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THIRD QUARTER 2021



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The Illinois Manufacturers' Association is the only statewide association dedicated to boldly moving Illinois' makers forward. The IMA is the oldest and largest state manufacturing trade association in the United States, representing nearly 4,000 companies and facilities.

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# THIS IS A HELLUVA WAY TO RUN A RAILROAD

MARK DENZLER, PRESIDENT & CEO



**M**ore than a century ago, the Kansas City Southern Railroad was in complete chaos financially and operationally. A flamboyant industrialist and business tycoon, Leonor Loree, was approached by a group of creditors and tasked with leading the troubled railroad. After inspecting the company, Loree addressed a group of civic and businesses leaders coining a phrase: "This is a helluva way to run a railroad."

This famous quip came to mind as I sat in my office at 1:30 a.m. on the Tuesday morning following the long Memorial Day weekend where I spent hours in my office and at the State Capitol advocating before lawmakers as the General Assembly completed their work in the spring legislative session.

I've worked in and around state and federal government for more than a quarter century and I've had my share of successes and defeats, satisfaction and frustration. But I'm not sure that I have ever been as furious as I was that night watching the Democrat-led legislature completely trample Republican lawmakers to the detriment of Illinois' well-being. And I'm not talking solely about policy decisions because reasonable people can disagree on issues. I'm talking about the broken process that epitomizes Illinois government and our largely failed state of affairs.

With a budget deadline looming at midnight on Memorial Day, Democrat lawmakers filed a budget package (budget, capital infrastructure, and budget implementation language) totaling 3,929 pages and gave the minority party seven minutes to review the budget before voting on the bill. Seven minutes to review \$42.3 billion in spending. Seven minutes. Our tax dollars and our government in action.

I'm confident that this is not the type of government that our forefathers imagined, nor the democracy that our brave soldiers, sailors, and airmen sought to protect when they laid down their lives for our nation. The individuals that we honored on that Memorial Day weekend.

The majority party took one billion dollars from the federal American Rescue Plan – one in eight dollars that was sent to Illinois to help our state recover from the pandemic – and they spent it on pork projects in their legislative districts. Now, some of these projects had merit and made sense for local economic recovery. However, Democrats completely ignored the 63 members of the House and Senate Republican caucuses who received zero dollars for their districts. Each of these state legislators represent more than 110,000 residents while Senators serve 220,000 constituents each of whom pays taxes. But they were completely shut out of the process. So if you live in Democrat district – congratulations – money is coming your way but you are out of luck if you happen to be represented by a Republican.

**This is not the way that our government is supposed to work.**

Sadly, I should not be surprised. Only days before the budget vote, Democrat leaders in Springfield pushed through brand new legislative maps and redrew Supreme Court districts for the first time in more than a half century. Governor JB Pritzker who made a pledge to voters during the election to veto any map that was drawn by politicians and not by an independent commission broke his promise and signed the maps into law. So once again, Illinois politicians are choosing their voters rather than the other way around.

Finally, capping off my frustration is the massive energy bill that will fundamentally change Illinois' competitive energy landscape and result in skyrocketing electric prices for our families and businesses. Analysis shows a rate hike approaching 15-20 percent for businesses and \$12-20 per month for families. Nearly 1,000 pages of new law is being negotiated largely behind closed doors with consumers virtually left out of the process. Lawmakers don't seem to care about cost, reliability, or the impact on jobs. Innovative manufacturers who are creating and using technology that makes energy more affordable, reliable, and cleaner are part of the solution but there needs to be a full debate.

This is a helluva way to run a railroad. We can do better and we must do better. Our businesses and our citizens deserve better and you have my commitment that the IMA will continue fighting for Illinois manufacturers and our political action committee will double down in the coming weeks and months to recruit and elect candidates who support a better democracy and our state's industrial sector. ♦

# WHERE DO WE BEGIN?

Having just completed the 2020-21 school year, the IMA wants to take just a moment to congratulate the Class of '21.

Your achievements this year might only be described as extraordinary. Remote learning, on-and-off returns to the classroom, critically limited opportunities for lab work (including CTE facilities) make your class admirable.

With that said, the widespread concern expressed by employers across the nation about the number and quality of applicants they're receiving for a record number of vacancies cannot go unnoticed. This, combined with the enhanced unemployment benefits, is forcing employers to think outside of the box when it comes to recruitment as the old methods of recruitment are no longer sufficient.

IMA members are utilizing sign-on bonuses, word-of-mouth incentives, and establishing in-house daycare to try to entice workers back to the workplace. The question remains, do these future employees have the knowledge and skills necessary to work in manufacturing?

At the same time teacher unions, as well as the State Board of Education are discussing the future of standardized testing in Illinois especially as it may aid in finding ways to identify and address the potential loss of learning that occurred because of the pandemic. This should have every parent concerned; not for whether it would be unfair to their child or teachers, but for what was being ignored by not testing.

Standardized testing reveals a wide array of data points for local school districts and state policymakers. It tells us if students are grasping the materials being taught, whether or not students can apply that knowledge to everyday life, and indicates for us where students are struggling so that help and remediation can begin sooner rather than later.

Most importantly, assessing students gives parents and educators the starting point for the next academic year. And this is where delaying testing this past spring, as nearly all districts elected

to do, may result in serious additional damage to our kids.

It's extremely unlikely that any school district will recommend holding any child back from advancing to the next grade level, believing that: "they'll catch up next year." But that's been an issue for decades and is the number one reason high school graduates are trying to enter higher education with abysmally low math and reading scores – as employers are working to train and retrain these same individuals when they become employees.

In too many instances, college placement tests put the math knowledge level at 8th grade, and some at 6th grade. One former community college president told me that more than 90 percent of incoming freshmen to his institution are assigned to non-credit, yet tuition bearing, remedial coursework.

So, where do we begin teaching when the new academic year begins in August? Is the assumption going to be that every student grasped and understood the materials...will teachers once again rely on "they'll catch up next year" and trivialize the loss of learning that was so inescapable that school districts canceled the one and only opportunity to make those measures to determine the real impact of the pandemic on learning?

In an age when technology is doubling at a phenomenal rate, our education system is already woefully behind. The creation and manufacturing of electric vehicles right here in Illinois is adding to an ever-expanding skills gap with newly minted occupations requiring knowledge and skills to match the emerging EV auto industry.

Across manufacturing, the expansion of light metals, composite metals, new and more robust plastics and polymers, metal alloys and, of course, integrated computer driven processes driving nearly every aspect of industry is a challenge for which even the youngest student needs to be prepared.

With nearly one-fourth of the 21st Century in the books, now is not the time to be ignoring any tool that gives

insight into where our students may be struggling. The State Board of Education, working with district superintendents, teachers and business will need to address learning loss caused by the pandemic. Admittedly, it's not an easy task, but the actions to turn a blind eye to the academic impact inflicted on students in favor of perhaps saving face for poor performance in 2020-21 cheats our kids.

We're better than that.

On a lighter note, the IMA hopes your company will return to Manufacturing Month events, coordinating with your local schools. As usual, Manufacturing Month is set for October with (national) Manufacturing Day set for Friday, October 1. As we have done in the past, the IMA will be asking Governor JB Pritzker to issue his proclamation for Manufacturing Month, and copies will be made available to any wishing one.

Manufacturing Month events are the single best way to open the eyes of young people to the inconceivable array of occupations available in manufacturing. Letting them see front office activities – engineering, procurement, accounting, marketing, sales, logistics – in addition to production positions will have a real impact.

Our partners at the National Association of Manufacturers have created a resource page to help your company have a robust and memorable event. The URL for these free resources is:

<https://creatorswanted.org/resources/>

Planning for October events should begin as soon as possible so that middle and high schools can schedule events, particularly if your event includes a tour at your facility.

To get started, simply call your local school district office, or principal and invite them to create a great event together. You'll be glad you did.

If you have questions, give us a call at (800) 875-4462. ♦

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# THE MANUFACTURER'S PREVIEW OF THE AMERICAN JOBS PLAN

GREENSFELDER, HEMKER &amp; GALE, P.C.



**T**he American Rescue Plan signed into law on March 11, 2021, was intended to “rescue” states, small business and certain industries from economic harm related to the COVID-19 national emergency. President Biden is now focusing on his American Jobs Plan, which is colloquially referred to as the infrastructure plan. This common description may be misleading. The American Jobs Plan is not limited to upgrading and repairing the physical infrastructure such as bridges and roads, which is characterized as “traditional infrastructure.” A majority of the spending in President Biden’s plan is intended to upgrade something referred to as “human infrastructure.” Congress is now debating the definition of a fairly common word. For the manufacturing industry, the resolution of this debate is essential. If the definition of infrastructure is expanded, the manufacturing industry can expect a massive inflow of capital.

Before addressing the specifics of the plan and the debate, it must be not-

ed this article is being submitted for publication while negotiations are ongoing. Traditionally, an article such as this would be submitted for publication after the debate is resolved and the bill has been signed into law. However, this traditional approach does not allow interested parties to effectuate change, if desired. The debate over a definition has practical consequences to the manufacturing industry.

As of the date of submission, a deal has been reached on the traditional infrastructure portion of the plan. It appears 1.2 trillion will be spent on physical infrastructure projects such as bridges and roads, but the details have not been publicly revealed. President Biden is suggesting he will attempt to get human infrastructure spending through Congress via reconciliation. The rest of this article will focus on the details of the original \$2.2 trillion plan to help define the parameters of and the significance of the debate over the definition of infrastructure.

## Summary of the Original Jobs Plan

The American Jobs Plan can generally be divided into transportation, manufacturing, long-term health, utilities (primarily energy), education and federal building spending. In the original plan, \$621 billion was earmarked for transportation-related spending, such as projects to upgrade roads and bridges. The plan also sought to invest \$590 billion on domestic manufacturing, research and development and jobs training initiatives. The details of the manufacturing spending will be set out in more detail below. An additional \$400 billion was directed to the long-term and home-healthcare industry to increase access to this care. To modernize school buildings, increase child-care facilities, and upgrade federal buildings, the plan sought \$328 billion in spending. Finally, \$311 billion was directed to improving broadband access, the electric grid and clean water projects.

## Breakdown of the \$590 Million for Manufacturing

According to the fact sheet on [whitehouse.gov](https://www.whitehouse.gov), the goal of the manufacturing spending is:

*“Mak[ing] smart investments in research and development, manufacturing and regional economic development, and in workforce development to give our workers and companies the tools and training they need to compete on the global stage.”*

With that goal in mind, the following is a detailed breakdown of the proposed manufacturing spending in the original American Jobs Plan. \$52 billion was directed to a) general funding for manufacturing, b) investing in capital access programs, c) modernizing supply chains and d) the creation of new financing programs to support debt and equity investments. According to published reports, some of this money was direct pay to domestic manufacturers, and some of it was indirect, such as tax credits.

There was \$150 billion, divided equally, to increase funding to the National Science Foundation, to create a new office in the Department of Commerce, and to increase the manufacture of and research into semiconductors. The new office in the Department of Commerce would be dedicated to monitoring industrial capacity and funding investment for the production of critical goods.

There was a large focus on training for technology and new job skills for the manufacturing work in the original plan. \$48 billion was dedicated to support workforce development infrastructure and worker safety. \$40 billion was allocated to the establishment of workforce displacement programs and investment in sector-based training. An additional \$30 billion was intended to spur innovation and job creation through research and development. Finally, another \$12 billion was allocated to workforce development in underserved communities, with a separate \$5 billion for a rural partnership program.

Notwithstanding the \$50 billion to the National Science Foundation addressed above, an additional \$40 billion was allocated to upgrade research labs, \$30 billion to prevent future pandemics, \$15 billion to create innovations hubs at Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSIs), \$14 billion for the National Institute of Standards and Technology, and \$10 billion to support general manufacturing research and development at HBCUs and MSIs.

Clean energy is not left out of the manufacturing spending. To incentivize more clean energy manufacturing, the plan would direct \$46 billion to federal procurement. Moreover, \$35 billion would be focused on climate change research and development. In other sections of the American Jobs Plan, \$400 billion in tax credits were established for clean energy. This included a 10-year extension to tax credits that generally support wind, solar and energy projects, among others. One such example is the \$174 billion for electric vehicle re-

bates, charging ports and electric school buses.

To complete the spending, \$31 billion will be allocated to community based small business incubators and innovation hubs, an additional \$20 billion for regional innovation hubs, and \$12 billion for enforcement of workplace protection and other general manufacturing-related items.

### **Potential Justifications for Manufacturing Spending**

There is no debate whether the COVID-19 pandemic disrupted manufacturing. Social distancing requirements, quarantine requirements, and the incredible increase in mortality in the U.S. significantly limited production in many industries. Manufacturing output remained at the end of May at about 5 percent below its pre-pandemic level, according to the Federal Reserve. The Institute for Supply Management's index of national factory activity fell to 57.5 in December 2020, down from 59.3 in October 2020, which had been the highest since November 2018. A reading above 50 indicates expansion in manufacturing, which accounts for 11.3 percent of the U.S. economy. Thus, stimulating a burdened manufacturing industry is one possible justification for the original jobs plan. Of course, a rebuttal argument could be made that \$928 billion in spending on traditional infrastructure will indirectly be a stimulus to the manufacturing industry. Therefore, many supporters of the original American Jobs Plan argue the manufacturing industry has gone through and will continue to go through changes that affect the ability to manufacture in the United States. They argue the spending for job retraining, research and innovation is past due.

There is an argument that Illinois could significantly benefit from the original version of the American Jobs Plan. Clean energy will be a large part of the Illinois economy in the future. According to the report "Electrifying Illinois," published by Advanced Energy Economy, an industry association

that promotes advanced energy technologies and services, Illinois is on pace to reach 83 percent job growth in electric transportation-related work by 2024. Through data collection, the analysis found that Illinois has 560 electric transportation-related businesses in 97 of its 102 counties. The state already has a significant motor vehicle manufacturing presence, with 3,400 workers, or two-thirds of those employed in electric transportation, working in manufacturing. About 70,000 workers in the manufacturing industries that are currently not directly involved with the electric transportation businesses, but have characteristics similar to companies that are, would require "relatively little training" to transition to this type of work, the report found. Examples of these types of businesses include general automobile manufacturing, specialty transformer manufacturing, or machine shops, to name a few.

As a final note specific to Illinois, the spending on HBCUs and MSIs could benefit Illinois even though Illinois only has one HBCU (Chicago State University). Chicago State University houses several centers for research and scholarly exploration. They include the Center for Urban Mental Health Research, the Minority Biomedical Research Program, the Research Development Office, the Neighborhood Assistance Center, and the Calumet Environmental Resource Center, among others. CSU also operates Innovation Lab ([www.csu.edu/innovationlab](http://www.csu.edu/innovationlab)), which has as part of its stated mission to "[c]reate solutions that are socially acceptable and commercially viable, and as a result form organizations of an entrepreneurial nature that benefit the students and individuals involved while the society as a whole as well via economic providence and richer awareness." Illinois also has 14 MSIs, which is the largest number of MSIs in one state in the Midwest. ♦

# SUPPORT YOUR SYSTEMS WITH AN INCIDENT RESPONSE PLAN

SIKICH LLP

While manufacturers have heard time and time again that they must prioritize cybersecurity efforts, this advice must continue to be a top focus for organizations. Even amidst a global pandemic, cyberattacks are on the rise – from phishing events to ransomware. In fact, our recent Industry Pulse report found that more than half of manufacturers and distributors have experienced at least two security events in the past year. And those are just the ones they know of.

If unprepared, a manufacturer can face devastating ramifications from a cyberattack – from losing critical data and IP to exposing sensitive customer information. While system defenses are of the utmost importance to prevent a cyberattack, manufacturers must also be prepared to respond should an attack happen. An incident response plan can help manufacturers quickly detect and respond to a security event to limit its impact.

Much like a professional sports team will not go into a game without a strategy, manufacturers cannot hope to “beat” an attacker without an incident response plan. With no plan in place, attackers may cause havoc in a manufacturer’s systems for extended periods of time or the incident has spread far beyond the company’s ability to control it. And, in these instances, the organization must research, identify key personnel, call in third parties and report to agencies – all when time is of the essence. This could put the company at fault with data security standards or its cybersecurity insurance.

Additionally, hackers are becoming more sophisticated – the types and methodologies behind attacks are constantly changing. And, this increases a manufacturer’s risk. A detailed, prescriptive and regularly updated incident response plan allows the manufacturer to build the skills and expertise to swiftly respond to any attack and mitigate risk.

## Prevent and Detect an Attack

While manufacturers often don’t typically hold as highly sensitive data as other industries, such as finance or health care, they are still prime targets for cyberattacks. Many manufacturers use industrial control systems, or equipment that is controlled by technology. While ICS allows manufacturers to better manage and control industrial systems – such as valves or pumps in a pipeline, or perhaps monitoring for temperature in a building – and collect data on these machines, this technology also increases a company’s risk of a cyberattack.

A cyberattack on an industrial control system can also have major ramifications. For example, the recent Colonial Pipeline attack forced the company to shut down much of its operations, resulting in surging gas prices and panic buying across the eastern United States.

One challenge with ICS is that it is tricky to keep secured. Updating these machines, for example, is not as simple as updating your laptop at home – where you press a button, restart your computer and you’re good to go. Often, these systems are housed on systems that have been running for years at a time, many times with outdated software. After all, availability of the systems they support is their key function. Even if the equipment isn’t outdated, installing patches is still tricky. For example, every second the machine is off may not only cost the manufacturer potentially millions of dollars, but can also result in safety concerns.

Further, the complexity of these systems requires manufacturers to plan and test updates for extensive periods of time, using identical equipment and application versions to ensure they will not break the system.

Instead of succumbing to these challenges during regular updates, many manufacturers try to mitigate the weaknesses of an outdated system by putting controls in place. The first control is to isolate the device and networks; keep it disconnected from the internet and oth-

er computers. This control ensures any attacker that breaches the outdated machine cannot reach other systems within the organization. The second control is to apply behavior analysis to the systems and networks containing the ICS. These systems complete the same, repetitive tasks each day and sensors may collect data while doing so. By monitoring for anomalies in the data, a manufacturer can sometimes detect a potential breach.

While these controls help detect a breach, how the manufacturer responds to the breach is equally as important.

## Create an Incident Response Plan

A manufacturer’s incident response includes three concepts – the policy, the plan and the procedures. Having just a policy, or a cookie cutter plan that was downloaded from the internet and not customized to the company, is not enough to prepare for a cyberattack. A true incident response plan includes a customized playbook that covers a range of potential situations and scenarios.

When creating an incident response plan, manufacturers should include four main categories, as advised by the U.S. Department of Commerce’s National Institute of Standards and Technology:

**1. Preparation:** This section defines how the manufacturer should be prepared. It includes creating an incident response team, putting controls in place, and testing for potential breaches.

**2. Detection and analysis:** This category ensures the team can quickly uncover a breach and classify it to understand how to best respond (as outlined in section 3).

**3. Containment, eradication and recovery:** Once a breach happens, this section outlines the specific steps that must be taken to correct it. This section should cover various scenarios, depending on the type of breach that takes place.

**4. Post-incident activity:** Following any breach, it is important to review

the lessons learned and incorporate this feedback into the incident response plan for future use.

And, manufacturers should keep in mind that each step of the plan should be as detailed and prescriptive as possible. For example, instead of saying “contact cybersecurity vendor” the plan should specify who on the team is conducting this outreach, name the vendor and include contact information.

Once a manufacturer has created its incident response plan, it must practice. Following the sports analogy mentioned earlier, a professional athlete must practice frequently before going into a game. The practice allows players to build experience and execute more effectively.

At a minimum, manufacturers should perform an attack against their own environment annually. This attack should challenge the systems in place as much as possible, and should initiate the incident response plan. There are a few ways a company can execute this test:

- A blind test, in which nobody knows that it’s coming. This is a complete fire drill.
- A semi-blind test, where only a handful of individuals know that it is going to happen.
- Table-top exercises, where the incident response team sits down and talks through the plan.

By conducting these tests regularly, a manufacturer will be ready to spring

into action should a true breach take place.

### Prepare to Execute

Thinking through a cyberattack is daunting. But, manufacturers must operate under the notion that a security event isn’t an “if” but a “when.” The best solution a manufacturer has to combat cyberattacks is preparedness. This includes effective prevention efforts and a thorough, well-practiced incident response plan. Similar to the way athletes train ahead of their seasons, manufacturers must put in effort upfront to mitigate risk and reduce the harm of an attack. ♦

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**TANDEM** HR

# PERKINS LEGISLATION CONTINUES TO BE A FORCE FOR EDUCATION

COLLEGE OF LAKE COUNTY

When government funding for Career and Technical Education, (CTE) then known as vocational education, was first introduced in 1917, it was done to aid in the development of an industrial workforce. Today, although on average accounting for just over approximately one percent of annual federal education appropriations, it has become a mainstay in CTE federal education funding setting standards for how high schools and community colleges provide CTE and partner with industry. Despite being a minor component in terms of size of funding, Perkins legislation and funding is an important ally to manufacturing workforce development.

CTE legislation is named after an outlier in Congress, Carl Perkins, a veteran of World War II and staunch supporter of education in the U.S. House from 1949 to 1984, one who avoided Washington cocktail parties and was willing to drive all night from Washington to visit the hollows of Kentucky where his constituents lived. Officially named "The Strengthening Career and Technical Education for the 21st Century Act," the most recent version of funding for CTE is yet commonly known as Perkins V, the fifth reauthorization of Perkins CTE legislation first passed in 1984.

Perkins V specifically lays out guidelines for what must be included in each state's plan for administering annual federal funding provided to the states. As required, Illinois developed a comprehensive plan for scope and quality of CTE program development, much to the benefit of the Illinois manufacturing industry.

Central to Perkins legislation and Illinois's plan is the requirement that each CTE program must contain key components collectively referred to as a Program of Study, POS. Under Perkins guidelines, a POS must be a "nonduplicative sequence of academic and technical content at the secondary and postsecondary level that ....addresses both academic and technical knowledge and skills, including employability skills;"... and "is aligned with the needs of industries in the economy of the State, region, Tribal community, or local area." To determine

and maintain alignment with industry the Illinois plan calls for industry guidance of CTE programs through advisory committees made of subject matter experts from local industry that "provide recommendations on curricula, equipment and technology; ....program size, scope, and quality."

While Perkins legislation was not the origin of the advisory role of industry to CTE, (states like Wisconsin have had industry partnerships central to program development for nearly a century), Perkins sets out to ensure all high schools and colleges around the nation teach curriculum recommended and vetted by local industry experts.

Perkins requirements include other key components for workforce development aside from a call for industry advisement. It also calls for alignment of programs between high schools and community colleges so high school students can receive college credits and shorten their time in post-secondary programs. Perkins V calls for CTE to incorporate industry developed or recognized credentials, such as a Level 1 SENSE certificate developed by the American Welding Society as a basic benchmark for welding education. Additionally, the legislation calls for CTE programs to structure degrees that are segmented to provide relevant industry training allowing students to gain workforce skills in blocks or phases. This ultimately builds toward an associate degree and makes it easier for working or financially strained students to achieve meaningful milestones over time.

Because of Perkins, and often because of a sincere commitment of school districts and colleges to workforce development within their community, manufacturers are leading the way to more relevant and valuable teaching at our high schools and colleges. College of Lake County located in north-eastern Illinois recently began a formal review process for each of the programs that will be entering their new Advanced Technology Center, a center focused on developing technical education and meeting workforce development needs. Each program within the college that will be part of the center is meeting with local business and

industry experts to ensure relevance and industry value of the credentials earned. As the process of curriculum development continues, input and guidance from local industry will be essential for program success, and the college's goals of serving the community and industry through workforce development.

Perkins can also be a guide for manufacturers in employee training. Manufacturers can work with colleges to better structure short term training programs that can later be leveraged by employees into advanced training and/or associates degrees. Many community colleges even have agreements with four-year institutions that apply credits earned toward a bachelor's degree. As outlined by Perkins, the key to any short-term training program, whether in-house or provided by an education partner, are sequences of learning concisely pieced together around job functions and skills. This improves the value of an employee at a company, allowing for career advancement through relevant technical study, creating motivated employees.

In addition, Perkins V calls for learning that engages the employee with real world tasks, problems and projects, also known as active learning. This offers the widest range of advantages to learners with different learning styles. Few learners want to be tested on how well they memorized material that they cannot see the value or context of. As at the high school and college level, teaching methods and format are essential to increase employee training completion and improve employee retention.

As Perkins Legislation continues to guide CTE, the education funding outlier so critical to educating the next generation of our manufacturing workforce, manufacturers will continue to hold critical roles in advising education partners. Manufacturers will need to continue contributing their time and expertise to high schools and colleges as they work to keep curriculum up to date and relevant. Ultimately, this will produce a highly skilled and relevantly trained workforce pipeline so desperately needed to allow manufacturers the ability to grow and thrive in the market. ♦

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# WAYS TO (REALISTICALLY) ACHIEVE YOUR BUSINESS' SUSTAINABILITY GOALS

CONSTELLATION

Chances are your organization has made commitments to environmental sustainability, but do you truly understand what they are? Do you know how to address them—or even where to start?

Let's start by defining environmental sustainability. It is the maintenance of the factors and practices that contribute to the quality of the environment on a long-term basis. Overall, it's a plan in which the demands placed on the environment can be met without reducing its capacity to allow all people to live well, now and in the future. More than a buzzword, it's a commitment to a safe, clean energy future.

For organizations, energy sustainability means being able to meet corporate efficiency goals through strategic solutions, including renewable energy options and energy efficiency initiatives. These reduce energy consumption—and thereby a company's overall carbon footprint.

Businesses are leading the charge on strengthening sustainability and resource management with measures such as the implementation of solar and battery projects, innovative water reduction programs, fuel cells, electric vehicles and proactive monitoring of waste.

Sustainable energy has two key components:

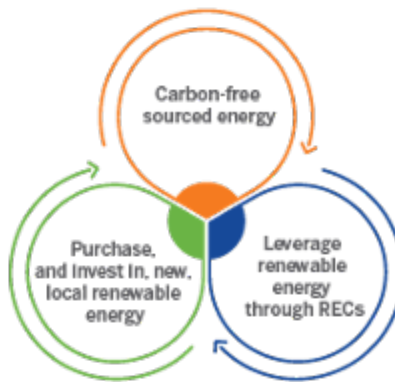
- **Renewable Energy:** energy produced from sources that do not deplete or can be replenished within a human's lifetime (compared with non-renewable sources like fossil fuels)
- **Energy Efficiency:** using a lower quantity of energy to provide the same amount of energy as a non-energy-efficient alternative, which can help lessen greenhouse gas emissions and therefore safeguard the environment

A sustainable energy strategy can and should take on a mix of energy sources. Below are three action steps (in no particular order) that could be a part of your strategy:

## Action Step #1:

### Choose carbon-free energy sources

A meaningful step to take on the road to sustainability is choosing carbon-free energy, the sources of which do not emit any carbon dioxide when they generate energy. Carbon-free options include nuclear, solar, wind and hydroelectric energy.



## Action Step # 2:

### Leverage RECs to offset carbon footprint

Renewable energy certificates (RECs) are proof that energy has been generated from renewable sources, such as solar energy, wind power, hydropower, geothermal energy and/or biomass energy. Each REC represents the environmental benefits of 1MWh of renewable energy generation and may be sold and traded. The purchase of RECs helps replace fossil fuel-based electricity generation in the region where the renewable electricity generator is located, and REC owners can legally claim to have purchased renewable energy.

## Action Step #3

### Invest in local renewable energy

Corporations, organizations, their employees, their customers and their supply chain partners have made sustainable energy procurement a priority. Current trends show that companies are looking

not only to source energy from renewable products but also to be able to unequivocally show where that renewable energy comes from. Depending on your specific needs, through retail electric power supply contracts or Offsite Power Purchase Agreement (PPA) contracts, you can now invest and source energy from new renewable projects through Constellation's CORE+ product.

Most importantly, when it comes to your organization's sustainability goals, keep in mind you don't have to hit a home run right away—you can use an incremental approach. You could start, for instance, by switching to carbon-free products; that is a solid first step. Based on your company's specific needs, your solution can be as simple or complex as necessary to help achieve your corporate efficiency commitments.

You could start, for instance, by switching to carbon-free products; that is a solid first step.

With sustainability efforts, there is no specific destination per se; it's a work in progress with continuously evolving endpoints. When it comes to setting goals for energy sustainability activities, it is critical to find the right pace for your organization. It's equally as important to have the right energy supplier to help you navigate what can sometimes be an overwhelming and seemingly complicated process—one that can help ensure your organization is on the right path and receiving the greatest benefit based on your overall company strategy.

Constellation is the easy answer to complex energy purchasing decisions. As the endorsed energy supplier to the IMA, we make it easy to navigate and select from a full array of energy strategies. With intelligent insights, an unparalleled view of market trends and tools that will make energy purchasing clearer and more manageable, find out why Constellation is considered **America's energy choice®**. ♦

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

# POLITICIANS AIM TO FORCE UNIONIZATION IN THE PRIVATE SECTOR

SMITHAMUNDSEN LLC



Over the past several decades, unions have experienced a gradual erosion of their representation in the private sector. In 2020, the percentage of all wage earners in the United States belonging to a union was 10.8 percent. This percentage represents 14.3 million workers. Comparatively, in 1983, the first year for which comparable data is available, the union membership percentage of all U.S. workers was 20.1 percent and there were 17.7 million union workers. With respect to the private sector, the union representation of private sector employees dropped substantially to 6.3 percent for 2020. Of particular interest, the U.S. Manufacturing Industry saw a slight drop in overall union representation of its workers in 2020. 9.3 percent of all U.S. manufacturing workers are represented by a union. According to many Springfield and Washington “insiders,” this trend must stop. Further, these same “insiders” truly believe that this downward trend in union representation will cease if the cur-

rent “rules” decidedly change. Hence, there is growing interest to forever change how and when unions organize.

## Proposed Amendment to Illinois Constitution Would Ban Right-to-Work

In the next statewide general election, voters will be asked whether they approve an amendment to the Illinois constitution that would ban “right-to-work” laws in the state. On May 26, 2021, the Illinois legislature approved the issue for inclusion on the ballot.

Right-to-work laws prohibit employers and unions from agreeing to union-security clauses. Union-security clauses are provisions contained in most collective bargaining agreements that mandate employees become union members, pay compulsory union dues (typically out of their paychecks) – and be subject to being fired by the employer if they refuse. The National Labor Relations Act allows states to de-

termine whether to allow or prohibit such contract provisions. Currently, a majority of states (28) have enacted right-to-work laws prohibiting union-security clauses. Illinois is NOT one of those states, though several of its closest neighbors: Iowa, Wisconsin, Indiana, Michigan, Kentucky are all right-to-work states.

Of course, Illinois’ current political make-up ensures any right-to-work legislation would see a quick death. Despite this, state legislators (Democrat and Republican) are intent on moving now in an effort to remove the question from any future legislature should the makeup eventually shift. The constitutional amendment would prevent the state, or any municipality, from passing a right-to-work law. In short, a constitutional amendment will likely permanently seal the fate of Illinois ever becoming a right-to-work state and further bolstering the unions’ grip on Illinois employers (and employees).

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## **Illinois Trying to Force Unionization at Private Refineries, Petrochemical and Ethanol Plants**

Further promoting a pro-unionization agenda, the Illinois House recently passed HB 3437, which would require government-mandated prevailing wages (i.e., top union wage rates and benefits) be paid for any construction, maintenance or repair work done at privately-owned petroleum refineries, petrochemical facilities and ethanol plants within Illinois. Other provisions of the bill require any such work to meet certain staffing requirements, apprenticeship standards, diversity provisions and related strict reporting requirements. However, any construction, maintenance, or repair work completed by union contractors would be fully exempt from the proposed law's requirements. Essentially, any non-union contractor in business today would be automatically exempt from the proposed law's burdensome mandates simply by voluntarily agreeing to become signatory to a construction-related trade union tomorrow.

The proposed law would have the practical effect of requiring all construction, maintenance and repair work at such privately owned and operated facilities to be performed by employees who are members of certain construction trades unions. Opponents of the bill argue that it simply aims to increase unionization in the construction union trades, while simultaneously squelching competition among competing contractors; thus, driving up the already steep cost of doing business in Illinois. In fact, a previous version of the bill introduced in 2019 was cited by a major energy company as a significant factor in its decision to shelve plans to build a \$500 million ethanol plant in Scott County. Moreover, with the union exemptions, opponents argue the bill will have a detrimental effect on minority workforce development efforts and workers in minority communities, as union contractors will be exempt from the bill's diversity and reporting requirements.

As of this writing, HB 3437 may not get through the Senate at this time. However, the legislation has been progressing in Springfield for a few years now and there is no guarantee that it will be defeated again or not gain traction in future legislative sessions. What's even more troubling is that if Illinois somehow implements this sort of legislation at private refineries, petrochemical and ethanol plants, what's stopping it

from doing the same in any other manufacturing facility?

## **Federal PRO Act Contains Union Wishlist**

Congress is moving quickly to appease its labor union constituents, mainly through the re-introduction of the Union-friendly Protect the Right to Organize Act (PRO Act). The PRO Act, which already has passed the House of Representatives and awaits action by the U.S. Senate, would completely re-write federal labor law as we know it, with an aim to making it a near impossibility for any private company to resist a union organizing campaign. Among the many drastic changes to long-standing labor law, the PRO Act would:

- Outlaw Right-to-Work laws across the country;
- Remove any and all restrictions on Union strike activities (including removal of restrictions against intermittent strikes, partial strikes, and slow-down strikes);
- Allow unions to strike and boycott directly against entities they have no labor dispute with, in order to pressure that entity to stop dealing with or supplying a business a unions has a dispute with;
- Drastically increase penalties against employers who commit unfair labor practices (including new punitive penalties of up to \$50,000 for a first offense and creating provisions that allow for personal liability of business owners and key decision makers);
- Erode the sanctity of secret ballot elections, allowing the organizing union alone to name the means and manner of election (mail ballot, off-site election, electronic election) and providing for a second-chance "card-check" election, if the union loses and alleges an unfair labor practice;
- Ban an employer's ability to withdraw recognition from a union, even if 100 percent of all employees sign a petition saying they no longer want the union;
- Ban an employer's ability to directly communicate to its workers on the good, bad and ugly of becoming part of a union (including educating its employees on a union's finances, rules/by-laws, dues and any corruption); and
- Many more provisions aimed at making organizing workers far more easier.

While the PRO Act is not yet law (and likely will not be enacted wholesale, unless the Senate scuttles the filibuster), it is increasingly likely that certain portions of the PRO Act will find their way in to oth-

er legislation in the upcoming legislative sessions. Again, all of these developments are for one simple purpose: making it easier for unions to organize new groups of workers in the private sector.

## **Federal Infrastructure Bill Aims to Boost Union Rolls**

Since January, Congress has also been busy attempting to deliver on President Biden's promise to be "the most pro-union president you've ever seen." Through the highly publicized "Infrastructure" bill, Congress seeks to not only earmark spending on improvements to roads, bridges and other transportation measures (much of which has bi-partisan support), but also pave the way for such projects to be completed exclusively by unionized labor.

Unsurprisingly, President Biden's infrastructure proposal contains many provisions for organized labor, including several measures lifted from the PRO Act—as well as a call for the PRO Act to be implemented wholesale. Specifically, the President's infrastructure bill, and the Administration's messaging around it, includes provisions to outlaw right-to-work laws across the country, and to require any contractor providing work on such federally funded projects to pay union scale. Moreover, the Administration seeks to require any contractor working on a federally funded infrastructure project to agree to remain "neutral" during any attempt by a union to organize the contractor's workforce. Presently, employers are allowed to use their free-speech rights to educate employees on labor law and collective bargaining during a union organizing campaign. The Administration's proposals would require those contractors to either forego federally funded work, or else quietly succumb to the unionization of its private workforce.

In closing, private sector employers of all sizes need to be on guard to what's developing around them. Organized labor is extremely motivated to add to its rolls. The unions know that they must gain more share of the private workforce and are doing everything in their collective power to see that major changes take shape quickly. All employers in Illinois (particularly manufacturers), who prefer to operate union-free, need to carefully and regularly evaluate their vulnerabilities to union organizing. In fact, any such employer who does not have a well thought out plan of remaining union-free today will face a much harder uphill fight in the days, weeks, and months to come. ♦

# TAKING CARE OF EMPLOYEE MENTAL HEALTH AFTER THE PANDEMIC

NAROD CONSULTING GROUP

Experts say the combination of health concerns and work pressures in the pandemic era caused widespread mental health problems that will reverberate far into the future. In a Kaiser Family Foundation survey, more people than ever report experiencing symptoms of anxiety and depression. Before the pandemic, 15 percent to 20 percent of people surveyed reported living with a mental health issue such as depression or anxiety.

By October 2020, that number had risen to 53 percent of people reporting that they were suffering from mental health issues due to stress from the coronavirus. How can employers respond?

Best-in-class organizations are adopting a holistic approach and reassessing their benefits packages to build and maintain a positive culture and resilient employees. More than half of employers have boosted their mental health benefits, and 79 percent offer an employee assistance program with mental health support, according to the Society of Human Resource Management.

Even before COVID-19 and the other challenges of 2020, we've been facing a mental health crisis in this country. Our nation's long-standing mental health crisis has been exacerbated by major societal stressors and now the need to treat mental health conditions virtually is on the forefront in a way that it has never been before, creating negative effect on employees' health, increasing the risk of a range of health problems including diabetes, heart disease, heart attack, stroke, cancer, anxiety and depression and substance use disorder.

All of this impacts employers' health-care costs. Healthcare costs for employees living with a chronic health problem are five times higher than employees without those conditions. Productivity suffers because of absenteeism related to employees' physical and mental health problems.

A robust health insurance plan can ensure employees have access to the care they need to manage these issues. Adding an array of wellness benefits to your

offerings can help change the behaviors that increase the risk of health problems developing and encourage employees to take ownership of their health.

To maintain a healthy workforce and create a culture of support around mental health, employers must encourage open communication and management training.

**TO HELP EMPLOYEES BETTER MANAGE EXISTING CHRONIC HEALTH PROBLEMS, CONSIDER OFFERING ONE-ON-ONE SUPPORT THROUGH A NURSE-STAFFED PHONE OR VIDEO CHAT PROGRAM. THESE PROGRAMS HELP ENSURE EMPLOYEES ARE TAKING THE APPROPRIATE MEDICATIONS, SEEING THE PHYSICIAN WHO MANAGES THEIR CONDITION REGULARLY AND MAKING ANY NEEDED LIFESTYLE CHANGES.**

By providing Employee Assistance Program (EAP) resources and benefits that directly impact mental health, employers rebuild quicker and succeed in this environment. In these trying times, time, employers are wise to reevaluate and adjust their benefits to help employees with mental health, caregiving, financial and well-being challenges.

Many employers are ramping up their benefits in response to the challenges anticipating they will stick with many of

the workplace changes. Many employers plan to continue to add more mental health resources, expanding their virtual benefits, wellness, disability coverage, relying on the ease and accessibility of telemedicine services, even when the pandemic comes to an end.

A robust health insurance plan can ensure employees have access to the care they need to manage these issues. Adding an array of wellness benefits to your offerings can help change the behaviors that increase the risk of health problems developing and encouraging employees to take ownership of their health.

The most robust wellness programs approach the issue from two directions — supporting and encouraging behavior change to lower the risk of health problems and managing existing chronic conditions to reduce the risk of more severe health problems.

Behavior change resources can include:

- Weight management resources and programs
- Smoking cessation support
- Stress management tools including integrative medicine options such as acupuncture, yoga and meditation
- Connections with sleep specialists for employees living with insomnia and other sleep problems
- Low or no-cost access to nutrition and exercise specialists and behavior change support subscription apps
- Streamlined access to mental health providers

With many employees still working remotely or working a hybrid schedule, making these resources available both virtually and via in-person events helps ensure that you're reaching all employees.

To help employees better manage existing chronic health problems, consider offering one-on-one support through a nurse-staffed phone or video chat program. These programs help ensure employees are taking the appropriate medications, seeing the physician who manages their condition regularly and making any needed lifestyle changes.

It can also be helpful to provide employees with a confidentially accessed online educational resource library so they can learn more about their condition and treatment options. The right wellness offerings can help employees be healthier and reduce the costs associated with chronic conditions and their complications.

We have also seen a sharp rise in the addition of EAP (Employee Assistance Program) benefits. EAP is a work-based intervention program designed to assist employees in resolving personal problems that may be adversely affecting the employee's performance. EAPs traditionally have assisted workers with issues like alcohol or substance abuse; however, most now cover a broad range of issues such as child or elder care, relationship challenges, financial or legal problems, wellness matters and traumatic events like workplace violence.

Programs are delivered at no cost to employees by stand-alone EAP vendors or providers who are part of comprehensive health insurance plans. Services are often delivered via phone, video-based counseling, online chatting, e-mail interactions or face-to-face.

One such vendor that we use most often for our clients is Principal Financial. Their Core EAP provides telephonic consultations, resources, and referrals to employees and anyone in their household who is 18 years of age and older. A toll-free hot line is available 24/7 and is staffed by masters-prepared licensed professionals. In addition, the program provides telephonic coaching sessions with the same coach. The upgraded Premier EAP service allow employers to customize a program to fit their budget and their employees' needs.

Such upgraded programs provide multiple options such as:

- **Face-to-face visits** – Employees receive counseling sessions with a licensed EAP mental health professional.
- **Trainings** – One Free Training hour per year
- **Legal and financial services** – Employees and eligible household members can discuss legal and financial concerns with an attorney or financial advisor.
- **Work-life services** – This option provides practical, time-savings solutions to challenges employees face through-



out all stages of their lives, including prenatal care, education resources, retirement planning, senior care, relocation services, home improvement and more. Employees have access to online features and the Member Discount Center which provides pre-negotiated discounts on over 3 million products and services.

By simply adding EAP to a company's disability benefits, we provide important services to all the families.

One of the most efficient ways to invest in employee mental health is to offer them virtual platforms. These tools are making mental health care more accessible and affordable than ever. Employers need to communicate and educate employees on what is available. Meet people where they are. Some people may want to talk to someone in person, and some people want to interact

over texts and chats and that works for them.

The following are top sites being successfully used by our clients:

- Calm
- Talkspace
- Headspace
- Happify
- 10 Percent Happier

With mental health top of mind for so many employers, these low-cost options can be a gateway to seeking further care and help employees manage their day-to-day stress.

Healthy employees are more engaged and more productive. Wellness programs can also be effective tools to improve employee retention and recruitment because they highlight a company culture that values employee well-being. ♦



## PASSING DOWN GENERATIONAL KNOWLEDGE AT PRYSMIAN GROUP

It isn't so often anymore that a grandson is able to learn a trade working side-by-side with his grandfather, but at Prysmian Group in DuQuoin, Illinois, Dean Stanley and his grandson Dalton Day spend a lot of time together on the job and even operate the same machine. Dalton, a young father with a set of twins on the way, will celebrate his two-year anniversary with Prysmian Group this fall. Just a few months later, Dean will step down from his role of 40 years, leaving his grandson in charge of his station after he's retired.

Originally established in 1965 the rurally-located manufacturer of medium-voltage copper and aluminum cables known as General Cable was acquired in 2018 by Prysmian Group – a world leader in the energy and telecom cable systems industry. The Prysmian plant is the largest employer in the area with over 200 individuals from DuQuoin and surrounding cities clocking in for the non-stop work that happens there. From supplying cables for Commonwealth Edison (the City of Chicago) and Con Edison (New York City) to the Hoover Dam, Prysmian Group's cables are quite literally all around the country, both above our heads and below our feet. With 23 manufacturing locations and nearly 6,000 employees just in North America, that's a lot of cable being made!

About 80 percent of the cable that is manufactured at the DuQuoin plant is copper, with the other 20 percent made with aluminum. The first stop for the copper or aluminum is to go through a wire drawing machine, which pulls the wire through a series of dies to stretch it to the correct size so that it can be wrapped or shaped into a cable. Dean and Dalton work on the wire drawing machine that produces all the alu-

minum wire for the cables in the plant. Each week, the two of them stretch almost six million feet of aluminum wire on their machine alone. That's almost 12.5 billion feet of cable in Dean's 40 years!

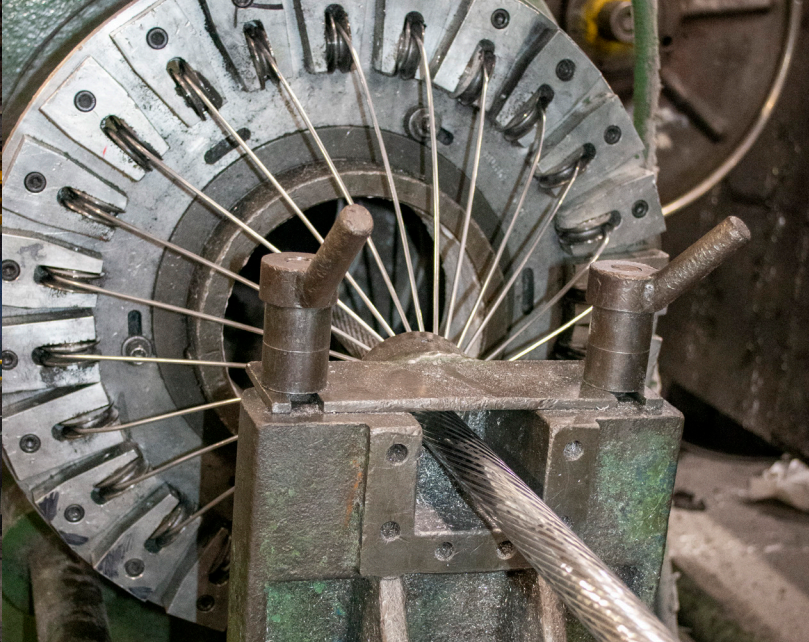
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**"I USED TO COME VISIT MY GRANDPA AT THE PLANT WHEN I WAS LITTLE, AND IT WAS ALWAYS FUN TO SEE WHAT HE WAS DOING...I'D LOVE TO HAVE MY DAUGHTERS COME OUT TO THE PLANT ONE DAY, JUST TO SEE WHAT IT'S LIKE."** -DALTON DAY

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Dean is not the only employee who has stayed with Prysmian Group's DuQuoin plant for most of his life. Many of the employees have stuck around for the long haul, hitting 20, 30, 40, and even 50 years of service at the plant. The reasons why they've stayed so long are clear.

"It's a good job with good wages, good benefits and insurance, and it's right here at home," Dean said. "The people are good to work for, and it's been a nice place to be for the last 40 years. It's kind of a sad thing to walk away from a job I've



The stretched aluminum wire is tightly wound together to make cables that will power entire cities.



The cables come in many configurations. This cable is made of over 60 wires!



Dean (L) and Dalton (R) with aluminum wire – ready to be made into cables

been at for so long, and at the same time it's going to be great not having to go to work every day."

Before the pandemic, cake and ice cream in the breakroom was the typical celebration for a milestone anniversary or retirement celebration. Now the employees are celebrated more individually with social media posts written by DuQuoin Mayor Guy Alongi, and personalized banners that are hung along the fence outside of the plant.

In early July, Dean's coworkers Milton Holmes and Perry King celebrated their retirements after 44 and 50 years (respectively) of working at Prysmian Group's DuQuoin plant. An outdoor COVID-safe celebration was held for Milton and Perry, with recognitions presented from representatives of Congressman Mike Bost.

"We try to take care of our employees the way they take care of the business," said Plant Manager Erik Perks. "We want to keep people here as long as possible, and we do all we can to make sure they're happy here."

When it came time for Dalton to step into the working world, the opportunity to work night shifts and stay at home with his growing family during the day was a no-brainer.

"I was lucky that I was able to get a job working the same machine as my grandpa," Dalton said. "This is a good job, and I don't have plans to leave any time soon."

Now, Dalton gets to step into his grandfather's shoes and do the same. And with twins due in a few months, Dalton will be taking advantage of some additional employee benefits that have been added this year.

As of July 1, 2021, Prysmian Group now offers 12 weeks of paid leave for birthing parents as well as two weeks of paid

leave for non-birthing parents. Additionally, Prysmian Group now offers adoption assistance for employees, and in 2022, will provide college, trade/technical and graduate school scholarships for the children and grandchildren of employees.

"We have a pretty progressive policy in place for our employees," Erik said, "but at Prysmian Group our employees are like our family."

With the labor market in its current state, adding more benefits has been a successful way for Prysmian to fill its open positions and keep dependable employees for decades – sometimes generations.

Though Dean may have some sadness about leaving his work family behind, he has big plans for his retirement.

"I hope to travel," Dean said. "I've always dreamed of retiring and traveling. I bought a new camper a couple of years ago and plan to do some camping. I still ride a motorcycle, so I'm sure I'll be doing that too."

As Dalton looks into the future, he sees his daughters coming to visit him at work, just as he visited his grandpa when he was young.

"I used to come visit my grandpa at the plant when I was little, and it was always fun to see what he was doing," Dalton said. "I'd love to have my daughters come out to the plant one day, just to see what it's like."

The IMA would like to congratulate Dean on his 40 years of service to the manufacturing industry, and wish the best of luck to Dalton as he carries his grandfather's torch and brings the next generation into the world. ♦

# NON-COMPETE AND NON-SOLICIT AGREEMENTS: NEW UPDATES TO CONSIDER

BARNES &amp; THORNBURG LLP



**E**mployers who use non-compete or non-solicit agreements are likely aware of a simple and sometimes painful truth: one size does not fit all. What's best for one employee may not make sense for another employee, and an agreement typically needs to be tailored to the specific employee and circumstances at hand. On top of that, court rulings frequently fail to provide clear guidance to employers on how the rulings impact their agreements and workforce. Similar restrictions may be enforced in one case and invalidated in another case. In short, these types of agreements can be important tools for employers to protect their business and the significant investment they make in employees, but they also present a number of challenges that employers must carefully consider to maximize the likelihood that the agree-

ment will be enforced.

The Illinois legislature recently unanimously passed a bill that's intended, in part, to provide employers with some much-needed clarity. Although the new law will clarify certain points, other questions remain. Governor Pritzker is expected to sign Senate Bill 672 into law, and it makes some significant changes to the Illinois Freedom to Work Act. The new law will affect non-compete and non-solicit agreements that are entered into after January 1, 2022. It will not impact confidentiality or trade secret agreements.

## Key Provisions of the Law

For those unfamiliar with the Illinois Freedom to Work Act, it was enacted in January 2017 in response to highly-publicized instances of employers requiring low wage employees to sign non-com-

pete agreements, which was viewed by legislators as an unfair overreach. The Act currently prohibits employers from entering into non-compete agreements with a "low-wage employee," which is defined as any employee whose earnings do not exceed the greater of \$13 per hour or the applicable minimum wage under federal, state or local law.

While SB 672 is a bi-partisan effort by the Illinois legislature to strike a balance between employee and employer interests, employers will likely view the changes as pro-employee. The law significantly expands the scope of the Freedom to Work Act and makes numerous changes that will impact all employers who use non-compete and non-solicit agreements. The key provisions from an employer's perspective include:

- **Increased annual earnings thresholds** – The law will increase the cur-

rent earnings thresholds and prohibit non-compete agreements for employees who earn \$75,000 per year or less, and prohibit non-solicit agreements for employees who earn \$45,000 per year or less. These thresholds will increase in future years to account for inflation. The law defines “earnings” to include all forms of taxable compensation that are reflected on an employee’s Form W-2, including salary, bonuses, and commissions.

- **COVID-19-related terminations** – The law prohibits enforcing agreements against employees who lose their jobs because of the COVID-19 pandemic or “under circumstances that are similar to the pandemic,” unless the employee receives compensation equivalent to his or her base salary for the full restrictive period, minus any compensation received during that period from new employment. The law does not provide any guidance what circumstances would be “similar to the pandemic.”

- **Attorney’s fees** – The law authorizes employees to recover attorney’s fees if they prevail in a claim brought by an employer seeking to enforce an agreement.

- **Attorney General enforcement** – The law empowers the Illinois Attorney General to investigate potential violations of the law and initiate litigation, in which a court may impose civil penalties on an offending employer.

- **Review period** – The law requires that employees be given at least 14 days to review an agreement and decide whether to sign it; the agreement is void unless the employer advises the employee in writing that the employee has a right to consult with an attorney before signing an agreement. Employees are free to sign an agreement before the end of the 14-day period, as long as they do so voluntarily.

- **Sufficient consideration** – The law codifies existing case law under which Illinois state courts have ruled that, unless an employee receives some professional or financial benefit in exchange for signing an agreement (e.g., a cash payment or additional vacation time), the employee must work for the employer for at least two years after signing an agreement for it to be enforceable.

- **Legitimate business interest** –

The law provides that when assessing whether an employer has a legitimate business interest sufficient to warrant a post-employment restrictive covenant, courts must consider the totality of the facts and circumstances, with each situation being assessed on a case-by-case basis.

- **Judicial reform of overly broad restrictions** – The law provides that a court may exercise its discretion and choose to reform or eliminate provisions of an agreement that are overly broad, rather than invalidating an agreement.

Collectively, these changes in the law do provide some clarity. However, the benefit to employers of that clarity is outweighed by the restrictions imposed and the incentives offered to employees. In particular, the availability of Attorney General enforcement and attorney’s fees to employees who prevail in litigation will likely result in employees being emboldened in trying to avoid complying with their non-compete and non-solicit obligations. On the front end, it may also mean that employees will increasingly push back on employers’ standard form of agreement and seek to negotiate greater benefits in exchange for lesser restrictions.

### Key Exceptions to the Law

The law contains a number of significant exceptions, including:

- **Sales of business** – The law does not apply to agreements that are entered into in connection with the acquisition or disposition of an ownership interest in a business.

- **Garden leave provisions** – The law does not apply to “garden leave” clauses that require an employee to provide advance notice of termination of employment, with the employee remaining employed and compensated during the notice period.

- **No reapplication clauses** – The law does not apply to “no reapplication” clauses that are commonly included in separation agreements and prohibit the separating employees from reapplying for employment in the future.

On the surface, these exceptions provide employers with some leeway. However, these exceptions are in line with existing law, and in that sense the law is not providing employers with

anything new. That stands in stark contrast with the new rights and protections granted to employees. Although garden leave clauses have long been popular in Europe, that popularity generally has not carried over to the United States because employers are often unwilling to incur the costs of paying an employee to not work.

### Employer Takeaways

Employers should promptly review their existing form agreements and related practices to ensure they will remain legally enforceable once the new law goes into effect in January 2022. Minimally, all agreements entered into after January 1 will need to include new language regarding the 14-day review period and right to consult with an attorney, and managers will need to be trained to comply with the review period. Employers with multi-state operations may wish to try and avoid the new restrictions altogether by modifying their agreement to have it governed by the law of a state other than Illinois, but in some instances such a change may not be viable for legal or business reasons. Although the law does not impact agreements that are currently in effect, there may be circumstances in which an employer wishes to enter into a new, modified agreement in advance of the January 1 effective date. Similarly, some employers may want to enter into an agreement with a current employee who currently is not a party to an agreement, to avoid having the agreement governed by the soon-to-come restrictions.

It is likely that the best approach will vary from one employer to the next and possibly from employee to employee. The only certainty is that every non-compete and non-solicit agreement will need to be reviewed and updated. While January 1 may feel far off, employers should not delay in assessing their specific situation and the changes that are warranted. In conducting that individualized assessment, employers are encouraged to consult with counsel that has significant experience handling restrictive covenant matters. ♦

# TRAVELING FORWARD: THE VALUE OF PATENTS

BANNER WITCOFF

An ardent defender of the patent system, Mark Twain observed that a “country without a patent office and good patent laws was just a crab, and couldn’t travel any way but sideways or backwards.”

Put simply, patents protect inventions. The Constitution expressly grants Congress the power to issue patents. (Article 1, Section 8). And issued patents give the owner the right to exclude others from practicing the inventions described in the patent while the patent is in force.

There are two basic types of patents:

- (1) *utility* patents; and
- (2) *design* patents.

Utility patents protect new, non-obvious, and useful products, methods, processes, or machines—or improvements thereto. As the Supreme Court famously said: utility patents protect “anything under the sun that is made by man.” And there are, unsurprisingly, utility patents covering almost everything—from consumer products to machinery to communication systems to vehicle telematics to food products.

The Constitution allows for protection for new inventions for a “limited time,” and Congress has changed the time-limits over the years. For almost all applications at this point, the duration is 20 years from the filing date of the earliest U.S. or international application priority date.

Design patents protect new and non-obvious ornamental designs. The applications for a design patent are wide-ranging. The only requirement is that the design be for “an article of manufacture.” And so there are design patents protecting all sorts of things—designs for vehicle parts, tractors, seating configuration layouts for aircraft, construction equipment and components, and tire treads, to name a few. A design patent gives the patent holder a right to exclude for 15 years (14 years if the patent was filed before May 13, 2015) from issuance.

For reasons we’ll explore more below,

many patent owners acquire both utility and design patents. Utility patents are more expensive to obtain, and they also require fees (called maintenance fees) to be paid at three years, seven years, and 11 years in order to keep the patent in force. But because they focus on the nuts and bolts of a new invention, their protection tends to be broader. Design patents cost less to obtain and do not require paying maintenance fees to keep them in force.

## So How Do You Get a Patent?

You apply! You file an application with the United States Patent and Trademark Office. For a utility patent, the application includes one or more “claims” that define the invention in words, and a supporting “specification” that describes the invention in more detail with words and usually with drawings. After you apply, an Examiner at the Patent Office in the relevant technology area reviews your application. In doing so, the Examiner compares your claims against earlier known technology called “prior art.” If the Examiner believes your claims would cover, or would be an obvious change over, the prior art, she will reject them. In response, you can try to argue that your claims are different from the earlier technology, or you can amend them to narrow their scope to get around the prior art. This back-and-forth process usually takes a few years to complete, although there are several newer programs that the Patent Office has launched to speed up applications and deliver patents faster.

Design patents focus on the drawings, as they define the scope of the invention. Some design patent applications receive no rejections, others have smaller issues to address, and still others require dealing with more time-consuming issues, like rejections based on similar designs. But generally, design patents issue faster than utility patents.

## Who Owns a Patent?

Even though the federal government

grants the patent, patent ownership is generally determined under state laws. In the U.S., patents are applied for by the inventors (other countries vary in this practice). So for a business to obtain ownership over a U.S. patent, it must have the inventors assign their rights to the business. This can be done through a written contract “assignment.” And a common approach is to include such patent assignments in employment agreements.

## How Do Patents Help You?

Patents provide many important benefits. For example, if you own a patent, and you believe that a competitor (or anyone else) is infringing your patent, you can file a lawsuit in federal court to stop the infringement (an injunction) and to recover damages. Damages can include a reasonable royalty (for instance, a percentage of the infringing sales), your lost profits, or a combination of the two. For design patents, the law (35 U.S.C. 289) also allows the patent owner to recover the infringer’s profits for making use of the patented design. And when the infringer has acted in bad faith—by deliberately infringing or acting despite a risk of infringement that was either known or should have been known—the court can also award up to three times the amount of damages (treble damages).

Patents also provide a strong deterrent. For example, if your business is sued for patent infringement or receives a demand letter, having your own patents can help you fight back (bring counterclaims). Even more importantly, those patents may well have already ward off any potential would-be litigants—entities that saw your patent portfolio (patents are public records) and decided not to sue you or send you a demand letter because they know that you can respond with your own patents.

A patent portfolio can also be a useful tool for joint-ventures or gaining access to newer technology. Perhaps a third-party (whether a competitor or

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not) is interested in your technology. It will be easier to explore a relationship with them if you have patents that you can sell or license to them. And if they have technology you're interested in, you may be able to cross-license your patents to each other and to explore a new opportunity in a joint-venture.

There are also many intangible benefits. Companies can hold up their patents to show that they are innovators and thought leaders. That can lead to attracting talent and customers. And businesses that reward their employees for obtaining IP also see an increase in internal innovation within the company.

### Patent Marking

As a final point on patent rights, you've probably seen notices that goods are protected by a patent or a pending patent. For issued design patents, and for some types of issued utility patents (generally those covering physical goods), if the patent owner sells goods covered by the patent and wants to obtain damages for infringement done before it files a lawsuit, then the owner


must provide either actual notice (like sending a letter alleging infringement) or constructive notice. To provide constructive notice, the patent owner must mark its patented goods with either the patent number or a web address that lists the patent number. There is no requirement to provide notice that a patent has been applied for, although some may perceive benefits to doing so, including to provide notice to competitors and to the public.

### Pending Patent Legislation

In September 2011, the American Invents Act (AIA) was signed into law. It was a comprehensive reform of the patent laws, and represented the most significant change to the substantive patent laws since the first "modern" patent act of 1952. It's unlikely that a bill of that magnitude will become law anytime soon. But there are still near constant smaller proposals for patent reform, usually in the form of proposed bills in Congress. Some proposals aim to strengthen patent rights; some proposals aim to diminish them.

One recent amendment introduced this spring (as of the time of this writing, it's most recently an amendment to a much broader bill, called the Endless Frontier Act) includes a requirement for patent owners to record their ownership and penalizes those who don't with the loss of monetary damages before filing a lawsuit. Another recent bill focuses on the Patent Office collecting certain demographic data on patent applicants, including their military service. There have also been several pushes by senators who are interested in patent law issues to clarify what is "eligible" for patent protection—especially for computer related inventions.

In the end, no one can say for sure which direction future changes will move the patent law. But you can be sure future changes will come. ♦



Start planning  
**now** for your  
future workforce

# SIX EASY STEPS TO BECOME A SHIPPER OF CHOICE

AM TRANSPORT SERVICES

While the freight market is prone to upheaval, this year—with the pandemic and the months of shutdown—has proven difficult for shippers to navigate. The pandemic slowed the number of new truck drivers entering the driving market while many experienced drivers retired at the same time. This exacerbated the driver shortage that was already affecting capacity. At the same time, the manufacturing shutdown along with the growth of e-commerce and the shuttering of brick and mortar stores created a bottleneck for the distribution of goods. All indicators point to the higher-than-normal freight rates and diminished truck capacity to continue at least into the near future. Being a “shipper of choice” remains as relevant as it’s ever been and gains importance with each passing day.

## Being a Shipper of Choice

Why is being a “shipper of choice” so important? First of all, it’s simply smart business to be considerate to carriers and their drivers. And secondly, it’s the right thing to do; after all, drivers are people too which is something we often forget. They work long, hard hours, and the pandemic along with changing regulations and shutdowns has been extremely difficult for these frontline workers. If you consistently treat carriers and their drivers right by making it easier for them to get in and out of your facility in a timely manner, it’s likely you’ll end up paying a lower rate. And you just might have the good luck to work with an incred-

ible carrier that doesn’t have to work with shippers who aren’t striving to be “shippers of choice.”

## You Can Be a Shipper of Choice

Becoming a shipper of choice isn’t rocket science, but it does require commitment. Implementing the following actions will have you well on your way to securing superior carriers and rates.

- **Quick Loading Times:** No one likes to wait, especially drivers who deal with a number of time constraints based on hours-of-service (HOS) rules. It’s not surprising, then, that carriers are keenly aware when the shippers they work with are timely and efficient and take this into consideration when accepting a shipment.

- **Flexible Pickup and Delivery Times:** Does your facility require an appointment? And if so, how easy is it to set one? Most carriers prefer going to shippers that load trucks on a first-come-first-served basis. Time is everything in logistics, and the more flexible you are, the more carriers will want to work with you. As long as you’re willing to work with carriers and/or understand that accidents and delays do happen in trucking, the better you will be able to attract the best carriers to your facility.

- **Low Rate of Tender Cancellation:** How often do you have to reach out to your provider to cancel an appointment for a load that isn’t quite ready? (Or for some other reason?) If this is more than a couple of times per month, it’s occurring too fre-

quently. Capacity is tight enough, don’t let this be a reason a carrier refuses to work with you.

- **Lead Time for Shipment Booking:** Planning is of the utmost importance in our industry, and the more time you offer carriers to plan their loads, the more likely they are to become a dedicated carrier. Trucking is complicated and planning a week of shipments is a difficult process, especially when you’re trying to maximize a driver’s hours of service. Don’t let slow tendering practices be the reason you’re paying a premium for that last-second shipment.

- **Parking Options:** Parking is a serious issue for carriers. If you’re willing to allow them to sleep on site, you’re already ahead of the curve.

- **Amenities for the Carrier:** Do you have nice bathrooms for drivers? A vending machine or machines? Some shippers will offer a drivers’ lounge with free WIFI and a comfortable station to for relaxing. Treating drivers like your customers is a great idea all shippers should live by.

## Good Carriers are Not a Dime a Dozen

You work too hard to not also work with the best carriers in the business. Cultivating your “shipper of choice” status is the best way to ensure you are working with superior carriers at reasonable and reliable rates. When you take care of carriers and their drivers, you show them you value them and create long-standing relationships that will serve you well into the future. ♦



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# JUST THE FACTS: COBRA SUBSIDIES

GALLAGHER BENEFIT SERVICES

Let's keep it simple. And yes, that statement is a cocktail called irony when the main ingredients are two parts legislations, one part compliance, with a dash of "model notice deadline". Hopefully by now most of you have already spoken to your HR departments or your insurance brokers about the COBRA subsidy that was introduced as part of The America Rescue Plan Act of 2021 (ARPA). In case you have not, consider this a friendly reminder for your ever-growing list of "to-do's".

The COBRA Subsidy is equal to 100 percent of the cost of COBRA coverage (including the two percent administration fee) that runs from April 1 through September 30, 2021.

## Who is Eligible for Assistance?

- Individuals who were previously eligible for COBRA continuation coverage, but who did not elect COBRA and have coverage that would have extended into the subsidy period.
- Individuals who were previously eligible for COBRA continuation coverage, elected, but dropped coverage, and have coverage that would have extended into the subsidy period.
- Individuals who are or become eligible during the subsidy period.

*AND eligibility is based upon an involuntary termination of employment or a reduction in hours.*

**For an alternative perspective:** If the COBRA Qualifying Event was not the result of a reduction of hours or an involuntary termination of employment then the individual is not eligible for subsidized coverage. If the individual's COBRA maximum coverage period (i.e., 18 months) expired before 4/1/21, they are not eligible. And if the individual is eligible for other group health coverage or Medicare, they are also not eligible.

**NOTE:** Individuals eligible for other group health coverage or Medicare should nonetheless receive applicable

notices.

### Here are three things to remember:

- 1) Outbreak Period relief still applies to all COBRA qualifying events
- 2) Subsidy reimbursable through the credit against payroll taxes
- 3) Refundable FICA Tax Credit

### Who Gets the Tax Credit?

- In the case of the multi-employer plan: the plan gets the credit.
- In the case of the insured or self-insured plan subject to federal COBRA: the employer will receive the credit.
- For other insured group health plans: the insurer will receive the credit.

**A commonly asked question:** Does ARPA change any requirements under any state's continuation coverage law? No. Employers subject to state law are not required to offer a new 60-day COBRA election period or provide notice of expiration of subsidy. Employers subject to state law should use the Department of Labor's Model Alternative Notice for individuals who become el-

igible for state continuation coverage during the subsidy period. Employers should monitor state laws that apply to their plans, as states may make changes to continuation coverage requirements to align them with ARPA, which may affect their obligations.

### Others common questions include:

- What is the definition of "involuntary?"
- Would the exhaustion of FMLA and failure to return to work count as "involuntary?"
- Does a resignation for fear of coming to work because of COVID-19 count?
- Would an employer's inability/unwillingness to accommodate employees with no childcare due to COVID-19 meet the definition?

When considering all your "to-do's," don't forget to speak with your team about the American Rescue Plan act and what COBRA subsidies will mean for your business. ♦



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*This article is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the author is not engaged in rendering legal or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.*

# AIR QUALITY AND THE FUTURE OF REGULATED MONITORING

AIRTHINGS

As the United States continues its reemergence from the dire circumstances of the COVID-19 pandemic, a silver lining of the past year and a half has been the acceleration of technology trends and innovation linked directly to public health and personal wellness. With a heightened level of awareness and an urgency to reevaluate anything relating to the air that we breathe in daily, indoor air quality monitoring has graduated from a topic that was bubbling under the radar in professional circles for years to a top-of-mind, mainstream concern for homeowners, employees, business owners, and administrative professionals, all in a matter of months. On average, people spend more than 90 percent of their time indoors, yet indoor air pollution takes a perennial backseat to outdoor air quality and pollution in the discussion about how air quality impacts our health. With air quality now finally in the spotlight, it begs the question - how can businesses, schools and facilities ensure that they are optimizing their indoor environments for occupants, and who (if anyone) should be in charge of regulating those standards?

At Airthings we advocate for a "Rule of Four" when it comes to establishing an effective air quality monitoring standard in your indoor space:

**1. Diagnose Your Space.** You may have heard the term "Sick Building Syndrome" before. This refers to any indoor space where occupants regularly feel the effects of poor indoor air quality, such as headaches, throat irritation, allergic reactions and difficulty concentrating. While you may think the phrase "Sick Building Syndrome" doesn't apply to your newly constructed high-rise office, the reality is that any building can be "sick" if indoor air quality is not considered. Even factors like radon, the odorless, tasteless, radioactive gas which is the leading cause of lung cancer for non-smokers, can be lurking in any indoor space and present a considerable risk to all occupants. Understanding what is in the air is the most important first step towards optimizing your building and preventing it, along with your

staff, from getting sick. This can only be achieved through decision makers conducting regular monitoring of air quality over time and educating themselves on the pollutants or weak spots that need to be dealt with properly.

**2. Be Honest About Your HVAC.** It all starts with the HVAC system. Building managers should assess their current HVAC system to ensure it is functioning properly, cleaned regularly, and circulating in outside air constantly and effectively. If not, it may be time to invest in a new system or a more efficient way of monitoring indoor pollutants and CO2. This will give you data that indicates if you should increase ventilation, reduce the use of products that emit them or to more regularly replace air filters in your indoor fan systems. Air quality technology should be viewed as an essential expense - but the best part is that it might not actually be an "expense" at all. Data shows that investing in monitoring will actually create perpetual energy savings for buildings, while also reducing carbon emissions. On average, spending \$40 on improving air quality in a building results in a \$6,500 productivity gain. Extrapolated across a large business, the difference is even more significant.

**3. Keep An Eye on Occupancy.** While limiting occupancy might seem like an obvious way to reduce the risk of airborne viruses spreading, it's not a perfect science. Air quality monitoring technology should also be utilized to measure the ideal balance of occupants in a room. Too many, and the risks of virus spread are well documented. But too few, and you might not be getting the most out of your HVAC system. Keep an eye on your occupancy to determine what the ideal balance is and where your people are working, not just the fact that they're present. Most ventilation systems run the entire day, regardless of building occupancy, which can quickly double the cost of energy, maintenance and wear. You may want to explore automating your system to shut off during non-work hours or only turn on in rooms that are frequently being used.

**4. Remember 30 to 60 percent.** Last but

not least, keep indoor humidity levels to between 30 and 60 percent. Studies have proven a direct, established link between the facilitation of seasonal respiratory virus transmission, particularly flu, and the level of humidity in the air. When humidity levels are too low, it means indoor air is dry, which allows airborne drops of water and other bacteria to stay airborne longer and travel farther. This threat is compounded with the fact that many public buildings that operate with central air conditioning tend to have exceedingly dry air.

## Who's Responsible?

Addressing the "how" is the simple part, but the "who" can become a complex topic of debate. Ventilation and indoor air quality in buildings should be regulated to protect people's health, ensure safe back-to-normal post-pandemic conditions, and improve both efficiency and wellness for everyone moving forward. In the US, there has been a trickling stream of recent government chatter and conversation about improving air quality, specifically in schools. From a business standpoint, the argument for illustrating the ROI of this is clear. A recent article in *The Economist* cited research findings that cognitive scores of people in well-ventilated offices are 61 percent higher than those of workers in conventional office set-ups - meaning the money that business owners and companies are investing in payroll and employee salaries is being put to better use purely through improved job performance. Factoring in additional cost savings such as improved energy efficiency and reduced emissions, implementing a customizable and tailored air quality monitoring system should be a proverbial "no-brainer" for decision makers.

When it comes to indoor air quality monitoring and the role that the government can play in not only regulating, but progressing our standards, there's a clear and present opportunity to take a significant step forward in changing how the public thinks about ventilation. Reflecting on what we've learned since March 2020, there's no better time to begin than now. ♦

# ATTRACT AND RETAIN VALUABLE EMPLOYEES AS THE ECONOMY REOPENS

LEADERS BANK

Every day brings new evidence of an American economy reopening for business. But as customers flock back to businesses to purchase goods and services, company owners confront an increasingly vexing problem. They are having difficulty finding employees.

A survey in March by the National Federation of Independent Businesses (NFIB) found 42 percent of business owners reporting inability to fill employment positions. That represents not just a record-high figure; it is almost twice the 48-year historical average of 22 percent. Thirty-four percent of owners have unfilled positions calling for skilled workers, while 19 percent can't fill positions calling for unskilled labor.

The shortage of qualified workers presents a cruel irony for many business owners.

Having survived an economic crisis ignited by the worst pandemic in a century, their inability to fill jobs prevents them from taking full advantage of post-COVID profit opportunities, now that their customers are returning in large numbers.

As for explanations, theories abound. Fear of the virus, childcare issues, jobless benefit disincentives and supply chain hurdles have all been cited. But one fact remains clear. Firms must find new ways to attract and retain good workers.

## Luring Qualified Workers

In a tight labor market such as this, providing superior financial incentives can be one way to attract qualified employees. Monitoring the competitive pay environment in your industry and offering higher wages than rivals can help you appeal to more and higher-quality workers.

In some jobs, time-and-a-half overtime pay opportunities can also help achieve these ends. Childcare assistance, which can exert a highly positive impact on an employee's personal financial standing, can be another draw.

But don't overlook less-tangible ben-

efits, says Tia Graham, business growth expert at Arrive at Happy, a firm that has worked with American Heart Association, Hilton Hotels and Four Seasons to help drive bottom-line results.

Among the most important qualities candidates look for in potential employers are meaningful work, psychological safety, open communication about company results, innovative and creative corporate culture and a conviction the employer will play a part in career advancement via mentorship, internal promotion tracks or other means.

Also scrutinize your management team, says Intent Consulting founder Omar L. Harris. "Because employees experience a company through the lens of their managers, ensuring the right people are in management roles is absolutely critical," he says.

## Engaging Remote Teams

Engagement represents one of the big challenges employers face with remote working. Some may feel disconnected by remote work, leading to performance declines, says James Rice, head of SEO at Picked, which helps companies hire better talent and create better teams. Spurring social interaction among team members remains critical. Try a "virtual happy hour," an online game, a race to capture incentives or a community service outing to encourage a spirit of inclusiveness among all employees, he says.

Communication can also suffer in remote work scenarios. Using good communication platforms, such as Slack, can help mimic informal office communication.

As well, employees working remotely need as much direction as in-office teams. "You should ensure there is clarity about goals, objectives, targets, and where you want the company to be overall," Rice advises.

Whether or not employees are working remotely, they must feel valued and recognized for their work. "Give employees the recognition they deserve," he says. "This can be through a tangible

reward, such as a bonus, or by simply mentioning it, which can still go a long way." An additional idea could be a virtual awards ceremony.

## Mid-Skill Jobs

Many employers, notably manufacturers, have found success teaming with area community colleges and vocational training programs that attract high school graduates, military veterans and career changers. These institutions provide training for jobs currently in demand – and likely to grow in demand – over coming years.

The programs teach specialized skills, provide hands-on experience using state-of-the-art tools and techniques, generally require two years or less to complete and result in certificates or associate's degrees. Some students in the programs master skills necessary to become a welder or CNC router operator, both highly-sought manufacturing sector skills. Others may train to become automotive, marine or motorcycle repair technicians.

Talent-hungry employers benefit from relationships with community colleges and vocational training programs on both the front and back end. They can be enlisted to assist program administrators in designing curricula that meet the evolving needs of area companies and fill future talent pipelines. They can also look to well-trained graduates to hit the ground running in specialized current openings.

Today's daunting recruitment and retention environment will eventually right itself. For now, employers must be willing to embrace proactive steps like these to begin filling important positions with qualified employees, and keep them filled. ♦

# WHAT THE REGULATED COMMUNITY CAN EXPECT UNDER THE BIDEN EPA

VEDDER PRICE P.C.

The Biden Administration will present a stark contrast to his predecessor's approach to the environment. President Biden believes that climate change is the greatest threat facing our country and our world, and he has proposed a bold plan for a clean energy revolution. Biden has already directed federal agencies and executive departments to immediately review and "take appropriate action to address" regulations and executive actions enacted by the Trump Administration "that were harmful to public health, damaging to the environment, unsupported by the best available science, or otherwise not in the national interest."

## The Familiar – Renewed Focus on Environmental Enforcement and Compliance Civil Enforcement

Under the Trump Administration, many observed that measures of civil enforcement indicated a less aggressive enforcement program. The United States Environmental Protection Agency (EPA) took a "compliance first" approach, and appeared less concerned with enforcement than it was with compliance. Fur-

ther, in his four-year term, Trump and his administration rolled back more than 100 environmental rules, dismantling policies related to air pollution and emissions, drilling and extraction, infrastructure and planning, wildlife, water pollution, and toxic chemicals. Biden will likely seek to undo many of these deregulatory actions.

The Biden Administration will return to an "enforcement first" approach, exercising its enforcement authority, and reasserting its control. While this change in enforcement focus may not occur immediately, all regulated parties should anticipate an increase in the number of federal-led cases as well as a review and subsequent revisions of the EPA Strategic Plan and National Compliance Initiatives.

The Biden Administration will seek to strengthen environmental protections by promulgating new standards and by revising existing standards. For example, Biden has pledged to set enforceable limits for PFAS in drinking water and to designate PFAS as a hazardous substance under the Superfund cleanup law. In addition, due to Biden's focus on the COVID-19 pandemic, his Administration will likely enhance FIFRA

enforcement to focus on the import and distribution of disinfectants and other antimicrobial products that make improper claims.

## Criminal Enforcement

Under the Trump Administration, the EPA referred the fewest number of criminal anti-pollution cases to the Justice Department in 30 years. It is likely Biden will direct his EPA and Justice Department to pursue pollution cases to the fullest extent permitted by law and, when needed, seek additional legislation to hold corporate executives personally accountable, including jail time where merited.

## The Unfamiliar – Comprehensive Approach to Global Climate Change/Greenhouse Gas

### Background

In accepting that the country is already experiencing the impact of climate change in communities across the nation, Biden has framed climate change as one of the most important issues his administration will confront. Tackling climate change was a central plank of Biden's presidential campaign and centers on an economy wide net-zero carbon emissions target by 2050.

- Rejoining of the Paris Climate Accord – On Wednesday, January 20, 2021, the United States rejoined the 2015 Paris Climate Accord. Under the accord, the United States pledged to reduce greenhouse gas emissions by 26 percent to 28 percent below 2005 levels by 2025. According to the Biden Administration, rejoining the accord sends a signal to the international community and will also serve as a method for driving domestic policy.

- Revocation of the Keystone XL Pipeline Project – In addition, as part of his ambitious first-day agenda to tackle climate change, Biden signed an executive order revoking the presidential permit issued for the controversial Keystone XL pipeline, a project that had planned



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to ship oil sands from western Canada to refineries on the United States Gulf Coast.

• Revival of the Obama-Era Greenhouse Gas (GHG) Emission Standards – On January 19, 2021, the D.C. Circuit vacated the Trump Administration’s rollback of Obama-era greenhouse gas emission standards for existing power plants as well as the rule intended to replace them, finding the actions “rested critically on a mistaken reading of the Clean Air Act.” As such, the Biden Administration no longer has to implement the rolling back of official agency regulations, and can instead target regulating carbon dioxide and other GHGs.

### **Enhanced Focus on Securing Environmental Justice**

Biden plans to make it a priority for all agencies to engage in community-driven approaches to develop solutions for environmental injustices affecting communities of color, low-income, and indigenous communities. The Biden Administration will establish a new Environmental and Climate Justice Division within the DOJ to complement the work of the Environment and Natural Resources Division. In line with the new Division’s mandate, Biden will instruct the Attorney General to: (i) implement, to the extent possible by executive action, Senator Cory Booker’s Environmental Justice Act of 2019; (ii) increase enforcement, in line with the commitments already detailed in the Biden Plan; (iii) strategically support ongoing plaintiff-driven climate litigation against polluters; (iv) address legacy pollution that includes real remedies to make communities safe, healthy, and whole; and (v) work hand-in-hand with the EPA’s Office of Civil Rights.

Biden will elevate and reestablish the White House Environmental Justice Advisory Council and White House Environmental Justice Interagency Council, both reporting directly to the Chair of the White House Council on Environmental Quality (CEQ). To support this work, Biden’s CEQ will also have senior and dedicated environmental justice staff. These two councils will be charged with revising the 1994 Executive Order 12898 (EO 12898) on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations in order to address current and historic environmental injustice, in collaboration with local environmental justice leaders. These councils will be tasked with developing clear performance metrics to ensure accountability in the implementation of the Executive Order. Once the revised EO is finalized, the White House Environmental Justice Advisory Council and White House Environmental Justice Interagency Council will publish an annual public performance scorecard on its implementation.

### **Biden’s Plan for a Clean Energy Future**

Biden has proposed an ambitious plan to make a \$2 trillion accelerated investment over four years on clean energy projects, to end carbon emissions from power plants by 2035, and to set the United States on the path to net-zero greenhouse gas emissions by 2050. Among Biden’s proposed investments are infrastructure, the auto industry, the power sector, buildings, innovation, agriculture and conservation.

• Build a Modern Infrastructure – Among Biden’s ambitious plans include the transformation of our transportation infrastructure systems, including roads and bridges, rail, aviation, ports, and inland waterways, thereby making the movement of goods and people faster, cheaper, and cleaner. Biden will seek to expand rail and municipal transit networks as well as broadband and wireless broadband via 5G.

• Position the United States Auto Industry to Win the 21st Century with Technology Invented in America – Biden plans to use the power of federal procurement to increase demand for American made, American sourced clean vehicles. He plans to encourage consumers and manufacturers to go clean by providing consumers with rebates to swap out old, less-efficient vehicles as well as targeted incentives for manufacturers to build or retool factories to assemble zero-emission vehicles, parts, and associated infrastructure. In addition, he plans to make major public investments in automobile infrastructure, including 500,000 electric vehicle charging stations, and accelerating research on battery technology and supporting the development of domestic production capabilities.

• Achieve a Carbon Pollution-Free Power Sector by 2035 –The Biden Administration plans to reform and extend current tax incentives that generate energy efficiency and clean energy jobs; develop innovative financing mechanisms that leverage private sector dollars to maximize investment in the clean energy revolution; and establish a technology-neutral Energy Efficiency and Clean Electricity Standard (EECES) for utilities and grid operators.

• Pursue a Historic Investment in Clean Energy Innovation – Biden plans to create a new cross-agency Advanced Research Projects Agency on Climate, to target technologies such as grid scale storage, advanced nuclear reactors, refrigerants with no global warming potential, production of carbon-free hydrogen, decarbonizing the food and agricultural sector, and capturing carbon dioxide through direct air capture systems.

• Advance Sustainable Agriculture and Conservation – Biden’s initial focus will be on plugging orphaned or abandoned oil and gas wells and restoring and reclaiming abandoned coal, hardrock, and uranium mines. Biden hopes to establish a new voluntary carbon farming market that rewards farmers for the carbon they sequester on their land and the greenhouse gas emission reductions, including from methane, that they secure.

### **The Bottom Line**

All regulated parties under a Biden led EPA should expect an increase in environmental enforcement, not only in the number of cases brought but also in the severity of these cases from a fine and penalty standpoint. The Biden Administration is proposing a bold new approach to addressing climate change and greenhouse gas emissions. Moreover, the Biden Administration will re-energize environmental justice programs and actions. The Biden Administration’s proposed investment in clean energy projects include infrastructure, the auto industry, clean energy innovation and power, energy efficient buildings and sustainable agriculture. With an ambitious agenda, the Biden Administration’s effect on the regulated community and the environment is likely to be impactful. ♦

# MEMBERS IN THE NEWS

## ADM Announces Successful Completion of One Million Metric Ton Carbon Capture and Storage Project



Archer Daniels Midland (ADM) and the University of Illinois announced today the successful completion of the Illinois Basin - Decatur Project (IBDP), a carbon capture and storage (CCS) project designed to evaluate and test the technology at commercial scale. This is one of two CCS projects located adjacent to ADM's corn processing plant in Decatur, Illinois.

The first-of-its-kind project was primarily funded through the Midwest Geological Sequestration Consortium (MGSC) by the U.S. Department of Energy - National Energy Technology Laboratory with the goal to confirm the ability of the Mt. Simon Sandstone to accept and store one million metric tons of carbon dioxide over a period of three years, the equivalent of annual emissions from about 1.2 million passenger cars according to EPA calculations. Working together through the MGSC, the Illinois State Geological Survey at the University of Illinois designed, implemented, and monitored the project and ADM was the host and operator.

The project utilized 20,000 feet of wells to successfully inject carbon dioxide from ADM's processing plant more than 6,500 feet underground. More than 2,000 visitors from 30 countries have come to the site throughout the project to learn more about the process and technology.

## Boeing, Motorola Solutions Foundation Host Virtual Chicago STEM Signing Day



On Tuesday, May 25, Boeing and Motorola Solutions Foundation jointly hosted the annual Chicago STEM Signing Day event for the fourth year in a row.

This special event celebrates students from across the Chicagoland area as they make commitments to attend some of the country's top technical schools, colleges and universities. These students will apply their talents in pursuit of STEM (science, technology, engineering and math) careers in fields such as software development, engineering, aviation and user experience design, putting themselves on the fast track for success.

Boeing supports STEM Signing Day events across the United States and will aid more than 600 students in 2021 through participation in events similar to this. Since the inaugural STEM Signing Day in South Carolina in 2017, nearly 2,000 STEM students have been recognized. This year, all STEM Signing Day students are being offered exclusive access to a mentorship program that will match them with a Boeing employee currently working in a STEM field.

## Caterpillar and Argonne Project Shifts Heavy-Duty Engine Design into Higher Gear



Heavy-duty diesel engines still power most large vehicles used in the construction, mining and transportation industries in the United States. Engineers are working to improve the fuel efficiency of these engines while minimizing pollution to reduce energy consumption and ensure the sustainability

of these industries in the future.

To tackle this problem, researchers at the U.S. Department of Energy's (DOE) Argonne National Laboratory joined forces with Caterpillar Inc., one of the world's largest manufacturers of construction and mining equipment. Taking advantage of Argonne's high-performance computing resources, researchers developed a potential piston design for Caterpillar's engines that could improve fuel efficiency while reducing harmful emissions.

In addition to the project's simulation innovations, one of the team's key contributions was its development of an industry-friendly approach, which allows companies to optimize their engine designs using their own in-house computer systems. This simplified model, based on the results of hundreds of the complex simulations, provides a similar level of accuracy while reducing the computational requirements by as much as 40 percent.

## PLZ Aeroscience Acquires 220 Laboratories to Expand Full-Service Personal Care Capabilities



PLZ Aeroscience Corporation, North America's largest independent specialty aerosol and liquid product manufacturer, announced in July the acquisition of 220 Laboratories ("220 Labs"), a leading innovator and formulator of hair, skin and body products. With this combination, PLZ can now offer its customers an end-to-end suite of solutions, from new product ideation and formula development to the custom manufacturing of aerosol and non-aerosol products.

The acquisition of 220 Labs is PLZ's fourth acquisition in the personal care industry in the last two years. In total, PLZ now operates seven personal care facilities across the United States and Canada.

Founded in 1991, 220 Labs manufactures a variety of aerosol and non-aerosol personal care products including dry shampoos, conditioners, and body sprays. The company is known as a market leader in product development and has a long track record of innovation. 220 Labs operates out of a 200,000 square foot FDA-registered facility in Riverside, California.

Headquartered outside Chicago, PLZ is owned by Pritzker Private Capital ("PPC") and management. With PPC's support, PLZ has continued to grow organically as well as through five acquisitions in the last two years – Champion Brands in 2021, Mansfield-King and Custom-Pak Products in 2020, and Liquid Technologies and Precise Packaging in 2019.

### Suncast Corporation Goes Solar



Suncast Corporation, the market-leading manufacturer of high-quality resin products made in the U.S.A., announced the installation of new solar array panels to help power its Batavia, Illinois operations.

The solar panels will generate thousands of kilowatts of clean energy to help run the plant, allowing Suncast to operate in a more sustainable and environmentally friendly way. Over the course of its lifetime, the solar array will save millions of pounds of CO2 emissions, the equivalent of planting hundreds of thousands of trees.

The installation of the solar array panels is just one of many initiatives as part of the Suncast sustainability program, embodying Suncast's commitment to operate in an environmentally friendly, responsible, and sustainable way. Other initiatives include recycling and reusing 100 percent of scrap resin in the manufacturing process, man-

ufacturing products partially or 100 percent from recycled materials, the use of electric powered hybrid vehicles at facilities, and an end of life recycling program where products can be fully recycled after providing lasting value through seasons of use.

### Synergy Flavors Acquires Innova Flavors From Griffith Foods Worldwide



Synergy Flavors Inc., a member of the Irish-based Carbery Group, has announced the acquisition of leading savory flavor and ingredient supplier, Innova Flavors, from Griffith Foods Worldwide.

This strategic purchase expands the savory capabilities of Synergy Flavors in alignment with the exciting new product development happening in meat alternatives, sauces, side dishes, and snacks. It also adds process flavors to Synergy's portfolio of extracts, essences, and compounded flavors of every form and designation, helping their customers to differentiate their products in the highly competitive food and beverage markets.

"This acquisition offers significant benefits to Synergy customers by providing them access to a proven range of flavors to meet the growing demand for natural flavorings and savory ingredients. In addition, these products complement Synergy's current offerings for rapidly growing plant based alternative food & beverages globally," comments Rod Sowders, President and CEO of Synergy Flavors. "Synergy's global footprint and history of investment in acquisitions will allow Innova customers to benefit from the deep flavor expertise and global reach of the Synergy organization."

### Zebra Technologies to Acquire Fetch Robotics



Zebra Technologies on July 1 announced it intends to acquire Fetch Robotics, a pioneer in on-demand automation. Fetch's Autonomous Mobile Robots (AMRs) are used for optimized picking in fulfillment centers and distribution centers, just-in-time material delivery in manufacturing facilities and automating manual material movement in any facility.

Fetch features the largest portfolio of AMRs in the industry and offers seamless integration with warehouse and manufacturing systems without the need for changes to facilities or infrastructure. Workflow Builder, Fetch's drag and drop workflow development studio, enables out-of-the-box automation so that customers and partners can deploy automated material handling workflows in hours instead of months. Fetch Robotics' AMRs help reduce the impact of labor shortages by improving throughput, efficiency and productivity while working alongside people in fulfillment, distribution and manufacturing environments.

In addition to Fetch Robotics' broad portfolio of AMRs, it offers cloud-based Enterprise Software, FetchCore as the foundational platform for deploying and fully integrating a broad range of automated workflows into manufacturing and warehouse operations and providing unique insights into facilities through machine learning on AMR sensor data. The planned acquisition furthers Zebra's vision to bring advanced robotics solutions to customers who have labor-intensive operations. ♦

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**PRAIRIE STATE GENERATING COMPANY**  
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