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FIRST QUARTER 2018



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TABLE OF CONTENTS

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EDITOR

Anastasia Lowenthal

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If you have any questions, please contact Anastasia Lowenthal, Editor and Manager of Publications at alowenthal@ima-net.org, or (217) 718-4207.

Share Your Company News with the IMA . . .

News information, press releases and articles may be sent to Anastasia Lowenthal, Editor and Manager of Publications, Illinois Manufacturers' Association (IMA), 220 East Adams Street, Springfield, IL 62701, or alowenthal@ima-net.org



10 MAZE NAILS CELEBRATES 170 YEARS OF MANUFACTURING



16 MEET NEW IMA CHAIRMAN RICK DELAWDER, SWD

FEATURED

FROM THE IMA

Illinois Had Net Loss of Nearly 36,000 People Last Year!.....4
 Happy Quasquicentennial!.....6

HR & BUSINESS DEVELOPMENT

Addressing Mounting Workforce Challenges for Illinois Manufacturers.....5
 Sexual Harassment: Protecting Your Business and Employees.....18

ENERGY & ENVIRONMENT

Creating a Master Plan for Energy Management.....7
 The Biggest Industrial Energy Wasters, And What to Do About Them.....14
 Is Automation the Answer for Industrial Energy Waste?.....15
 U.S. EPA Amends the Hazardous Waste Generator Improvements Rule.....24

INNOVATION, TECHNOLOGY, & SECURITY

New Game, New Rules: Play it Safe with Data Security.....8
 Designing a Comprehensive Data Security Policy for Your Business.....22

GOVERNMENT REGULATION & LEGISLATION

Marijuana in the Workplace: An Update on Changing Law.....12
 Does Your Business Comply?.....20
 Illinois Biometric Privacy Act: What You Need to Know.....26

RECOGNITIONS

Member News.....28
 New IMA Members.....30

ILLINOIS HAD NET LOSS OF NEARLY 36,000 PEOPLE LAST YEAR!

GREGORY W. BAISE, CEO



The outcry over the plight of Illinois is growing louder by the day. The lack of job growth in comparison to our neighboring states seems to be a surprise to some.

Anyone who has paid attention to our statements over the last decade is not surprised by the latest so-called "hysteria" pouring out of news outlets across the state.

I have been involved in and around government my entire career. I have watched with great alarm the deterioration of the economic and social fabric of Illinois during the last decade.

Once the economic engine of the Midwest, we are now being laughed at by our neighboring states as they gleefully poach our companies and jobs.

Since the great recession began in 2008, we have watched an acceleration of job loss in the manufacturing sector unlike anything seen elsewhere. 300,000 manufacturing jobs gone since 2000.

In 2006, I gave a speech sounding the alarm to the City Club of Chicago. I made the point how our state, a manufacturing center, then had crossed the Rubicon of having more government employees than people employed by manufacturing. The number then was 844,000. Today, government job levels remain steady, while manufacturing jobs in the state have dipped below 600,000.

The response by the states' political leaders and the news media: crickets.

Political leaders of both parties give lip service to the concern – they lament the loss of another manufacturer moving to a more business-friendly state, but do nothing when the time comes to change the trajectory. Fearful of alienating their political patrons, they refuse to stand up to the lobbyists of the trial lawyers and medical community when real reform is on the table.

Modest changes to our Workers' Comp costs in 2011 have made some improvements, but not enough to make site selectors looking for a new manufacturing location or a CFO contemplating a capital investment give our state a second look.

A DRASTIC REDIRECTION NEEDS TO BEGIN IMMEDIATELY. DON'T WAIT FOR ANOTHER ELECTION. SIT DOWN TOGETHER, RIGHT NOW, AND BEGIN LOOKING FOR WAYS TO WORK TOGETHER TO START ANEW.

In 2017, our legislative leaders gave us a tax hike. We opposed the final package for one simple reason – it failed to reform Illinois' trajectory.

The tax hike without reforms sent a powerful message to the job creators of this state: Illinois has no ability to reform itself.

I could spend the next 31 pages in this magazine assailing by name all the leaders who share in the blame for our state's sorry situation. Republicans and Democrats alike are at fault.

They have voted for unsustainable budgets, they allowed pension system deficits to grow to levels that will never be funded, and have passed law after law that have begat regulations that are killing this state.

A MESSAGE TO OUR LEADERS – PLEASE STOP!!!!

This is now a personal plea. Forgive me for not using the titles, but: Bruce Rauner, Michael Madigan, Jim Durkin, John Cullerton, Bill Brady, Susannah Mendoza, Mike Frerichs, and all 177 members of the legislative branch – please stop and look at what you are allowing to continue to happen to this great state.

Jobs are being created elsewhere. Look around and ask yourself, is Illinois really headed in the right direction?

Drive through any part of Illinois and look at the vacant store fronts, the empty factory sights, the lack of new housing starts. It's going on in other states.

A drastic redirection needs to begin immediately. Don't wait for another election. Sit down together, right now, and begin looking for ways to work together to start anew.

People are sick and tired of the direction this state is headed, and as the numbers from our friends in the moving business tell us, Illinois is leading the way in outmigration.

While the blame for this mess does not rest solely with the names of our current leaders, the buck stops with them. All of them. ♦

ADDRESSING MOUNTING WORKFORCE CHALLENGES FOR ILLINOIS MANUFACTURERS

SIKICH LLP

It's no secret that manufacturers in Illinois and across the country face significant challenges related to building and retaining the talented and productive workforces they need to grow their businesses. In the 2017 Manufacturing Report conducted by Sikich LLP, respondents identified addressing workforce challenges as a top priority for their companies, and nearly 60 percent pointed to a lack of qualified workers as a barrier to business growth.

Finding the skilled workers needed to run today's increasingly high-tech manufacturing operations is a persistent issue for companies. The fact that many young workers are hesitant to enter a profession they view as dirty and dangerous only compounds this challenge. At the same time, manufacturers face an increasing exodus of baby boomers from the workforce. As a result, the numbers are working against the industry. And, unfortunately, many manufacturers are not doing enough to address these problems and put themselves in a position to attract and retain the workers they need to drive long-term competitiveness.

Adopt a Strategic Approach

A core problem is that too many companies treat hiring and workforce development as tactical items on their to-do lists. For instance, recruitment will only kick off after an employee gives their notice, or when a big, new customer order comes in and the manufacturer needs extra resources to fulfill it.

Companies that adopt this tactical and reactive approach typically only hire based on the needs of the moment. But for recruitment to be effective, it needs to be a 24/7 activity. Companies should market themselves across multiple channels on a regular basis to ensure they are a sought-after destination for the best workers available. And recruiters need to scout new talent proactively and constantly.

A tactical approach to workforce issues further hurts the organization by de-prioritizing workforce development, which increases the likelihood of employee burn-

out, turnover, and organizational instability. Competitive compensation and benefits are a must to retain talented employees. But employees – and especially millennial workers – also want a clear sense of their career paths. Therefore, it's important that a manufacturer sufficiently invest in training and developing its employees. Our report found that more than 80 percent of respondents said their companies provide 40 hours or less of annual training per employee. In order to retain top employees, manufacturers need to ensure their workers continue to sharpen their skills and grow as professionals.

Overall, a manufacturer should place workforce issues near the top of its list of corporate priorities and strategic initiatives. Further, recruitment, development, and retention should be ongoing activities with a dedicated team to support them. By adopting a strategic approach to workforce issues, the manufacturer will be better equipped to recruit and retain top talent.

Grow the Workforce of the Future

If a manufacturer hopes to avoid the organizational upheavals that result from regular turnover, it needs to ensure it not only finds people to meet the demands of the day, but also the right people to grow the organization over the long term. Therefore, manufacturers need to spend time growing the workforce of the future.

Manufacturers can help improve the future workforce by partnering with high schools, vocational schools, community colleges, and universities to develop skilled workers. However, our report found that more than half of respondents are not doing so. This is alarming at a time when many young people don't view manufacturing as a viable career. Manufacturers need to actively combat negative perceptions of the industry through education and by showcasing their operations to the future workers in their communities.

For example, manufacturers can develop apprenticeship programs in conjunction with educational institutions to give prospective employees early exposure to their

organizations while also evaluating them for future positions. Additionally, manufacturers can offer educational tours of their facilities to showcase the innovative work that takes place on a daily basis and knock down misperceptions about the industry.

Make Your Workforce an Engine of Competitiveness

A manufacturer should assess its current hiring and training processes and compensation structure to identify gaps and shortcomings. From there, it can develop a clearly-defined strategic approach to recruitment and development to guide it moving forward. As part of this, company leaders need to instill a culture across the organization that values and prioritizes workforce issues.

A thoughtful, well-planned approach to workforce recruitment and development will ensure a manufacturer puts itself in a position to attract top talent, retain its best workers, maintain stability across the organization and position itself for long-term competitiveness. Amid today's challenges, there's no better time to prioritize the workforce. ♦



Constellation – Providing tools to create a customized energy strategy for your company

About the Author: Joy Duce is partner-in-charge of the human resources consulting services practice at Sikich LLP, and can be reached at joy.duce@sikich.com, or (630) 556-8454.

HAPPY QUASQUICENTENNIAL!

MARK DENZLER, COO



The word “quasquicentennial,” meaning “125th anniversary,” did not exist six decades ago. According to Robert Chapman’s article in a 1965 edition of *American Speech*, the term was coined in 1961 after engineer Frank Hatten, of tiny Delavan, Illinois, wrote to publishers of a popular dictionary seeking a word to describe their upcoming 125th anniversary the following year.

Dr. Wilford Funk, president of Funk & Wagnalls and publisher of popular encyclopedias and dictionaries, played with a number of Latin elements to devise the term ascribing the special anniversary. He wrote back to Frank Hatten with the word “quasquicentennial” while adding “this word will not appear in any of our dictionaries until it has established itself in wide currency, even if you should decide to use it.”

Mr. Hatten accepted the challenge and the new word was adopted for use in at least 15 celebrations in towns across Illinois, Iowa, and Michigan over the next two years. As they say, the rest is history and the word is now a part of every dictionary. So, now you’re wondering why I’m giving you a brief history of “quasquicentennial” and not other words that first appeared in 1961 such as aflatoxin, DNA polymerase, or magneto fluid dynamics.

When the clock struck midnight and we turned the page on a new year, the IMA began a transformative year that will culminate with our special 125th anniversary at the Annual Luncheon in December 2018. This is a very special year for the Illinois Manufacturers’ Association and our member companies who will celebrate our historical legacy as the oldest state manufacturing trade association in the United States. Amazingly, all seven of our founding member companies are still part of the IMA!

The IMA plans to reflect on the past and focus on the future during this year.

**WE HAVE SEEN TREMENDOUS PROGRESS IN OUR STATE, NATION, AND THE WORLD,
BUT WE STILL HAVE MUCH WORK TO DO IN 2018 AND BEYOND. CHIEF AMONG OUR
CHALLENGES IS THE NEED TO DEVELOP A SKILLED WORKFORCE TO MAKE SURE WE HAVE
A PIPELINE OF QUALIFIED WORKERS FOR THE MODERN, 21ST CENTURY WORKFORCE.**

Illinois manufacturers have played a major role in nearly every historical event in our nation’s history from the Civil War to the Industrial Revolution to the Space Race. Today, IMA member companies are creating lifesaving medical products, feeding people across the world, making transportation systems that move people and products around the globe and into space, employing new communication technologies that were not envisioned a short decade ago, and building our critical infrastructure.

Quite simply, Illinois manufacturers help create wealth and make the world a better place every single day. Middle class manufacturing jobs are helping nearly 600,000 Illinoisans achieve their American dream.

We have seen tremendous progress in our state, nation, and the world, but we have much work to do in 2018 and beyond. Chief among our challenges is the need to develop a skilled workforce to make sure that we have a pipeline of qualified workers for the modern, 21st century workforce.

The IMA’s Education Foundation led by Jim Nelson, a nationally recognized expert in education and workforce development, is leading this workforce challenge. Jim and his team have invested significant financial resources into our educational institutions while coordinating efforts between employers, K-12 schools, and colleges and universities. It’s an all-hands-on-deck approach to develop new pipelines of workers who want to help build our future. We’ve hosted dozens of local roundtables around the state along with hundreds of Manufacturing Day events to help educate our parents, teachers, counselors, and students, but more work must be done.

You’ll see a continued focus on education and workforce throughout the year because we need skilled workers to fill the manufacturing jobs of the future. After all, you can’t have jobs without workers. But we’re also looking to highlight IMA companies such as Maze Nails (see page 10) who are celebrating their own special anniversaries this year or have special stories to tell us. If you have a special story or an anniversary in 2018, please reach out to our Editor and Manager of Publications, Anastasia Lowenthal, so that we can help celebrate you!

In the meantime, let me be the first to say ‘Happy Quasquicentennial’ and thank you for your support and investment in the IMA over the years. ♦

CREATING A MASTER PLAN FOR ENERGY MANAGEMENT

AMEREN ILLINOIS

Energy management is good business. U.S. commercial and industrial facilities spend about \$400 billion a year on energy costs and up to 30 percent of that is wasted, according to the U.S. Department of Energy. In addition to energy savings, a strategic energy management program will benefit your organization in a number of ways:

- Lower maintenance costs
- Increased productivity and reduced waste
- Reduced water consumption and lower material resource costs
- Lower air emissions and hazardous waste costs
- Improved safety and indoor air quality

However, long-term energy savings requires more than just making a statement. It involves setting clear and measurable goals and making a commitment to continuous improvement. Here's how to make it happen.

Elements of a Successful Energy Management Program

While every organization is different, effective energy management programs typically include the following elements:

- A system for monitoring energy use over time
- Set processes for assessing energy performance
- A plan for continuous improvement, including periodic performance evaluations
- A policy for evaluating and investing in energy-efficient technology, along with the resources and staffing to implement the technology

The U.S. Environmental Protection Agency has developed Guidelines for Energy Management that include the best practices of leading energy performers. By following these six steps, you can improve your energy efficiency and gain a competitive edge:

1. Make a commitment. Allocate staff and funding to achieve continuous improvement. Leading organizations form dedicated energy teams and institute energy policies.

2. Assess performance. Measuring and comparing energy use are crucial steps in identifying opportunities to improve efficiency. Collect energy-use data and benchmark it against similar facilities. Periodically evaluate energy use as a baseline for measuring future performance.

3. Set goals. Goal setting confirms a commitment to energy efficiency and sets the stage for continuous improvement through your organization. Goals become the benchmarks from which you evaluate progress, as well as any setbacks. When setting goals, it is important to keep them realistic, measurable, and — most importantly — achievable, especially in the initial phases of your program. Experiencing success along the way will help solidify your organization's commitment to an energy management program.

4. Create and implement an action plan. An action plan acts as a road map for implementing energy-saving measures that align with your performance goals. Evaluate and update the plan regularly to reflect progress and shifting priorities.

5. Evaluate progress. Review energy-use data and the activities carried out as part of the action plan at regular intervals, comparing the results to your performance goals. Many organizations use information gathered during the review process to create new action plans, identify best practices, and set new performance goals.

6. Recognize achievements. Acknowledging efforts and accomplishments is key to building momentum and sustaining support for your program. Rewarding employees who have helped the organization achieve results will help motivate employees, strengthen morale, and foster a sense of ownership. Consider LEED or ENERGY STAR® building performance certification to help publicize your organization's commitment to saving energy and improving the environment.

Useful Online Tools

Planning and implementing an energy management program may seem daunting, but a number of online tools and resources are available to help. For example, the ENERGY STAR Portfolio Manager is a useful tool for comparing your energy use to that of similar facilities. The ENERGY STAR Ask an Expert service can help answer your questions about energy efficiency and provide you with targeted energy-saving recommendations.

Resources Available for Energy Efficiency Projects

The Ameren Illinois Energy Efficiency Business Program has a number of valuable resources designed to help you plan and complete more energy efficiency projects. The program offers free energy consultations, which can help identify potential projects in your facility and detail how to secure cash incentives to offset project costs. Even better, your facility may also be eligible for an additional incentive bonus — up to 15 percent — when you complete your project early in 2018.

To schedule a free energy consultation or to get more information on our program, please call us at 1.866.800.0747 or visit AmerenIllinoisSavings.com/IMA.

About the Ameren Illinois Energy Efficiency Program

Since 2008, the award-winning Ameren Illinois Energy Efficiency Program has helped Illinois businesses save over \$350 million in energy costs. Utilizing more than \$85 million in cash incentives, business customers have been able to cut project costs, decrease payback periods, and move energy efficiency projects forward. ♦

NEW GAME, NEW RULES: PLAY IT SAFE WITH DATA SECURITY

IT RISK MANAGERS

Welcome to the world of high-stakes data security. Unfortunately, you probably didn't receive a welcome package or a copy of the game's rules. Unlike public or regulated industries that have had the rulebook for a while, most manufacturers are becoming aware that they too are in the game; however, they are forced to figure the rules out for themselves. The new game requires strategy, skill, and endurance to defeat the most cunning opponents. Knowing you're in the game is rule #1.

The object of the game: leverage the power of the internet to maximize productivity, enhance collaboration, and reach more customers while protecting your trade secrets, financial data, and employee's and customer's personal information. Winners get to proceed on to the next game and grow their business, and the losers face a damaged reputation, loss of competitive advantage, legal action, and financial loss.

Sadly, many manufacturers are still playing the old game with some fairly danger-

ous assumptions:

1. Hackers aren't interested in me. What data do I have worth stealing/selling? I'm not a bank or a retailer.
2. My IT department assures me we're secure – firewalls, content filters, antivirus, and data backup.
3. We passed the security sections of our last accounting audit. We must be ok.
4. We haven't had a data breach. We're good.

These assumptions represent a bygone era – an era when securing critical information meant restricting access to file server folders and accounting systems, installing antivirus software, keeping up to date with security patches, and installing a firewall to protect intruders from accessing your network. If a user's computer became infected with a virus, they would contact the IT department. If trade secrets were especially critical, they weren't even stored on the network. This was back when data security was more like a simple board game – data was stored safely within the four walls of

your company and the internet was mainly used for email and surfing the web.

Today's high-stakes game is more comparable to 3-D chess, with the unpredictability of Monopoly™ Chance cards, and Russian Roulette thrown in for additional excitement. Manufacturers are now the custodians of an increasing amount of critical employee data, internal, customer, and partner trade secrets, and customer electronic payment data. Mobile devices, a growing remote workforce, and cloud-based solutions are spreading this data far outside the perceived security of your internal network. Now let's add socially-engineered email scams, black market demand for personal identity and payment card information, rogue employees leaking trade secrets, untrained users, rapid adoption of IoT devices, and widespread use of consumer technologies.

Today's game has become a virtual gauntlet of risk. However, the strategy of the game is actually quite simple.



About the Author: Warren Sharer is the Chief Information Officer at IT Risk Managers, and can be reached at wsharer@itriskmgrs.com, or (847) 212-9495.

Lead by Example

All eyes are on you. It's not what you say. It's what you do. Exceptions made for the executive team tend to spread through the ranks, burdening the data security effort.

Know What Data You Have

Know what data you need to protect, where the data is stored, and who is authorized access to the data. Beyond the obvious personal identification and health information, trade secrets and R&D data are equally as critical to protect.

Know What's Connected to Your Network

Maintain an active inventory of ALL computers, devices, and applications connecting to your network. Beyond the obvious user computers, business applications, and servers, this list must include mobile devices, social media applications, printers, and IoT devices such as network connected thermostats, equipment controllers, and video cameras. Everything.

Manage What You Have

Establish and regularly review policies and procedures governing the appropriate handling of protected data, define acceptable use of company assets and resources, and instruct what to do in the event of data loss or a disaster. Ensure all equipment and systems are correctly configured and properly maintained.

Train Employees How to Use What You Have

Is data security part of your company's culture and values? Conduct periodic employee security training to ensure users know how to safely handle sensitive data, identify fraudulent email, understand safe web browsing behaviors, and know what to do in the event something goes wrong.

Know When Something Happens

Every medical drama on TV has taught us the sooner a patient receives treatment, the more likely their chances for recovery. The same is true in the high-stakes work of data security. The sooner the company is alerted to a breach, the sooner they can react to minimize or prevent the loss.

Data breaches are never the result of one factor. Two or more seemingly unrelated events must occur for most data breaches to occur. Just as fire requires fuel, oxygen, and heat, there are several potential factors in a data breach. Here are some combinations of events that can result in an attack:

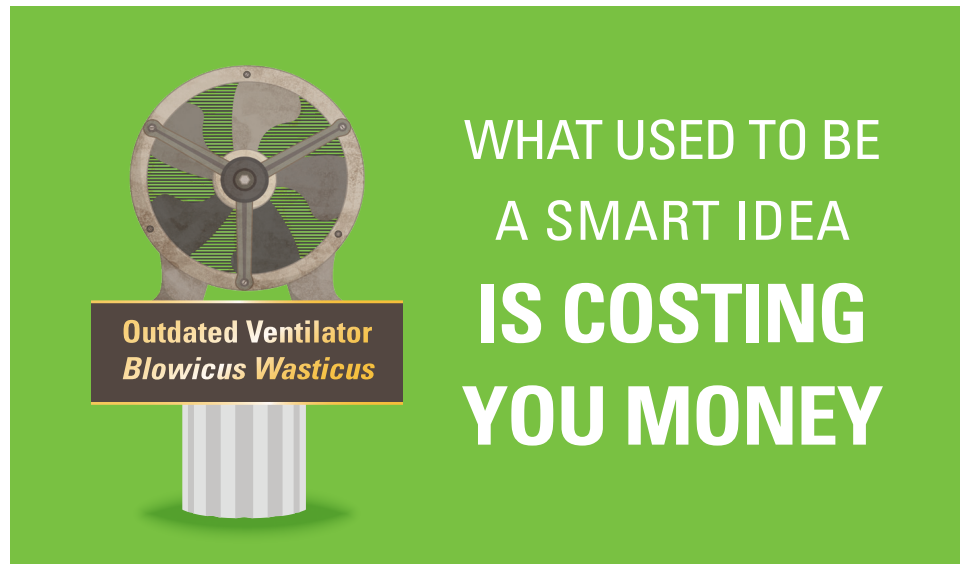
- Attack from a hacker + unpatched vulnerability + untrained user clicking on link in an email = **ransomware attack**
- Rogue employee + unrestricted access + no company policy forbidding use of personal email or cloud storage =

trade secrets sent to a competitor

- Phishing email requesting transfer + untrained user initiating wire transfer = **accidental wire transfer**

The above examples had multiple events, but they all have one big thing in common – a failure in the human firewall. Data security is a people problem, not a technology problem. To win the new game the human firewall is the most effective defense to prevent information from getting into the wrong hands. Regular employee training and ongoing communication are necessary to ensure the human firewall remains effective, which in turn prevents complacency, ignorance, and employee error from putting your data at risk.

When it comes to protecting data, the stakes just keep getting higher. The demand for collaboration, a growing distributed work force, the adoption of BYOD and consumer technologies, and already strained IT resources are counter to the need to protect more and more sensitive information. The growing need to protect R&D data, Intellectual Property, your trade secrets, your customer's trade secrets, employee data, and customer data requires a new approach. The potential litigation, financial loss and damaged reputation resulting from a data breach is a business issue. Protecting the data is also a business issue. Welcome to the game. ♦



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ENERGY AT WORK

Proud member of the Illinois Manufacturer's Association



MAZE NAILS CELEBRATES 170 YEARS OF MANUFACTURING

When it comes to running not just a family business, but a family-oriented business, Maze Nails in Peru, Illinois is second to none – and it’s been that way for 170 years now.

Founded in 1848 by Irish immigrant Samuel Nesbitt Maze, Maze Nails began out of a need for a better solution.

“My great-great-grandfather came to America and started working as a masonry contractor,” said Roelif Loveland, President of Maze Nails. “When the Illinois and Michigan Canal opened up and gave a direct route to Chicago from Peru, he opened Maze Lumber right along the river so that he could sell brick and lumber to local residents.”

Samuel had a small barge (named “The Elk”) built for the lumberyard – and used it to take the 100-mile long trip to and from Chicago. The trip up was with his barge full of local farmers’ grain for the commodity markets – and the backhaul was a bargeload of white pine lumber for his little yard.

In the late 1800’s, Maze Lumber was selling market-standard nails with their lumber. But when customers came back complaining that the nails were rusting and the cedar shingle roofs of their homes were blowing off, Samuel’s son Walter purchased a single nail machine and the yard began making their own. Instead of making them out of steel, which quickly rusted, Walter used pure zinc for the nails. The LaSalle Peru area was a huge smelter of zinc at the time (since they had lots of coal needed for the process) so accessing the raw zinc for the nails was easy. The result was rust-proof nails that dependably kept Maze Lumber’s cedar shingles on the roofs of their customers’ homes.

It wasn’t long before the nails made at Maze Lumber became

known to other local lumberyards – and they asked Maze to sell them some of their production. And so the small, used nail machine purchased for a part-time solution started running full-time. And soon, more machines were added.

There was a small problem, though. Because Maze Lumber was situated so close to the Illinois River, any time the river rose and water came into the plant, production of nails had to be shut down. So, in 1922, the third-generation Maze boys – Hamilton and James – purchased an empty plot of land on higher ground, and Maze Nails was born.

“We started very small and built from there,” Roelif said. “We had just a handful of employees at the time, and made only one or two types of nails.”

Things have changed since then – the company now employs over 80 people and makes over 2,800 types of nails, claiming the title of America’s Premier Specialty Nail Maker.

“We are basically the last man standing in the specialty nail business,” Roelif said. “Many other companies thought they could compete by matching the import prices, which was their downfall. You have to drive your business with the quality of your products, speedy delivery times, and with a good variety.”

And though much has changed in the scope of nail making, the business has stayed within the community and in the family. Roelif works alongside his two brothers, Pete and Jim, two of his three sons, and four of his nephews. He is the fifth generation to own and operate the Maze operation – and the sixth generation is soon to take over.

Roelif didn’t always expect to become the president of his family’s company, but is happy that he did.



Roger Wasik stands in front of Maze Nails' 100% recycled boxes, remembering the days when the packaging line was not automated.



Cindy Diaz packages nails into convenient 5-lb. boxes.



Doug Jost prepares to paint a 200-lb batch of nails.



Maze Nails President Roelif Loveland shows off a bundle of copper, which will be made into solid copper slating and flashing nails.



Bobby Lance fine tunes a nail machine that manufactures hundreds of nails every minute.

"It really tickled my Dad to have all three boys in our family end up working with him. I think it was a lot of fun for him, and I now know how he felt. Two of my sons work in this family business with me. I'm proud of their strong interest and their abilities, and how they are learning about the business and are enthusiastic about their work," Roelif said.

While much of the family is still in the business, Roelif makes sure all employees are treated like family. During the tour of the facility, he made sure to stop and chat with each and every one of his employees – from the sales department all the way to packaging.

"We really are a family here," Roelif said. "I think what makes this business work is that we try hard to put everyone in a position that they belong in and where they want to be. It's about finding the right place where someone fits in, making sure they're happy, and that they are productive in that spot."

One of the many ways Roelif keeps his employees happy is through the relaxed and open office setting he provides. His desk sits in the sales department right next to everyone else's and he works just as hard as everyone he employs. He even allows employees to wear casual clothes to work in exchange for donations.

"I really love how community-oriented we are," said June Holdcraft, an employee of Maze Nails. "We always have donations that we give to various charities. Right now, we get to wear jeans on Wednesdays as long as we put some money in the jar, which is going to our local homeless shelter this month. Around this time of the year, customers always send us gift baskets. We just had a raffle for

them and donated the proceeds to the homeless shelter and the food pantry."

The level of community involvement at Maze Nails is more than just charming – it's for a reason. Maze Nails is also a part of the Certified Production Technician Program at Illinois Valley Community College (IVCC) in Peru, which provides skills to students coming out of high school who are looking for a technical degree.

"If a student takes classes at IVCC and comes to work for us for at least a year, we will reimburse them the full cost for that course," Roelif said. "We have been involved in the program for about three years."

Roelif believes that if the skills gap in manufacturing is going to close, it will have to be with the help of manufacturers investing their time and resources into younger generations.

"Manufacturers need to make it happen. We can't operate without people who know what they're doing. One way or another, we're going to make our nails in the state of Illinois," Roelif said.

It's this kind of attitude that has kept Maze Nails around for so long. That, and Roelif's genuine excitement about the products Maze Nails produces and the people he hires to help make them.

Please join the IMA in congratulating Maze Nails for 170 years of manufacturing in Illinois, and a bright future ahead. ♦

MARIJUANA IN THE WORKPLACE: AN UPDATE ON CHANGING LAW



With so many states permitting the use of marijuana recreationally or for medical reasons, it will continue to be difficult for employers to understand their legal obligations and how, in a practical way, to address a topic that continues to create human resource and legal issues. The law in this area is changing in significant ways.

Tension Between State and Federal Marijuana Law

Currently, there are 29 states which allow for medical use of marijuana and eight states which allow for recreational use of marijuana. Nevertheless, marijuana is currently deemed a Schedule 1 substance under the federal Controlled Substances Act (CSA), which means that under federal law it is illegal to use, buy, or sell marijuana. A number of states have taken the position

that, despite the CSA, marijuana is not illegal. However, the right to prosecute is a right that the federal government still holds under the CSA. This creates a significant tension in how courts will address issues relating to marijuana, both generally and in the workplace.

Pre-2017 Trends

Prior to 2017, court decisions that interpreted the interplay between federal and state marijuana laws were generally employer-friendly. For example, in 2016, the Colorado Supreme Court ruled in *Cotts v. Dish Network, LLC* that employers may terminate an employee for off-duty marijuana use, despite the state's medical marijuana law. The employer at issue had a zero tolerance drug use policy and the employee, a legally prescribed medical marijuana user, failed a random drug test due to his off-du-

ty use. The employer terminated the employee and the court found its policy and termination permissible since marijuana is illegal under federal law.

Likewise, in *Shaw v. Safeway, Inc.*, a Washington federal court held that employers were not required to accommodate medical marijuana use in a drug-free workplace. Following a workplace injury, the employee tested positive for marijuana. Despite his valid prescription for medical marijuana, the employer terminated him pursuant to its drug-free workplace policy. The court reasoned that since marijuana is illegal under federal law, the employer was not required to provide a reasonable accommodation.

While these employer-friendly rulings were the trend prior to 2017, recent decisions have taken a turn.

Recent Trends

Barbuto v. Advantage Sales & Marketing

In July 2017, Massachusetts' highest court ruled in *Barbuto v. Advantage Sales & Marketing, LLC*, that employers may be held liable for disability discrimination for firing an individual because he or she legally uses marijuana under a prescription. In *Barbuto*, the plaintiff took a pre-employment drug test. Before she took the test, she told the employer that she had a medical marijuana prescription to treat her Crohn's disease pursuant to the Massachusetts medical marijuana law. The plaintiff informed her employer that while she used marijuana to treat her Crohn's disease, she did not use it before or during work. Not surprisingly,

reasonable accommodation as it would for other legally-prescribed medications.

Noffsinger v. SSC Niantic Operating Company, LLC

One month later, in August 2017, a Connecticut federal district court held in *Noffsinger v. SSC Niantic Operating Company LLC*, that federal laws that prohibit the use and sale of marijuana do not preempt Connecticut's Palliative Use of Marijuana Act (PUMA), which provides protections for employees and applicants against discrimination based upon medical marijuana use that is legal under state law. After the employer offered the plaintiff a job, she disclosed that she had a prescription that allowed her to use marijuana to treat post-traumatic stress disorder. Upon learn-

first of its kind, as no other court has concluded that marijuana's illegality under federal law does not bar a discrimination claim based upon conduct that is protected by a state's medical marijuana law. In other words, employees in Connecticut may bring discrimination claims based upon their status as medically prescribed marijuana users pursuant to state law.

Wise Words for Employers

While *Barbuto* and *Noffsinger* are binding only in their respective states, they provide a legal path for other courts to follow. It is highly likely that employees in other states will follow this path and make the same arguments. It remains to be seen whether other courts will rule similarly.

In Illinois, the Compassionate Use Act contains a specific provision which prohibits employment discrimination based upon an employee's status as a medical marijuana user, unless it would put the employer in violation of a federal law or cause the employer to lose monetary or licensing benefits under federal law. To date, there have been no court decisions regarding the interpretation of the Act's anti-discrimination provision.

Employers are advised to maintain a watchful eye on changes to the law and precedent in their local jurisdictions. There are various ways for employers to limit their exposure to liability. At this point, employers would be wise to consider accommodation requests made by medical marijuana users just as they would any other potential disability. Employers should engage in the interactive process with the employee and determine whether off-duty marijuana use will cause an undue burden on its business operation.

Even if the *Barbuto* and *Noffsinger* decisions start a trend, employers may still enforce policies with respect to marijuana use. Employers may maintain a commitment to a drug-free workplace and disallow on-site marijuana use by employees. The same holds true for policies constructed around safety-related concerns or federal drug-free workplace laws. Employers should, however, leave room in each of their policies for certain "exceptions" regarding legally prescribed marijuana use. ♦

AT THIS POINT, EMPLOYERS WOULD BE WISE TO CONSIDER ACCOMMODATION REQUESTS MADE BY MEDICAL MARIJUANA USERS JUST AS THEY WOULD ANY OTHER POTENTIAL DISABILITY. EMPLOYERS SHOULD ENGAGE IN THE INTERACTIVE PROCESS WITH THE EMPLOYEE AND DETERMINE WHETHER OFF-DUTY MARIJUANA USE WILL CAUSE AN UNDUE BURDEN ON ITS BUSINESS OPERATION.

the plaintiff tested positive for marijuana, and the employer terminated her after one day on the job. The plaintiff brought a claim against the employer and alleged that the employer violated Massachusetts' law prohibiting handicap discrimination. The court held that legally prescribed marijuana is, with respect to disability laws, the equivalent of any other prescription medication. "The use and possession of medically prescribed marijuana by a qualifying patient is as lawful as the use and possession of any other prescribed medication." The ruling made clear that employers must engage in the interactive process with employees that are legally prescribed marijuana.

Thus, in Massachusetts, the same principles under the Americans with Disabilities Act (ADA) apply to medical marijuana users – the employer must show that allowing for off-site marijuana use constitutes an undue burden. Employers must allow for a

ing this, the employer withdrew the job offer. The plaintiff sued the employer for violation of Connecticut's medical marijuana statute's anti-discrimination provision.

The court found that PUMA was not preempted by the CSA or the ADA, and did not conflict with either federal law. In its reasoning, the court concluded that PUMA did not conflict with the terms and provisions of the CSA or the ADA, as neither addresses an employee's use of marijuana outside of the workplace and neither disallows states from providing greater protections to its citizens. While the purpose of the CSA is to prohibit marijuana use, it does not prohibit the employment of marijuana users. Similarly, while the ADA permits employers to prohibit drug use at the workplace, it does not provide authorization for employers to take adverse actions based on drug use outside of the workplace.

The court's decision in *Noffsinger* is the

THE BIGGEST INDUSTRIAL ENERGY WASTERS, AND WHAT DO ABOUT THEM

CONSTELLATION

Many business leaders might consider energy costs as nothing more than an operational requirement. Organizations pay their monthly bills, groan, and complete the cycle again in another month. What these businesses don't realize is that you have much more control over your energy costs than you might think.

According to a recent report from the Energy Information Administration, industrial facilities accounted for 60 percent of all energy consumed in the United States last year. The impact of your energy consumption could seem like a monthly expense, but the waste adds up quickly and could be impacting your bottom line.

CHANGING YOUR WORKFLOWS AND OPERATIONAL PROCESSES MIGHT SEEM CHALLENGING, BUT THERE IS A LOT OF POTENTIAL FOR CUTTING ENERGY WASTE.

By recognizing the greatest energy wasters in your facilities and adjusting your energy management strategy, your business will be able to see results. By creating a more effective energy strategy and working to increase efficiency, your business could realize sustainable, long-term success that benefits your business, employees, customers and community.

HVAC

The need to heat, cool and ventilate your industrial facilities plays a critical role in consumption. Last year, industrial

facilities required 69 billion kWh to meet their HVAC needs. But did you know that poorly-performing air compressors alone contributed to \$3.2 billion of unnecessary HVAC-related energy expenses? Conducting an HVAC audit can help determine where your HVAC systems could be burning up your budget.

Lighting

The EIA found that facility lighting required almost 52 billion kWh of electricity last year. While you may not be able to operate with the lights off, lighting system upgrades are among the simplest fixes you can make at your facility today. Low-cost LEDs are now competitive with traditional incandescent bulbs. These long-lasting, high efficiency bulbs will curb your utility bills and decrease maintenance expenses. Combining these bulbs with a smart lighting system that can respond automatically to facility conditions can also cut lighting-related energy waste.

Process Heating

In many industrial manufacturing settings, heat must be supplied for the forging of various materials and commodities. In 2016, the EIA found that process heating required nearly 94 billion kWh of electricity to meet demand. This accounts for roughly 17 percent of all industrial usage. The Department of Energy has put forth a guideline for improving process heating systems. The recommendations can be applied in one year and reach a standard payback within two years.

Electrochemical Processes

Some materials cannot be created through simple process heating, which may require a more complex electrochemical reaction. Last year, electrochemical processes in United States facilities required almost 93 billion kWh. That is almost the same amount required for process heating.

Recent research into these processes has shown a promise for turning waste heat back into energy. Through a renewable energy system that leverages electrochemical waste, industrial facilities may be able to create a highly-efficient loop that powers itself.

Machinery Use

The greatest contributor to industrial energy consumption is the energy required to power machinery. Requiring 426 billion kWh to meet demand, machine drive accounts for more than HVAC, lighting, process heating and electrochemical processes combined. However, it is also one of the easiest costs to control. Energy prices change over the day, week, month and year. As a result, facilities can capitalize on these fluctuations by operating heavy machinery in off peak hours when electricity is offered at a lower cost. Changing your workflows and operational processes might seem challenging, but there is a lot of potential for cutting energy waste.

By analyzing where your business' energy costs are coming from and taking a positive step to correct them, you are already one step ahead of many other businesses when it comes to cutting energy costs. Constellation believes it is important to consider high energy costs as an opportunity to rethink your overall energy strategy.

Constellation offers products and tools that will help your business do just that. Beyond those products, Constellation's Efficiency Made Easy® (EME), an award-winning efficiency and sustainability program, can help you make many of the efficiency updates discussed above with no upfront capital. Learn more about EME and more products and tools offered by Constellation, the IMA's endorsed energy supplier, that could help your business by visiting constellation.com/IMA. ♦

IS AUTOMATION THE ANSWER FOR INDUSTRIAL ENERGY WASTE?

CONSTELLATION

For all the millions of homes and businesses scattered throughout the country, it is actually the industrial sector that consumes by far the most energy in the United States on a yearly basis. According to the U.S. Energy Information Agency (EIA), the residential and commercial sectors only accounted for 40 percent of U.S. energy consumption last year—combined. That leaves nearly two-thirds of all consumption to the industrial sector.

Energy is typically one of the top five operating costs for most businesses—especially so for the high-demand industrial sector. As such, energy efficiency measures should be looked at as a way to not only control costs and streamline production, but also to provide fiscal stability and environmental consciousness.

In a recent Department of Energy (DOE) report, analysts noted that emerging technologies may have a role to play in helping to reduce energy waste across the industrial sector. The report's authors claim that "... there is potential to accelerate the rate of adopting energy efficient technologies and practices that could **reduce energy consumption in the industrial sector by an**

additional 15 to 32 percent by 2025."

One such technology is automation. The proliferation of connected and Internet-enabled devices is now converging with increasingly complex machine learning software, optimal conditions for quality automated processes, and industrial facility.

A 2017 MarketsandMarkets™ report found that the industrial control and factory automation market are poised to balloon to a value of \$239.1 billion over the next five years. Among the reasons for the accelerating adoption, report analysts pinpointed energy efficiency as a primary driver.

How will automation impact energy waste at industrial facilities? Let's take a closer look at the use cases provided by MarketsandMarkets™.

Distributed Control Systems to Simplify Energy Distribution

Distributed control systems (DCS) will unify connected devices into a single autonomous system. DCS technology will help companies reduce downtime and improve production with the most efficient distribution of resources. The aforementioned MarketsandMarkets™ report further stated that the oil industry is likely to

be a primary beneficiary due to the rise in oil exploration.

Data Analytics

As connected devices aggregate data, analysts will be able to develop a more informed energy management policy. From assessing shipping logistics to maintaining facility temperatures, this data will offer facility managers enough insight into their own operations to alter processes as more efficient opportunities are discovered.

Robotic Automation

Many large-scale facilities are even expanding the role of autonomous robots to expedite processes and curb waste. In an example from a Chinese package sorting facility, autonomous self-charging electric robots sort 200,000 parcels a day—virtually eliminating mistakes and rapidly expanding efficiency, both of which can help facilities scale back on energy consumption.

Constellation, the IMA's endorsed energy supplier, is all about delivering customized strategies that will help facility managers take more control over their energy consumption. To learn how Constellation can help you, visit constellation.com/IMA. ♦





MEET NEW IMA CHAIRMAN RICK DELAWDER, SWD

The IMA is proud to welcome Rick Delawder, President of SWD Inc., as the newest Chairman of the IMA Board of Directors.

SWD opened for business in March of 1980 with just three employees and a 9,000 square-foot facility that specialized in black oxidizing, cleaning, and pickling of metals. A generation later, SWD has just over 200 employees and runs three shifts per day for metal finishing, coating, and fastener sorting in its 165,000 square-foot facility in Addison, Illinois.

"We put finishes and coatings on the parts to make them corrosion resistant and more functional and long-lasting within their applications," Mr. Delawder said.

Operating primarily within the automotive world, SWD is a recognized leader in the Metal Finishing and Fastener Sorting industry, and also does business with many manufacturer supply chains such as John Deere, Caterpillar, and Navistar.

Working with big-name businesses is nothing new for Mr. Delawder. After receiving his degree in Industrial Engineering from

Southern Illinois University Carbondale, he immediately began working at Texas Instruments in the defense electronics group in Dallas, Texas.

"When we moved to Texas, my wife and I decided we would come back to Illinois someday. And five years later, we came back with our first baby," Mr. Delawder said.

Mr. Delawder didn't start off at the top, but rather, worked his way up to his father's position.

"I was the first quality engineer at SWD," Mr. Delawder said. "Progressively over the years, I had more opportunities to do various jobs within the company. Eventually, about 10 years ago, my dad stepped aside regarding the day-to-day work, and I became the president of the company."

Running SWD is a family matter. Both of Mr. Delawder's brothers work in the business as well, and the third generation is likely to join in the future. Along with keeping his family in the business, Mr. Delawder takes a family approach to his business as a whole.

"There are three things I try to remember," Mr. Delawder said.



Rick Delawder with his father, Dick, and brothers Matt and Tim in 2014.



An SWD fastener sorting machine operator logs machine callibration.

“The first is that life is short, and so you have to make sure you keep a good balance within it. The second is that you should always treat others with respect. And third, I don’t want anyone on our team to feel like they’re just a number. We want them to know that they are always a part of the team, that they have a name, and we understand that they have a life outside of the company. We spend a lot of time recruiting and training, and I think that, along with our culture, helps us to retain people.”

Although Mr. Delawder is grateful to have a high retention rate, there have been some struggles in the modern age of manufacturing.

“ONE THING THAT IS VERY IMPORTANT TO ME IS THAT WE HAVE A SOLID IMA TODAY AND A BETTER IMA TOMORROW. I WANT TO MAKE SURE THAT WE ARE MAKING GOOD DECISIONS GOING FORWARD SO THAT THE IMA CONTINUES TO EXIST FOR ANOTHER 125 YEARS.”

“Manufacturing is always transforming and morphing into different areas here in the U.S. as well as globally,” Mr. Delawder said. “In the auto industry, it wasn’t uncommon many years ago to function independently from other regions of the world. In today’s environment, that’s just not true. The different laws that are passed affect the decisions that are made not only in Springfield or in Washington D.C., but they affect the decisions that public and private companies make.”

Along with facing pressures of the global economy, Mr. Delawder mentioned the difficulties of locating quality hires.

“Right now, we have many job openings. We are challenged

with finding qualified people that want to contribute at the levels we would hope – from a productivity standpoint, from an attitude standpoint, and from a drug-free standpoint,” Mr. Delawder said.

These issues are not uncommon among manufacturers all across Illinois, which is why one of Mr. Delawder’s goals with the IMA is to continue to work hard with lawmakers and educators to support the manufacturing sector.

“It is so important that the whole picture is taken into account as we move into the future,” Mr. Delawder said. “The IMA plays a key role in helping to guide our legislators in regards to how their decisions will affect the manufacturing supply chain. We’ve got the ball rolling with apprenticeships through the Education Foundation, and we need to keep that going if we are going to fill the skills gap and find qualified people to take these very important jobs.”

Mr. Delawder has followed in his father’s footsteps in more ways than one, and makes sure that he gets involved with as many organizations as possible.

“My father got the business involved with the IMA before I even joined it. He’s always had the philosophy of participating with different organizations, whether they’re within our business or a customer’s business,” Mr. Delawder said. “That has been a huge part of what SWD has become, not only at the trade level but also at the local level. I do a lot locally – I sit on a committee with the mayor that is involved in training and helping our community understand the value of manufacturing and the jobs that we have right here in the village of Addison.”

Mr. Delawder will be bringing his passion for manufacturing into his new position as Chairman of the IMA.

“One thing that is very important to me is that we have a solid IMA today and a better IMA tomorrow. I want to make sure that we are making good decisions going forward so that the IMA continues to exist for another 125 years. I take great pride in being able to say that I am a part of this team, and I really look forward to the next two years and beyond.”

Please join us in welcoming Rick Delawder as the newest Chairman of the IMA. ♦

SEXUAL HARASSMENT: PROTECTING YOUR BUSINESS AND EMPLOYEES

CLARK HILL PLC

Harvey Weinstein. Kevin Spacey. Charlie Rose. Louis C.K. Roy Moore. Al Franken. John Conyers. Matt Lauer. When will it end? The list grows daily. Women and men are coming forward with allegations of sexual harassment and abuse, and some of the allegations are truly shocking. Although we normally presume that an accused person is innocent, in many of these cases the alleged perpetrators either have admitted to the conduct or, at least, have failed to deny it. In the case of Senator Franken, there are photos. With allegations of sexual harassment in the spotlight, agencies and companies are issuing statements and conducting research about sexual harassment. For example, the Equal Employment Opportunity Commission (EEOC) issued a "What You Should Know: What to Do if You Believe You have Been Harassed at Work" statement. It outlines steps for employees to take if they believe they have been subject to harassment.

The allegations against these high profile individuals have also sparked a resurrection of the #metoo campaign on social media. The campaign called on those who had been sexually harassed or sexually assaulted to share their stories with the hashtag "me too." Men and women all over the world have shared stories through the campaign. Because of the #metoo cam-

paign, the new allegations that have been appearing in the news almost daily, and a renewed attention on sexual harassment in the workplace, employers likely will see an increase in employee sexual harassment complaints in the coming months.

Studies show that sexual harassment in the workplace is very costly. In addition to the hundreds of millions of dollars paid out in settlements every year, sexual harassment causes low employee morale, high job turnover, increased sick leave, decreased productivity, and reputational loss. The good news is there are ways to help reduce these costs.

Make Sure Your Harassment Policy is Up to Date and Has Been Communicated Recently

The policy must include a notice that sexual harassment is unlawful and that it is unlawful to retaliate against someone who reports sexual harassment or participates in an investigation into harassment. Additionally, among other things, the policy should define sexual harassment and outline the employer's internal complaint and investigation procedure. Each time the policy is distributed, employers should obtain a signed acknowledgment form from the employee indicating that they have received, read, understand, and agree to abide by the policy.

Conduct Harassment Training for Management/Supervisors if You Haven't Done So Within the Past Year

The EEOC has provided some helpful guidance about effective harassment training. Among other things, the EEOC recommends that the training be live and interactive if possible, or computer-based and interactive if live training is not possible. The CEO or other top person in the company should provide full, public support for the training and a harassment-free workplace. The substance of the training should not just recite the legal definitions related to workplace harassment, but should provide real-world examples tailored to the employer's particular work environment. Management/supervisor training also should include specific guidance on what the manager/supervisor should do if he or she receives a complaint or becomes aware of an issue and should include a component on retaliation.

Conduct Harassment Training for Non-Management Employees

Employee training does not have to be as in-depth as the training for management, but it should cover the following topics: (1) the type of behavior that can get an employee in trouble (or, conversely, that would be considered "harassment" in violation of company policy if the employee is subjected to it); (2) what the employee should do if the employee believes he or she may have been a victim of harassment, and (3) what retaliation is, that it is prohibited, and how to lodge a retaliation complaint.

Refine Your Complaint and Investigation Process

As discussed above, an employer's sexual harassment policy should outline where and how employees can bring internal complaints of harassment and what the investigation procedure is. If either of these processes is unclear in your policy, now is the time to revisit them and develop a more straightforward complaint process and investigation procedure. Although complaints can be brought to an employer's attention in a number of different ways (e.g. third party, observation, etc.), employers





should be aware that an employee is not legally required to follow the complaint procedure outlined by an employer's policy so long as the employer becomes aware of the complaint through some other means. Employers also should provide the names of two employees, preferably one male and one female, to which employees can bring their complaints of harassment. And, lastly, the employer should inform all employees that they will not be retaliated against for reporting harassment in good faith.

With regard to the investigation process, it must be a prompt and thorough process that involves a private interview with the person filing the complaint, the accused, and any witnesses. Additionally, employers should review any other evidence including, but not limited to policies and emails. Employers also should specify who will be responsible for investigating allegations of sexual harassment in the procedure outlined in the policy.

What to Do with a Sexual Harassment Complaint

Conduct a prompt and thorough investigation into the allegations as outlined above, document the investigation including, but not limited to taking notes during interviews, writing up an investigation report, and determining what, if any, discipline is appropriate.

Once the investigation is complete, follow up with the complaining party regarding the outcome without sharing specifically what, if any, discipline the accused will face. Follow through on any disciplinary measures or other recommendations, and in the weeks and months following, continue to follow up with the complaining party to confirm that all of the inappropriate conduct he/she reported has stopped.

Employers should also remember that their workplaces are not courts of law, and so employers are not bound by any "proof

beyond a reasonable doubt" standard before imposing discipline. Even when an investigation doesn't reveal any hard "proof" of harassment, employers can impose discipline if they believe improper conduct occurred.

The best position for an employer to be in is one in which none of its employees are engaging in sexual harassment. Distribution of the policy and annual training help to eliminate harassment in the workplace, but when someone does report it, an employer must also be prepared to promptly investigate and stop the conduct to limit its legal liability.

One of the most effective ways to curb harassment in the workplace is to take strong action in response to misconduct and make clear to employees that inappropriate conduct will not be tolerated. ♦

DOES YOUR BUSINESS COMPLY?

ICE MILLER LLP

Employers are justifiably concerned with the integrity of their employees because employees have access to customer funds and confidential customer information. However, employers must be aware of and comply with the requirements of at least two Illinois laws that limit employers' consideration of the criminal records and criminal histories of potential and current employees; they are the Illinois Job Opportunities Act and the Illinois Human Rights Act. Certain employers must also comply with the City of Chicago's Human Rights Ordinance whether or not they are subject to the Illinois Job Opportunities Act and the Illinois Human Rights Act.

The Illinois Job Opportunities Act

Like many other states, Illinois enacted a so-called "Ban the Box" law that generally prohibits employers from inquiring about, considering, or requiring disclosure of a criminal record or criminal history during the early stage of the employment application process. The Job Opportunities for Qualified Applicants Act (the "Job Opportunities Act") applies to private employers with 15 or more employees in the current year or the preceding calendar year, so it applies to many Illinois employers.

Specifically, the Job Opportunities Act states an employer may not "inquire about, or into, consider, or require disclosure of the criminal record or criminal history of an applicant":

(a) until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview; or

(b) until after a conditional offer of employment is made to the applicant by the employer, if no interview is involved.

Unfortunately, the Act does not define the terms "criminal record" or "criminal history," and the Illinois Department of Labor has not issued any rules or regulations defining these terms.

The Job Opportunities Act also does not prohibit employers from considering the criminal record or criminal history of an applicant when making the ultimate decision whether to hire the applicant.

Exceptions to the Job Opportunities Act

The Job Opportunities Act also has a few limited exceptions that may apply to employers. For example, the Job Opportunities Act's prohibitions do not apply to positions for which state or federal law requires employers to exclude applicants with certain criminal convictions from employment.

The Job Opportunities Act's prohibitions also do not apply where a standard fidelity bond or an equivalent bond is required and a conviction of one or more specified criminal offenses would disqualify the applicant from obtaining the required bond. In this limited circumstance, the employer may include a question or otherwise inquire whether the applicant has ever been convicted of any of those specified offenses.

Enforcement of the Job Opportunities Act

The Illinois Department of Labor investigates alleged violations and enforces the Job Opportunities Act, which has escalating civil penalties beginning with a written warning and increasing to a monetary penalty of up to \$1,500 for every 30 days that pass without compliance.

The Department of Labor's website includes a complaint form for the submission of claims for alleged violations of the Job Opportunities Act. Although the Job Opportunities Act authorizes the Department of Labor to adopt rules related to the Act and issue final and binding decisions, the Department has not yet finalized any rules interpreting the Job Opportunities Act or its implementation. Also, no reported Appellate Court Opinions have interpreted the Job Opportunities Act or its exceptions. However, the Job Opportunities Act is a remedial act intended to protect the rights of applicants for employment and will likely be interpreted liberally by the Department of Labor and the Courts.

The City of Chicago's Human Rights Ordinance

The City's Human Rights Ordinance includes the same prohibitions as the Job Opportunities Act, but applies to certain employers that are not subject to the Job Opportunities Act. All employers, regardless of the number of employees, must comply with the City's Human Rights Ordinance if:

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- (a) the employer is subject to the City of Chicago's licensing requirements; or
- (b) the employer maintains a business facility within the City limits.

The City's Human Rights Ordinance contains the same prohibitions regarding inquiring about, or into, considering, or requiring the disclosure of the criminal record or criminal history of a job applicant as the prohibitions in the Job Opportunities Act described above. Like the Job Opportunities Act, the City's Human Rights Ordinance does not define the terms "criminal record" or "criminal history."

However, the City's Human Rights Ordinance goes a step further than the Job Opportunities Act by requiring private employers to notify the applicant if the decision not to hire the applicant was based, entirely or partially, on the applicant's criminal record or history.

Exceptions to and Enforcement of the City's Human Rights Ordinance

The City's Human Rights Ordinance includes the same limited exceptions included in the Job Opportunities Act discussed above. The City's Commission on Human Relations investigates alleged violations of and enforces the City's Human Rights Ordinance.

The City's Human Rights Ordinance states fines of not less than \$100 or more

than \$1,000 shall be assessed for violations, and that each day a violation continues is a separate and distinct offense. The City also imposes license discipline for City licensees that violate the City's Human Rights Ordinance.

The Illinois Human Rights Act

Contrary to the Job Opportunities Act, the Illinois Human Rights Act actually prohibits employers from considering an arrest and certain criminal history in employment decisions. The Human Rights Act applies to employers employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or the year preceding the alleged violation. Section 2-103 of the Human Rights Act prohibits employers from inquiring into or using:

- (a) the fact of an arrest; or
- (b) criminal history record information ordered expunged, sealed or impounded, as a basis for most employment, promotion, discharge, and disciplinary decisions.

However, the Human Rights Act states the prohibition of the use of a fact of arrest does not prohibit the employer from obtaining or using other information that indicates a person actually engaged in the conduct that led to the arrest. As one Appellate Court Opinion stated, the legislature intended this section of the Human

Rights Act "to prevent an inquiry into mere charges of alleged criminal behavior, but to allow inquiry where criminal conduct has been proven."

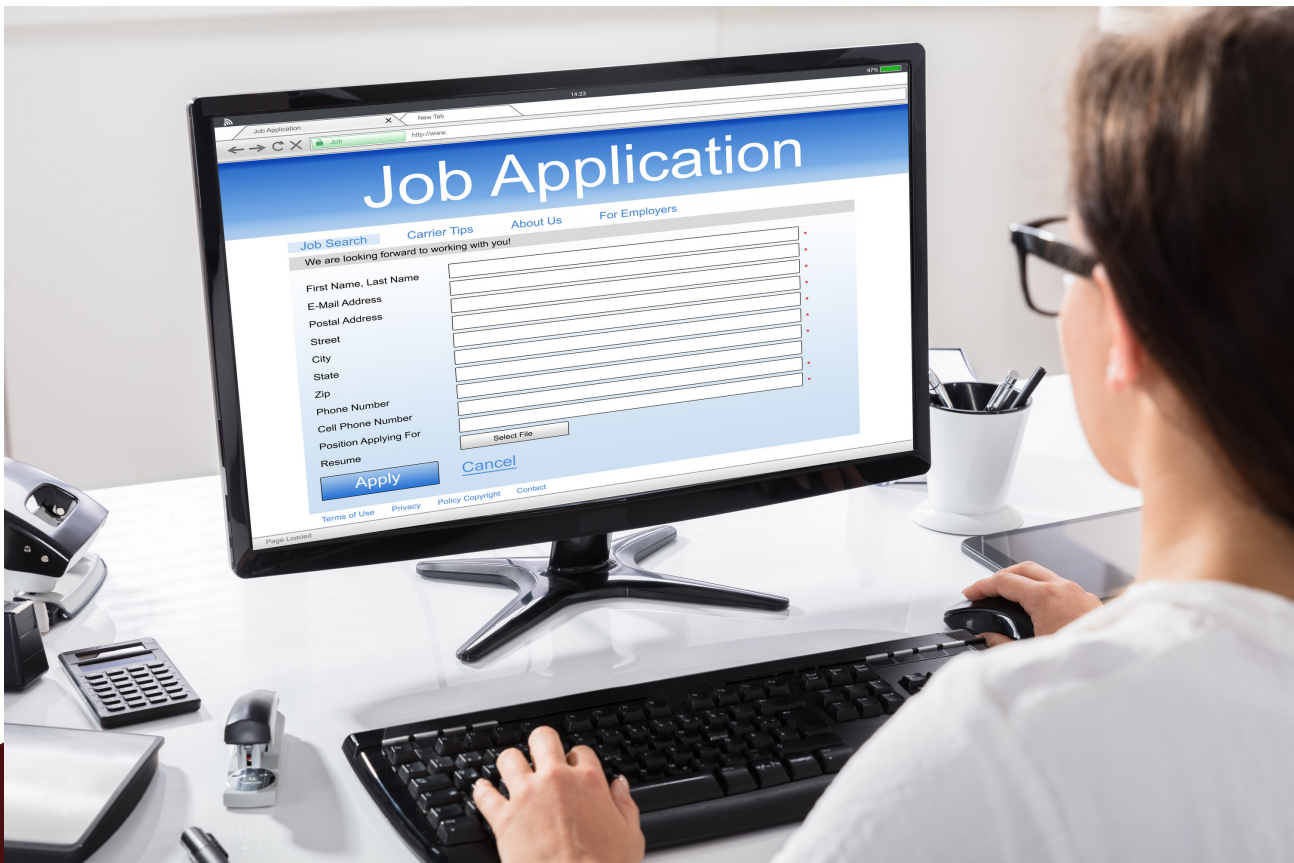
Enforcement of the Human Rights Act

Several Appellate Court Opinions that have interpreted the Human Rights Act have ruled the Human Rights Act is a remedial act that should be interpreted liberally.

The Human Rights Act authorizes the Department of Human Rights to adopt rules and regulations and to investigate, file complaints, and settle charges brought under the Human Rights Act.

The Illinois Department of Human Rights investigates alleged violations of and enforces the Human Rights Act that provides for the award of damages and other remedies, including an award of attorney's fees.

Accordingly, employers should review their employment applications, including online applications, to ensure they comply with the Job Opportunities Act and the City's Human Rights Ordinance. Employers should also confirm that their hiring procedures and employment-related decisions comply with the Illinois Job Opportunities Act and the Illinois Human Rights Act and with the City of Chicago's Human Rights Ordinance. ♦



DESIGNING A COMPREHENSIVE DATA SECURITY POLICY FOR YOUR BUSINESS

DRINKER BIDDLE & REATH LLP

All companies today, including manufacturers, have an online presence and/or are using the internet to conduct business in some way. By digitally connecting to the outside world, all companies are at risk of a data security breach of customer information and/or internal financial/technical data. If you think your company is safe merely because it does not host an ecommerce platform, the reality is that it only takes one hacker's control of a single business email account to compromise your internal systems. As a result, cybersecurity must be viewed as a company-wide business risk that affects all departments, instead of merely an IT risk. Based on the many recent, widely-reported and devastating cyber-attacks, it's not a

actionable ways to thwart the most pervasive attacks and online threats. The NIST Framework provides a process to map out security goals and measure progress towards meeting those goals.

In this article, we use the DFS regulations, CIS Controls and NIST Framework to first explain how to design a comprehensive data security policy, and second, to describe how to implement data security policies across your organization.

Risk Assessment

The first step is to understand the key cybersecurity risks to your internal systems. You should begin by inventorying your physical devices, workstations, IT systems (internal and external), assets, and your facilities. After that, you should identify your

your cybersecurity risks. If a risk could result in catastrophic harm, such as trade secret loss or physical injury – critical concerns for manufacturers – the risks should be given a high priority.

Once you have mapped out a clear picture of your systems and evaluated your cybersecurity risks, you are ready to begin drafting a data security policy targeted at mitigating your risks and rapidly addressing the threat of cybersecurity attacks against all or any part of your overall system.

Drafting a Comprehensive Data Security Policy

Data security policies are living documents. While it may be daunting to draft the initial policy, expect that the policy will

EACH RISK YOU IDENTIFY SHOULD BE LABELED LOW, MODERATE, OR HIGH DEPENDING ON THE IMPACT OF THE RISK, IF REALIZED. YOU SHOULD ALSO KEEP IN MIND YOUR BUSINESS OBJECTIVES WHEN EVALUATING THE POTENTIAL IMPACT OF YOUR CYBERSECURITY RISKS.

matter of "if" anymore, it's a matter of "when."

Fortunately, recent guidance from state and federal agencies provides valuable insight into protecting your employee and customer personal data, financial data, and proprietary information. In particular, this article highlights the New York Department of Financial Services' (DFS) Cybersecurity Regulations (entered into effect on March 1, 2017), the Center for Internet Security (CIS) Critical Security Controls, and the NIST Cybersecurity Framework. The DFS regulations were created to help prevent cybersecurity attacks against financial institutions and insurance companies, but most of the regulations can be viewed as guidance to all companies. Similarly, the CIS Controls were created to provide a set of best practices for implementing cyber defense measures that provide specific and

software applications and map out the data flows between your systems. At the end of this process, you should have an understanding of where your most sensitive data resides, how it can be accessed, and how it flows.

The second step in the risk assessment is to assess the security risks and threats facing your institution. One way to identify risks to your IT systems is through penetration and vulnerability testing. Although the initial risk assessment will set up the foundation for your company's data security policy, you should expect to conduct similar penetration tests and evaluations at least annually.

Each risk you identify should be labeled low, moderate, or high depending on the impact of the risk, if realized. You should also keep in mind your business objectives when evaluating the potential impact of

be continually updated as your IT systems change and technology advances. In the following sections, we provide a summary of some of the key components of your data security policy.

Incident Response Plans

Incident response plans are written procedures designed to allow your company to promptly respond to and recover from a cybersecurity event. They will assist your company in streamlining forensic analyses, reducing recovery time, and dealing with potential negative publicity.

The incident response plan should begin by defining roles, responsibilities, communication strategies, and the decision-making processes. Incident response plans should also contain the technical steps needed to resolve a cybersecurity event. The steps should outline the controls in the



system, the data potentially involved in the event, and a method for quickly containing or eliminating the threat. After the incident has been contained, the team involved in the resolution should also evaluate and revise the applicable incident response plan by incorporating lessons learned.

How many incident response plans should you have? Although there is no set number, you should draft incident response plans based on the risks and potential types of data that may be impacted as identified during your risk assessment. For example, you may have separate incident response plans for breaches of human resource data, proprietary financial or marketing data, or trade secrets, as well as another plan for a potential DNS attack. Each separate plan would then identify appropriate team members (internal and external) and the potential notification efforts that might arise.

Access Controls and Auditing

A key element to a robust security infrastructure is maintaining industry-grade access control policies, such as multifactor authorization. Access control ranges from (1) physical access to facilities to (2) permission for access to your IT systems. Limiting administrative privileges and implementing secured, remote connections are critical to ensuring your systems are protected. You should also include a process for granting access, especially for systems containing sensitive data.

In addition, you should implement auditing trails to actively monitor user activities. Automation can be helpful here, because it enables you to quickly identify atypical patterns and temporarily or permanently disable associated accounts.

Encryption and Isolation

Essentially all guidance related to cyber-

security recommends encrypting personal or other sensitive data, especially when transmitting this data outside of secure systems. Encryption is a powerful tool in protecting data, and will, at the very least, buy you time in the case of a data security incident because sophisticated encryption algorithms can be extremely difficult to crack.

Another important strategy is to isolate your systems – especially primary systems – from their backups. In the event of a security incident, the ability to quarantine the infected system or quickly switch to a backup system could save your company a lot of unnecessary expense and anguish.

Data Security Teams and Governance

In your data security policy, you should also identify a data security team, including a chief information security officer, or equivalent manager, to implement your data security program. The resources involved on the team can be a mix of internal and external members, but each should be trained in their new data security responsibilities and should meet regularly to discuss updates on new risks and technologies.

Vendors/Third Parties

In addition to internal considerations, data security policies should also include a strategy for contracting with vendors and third parties. You can have the most robust infrastructure within your company, but if your vendors fail to maintain similar standards, you could still be at risk of a cybersecurity attack. Your data security policy should therefore include standard contractual provisions that should be added to all vendor agreements. These standards should also play a role in your procurement processes and evaluations of new vendors.

Annual Reviews

As stated above, data security policies are living documents and should be re-

viewed at least on an annual basis to incorporate changes in technology and your infrastructure. The data security team should lead revisions to the policy, but your annual review should also contain input from leaders from across your organization. It is also important to add new incident response plans (and/or modify existing ones) based on (1) threat developments that may have been identified by your new risk assessments or (2) attacks/incidents that may have occurred in your industry during the previous year.

Employee Training

As the old adage goes, “you’re only as secure as your weakest link.” After you have designed your data security policy, you need to establish a company-wide training program to make sure employees are aware of the key risks affecting their day-to-day operations and how to work with those risks in mind. These training programs should be tailored based on the employees’ roles and responsibilities and should align to their business objectives. Training should occur for all new employees and at least annually for all employees, especially those that access critical IT systems or maintain sensitive data.

While no amount of preparation or protection can eliminate all risk of a cybersecurity incident or attack from occurring, the drafting and implementing of a comprehensive data security policy is a critical step in minimizing that risk against your valuable data assets – including your employee data, trade secrets, research and development, marketing strategies and cost data. The upfront investment will save your company a considerable amount of time, money, stress, and negative publicity down the road if/when an attack occurs. ♦

U.S. EPA AMENDS THE HAZARDOUS WASTE GENERATOR IMPROVEMENTS RULE

HEPLERBROOM LLC

The generation of hazardous waste is regulated by the United States Environmental Protection Agency (U.S. EPA) under the Resource Conservation and Recovery Act (RCRA). On November 28, 2016, the U.S. EPA finalized revisions to the RCRA hazardous waste generator regulatory program.

The final rule, known as the Hazardous Waste Generator Improvements Rule (GIR), includes over 60 changes to the hazardous waste generator regulations and is the culmination of a comprehensive review of the regulations that began in 2004. The revisions reorganize the structure of the regulatory program and address certain gaps in the existing regulatory structure. Additionally, the revisions were intended by the U.S. EPA to make the regulations easier to understand and provide greater flexibility for generators.

Amendments to the Generator Regulations

One of the U.S. EPA's goals with the GIR was to reorganize the generator regulations to make them more user-friendly. To accomplish this, the U.S. EPA moved all of the RCRA generator provisions into one section – 40 C.F.R. Part 262 – and made conforming changes to citations elsewhere in RCRA.

The GIR also includes several substantive changes to the requirements applicable to hazardous waste generators. As one example, large quantity generators (LQGs) are now required to notify the U.S. EPA or their respective States when they close the facility. The U.S. EPA believes that the notification requirement will allow implementing agencies to confirm that LQGs have complied with closure performance standards. LQGs with waste accumulation units that fail to clean close will be required to close as a landfill. Additionally, under the GIR, LQG contingency plans must include a “quick reference guide” with the information most critical for emergency responders.

Beginning in 2021, small quantity generators (SQGs) will be required to re-notify

every four years, instead of the one initial notification previously required. State agencies will have more up-to-date information regarding SQGs that change ownership, go out of business, or change regulatory category.

The GIR revisions impose new marking and labeling requirements for SQGs, LQGs and transporters, including the identification of hazards associated with hazardous wastes that are accumulated in containers, tanks, drip pads, and containment buildings. Hazards may be indicated using several established methods, e.g., Department of Transportation (DOT) labeling/placarding, Occupational Safety and Health Administration (OSHA) hazard statement

EPA means by “generator knowledge” as it relates to the determination of whether a listed or characteristic hazardous waste has been generated. Hazardous waste counting is also addressed in the GIR and the regulations clarify that a generator can only be in one category during a calendar month.

The GIR replaces the “conditionally exempt small quantity generator” (CESQG) category with a “very small quantity generator” (VSQG) category for facilities generating less than 100 kg of non-acute hazardous waste and/or 1 kg or less of acute hazardous waste per month. Under the GIR, VSQGs are allowed to send hazardous waste to a LQG under the “control” of the same company for consolidation. Moreover,

AS THE FINAL RULE EXPLAINS, “[T]HE PRIMARY LEGAL CONSEQUENCE OF NOT COMPLYING WITH THE CONDITION FOR EXEMPTION IS THAT THE GENERATOR WHO ACCUMULATES WASTE ON SITE CAN BE CHARGED WITH OPERATING A NON-EXEMPT STORAGE FACILITY,” AND IS “POTENTIALLY IN VIOLATION OF MANY STORAGE PERMIT OPERATIONS REQUIREMENTS...”

or pictogram, National Fire Protection Association (NFPA) chemical hazard label, or applicable RCRA hazardous waste characteristic.

The GIR also clarifies the regulations governing hazardous waste determinations by codifying a long-standing U.S. EPA interpretation that hazardous waste determinations must be made at the point of generation and prior to any dilution, mixing, alteration, or change in properties of the waste. (The U.S. EPA considered requiring documentation of non-hazardous waste determinations, but did not include this requirement in the GIR, although this is recommended in the final rule as a best management practice.) The GIR provides additional explanation as to what the U.S.

under certain conditions, VSQGs and SQGs are now allowed to maintain their existing regulatory category when they generate additional amounts of hazardous waste as a result of a planned or unplanned “episodic” event. The GIR imposes notification and recordkeeping requirements with these new changes to the hazardous waste generator rules. The consolidation and episodic generation rules will potentially allow companies to reduce recordkeeping and reporting requirements, negotiate better terms for waste disposal, and utilize the episodic generation rule to schedule maintenance, cleaning, and other operational activities to avoid the requirements applicable to a higher generator classification.

The GIR defines “independent require-

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About the Authors: Melissa S. Brown is an associate at HeplerBroom LLC, and can be reached at melissa.brown@heplerbroom.com, or (217) 993-6074.

Jennifer Martin is a partner at HeplerBroom LLC, and can be reached at jennifer.martin@heplerbroom.com, (217) 993-6077.

ment” and “condition for exemption,” and codifies the U.S. EPA policy that a generator that does not comply with a condition for exemption will be considered a non-exempt storage facility. As the final rule explains, “[t]he primary legal consequence of not complying with the condition for exemption is that the generator who accumulates waste on site can be charged with operating a non-exempt storage facility,” and is “potentially in violation of many storage permit and operations requirements. . . .”

Challenges to the GIR

Several industry groups challenged the GIR by filing a petition for review in the Court of Appeals for the D.C. Circuit on February 24, 2017. One of the main issues raised in the petition was the potential for generators to be in violation of numerous storage permit requirements and other requirements as a result of a single violation of a “condition for exemption.” A briefing schedule was posted on April 25, 2017, and final briefs on the issues were scheduled to be due on September 8, 2017. On May 22, 2017, the U.S. EPA filed a joint unopposed motion to hold the case in abeyance pending discussions between the parties. The latest status report filed by the parties on November 27, 2017 stated that the parties are still engaged in discussions and believe

that further discussions may resolve or narrow the issues in the case. The parties requested that the case continue to be held in abeyance.

Effective Date of the Regulations

For states without an authorized hazardous waste program (Iowa and Alaska), the GIR went into effect on May 30, 2017. Authorized states, including Illinois and Missouri, will be required to adopt the provisions of the GIR that are more stringent than the current RCRA generator regulations in order to retain their authorized status. Pursuant to 40 C.F.R. § 271.21(e)(2) (ii), authorized States are required to adopt the more stringent provisions of the GIR by July 1, 2018 (or July 1, 2019 if a statutory change is required).

The above-described provisions of the GIR regarding VSQG consolidation and episodic generation are less stringent than the current RCRA generator rules and States can elect, but are not required, to adopt these provisions. Because states have discretion to adopt the VSQG consolidation and episodic generation provisions and other provisions of the GIR that are neither more nor less stringent, there is likely to be considerable interest on the part of regulated industries and non-governmental organizations in the State rulemaking proceed-

ings involving the GIR.

The Illinois Pollution Control Board’s (Board) consolidated rulemaking docket encompassing the GIR is In the Matter of RCRA Subtitle D (Municipal Solid Waste Landfill) and Subtitle C Updates, R 17-14 and R 17-15. On October 19, 2017, the Board issued an order extending the deadline for completing the rulemaking to June 1, 2018 due to delays in developing a proposed rule and the “considerable effort” required to incorporate the GIR and other amendments into the Illinois rules. The Board’s order also includes a schedule for completion of the rulemaking, under which the proposed amendments will be published in February 2018 with a public comment period that will end on April 9, 2018.

According to the U.S. EPA, the revisions in the GIR may affect up to 676,890 industrial entities that generate hazardous waste. While the GIR was intended by the U.S. EPA to increase flexibility and clarify certain issues, the GIR also imposes additional requirements and increases the burden imposed on hazardous waste generators. Hazardous waste generators should become familiar with the revised generator provisions in the GIR and the actions being taken in the ongoing Illinois rulemaking proceedings. ♦

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ILLINOIS BIOMETRIC PRIVACY ACT: WHAT YOU NEED TO KNOW

SEYFARTH SHAW LLP

As biometric technology has become more advanced and affordable, more companies and employers have begun implementing procedures and systems that rely on biometric data. Given the serious repercussions of compromised biometric data, a number of states have proposed or passed laws regulating the collection and storage of biometric data, including Illinois, through the passage of the Illinois Biometric Privacy Act (BIPA) – the only biometric statute which provides a private cause of action.

Plaintiffs' class action attorneys have taken notice, as the number of class action lawsuits alleging violations of the BIPA in Illinois has surged in recent months. As more and more employers are utilizing biometric technology for various purposes, including timekeeping, employers are at a significant risk of becoming a target of class action litigation under the BIPA if it fails to comply with the requirements of the statute. Cases brought pursuant to the BIPA are akin to other "gotcha" statutory class actions – highly popular with the plaintiffs' bar due to the inclusion of statutory damages and a provision for attorneys' fees.

The theories underlying BIPA class actions, and the defenses thereto, remain largely untested. However, the Second Circuit became the first U.S. Court of Appeals to wade into the rising tide of litigation under the BIPA in *Santana v. Take Two Interactive Software* by affirming the district court's dismissal of the case based upon a lack of Article III standing under the principles announced by the Supreme Court in *Spokeo v. Robins*, but vacating the district court's finding that plaintiffs were not "aggrieved by" a violation the BIPA (e.g., failed to state a cause of action under the statute due to a failure to plead actual damages).

The decision sheds light on the viability of certain potential employer defenses in BIPA class actions, particularly at the motion to dismiss stage.

Requirements of the BIPA

Notice and Consent

The BIPA prohibits companies from collecting employees' biometric information until the company notifies the employee in writing that the information is being col-

lected. Specifically, the written notice must inform the individual of the "specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored and used." Likewise, a company must obtain a written release from the individual enabling it to collect and store the information. In the employment context, "written release" is defined as "a release executed by an employee as a condition of employment."

Written Policy

The BIPA requires companies to develop a written policy establishing a retention schedule and guidelines for permanently destroying biometric information when the initial purpose for collecting them has been satisfied or within three years of the employee's last interaction with the employer, whichever occurs first. The policy must be made available to the public.

Disclosure to Third Parties

A company may not disclose biometric information to a third party unless: (1) it obtains consent for disclosure from the individual; (2) the disclosure completes a financial transaction requested by the individual; the disclosure is required by law; or (3) the disclosure is required by a valid warrant or subpoena.

Standard of Care

The BIPA requires that a company use "the reasonable standard of care" within its industry for storing, transmitting, and protecting biometric information and act "in a manner that is the same as or more protective than the manner in which the [company] stores, transmits and protects other confidential and sensitive information."

Case Background

In *Santana*, Plaintiffs alleged that Defendant violated the BIPA based on the use of a feature in the NBA 2K15 and NBA 2K16 video games, which contain a feature called "MyPlayer" which allows gamers to create a personalized basketball player that has a realistic 3-D rendition of the gamer's face. The 3-D mapping process used cameras to capture a scan of the gamer's facial geometry to disseminate a realistic rendition of the gamer's face which requires gamers to hold their faces within 6 to 12 inches of the camera and slowly turn their heads during

the scanning process. To use the feature, gamers must also first agree to terms and conditions acknowledging that the face scan will be visible and may be recorded during gameplay and requires gamers to "agree and consent to such uses."

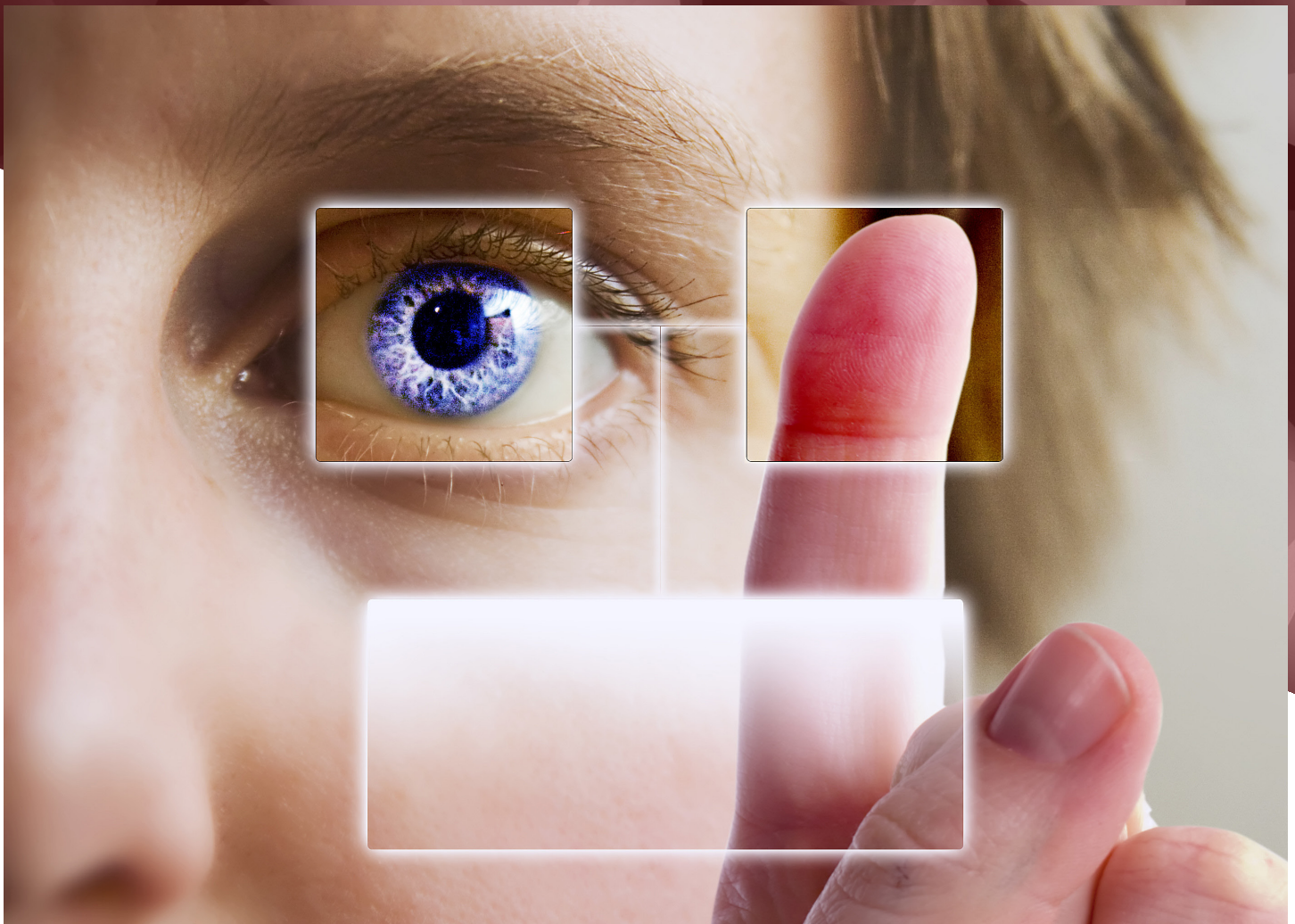
Plaintiffs alleged that Defendant: (1) collected their biometric data without their informed consent; (2) disseminated their biometric data to others during game play without their informed consent; (3) failed to inform them in writing of the specific purpose and length of term for which their biometric data would be stored; (4) failed to make publicly available a retention schedule and guidelines for permanently destroying plaintiffs' biometric data; and (5) failed to store, transmit, or protect from disclosure plaintiffs' biometric data by using a reasonable standard of care or in a manner that is at least as protective as the manner in which it stores, transmits, and protects other confidential and sensitive information.

Defendant moved to dismiss Plaintiffs' claims for lack of Article III standing and for failure to state a cause of action under the statute (i.e., lack of "statutory standing"). The district court granted the motion on both grounds and dismissed the action with prejudice, and Plaintiffs appealed.

The Second Circuit's Decision

In its ruling of November 21, 2017, the Second Circuit entered a summary order affirming the district court's decision insofar as it held that Plaintiffs lacked Article III standing, but vacating the decision in part insofar as it held that Plaintiffs lacked a statutory cause of action as "aggrieved" parties.

In regards to Article III standing, the Second Circuit held that "none of the alleged procedural violations...raise[d] a material risk of harm" to Plaintiffs arising out of the use, collection, or disclosure of an individual's biometric data. In reaching this conclusion the Second Circuit noted that no reasonable person would believe that the feature of the game at issue was anything other than a facial scan and Plaintiffs did "not plausibly assert (beyond a mere conclusory allegation) that they would have withheld their consent had Take-Two included additional language in its consent



disclaimer. Plaintiffs' alleged violations of the BIPA's notice provisions similarly failed to raise a material risk of harm because Plaintiffs did not allege that Defendant had not or will not destroy their biometric data within the period specified by the statute, nor did Plaintiffs allege that Defendant lacked such protocols or that its policies were inadequate and "there is accordingly no material risk that Defendant's procedural violations have resulted in plaintiffs' biometric data being used or disclosed without their consent. Finally, the Court was not persuaded by Plaintiffs attempts to "manufacture an injury" by alleging that they would be deterred from using biometric technology in the future because "Plaintiffs' fear, without more, is insufficient to confer Article III injury-in-fact."

Despite this ruling, the Second Circuit remanded to the district court with the instruction that the district court shall enter dismissal without prejudice finding that the district court did not have subject matter jurisdiction to ultimately find that plaintiff did not have "statutory standing," e.g., that Plaintiffs had not alleged a cause of action

under the statute – specifically, that Plaintiffs were not "aggrieved by" a violation of the statute because they did not allege "actual damages."

Since the statutory standing arguments here are based on differing constructions of the term "aggrieved party" as used in BIPA, the district court's resolution of the issue was a judgment on the merits that could not be properly addressed absent subject matter jurisdiction. The district court was therefore without power to dismiss the complaint with prejudice for failure to state a cause of action under the statute.

Implications for Employers

The Second Circuit's ruling represents a victory for employers to the extent that it will make it more difficult for plaintiffs to plead and maintain Article III standing to survive a motion to dismiss in federal courts. On the other hand, the Second Circuit opinion did not bring any clarity as to who a "person aggrieved" is for purposes of the statute and whether plaintiffs must plead actual damages in order to state a cause of action under the BIPA.

The practical import of this ruling is that

the battleground for defenses based on subject-matter jurisdiction and standing grounds and a lack of statutory standing (e.g. failure to plead a cause of action because plaintiffs were not "aggrieved by" a violation of the statute) will likely shift back to the Illinois state courts, which (despite being similar in many respects) have different and independent standing principles from federal courts.

In sum, the Second Circuit's opinion provides employers with strong support for arguments based on a lack of subject-matter jurisdiction and standing (particularly in federal courts). However, arguments by employers at the motion to dismiss stage that a plaintiff lacks statutory standing (e.g., whether the statute requires a plaintiff to plead actual damages to state a cause of action) will likely have to be resolved by Illinois state courts and any such arguments in federal court may result in remand to state court, or a dismissal without prejudice allowing plaintiffs to re-file in state court. ♦

MEMBER NEWS

Governor Cuts Ribbon on New General Mills Distribution Center



Gov. Bruce Rauner joined area officials at a ribbon cutting in November to open a new 1.5 million-square-foot distribution center for General Mills. The facility, located at the rapidly developing RidgePort Logistics Center in Wilmington, could employ up to 150 people when it is fully operational.

Headquartered in Minneapolis, General Mills is a worldwide company that is home to such well-known brands as Cheerios, Betty Crocker, Pillsbury, Haagen-Dazs, Annie's, and Cascadian Farm. Its new distribution center in Illinois will ship General Mills products to destinations across the U.S.

"Illinois is the nation's logistics and distribution hub," Rauner said. "As a business person, I can see why General Mills has chosen our central location, our unmatched transportation systems and, most important, our pool of highly skilled Illinois workers. Seeing this facility open is testimony to our state's central role in the distribution of goods to every part of the nation."

"The Wilmington customer service facility will be a key addition and a critical location for the General Mills distribution network," said Mike Nordstrom, General Mills vice president for Global Workplace Solutions. "From this location, we will deliver top-selling cereals, snacks and other products to customers across America.

"We're also proud that this facility will continue our company's strong commitment to treating the world with care, as we anticipate that the building will achieve LEED Silver certification," Nordstrom said.

"What a tremendous boost this will be for the Will and Grundy county areas both for jobs and the local economies," said state Sen. Sue Rezin, R-Morris, who invited Gov. Rauner to Wilmington. "Our area has some of the most talented and knowledgeable people in the world when it comes to logistics. I hope we can build off this momentum

and other companies see the great things that are happening in the area and choose to locate here as well."

The new General Mills center is part of the sprawling 2,500-acre RidgePort Logistics Center that is being developed by Elion Partners about 40 miles southwest of Chicago. The Illinois Department of Transportation (IDOT) is providing \$113 million in multimodal improvements involving highway (I-55) and rail infrastructure.

"An additional feature of RidgePort Logistics Center, apart from its infrastructure and logistical location, is servicing the trucking profession," said Michael Stellino, managing director of development for Elion Partners. "By having a mixed-use logistics park, we are responding to the needs of the truck drivers, employees and tenants of the park such as General Mills."

Located in Will County, RidgePort Logistics Center is the largest planned, rail-served industrial park in the Chicago market with 30.6 million square feet of potential development. About 5.4 million square feet have been developed to date, and 810,000 additional square feet are under construction.

Nucor Steel Invests to Expand Steel Mill Near Kankakee



Illinois recently got some good economic news when Nucor Corporation announced that it will invest \$180 million to expand its steel mill located near Kankakee. This expansion, which is expected to take two years to complete, will create 50 new jobs at Nucor Steel Kankakee, Inc. These jobs are in addition to the 300 people the company currently employs at the steel mill.

Nucor Corporation is the largest steel producer in the U.S. and North America's largest recycler. Nucor has been doing business in Illinois since 2002 when it became the owner and operator of the mill, as part of its acquisition of Birmingham Steel. Nucor Steel Kankakee, Inc., has the capacity to produce 700,000 tons of steel bar products

each year. Using scrap metal as its main feedstock, Nucor Steel Kankakee products have a recycled content of 96.5%. The rebar they produce has been used in several high-profile construction projects in Illinois, including the renovation of Wrigley Field, Trump Tower skyscraper in Chicago, and the reconstruction of the Interstate 57 Bridge over the Kankakee River.

Nucor Steel Kankakee will expand its mill by building a full-range merchant bar quality (MBQ) mill at their existing site. The MBQ mill will have an annual capacity of 500,000 tons. The company had been evaluating both its Illinois mill and a bar mill it owns in Ohio as potential spots for the new MBQ mill. The company worked with Illinois state government officials and leaders in Kankakee during the evaluation process. "We are very excited to bring new investment and jobs to the Kankakee community and the State of Illinois," said Johnny Jacobs, Vice President & General Manager of Nucor Steel Kankakee. "We appreciate the support we had from Governor Rauner, state and local officials, including Ted Nugent of the Economic Alliance of Kankakee County and Representative Lindsay Parkhurst, as well as the entire community."

The Midwest region is one of the largest markets for MBQ products, and Nucor Steel Kankakee is ideally situated to take advantage of existing operating and commercial capabilities to meet this regional demand. This project will allow Nucor to fully utilize the existing bar mill by optimizing its melt capacity and the infrastructure that is already in place. It will also take advantage of the abundant scrap metal supply in the region, as well as the company's commercial footprint in the central United States. Nucor Steel Kankakee will continue to be a supplier of quality reinforcing bar products.

The new MBQ mill is part of Nucor's long-term strategy for profitable growth. This strategy is based on five drivers: 1) strengthen Nucor's position as a low-cost producer; 2) achieve market leadership positions in every product line in the company's portfolio; 3) move up the value chain by expanding Nucor's capabilities to produce higher-quality, higher-margin prod-

ucts; 4) expand and leverage downstream channels to market to increase Nucor's steel mills' base load volume for sustained results; and 5) achieve commercial excellence to complement the company's traditional operational strength.

"This new MBQ hits all the drivers of our growth strategy. It takes advantage of our position as a low-cost producer to displace tons currently being supplied by competitors outside of the Midwest. It also builds on our market leadership position by further enhancing our product offerings of merchant bar, light shapes and structural angle and channel in markets in the central U.S.," said John Ferriola, Chairman, CEO & President of Nucor.

The new MBQ mill is just the latest investment Nucor has made in the state of Illinois. Earlier in 2017, Nucor expanded its bar grating operations by purchasing a facility in Bourbonnais which had recently been shuttered. Nucor's acquisition allowed Kankakee County to retain nearly 90 high-quality manufacturing jobs. In the fall of 2016, Nucor also acquired Independence Tube Corporation, a leading independent manufacturer of hollow structural section (HSS) steel tubing. Independence Tube is headquartered in Chicago, and has steel tubing manufacturing facilities in both Chicago and Marseilles, which produce steel tubing for use in a broad array of structural and mechanical applications including nonresidential construction, infrastructure, and agricultural and construction equipment end-use markets.

Today, Nucor has more than 1,000 teammates in Illinois. According to estimates by the American Iron & Steel Institute, for every job in the steel industry, seven more jobs are created in other sectors of the economy. Manufacturing is vital to the Illinois economy. Nucor's growing presence in the state is a positive sign that companies see Illinois as a great place to do business.

OTTO Engineering Plans for Tech Center to Promote Manufacturing Jobs



A decline in interest in skilled-trades jobs among area high school students has prompted one Carpentersville business owner to take action.

In the next decade, many of OTTO Engineering's tool and die employees are set to

retire, said company president Tom Roeser. Finding their eventual replacements has proven to be a daunting task, he said.

Last year, for instance, Roeser talked to staff at an area high school about the job opportunities available at OTTO, a manufacturer of control switches and audio accessories. Only one student showed an interest in an apprenticeship, he said.

"We keep telling all of our kids to go to college, so nobody's going into the trades," he said.

Those who aren't college-bound are not being motivated to consider those types of jobs, Roeser said.

And it takes years to hone the skills to work in tool and die, a key part of the manufacturing process, he said.

Following OTTO's purchase of Itasca-based Dies Plus, the company acquired 30 acres at Carpenter Boulevard and Cleveland Avenue, where Roeser plans to build a 100,000-square-foot technology center to consolidate the company's tooling and stamping operations.

The center, which is expected to be completed in the spring of 2019, will also be used for training and to offer tours to inform students about the opportunities available in the industry.

"I see a tremendous opportunity to invest in the future of American manufacturing," Roeser said. "It takes several years of experience and training to become a tool and die maker. Our plan is to hire several apprentices and experienced tool and die makers and grow these important technologies."

Carpentersville Village President John Skillman called Roeser's plan "great news."

"It's exactly what the area companies are looking for. A lot of the schools don't have programs like this to train people. Even junior colleges sometimes don't have those programs. It's great for the village and OTTO and for our residents," Skillman said.

While Roeser has been a prominent investor in the redevelopment of Carpentersville and the surrounding area, he is adamant it's not because he is a philanthropist.

"I made a big investment. I do a lot of things the government could do but doesn't," he said.

For instance, in the past decade he has purchased more than 100 dilapidated foreclosed homes in the Carpentersville area, which he has rehabbed and put back on the market through the Homes By OTTO program. Many of those homes are located near OTTO and rented out to his employees. He has also partnered with both East Dundee and West Dundee by purchasing and renovating several buildings to help drive foot traffic in the downtown areas.

Roeser said he has done these things

because he believes that by enhancing the properties in the area, value is added to the community as a whole.

"I've been lucky enough to grow in Carpentersville and fix a lot of the capital stock," he said. "Carpentersville is really a different spot than it was."

Rahco Rubber Invests Nearly \$1 Million in People, Equipment



Rahco Rubber

Rahco Rubber Inc. has grown steadily in 2017, and during the last eight months has poured about \$1 million into its operation to add machinery and make other moves to support the gains it has made.

Included in the company's investments are two high tech V710, generation G10 Rep presses; a 700-ton Benchmark 750 vertical injection Desma with matching 12 cavity double deck precision mold; a 110-ton hydraulic Wabash press; a Micro-Vu automated metrology system that automatically dimensionalizes and certifies components to sub-pixel accuracy; a 40-ton Wabash press with state-of-the-art control system for research and development efforts; and a high tech dry ice cleaning system, according to Dennis Askew, business development manager of the Des Plaines-based company.

Overall, the company has experienced about 7 percent growth, he said, and it has received ISO 9001:2015 certification and an extension of the company's ISO 9001:2008 certification.

A manufacturer of custom engineered precision molded rubber components, a sealing products provider and a formulator of advanced polymer materials, Rahco has been a family-owned business with the Anton family at the helm for 45 years.

The firm operates out of a 60,000-sq.-ft. plant in Des Plaines that features nearly 50 presses and compounding machines along with fully equipped research, development and quality control labs.

That's a big leap from Rahco's three employees and four machines housed in a 5,000-sq.-ft. facility when the company was launched in 1972. ♦

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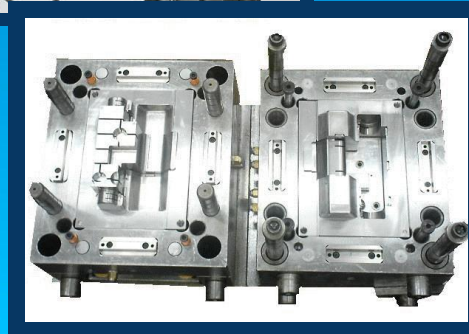
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