

ExecutiveMemo

www.ima-net.org

A newsletter of the Illinois Manufacturers' Association



April 6, 2010

BRIEFLY

2010 Midwest Small Business Government Contracting Symposium — April 12 & 13, 2010

The 2010 Midwest Government Contracting Small Business Symposium will be held at the I Wireless Center, 1201 River Drive in Moline, Illinois, on Monday, April 12 and Tuesday, April 13, 2010. The symposium offers Small Business contractors a unique opportunity to learn about contracting opportunities with the government and what Government Prime Contractors expect from the small business contractors they hire to help them execute their contracts. A wide range of speakers including Congressional Representatives to Government Contracting Officers will provide information essential to any Small Business wanting to enter into contracts with the government. To register, go to <https://www.regonline.com/msbs>.

Profile America: U.S. Enters WWI

Tuesday, April 6th. On this date in 1917, the U.S. declared war on Germany and entered the conflict now called World War I. After staying neutral for more than two years, the American action was prompted by Germany's decision to pursue unrestricted submarine warfare in the Atlantic. The arrival of U.S. troops broke a stalemate of many months and turned the tide of the war. Germany stopped fighting on November 11, 1918. In the 20 months that U.S. forces took part in the war, 53,000 were killed in battle, 204,000 were wounded, and 63,000 died from other causes. By comparison, U.S. forces in World War II suffered 292,000 battle deaths.

Source: U.S. Census Bureau.

Executive Memo is published semi-monthly for IMA members by the Illinois Manufacturers' Association, 1211 W. 22nd St., Ste. 620, Oak Brook, IL 60523, 630-368-5300.
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Tax Freedom Day 2010 is April 9; historically massive deficits promise later tax freedom in the future

Tax Freedom Day — the day on which Americans have earned enough money to pay all federal, state, and local taxes for the year — will arrive on April 9 this year, the 99th day of 2010.

Americans will work well over three months of the year before they have earned enough money to pay the nation's tax bill for the year, and they will pay more taxes in 2010 than they will spend on food, clothing and shelter combined.

This year's Tax Freedom Day is one day later than in 2009, but more than two weeks earlier than in 2007. The shift toward a lower tax burden since 2007 has been driven by three factors:

- (1) The recession has reduced tax collections even faster than it has reduced income.
- (2) President Obama and the Congress have enacted large but temporary income tax cuts for 2009 and 2010, just as President Bush did in 2008.
- (3) Two significant taxes were repealed for 2010 as part of previous legislation, the

estate tax and the so-called PEP and Pease provisions of the income tax.

The shift toward an earlier Tax Freedom Day since 2007 is not necessarily cause for celebration. That's because Tax Freedom Day does not count the deficit even though deficits must eventually be financed. Since 1948, when Tax Freedom Day was first calculated, the difference between what governments are spending and what they're collecting has never been as great as during 2009 and 2010. If Americans were required to pay for all government spending this year, including the \$1.3 trillion federal budget deficit, they would be working until May 17 before they had earned enough to pay their taxes — an additional 38 days of work.

This May 17 date for a deficit-inclusive measure is the second latest since World War II. Only in 2009 was it later, when an unprecedented budget deficit of close to \$1.5 trillion produced a deficit-inclusive date of May 21, fully 43 days later than Tax Freedom Day.

Trends in ERP: Traditional vs. Hosted vs. SaaS

Over the past couple of years, the ERP market has seen a trend in the movement from the traditional ERP approach to a hosted or a SaaS "Software as a Service" approach. The terms "cloud computing" and "on demand" will also be used to describe the hosted and SaaS approaches. There are many variations to these approaches so an organization must take several factors into account when deciding on which ERP approach will best suit it, including functionality, pricing, data security, Internet connectivity, disaster recovery, and available IT support.

The three approaches

The traditional ERP approach requires the purchase of databases, server and peripheral hardware, as well as software. Maintenance and support costs can range between 15 to 25 percent of the software purchase price per year. The customer owns the software and is responsible for all upgrades as well as backup systems. A traditional approach requires an IT staff with a database administrator and a developer. Customizations are usually handled internally within the IT department.

See **TRENDS**, page 2

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EXPERIENCE RESPONSIVENESS.

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

Software implementations may require specialized resources and will require more effort and time to deploy. Year-one costs include server and peripheral hardware, software, support, implementation, and IT staff. Year-two and beyond costs include IT staff and ongoing maintenance and support.

The hosted approach typically requires the same purchase of server and peripheral hardware, software, maintenance, and support as the traditional approach. The customer purchases the software licenses but is not responsible for maintaining the operating system, database, or a disaster recovery plan. This approach reduces internal IT requirements and typically internal IT staff levels. Customizations may or may not be performed by the hosting provider. Implementation usually calls for less effort during deployment. Initial costs generally include hardware, software, maintenance and support, hosting, and implementation. Year-two and beyond costs include some ongoing internal IT staff cost (lower than a traditional approach), hosting, maintenance, and support.

The SaaS approach does not require the purchase of server hardware or software. The software, along with maintenance and support and disaster recovery, are provided via a subscription and delivered over the Internet. Software upgrades can be continuous so customers are not forced to plan for and embark upon significant upgrade efforts every one to two years. Customizations are performed by the provider at the customer's direction. This approach typically requires minimal IT staff. Implementations and deployment typically require less calendar time since server hardware acquisition and installation are avoided. Year-one costs are low and consist of the implementation and subscription fees. Year-two and beyond costs include some ongoing internal IT staff cost and the subscription fees. Total cost of ownership may or may not be higher than the traditional or hosted approaches over time depending on all of the factors involved.

Factors to consider

Functionality. Regardless of the deployment approach, the software's functionality must satisfy the organization's needs. Be

aware that some vendor's SaaS solutions are not as functional as their traditional or hosted solutions. Carefully review and evaluate the organization's requirements against the software capabilities.

Pricing. Traditional and hosted models typically base yearly maintenance and support costs on the number of named or concurrent users of the software. The SaaS model may also base price on user counts, but some vendors also offer unlimited users based on the organization's annual sales. This pricing structure provides predictability to a major portion of the IT budget and reduces the traditional, large year-one capital investment.

Stability. In recent years, organizations considering the SaaS approach were concerned about the security of data, Internet connectivity, data center stability/"up-time," and vendor viability. The viability of the providers offering SaaS solutions have dramatically improved and many organizations have entrusted significant portions of their application environments to such providers. If evaluating a SaaS or hosted approach, ensure that the provider's data center is compliant with the current standards by requesting and reviewing the results of its latest SAS 70 audit.

If your organization is struggling with functionality gaps, disintegrated systems, staying up to date with the latest ERP version, or is experiencing high or unpredictable IT costs, it is time to consider the various ERP solutions and approaches that are now available.

Plante and Moran's experienced professionals offer services in ERP assessments, selections, and implementations to help companies with these important business decisions.

What's missing from your Illinois Restrictive Covenant?

At the end of February 2010, the Illinois Appellate Court, in the case of *Citadel Investment Group, LLC v. Teza Technologies LLC*, held that, when a former employee breaches a restrictive covenant, the court may grant an injunction only for the original restricted time period, unless the covenant specifically provides that the period may be extended in the event of a breach.

In Citadel, two individual defendants (the "Former Employees") were subject to restrictive covenants that prohibited them from competing with their former employer, Citadel, for a nine-month period. The Former Employees resigned on February 16, 2009, and thus were prevented from competing until November 12, 2009. The Former Employees allegedly began violating their restrictive covenants almost immediately.

On July 6, 2009, Citadel learned of the alleged violations of the restrictive covenants. Three days later, Citadel filed a complaint seeking, among other things, a preliminary injunction. After an evidentiary hearing, the lower court issued an Order on October 16, 2009, granting Citadel a preliminary injunction, but limiting the injunction time period to the original nine-month period in the restrictive covenant. Thus, Citadel was awarded a 27 day preliminary injunction, from October 16, 2009 (the date of the Court's Order) through the last day of the restrictive period, November 12, 2009.

Citadel appealed claiming error for the lower court having ruled that the restrictive period commenced at the time of the Former Employees' resignation as distinguished from the time that the lower court granted the preliminary injunction.

On appeal, the Appellate Court reviewed settled law on the granting of a preliminary injunction and held that the lower court's determination would not be disturbed absent an abuse of discretion and a finding that it was contrary to the manifest weight of the evidence. Citadel, on appeal, argued that not enjoining the Former Employees for the full nine-month period commencing on the date the lower court granted the preliminary injunction was inconsistent with Illinois precedent and "equity, common sense and good public policy."

The Appellate Court declined to extend the length of the contract period and found that the lower court's decision was not contrary to Illinois precedent and that the subject factual scenario was similar to the case of *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077 (2007). There, the trial court enjoined the defendant for six months after the plaintiff left his employment pursuant to the terms of a restrictive covenant.

The plaintiff contended, similar to Citadel, that the restrictive period should have commenced as of the date of the preliminary injunction. The *Stenstrom* court relied upon the case of *Prairie Eye Center, Ltd. v. Butler*, 329 Ill. App. 3d 293 (2002), a case which held that the Court had not erred in extending the restrictive period

See **COVENANT**, page 3

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because the language of the covenant, itself, provided for an extension of the period on proof of its breach.

Thus, the Appellate Court found that Citadel had opted for a nine-month restrictive period and that the plain language of the covenant caused the restrictive period to end nine months from separation of employment. Citadel's agreements with the Former Employees contained no provision allowing for an extension of time or modification of the commencement date and gave the parties the benefit of their bargain holding that the conclusion was reinforced by the established rule that restrictive covenants are to be strictly construed. The Appellate Court affirmed, concluding that the trial court's ruling was not against the manifest weight of the evidence and no extension of the injunction period was warranted.

It would be wise for Illinois employers to review their restrictive covenants to ensure they contain a tolling agreement or similar contractual language to make certain that following a breach, the employer

receives the appropriate amount of restricted time agreed to by the parties.

If you have any non-compete questions, please contact the authors of this article, Dan Kaufman at dakaufman@michaelbest.com, Brian Paul at bppaul@michaelbest.com, or Charmaine Butler at cmbutler@michaelbest.com. They 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.

Conference Board Employment Trends Index™ (ETI) continues to rise

The Conference Board Employment Trends Index™ (ETI) rose in March for the seventh consecutive month. The index now stands at 94.4, up from February's revised figure of 93.7. The index is up 5.5
See **ETI**, page 4

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 SMC 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 13, 2010

Webinar: Navigating Health Care Reform — An Employer's Perspective

ON THE WEB — 11:30 am until 1:00 pm CDT

Vedder Price employee benefits attorneys have been closely monitoring the progress of the Health Care Reform legislation and are uniquely positioned to steer employers in the right direction amid these ensuing reforms. Please join us for a timely and engaging webinar to discuss the immediate and continuing impact of this legislation. These new developments will present both obstacles and opportunities. We will offer practical advice on ways in which employers can best position themselves for future success. To register, visit <http://www.vedderprice.com/index.cfm/fuseaction/seminars.home/seminars.cfm>.

April 14, 2010

Health Care Reform & How it Affects You 8:00–11:00 am, Mon Ami Gabi Restaurant, Oak Brook Center (east side of the mall) Oak Brook

Health care reform has arrived! President Obama signed into law The Patient Protection and Affordable Care Act on March 23, 2010 and a package of amendments to this legislation, the Health Care and Education Affordability Reconciliation Act of 2010 (the "Reconciliation Bill") was approved on March 30th. Join us for a presentation and discussion about the short and long-term impact of this legislation. Cost: \$60 IMA Members—\$85 Non members. Presented by attorneys from Michael Best & Friedrich LLP. Questions? Contact Kimberly McNamara at: kmcnamara@ima-net.org.

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.

Breakfast Briefings 2010 . . .

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>

Buying and Selling Companies

APRIL 28, 2010 • 8:00-11:00 AM

Mon Ami Gabi—Oak Brook Center
Presented by Gabrielle Buckley, Guy Snyder and James Spizzo from Vedder Price PC

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 the labor implications of such. To register visit <https://www.ima-net.org/breakfast.cfm>.

Social Networking in the Workplace: Guidelines for Employers

MAY 18, 2010 • 7:30-10:30 AM

Ditka's Restaurant, Two MidAmerica Plaza, Oak Brook
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: \$60 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. To register visit: <https://www.ima-net.org/breakfast0518.cfm>.

Cost per session: \$60 IMA member ♦ \$85 non-members
Questions? Contact Kimberly McNamara at kmcnamara@ima-net.org or 630-368-5300, Ext. 2109

percent from a year ago. Over the past three months, all of the index's eight components have been improving.

"The solid rise in the ETI and the widespread improvement across its components suggest that the March increase in employment was not a fluke and the economy is likely to continue to add jobs in the coming months," said Gad Levanon, Associate Director, Macroeconomic Research at The Conference Board. "However, we do not expect job growth to significantly accelerate in the short term, as both consumption and investment growth are likely to remain relatively weak."

This month's increase in the Employment Trends Index was driven by positive contributions from five out of the eight components. The improving indicators were: Percentage of Respondents Who Say They Find "Jobs Hard to Get," Initial Claims for Unemployment Insurance, Number of Temporary Employees, Industrial Production and Real Manufacturing and Trade Sales.

The Employment Trends Index aggregates eight labor-market indicators, each of which has proven accurate in its own area. Aggregating individual indicators into a composite index filters out so-called "noise" to show underlying trends more clearly.

The eight labor-market indicators aggregated into the Employment Trends Index include:

- Percentage of Respondents Who Say They Find "Jobs Hard to Get" (The Conference Board Consumer Confidence Survey®)
- Initial Claims for Unemployment Insurance (U.S. Department of Labor)
- Percentage of Firms With Positions Not Able to Fill Right Now (© National Federation of Independent Business Research Foundation)
- Number of Employees Hired by the Temporary-Help Industry (U.S. Bureau of Labor Statistics)
- Part-Time Workers for Economic Reasons (BLS)
- Job Openings (BLS)
- Industrial Production (Federal Reserve Board)
- Real Manufacturing and Trade Sales (U.S. Bureau of Economic Analysis)

The Conference Board publishes the Employment Trends Index monthly, at 10 a.m. ET on the Monday that follows each Friday release of the Bureau of Labor Statistics employment situation report. The technical notes to this series technical notes are included here.

The Conference Board is a global, independent business membership and research association working in the public interest.

EPA's new lead-based paint hazard regulations for businesses

The EPA's Lead-Based Paint Renovation, Repair and Painting (RPP) program has issued a regulation that affects contractors, property managers, and others who disturb painted surfaces in facilities built before 1978. The rule is aimed at protecting against the lead-based paint hazards associated with renovation, repair and painting activities for residential houses, apartments, and child-occupied facilities such as schools and daycare centers.

Who does the rule apply to?

Any paid worker who disturbs paint in housing and child-occupied facilities built before 1978, including residential property owners, general contractors, painters, plumbers, carpenters, and electricians, are subject to the new rule.

How do I comply?

Though the rule was established in 2008, some portions of it do not go into effect until this month. The EPA provides businesses with a free compliance handbook that outlines the simple steps to implement the lead program requirements:

- Effective immediately, businesses must distribute the EPA's lead pamphlet or post a sign before any renovation work begins, and retain records for three years after a renovation is complete.
- Businesses have until the end of April 2010 to provide employee training, become certified, and institute protective lead-safe work practices.
- To apply for certification, businesses must submit a signed and completed "Application for Firms," along with the associated fees, to EPA. To obtain a copy of the "Application for Firms" contact the National Lead Information Center at 800-424-LEAD (5323) or visit the EPA's Renovator and Trainer Tool Box training website.

Keep in mind that your state or local government may enact a different version of the federal requirements. For more information on the rules that apply in your state, contact the National Lead Information Center at 800-424-LEAD (5323).

Is there assistance for small businesses?

The EPA's Small Business Policy applies to businesses with 100 or fewer employees and encourages businesses to voluntarily discover, disclose, and correct violations by working with one of the agency's construction industry compliance assistance centers.

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?bevalID=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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