

ExecutiveMemo

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BRIEFLY

New mobile applications offer information and resources for business owners, entrepreneurs

As a result of SBA's "Apps for Entrepreneurs Challenge," entrepreneurs can reach for their smartphone or tablet and search federal, state and local databases for vital information by using one of seven award-winning apps.

"It was a great learning experience to participate in SBA's Apps for Entrepreneurs Challenge and to create SBA Gems," said Kumar, whose winning app can be downloaded at "SBA Gems" at entrepreneurs.challenge.gov/submissions/5458.

The SBA competition produced seven winners — one First Place winner (\$5,000), three Second Place winners (\$3,000 each), and three Third Place winners (\$2,000 each) for a total of \$20,000 in prize money. All seven apps can be downloaded from SBA's Website.

These new mobile apps complement SBA's mobile application created for iPhone in partnership with Palo Alto Software. Users can employ the SBA app to find local Small Business Administration-affiliated advisers and get free, personal, one-on-one help with starting and growing their businesses.

The SBA mobile app also features a built-in start-up cost calculator to help estimate the costs associated with getting a business off the ground, plus an SBA partner locator to help users find SBA offices, Small Business Development Centers, Women's Business Centers and SCORE.

Users will also have mobile access to SBA video content and social media alerts to provide them with tips on the go. This will include live updates from the SBA's YouTube channel and from SBA's Twitter feeds. The free mobile app can be downloaded from the SBA's website at sba.gov/content/sba-mobile-app.

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Ground broken for new job-creating accelerator research facility at DOE's Fermi National Accelerator Laboratory in Illinois

On December 16, 2011, ground was broken for a new accelerator research facility being built at the Department of Energy's (DOE's) Fermi National Accelerator Laboratory (Fermilab) in Batavia, Illinois.

Supported jointly by the state of Illinois and DOE, the construction of the Illinois Accelerator Research Center (IARC) will provide a state-of-the-art facility for research, development and industrialization of particle accelerator technology, and create about 200 high-tech jobs. DOE's Office of Science Director William Brinkman participated in the groundbreaking ceremony.

"The Illinois Accelerator Research Center will help fuel innovation by developing advanced technologies, strengthening ties with industry and training the scientists of tomorrow," said Dr. Brinkman. "The Department of Energy welcomes the opportunity to partner with the State of Illinois and looks forward to seeing IARC come to fruition."

IARC will house 42,000 square feet of technical, office and educational space for scientists and engineers from Fermilab, DOE's Argonne National Laboratory, local universities and industrial partners. A major focus of the facility is to develop partnerships with private industry for the commercial and industrial application of accelerator technology for energy and the environment, medicine, industry, national security and discovery science. IARC will also offer unique, advanced educational opportunities to a new generation of engi-

neers and scientists.

More than 30,000 accelerators are at work around the world in industry, medicine, security, defense and science. Products that are processed, treated or inspected by particle beams have an annual value of more than \$500 billion. Today's particle accelerators address many of the challenges confronting our nation in the areas of sustainable energy, a cleaner environment, economic security, health care and national defense. The accelerators of tomorrow have the potential to make still greater contributions.

The Illinois Jobs Now! capital bill provided \$20 million to the Illinois Department of Commerce and Economic Opportunity to fund a grant for the design and construction of a new building that will form part of the IARC complex.

DOE is providing \$13 million to Fermilab to refurbish an existing heavy industrial building that will be incorporated into the complex, adding 36,000 square feet of specialized work space.

More information about the Illinois Accelerator Research Center is available at: <http://www.fnal.gov/pub/IARC>.

More information about the use of accelerators is available at: <http://www.acceleratorsamerica.org/>.

DOE's Office of Science is the single largest supporter of basic research in the physical sciences in the United States, and is working to address some of the most pressing challenges of our time. For more information, please visit the Office of Science website at science.energy.gov.

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New test to determine whether non-compete agreements are enforceable

In a case with favorable implications for manufacturer-employers, in *Reliable Fire Equip. Co. v. Arredondo*, 2011 IL 111871 (Ill. Dec. 1, 2011), the Illinois Supreme Court clarified the “legitimate business interest test” that Illinois courts must use to determine whether a non-compete agreement or other restrictive covenant is enforceable. Before *Arredondo*, appellate courts in Illinois were divided on how to apply this test, which resulted in uncertainty and legal expense for businesses and employees. The *Arredondo* decision provides clarity and a reasonable rule, both of which should help employers reduce risk and uncertainty.

This dispute began in late 2009, when the Fourth District of the Illinois Appellate Court took the position that an enforceable non-compete agreement only had to be reasonable as to time and geography. In doing so, the Fourth District rejected the legitimate business interest test that required that a former employer establish either that confidential information or near-permanent customer relationships were at risk if the non-compete agreement was not enforced. The legitimate business interest test had been used consistently by Illinois Appellate courts since 1975. However, after the Fourth District’s decision, almost every Illinois appellate court district struggled with the Fourth District’s opinion and, as a result, each district developed its own standards. Thus, employers and employees had to evaluate which district their lawsuit would proceed in before either could assess whether the non-compete agreement was enforceable.

Thus, the Illinois Supreme Court agreed to hear *Reliable Fire Equip.*, a very typical non-compete case where Arnold Arredondo (“Arredondo”) and Rene Garcia (“Garcia”) were employed as salespersons for Reliable Fire Equipment Company (“Reliable”). Reliable sells, installs and services portable fire extinguishers and related equipment. Both Arredondo and Garcia signed a non-compete agreement prohibiting them from competing with Reliable in Illinois, Indiana and Wisconsin for one year after their termination. When Arredondo and Garcia went to work for a newly formed competitor, Reliable sued to enforce the non-compete agreements.

The Trial Court ruled that the covenant was unenforceable, finding that Reliable had failed to identify a legitimate business

interest that needed to be protected by the non-compete agreements. A divided panel of the Appellate Court upheld the Circuit Court’s order, but questioned whether it was applying the appropriate test for non-compete agreements.

The Illinois Supreme Court reversed and remanded the case for further proceedings. In doing so, the Court held that a valid and enforceable non-compete agreement must meet three basic components of reasonableness.

A restrictive covenant, assuming it is ancillary to a valid employment relationship, is reasonable only if the covenant: (1) is no greater than is required for the protection of a legitimate business interest of the employer-promissee; (2) does not impose undue hardship on the employee-promisor, and (3) is not injurious to the public.

However, the Illinois Supreme Court then went one step further. Over the last 36 years, the Appellate Court decisions that applied the legitimate business interest test had held that there were only two legitimate business interests that would justify enforcing a non-compete agreement: (1) protecting confidential information; and (2) protecting near-permanent customer relationships. The Illinois Supreme Court rejected this rigid standard, holding that the Illinois Appellate Court decisions of the last 36 years are “only nonconclusive aids in determining the promisee’s legitimate business interest.”

Under *Reliable*, the new standard for determining whether a legitimate business interest exists is:

[B]ased on the totality of the facts and circumstances of the individual case. Factors to be considered in this analysis include, but are not limited to, the near-permanence of customer relationships, the employee’s acquisition of confidential information through his employment, and time and place restrictions. No factor carries any more weight than any other, but rather its importance will depend on the specific facts and circumstances of the individual case.

Most carefully drafted non-compete agreements for use in Illinois proactively identify confidential information and near-permanent customer relationships as the business interests the employer is trying to protect. Given this ruling, the door is open for employers to enforce restrictive covenants in a broader range of circumstances and even perhaps for the purpose of protecting customer goodwill.

Manufacturers should reevaluate their non-compete agreements in light of the decision in *Reliable Fire Equip. Co. v. Arredondo* to determine whether additional business

interests should be identified as protectable business interests and whether additional job positions now warrant non-compete agreements. At the same time, manufacturers should determine whether the other provisions in their non-compete agreements are well drafted and give them the best chance of deterring unfair competition and enforcing the agreements if the need arises.

If you have any questions, please contact the authors of this article, Daniel A. Kaufman (dakaufman@michaelbest.com) or Sarah E. Flotte (seflotte@michaelbest.com), who are attorneys at the IMA member law firm of Michael Best & Friedrich LLP in Chicago, Illinois. They also can be reached at 312-222-0800.

Website and Internet marketing tips from IMA member Weblinx, Inc. . . .

Planning a new Website in 2012? Here are four things to keep in mind . . .

As the calendar rushes towards a new January 1, many of our clients and colleagues are thinking not only about their personal goals for the coming year, but what might change in their businesses, too. And for many of us, a new Website — or some substantial upgrades — is a great way to kick off a brand-new business year.

But you don’t just want any Website: you want to keep up with the latest trends and best practices. With that in mind, here are four things to keep in mind for your next business Web project:

It’s all about simplicity. The sheer number of websites out there these days, in your industry or any other, means it’s getting harder for people to find what they’re looking for. Make sure your site clearly explains what you do, and that it’s easy for a viewer to make their way quickly towards the information they need.

Your customers are going mobile. The growth of next-generation mobile devices in North America isn’t big . . . it’s huge. More clients than ever are coming to you from outside their homes and offices, so make sure your website is mobile-ready.

Video is where it’s at. For marketing messages to customer service and frequently asked questions, lots of business issues can be cleared up more quickly with video, so make it a centerpiece of your new design.

Don’t ignore the business on your doorstep. The *Yellow Pages* haven’t disappeared yet, but they seem to be on their

See **NEW WEBSITE**, page 3

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way out the door. More and more, customers are turning to the Web even for local purchases. Make sure your site is local search optimized.

Giving your company's Website a fresh look, and some new functionalities, is a great way to start the new year. Remember these tips, incorporate the key features, and you'll be ready to tackle more business than ever in 2012.

If you have questions about your Website or would like to receive a free site analysis, contact IMA member company Weblinx, Inc. at 630-551-0334 or email sales@weblinxinc.com (<http://www.weblinxinc.com>).

Five ways to get that federal contract

By Marie Johns, SBA official

The federal government spends more than \$500 billion a year in contracts, making it the largest purchaser of goods and services in the world. Contracting opportunities can be a crucial source of revenue to help businesses grow, innovate and create jobs.

President Obama has made small business contracting a top priority. He created an inter-agency task force which developed recommendations to increase small business contracting. The president also signed the Small Business Jobs Act, which levels the playing field and increases small businesses' access to contracting opportunities. The number of contracts going to small businesses has steadily risen in the last two years. Last year, almost 23 percent of federal contracting dollars went to small businesses.

The world of government contracting can be difficult to navigate. If you're a small business owner or thinking of becoming one, here are five ways to increase your chances of winning that contract:

- **Get a counselor.** You can find counselors in 68 SBA district offices, 885 Small Business Development Centers, 110

Women's Business Centers, 350 SCORE chapters, and 300 Procurement Technical Assistance Centers (PTACs) across the country. Go to www.SBA.gov/direct, enter some basic information about your business, and you'll be presented with a list of nearby resources.

- **Get certified.** A number of certification programs can increase your chances of winning a contract. SBA's 8(a) program provides counseling, mentoring and access to set-aside and sole-source contracts. Service-disabled veteran-owned businesses and small companies in Historically Underutilized Businesses Zones (HUBZones) are also eligible for set-asides. SBA recently launched the Women's Federal Contract Program which opens up contracting opportunities for women-owned small businesses in more than 300 industries. Find out more at www.SBA.gov.
- **Be targeted.** The most successful contractors have a specific product or service that federal agencies need. Decide what you have to offer and target your efforts at the federal agencies that need it most.
- **Market your business.** Get your foot in the door by attending matchmaking events with agency contracting officers, or by reaching out to agencies' Offices of Small and Disadvantage Business Utilization (OSDBUs). Visit <http://www.osdbu.gov/> to find out more.
- **Identify contracting opportunities.** Once you've determined the agencies most likely to buy from you, you need to find contracts to bid on. Stay in close contact with the agency's OSDBU and contracting officers you have met, and visit the Federal Business Opportunities Website (<http://www.fbo.gov/>), which has a list of all contracts available for bid.

Small businesses are the engine of job creation and economic growth in this country. The SBA is committed to helping small businesses grow through contracting. Winning a contract is hard work, but small business owners are not in it alone.

DATES OF NOTE

For information on IMA special events, visit <http://www.ima-net.org/special-events>.

For information on IMA-MIT training events, visit <http://www.ima-net.org/training-events>.

January 18, 2012

IMA Breakfast Briefing: The Obama Labor Board and It's Impact on Manufacturers
Mon Ami Gabi, Oak Brook Center Mall, Oak Brook, 8:00-11:00 am

The Obama Labor Board is attempting a fundamental re-examination of the legal framework for labor-management relations in the United States. Manufacturers are being impacted, union and non-union workplaces alike. Learn about the evolving new direction of the NLRB and its Obama majority. Presenters from Chicago-based law firm Vedder Price PC will discuss and answer questions. For more information or to register, visit <http://www.ima-net.org/ima-breakfast-briefing-011812/>.

January 25, 2012

Essential Leadership Skills for Front Line Managers & Supervisors, DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago, 9:00 am-5:00 pm

Today's business environment requires strong leadership; leaders who can do more with less, meet the ever increasing demands of the customer as well as inspire their followers to give "110 percent" during this period of uncertainty and economic challenges. The reality is most front line managers and supervisors are individuals who have been promoted from within their organizations based on strong performance and/or technical expertise. For more information, or to register, visit <http://www.ima-net.org/jan25-mit-event-essential/>.

January 31, 2011

Essential Internal Training Skills and Techniques, DePaul University O'Hare Campus, 8770 W. Bryn Mawr Ave., Chicago, 9:00 am-5:00 pm

Learn key internal trainer skills and techniques. Don't miss this opportunity to experience a dynamic and interactive workshop designed to help all participants learn and practice the key skills of assertive communication. Cost: The fee per person is \$345.00. For three or more participants, the fee per person is \$295.00. For more information or to register, visit <http://www.ima-net.org/jan31-mit-essential-internal-t>.

February 23, 2012

IMA Breakfast Briefing: Gaining Supply Chain Advantages through Superior Payment Practices, Mon Ami Gabi, Oak Brook Center Mall, Oak Brook, 8:00-11:00 am

Roberta Tamburrino, VP, Transportation Solutions Sales for U.S. Bank, will discuss topics such as: Supply chain challenges for 2012 and beyond – focus on payment challenges; New payment models that drive cost savings and process efficiencies; and How best practices in payment can result in improved carrier relationships, lower overall costs (including rates) and better business intelligence. For more information or to register, visit <http://www.ima-net.org/feb23-2012-breakfastbriefing-s/>.

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