MANUFACTURERS GRAPPLE WITH NEW OVERTIME FINAL RULE

THE ILLINOIS Manufacturer

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Summer 2016

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Summer 2016

Columns

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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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Sorry Jack!

Illinois has lost nearly 300,000 jobs since 2000. Were a sizable portion of those jobs lost because of the implications of free trade agreements? There is no easy answer to this question.

When I joined the IMA in 1991, our long-time staff attorney was Jack Roadman. Jack handled various issues for the Association including international trade. He had one piece of advice for me concerning the issue of trade, "Greg, when someone wants to have a meeting on international trade, you schedule another meeting."

I have written about dozens of issues over the years and I have followed Jack's advice and mostly stayed away from trade issues. As an association representing the gamut of firms from large multinational organizations, small and medium-sized companies, agricultural companies to companies who have seen their products copied and patent rights stolen, there simply is no one-size-fits-all answer.

But this year, international trade is one of the many hot-button issues in the presidential race. Bernie Sanders, the socialist from Vermont, pushed Hillary Clinton to the brink in the primaries using trade policy and her previous support of NAFTA as a wedge issue.

Donald Trump took the issue of bad trade agreements and crushed 16 opponents in the primaries. The Republican Party, which — until this year supported "free trade" in all of its party platforms since World War II — now stands for rolling back NAFTA and is in opposition of the Trans-Pacific Partnership.

There are many reasons for this and the space given me here does not allow for a long and painful discourse on the pros and cons of this issue.

But, no matter what your views on this issue may be, trade is important to the economy of Illinois — especially today. Here are some of the facts:

- Illinois' total gross domestic product totaled $740 billion. In term of exports, Illinois' manufactured products accounted for $58 billion — or nearly 90 percent — of Illinois' total exports.
- Another $6 billion is directly related to our agriculture sector, which in turn supports our heavy equipment manufacturers.
- Nearly half of our exports go to Mexico and Canada, our NAFTA partners, and nearly 90 percent of all exports are shipped by small manufacturers.

Pro-free traders can go on and on about the virtues of all the "free trade agreements." Our largest multi-nationals and many of our small members benefit from these agreements.

But, many critics paint a much darker picture to the world of "free trade."

There is no question that the loss of manufacturing jobs has accelerated in the last 20 years. Illinois has lost nearly 300,000 jobs since 2000. Were a sizable portion of those jobs lost because of the implications of free trade agreements? There is no easy answer to this question.

But here are some additional facts to consider. In 2015, the balance of trade payments were a negative $759 billion in U.S. trade — 4.64 percent of the nations' GDP. Nearly 10 percent of that loss was with our trading partners — Mexico ($58 billion) and Canada ($14 billion) — the beneficiaries of NAFTA.

When politicians can point to the movement of auto manufacturing, air conditioning plants and refrigerator companies, it is very easy to blame a trade agreement for the loss of those jobs.

The world economic order is not a place of equals. The United States is by far the largest economy in the world, but we don't enjoy the huge lead we previously had. We attempt to live by the agreements made; the same cannot always be said about our trade partners. Without a doubt, countries like China manipulate their currency and dump products like steel to the detriment of our domestic steel industry. An industry once gone, may never return.

So after assiduously steering clear from the counter-flowing eddies of trade for 25+ years, why bring it up now? Simple: As it happens too often in political campaigns, the truth is often lost along the way.

Opponents of current and proposed trade agreements rightly point out deficiencies that our trade representatives allowed in previous agreements. But proponents must highlight the benefits derived from trading with the world and support stronger measures in upcoming agreements.

Our country's tax policy, our regulatory posture and legal system, all put our manufacturing workforce at risk. Technology, automation and a push for continued efficiency all drive to lower numbers in the workplace.

However, a change to protectionist policies will not benefit Illinois. ■

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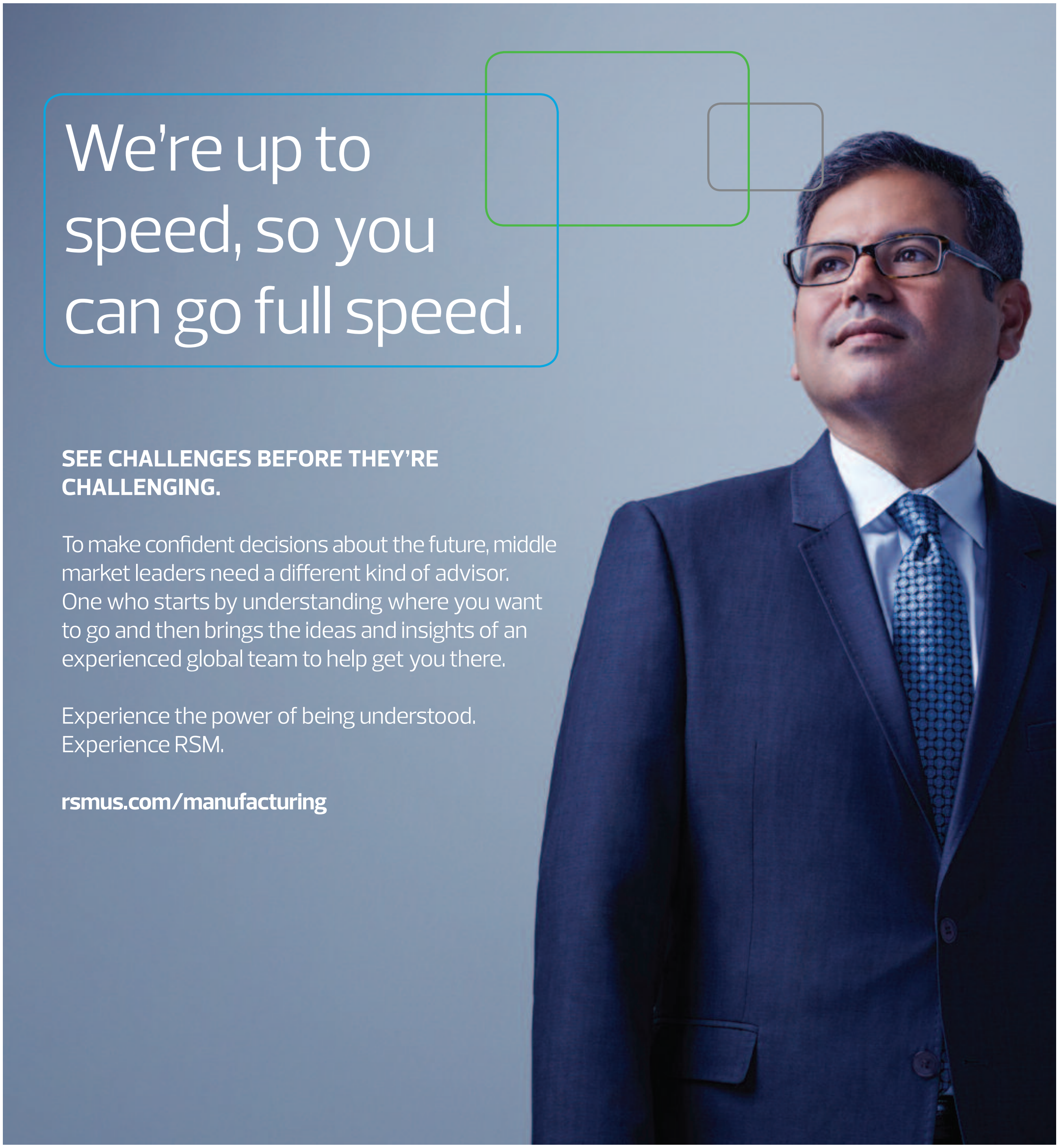
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While this stopgap budget released some pressure and allowed lawmakers to pat themselves on the back, it is not a solution and simply kicks the can down the road once again.

I am often asked to speak to audiences regarding the challenges plaguing Illinois, much of it self-inflicted by elected leaders and state government bureaucrats. More times than not, the discussion focuses on state debt. Eyes begin to glaze over when I talk about the billions and billions of dollars in debt that Illinois has racked up. That's because the amount of money is so vast that it's extremely hard to actually comprehend just how much money it is.

Illinois' short-term budget debt totaled more than $10 billion at the end of the fiscal year in June, along with unfunded pension debt that surpasses $110 billion.

Let me try to simplify it using data from a variety of sources, including NASA and the U.S. Bureau of Engraving and Imprinting, which manufactures dollar bills measuring .0043 inches thick.

- The height of a stack of 100 one dollar bills measures .43 inches, meaning that a stack of one dollar bills used to pay only our budget shortfall would measure 3,585,100 feet or 679 miles. This would reach three times higher than the orbit of the International Space Station.
- The length of a dollar bill is 6.14 inches, meaning that $10 billion laid end-to-end would measure 969,000 miles and would extend around the earth 16 times.
- If you went on a $10 billion shopping spree and were forced to spend $20 per second, it would take you almost 16 years to spend the money.

The lack of political courage and fiscal discipline by elected officials over the past decade is appalling. There is plenty of blame to spread around. State spending continues unabated despite the claims of many current lawmakers who contend that they have "cut the budget." The last time that the state budget was actually reduced was the final year of George Ryan's administration when he used the line item veto to reduce spending; and a Republican majority in the State Senate sustained these cuts.

In the last year — when Governor Bruce Rauner and majority Democrats were locked in a 364-day budget impasse — state spending continued largely due to court orders and consent decrees that sent money flowing out the door without restriction. Illinois had no budget in place and yet the state somehow found its way to host not only one, but two State Fairs, and the artist who carved the famed "butter cow" is still awaiting her $2,500 payment, nearly a year later.

Over the last year, our state debt grew at an amazing rate of $33 million per day. Every day, Illinois racked up $2.57 in debt for every man, woman and child living in the state.

That is unacceptable and outrageous.

With lawmakers facing the possibility of schools not opening on time this fall, they finally passed a temporary, six-month stopgap budget that allowed them to get out of Springfield and back home to their districts to begin campaigning. While this stopgap budget released some pressure and allowed lawmakers to pat themselves on the back, it is not a solution and simply kicks the can down the road once again. At the time, the IMA released a statement:

"While we recognize the work of the Governor and lawmakers to reach accord on a temporary, short-term budget after 364 days of inaction, the stopgap should not be considered a victory for Illinois taxpayers and businesses. Today's action is a band-aid that will temporarily relieve budgetary pressure, but does not solve the core problems plaguing Illinois. Manufacturers lost 15,000 good, high-paying jobs in our state last year and it's well past time that our elected leaders enact a real balanced budget and pro-business reforms that will grow our economy. Today's agreement will once again foist a property tax hike on manufacturers and other businesses in Cook County without offering any spending reform or job creation policies. The IMA stands ready to work with the Governor and lawmakers over the summer to reach consensus on key economic development reforms of tax policy, workers' compensation, pension reform, and the court system that will help stop the loss of middle class manufacturing jobs."

We now have less than 100 days until the General Election where every member of the House of Representatives and two-thirds of the Senate will be on the ballot. When you go into that voting booth, you can choose the failed policies of the past that are costing you $2.57 per day, or you can vote for change that will help turn our state around. ■

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The future of carried interest

What are the presidential candidates saying about carried interest?

The two presumptive major party presidential candidates both support changing the current tax treatment of carried interest. But what does that mean?

Hillary Clinton supports "ending the 'carried interest' loophole" as well as enacting a "Buffett Rule" to ensure that "no millionaire pays a lower effective tax rate than their secretary." In addition, Bernie Sanders' stance — which could still influence the party platform — pledged to "end the carried interest loophole that allows billionaire hedge fund managers to pay a lower tax rate than nurses and truck drivers." In addition, he pledged to render the benefits of carried interest almost worthless, by eliminating capital gains rates for couples with income over $250,000.

Donald Trump would end the current treatment for "speculative partnerships that do not grow businesses or create jobs and are not risking their own capital." However, taking personal compensation in the form of a profits interest in the annual operating earnings of a going concern could become more attractive, even without a capital gains break, since he would only tax operating business income at 15 percent.

There is evidently as much uncertainty about how the law might change as there is about whether or when it will change. What are some of the options?

Recap: what is carried interest?

A carried interest or profits interest arises when the manager of a partnership — or other employee or service provider to the partnership — is compensated for his managerial services with a percentage interest in the partnership's future income or gains. That may include capital gains if the partnership is engaged in buying and selling assets taxed at capital gains rates — or if the partnership is a business that sells all of its assets, including goodwill or other business assets generally taxed at capital gains rates.

When the taxpayer receiving the carried interest or profits interest is the founder or full-time manager or employee of an operating business, everyone seems to accept that capital gains treatment for his "piece of the action" is appropriate. It is the American dream, so to speak.

The leading Presidential candidates seem to believe it should be different if the partnership is not itself a conventional operating business, but is a fund that invests in commodities, securities, real estate or equity interests in other businesses. As a technical matter, it can be argued that the manager should be treated no differently than the manager or employee of a conventional business, and should be able to be compensated with a "piece of the action" that is taxed at capital gains rates. But many believe that the manager's activities look too much like managing money or managing real property, not managing a business, and should not be able to enjoy the same treatment that is provided for a partner who is a full-time manager or employee of an operating business.

Any proposal to change the treatment of carried interest must first define the term.

At one extreme, new rules could apply across the board to any partnership interest received or held on account of the holder's provision of services to the partnership — including, say, the founder of a tech company who receives a substantial interest solely in exchange for his services in creating the company, without having to put up any substantial amount of cash or financial capital. Technically, some would argue that is a carried interest.

Others might say the new rules should only apply to partnerships that are investment or hedge funds that buy and sell commodities and

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securities on the financial markets for capital gains, or to private equity funds that buy and restructure other businesses, hoping to resell them at a capital gain, or to partnerships that buy, build or hold real estate with a view towards realizing a capital gain.

Thus, the first question for the politicians is what is the scope or definition of the partnership profits interests that will be subject to any rules.

What is the problem, what is the remedy?

Once it is defined, how should it be taxed? When a profits interest is granted, it typically has no readily ascertainable value. For that reason, the IRS and some courts have allowed it to be assigned a value of zero when it is granted. Thus, the grant itself does not give rise to any tax and if capital gains are later generated, a portion of them are passed through and taxed to the holder as capital gains.

Congress or the IRS could change this rule, and insist that the value of the interest be determined when it is issued, and taxed as ordinary compensation income at that time, as if it was a cash bonus that the recipient received, paid tax on, and then used to purchase an investment in his employer. That would be very difficult to apply, since the IRS, taxpayers and the courts would be tied up in disputes over valuation.

Congress could keep the zero valuation at issuance, but insist that all or a portion of any later capital gains be recast as ordinary income. It could be 100 percent, 50 percent, 25 percent or a number determined based on a formula, perhaps linked to how much the underlying assets have actually appreciated. For example, if the assets appreciated at five percent per year, perhaps they would be taxed entirely as ordinary income, but if the assets appreciated at 15 percent per year, then two-thirds of the gain, the amount in excess of a five percent return, might retain its capital gain treatment. Thus, a relatively certain return would be treated as ordinary income, but a riskier, more speculative return would be taxed at capital gains rates. That could make sense to reinforce the policy underlying capital gains rates in the first place — promoting entrepreneurial risk.

Other approaches?

If Congress completely eliminated capital gains breaks — as was done in the landmark 1986 Tax Reform Act when the top rate for all income was set at 28 percent — there would be no real need to change the rules for carried interest. The same is true if Congress eliminated capital gains breaks for anyone with income over $250,000 as Bernie Sanders has proposed. In that event, very few managers would get any benefits from carried interest.

If Hillary Clinton's proposal advanced to impose a minimum tax rate of 30 percent on income over $1 million, that would also substantially cut back on the benefits of carried interest. If the capital gains rate were 20 percent and the ordinary income rate were 40 percent, and a millionaire manager whose income was entirely carried interest was subject to a minimum rate of 30 percent, it would be the equivalent of taxing half of his capital gains as ordinary income. That would seem to meet the objectives of Clinton and Sanders to ensure that hedge fund managers pay higher tax rates than moderate income taxpayers. That may already be the case, as regards "average" or "effective" tax rates, but it would also be the case for "marginal" tax rates under such a proposal.

Finally, at least in the case of many operating businesses, if Donald Trump's proposal is enacted to tax all business income at 15 percent it may become attractive to hold onto certain successful businesses as "cash cows" whose income is taxable at 15 percent, rather than selling the business for a lump sum, just to ensure that the profits — attributable to the business becoming more profitable than it was when it was purchased — are taxed as capital gains. That would also make carried interest — and capital gains generally — of lesser importance to some taxpayers.

Final thoughts

Finally, just because the Presidential candidates agree — and assuming that one of them becomes President — there is no guarantee that anything will get done. With a divided government, we may be in for another four years of gridlock. One thing is almost certain — carried interest is not likely to be fixed as a stand-alone measure. If the Congress and the President cannot agree on a comprehensive reform, an item like this is unlikely to be pulled out and dealt with separately. It may be too valuable as a bargaining chip. Remember that it was widely expected that there would be a change to the rules governing carried interest in 2012 when the Congress and the President were forced to reach a consensus deal on the tax rates that would replace the expiring Bush-era tax cuts. To the surprise of many, nothing was done about carried interest, and that could happen again. ■

MARK ANTHONY SPOGNARDI, ESQ.

Manufacturers grapple with new overtime final rule

Compliance options require review of exempt classifications

On May 18, 2016, the Department of Labor ("DOL") announced its final rule governing overtime, which will take effect on December 1, 2016. This gives employers a few months to prepare for the changes. The final rule raises the salary threshold for exempt employees from $23,660 to $47,476 annually, or from $455 to $913 a week. The final rule also substantially raises the exempt compensation level for highly compensated employees from $100,000 to $134,000 annually.

The final rule updates the salary level threshold every three years, automatically, adjusting it to maintain it at the 40th percentile of full-time salaried employees in the lowest-wage census region of the United States, the South. The first update will take place in 2020, unless the rule is successful challenged in court, or is abrogated by Congress or the Department of Labor in the future. As of this date, there have been no court challenges to the final rule, although trade associations are expected to file lawsuits before the final rule takes effect. Congress is expected to propose defunding riders to appropriations bills, and also propose overturning the final rule through the Congressional Review Act.

This doubling of the current weekly salary threshold amount, is causing concern for many Illinois manufacturers. The DOL touts purely positive effects from the new rules: employees will get either 1) a salary increase to stay exempt, 2) paid the overtime rate of time and one-half for hours worked after 40; or 3) be limited to a 40 hour work week and have more time away from work. The final rule is estimated to make approximately 4.2 million currently exempt employees eligible for overtime. Many commenters posit that employees may end up worse off economically because of the final rule. This would result from the reclassification of employees from exempt salary status to nonexempt hourly status, and limiting the number of hours worked by employees to 40 or less per week.

Many employers are unaware of the final rule, and others are "grappling" with it because they have an imperfect understanding of what is required to lawfully treat an employee as exempt. The final rule increased the salary compensation levels, but it did not change the detailed and nuanced "salary basis" and "standard duties" tests that must be met for exempt status. This article should serve as a primer to briefly discuss the threshold criteria that must be met for an employee to be exempt from overtime. This includes a discussion of the salary basis requirement and the "white collar" overtime exemptions. This article also broadly examines the employer's options for compliance with the final rule.

The final Rule and threshold inquiries

Compliance analysis begins with an examination of three threshold tests necessary to establish an exemption from overtime law. These tests are: 1) the employee must be paid on a "salary basis" (the "salary basis test"); 2) the employee must be paid the new minimum salary of $913 per week (the "salary level test"), and; 3) the "standard duties" of the employee must be those encompassed within the white collar exemptions of *bona fide* executive, administrative, and professional employees (the "standard duties" test). As previously noted, the salary

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basis and standard duties tests have not changed. The final rule only changed the salary level test. However, many employers need to be reminded or educated about what these tests actually mean. Simply paying a high salary or providing particular job titles do not, by themselves, establish that an employee is exempt from overtime laws.

The Salary Basis Test

One commonly misunderstood concept is the "salary basis test." Being paid on a "salary basis" means an employee regularly receives a predetermined amount on a weekly or less frequent basis. The salary cannot be reduced because of variations in the quality or quantity of the employee's work. The employee generally must be paid the full salary for any week in which work is performed, regardless of the number of days or hours worked. Importantly, the employee does not have to be paid the salary for any week in which no work is performed. If the employer makes a deduction in the salary for a week in which business is slow, the employee is not paid on a "salary basis," and the employer would be subject to losing the exemption. Deductions may not be made for time in which no work is available, if the employee is available and willing to work.

Certain limited deductions from the salary may be made. A deduction may be made when an employee is absent for one or more full days for personal reasons other than sickness or disability; for absences of one or more days due to sickness or disability if the deduction is made in accordance with a *bona fide* leave plan; to offset amounts received for witness or jury duty, or military pay; for penalties imposed in good faith for infractions of safety rules of major significance; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions. Also, an employer is not required to pay the full salary in the first or last week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.

The Salary Level Test

As is noted above, the final rule requires that the minimum salary level be $913 per week, or $47,476 annually for a full time employee, in order to maintain an exemption from overtime. For the administrative and professional white collar exemptions, employees may also be paid on a "fee basis" rather than on a salary basis. If the employee is paid an agreed sum for a single job, regardless of the time required for its completion, the employee will be considered to be paid on a "fee basis." To determine whether the fee payment meets the minimum salary level requirement, the test is to consider the time worked on the job and determine whether the payment is at a rate that would amount to at least $913 per week if the employee worked 40 hours. For more information on "fee basis," see 29 CFR 541.605 and WHD Fact Sheet 17G.

The Standard Duties Test

The third criteria that must be met is the "standard duties test." This requires that the employee's primary job duties be the kind of work associated with an exempt executive, administrative or professional employee (commonly referred to as "white collar" employee exemptions).

The Executive Employee Exemption: In order to satisfy the Executive "standard duties" test, the employee's primary job duties must be "managing" the enterprise, or "managing" a customarily recognized department or subdivision of the enterprise. The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent. The employee must also have the authority to hire or fire other employees, or have their suggestions and recommendations as to the hiring, firing, advancement, promotion or any other status changes be given "particular weight."

"Managing" includes, *inter alia,* interviewing, selecting, and training employees; setting and adjusting pay rates and hours of work; directing employees' work; maintaining business records for use in supervision or control; evaluating employees; resolving complaints/grievances; disciplining employees; determining the means and methods of work and production; providing for safety/security; budgeting; and ensuring legal compliance. There is a special rule for "business owners." An employee who owns at least a *bona fide* 20 percent equity interest in the enterprise, and who is actively engaged in management, is considered a *bona fide* exempt employee.

The Administrative Employee Exemption: To meet the administrative employee exemption, the employee's "primary duties" must be the performance of office or non-manual work "directly related to the management or general business operations" of the employer or the employer's customers; and the employee's primary duty includes the exercise of discretion and independent judgement with respect to matters of significance. This means work directly related to assisting or running the business, as opposed to production, sales, or service work. It includes, *inter alia,* work in such areas as tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing procurement, advertising, marketing, research, safety, human resources, employee benefits, labor relations, public relations, government relations, computer and information technology administration, and legal and regulatory compliance.

The exercise of "discretion and independent judgement" means that the employee has the authority to make independent choices, free from immediate direction or supervision. It includes, *inter alia,* the authority to formulate, affect, interpret, or implement management policies or operating practices, the authority to waive or deviate from the same without prior approval, or to commit the employer in matters that have financial impact such as pledging the employer's credit. The fact that an employee's decisions are reversed or reviewed does not mean the employee is not exercising independent judgment.

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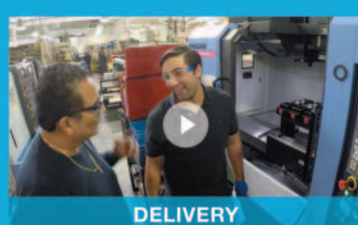

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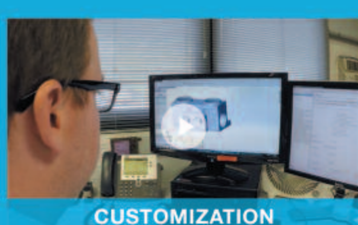

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The Professional Employee Exemption: There are two types of exempt professional employees: learned professionals and creative professionals. To qualify as a learned professional, the employee's primary duty must be the performance or work requiring advanced knowledge, which is work that is predominately intellectual in character and which requires the consistent exercise of discretion and judgment. The advanced knowledge must be in a field of science or learning and acquired by a prolonged course of specialized intellectual instruction, with is evidenced by the appropriate academic degree. Fields of science or learning include law, theology, accounting, actuarial computation, engineering, architecture, teaching, various physical, chemical and biological sciences, pharmacy and other occupations that have a recognized professional status.

To qualify as a creative professional, the employee's primary duty must be the work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. The requirements are generally met by actors, musicians, composers, soloists, certain painters, writers, cartoonists, essayists, novelists and certain journalists.

Examining Your Options for Compliance

A thorough audit of your exempt employees must be conducted to ensure that you are not misclassifying employees. Consider taking steps to preserve the confidentiality of your compliance review and audit by having the project led by legal counsel, with full participation by human resources. A failure to review whether an employee is properly classified as exempt is one of the most common and costly employment mistakes.

The employer has numerous options for compliance. All of these options are discussed with detailed examples on the DOL's website, and can be accessed at www.dol.gov/whd/overtime/final2016. First, an employer may determine after evaluation that there are no changes necessary. This would be the case where the employee is clearly paid on a salary basis, at or above the new salary level and performs the standard duties required to satisfy one of the white collar exemptions. This would also be the case where it is determined that while the employee does not meet the salary level, the employee never works more than 40 hours in a week.

Second, the employer may choose to raise the salary level of those who meet the duties test, where they regularly work overtime. Third, an employer may choose to continue the salary which does not meet the $913/week minimum, but pay the overtime premium for hours worked after 40 per week. In this situation, the employer is required by law to keep records of how many hours the employee works per week. Fourth an employer may choose to reorganize workloads, adjust schedules, spread out workloads, or hire additional employees. Finally, an employer may adjust the earning of employees, to establish a regular wage rate of employees, and pay them on an hourly basis, so that the total amount paid to employees for regular hours, plus overtime hours worked, is approximately the same. The employee's regular wage rate may not be below minimum wage. The employee's regular rate of pay and hours must be recorded.

Ultimately, the questions that will need to be asked and answered are: 1) Are employees properly classified as exempt or nonexempt under the rules?; 2) Are currently exempt employees below the increased minimum salary threshold, and how should such employees be treated in the future?; 3) What will be the economic impact of treating previously exempt employees as nonexempt in the future?; 4) How will the employer keep track of the hours of previously exempt employees who are now treated as non-exempt?; and 5) How will the employer's efforts to properly classify employees affect the organization's manning and scheduling requirements?

Conclusion

In the end, employers will need to sort through the issues to determine what approach works best for their organization. With the December deadline fast approaching, compounded by election year political manueverings, there is uncertainty as to whether the final rule will be defunded, overturned or enjoined before its effective date. The DOL's Wage and Hour Division budget for FY2017 has been increased by $50 million for a total of $277 million for wage and hour division enforcement. Moreover, the plaintiffs' bar is undoubtedly following these events, looking for opportunities. To ignore the final rule at this time poses potentially significant risk. Prudent employers will begin their examination now. ■

STEP Ahead Awards recognize women for excellence in manufacturing

By Allison McNamara, IMA intern from Illinois College

Women are changing the face of the manufacturing industry all over the nation. Although the number of women in the industry is seemingly low, that is changing rapidly, and Illinois is no exception to this trend. From the factory floor to corporate headquarters, women are stepping into roles that truly make the manufacturing industry stronger at every level.

On April 21st, the Manufacturing Institute recognized this change by honoring 130 women as recipients of the STEP Ahead Award. STEP represents "science, technology, engineering, and production." The STEP Ahead Award is given to women who are leaders within their companies and demonstrate excellence day in and day out. The Illinois Manufacturers' Association is pleased that 30 of these successful honorees are part of IMA member companies. From Executive Vice-President to Manufacturing Engineer to Human Resources, these women represent all levels of the manufacturing industry.

Alcoa Inc. is a company headquartered in Pittsburgh, Pennsylvania, that produces metals technology through engineering and manufacturing. Alcoa Inc. in Danville has been an IMA member since December 2014. The winners from Alcoa include **Megan Benadum, Danielle Berndt** and **Leslie Suffredini.** All three have outstanding careers involving leading teams, mentoring co-workers and advocating for the STEM field and the manufacturing industry.

Johnson & Johnson Vision Care is dedicated to giving everyone clear vision. **Keyana Caesar, Brigot Gunter** and **Barbara Parkerson,** all out of Jacksonville, Florida, were STEP Award recipients. Johnson & Johnson, in Chicago and Lansing, Michigan, have been members of the IMA since 2007. These women are prominent role models within and outside their company. They work hard to be community contributors, and strong mentors in the manufacturing industry.

AGCO Corporation is a global leader of agricultural solutions. The Assumption location has been an IMA member since 1997. They design, manufacture, and distribute agricultural solutions all around the world. From the AGCO Corporation, **Miranda Aarons, Jaclyn Clark,** and **Beth Tucker** all received the STEP Ahead Award. Aarons is a Line Design Manager. Clark is a Manufacturing Engineer and is also recognized as an emerging leader. Tucker is a Director of Quality. These three women continue to bring leadership, efficiency and growth to AGCO through their exceptional careers in manufacturing.

Two other recipients are **Lauryn King** and **Staci Kroon** from **Eaton Corporation.** Eaton Corporation is a power management company and the Lincoln, Illinois, location has been a member of the IMA since 2002. King, an emerging leader and Kroon, a dedicated employee of nearly 20 years, both excel in the mentoring and development of their peers at Eaton Corporation.

Two honorees from **3M Company** are **Addie Marie Lordemann,** an emerging leader, and **Valerie J. Young.** Lordemann is

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emerging as a leader in her first 4.5 years with 3M Company by successfully managing over $20 million in Capital Projects and by serving as an ambassador for 3M while advocating for STEM careers. Young is also an exemplary leader and has given 31 years to 3M Company. She gives her time and experience generously through mentoring and making time for people in the company. 3M Company (multiple Illinois locations) has been a member of the IMA since 2007.

John Deere is a founding member of the IMA, which was established in 1893, and a long time producer of farming equipment and more. Due to this rich history of production, it is no surprise that two STEP Ahead Award recipients come from John Deere. **Kristi Thoman,** a senior Manufacturing Engineer, has used her leadership and communication skills to create a cross-functional and high performing team at John Deere. **Beth Takemoto,** a Supervisor at John Deere Harvester Works in East Moline, is also an outstanding team leader and an emerging leader in manufacturing. Both of these women work hard and give back to their company by mentoring other employees.

Caterpillar Inc. manufactures construction products, mining products, engines, turbines and diesel-electric locomotives. **Gina Vassallo** and **Jennifer Wick** are both employees of Caterpillar and were honored with a STEP Ahead Award. Vassalla is an Engineered Value Chain Program Manager in Peoria. She is a local and national leader for Caterpillar as well as an advocate for women and other under-represented minorities in the manufacturing and STEM fields. Wick is a Lead Human Resources Manager who focuses on developing other people through direct and indirect mentoring. Caterpillar Inc. has been a member of the IMA since 1922.

An IMA member since 2015, **Merck & Co., Inc.** is one of the top pharmaceutical companies today. **Tonya Hutchison,** a SDPM Field Specialist in Global Supplier Management exemplifies the quality and reliability of such a company. Hutchison is also an emerging leader and an effective team leader for Merck & Co., Inc. **Jennifer Wipf,** a Director in Project Management is also a trusted and respected team leader. Wipf is also a Leader of the Women in Science and Engineering Initiative at Merck & Co.

Stacey Brown is the only woman representing **American Airlines** in the STEP Ahead Awards. American Airlines in Rosemont has been an IMA member since 2007. Brown has put in 23 years at American Airlines and is a lifelong learner as well as someone who strives for continuous improvement. She is currently a Senior Manager for Component Maintenance.

Abbott Labs in Abbott Park, Illinois, has been a member of the IMA since 1901. Abbott is a company dedicated to giving consumers healthier lives. **Jen Crapisi,** Manager for Technical Services, has been instrumental to the success of Abbott Nutrition. Crapisi enjoys working in the manufacturing industry because it inspires continuous improvement.

Jodi Keller is the Vice President for **United Scrap Metal.** Based out of Cicero, United Scrap Metal is dedicated to providing innovative recycling solutions. Keller has been successful in her role as Vice-President by developing new streams of business, mentoring other women in the company and giving back to her community by teaching about recycling. United Scrap Metal has been a member of the IMA since 1986. United Scrap Metal CEO Marsha Serlin serves on the IMA Board of Directors.

Kiera Lombardo, Senior Vice President for Corporate Affairs for

Smithfield Foods, Inc., is being honored with a STEP Ahead Award. She leads in the areas of sustainability, government affairs, investor relations and corporate communications. Smithfield Foods, Inc., in St. Charles, has been an IMA member since 2010 and is a top producer of packaged meats for consumers.

Julie Lucas is a Chemical and Environmental Engineer for **General Motors.** General Motors, the global automotive company, has been an IMA member since 1943. Lucas is receiving the STEP Ahead award because of her excellent problem solving skills and her thorough work with environmental compliance data.

MillerCoors LLC joined the IMA in mid-2003. While the beer industry may seem male-dominated, that is not how **Robin Luedtke** chooses to see it. Luedtke earned the title of first female warehouse manager in the history of the company. She earned the STEP Ahead award not only for being a trailblazer, but also for her incredible work with interns and young graduates who work for the company.

Kristy Spackey works for **Owens-Illinois,** an IMA member since 2009. Owens-Illinois is a glass container manufacturer in which Spackey is a Manager of Corporate Procurement. Spackey is an honoree due to her ability to inspire confidence in customers and her guidance to other procurement professionals in the company.

GE Appliances has been a member since 2010. **Renee Story** is a Quality Manager for the company. Story earned this award through her

confidence as a team leader, being a team player, and also through her mentoring in company programs.

Tara Tibbs from **Eli Lilly & Company** is a Director for Manufacturing Operations. She has earned the STEP Ahead Award due to her leadership of over 150 people, her commitment to diversity and inclusion, and her mentorship to many, especially top female talent. Eli Lilly and Company is headquartered in Indianapolis, Indiana, with offices in Chicago, and has been an IMA member since 2002.

BP America in Warrenville, Illinois, has been an IMA member since 2014. **Aleida Rios** is the Vice President of Operations in the Gulf of Mexico locations. Rios is an honoree because of her service on the Leadership Council to mobilize workers and to get young women interested in the STEM field.

Paula Kilrain works for **Ball Corporation** as a Deputy General Manager for Tactical Solutions. She is very committed to the professional development of her fellow workers and has had a strong impact on Ball Aerospace. Ball Corporation's location in West Chicago has been an IMA member since 1974.

STEP AHEAD WOMEN IN MANUFACTURING

"Congratulations to these outstanding leaders. Thanks to their work, not only are their companies creating opportunity, but they are leading an innovation revolution — a revolution that will win us jobs, raise standards of living and restore our mantle of leadership around the world. This revolution is strengthened by the diversity in the manufacturing industry. And through the work of these accomplished leaders, we are demonstrating to the country that modern manufacturing offers a range of exciting and rewarding career paths."

— Jay Timmons, president and CEO, NAM

"We choose to honor these women because they each made significant achievements in manufacturing through positive impacts on their company and the industry as a whole."

— Jennifer McNelly, Executive Director, The Manufacturing Institute

The IMA congratulates these exceptional women and their member companies that were honored by the Manufacturing Institute with the STEP Ahead Award for women in manufacturing.

Keep them in mind, because you will hear about them again. They all have exciting manufacturing careers ahead, and they will continue to have a positive impact on the manufacturing industry of the future. ■

Author Allison McNamara is interning with the IMA in Springfield this summer. She returns to Illinois College as a junior in the fall.

Six key tax strategies manufacturers often miss

By Plante Moran

We often encounter businesses that have fallen into a tax "rut." As long as their products, processes and facilities don't change significantly, they're comfortable with the status quo. In order to help you snap out of any tax rut that may be costing your business money, we've compiled a list of six areas in which manufacturers frequently miss tax-saving opportunities.

Research & Development (R&D) Tax Credit

At the end of 2015, Congress enacted and the president signed into law a permanent R&D credit. This eliminated the need for ongoing renewal of the temporary R&D credit, which was historically part of "tax extenders" packages. Not only did lawmakers provide added certainty to companies already claiming the credit, but they also expanded some of its valuable benefits. Here are some key things to remember about the credit:

- In addition to traditional research activities, it applies to costs associated with product and manufacturing process development activities. Further, when a manufacturer works to improve the function, performance, reliability or quality of its products or processes, those costs may also qualify for the credit if they meet appropriate criteria.
- New provisions enacted with the permanent credit provide additional benefits for startups and small to midsized growing businesses:
    - Companies that have been in business for less than five years and have receipts of less than $5 million may be able to use the credit to offset some payroll taxes.
    - Businesses with average annual gross receipts of less than $50 million for the last three years may be able to use the credit to offset alternative minimum tax liability.
- R&D credits are also available in many states.

Domestic Production Activities Deduction (DPAD)

This provision was enacted to encourage manufacturers to keep production activities in the United States. It's a fairly complicated calculation to determine which activities qualify, but it can result in savings of nine percent on income attributable to qualified activities.

Even if your business already claims this deduction, it might be a good time to review the calculation. The IRS is in the process of finalizing regulations regarding key considerations of its application. At this time, the draft guidance suggests that the IRS may try to clarify several issues, including who gets to claim the DPAD in a contract manufacturing agreement.

Interest Charge-Domestic International Sales Corporations (IC-DISCs)

An IC-DISC is a separate company that's made an election under the Internal Revenue Code which helps U.S. manufacturers exporting goods achieve significant tax savings. It earns a commission based on the sale of U.S. manufactured goods sold for use outside the United States. The IC-DISC is not taxed on its commission income, and earnings are distributed to its shareholders (who usually are also owners of the U.S. business) as dividends. The IC-DISC shareholders pay tax on those distributions at the capital gains rate (typically 20 percent) instead of the individual income tax rate (as high as 39 percent).

We find that closely held businesses with qualified export revenues exceeding $1 million seem to gain the most from this structure, but almost any U.S.-based exporter can derive some benefit from an IC-DISC. Despite the significant tax savings, manufacturers who export often hesitate to create one of these corporations due to some common misconceptions:

- **Incompatible corporate structures:** IC-DISCs are frequently presented as a "one size fits most" solution. Executives are left with the impression that if their business doesn't fit within the edges of the cookie cutter, this opportunity is not available to them. In reality, customized planning can help many businesses comply with the rules and qualify for the tax-advantaged distributions.
- **High compliance costs after setup:** When we talk about IC-DISCs with businesses, it's not uncommon for executives to tell us they've heard of the strategy but that the associated ongoing costs are too high. The annual calculation of the commission amount does require outside assistance in most cases, but we've found that if the economics of the business suggest that an IC-DISC is a good choice, the annual tax savings are a multiple of the costs of compliance.

Transfer Pricing

Transfer pricing may not qualify as a strategy that manufacturers miss, but failing to consider transfer pricing when planning and managing international supply chains and production processes can be a costly mistake. Transfer pricing can be beneficial when:

- **Planning for international growth:** We've encountered manufacturers that have carefully analyzed labor and supply costs when planning an international expansion but failed to consider tax rates. When you include the impact of local taxes in the transfer pricing calculation, it's not unusual to find that the most cost-effective location for new operations changes.
- **Allocating administrative costs:** U.S.-based manufacturers sometimes overlook the allocation of administrative costs to operations in other countries. They work hard to accurately determine costs incurred in the country where the operations occur, but they often fail to recognize that many costs incurred in the U.S. for things like executive management, HR and accounting should be apportioned throughout the company without regard to borders.

State Nexus Studies

One of the most significant state tax trends in the United States in recent years has been the active expansion of the concept of "nexus," which is having enough contact with a state to be subject to its taxes. With certain exceptions, nexus was historically based on a physical presence in a state, like owning or leasing property. Nexus might also be created by employees or independent contractors working in a state on behalf of the company.

Today, many states are challenging the traditional standard to assert that nexus may exist via some types of virtual presence, even in the absence of a physical presence. Further, many states have increased their efforts to discover non-filers and have implemented rigorous programs to identify them.

States' efforts to increase the number of businesses subject to their taxes have created a need in many companies for a comprehensive internal review of activities to determine if any states might attempt to impose a tax based on

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operations within their borders. A nexus study can deliver significant benefits for a company, such as:

- **Uncover previously unknown filing obligations and allow a business to proactively address them:** Most states offer voluntary compliance programs that eliminate or reduce penalties and taxes for businesses that come forward to file back returns and pay amounts owed. These programs are typically unavailable to businesses that are contacted by the state first.
- **Potential refund opportunities:** Not all tax news is bad news. In some cases, companies have filed returns they were not required to, allowing them to potentially recoup taxes paid on previously filed returns.
- **Possible Illinois income tax benefits:** Taxes paid to other states may reduce income taxes owed in Illinois based on the interaction of its tax rules and the states where other returns are filed.

Work Opportunity Tax Credit (WOTC)

If your business hires individuals who are members of "targeted groups" under the federal work opportunity tax credit, such as veterans and federal assistance recipients, you need to make sure you aren't missing out on this opportunity to save your business money. The WOTC allows businesses to take a credit against federal income taxes for up to 40 percent of the first-year wages paid to those employees, up to $9,600 per qualifying employee. A recent change expanded the list of targeted groups to include those unemployed for longer than 27 weeks.

Unfortunately, many companies hire eligible individuals without realizing that they're part of a targeted group. In order to make sure your business is able to claim the full amount of credit it has earned, you may want to incorporate the prescreening forms into your hiring process.

Never a bad time to plan

We understand that most businesses don't typically think about taxes in the summer months, but the slower tax times can be some of the best times to step back and consider your tax positions. You never know when you might just come across something new that reduces the amount of tax you owe in the future. ■

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BOB LINDEMAN & MARK REILLY

Long-term incentives & non-qualified plans for privately-held companies — trends & challenges

The U.S. economy continues to grow modestly due to a combination of characteristics. The country has access to abundant natural resources and a sophisticated physical infrastructure. It also has a large, well-educated and productive workforce. Economic growth in the United States is constantly being driven forward by ongoing innovation, research and development as well as capital investment.

As business owners and stakeholders strive to anticipate the changing needs of their customers, they must constantly re-evaluate and modify their company's business model.

Business owners are looking to minimize fixed costs by utilizing variable compensation opportunities to link the interests of company executives with their financial goals. They are focused on executive compensation and how it can enhance their company's results. It is through various long-term incentive programs that companies can establish a proper linkage between enterprise success and the opportunity to earn a significant payout in the future.

The primary vehicle for rewarding executives in publicly-held companies is stock, either through stock options or restricted stock. However, stock is not always available in privately-held companies. Nonetheless, privately-held companies still need a sound long-term compensation program to retain and motivate high-quality executives and key managers.

Types of long-term compensation

There are two different types of long-term compensation plans:

- Long-term incentives provide executives with an incentive based on corporate performance or value creation. Stock options and restricted stock are mainly used by public companies, and stock appreciation rights and phantom stock are used for privately-held companies.
- Non-qualified deferred compensation plans provide executives with long-term financial opportunities that are not based on performance. Supplemental retirement plans are non-qualified deferred compensation plans focused on providing additional retirement benefits.

Retirement income shortfalls

Even if executives contributed to their 401k at maximum levels, it may not be sufficient to fund their retirement if their employers did not provide pension plans or non-qualified plans as well. Long-term incentives and deferred compensation can help executives create the wealth needed to fund their retirement.

Very few privately-held companies (less than three percent) offer defined benefit pension plans. 401k plans shift investment risk to employees and many employees are not good investors. For these reasons, many managers and executives have not or will not be able to replace 70 percent or more of their pre-retirement income if they plan to retire at age 62. The 70 percent

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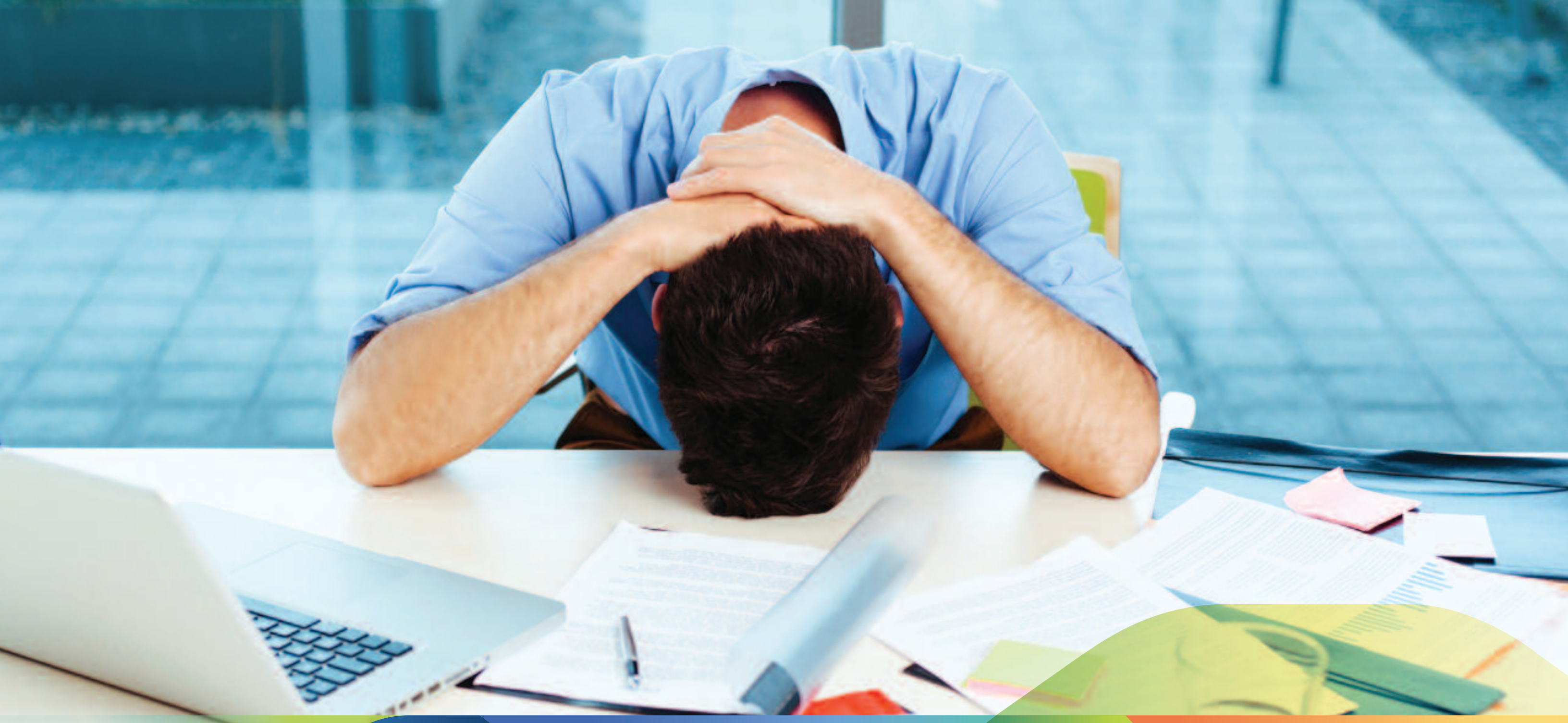

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Current challenges in Illinois' energy landscape

Have you ever heard the saying "the cure for low prices is low prices?" Years of falling natural gas and power prices moved by the growth of technology from the shale revolution may be the cause for this old phrase to come back around.

Due to a prolonged time of surplus in the natural gas market, NYMEX prompt month gas futures fell to a 17-year low of $1.61/MMBtu on March 17th. Since then, it has rallied to a 14-month high of $2.98/MMBtu on July 1st. This 80 percent gain in the natural gas market took many by surprise. It should serve as a warning to energy buyers that prices will not be low forever. Sustained time of low oil and natural gas prices is now having an adverse impact on production. At the same time, long-term gas demand is coming online to take advantage of a cheap and ample supply. This tightening of the supply-demand balance in the natural gas market could mean that energy buyers should prepare for possible rising prices and potential volatility for the first time in years.

The Illinois market faces a special set of challenges. Years of low power prices resulting from falling natural gas prices and an increase in wind generation entrances has driven a rash of announced baseload coal and nuclear unit retirements within the state. While much of the country has also come across a number of retirements in recent years, Illinois is unique. This is due to the finite amount of new natural gas fired generation being built to replace the outbound generating capacity.

Also, MISO, the operator of the electrical grid in central and downstate Illinois, is planning major changes to the region's capacity market structure. These changes along with the current state and federal energy policy debate, signals the chance of a shifting landscape for Illinois energy buyers in coming years.

Current natural gas price trends

In the past, Illinois energy buyers have been able to count on falling gas and power prices. Though, we are starting to see the impact of a sustained low-price environment on natural gas and power markets.

Despite the belief that low energy prices will last forever, we have seen prices rise off of multi-year lows due to changes in supply and demand fundamentals. NYMEX prompt month gas has rallied by over a dollar since the 17-year low in early March. Longer-dated NYMEX futures prices have also increased 12-25 percent since falling to life-of-contract lows earlier this year. Low natural gas and oil prices have caused producers to cut back on output at the same time that LNG exports, pipeline exports to Mexico and power sector gas burns are rising. This recent dynamic of lower supply and more demand in the natural gas market has created the perfect storm for higher energy prices going forward.

Current power price trends

On the power side of the market, forward prices for 2017-2020 have also risen in response to higher natural gas prices and forecasts for a hotter-than-normal summer. Forward power prices at Northern Illinois Hub have increased 8-9 percent since reaching all-time contract lows in late-February. Although forward power prices are still lower than their year-to-date highs from this spring, prices have regained upward drive this month. Weather forecasts show that the hottest temperatures are set to occur in the second half of summer.

Despite the constant rally in prices, there is still a lot of value for energy buyers in the current market. Forward natural gas and power prices remain several percentage points below the price levels we saw this time last year. Since much of the price increase this spring has been weather-driven, it has affected near-term prices. Longer-term energy prices for 2018-2020 delivery years

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Steve Chambers is with Constellation. **Constellation** is the preferred energy provider for IMA members. For more information, visit www.constellation.com/IMA. Or, you may contact Constellation's **Richard Cialabrini** at 888-312-1563 or Richard.cialabrini@exeloncorp.com.

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retirement ratio is the general rule of thumb that financial planners use as an estimate for the income retirees will need to maintain the lifestyle equivalent to that prior to retirement.

Ability to attract: Many privately-held companies realize that the talent they need either comes from publicly-held companies or larger privately-held companies that already have long-term incentive or non-qualified plans. To attract this talent, the privately-held company must implement one of these plans or be forced to increase base salary and/or short-term incentives.

Ability to retain key talent: Talented people are no longer staying at only one or two companies throughout their career.

Long-term incentive and non-qualified deferred compensation plans can help retain an organization's key people by making the walk-away cost significant enough to make them think twice before leaving for other opportunities.

Private equity firm impact: In the last five years, private equity firms have aggressively tried to buy privately-held companies.

Private equity firms usually provide management with generous long-term incentives to attract, motivate and retain top talent.

Ownership/management succession: Ownership/management succession is always a critical issue. Many owners need key management talent to run their companies as they position themselves for any one of the following succession alternatives:

- Transition the business to the next generation of family (Family Business Model)
- Owners plan to shift to part-time or full-time retirement, yet remain owners (Owner Investment Model)
- Owners partially or totally cash out with an ESOP (Employee Stock Ownership Plan)
- Ownership sells partially or totally to management through a management buyout or internal transfer of ownership
- Ownership sells partially or totally to a private equity firm or strategic buyer.

In all of these cases, the ability to retain key talent prior to and after a transaction or transition can be greatly enhanced with either a long-term incentive plan or a non-qualified plan. Without such plans in place, privately-held companies bear the risk of losing key people or not being able to attract them in the first place, possibly harming the value of their company and derailing their succession plans.

Plan selection

Assessing the need for a long-term incentive plan, within an overall executive compensation program, is a critical first step in evaluating appropriateness. The key is to first establish some plan objectives and parameters. For example:

- Is stock available?
- Should the plan be performance-based?
- If performance-based, what criteria should be used to measure value?
- What is the appropriate timeframe?
- Are there any tax issues that should be considered?
- What are the cost considerations?
- What do potential plan participants perceive as valuable?
- Are there significant individual differences among your executive team which would prohibit a single approach?

The answers to these questions will form the basis for selecting the appropriate long-term compensation plan.

The different types of performance-based and non-performance-based plans are:

Performance-based stock plans

- Qualified Stock Options
- Non-Qualified Stock Options
- Incentive Stock Options
- Restricted Stock

Non-stock plans

- Stock Appreciation Rights
- Phantom Stock
- Performance Unit Plan
- Restricted Stock Units

Non-performance-based plans

- Supplemental Executive Retirement Plans (SERP)
- Deferred Compensation Plans

Selection, design and implementation

If the wrong type of plan is selected, or if it is not implemented properly, it can have a disastrous impact on the company and the morale of its executives.

Nine common pitfalls in the selection, design and implementation of long-term compensation plans are discussed below:

1. **Skipping the overall compensation strategy review —**The company needs to look at how the total compensation package stacks up in terms of base salary, annual incentives, qualified retirement plans and long-term compensation plans. Critical factors to consider are:

- How does the plan relate to our overall business strategy and culture?

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Was your 2015 ACA reporting experience a nightmare? Join the club

For employers living under a rock, the inaugural year of employer reporting under the Affordable Care Act (ACA) has just concluded. While it was recently announced that the Internal Revenue Service would continue to accept employer data files beyond the June 30, 2016 deadline, by now the majority of Applicable Large Employers (ALEs) should have filed their 2015 ACA reporting data with the IRS. One year down, perpetuity to go . . .

In 2015, Illinois manufacturers had access to a variety of solution providers to assist with this cumbersome compliance exercise. However, it is highly probable that your organization experienced varying degrees of heartburn associated with the debut of this annual requirement. For what it's worth, you aren't alone. ACA reporting solutions in 2015 ran the gamut from the good, the bad, and the ugly. Before we jump into some year-one observations, let's quickly recap what this compliance requirement is all about.

In short, Internal Revenue Code §6056 requires employers with an average of 50 or more full-time equivalent employees (FTEs) in the calendar year prior to the reporting period to provide each full-time employee with a completed IRS Form 1095-C by the following January 31. Notwithstanding several inaugural-year delays, this generally means that employers with 50+ FTEs in 2015 must provide any and all full time employees in 2016 with a personalized Form 1095-C no later than January 31, 2017. This employee communication requirement is then followed by a data transmission to the IRS that is due no later than February 28, 2017 (or March 31, 2017, if filing electronically). Each year, the exercise repeats.

The chances are fairly good that you had all the information necessary to accurately complete Form 1095-C for each of your full-time employees in 2015. That said, the chances are better that the necessary data existed across numerous "systems of record" (payroll, benefits administration system, paper files, etc). For many employers, this created a nightmare scenario of "spreadsheet reconciliation" that may have sabotaged your post-holiday-season cheer.

Even if your internal "data room" was well equipped for this exercise, no one could have prepared for some of the challenges and glitches experienced by a majority of ACA reporting solution providers. This included payroll vendors, employee benefits brokers, cottage industry start-ups, and even the IRS themselves.

Without reliving all the gory details, here are a few lessons we took away from the inaugural year of employer reporting under the ACA.

Data consolidation and validation is key

Approximately 6-8 percent of the employee records submitted to the IRS generated a Taxpayer Identification Number (TIN) error. This means that an employee's legal name and/or Social Security Number combination did not match the information in the IRS system. Furthermore, some ACA solution providers were unable to merge data from multiple systems (i.e. payroll and benefits) in any coherent fashion. This meant that employers were stuck auditing and updating hundreds (or in some cases, thousands) of rows of spreadsheet data because their reporting partner couldn't tell a complete story to the IRS. Moving forward, employers should maintain reportable ACA data in the fewest systems of record possible. Also,

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Brad Urhausen is the Executive Vice President of Employee Benefits for Manufacturers Insurance Services of Illinois (MIS of Illinois), an Acrisure Agency Partner. MIS of Illinois helps members of the IMA manage and reduce their bottom line costs with innovative insurance strategies and valuable compliance tools. For more information, visit www.mis-360.com or contact us at info@mis-360.com or 855-607-6190.

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have seen modest rises. In some cases, natural gas and power prices are now backward-dated. This means that prolonged contract terms can result in lower fixed costs since 2018-2020 prices are trading at a discount to prices for 2017. For example, as of July 1st, the 2017 NYMEX calendar strip is trading at $3.18/MMBtu while prices for 2018-2020 strips are within a narrow range of $3.00 to $3.06/MMBtu. On the power side, ComEd forward power prices for 2017-2019 are trading within a tight 40 cent per MWh range.

Capacity costs on the rise

While energy prices have fallen to multi-year lows this year, many customers have been surprised to find that their contract prices have not fallen by as much as expected. This is due to rising capacity costs in Illinois. With capacity typically being the second largest charge on a customer's supply bill, higher costs for capacity have offset some of the benefits of falling natural gas and power prices. Both Ameren and ComEd customers have been affected by rising capacity costs in recent years.

In northern Illinois, PJM launched a FERC-approved pay-for-performance tool in the capacity market known as Capacity Performance. The goal of Capacity Performance is to increase reliability to ensure that generators meet their commitments to bring power during times of extreme system conditions.

According to PJM, this new capacity market tool should limit price spikes and produce savings for customers during events such as the Polar Vortex. Since the start of Capacity Performance, capacity prices have risen as generators now take more steps to assure their reliability during hours of highest system demand. During the first two PJM capacity auctions that involved Capacity Performance resources, ComEd zonal prices cleared higher than $200/MW-Day, or $16.66/MWh for a 50 percent load factor customer. Capacity prices in ComEd have cleared the auctions for planning years 2018-2019 and 2019-2020 at higher rates than other areas of the PJM market.

Meantime, in the MISO market that covers central and downstate Illinois, customers have faced rising and volatile capacity prices. In the 2014-2015 planning year, capacity rates cleared at only $16.75/MW-Day. Prices increased to $150/MW-Day by planning year 2015-2016, still substantially less than prices in the PJM territory. For the 2016-2017 planning year, prices fell back to $72/MW-Day, but were still well above where capacity prices have cleared in the MISO market for southern Illinois in the past.

A challenging environment for generators

Falling natural gas prices pushed 2017-2020 forward power prices to new, all-time contract lows in the Illinois markets earlier this year. Wholesale energy prices in the state are among the cheapest in the country thanks to plenty of baseload nuclear generation. While these low prices are opportune for energy buyers in Ameren and ComEd, the sustained low energy price environment has shown major challenges for merchant generation within the state.

Over the past several months, nearly five GW of coal and nuclear generation will be retired or mothballed across the state. Another 500 MW are planned for potential retirement. Most of these proposed retirements will occur in the MISO footprint (Ameren). According to some reports, more than 30 percent of the region's total generation capacity could be shuttered by mid-2017.

At the same time baseload generation units are retiring in the state, very little new natural gas fired generation is being built. According to the EIA's Annual Electric Generator data, only one 600 MW natural gas fired combined cycle turbine (Nelson Energy Center) has been built in northern Illinois since 2012. There are zero scheduled to be built before 2020. In contrast, across the rest of the PJM states, over 22 GW of new natural gas fired generation are likely coming online before 2020. Most of this new natural gas fired capacity is being built near the Marcellus and Utica shale plays in the eastern half of PJM in order to take advantage of cheap and ample fuel. The number of generation retirements combined with a lack of new natural gas fired generation presents upside risk for power prices in the ComEd and Ameren markets.

Develop an integrated energy strategy

Energy buyers in Illinois face a number of challenges. At Constellation, we have the size, scale and resources to help protect you from market risk. As the IMA's endorsed energy supplier, we can help you develop energy management solutions to protect your bottom line. For more information, visit constellation.com/IMA. ■

ACA REPORTING

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employers should closely audit all reportable employee/dependent data prior to remitting their data to the IRS to minimize TIN-related data errors and the workload associated with their correction.

ACA consulting expertise is a must

While some ACA reporting providers experienced significant technical challenges, the majority of providers delivered a relatively stable technology platform from a data input/output perspective. That said, fewer providers coupled their intuitive algorithms with the ACA consulting expertise needed to quickly resolve issues and questions when they arose. The law is complicated, and this annual reporting exercise requires a sound understanding of its nuances. Time and time again, relatively short, straightforward questions with reporting providers turned into escalated, multi-week affairs that went on far too long and involved far too many people. As highlighted by the tragedy of the world's first self-driving automobile fatality several months ago, some activities just aren't quite ready for a series of "0s and 1s" to be in the driver's seat. Next year, be sure that your reporting partner has the chops to deliver stable technology alongside qualified ACA counsel.

Capacity is everything

Good technology and strong consulting mean nothing without the capacity to deliver it. In 2015, more than one household-name provider fell short on their promises to accurately remit their client's ACA data to their employees and to the IRS. In

see ACA REPORTING *page 26*

INCENTIVES

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- How does the plan relate to ownership objectives?
- What is the appropriate compensation mix?
- How does it compare to the competition?
- How does it compare to the general market?
- How variable is the plan based on performance?
- How does each component compare to the market?
- Who should be eligible to participate in the program?

Determining the appropriate compensation strategy and selecting and designing a plan consistent with that strategy will help maximize the return on the required financial investment.

2. **No plan selection criteria —** Ownership not clarifying and defining what they really want to achieve with a long-term plan for the employer and the participants. These requirements should be matched with what each plan offers to ensure the selected plan meets their needs.
3. **Poor plan knowledge —** Not fully understanding how these plans work and the advantages and disadvantages of each to the employer and the participants. The company should conduct the necessary research at the beginning of the process to properly educate all parties concerned. If necessary, seek help from outside consultants.
4. **No cost analysis —** Not projecting the cost/benefit of the plan under various scenarios. Owners need to project how much participants could possibly earn based upon organizational level, years of service, company financial performance, sale of company or other considerations. In some cases, owners may want participants to earn just enough in their plan to augment their 401k, or they may want true wealth accumulation which would require the selected plan to be worth far more than any qualified retirement program.
5. **No pay versus performance modeling —** Not assessing the linkages between enterprise financial performance and associated plan award values. Poorly conceived performance-based plans may generate award levels at odds with the level of enterprise value created by the executive team; awards may result which are at one extreme or another, either too rich, generating excessive costs and benefits compared to performance, or too lean, generating insufficient benefits to the participants when they have performed successfully. Modeling multiple scenarios over a 5- to 15-year period, using optimistic, realistic and pessimistic financial forecasts will help minimize the likelihood of this occurring. The company should model the following:
   - The impact on the balance sheet and the income statement given resulting corporate gains
   - The potential benefit to the participants before and after taxes
   - The impact on the company's tax liability
6. **Poor initial communication —** Not communicating the overall plan concept objectives, potential financial benefits and key provisions in an easy to understand set of communication documents. While the actual legal document may be complex because of typical legal verbiage and 409A rules, there is no reason a practical set of communication documents cannot be developed to compliment the legal document. These documents should be augmented with oral presentations when plans are rolled out.
7. **Inappropriate plan provisions —** The company does not think through critical provisions and how they relate to the owner's objectives. It is important that the selected long-term compensation plan meet the needs of the company and participants for it to be successful. Therefore, great care must be taken to make important decisions now that will affect how the plan operates well into the future. Key issues to be decided upon include the following:
   - Vesting
   - Timing of payouts
   - Termination clauses
   - Change of control provisions
   - Use of Rabbi-trusts
   - Non-compete and non-solicitation agreements

   For example, a rapid payout upon termination may make sense in some situations. On the other hand, an extended payout over three to five years may have diminished value in the participant's mind if the industry is risky or there is a concern about financial stability of the company.
8. **Little ongoing communication —** Not reinforcing the plan through periodic communication. The long-term compensation plan will not be effective if it is immediately put in a drawer and left there. At a minimum, plan participants should receive a participant statement of their vested and unvested balances annually. This statement should be augmented by some verbal or written communication by top management, the board of directors or ownership discussing company results and reinforcing plan objectives.
9. **Lack of periodic plan review —** Not reviewing the plan's results and effectiveness. Annual incentive plans are usually revisited annually and performance targets and formulas are modified based on budgets and goals for that plan year. However, long-term plans are not intended to change from year to year. It is usually not appropriate to change plans unless the plan is not meeting the company's objectives or if there are problems with plan mechanics, legal or tax issues. To tinker with long-term plans too much can not only cost money, but breed mistrust or unwanted complexity. However, it is important for the company to periodically review the effectiveness of the long-term compensation plan in terms of achieving its objectives. If the plan is working properly, then no change is required. But, if it is determined the plan is not effective or causes problems, modifications or replacement may be required.

Conclusion

Long-term compensation plans can help private companies attract, retain and engage the talent they need to drive the company's results. These plans, however, should be carefully designed and implemented. ■

PAL Health Technologies celebrates 40th Anniversary

This year marks the 40th Anniversary for PAL Health Technologies (PAL), an industry leader in the manufacturing of prescription foot orthoses for foot care practitioners. Headquartered in Pekin, this international company employs over 75 people with an average company tenure of 20 years.

CEO and co-founder Carol Schoenfeld proudly states, "We feel incredibly blessed to celebrate our 40th Anniversary. PAL was founded on optimism and a vision for the future by my husband Jeff. We've come a long way since the doors first opened 40 years ago, but we remain committed to developing innovative products and technologies. All this could not have happened without our staff's dedication to excellence and the loyal medical practices we serve."

To be an industry leader of custom and off-the-shelf devices was one of the goals of PAL's founder and first chief executive officer (CEO), Jeff Schoenfeld, who passed away in 2012. Jeff's wife, Carole Schoenfeld, then stepped up as CEO.

PAL Health Technologies was established in 1976, beginning its legacy in the orthotic industry. It has

PAL Health Technologies
40 Years
1976–2016

since expanded its inventory to include a comprehensive catalog of corrective lower extremity devices, including custom foot orthoses, diabetic and accommodative inserts, ankle braces and therapeutic shoes.

Within the past decade, PAL increased its foothold within the orthotics field with the development and introduction of XtremityOne, a digital foot-imaging device that eliminates the need for traditional casting and saves practitioners time with immediate, electronic ordering.

"We work hard for our medical podiatry practitioners and continue to deliver world-class service and best-in-class corrective foot devices, orthoses, inserts, braces and therapeutic shoes," states Schoenfeld. "Our main goal is to make sure that we continue to supply a product and service that continues to improve quality of life. We want to make sure our internal processes directly correlate with the processes of each medical practice we work with so that we seamlessly serve the end-user — the patient."

IMA member PAL Health Technologies is dedicated to leading the industry with unmatched customer service and the highest level of orthosis precision.

■ ■ ■

Advertiser Index

Flagsource hosts open house for 100th anniversary of Flag Day

On Tuesday, June 14, the U.S. celebrated the 100th Anniversary of Flag Day, a holiday created during the Woodrow Wilson Administration. IMA member J.C. Schultz Enterprises, Inc./The Flagsource held an Open House for local residents in Batavia on Flag Day.

■ ■ ■

ACA REPORTING

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fact, some employers were troubled to discover that their ACA reporting provider knowingly sent incorrect forms to their employees and data to the IRS because they didn't have the internal capacity to fix the errors in their systems before the published deadlines. Despite the announcement of "cut off dates" last fall for taking on new ACA reporting clients, it is clear that many providers misjudged their first year capacity. Employers must thoroughly vet their go-forward ACA reporting partner on their plans to manage capacity and guarantee compliance into the future.

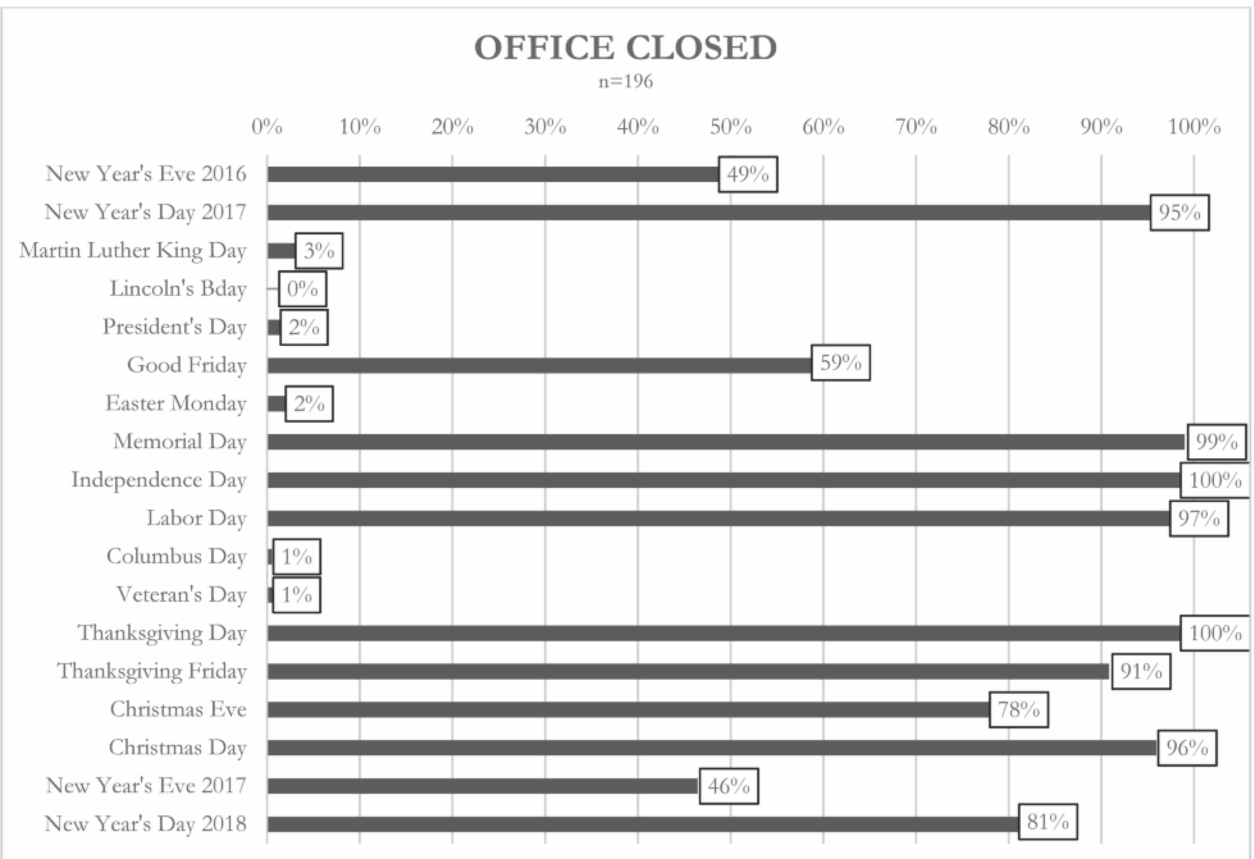
Although this retrospective summary may seem a bit forlorn, don't despair. When the "Current Tax Payment Act of 1943" required employers to start using Form W-2 to report employees' wages, the first few years to follow were presumably rocky. Today, generating a W-2 is like tying your shoe. ACA reporting is no different. There are many qualified providers in the marketplace, and their process and their technology gets better every day. Use this opportunity to re-evaluate how your organization manages your employees' data and the partners who assist with that process. And, at least for now, keep your hands on the steering wheel. ■

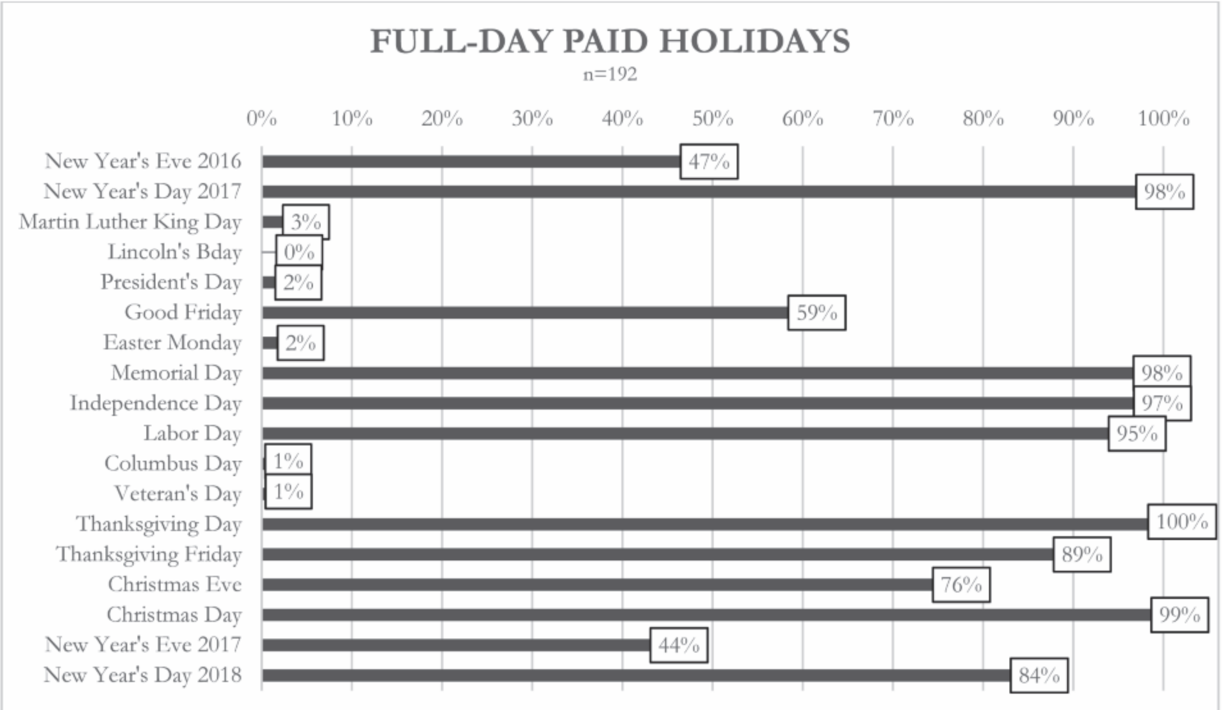
The IMA's Annual Holiday Report highlights employers' plans on select holidays throughout the year. This year's survey was conducted in March, 2016 and applied to the 2017 calendar year. Four questions were asked ranging from total number of paid days off to a breakdown of full or half day paid holidays, and on which days the member company is actually closed throughout the year. More than 200 IMA members responded. These are the results.

The majority of respondents provide at least 10 full-day paid holidays per year, including New Year's Day, Good Friday, Memorial Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving, Christmas Eve, and Christmas Day.

How many paid holidays do you provide your employees (not including personal days)?

6 or fewer days	13	7%
7 days	13	7%
8 days	32	16%
9 days	53	27%
10 days	67	34%
11 days	8	4%
12 or more days	11	6%
TOTAL	**197**	**100%**




FULL-DAY PAID HOLIDAYS
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New Year's Eve 2016
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0%
President's Day
2%
Good Friday
59%
Easter Monday
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Memorial Day
98%
Independence Day
97%
Labor Day
95%
Columbus Day
1%
Veteran's Day
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Thanksgiving Day
100%
Thanksgiving Friday
89%
Christmas Eve
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Christmas Day
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New Year's Eve 2017
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New Year's Day 2018
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Lincoln's Bday
97%
President's Day
92%
Good Friday
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Easter Monday
92%
Memorial Day
0%
Independence Day
0%
Labor Day
3%
Columbus Day
97%
Veteran's Day
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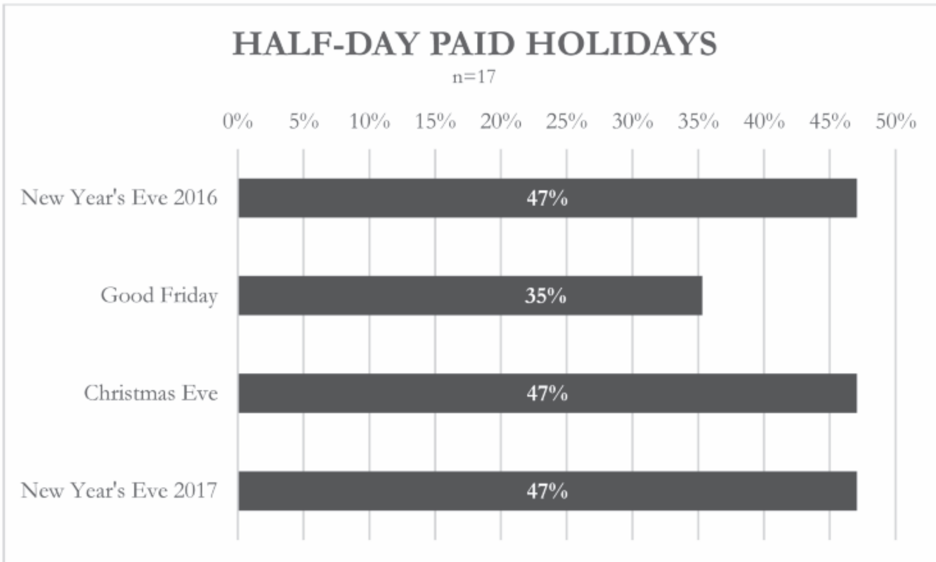
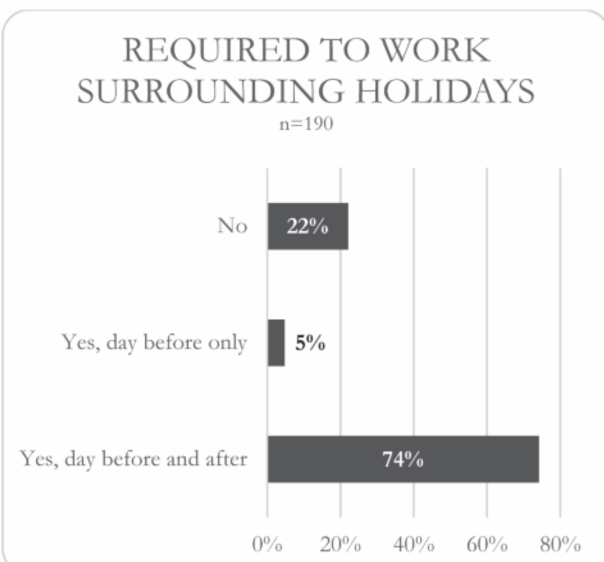
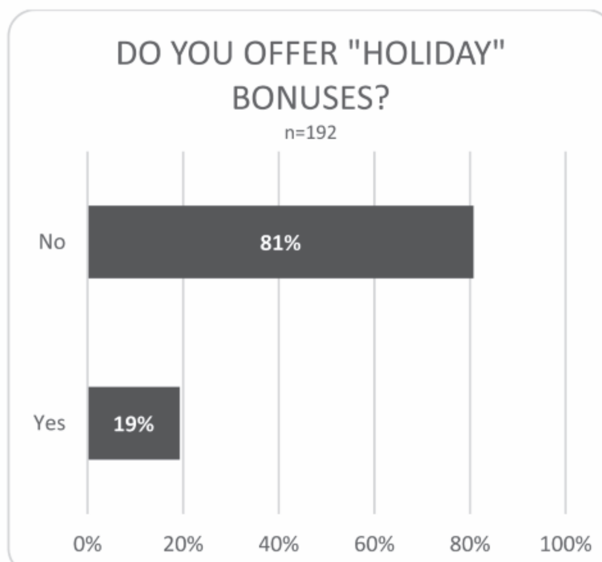
New Year's Day 2018
3%



Historically many manufacturing plants continue to operate with skeleton crews or reduced shifts on paid holidays. However, this does not always represent the majority. The percentage of respondents who require employees to work surrounding holidays in order to be paid for holidays is represented on the right. Additionally, those organizations that offer "Holiday Bonuses" are represented.





Thanks to all those who responded for making this report possible. If you have any feedback regarding additional information you might like to see in next year's report, or have questions, please contact Janie Stanley, Revenue and Grant Administrator, at 217-718-4214, email jstanley@ima-net.org.

New IMA members

BTD MANUFACTURING
Washington, IL

HERFF JONES, INC.
Champaign, IL

TOY INDUSTRY ASSOCIATION, INC.
Washington, DC

VERSATECH, LLC
Effingham, IL

VILLAGE OF FRANKLIN PARK
Frankin Park, IL

2016 Calendar of events

Tuesday, August 30, 2016
City Club of Chicago Luncheon — Guest Speaker: IMA President & CEO Greg Baise
Maggiano's Banquets, 111 W. Grand Ave., Chicago
Reception: 11:30 am — Luncheon: 12:00 noon
Visit www.cityclub-chicago.org for more information or to register to attend

Tuesday, September 6, 2016
IMA-IRMA 2016 Public Affairs Conference–2016 Political Election Update
10:00 am–2:00 pm CST — Inland Real Estate–The Legacy Room, 2901 Butterfield Road, Oak Brook

September 12-17, 2016
IMTS 2016 — International Manufacturing Technology Show
McCormick Place, Chicago — ***Visit the IMA Education Foundation at the Smartforce Student Summit area*** **—** Visit www.imts.com

Thursday, September 29, 2016
WEBINAR: Automation in Manufacturing
9:00-10:00 am CST — presented by Manufacturers Insurance Services of Illinois (MIS-360)

Friday, October 7, 2016
Manufacturing Day
October is Manufacturing Month in Illinois
Save the date and plan to participate in Manufacturing Day 2016. Illinois celebrates Manufacturing Month (October) in Illinois by gubernatorial proclamation — Visit www.mfgday.com for information

Thursday, October 13, 2016
October IMA Breakfast Briefing: OSHA
8:00–10:30 am CST, Ditka's Restaurant

Wednesday, October 26, 2016
RSM 2016 Manufacturing Executive Summit
Rockford — 800-274-3978
Visit www.rsmus.com for more information

Thursday, October 27, 2016
RSM 2016 Manufacturing Executive Summit
Hyatt Regency, O'Hare, Chicago — 800-274-3978
Visit www.rsmus.com for more information

Thursday, October 27, 2016
WEBINAR: Exit Strategies
9:00-10:00 am CST — presented by Manufacturers Insurance Services of Illinois (MIS-360)

Thursday, November 10, 2016
IMA November Tax Conference
JW Marriot, Chicago — 10:00 am–12:00 noon
Marriott Naperville, 1801 N. Naper Blvd, Naperville

November 14-18, 2016
Certified Energy Manager Training from Ameren Illinois
8:00 am-5:00 pm at OSF Healthcare, 3300 Willow Knolls Drive, Peoria — Cost: $1,900 — $1,795 UNTIL SEPTEMBER 14TH. For more information, contact Angela Holloway at 309-677-6116 or aholloway2@ameren.com

November 2-3, 2016
Midwest Environmental Compliance Conference (MECC)
Chicago Marriott O'Hare
This conference, will provide a regional perspective on the RCRA, Air and Wastewater compliance issues you care about every day, including enforcement and policy/regulation changes — mecconference.com/chicago-november-2-3-2016

November 14-20, 2016
National Apprenticeship Week

Friday, December 2, 2016
IMA's Annual Luncheon
JW Marriot, Chicago — 9:00 am–2:00 pm
Keynote Speaker: Dennis Muilenburg, President & CEO of The Boeing Company

Visit ima-net.org/calendar for information, pricing, registration, etc., related to all events.
For more information on IMA events, contact Kimberly McNamara at kmcnamara@ima-net.org, 800-875-4462, ext. 9371

Midwest Environmental Compliance Conference

CROWNE PLAZA CHICAGO O'HARE

November 1-3, 2016

Registration and Agenda at

WWW.MECCONFERENCE.COM

Featuring

-Flint Fallout
-EPA's New Environmental Justice Policy
-Nexus Between EHS and Sustainability
-Peer-to-Peer Compliance Tips
-EPA's Next Generation Compliance
-Six State Environmental Agency Breakouts

IMA members: use "IMA" promotion code at registration

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IMA Illinois Manufacturers' Association

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