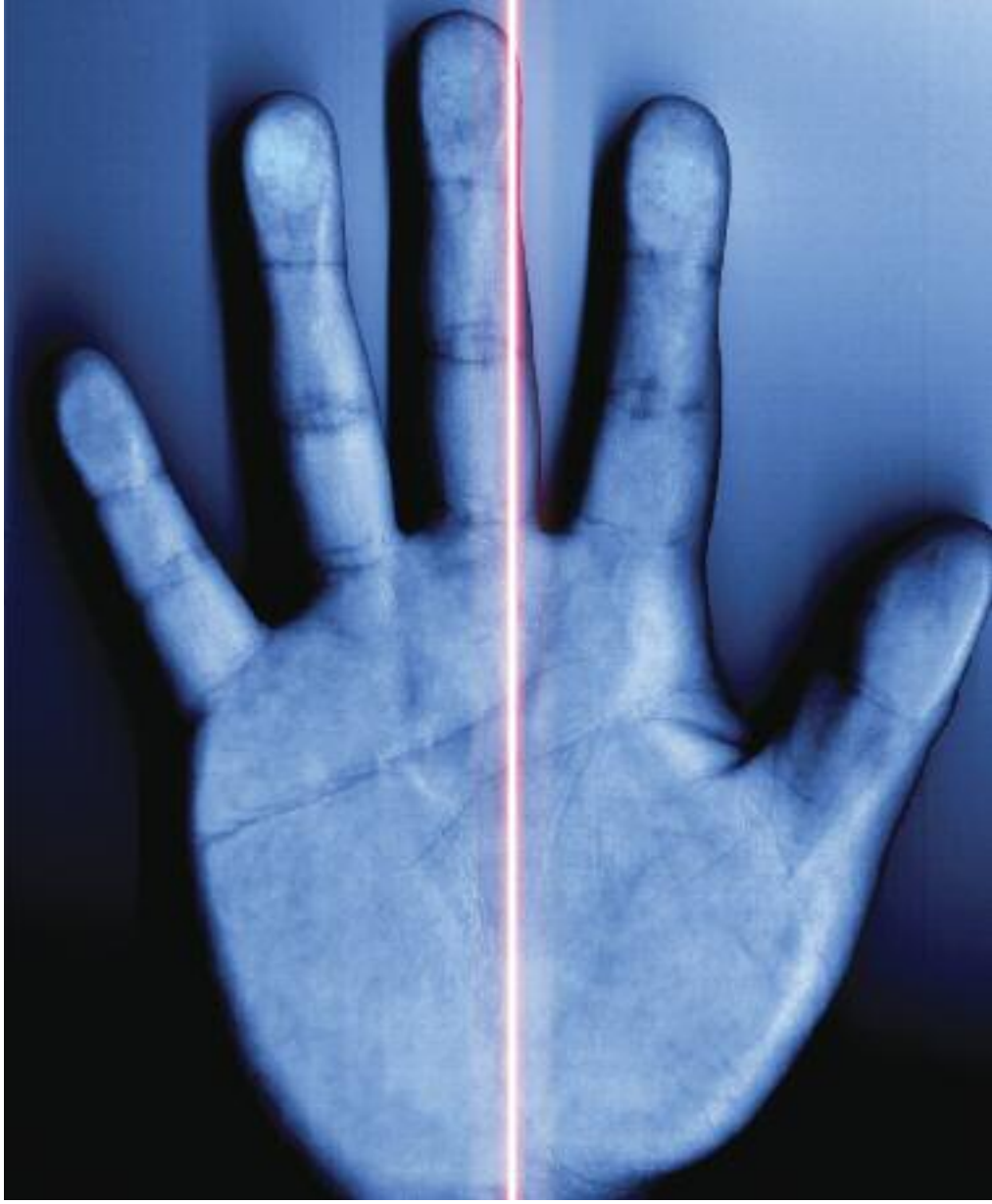
Making it right: Manufacturing productivity, challenges increasing

By Acxiom Corporation



It's a confusing time for the manufacturing industry. Some news reports credit manufacturing with leading the way to economic recovery: orders and productivity are up, and jobs are being created. At the same time, government intervention seems to increase almost monthly, and labor is on edge.

Meanwhile, industry analysts say several trends are expected to affect the industry in 2011 and beyond. Increasingly, they see manufactures:

- Becoming leaner and more efficient by continuing to automate production;
- Requiring more cross-training, for more employees;
- Adopting more mobile apps and cloud-computing solutions;
- Going "green" out of business necessity;
- Creating pay-for-performance compensation and bonus structures; and
- Scrambling to satisfy changing compliance requirements.

Obviously, each of these trends have tremendous impact on human resources, an impact that will be felt at every level in organizations. Industry leaders and Acxiom experts are working to prepare for every aspect of these pending — and in some cases ongoing — changes.

Here, a look at how things are shaping up after the first few months of 2011.

Lean, efficient manufacturing machines still need good people

Even the slickest automated processes don't run themselves. Turnover is expensive in every business, and it can be especially so in manufacturing environments, where open positions can create holes in production lines. While automation allows manufacturers to run leaner operations, the high tech nature of most automated facilities requires workers with specialized training, meaning that even in the most modern, automated plant, an open position can still spell L-I–N-E D-O-W-N.

In response, manufacturers have beefed up training programs. Having a skills advantage is a competitive advantage for the company and, generally, the more skills and training a worker has, the higher his or her paycheck. It's a win-win for workers and employers. However, it also makes turnover more expensive.

What to do: Include conflict-resolution training for managers and supervisors. Proactive managers can increase worker retention rates by recognizing and diffusing problems before they become unmanageable, causing valued employees to resign in frustration.

Because individual workers have more impact on the company in a lean organization, illegal drug and alcohol abuse is a greater threat to productivity. Unfortunately, recent court decisions make it more difficult for employers to use random drug screening and certain collection methods.

Should you pay for performance?

Although pay-for-performance is hardly a new concept (the oft-cited Lincoln Electric model was implemented in 1959) it has regained popularity during the current recession. It can be an effective incentive and retention tool, but it is not a quick fix.

Implementing pay-for-performance programs can be complicated, requiring policy and procedure revisions. Once in place, maintaining performance-based programs requires excellent record-keeping systems and, sometimes, additional

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training for managers. As a result, the benefits of performance-pay solutions may not be obvious for several months to a year.

Worker classification

Overtime labor, casual labor, or consultant? If a Department of Labor (DOL) auditor is asking, giving the wrong answer can be expensive.

DOL auditors don't wait for you to be ready; they come when called (often by concerned or angry employees). Many employers are surprised that a DOL audit will consider how both federal and state laws apply to the workplace, and they're further surprised by the scope of DOL reviews.

Before a federal investigator shows up — and your answers may be worth hundreds of thousands of dollars — conduct an internal audit to review all of your worker classifications and other wage-and-hour policies.

The first step in conducting an internal audit sounds deceptively simple — collect job descriptions for every position in your organization. That tends to be an informative exercise, especially when it reveals that you don't have a job description for every position. (Best advice: Don't wait until the audit is complete to write one, and be sure it truly "fits" the job that is being done.)

Once all job descriptions are available, the next step is to verify that employees are performing job duties as assigned and working during the prescribed hours. If they're not, your workplace is non-compliant.

An audit should also ensure that all job classifications are accurate and that records for employees (which are different for exempt and non-exempt employees) are up-to-date.

Review payroll records to ascertain that all employees have been paid for overtime worked, even if the overtime was not approved. A separate review of your workflow and policies should address the circumstances that lead to unapproved overtime.

Internal audits can be stressful and time-consuming, but they are also excellent, instructive tools. Reviewing the legal requirements and procedures necessary to correctly classify employees, track their work, and pay them fairly not only allows employers to correct many innocent discrepancies, it's also proof of an employer's good faith effort to be compliant and conscientious regarding its workforce — efforts outside auditors will consider in their review of your organization.

Millions of compliance matters

Since a program focused on recordkeeping compliance began in 2009, more than half of the workplace inspections conducted by the Occupational Safety and Health Administration (OSHA) have found recordkeeping errors. In some cases, OSHA-imposed fines on employers with less-than-adequate records hit the million-dollar mark. A customized consultation with one of Acxiom's compliance experts can help ensure your records are always inspection-ready.

Government agencies are collaborating as never before, making compliance that much more important. Repeatedly over the past year, the Equal Employment Opportunity Commission has combined forces with its state counterparts as well as with other federal offices to investigate employers and handle resulting lawsuits. Similarly, various DOL offices — including OSHA and the Office of Federal Contract Compliance Programs (OFCCP) — are increasingly working together to streamline their work and resolve complaints more quickly.

As various government agencies work together to reduce a backlog of complaints, many employers are on edge. Best advice: Be prepared, but don't overreact to any single ruling. Case law is accumulating so rapidly, it's likely courts will issue clarifications to some regulations by the end of 2011.

Make it a good year

Manufacturers are affecting positive changes, combating many problems that helped trigger the recession. In any business, regardless of the economic climate, the surest way to grow is to put qualified, dependable people in positions where they can succeed, so your business can succeed.

Resources and recommended reading

An overview of the Fair Standards Labor Act (FLSA), enforced by the Department of Labor, is available at http://www.dol.gov/compliance/laws/comp-flsa.htm. ■

For more information, contact Wendy Frostino, Marketing Manager with Acxiom Corporation. Wendy can be reached at 216-615-7622 or by email at wendy.frostino@acxiom.com. Acxiom Corporation is an IMA member company.

THOMAS J. BLAZE

EDGE tax credit requires accurate job data reporting

States are continuously competing to encourage companies to locate within their borders. Companies make investments, create new jobs and are crucial to the State's economic development. In order to compete for jobs and investments with other states, Illinois has enacted various tax credits and incentives. This article will discuss the EDGE Tax Credit, explore one of the common problems associated with tax credits and incentives and explain how the human resource department can help avoid them. In addition, this article will explore the role of the human resource department in the annual reporting process required by Illinois.

Illinois offers a statutory state income tax credit known as EDGE, which is an acronym for "Economic Development for a Growing Economy." See 35 ILCS 10/5-1 et seq. The EDGE Tax Credit ("Credit") is administered by the Illinois Department of Commerce and Economic Opportunity ("DCEO") and the Illinois Department of Revenue.

For eligible companies, Credit awards are based on the amount of state income taxes withheld from the wages or salaries of employees in newly created jobs or retained jobs attributable to a particular project. (35 ILCS 10/5-15) The amount of the Credit is awarded and calculated on a case-by-case basis. (35 ILCS 10/5-40) The Credit could be as high as the amount of tax receipts collected from the Illinois income taxes paid by the newly hired or retained employees of the company in connection with the project. (35 ILCS 10/5-15(d)) The current Illinois income tax rate on individuals is five percent. DCEO will, in general, limit the amount of the credit for retained jobs to half of the Illinois income tax rate or less, depending on the amount of wages that are expected to be paid. The Credit, which is non-refundable, can be used against corporate income taxes to be paid over a period not to exceed 10 years. (35 ILCS 5/211(1) and 35 ILCS 10/5-45) The amount of the Credit is determined on an annual basis over the ten year span of the agreement and any unutilized Credit can be carried forward for five years.

In order to qualify for the Credit, a company must provide documentation to demonstrate competition among competing states, agree to make an investment in capital improvements and create and/or retain full-time jobs in Illinois. (See 35 ILCS 10/5-20(b) and 14 Ill. Admin. Code § 527.30(c).)

Each company that is awarded a Credit must enter into an Agreement with DCEO. (35 ILCS 10/5-50) In order to claim the Credit, the company must meet its covenants in the Agreement, including covenants related to capital investment and new and retained employees. Accordingly, the human resource department will want to be involved in the process of determining the number of jobs projected and whether the jobs will be created or retained. If the company does not meet its covenants related to new and retained employees, then the company cannot claim the Credit.

Some companies' business managers have negotiated substantial benefits under the Credit and then fulfilled their obligations with regards to making the required capital investment, but did not fulfill the job requirements. As a result, some of these companies lost the benefit of the Credit because of overly optimistic job creation projections that fell short of the commitments contained in the Agreement. If the human resource department is involved, then problems like this have a greater chance of being avoided. As such, it is important to involve the human resource department throughout the process.

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1297, the EPA will receive about $2 million in additional fees in order to implement these improvements.

Concealed carry legislation

For the first time in many years, a serious effort was made to pass a concealed carry law in Illinois. The IMA successfully persuaded the Rifle Association and state lawmakers to amend the original legislation (HB 148) to remove civil liability provisions that would have held employers liable for damages resulting from criminal actions if they did not allow concealed weapons to be carried on their property. In addition, the bill was amended to strengthen the "parking lot" exemption that allowed weapons to be stored unloaded, locked, and out of sight in vehicles. Ultimately, HB 148 received 65 votes but fell six votes short of the supermajority needed for passage in the House of Representatives.

Gambling expansion

Despite objections by Governor Pat Quinn, a massive expansion of casino gambling was approved by the legislature. Under the bill, residents of northeast Illinois will now be within 90 miles of a casino. Five new "riverboat" casinos will be located in Chicago, Lake County, Danville, Rockford and the south suburbs. In addition, a "Racino" (combination of a casino and horseracing) will be created at the Illinois State Fairgrounds in Springfield.

Proponents, including newly elected Chicago Mayor Rahm Emanual say the expansion will mean thousands of new jobs and tax revenues for local governments, while opponents point to increased costs to deal with social issues aggravated by making gambling more accessible, like compulsive gambling and effective enforcement to assure industry integrity. Governor Quinn has already given hints he may use his veto powers to significantly alter the bill, but has not indicated just how far he might go.

Illinois' 2012 budget

Despite a record income tax increase passed by the 96th General Assembly during the closing hours of the veto session in January, Illinois still faces a multi-billion budget deficit. Six weeks following his inauguration, Governor Pat Quinn provided his budget address that included a nearly $35.4 billion spending plan for the coming fiscal year. During the course of budget negotiations, House Democrats and Republicans worked together on a $33.2 billion budget. Senate Democrats preferred a higher spending plan ($34.3 billion) while Senate Republicans unveiled a measure cutting spending by another five billion to a $29 billion level. Ultimately, the General Assembly passed a budget at the lower $33.2 billion level.

Governor Quinn has publicly indicated that the budget passed by the General Assembly does not address his core needs in education and health care, seemingly threatening a veto. However, while he can use a line-item veto to reduce spending, the Governor cannot add additional spending. Senate Democrats attempted to add $430 million in additional spending to a capital infrastructure re-appropriation bill but it was rejected in the House, which could lead to a halt in construction projects this summer.

At press time, it appears likely that Governor Quinn will call lawmakers back to Springfield in the next several weeks to address the state budget and capital infrastructure program. ■

EDGE TAX CREDIT

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Annual progress reports

The human resource department will also have a role in the annual reporting process required by Illinois law. Under the Illinois Corporate Accountability for Tax Expenditures Act (20 ILCS 715/1 et. seq.), businesses that receive state incentives, including the EDGE Tax Credit, must submit annual progress reports. This includes reporting the type and value of development assistance as well as headcount data as of December 31 of each year. (See 20 ILCS 715/20(b).) Specifically, the business must provide the "total number of employees at the specific project site on the date that the application was submitted to the State granting body and the applicant's total number of employees at the specific project site on the date of the report, including the number of full-time, permanent jobs, the number of part-time jobs, and the number of temporary jobs, and a computation of the gain or loss of jobs in each category." (20 ILCS 715/20(b)(5))

The Corporate Accountability reporting requirement is separate from (and in addition to) the reporting requirements under EDGE. The Corporate Accountability annual progress reports are completed online. DCEO will normally send a company the log-in information and instructions. The web site is: www.ilcorpacct.com/corpacct.

Effective January 1, 2011, "a recipient of multiple development assistance agreements in the same award year and for a single project site may file a consolidated progress report if the applicant's base number of employees and number of jobs to be created and retained as stated in the multiple development assistance agreements or applications are the same." (35 ILCS 715/20(b) (P.A. 096-1429)) This provision could apply to a business that received the EDGE Tax Credit and a training grant, for example.

Many companies usually assign the annual progress reporting to the human resource department because it has the headcount data necessary to complete the reports.

The foregoing article explains the important role a companies' human resource department plays with regard to the credits and incentives offered by Illinois. As explained above, accurate job data (current and projected) is essential in order to meet the agreed upon commitments and secure the valuable credits and incentives offered by Illinois. Involving the human resource department in every step of the process will help to avoid the common problems that are associated with securing these credits and incentives. ■

JULIE A. PROSCIA

Changes at the new NLRB may affect your business

Since 2009, the National Labor Relations Board ("NLRB") and the NLRB's General Counsel's Office have both been controlled by Democratic appointees for the first time in over a decade. In the past year, the newly-reformed Board has taken unprecedented steps to regulate the national workforce in new ways, and reversed major Board precedent in ways that may have a significant impact on the manufacturing industry. This article will examine just a few of the notable changes at the NLRB in the past year.

Workplace posters and rulemaking

In December, 2010, the NLRB caused a stir by announcing a proposed rule that would require all employers under its jurisdiction — union and non-union — to hang a poster notifying employees of their rights under the NLRA. The proposed poster would inform employees that they have the right to do any of the following:

- Collectively negotiate wages, hours, and other terms and conditions of employment;
- Form, join, or assist a union;
- Discuss terms and conditions of employment with other employees;
- Take action with one or more co-workers to improve working conditions by, among other means, raising work-related complaints and seeking help from a union; and
- Strike and picket.

The Board's notice further advises that it is illegal for an employer to retaliate against employees for engaging in union activities, to prohibit employees from soliciting for a union during non-work time and in non-work areas, and to question employees about union activities in a manner that discourages such activity. The poster would contain the Board's web address and a toll-free number for workers to call if they believe their labor rights were being violated. Under the rule, an employer's failure to post the notice would be considered an unfair labor practice.

The announcement of the proposed rule was not only surprising because of its scope (creating a requirement for nearly all U.S. employers), but because the Board was proposing a rule at all. While the Board has the authority to promulgate regulatory rules, it has done so only once before in its 75-year history. The previous rule, created in 1988, governed a very specific issue — unit determination in acute healthcare facilities — and the rulemaking process involved four hearings in strategic cross-national locations, resulting in over 1,000 pages of testimony on the issue. This time, no one outside of the NLRB knew about the proposed rule until it was announced. Public comments were accepted for the statutorily-required period, but no hearings were held on the rule, and no other input from interested parties was sought.

The time frame for the public to submit comments about the rule ended on February 22, 2011. The NLRB has not provided any additional information about what changes may be made to the rule as a result of the comment period, or when a final rule is expected.

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SOCIAL MEDIA

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Thomson Reuters Corp. for its social media policy, which was applied to verbally discipline an employee who sent a tweet that said, "One way to make this the best place to work is to deal honestly with Guild members." Even though the issued discipline was extremely minor, the NLRB took the position that it, and the Company's allegedly overbroad policy, had a chilling effect on the employees' right to discuss their working conditions, in violation of the NLRA.

These recent developments from the NLRB should not come as a surprise, given the 2009 outcome of *Guard Publishing Co. d/b/a Register Guard v. NLRB* (D.C. Cir. 2009). *Register Guard* held that the company's discipline of an employee who used work e-mail to discuss her impressions of a union rally violated the NLRA. Like the outcome in *Register Guard,* the NLRB's recent targeting of companies' social networking sites is a sign that the agency is paying close attention to how employers monitor and respond to their employees' use of social media.

And the NLRB is not the first to take notice of employers' trend of cracking down on their employees' on-line activity in response of the recent explosion of social networking sites. In our Fall 2009 article on social networking sites that appeared in *The Illinois Manufacturer,* we discussed a number of court cases reflecting what has been a steady chipping away at the relatively free reign that employers previously enjoyed with regard to controlling what their employees do on line. Cases like *Pure Power Boot Camp v. Warrior Fitness Boot Camp* decided by a federal court in New York, *Stengart v. Loving Care Agency* decided by the Supreme Court of New Jersey, *Van Alstyne v. Electronic Scriptorium* decided by the Fourth Circuit Court of Appeals, *Pietrylo v. Hillstone Restaurant Group* decided by a federal district court in New Jersey and *Konop v. Hawaiian Airlines* decided by the Ninth Circuit Court of appeals, all resulted in outcomes against employers that accessed their employees' e-mails and password-protected social media accounts and took disciplinary action based on what they saw. These cases, and the recent developments from the NLRB, indicate that under the law, employees do enjoy a certain amount of freedom in discussing their jobs over the internet while the employers need to be measured and thoughtful in how they respond.

Employers, however, can take effective measures to protect themselves and their hard-earned reputations in a way that complies with the law through well-written, consistently enforced internet usage/ social media policies. To the extent such existing policies contain broad prohibitions against employees' use of social networking sites to discuss anything work-related, a revision is in order. Employers still can and should, instruct employees that the company's anti-discrimination and anti-harassment policies apply to their online posts, and that false, profane, discriminatory and harassing statements are prohibited. But employers should stay away from requirements that employees check with management before making any work-related posts, or broader prohibitions against "negative" or "disparaging" comments about the company or company management. Employers should also be careful of any policies, both in and outside the internet context, that limit employees from discussing their "work conditions," and "wages." In today's climate, provisions like these may well get unwanted attention from the NLRB and result in legal exposure.

> A good internet usage/social media policy should mention Facebook, LinkedIn and Twitter by name and reflect the employer's individual, working philosophy on the use of these and other social networking sites during work time.

A good internet usage/social media policy should also be updated to: (1) reflect today's technologies; (2) establish the company's ownership of electronic systems; (3) alert employees as to the employer's appropriate monitoring practices; (4) protect the company's confidential information and trade secrets; and (5) include a disciplinary and acknowledgment components.

For a policy to be taken seriously, it needs to reflect the employer's commitment to making it current and relevant. In our practice, we have seen too many policies that look like, and probably were, drafted in the last century, when the internet first made its debut in the workplace. They refer things like the "world-wide web" and "electronic mail" and actually define "blogging" as if it was first invented yesterday, but do not bother to mention the many new technologies relevant to today's workplace. A good internet usage/social media policy should mention Facebook, LinkedIn and Twitter by name and reflect the employer's individual, working philosophy on the use of these and other social networking sites during work time.

A good internet usage/social media policy should also make clear that the employer owns its electronic systems, and, relatedly, that these systems are subject to appropriate monitoring practices. This concept is important because it puts employees on notice that they do not have the unlimited right to do whatever they wish from their work computers. Employees should know that business computers are primarily for business use. Appropriately drafted ownership and monitoring language also provides notice to employees that they do not have privacy expectations when using their work computers. Although employers generally should not access password-protected/restricted e-mail and social networking accounts, publically accessible accounts and posts are fair game, both for current employees and job applicants. When such accounts feature inappropriate posts, an employer may, under appropriate circumstances, have legitimate grounds to take disciplinary action.

Employers should also consider

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Facebook, handbooks and wrongful termination at the NLRB?

In October, 2010, the Board announced (via press release) that it had filed a complaint against a Connecticut corporation for retaliating against an employee engaged in concerted action under the NLRA. The employee's supposed protected activity? She was terminated for posting disparaging comments about a supervisor on Facebook. See Complaint and Notice of Hearing, American Medical Response of Connecticut, Inc., Case No. 34-CA-12576 (NLRB Region 34, October 27, 2010).

Following a customer complaint about her performance, the employee was asked to participate in an investigative review and requested representation from her union. After her request was denied, she posted a negative remark about her supervisor on Facebook, which drew additional comments on her "wall" from some of her coworkers. While the complaint included allegations regarding the denial of union representation, the NLRB's focus was on the company's employee handbook, which contained a "Blogging and Internet Policy" that read, in part:

Employees are prohibited from making disparaging, discriminatory or defamatory comments when discussing the Company or the employee's superiors, co-workers and/or competitors.

The NLRB alleged in its complaint that the employee "engaged in concerted activities with other employees by criticizing [her] supervisor . . . on her Facebook page." The allegation of concerted activity was not connected in any way to the employee's union affiliation.

While the American Medical Response (AMR) matter settled before a hearing was conducted, the case shows that the NLRB is making restrictions in employers' social media and internet policies a priority. Indeed, this complaint marks a complete reversal of the interpretation of a nearly-identical social media policy by the previous General Counsel only a year prior. While the previous General Counsel saw no detriment to a social media policy restricting disparaging remarks, the AMR settlement required an agreement from the employer to scrap the blogging and internet policy at issue, and an acknowledgement that the policy interfered with employee's rights to discuss wages and other conditions of employment.

The Board's focus on social media policies means employers in manufacturing will have to be very cautious of how they control or manage what is said by their employees online. While employers absolutely must protect their public image, especially in this tenuous economic environment, over-reaching control may be considered an unfair labor practice by the Board, regardless of whether unions are involved.

Opening up objections to failed union elections

In two recent cases, *Austal USA, LLC,* 356 NLRB No. 65 (2010), and *Community Medical Center,* 355 NLRB No. 128 (2010), the Board reversed prior precedent, ruling that unfair labor practice allegations can be considered for setting aside a union election, even where those practices were not objected to in the official election objections. This ruling "effectively overruled" a previous case, *Super Operating Corp.,* 133 NLRB 241 (1961), which the new Board called an "anomaly."

In *Super Operating Corp,* the Board ruled that union allegations of unfair labor practices that it claims interfered with the results of an election cannot be considered unless the union also raised those practices as official objections to the election. In *Austal USA,* an employee was discharged, allegedly for participating in a union organizing drive. Even though the unfair labor practice was not raised as an objection, the Board, relying on similar language in *Community Medical Center,* supra, held that "the interests of employee free choice require that the unfair labor practice allegations be considered as grounds for setting aside the election even though not specified in the election objections." *Austal USA,* 356 NLRB No. 65. The Board then ruled that the union organizer's discharge affected the election results, and approved of the decision to set aside the election.

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that without a well-drafted internet usage/social media policy, they risk compromising their confidential, sensitive information if their employees decide to share this information on-line. Employers' policies should prohibit the dissemination of proprietary information pertaining to the company, its affiliates and clients.

To help ensure that the internet usage/social media policy is actually followed, it should be drafted to include a disciplinary component, require employee acknowledgment, and it should be appropriately and consistently enforced. A policy's effectiveness is limited, if not nonexistent, unless disciplinary action is expressly tied to its violation. An internet usage/social media policy, like other important employee relations policies, should specifically state that its violations are grounds for disciplinary action, up to and including termination of employment. In addition, the utilization of good policy dissemination practices, including requiring employees to sign off on acknowledgments that they received, reviewed, and agree to abide by their employers' policies, will help minimize an employee attempting to feign ignorance as to these policies later. And a good policy on paper only has limited, if any, utility, unless it is actually enforced. All employees should be required to review, and periodically re-review, the policy, and managerial employees should be trained in how to recognize and appropriately respond to potential problems as soon as they arise.

With the recent developments in the social media arena, employers cannot afford to ignore their employees' use of social networking sites any longer. Now is the time to give your internet usage/social media policies a fresh look, to ensure legal compliance and effectiveness. ■

IMA members receive awards for environmental protection practices

Since 1987, Illinois Sustainable Technology Center (ISTC) has presented Governors awards to organizations in Illinois that have demonstrated a commitment to environmental excellence through outstanding and innovative sustainability practices. Organizations who are winning for the first time received the Sustainability Award. Those organizations that have won in past years and are continuing their environmental efforts are awarded a Continuous Improvement Award.

"These businesses and organizations have shown that it is possible to create and maintain conditions under which people and the environment can exist in productive harmony, and fulfill the social and economic requirements of present and future generations," said Manohar Kulkarni, ISTC Director.

The 2010 Continuous Improvement Award winners include: Abbott, Abbott Park; Ball Food & Household Products, Danville and Elgin; Baxter Healthcare, Renal Division, McGaw Park; GE Healthcare IT, Barrington; and McDonald's Corporation, Oak Brook.

2010 Governor's Sustainability Award (first time winners) recipients include Southeastern Container, Inc., Effingham.

Information on the Governor's Sustainability Awards is available from the Illinois Sustainable Technology Center, www.istc.illinois.edu.

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Dykema ranked a "Top 100 Law Firm for Diversity"

IMA member company Dykema Gossett, PLLC has been ranked a 2011 "Top 100 Law Firm for Diversity" by *MultiCultural Law Magazine,* a distinction Dykema has earned every year since the inception of the publication. The 2011 results also include two rankings in the publication's specialized lists: "The Top 100 Law Firms for Women" and "The Top 100 Law Firms for Native-Americans."

The recognition complements Dykema's commitment to diversity and its mission to develop, maintain and promote an inclusive environment reflective of all backgrounds. The firm believes that a diverse workforce contributes to the quality of its work product, and helps its attorneys and staff better understand each other, the firm's clients and the communities within which they work.

"We believe that as corporate citizens, it is our responsibility to lead and educate our peers in matters of diversity," said Rex E. Schlaybaugh, Jr., Chairman and Chief Executive Officer. "Our attorneys and staff regularly champion diversity through Dykema's scholarship and mentoring programs — as well as their involvement in many professional organizations devoted to fostering diversity and inclusion in the legal community."

To learn more about Dykema, visit www.dykema.com.

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OTTO celebrates 50 years of unmatched quality and performance

IMA member company OTTO, a manufacturer of communications accessories and operator controls, proudly marks a milestone in 2011: a half-century of manufacturing and engineering expertise.

Known today as a prominent leader in the controls and communications industries, OTTO engineers and manufactures equipment for federal, military and commercial applications around the globe. In the Controls division, OTTO produces several styles of switches in addition to control grips used in heavy operating machinery for industrial, agriculture, construction and aerospace sectors, among others. OTTO Communications provides a comprehensive line of two-way radio accessories such as speaker microphones, surveillance kits and headsets employed in public safety, industrial and hospitality industries.

In 1961, Jack Roeser founded the company as a high-quality manufacturer of ultra-dependable controls. In the 1980s, OTTO was presented with an opportunity to design and manufacture a basic switch used inside of a surveillance kit and offered to produce the entire finished good. Thanks to the vertically integrated manufacturing resources in place, OTTO realized the opportunity for new business and launched its Communications division. Years of dedication, innovation and precision have built OTTO into a globally respected, high-quality manufacturer with more than 200,000 square feet of manufacturing capabilities.

All of OTTO's design, testing and manufacturing processes are based in the US, and have earned the company a worldwide reputation for superior performance and engineering. OTTO's employees, partners and clients have played a role in building OTTO into the company it is today. CEO since 1987, the founder's son, Tom Roeser, has taken OTTO to new heights. Of the company's progress, founder Jack Roeser says "We appeal to the customer because of our close working relationship between sales, engineering and responsive manufacturing."

OTTO proudly celebrates its 50-year history throughout 2011 and has big plans for a bright future involving growth, innovative ideas, new product development and leadership. For more information on OTTO, visit www.ottoexcellence.com.

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BOPI awarded Green Business Excellence Award at the McLean County Chamber of Commerce Annual Gala

Bloomington-based BOPI, the recipient of the 2010 Corn Belt Energy Green Business Excellence Award, has gone to great lengths in its commitment to making a positive impact on the environment and the world. Whether its through the use of ecologically-friendly inks, paper from certified renewable forests, power from sustainable sources or through processes that promote recyclability and ecological responsibility, IMA member company BOPI takes pride in being an earth-conscious company which takes the steps necessary each

day to be a good environmental citizen. "The commitment that BOPI made to the environment is an outgrowth of who they are as people," said Rick Galbreath, president and founder of Performance Growth Partners. "I think they are wonderful role models for corporate responsibility in our community." See the awards video at www.youtube.com/watch?v=juJ3UMBb528, or visit www.bopi.com for more information.

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IMEC and the Illinois Sustainable Technology Center combining forces to drive sustainability

Helping Chicago area manufacturers reduce the impacts of their operations on the environment and improve profits is the aim of a newly created strategic alliance between the Illinois Manufacturing Extension Center (IMEC) and the Illinois Sustainable Technology Center (ISTC).

Under the agreement, the two non-profit business assistance organizations will jointly conduct in-depth assessments of manufacturing production processes, and deliver training and technical support to help companies prevent pollution, divert solid waste from landfills, and increase energy efficiency. The collaboration will also focus on providing manufacturers with information on waste-reducing technologies and sustainable management practices.

"The combination of IMEC and ISTC resources will give area manufacturers a holistic approach to environmental impact reduction," said Manohar Kulkarni, Director of the ISTC, a division of the Institute of Natural Resource Sustainability at the University of Illinois.

Since 1985, ISTC has helped more than 2,600 Illinois companies with projects ranging from industrial fluid purification, to carbon sequestration and environmental cost analysis. ISTC operates a state-of-the-art sustainability laboratory with sophisticated analytical capabilities at the University of Illinois Campus in Champaign. ISTC engineers also work on-site with Illinois companies to provide customized environmental assistance. ISTC's Oak Brook office is headed by Deb Jacobson, Regional Operations Manager, who will be the first point of contact for this strategic alliance.

The alliance will build on IMEC's successful Waste to Profit and Green Supplier Networks, and the Lean and Clean Review. Since 2006, the Waste to Profit Program has reduced landfill consumption by facilitating the transformation of one company's waste, or by-products, into an input that can be utilized by another company. The Green Suppliers Network works with large manufacturers to engage their suppliers in low-cost technical reviews to identify strategies for improving process lines and using materials more efficiently. Lean and Clean Reviews target and eliminate the root causes of implementing lean manufacturing and six sigma techniques.

"We know that manufacturers account for nearly a third of U.S. energy use, and are responsible for the majority of carbon emissions," said David Boulay, IMEC President. "Working with ISTC, we can show manufacturers how they can deploy proven continuous improvement methods to cut environmental waste, and do it profitably."

Since being created in 1996, IMEC has generated more than $1 billion in productivity, sales and cost-saving economic benefits for Illinois manufacturers. Part of a nationwide network of federally-funded non-profit organizations, IMEC was recently awarded a $2.5 million grant from the U.S. Department of Commerce's Manufacturing Extension Partnership (MEP) program to serve the Chicagoland market.

The two organizations will also produce information workshops and webinars, and IMEC will market ISTC services to its clients.

A non-profit organization with 10 field office locations throughout Illinois, IMEC is part of the National Institute of Standards and Technology's Manufacturing Extension Partnership. IMEC also receives additional funding from the Illinois Department of Commerce and Economic Opportunity. More information can be found at www.imec.org.

The Illinois Sustainable Technology Center (ISTC) is a Division of the Institute of Natural Resource Sustainability at the University of Illinois. More information can be found at www.istc.illinois.edu.

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Former IMA Board member Anthony Rudis turned 100 in January

It's not every day you meet a centenarian, but Loyola University Health System primary care physician Dr. Josephine Dlugopolski-Gach has helped one astonishing Chicago-area community member celebrate 100 years of life.

Born the son of a coal miner in Chicago, Anthony Rudis turned 100 on January 14. Though he made an impact around the world, Rudis always lived close to the city he loved.

"I've always felt that the world is my oyster and that life is precious and priceless," said Rudis. "But you have to realize what is really important and make priorities."

Rudis did just that. Rudis was the founder of a steel fabrication business that supplied resources for the nuclear power industry, as well as locks and dams for the US Department of Defense. He was the president of the Lithuanian American Council, International Trade Club of Chicago, on the Board of Directors of the Illinois Manufacturer's Association, director of National Strategy Forum and even ran for US Congress in 1958.

Even with all these accomplishments he never lost sight of what was important to him: his Catholic faith; his family, which includes four children, nine grandchildren and four great-grandchildren; but most all his beloved wife, Mary, who passed away after 68 years of marriage.

Mr. Rudis lives in Monee, Illinois, with his son Tony Rudis, Jr.

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AT&T providing relief to flood victims in southern Illinois

AT&T Illinois is offering services to assist residential and business flood victims in deep southern Illinois. AT&T Illinois residential and

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TRICLOSAN

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from its dish soap. GlaxoSmithKline has reportedly removed triclosan from its popular mouthwashes and toothpastes. The European Commission has announced that triclosan had been formally withdrawn for use as a food contact additive.

All of this pressure has come to bear on triclosan despite the fact, that after 40 years on the market, no one has ever proven that triclosan is harmful to humans. Neither the FDA, EPA or any other U.S. regulatory body has ever formally declared that triclosan is harmful. It remains a legal, approved product.

Staying off the "list"

Still, the anti-triclosan drumbeats are unmistakable. Brand managers at consumer products companies and retail chains must now be considering whether to remove triclosan from the products they make and sell.

What is the lesson of triclosan? How can other manufacturers prevent their products from becoming the targets of similar attacks?

These are difficult questions. The manufacturers of triclosan and their trade association, the American Cleaning Institute, have strenuously defended the product against "fear mongering." Unfortunately, these efforts have not ended the attacks on the product. It seems that once public opinion turns against a product, no amount of level-headed discussion or good science may be able to save it.

The following are some strategies that may help product manufacturers and distributors avoid the issues that have confronted triclosan. None of these comes with a guarantee. Public opinion is unpredictable, and in these days of viral marketing and lightening-fast communication, a product may come under attack seemingly overnight. Still, there are some things manufacturers and distributors can do to help minimize their risks.

- **Stay on top of the science:** Even if your company is not the primary manufacturer of the active ingredients you use, it is beneficial to stay apprised of the developing science surrounding the product. This may be as simple as setting an alert through Google or some other search engine which will deliver an update once daily if the product has been mentioned in news reports or blogs. If negative studies are published regarding a product you use, it helps to know about them sooner, rather than later.

- **Attempt to obtain an environmental certification:** "Sustainability" and "Green Chemistry" are difficult concepts to define, but consumers are increasingly demanding that manufacturers work to minimize the impacts of their products on the environment. There are numerous third-party services which evaluate products and provide independent verification and certification of environmental, sustainability, stewardship, quality, safety and purity claims. The process can be expensive, but it is becoming increasingly important to retailers that products they sell undergo such third-party evaluations.

If negative studies are published regarding a product you use, it helps to know about them sooner, rather than later.

- **Work with industry associations to promote good science and good public relations:** Many of the attacks on triclosan and similar products followed non-standard and non-verified scientific tests which somehow gained public attention. If you suspect that a product you make or sell will be subject to such an attack, it may be helpful to support independent, standardized testing to help prove that the product is safe. Industry associations are an excellent vehicle for such testing as they are able to pool the resources of multiple manufacturers and distributors. They also help distance the industry members from the research, helping to blunt claims of undue influence by industry members over the independent researchers.

- **Have a backup plan:** No amount of careful planning can prevent all unfounded attacks on products like triclosan. It may be useful to have an approved substitute product ready to introduce. Issues of cost, availability and effectiveness will all come into play, and the switch to a substitute may create a perception that there was something wrong with the original product, but being able to quickly introduce a substitute product may be necessary to keep your customers happy.

- **Cost shifting:** This is a less desirable option, but if you suspect that a product you are making or selling might come under attack — especially a legal attack — you may wish to evaluate your supply contracts to see if it is necessary to insert, strengthen or eliminate indemnification language. You may also wish to evaluate your insurance policies to see if you have coverage for product liability and consumer fraud claims.

- **Litigation:** This is perhaps the least attractive and least predictable option, but if the statements being made about your product are untrue, there are numerous federal and state laws that allow for recovery based on false advertising claims. The details of these claims are beyond the scope of this article, but you should consider consulting counsel if you believe you have been damaged by untrue statements about a product you make or sell.

In retrospect, could anyone have predicted that a 40-year old product like triclosan would suddenly attract so much negative attention and be placed on manufacturers' and retailers' lists of "dirty ingredients" or "priority substances?" It's difficult to say how such attacks begin or where they come from. Unfortunately, there is no sure-fire strategy for making sure that your product is not the next triclosan. Following the steps outlined in this article, however, should help you to minimize the risk that your product will show up on such a list. ■

NLRB

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Pro-union clothing can replace uniforms

Finally, in *Stabilus, Inc.*, 355 NLRB No. 61 (2010), the Board ruled that an employee's right to wear pro-union garb extends even to the extent that the pro-union clothing replaces or supplants a required uniform. In *Stabilus*, an employee was prohibited from wearing a union t-shirt during a certification election, because the company had a handbook policy requiring all employees to wear shirts bearing the company name. The Board found that the policy in and of itself was overbroad, and was applied to the employees in a discriminatory manner. In support of its radical rebalancing of the rights of management and employees, the Board noted that *Stabilus* had relaxed the policy in special circumstances in the past, such as the days following the terror attacks of September 11, 2001.

What these changes mean for your business

Through its actions, the Obama Administration's NLRB has made clear that it intends to expand its traditional role. These changes in long-standing Board precedent are clearly geared toward giving unions a much more visible presence in work facilities, through notice posters, and relaxing of management prerogatives over issues like uniform or workwear rules. These shifts also mean that unions will have a much easier time convincing the Board to set aside lost election results, and to carry a much more visible presence during organizing campaigns and elections through worker clothing and "concerted action" such as social media posts. Additionally, the AMR and Stabilus cases reveal a clear push by the Board to examine companies' handbooks and other policies at an unprecedented level.

These are major shifts in Board policy that may have a serious impact on both union and nonunion companies in the manufacturing industry. In particular, union membership for manufacturing employees has declined in the past two years, while productivity and overall output have started to increase. Given the focus on manufacturing's involvement in the economic recovery, and the decline in membership, unions will likely use the new leeway granted by the Board to try and regain ground industry-wide. The Board's very public willingness to prosecute issues for non-union employees could also embolden union supporters to bring charges long before a formal labor campaign has begun.

Additionally, as manufacturers continue to improve their lean and other efficiency designs, care must be taken to ensure that changes in workforce policy or structure, including workwear rules, leave policies, etc., do not violate the NLRA's protections. Employers (even non union employers) must also understand that, with the Board's current stance on internet and communication policies, any employee commentary regarding changes in quotas, take time, or other productivity expectations, whether at the water cooler or on a Facebook wall, may be protected "concerted activity" under the Act. If you believe an employee's complaints about work changes warrant discipline, contact with an attorney knowledgeable about Board precedent is imperative.

If you have any questions about this article, or would like assistance in union related issues, please contact author Julie A. Proscia, Esq. (See bottom of page 23 for contact information.) ■

MEMBER NEWS

Cont. from page 27

business customers displaced by flood waters in Alexander, Pulaski and Union counties are eligible to receive certain installation waivers and credits for call forwarding services to help keep them connected.

"This is a very difficult time for our fellow citizens who have been displaced by rising flood waters in deep southern Illinois. At AT&T, we want to support these flood victims in their hour of need and by providing waivers on installation services and credits for call forwarding, we can help them stay connected to their friends, family and loved ones when they need it most," said Paul La Schiazza, President AT&T Illinois.

AT&T Illinois, an IMA member company, will waive certain installation charges, provide installation jacks and associated wiring at no cost and provide a one month credit for certain call forwarding services through June 8, 2011, for eligible displaced residential and business customers in those three Illinois counties.

"As state and local officials respond to flooding across southern Illinois, I salute businesses like AT&T, which are also joining the effort to help Illinois' families and small businesses recover," said Gov. Pat Quinn. "By working together, the people of Illinois are showing that we can overcome any challenge."

"This is a trying time for many residents of Alexander, Pulaski and Union counties who are displaced from their homes by flood waters," said State Rep. Brandon Phelps. "They need some help right now and this support from AT&T is going to help make their lives a little easier when they could use it most."

The company will waive installation charges for eligible residential and business wireline customers who are moving to a temporary location or a new permanent location because of flood waters or are returning to their original location after the flood waters recede.

To learn more about these offers for displaced customers in Alexander, Pulaski and Union counties, residential customers can call 800-288-2020 and business customers can call 800-321-2000.

Additional information about AT&T Inc. and the products and services provided by AT&T subsidiaries and affiliates is available at http://www.att.com.

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Advertiser Index

New IMA members

ACXIOM CORPORATION
Downers Grove, IL

ALARM DETECTION SYSTEMS, INC. (ADS)
Aurora, IL

ALTERNATIVE STAFFING, INC. (ASI)
Cicero, IL

ASSOCIATED BANK
Chicago, IL

CHILDRESS DUFFY, LTD.
Chicago, IL

CIGNA MIDWEST MARKETS
Chicago, IL

CLARK HILL, PLC
Chicago, IL

COCA-COLA REFRESHMENTS, USA, MIDWEST REGION
Niles, IL

EAGLE MOTOR SPORTS
Springfield, IL

FAUSKE & ASSOCIATES, LLC
Burr Ridge, IL

GATEWAY DISTRIBUTION, INC.
Lebanon, IL

GETZ FIRE EQUIPMENT COMPANY
Peoria, IL

GRANT THORNTON, LLP
Chicago, IL

HARRIS COMPANIES
Atwood, IL

MEDTRONIC, INC.
Downers Grove, IL

MESIROW FINANCIAL INSURANCE SERVICES, INC.
Chicago, IL

MIDWEST PATTERNS, INC.
Quincy, IL

SATELLITE BROADCASTING & COMMUNICATIONS ASSOCIATION
Washington, DC

UNISTAFF, INC.
Northlake, IL

US BANK
Chicago, IL

WATER WELL SOLUTIONS – ILLINOIS DIVISION
Elburn, IL

WINTRUST FINANCIAL
Chicago, IL

2011 Calendar of events

JULY 2011

July 12, 2011
Time Management & Personal Effectiveness Skills, DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago
For more information or to register, visit: http://www.ima-net.org/jul-12-mit-time-management-ski.

July 20, 2011
Essential Leadership Skills for Front Line Managers and Supervisors, DePaul University O'Hare Campus, 8770 W. Bryn Mawr Avenue, Chicago
For more information or to register, visit: http://www.ima-net.org/july20-mit-essential-leadershi.

July 26, 2011
Strategic Planning & Goal Setting, DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago
For more information or to register, visit: http://www.ima-net.org/jul-26-mit-strategic-planning.

AUGUST 2011

August 3, 2011
Essential Internal Training Skills and Techniques, DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago
For more information or to register, visit: http://www.ima-net.org/aug3-mit-essential-internal-tr.

August 5, 2011
IMA Small Manufacturers Council DoubleTree Hotel, Oak Brook
8:00 am-12:00 noon. Contact: Jim Nelson, jnelson@ima-net.org.

August 11, 2011
World Class Negotiating Skills, DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago
For more information or to register, visit: http://www.ima-net.org/aug-11-mit-event-world-cla.

August 18, 2011
Effective Presentation Skills, DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago
For more information or to register, visit: http://www.ima-net.org/aug-18-effective-presentatio.

August 23, 2011
Customer Service Excellence, DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago
For more information or to register, visit: http://www.ima-net.org/aug23-customer-service-excelle.

SEPTEMBER 2011

September 9, 2011
Effective Business Writing Skills, DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago
For more information or to register, visit: http://www.ima-net.org/sep9-effective-business-writ.

Visit http://www.ima-net.org/special-events or http://www.ima-net.org/training-events for information, pricing, etc., and a complete listing of IMA and IMA-MIT offerings.

Quarterly Economic Update

citibank

Our updated forecast still anticipates growth averaging near 3% this year and next as a reprieve from rising energy costs is buoying real incomes and confidence as the peak driving season approaches. Supply chain disruptions are slowing factory output and shipments near term but financial conditions thus far remain supportive. Job growth has accelerated and consumer spending in autos and discretionary areas suggests a key element of recovery is on track despite the dip in Q1 growth.

Monetary policy is expected to keep overnight rates unchanged into the first few months of 2012. We still expect the first rate hike around March of next year, preceded by a step-up in reserve-draining operations to underpin a higher rate target. Officials have signaled that reinvestment of MBS redemptions will continue at least for a time beyond the announced June end of net new asset purchases. Management of overnight interest rates is expected to have primacy over the balance sheet once exit strategies begin. Rising headline inflation has prompted greater policy caution but officials still have high hurdles for unwinding accommodation barring a loss of public confidence in low underlying inflation.

Forecasts for inflation have peaked for the time being, now showing some near term relief from rising costs for energy and commodities. Importantly, the backdrop of continued high unemployment, anemic wage growth, unused capacity and wide profit margins does not support a forecast of spreading price pressures. This setting is expected to hold cyclical pressures on bond yields at bay despite background concerns about fiscal sustainability and possible brinkmanship over new public borrowing authority.

To discuss how this data can impact your business please call:

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United States Economic Forecast 2010-12F

		2010	2011F	2012F	2010 4Q	2011 1QF	2011 2QF	2011 3QF	2011 4QF	2012 1QF	2012 2QF	2012 3QF
GDP	SAAR				3.1%	1.8%	3.0%	3.9%	3.8%	2.4%	3.1%	3.0%
	YoY	2.9%	2.7%	3.1%	2.8	2.3	2.6	2.9	3.1	3.3	3.3	3.1
Consumption	SAAR				4.0	2.7	3.0	3.7	3.3	1.5	3.0	3.0
	YoY	1.7	3.1	2.8	2.6	2.8	3.0	3.4	3.2	2.9	2.9	2.7
Business Investment	SAAR				7.7	1.8	6.5	8.6	10.0	8.9	9.0	9.3
	YoY	5.7	7.0	9.0	10.6	9.0	6.5	6.1	6.7	8.5	9.1	9.3
Housing Investment	SAAR				3.3	-4.1	10.1	10.4	10.1	9.9	7.6	9.2
	YoY	-3.0	0.5	9.4	-4.6	2.5	5.6	4.8	6.5	10.1	9.5	9.2
Exports	SAAR				8.6	4.9	6.3	6.4	6.8	6.6	6.5	6.4
	YoY	11.7	6.7	6.6	9.0	7.3	6.7	6.6	6.1	6.6	6.6	6.6
Imports	SAAR				-12.6	4.4	6.7	2.4	5.1	3.9	4.5	5.3
	YoY	12.6	4.1	4.4	11.0	9.2	3.3	-0.1	4.6	4.5	4.0	4.7
CPI	YoY	1.6	2.9	1.7	1.2	2.2	3.3	3.3	2.9	2.0	1.4	1.5
Core CPI	YoY	1.0	1.3	1.5	0.6	1.1	1.3	1.4	1.6	1.5	1.5	1.5
Unemployment Rate	%	9.6	8.8	8.4	9.6	8.9	8.9	8.7	8.6	8.5	8.4	8.4
Gov't balance	% of GDP	-8.9	-9.2	-7.0								
Assumed WTI Spot Price	US$	79.4	99.3	99.7	85.0	94.0	100.0	99.8	100.3	99.6	100.1	99.7
Current Account	US$bn	-470	-504	-490	-455	-529	-497	-493	-496	-494	-492	-492
	% of GDP	-3.2	-3.3	-3.1	-3.0	-3.2	-3.4	-3.5	-3.5	-3.3	-3.2	-3.1
S&P 500 Profits (US$ Per Share)	YoY	37.0	14.6	7.1	34.2	19.0	15.2	13.3	11.5	6.5	6.9	7.

Notes: F: Citi forecast. YoY: Year-on-year percent change. SAAR: Seasonally adjusted annual rate.
Sources: Bureau of Economic Analysis, Bureau of Labor Statistics, [illegible], Treasury Department, Wall Street Journal and Citi Investment Research and Analysis.

Interest Rate and Bond Market Forecast (End of Period), as of 25 May 2011

US	Current	2Q 11	3Q 11	4Q 11	1Q 12	2Q 12	3Q 12
		Forecast End Period					
Policy Rate (Fed Funds) End Quarter	0.25	0.25	0.25	0.25	0.50	0.88	1.00
3 Month Libor	0.25	0.28	0.35	0.40	0.80	1.10	1.35
2 Year Treasury Yield	0.53	0.65	0.75	1.00	1.40	1.70	1.90
10 Year Treasury Yield	3.12	3.30	3.35	3.60	3.70	3.85	4.00
30 Year Treasury Yield	4.28	4.40	4.45	4.65	4.70	4.75	4.85
2-10 Year Treasury Curve	259.00	265	260.00	260	230	215	210
30 Year Mortgage Yield	4.55	4.65	4.75	5.10	5.35	5.60	5.75

Notes: [illegible]
Source: Citi Investment Research and Analysis

IMA

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