

ExecutiveMemo

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A newsletter of the Illinois Manufacturers' Association

March 24, 2010

BRIEFLY

IMA-RSM McGladrey 2010 Compensation Survey participation deadline extended to Friday, March 26th

Absolutely your last chance to participate

Response to this year's survey has been excellent with more than 225 companies participating so far. RSM McGladrey and the IMA are extending the deadline to Friday, March 26th — in order to allow companies one more chance to participate. All participants receive a FREE electronic copy of the survey report.

The survey covers 186 positions across 13 job families including jobs at the plant, supervisory, management and executive levels. Data will be collected on base pay, pay grades, annual bonuses and target incentive levels. Custom reports will provide data on select peer groups, and index reports will allow a comparison of your organization's pay to the market median rate.

Again, the **deadline to participate in the survey has been extended to Friday, March 26, 2010**. Results are scheduled for release in June, 2010. If you have any questions or comments regarding the survey, please feel free to contact Janie Stanley of the IMA at 800-875-4462, ext. 3020 or email jstanley@ima-net.org.

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Editor: Stefany Henson (shenson@ima-net.org).

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Manufacturers say health care bill bad for business, bad for jobs and bad for economic recovery

Estimated \$2 trillion price tag will hurt America's ability to compete

The National Association of Manufacturers (NAM) President John Engler issued the following statement regarding House passage of the "Patient Protection and Affordable Care Act" (HR 3590) and the "Reconciliation Act of 2010" (HR 4872):

"It is unfortunate that the House of Representatives passed a health care bill that is going to increase costs and make it difficult for manufacturers to continue to offer generous health benefits.

Ninety-seven percent of NAM member companies voluntarily provide health care benefits, not only to attract a skilled workforce, but because they believe it is the right thing to do for employees. The legisla-

tion passed today will stifle manufacturers' ability to grow and create jobs while competing in a challenging global economy.

Manufacturers oppose many of the provisions in this legislation, as they would increase their health care costs, including excise taxes on health insurance plans which would adversely impact companies with older workforces and/or smaller self-insured plans. Other measures that manufacturers oppose include:

- *An increase in and expansion of the Medicare hospital insurance (HI) tax, which would increase taxes on investment income and unfairly target some*

See **BAD, BAD, BAD**, page 2

NEW JOBS BOARD available for manufacturers

The **Illinois Manufacturers' Association, in partnership with Kensington International**, has established a jobs board to help manufacturers find qualified job applicants, and job seekers find manufacturing jobs. IMA member companies are encouraged to post available jobs on the site. There is no charge for this service. Visit <http://www.kionline.com/job> to sign up. By using your IMA member ID and the password "jobs," most fields will automatically pre-populate with basic information. In addition, the jobs board has all manufacturing job titles described in the federal *Dictionary of Occupational Titles* already loaded. Administrative and office titles are also available. In recent years a number of IMA member companies have expressed an interest in the IMA creating a jobs board. Creation of the site began last fall when Oak Brook-based Kensington International and IMA Director of

Membership Julie Starsiak discussed how the two organizations could work together to benefit manufacturers. Kensington International is a large and successful talent management firm that provides executive search, leadership development and outplacement services within key industry segments. Kensington International partners with its clients to assist them with their strategic talent needs in the areas of strategy, acquisition, assessment, development, engagement and transition. In addition to hosting the Website, Kensington International offers IMA member companies access to its full line of help in the area of executive search, outplacement services and more. Visit <http://www.kionline.com/job> today to get started. If you have questions, please contact the IMA's Jim Nelson, at 800-875-4462, ext. 3023, email jnelson@ima-net.org.

IMA'S EXECUTIVE MEMO IS UNDERWRITTEN BY:



EXPERIENCE RESPONSIVENESS.

Of 838 clients surveyed, 98% say Plante & Moran is responsive to their needs.

70 percent of U.S. manufacturers who file taxes at the individual rate;

- Limits on Flexible Spending Accounts (FSAs) that would curb design flexibility options for manufacturers and place an immediate tax increase on employees who use these tools;
- New industry-specific fees that single out particular industries to pay for health care reform; and
- Repeal of the tax exclusion for prescription drug subsidies, which would significantly increase employers' costs and make it more difficult for them to continue offering health benefits to their retirees.

This legislation is fundamentally flawed. Based on the Congressional Budget Office numbers, once the Act takes full effect it could cost as much as \$2 trillion over 10 years; this is not reform . . .

Manufacturing has lost 2.2 million jobs since December 2007; this is no time to place additional burdens on America's job creators. America's manufacturers will continue to advocate for real health care reform that lowers costs, improves care and does not impede our ability to create jobs, grow our economy and remain competitive in a global market."

Bill will add significant costs for Illinois manufacturers

According to numerous published reports, Peoria, Illinois-based Caterpillar Inc. says the health care overhaul legislation passed by the U.S. House of Representatives on March 21st will increase the company's health care costs by at least 20 percent, amounting to more than \$100 million in the first year alone.

In a letter sent last Thursday to House Speaker Nancy Pelosi (D-Calif.) and House Republican Leader John Boehner of Ohio, Caterpillar urged lawmakers to vote against the plan "because of the substantial cost burdens it would place on our shareholders, employees and retirees." Caterpillar, the world's largest construction machinery manufacturer by sales, said it's particularly opposed to provisions in the bill that would expand Medicare taxes and mandate insurance coverage. The legislation would require nearly all companies to provide health insurance for their employees or face large fines.

"We can ill-afford cost increases that place us at a disadvantage versus our global competitors," said the letter signed by Gregory Folley, vice president and chief human resources officer of Caterpillar. "We are disappointed that efforts at reform have not addressed the cost concerns we've raised throughout the year."

"More than 98 percent of Illinois manufacturers provide health insurance for their employees and immediate families according to a recent IMA member survey," said Gregory W. Baise, President & CEO of the Illinois Manufacturers' Association.

"However, uncontrolled escalating costs are forcing employers to increase deductibles and co-pays paid for by workers. Sunday's ill-advised action by the U.S. House does nothing to curb costs and employers could be faced with implementing further measures to keep health care available."

Time to file H-1B visa petitions . . .

On April 1, 2010, the United States Citizenship and Immigration Services (USCIS) will begin accepting new H-1B visa applications for employment that will begin on October 1, 2010. The H-1B visa is a popular choice for companies planning to hire a foreign worker to fill a "professional" or "specialty occupation" position requiring a minimum of a bachelor's degree or the equivalent.

There are 65,000 H-1B visas available each year in addition to 20,000 H-1B visas reserved for holders of U.S. master's degrees or higher. Although USCIS reached the quota in the first week of filing in previous years, the quota this past year was not filled until December 2009. However, we anticipate that the H-1B visa numbers will be filled more quickly this year as the economy starts to recover.

Consequently, an April 1 target date for filing H-1B petitions will increase your chances of obtaining one of the H-1B visa numbers.

To meet a target filing date of April 1, we recommend that you start the application process now. Unlike previous years, there is no longer the possibility of one-day approval from the U.S. Department of Labor (DOL) for Labor Condition Applications — which are required in

order to file the H-1B petition with USCIS. The DOL is generally taking seven days to process Labor Condition Applications, and we expect this processing time to increase as employers prepare to file H-1B petitions. Possible candidates for H-1B visas include current employees or potential new hires now working in student (F-1 or J-1) status whose employment authorization will expire before October 2011.

Authors Gabrielle M. Buckley, gbuckley@vedderprice.com or 312-609-7626, or P. Michelle Jacobson, mjacobson@vedderprice.com, or 312-609-7761, are available to answer your questions. Source: VedderPrice PC's Business Immigration Practice Group.

Proposed amendments to the Illinois Trade Secrets Act may substantially alter non-competes

Protecting confidential information, trade secrets and customer relationships from former employees and competitors is critical to a manufacturer's business, particularly in light of the challenges posed by the intense competition in the current economy. As a result, effective use of non-compete and other restrictive covenants with employees to protect manufacturers' interests has become even more important.

Recently proposed amendments to the Illinois Trade Secrets Act ("ITSA") may substantially change the way restrictive covenants are written and enforced in Illinois. One major component of the proposed legislation is a requirement that a trade secret plaintiff identify its alleged trade secret in writing with "reasonable specificity" before beginning discovery. Currently, the ITSA does not require a specific, written disclosure by a plaintiff at any time.

The primary purpose of this part of the legislation is to tie the plaintiff to specific trade secrets in the early stages of litigation. The proposed legislation allows for amendments of written trade secret disclosure only under the following conditions: (1) with leave of the court; (2) upon a showing of good cause; (3) within 180 days of the original disclosure; and (4) before the close of discovery. In addition, if the amended trade secret disclosure abandons previously identified trade secrets or discloses additional trade secrets, the defendant is entitled to a mandatory award of attorneys' fees.

See **TRADE SECRETS ACT**, page 3

Illinois Manufacturers' Association
2010 Business Day at the Capitol
Wednesday • May 5, 2010 • Springfield
Register today at: <http://www.ima-net.org/bizday10.cfm>

The legislation also would limit the enforceability of non-competes. For example, non-competes would be unenforceable against anyone except a "key employee" or "key independent contractor." A rebuttable presumption that any restriction unenforceable would exist if: (1) the restriction is greater than one year; (2) the geographic restriction extends beyond the region where the employee provided services; or (3) the restriction is based on a service other than the service the individual performed for the employer. The law also would require an employer to provide a "material advancement or promotion" or a "material bonus or material increase" in salary rather than rely on continued employment as adequate consideration to support a non-compete.

On the other hand, certain provisions of the proposed law could make non-competes easier to enforce. For instance, the law would make it easier to establish a legitimate business interest sufficient to justify a non-compete. It also would expand the ability of judges to modify restrictions in a non-compete to make it enforceable when the court finds it overly broad.

This new legislation comes on the heels of the *Sunbelt Rentals v. Ehlers* (Ill. App. 4 Dist. 09/23/2009) case. In the *Sunbelt* case, the Fourth District of the Illinois Appellate Court rejected the "legitimate business interest" test, which generally required the

former employer to establish that the non-compete agreement was drafted to protect confidential information or long-term customers. Instead, the Illinois Appellate Court held, "When presented with the issue of whether a [non-compete agreement] should be enforced, [the court] should evaluate only the time-and-territory restrictions contained therein."

Based on the reasoning in *Sunbelt*, the former employer always will have some interest to protect and courts need to assess only the reasonableness of the activity, time and geographic restrictions. Thus, the court still would have to determine an employer's interests in order to decide whether the activity, time and geographic restrictions are reasonable.

We will monitor further decisions in the courts, the progress of the proposed amendments to the ITSA and other relevant developments and provide updates in future articles. If you have any non-compete related questions, please contact Dan Kaufman at dakaufman@michaelbest.com or Charmaine Butler at cmbutler@michaelbest.com.

The authors of this article (Kaufman and Butler) can also be reached at 312-222-0800. Michael Best's Trade Secret Protection and Non-Competition Team frequently counsels employers and businesses regarding the drafting and enforceability of restrictive covenants and the protection of confidential information and trade secrets.

DATES OF NOTE

More information/events may be found at <http://www.ima-net.org/calendar.cfm> and <http://www.ima-net.org/MIT/open.cfm>
Email: jstanley@ima-net.org

April 9, 2010

**Small Manufacturers' Council
Ditka's Restaurant, Two MidAmerica Plaza,
Oakbrook Terrace, 8:15 am-Noon**

IMA's Small Manufacturers' Council is a group focused on the unique issues and challenges facing manufacturers employing fewer than 150 workers. Continental breakfast provided. Underwritten by Sikich LLP

April 9, 2010

**IMA-MIT Event: Project Management Skills for Non Project Managers, DePaul University
O'Hare Campus, 3166 S. River Rd., Des Plaines**
Objectives • To provide non-project managers with the project management knowledge, skills, tools and techniques to make the transition to a project leadership role and ensure optimum project execution.

April 19, 2010

**IMA-MIT Event: Essential Internal Training Skills and Techniques, DePaul University
O'Hare Campus, 3166 S. River Rd., Des Plaines**
Essential Internal Training Skills and Techniques is a one day workshop that will introduce the new internal trainer or subject matter expert to the skills necessary for them to be a successful trainer or facilitator. The program will cover core skills such as how to create rapport with your learner, how to communicate learning objectives, how to introduce a learning activity, how to ask the right question, and how to engage and reengage the adult learner.

April 28, 2010

IMA Breakfast Briefing: Buying & Selling Companies, Mon Ami Gabi-Oak Brook Center, 8:00-11:00 am.

Join experts Gabrielle Buckley, Guy Snyder and Jim Spizzo from Vedder Price PC as they discuss: buying and selling manufacturing businesses in 2010; business immigration issues and labor implications. Cost: \$60 IMA members; \$85 Non members. For more information or to register, visit <https://www.ima-net.org/breakfast.cfm>.

May 18, 2010

IMA Breakfast Briefing: Social Networking in the Workplace: Guidelines for Employers, Ditka's Restaurant, Two MidAmerica Plaza, Oakbrook Terrace, 7:30-10:30 a.m.

Presenter David B. Ritter chairs the Neal Gerber Eisenberg Labor & Employment Practice Group. Employers must face the fact that their employees do access and use social networking sites and they likely do so at work. This presentation will help you implement smart measures to deal with this reality and explore some additional aspects of the topic of social networking sites. Cost: \$65 IMA members, \$85 Non-members. Cancellations must be made IN WRITING by May 12, 2010 in order to receive a refund. Refunds will not be made after May 12, 2010. Questions? Contact Kimberly McNamara at: kmcnamara@ima-net.org or 630-368-5300, Ext. 2109.

Breakfast Briefings 2010 . . .

Finding Cash for Recovery and Growth

MARCH 30, 2010 • 8:30-12:00 NOON

Courtyard Marriott, 1928 West War Memorial Drive, Peoria

Presented by Duane C. Oest, Kenton M. Bowles and David E. North, CPA, ChFC, CLU, of Clifton Gunderson

In times like these, manufacturers must be proactive in their efforts to improve cash flow and reduce costs. Learn how and where you can find cash in your business. Four objectives covered: • Identify a range of tools and practices that can be used to strengthen your company's current financial position. • Identify and review existing federal and state programs developed to support and grow Illinois manufacturing • Understand and maximize federal and state tax programs designed to provide manufacturing relief • Provide a self assessment checklist allowing you to better understand your opportunity for improvement. *CPE credits are offered. To register, visit: <https://www.ima-net.org/breakfast0330.cfm>.

Leaves of Absence under the ADAAA and the amended FMLA: Good News and Bad News for Employers

APRIL 20, 2010 • 8:00-11:00 AM

Ditka's Restaurant, Two MidAmerica Plaza, Oak Brook

Presented by Gregory H. Andrews, Esq, Dykema Gossett, PLLC

Managing Reduced Manufacturing Workforces Under the New Rules

The FMLA was amended in 2008 and yet again this past October. The ADAAA amended the ADA last year, and the final regulations are imminent. What does all of this mean for manufacturers who are doing their best to manage with a reduced workforce as they struggle to move past the depths of the economic recession? This 2.5 hour advanced level seminar will provide attendees with an understanding of the fundamental shifts in how these laws impact leave of absence management. After a review of the changes (some actually good for employers, others good for employees) the briefing will walk through useful checklists to propose realistic and practical solutions to real life problems from manufacturing-based workplaces. To register visit: <https://www.ima-net.org/breakfast0420.cfm>.

Cost per session: \$75 IMA member ♦ \$100 non-members

Questions? Contact Kimberly McNamara at kmcnamara@ima-net.org or 630-368-5300, Ext. 2109

Obama administration launches \$130 million building energy efficiency effort

Will create jobs and lower utility bills through innovative technology

The Obama Administration recently announced a multi-agency initiative to spur regional economic growth while making buildings more energy efficient. Seven federal agencies issued a combined Funding Opportunity Announcement of up to \$129.7 million over five years to create a regional research center that will develop new building efficiency technologies and work with local partners to implement the technologies in area buildings.

Buildings account for nearly 40 percent of U.S. energy consumption and carbon emissions. Improvements in building efficiency will provide significant benefits — reducing energy use, lowering utility bills and decreasing carbon emissions.

The agencies are working together to leverage funding and resources to promote regional growth through an Energy Regional Innovation Cluster (E-RIC) that is centered around an Energy Innovation Hub focused on developing new technologies to improve the design of energy-efficient building systems. This Energy Innovation Hub, one of three proposed by the Administration and funded by Congress in the FY10 budget, will bring together a multidisciplinary team of researchers, ideally working under one roof, to conduct research and work to solve priority technology challenges that span work from basic research to engineering development to commercialization readiness.

The E-RIC will work to disseminate new technologies into the local marketplace and share best practices with the public and private sectors. It will be supported through agency investments in technology and business development, and will include support for workforce education and training. By linking researchers at the Hub with local businesses and supporting specialized workforce education and training in the area, the initiative will create an economically dynamic region focused on building efficiency technologies.

“This unique partnership will not only advance the development of new, energy efficient technologies, it will help local governments, businesses, and homeowners save money on their utility bills by putting the technology to work,” said U.S. Secretary of Energy Steven Chu. “Energy efficient buildings represent one of our best and most immediate opportunities to create jobs, save

money and cut carbon pollution.”

“The Department of Labor will engage local and regional networks of Workforce Investment Boards and One-Stop Career centers to ensure that workers reap the maximum benefit from this initiative,” said Secretary of Labor Hilda L. Solis. “This alignment of federal agency resources will allow us to have an even greater positive impact along the full economic spectrum. It will also help reduce the energy costs of buildings while spurring the creation of new jobs in green and energy efficient industries.”

The E-RIC chosen under the funding opportunity will be based at a university, DOE national laboratory, nonprofit organization or private firm, partnering closely with local or state government officials, and leveraging existing expertise of local architects, builders and manufacturers. With this specialization, the regional economy could support other businesses that address the full production lifecycle for building technologies and thus create more jobs. Training and education can help narrow the gap between the supply and demand for workers in these specialized fields.

This effort will leverage the collective resources and expertise of seven federal agencies.

The Department of Energy is providing up to \$22 million for this project in the first year, with up to \$100 million over the next four years. To encourage regional

cooperation, the Department of Commerce’s (DOC) Economic Development Administration will make available up to \$3 million in Public Works and Economic Development funds and up to \$2 million in Economic Adjustment Assistance funds for the winning Proposal. The DOC Manufacturing Extension Partnership will make available up to \$500,000 for a one-year award, with the possibility of renewal for up to two additional years, to support the services of an existing DOC-funded MEP Center. The U.S. Small Business Administration (SBA) will make up to \$300,000 in the first year, with three one-year options for renewal grants up to \$300,000 per year, available to provide the services of an existing SBA-funded Small Business Development Center to the Regional Innovation Cluster.

Current National Science Foundation (NSF) award recipients who are also co-applicants or E-RIC partners of the winning consortium will be able to apply for supplemental funding from NSF through existing programs, particularly those designed for the training of students who will be the future leaders in sustainable energy. The Department of Labor (DOL) will support linkages between E-RIC funding and existing Workforce Investment Act (WIA) and grant-funded programs to help develop the skilled workforce needed for the cluster to grow and prosper.

ITP announces 2010 industrial utility webinar series

The U.S. Department of Energy’s Industrial Technologies Program (ITP) has partnered with Western Area Power Administration (WAPA), the American Public Power Association (APPA), and APPA’s Demonstration of Energy-Efficient Developments (DEED) to present a six-part series of industrial Webinars that will cover a variety of important sector energy topics relative to utilities and their industrial customers. The series kicked off with a general open session held in January, a second open session on public power in February and a session on March 10. Future topics include:

- Natural Gas Utility Efficiency Programs (April 14)
- Public Power Financial Incentives (May 12)
- Combined Heat and Power Case Studies (June 9)

Slides from previous Webinars will be available for download on the Utility Partnerships’ Training page of the Save Energy Now Website (<http://www1.eere.energy.gov/industry/saveenergynow>).

Register at: <http://www.acteva.com/booking.cfm?bevalD=198477&CFID=22713028&CFTOKEN=6-9615751>. \$45 per session. For more information, contact Salvatore Rinaldi, Energy Resources Center, University of Illinois at Chicago, email: samr@uic.edu, telephone: 312-996-2554.

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