

Ohio Matters

An Official Publication of *The Ohio Chamber of Commerce*

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WRAPPING UP THE FIRST PART OF THE LEGISLATIVE SESSION

Most of your local news coverage of what's been happening at the Ohio Statehouse has probably concerned the state budget, Medicaid expansion, or overrides of gubernatorial vetoes. These issues have gotten the most attention because they're the most controversial or exciting — but they're far from the only ones that policymakers have been working on.

If you've been reading your weekly Ohio Chamber Legislative Update emails, you already know the Ohio Legislature has also been working on a variety of issues that impact your business and Ohio's business climate, both within and outside of the state budget.

The signing into law by the governor on June 30 of House Bill 49, the state budget, signaled the end to the General Assembly's work for the first half of 2017. With lawmakers not expected to return to Columbus until after Labor Day, this is a good time for a summary of key business issues that saw action so far this year.

ENERGY AND ENVIRONMENT

For nearly five years, the legislature has been discussing how to address Ohio's existing energy efficiency and renewable energy mandates. Because Gov. John Kasich vetoed a bill in late 2016 that would have reformed the expensive and heavy-handed energy efficiency mandate, a two-year freeze on the requirements expired without a long-term fix.

The Ohio House set out to tackle this issue by quickly passing HB 114. Among other things, this bill would

convert Ohio's renewable energy requirements into goals, expand what counts for purposes of energy efficiency savings and decrease the total reduction in sales required. These provisions are supported by the Ohio Chamber, and HB 114 is pending in the Senate.

Employers achieved a big win when language suggested by the Ohio Chamber, overhauling how the Ohio Environmental Protection Agency develops pollution studies of Ohio's waterways — known as total maximum daily loads (TMDLs) — was incorporated into the budget. TMDLs can significantly impact business operations as they are used when issuing discharge permits, which made it vital to ensure the process for setting TMDLs is fair, transparent and based on respect for due process.

HEALTH CARE

Most of the discussion surrounding health care is in the context of Medicaid. One of the biggest areas of disagreement between Kasich and the GOP-controlled General Assembly is about the expansion of coverage to Ohioans ages 19 to 64 with incomes at or below 138 percent of the poverty level. The Ohio Chamber supports Medicaid expansion, conditioned on the federal government continuing to provide the levels of funding promised in the Affordable Care Act.

HB 49 includes a requirement that the Ohio Department of Medicaid ask the federal government if Ohio's

health insuring corporation franchise fee — essentially a tax — can be increased. If the additional tax is approved and implemented, the Ohio Chamber is concerned it will lead to higher premiums for health care plans subject to this new tax, typically health maintenance organization plans. Although Kasich vetoed this provision, the House has already voted to override — despite the Ohio Chamber's objections. Should the Senate also vote to override, the provision will remain in effect.

LABOR AND EMPLOYMENT

At the top of the Ohio Chamber's 2017-18 agenda is enactment of necessary and overdue reforms to Ohio's employment discrimination statutes. HB 2 would bring balance and predictability to these laws, which are woefully out of line with both their federal counterparts and those of other states. After numerous revisions addressing all major concerns raised about HB 2, the legislation is ready for a full House vote.

Alarming, lawmakers have made two changes recently — with a third currently making its way through the legislature — that interfere with an employer's right to decide whether to allow weapons on its private property.

Last December, the legislature passed a bill banning employers from prohibiting firearms in private vehicles parked on their property. Then in June, as part of the state budget, lawmakers added a penalty provision for employer violations of the statute. As originally proposed, it would have created civil liability for businesses and property owners — to include damages, attorneys' fees and court costs — for violations. The Ohio Chamber convinced the legislature to alter it to only allow an individual to seek injunctive relief for an alleged violation of the law. While an improvement over the original proposal, this is still problematic.

Less than a week later, HB 233, which would allow a concealed handgun license holder to carry any "deadly weapon" onto or into a private business and face no criminal repercussions, so long as the individual leaves upon request, passed the House. In addition to the removal of existing criminal penalties, HB 233 also takes away the ability for a business or property owner to pursue civil action for trespass against the person.



QUICK GLANCE

Our suggested language for TMDLs was included in the new state budget.

Reforms to state's employment discrimination statutes ready for a full House vote

Municipal income tax changes approved

TAXES

Tax policy changes typically are a key component of any state budget. This year, however, was a bit of an exception. Over Kasich's first six years, lowering personal income tax rates was a top priority, and his original budget proposal included another across-the-board rate cut. To offset the financial impact of the tax cuts, the governor proposed both raising taxes in several areas and subjecting a number of services to the sales tax. Although this tax reform package would have delivered a net tax cut of \$39 million, it would also have resulted in an estimated \$1.2 billion in new taxes on Ohio employers.

Following intense lobbying by the Ohio Chamber, the House removed all of these provisions. Additionally, although there was much discussion about potential changes to Ohio's small business investor income deduction, it was ultimately left untouched.

Although changes to state tax policy were minimal, the same cannot be said about municipal income tax changes. The Ohio Chamber led the fight to ensure HB 49 retained two

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*You work to develop
committed employees.*

*We all work to see
better outcomes.*

*We'll provide the resources
to get you there.*

We're All for Ohio.

Working with some of Ohio's best human resources attorneys, the Ohio Chamber built the HR Academy to help our members and the larger business community stay updated on important local and national HR issues.

We continue to see strong participation in the program, garnering up to 200 participants per webinar, selling hundreds of HR Manuals and enjoying active engagement in our HR Symposium series. We are proud to offer this homegrown effort that brings together Ohio expertise and leadership.

We have many more webinars and symposiums scheduled for this year.

For more information, contact Michelle Donovan at mdonovan@ohiochamber.com or (614) 228-4201.

Visit our website at www.hracademyohio.com.



OHIO'S MISLEADING RX BALLOT ISSUE

Bad for Ohioans, bad for business



There's an old adage that says if something sounds too good to be true, it usually is — and that is a good way to quickly describe a ballot issue Ohio voters will face in November.

In an election year that is focused on local races and issues, Ohioans will be faced with the so-called "Ohio Drug Price Relief Act," a statewide ballot issue that, if passed, could be damaging. The issue is of serious concern to employers and business advocates.

In May, the board of directors of the Ohio Chamber of Commerce voted to oppose the ill-conceived and poorly written act.

The proposed law would impose unworkable contracting requirements on the state of Ohio whenever it purchases prescription drugs. It calls for state entities to pay no more than the lowest price paid by the federal Department of Veterans Affairs for prescription medications for state-run programs. These include programs that serve people who depend on Medicaid, as well as injured workers through the Bureau of Workers' Compensation, retirees, prisoners, state workers and people in other state-connected health care programs. The language of the ballot issue is vague, with no detail on how it could be implemented across state agencies and entities, and without definitions critical to its application.

"The Rx ballot issue is yet another example of an out-of-state special interest misusing Ohio's ballot

access process in an effort to advance its own interests — at the expense of Ohio citizens and taxpayers," says Andrew E. Doehrel, president and CEO of the Ohio Chamber of Commerce. "This proposal would almost certainly lead to cost shifting to private payers, including employers, perversely resulting in a majority of Ohioans paying more, not less, for their prescription drugs.

"While it is so convoluted that it likely couldn't work as intended, we're concerned that a similar approach could be expanded to any other industry or product the state purchases if it were successful. Further, the proposal runs counter to the free market values that the Ohio Chamber stands for and is nothing more than an attempt to artificially fix drug prices."

In expressing its opposition, the Ohio Chamber joins with other business groups, organized labor, doctors, nurses, pharmacists, veterans, hospitals and others who have come to the same conclusion: The ballot issue won't do what it promises and could even make things worse.

Three former state Medicaid directors, John McCarthy, Barb Edwards and Maureen Corcoran, as well as a former Ohio Budget and Management Director, Greg Browning, have closely examined the issue. They agree it is unworkable and, should it pass and Ohio officials be forced to implement it, it would create bureaucratic red tape and a quagmire of litigation.

The Ohio Chamber and other business advocates are concerned that the issue runs counter to free market values and would establish artificial price fixing that could expand to other industries or

products in the future. In addition, the majority of Ohioans who use employer-based or private insurance could see higher out-of-pocket costs and premiums.

Finally, many business leaders are concerned about lawsuit abuse. The promoters of this ballot issue wrote into it an unprecedented provision to give themselves the right to intervene at taxpayer expense in any legal challenges that may be filed against it if it becomes law. This provision would give the sponsors a blank check to sue the state if they don't like the way the law is being implemented, and require that their legal fees be reimbursed by taxpayers whether they win or lose.¹

Veterans' organizations are particularly concerned about the issue and the potential disruption to the VA system. Should the issue pass, the first problem centers on VA purchasing arrangements. The VA is not required to disclose its purchasing contracts. That means state entities would not know what pricing benchmarks to meet. But if Ohio voters approve the ballot issue, state officials would be legally required to implement the new law, forcing them to challenge the VA for information and taking up resources both the state and the VA could put to better use. A number of Ohio veterans' groups, including the American Legion, the VFW, the Iraq Afghanistan Veterans of America, Korean War Veterans and Military Officers Association of America, oppose the ballot issue.

An almost identical version of the proposal, Proposition 61 (Prop 61), was defeated on the November 2016 California ballot. Opposing Prop 61 were more than 200 organizations, including the California Chamber of Commerce. Opponents helped to educate voters on Prop 61's many flaws and potential harm to patients. Every major California newspaper opposed Prop 61, recognizing it as poorly constructed public policy.

1 Text of the proposed initiated statute, provision (G) (<https://www.sos.state.oh.us/sos/upload/ballotboard/2015/2015-07-21-petition.pdf> accessed 4/18/2017); Bricker & Eckler memo re: "ODPRA Legal Fees Provision," February 23, 2017 pp. 1-2



QUICK GLANCE

Act would limit amount state can pay for drugs

Chamber opposes the ill-conceived, poorly written act

Passage of issue could result in higher drug prices for most Ohioans

Three former Medicaid directors agree act is unworkable

The ballot issue is being promoted by a billion-dollar California-based nonprofit, the AIDS Healthcare Foundation (AHF), that gets 80 percent of its revenue from pharmacies it owns² and has been found in three separate government audits to have overcharged taxpayers for the drugs it sells.³ AHF's controversial leader Michael Weinstein has been accused of using millions of tax-exempt dollars generated by his organization for political purposes wholly unrelated to the mission of his foundation.⁴

The Ohio Chamber urges our members and supporters to oppose the deceptive Rx ballot issue. Educate your employees, colleagues and families that what the proponents claim as savings on prescription drugs and savings to taxpayers is deceptive and misleading. Visit www.deceptiverxissue.org for more information. If it sounds too good to be true, it is. 🗳️

2 AHF Audited Consolidated Financial Statement and Supplementary Information, Years Ended Dec. 31, 2015 and 2014, with Report of Independent Auditors, http://www.aidshealth.org/wp-content/uploads/2016/05/AIDS-Healthcare-FS-2015_FINAL-3.pdf, p. 4

3 <http://portal.lacounty.gov/wps/portal/bc?querytext=%22aids+healthcare+foundation%22&department=Auditor&date-from=04%2F14%2F2005&date-to=5%2F14%2F2017&Go=Board+Correspondence>

4 The Advocate, "World's Largest AIDS Organization Just Flushed Millions Down the Toilet," Neal Broverman, (March 8, 2017) <http://www.advocate.com/hiv-aids/2017/3/08/worlds-largest-aids-organization-just-flushed-millions-down-toilet> (accessed 4/21/17)

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WRAPPING UP THE FIRST PART OF THE LEGISLATIVE SESSION

provisions that will improve Ohio's costly and convoluted municipal income tax system. One is the elimination of the "throwback" rule, wherein cities unfairly tax businesses on sales made to customers not located in that or any other Ohio city. The other is the establishment of an option to have municipal business net profit taxes administered by the Ohio Department of Taxation. This allows businesses to file a single form and make a single payment, rather than file separately with each municipality in which the taxpayer does business.

While the inclusion of these two provisions in HB 49 is perhaps the biggest victory for employers in the 3,384 page bill, there was one tax-related change that will be problematic: the elimination of the right to directly appeal a decision of the Board of Tax Appeals to the

Ohio Supreme Court. By eliminating the direct appeal, the costs of tax appeals will increase, and it is likely tax law will be applied differently across Ohio.

WORKERS' COMPENSATION

Included in HB 27, the Bureau of Workers' Compensation (BWC) budget, were policy changes that positively impact both businesses and the system as a whole. Most significantly, the timeframe to file a workers' compensation claim was reduced from two years to one year, a reform long sought by the Ohio Chamber. Early reporting of injuries leads to faster treatment and better outcomes for all parties involved.

WORKFORCE DEVELOPMENT

HB 49 contains several provisions that have the potential to greatly benefit employers for whom finding skilled talent, training employees and

retaining staff is a challenge.

The Ohio Incumbent Workforce Training Voucher Program provides employers partial reimbursement for the training and professional development of existing workers. The executive budget proposal effectively terminated this program by not funding it. The General Assembly, however, continued the program by allocating \$2.5 million to it.

To help with the concern over the lack of soft skills among job applicants, the bill creates an OhioMeansJobs-Ready seal. This seal would be affixed to the diplomas of high school graduates to demonstrate to potential employers that they have the soft skills and job-ready competencies for which businesses are clamoring.

In addition, career-technical students will now have the option to enter into approved pre-apprenticeship

programs. This will provide them with hands-on training and practical real-world experience. Lastly, students who are pursuing a short-term certificate or industry-recognized credentials in an in-demand job are now eligible for financial aid under the Ohio College Opportunity Grant Program.

Other workforce-related bills supported by the Ohio Chamber are still working their way through the legislative process. SB 3 and HB 166 would utilize a regionally coordinated workforce counseling model to connect high school students with job shadowing, co-op and internship opportunities. The bills also create an "In-Demand Jobs Week" during which businesses would have the opportunity to showcase the types of opportunities they offer. All are currently pending in the Ohio House. 🗳️

Ohio Chamber of Commerce Research Foundation Inc.

OUR FIRST 100 DAYS



Unlike the president, our 100th day doesn't draw national, state or even local attention. However, it is important to let our stakeholders know our activities of the first 100 days in service to you.

Our top concern is the prosperity of Ohio and the ability for companies of every size to succeed in business. Ohio needs to be a state with safe and strong communities, thriving businesses that allow for generational prosperity, and governmental rules and regulations that don't impede the ability to start, grow or transition business ventures.

On Jan. 1, 2017, we officially opened our doors for business. Within the first few weeks, we held our inaugural board meeting with founding board members Brian Hicks, Tom Zaino, Tim Snyder, Frank Carrino and Walt Davis. More important, we also held a dynamic brainstorming session to come up with a list of potential projects or programs to tackle in the next few years.

In an effort to hear directly from business leaders, we launched our first project, *Prosperity Pulse*, a quarterly survey questioning the economic health of companies across the state. The feedback we received, and will receive in the future, is imperative to the success of the Ohio Chamber Research Foundation. Making decisions about the type of research needed to help the economic well-being of Ohio flourish is almost a fool's errand without the input and data that we receive from you — our business leaders. Your voice is what we need to properly provide relevant, useful and trusted information to you, policymakers and future investors in the state of Ohio.

The first quarter results of *Prosperity Pulse* revealed a few eye-opening facts.

1. Less than half of Ohio business leaders are concerned with data security.

This is an interesting finding. If your business were to be broken into and your inventory stolen, you would immediately call the police. Most companies in Ohio have preventive measures to stop a robbery, for example an alarm system, deadbolts and even security guards. Your customer, client or

employee data is just as, if not more, valuable than your inventory. There are preventive measures that you can take to avoid a data breach. Resources and information are available everywhere — including within the membership of the Ohio Chamber of Commerce. Also, the Ohio Attorney General's office created the OhioCyber Initiative to assist businesses in Ohio with identity theft, cyber security and data privacy.

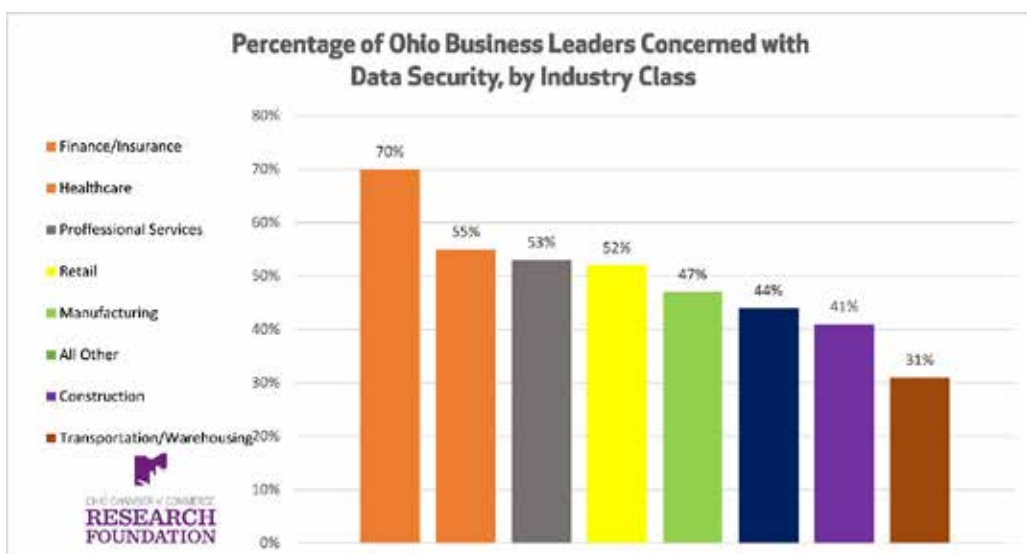
2. The majority of Ohio business leaders are satisfied with their current employees' productivity but worried about their future workforce.

Without further probing, we are not able to explain why you are worried about your future workforce. Therefore, in quarters 2 and 3 surveys, we will be asking you to tell us specifically what worries you about attracting/hiring qualified employees. We want to be able to help find a solution and relieve your concerns about the future workforce.

How can you help the Ohio Chamber Research Foundation help you?

- **Complete the survey.** No doubt you are bombarded with surveys. However, this survey is not a customer satisfaction survey and won't determine the future of any employee. Our survey is not self-serving but stakeholder serving. We want to help your business thrive.
- **Consider a charitable contribution.** We are a 501(c)(3) organization, and your gifts are tax-deductible as a charitable contribution.
- **Correspond with us** by submitting project and topic ideas to research@ohiochamber.com.

With the first 100 days under our belt, we look forward to the next 265 days of serving you in 2017. To learn more about us, visit www.ohiochamberfoundation.com. If you would like to participate in the survey, or have any questions or comments, please connect with us via email at research@ohiochamber.com, phone (614) 629-0921, Twitter @OCCResearch, Facebook OCCResearch or mail 230 East Town St., Columbus, OH 43215.



OHIO'S IN-DEMAND JOBS LIST

As an employer, you are acutely aware of the so-called "skills gap" Ohio is facing. The Governor's Office of Workforce Transformation is consistently told by employers across the state that: 1) employers are unable to find the skilled workers they need, and 2) candidates lack the soft skills necessary to succeed in the workplace. From these statewide discussions, a number of initiatives have arisen to address these challenges, including Ohio's In-Demand Jobs List.

The In-Demand Jobs List represents the needs of Ohio's primary driving industries and guides workforce and education efforts across the state to ensure that employer needs are being met with a skilled and productive workforce.

The Governor's Office of Workforce Transformation first partnered with the Ohio Department of Job and Family Services in 2014 to develop a list of the state's most in-demand occupations. The In-Demand Jobs List combines data from many sources — including responses from a survey sent to over 2,000 employers in Ohio, Ohio Labor Market Information, jobs posted on OhioMeansJobs.com and regional forecasts from JobsOhio's targeted industries — to capture statewide hiring needs.

Using a combination of this data, we compiled a list of Ohio's most in-demand occupations. Recently, the Governor's Office of Workforce Transformation sent out a second round of employer surveys. On July 1, 2017, the list was updated to reflect the newly forecasted occupations, and the survey portal will remain open indefinitely to continue to capture employer needs.

To ensure that the state is adequately meeting the needs of business, we encourage you to review the new version of the list and respond to the survey if you have not yet done so. To gain access to the survey, please email forecasting@governor.ohio.gov with your name and contact information.

To qualify as in-demand, an occupation will typically meet the following criteria.

- **Pay greater than or equal to \$13.47 per hour and**
- **Have greater than or equal to 230 projected annual openings or**
- **Have projected annual growth of 50 or more openings**

Takeaways from the In-Demand Jobs List include:

- **37% of In-Demand Occupations require a high school diploma or equivalent.**
- **63% require a post-secondary degree or certificate.**
- **90% of the occupations from the prior (2014) list are on the new 2017 list.**
- **23% of all projected annual openings fall within "Medical and Health Care."**
- **58% of all projected annual openings fall within Office & Administrative, Management, Health Care Practitioners, Support, Technical and Production.**

The full list of In-Demand Occupations can be found at <http://omj.ohio.gov/OMJResources/In-DemandOccupations.stm>.

The Governor's Office of Workforce Transformation is committed to identifying the needs of business, connecting businesses with educators and individuals and aligning training to meet the needs of businesses.

By Tyler Tarney and Pat Kasson,
with Reminger Co. LPA

BASIC FEDERAL LABOR LAW FOR NONUNION EMPLOYERS

The federal labor law landscape is rapidly changing. Contrary to popular belief, the Labor Management Relations Act (LMRA) applies to almost all private employers, regardless of whether a union is in place. The cornerstone of the act is the right to bargain collectively. It protects “concerted activities,” when employees are united in pursuit of a common goal for their mutual benefit, but not grievances of a purely personal nature. Any act by an employer that interferes with the right to engage in protected concerted activity violates the LMRA. Employers with nonunion workforces cannot ignore federal labor law because they have become a recent target on issues such as the “joint employer” standard, class action waivers in arbitration agreements, no-recording policies, at-will handbook disclaimers and social media policies.

Congress enacted this law to protect employees and employers, to encourage collective bargaining and to curtail harmful private-sector labor practices. The National Labor Relations Board (NLRB) is the tremendously powerful administrative agency charged with enforcing federal labor laws through complaints, unfair labor practice investigations, petitions and hearings. Employers, however, may challenge NLRB decisions in the federal appellate courts. But the NLRB is not the only remedy for employees; they may file suit to enforce NLRB decisions in the federal district courts. Courts are supposed to give deference to NLRB interpretations of the act, but don’t always do so. Nevertheless, employers must be mindful of the parallel means of enforcing the act.

RECENT DEVELOPMENTS

Although the recent change in presidential administrations will likely slow down the tide of aggressive pro-employee NLRB developments, and eventually should lead to a more employer-friendly panel, nonunion employers must be prepared for the recent issues making their way through the NLRB and the courts.

- **“Joint employer” standard.** In its 2015 *Browning-Ferris* decision, the NLRB upended decades-old precedent by redefining and drastically expanding the meaning of “joint employer.” According to the NLRB, indirect control — including potential contractual authority — can result in joint employment. Given the heightened liability and obligations of a joint employer, if this new standard survives judicial review, it could potentially have a tremendous impact on virtually every employer making use of subcontractor, franchise, staffing, service, or other similar relationships. This decision is currently on appeal before the United States Court of Appeals for the D.C. Circuit, and the court’s scathing comments at oral argument suggest it could be overturned. Because the fate of this new standard remains unclear for now, employers must be especially mindful of their direct, indirect, actual, or potential control

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By William J. Wahoff, Esq., and Nelva J. Smith, Esq., Steptoe & Johnson PLLC

OSHA RECORDKEEPING REGULATION

It’s not just about recording workplace injuries

Enforcement of the new Occupational Safety and Health Administration (OSHA) recordkeeping regulation interpretations began Dec. 1, 2016. Without mentioning them in the rule itself, the comments accompanying the rule criticize, and attempt to outlaw: (1) mandatory post-accident drug testing; (2) employer incentive programs that provide significant financial incentives to individual employees or groups of employees who work safely and do not sustain injuries; and (3) employer policies requiring the immediate reporting of injuries.

While there are several pending legal challenges to the new recordkeeping regulation, this does not change the fact that the regulation is currently in effect. Employers can and will be cited by OSHA under this regulation. However, it is noted that, according to OSHA’s website, it is not at this time accepting electronic submissions of injury and illness logs that were required to be filed by July 1, 2017.

The regulation used by OSHA is entitled “Employee Involvement,” 29 CFR Section 1904.35. The regulation itself does not mention employee safety incentive programs, mandatory post-accident drug and alcohol testing programs, or rules regarding the immediate reporting of injuries, period. It simply states that:

- (a)(1) You must inform each employee of how he or she is to report a work-related injury or illness to you.
- (b)...(1)(i) You must establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage a *reasonable employee* from accurately reporting a workplace injury or illness... [Emphasis added].

This section of the rule concludes by requiring employers to inform employees that they have the right to report injuries, and that they cannot be discharged or discriminated against for reporting injuries. For the first time, then, an OSHA compliance officer can cite an employer for allegedly deterring reporting of work-related injuries and illnesses, and the employee does not have to file a complaint under 11(c) of the OSH Act for discrimination or retaliation.

Because the interpretations regarding the safety incentive programs, post-injury mandatory drug and alcohol testing and policies regarding the immediate reporting of injuries are not explicitly mentioned in the rule itself, it would seem that OSHA could change those interpretations without notice and comment rulemaking. In short, the new administration would be able to eliminate those interpretations with the stroke of a pen. However,



Plant managers and construction superintendents, who must run plants and build projects, now must guess what a “reasonable employee” would do.

based upon the current activity in this administration, it does not appear that there will be any changes to these interpretations other than through the rulemaking process. It was reported that Labor Secretary Alexander Acosta would not revise or revoke Obama era regulations without following rulemaking requirements, *BNA Occupational Safety & Health Reporter, June 15, 2017, Number 24.*

Plant managers and construction superintendents, who must run plants and build projects, now must guess what a “reasonable employee” would do. Is a drug-using employee reasonable? Is an employee who refuses to report an injury immediately “reasonable”? Is an employee who would not report a serious injury due to a safety incentive reasonable? In our view, OSHA has issued a recordkeeping regulation to invade employment matters in the workplace not within the OSHA statute.

The following are summaries from OSHA Deputy Assistant Secretary Dorothy Dougherty’s Oct. 19, 2016, memorandum to regional administrators on OSHA’s interpretation of 1904.35(b)(1)(i) and (iv)¹.

- **Drug and alcohol testing.** OSHA states that the rule does not prohibit drug testing employees who report work-related injuries, as long as employers have an objective, reasonable basis for testing and the rule does not apply to drug testing employees for reasons other than injury reporting. OSHA has stated the general principle is that drug testing is not to be used by the employer as a form of discipline against employees who report an injury, but may be used as a tool to evaluate root causes of workplace injuries in appropriate circumstances. Further, OSHA specifically states that drug testing an employee whose injury could not possibly have been caused by drug use would be a violation under the standard. The examples
- **Discipline.** The standard prohibits disciplining employees simply because they report a work-related injury or illness. OSHA’s central inquiry will be whether the employer treated other employees who violated the same rule the same way, regardless of whether those employees reported a work-related injury or illness. With regard to workplace rules on reporting injuries, OSHA will consider whether the employer had a legitimate business reason for the discipline. OSHA will consider the following factors: 1) reasonableness of the rule; 2) did the employee have a reasonable basis for deviation from the rule; 3) does the employer have substantial interest in the rule and its enforcement; 4) discipline appears proportionate to the employer’s interest in the rule.
- **Safety incentive programs.** OSHA states that withholding a benefit, such as a cash prize or other substantial award, simply because of a reported injury, would be a violation, regardless of whether such adverse action is taken pursuant to an incentive program. OSHA does state that conditioning a benefit on compliance with legitimate safety rules or participation in safety-related activities would not be a violation.

This interpretation of the regulation propounded by OSHA will no doubt create questions among management personnel as to how they should move forward with revising and/or updating their policies. OSHA compliance officers can now ask to review those policies during an inspection, which may lead to violations of this recordkeeping regulation. As OSHA has increased its penalties, as of Jan. 13, 2017, up to \$12,675 for serious or other-than-serious injuries and up to \$126,749 for repeat and/or willful violations, it is important that companies review their policies now. 📌

¹ https://www.osha.gov/recordkeeping/finalrule/interp-recordkeeping_101816.html

WHO'S RUNNING FOR STATEWIDE OFFICES?

With Gov. John Kasich signing his fourth and final budget, members of the legislature will take a break to travel to their districts for county fair season. They'll be back in the fall for deliberation on legislation that will undoubtedly have great implications on our state's business climate. Following the fall session, the legislature will break again for the winter holiday season, which brings us into the 2018 election year.

With the signing of the budget, Kasich is effectively a lame duck. There is no doubt that the governor will be working diligently to cement his legacy during his remaining 16 months in office. Kasich's impending departure may have top billing, but in January 2019, Ohio will have four new statewide officeholders, two new justices on the Supreme Court and a new speaker of the House in the General Assembly. In addition, on the federal level, Sen. Sherrod Brown stands for re-election in a 2018 rematch with Treasurer of State Josh Mandel.

Below is a list of who is in, and who is speculating on a run for statewide office (as of June 26, 2017). Be sure to follow along on ohiochamber.com for a real-time list updating you on the candidates' statuses.

REPUBLICAN GUBERNATORIAL PRIMARY

Attorney General Mike DeWine*
Secretary of State Jon Husted*
U.S. Rep. Jim Renacci*
Lt. Gov. Mary Taylor*

DEMOCRATIC GUBERNATORIAL PRIMARY

Former State Rep. Connie Pillich*
State Sen. Joe Schiavoni*
Dayton Mayor Nan Whaley*
Former U.S. Rep. Dennis Kucinich
Former mayor of Cincinnati and talk show host Jerry Springer
Supreme Court Justice Bill O'Neill
Former Attorney General Rich Cordray
Former U.S. Rep. Betty Sutton*
Former Ohio Secretary of State Jennifer Brunner

REPUBLICAN U.S. SENATE PRIMARY

State Treasurer Josh Mandel*
Investment banker Michael Gibbons*

DEMOCRATIC U.S. SENATE PRIMARY

Senator Sherrod Brown*

REPUBLICAN OHIO SUPREME COURT PRIMARY

Appellate Judge Mary DeGenaro
Appellate Judge Craig Baldwin
Appellate Judge Matthew McFarland
Appellate Judge Colleen O'Toole

DEMOCRATIC OHIO SUPREME COURT PRIMARY

Common Pleas Judge John O'Donnell
Appellate Judge Cynthia Rice

REPUBLICAN AUDITOR OF STATE PRIMARY

State Rep. Keith Faber

DEMOCRATIC AUDITOR OF STATE PRIMARY

Former U.S. Rep. Zack Space*

REPUBLICAN TREASURER OF STATE PRIMARY

Franklin County Treasurer Clarence Mingo*
State Rep. Robert Sprague

DEMOCRATIC TREASURER OF STATE PRIMARY

Former Cincinnati mayoral candidate Rob Richardson*

REPUBLICAN ATTORNEY GENERAL PRIMARY

State Auditor Dave Yost*

DEMOCRATIC ATTORNEY GENERAL PRIMARY

U.S. Attorney Steve Dettelbach

REPUBLICAN SECRETARY OF STATE PRIMARY

State Sen. Frank LaRose*
State Rep. Dorothy Pelanda*

DEMOCRATIC SECRETARY OF STATE PRIMARY

Rep. Kathleen Clyde*

*Indicates they have officially announced

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BASIC FEDERAL LABOR LAW FOR NONUNION EMPLOYERS

over workers who are otherwise subject to contractual arrangements, be as hands off as possible and clearly define the responsibilities and authority of both entities in writing.

- Class action waivers in arbitration agreements.** One important issue for employers is the treatment of employee arbitration agreements and employers' ability to require employees to waive their right to bring class or collective actions. In early 2012, the NLRB struck down a condition of employment that required employees to waive the right to bring a class or collective action in any forum because it restricted the right to engage in protected concerted activity by implying that, if the waiver was not signed, the employee would be fired or not hired. Since then, federal appellate courts have issued split decisions on this issue. In June 2017, the United States Court of Appeals for the Sixth Circuit — the binding federal appellate jurisdiction for Ohio — ruled that a company violated the LMRA by forcing employees to sign arbitration agreements as a condition of employment to prevent them from participating in class actions against the company. The United States Supreme Court recently agreed to hear a series of cases to decide whether the NLRB's interpretation of joint employer is correct, which will be resolved during the October 2017 term. In the meantime, employers looking to proceed cautiously should leave a judicial forum open for class and collective claims, such as allowing employees to opt out of an otherwise mandatory class action waiver without fear of retaliation.
- No-recording policies.** In 2015, the NLRB held that a policy barring photographs and audio or video recording in the workplace, as well as the posting of photographs and recordings on social media, is protected if employees are acting in concert for their mutual aid and protection and no overriding

employer interest is present. In other words, an employer may not lawfully adopt a rule prohibiting recording if employees are acting in concert for their mutual aid and protection and the employer cannot demonstrate an overriding business interest. Moving forward, employers should carefully review and revise no-recording policies to ensure they are narrowly tailored to protect privacy and other business concerns, confirm that they clearly explain why the restrictions are necessary and specify that they are not intended to infringe on rights to engage in protected concerted activity.

- At-will handbook disclaimers.** In a relatively controversial stance, the NLRB has taken the position that certain disclaimers in employee handbooks concerning the at-will nature of employment may violate the LMRA. Most handbooks indicate that employment is "at-will." The NLRB's position is that a handbook that indicates employment is "at-will" and suggests this can never change interferes with employees' rights to collectively bargain. Therefore, at-will statements in handbooks and policies must be carefully written to ensure they properly state that employment is at-will and that the at-will status can only be changed under certain conditions, such as a written agreement from an officer.
- Social media policies.** Social media news feeds and tweets are the new "workplace water coolers," and the NLRB's heightened interest in this area requires employers' attention. Not only must employers balance privacy concerns when drafting social media policies, they must also avoid suppressing protected concerted activities.

The NLRB struck down a catch-all social media policy that barred posts that "damage the company, defame any individual or damage any person's reputation or violate the policies,"

2017 POLICY CONFERENCE AT SALT FORK

Since 1989, the Ohio Chamber of Commerce has been hosting the Policy Conference at Salt Fork, commonly referred to by our veteran attendees as just "Salt Fork." It is a nationally recognized, one-of-a-kind public policy networking event. Held in off-election years, the goal is to bring together members of the Ohio General Assembly with public affairs professionals in a relaxed setting, rather than under the Ohio Statehouse dome, to discuss issues that are being debated on Capitol Square. This year, the conference is Sept. 6-8 at Salt Fork State Park in Guernsey County.

While the full agenda is still in the planning stages, we are excited to announce that our opening night speaker is J.D. Vance, New

York Times best-selling author of "Hillbilly Elegy." Vance grew up in Middletown, Ohio, and "Hillbilly Elegy" serves as a memoir of his life growing up in Appalachia and the struggles he and his family endured. Having recently relocated to Columbus after working for a venture capital firm in California, Vance will speak about what his family taught him and his vision for the future. Other speakers will be announced soon.

Past attendees attest to the fact that relationships made and issues discussed at Salt Fork make a lasting impression. Legislators and public policy professionals who attend Salt Fork rave about its importance, especially now when legislators are term limited. Working together, forging good public policies for our

state and stopping to take the time to get to know each other make the two days away from the office or Statehouse well worth it.

The program begins Wednesday, Sept. 6, with registration opening at noon. Attendees then have time to acclimate and can take in a practice round of golf, hit some balls on the tennis court or just enjoy one of Ohio's largest state parks. We will have a welcome reception at 6 p.m., with dinner and a program to follow, capped off by several hospitality suites.

On Thursday, Sept. 7, our day begins with a group breakfast, followed by morning policy sessions. Afternoon activities include a golf scramble, tennis tournament, a tour or leisure time. At 6:30 p.m., we will have

an evening reception, followed by dinner, an evening program (featuring Ohio Chamber members as well as members of the Ohio General Assembly) and the final night of hospitality suites.

On Friday, Sept. 8, we will start our day with a group breakfast, followed by morning policy sessions. The program will wrap up by noon. 📌

No other public policy event in our state has the positive impact that this one has. Attendees return home with a greater understanding of the legislative process and better relationships with Ohio's lawmakers. Registration information is available on our website at www.ohiochamber.com, or you can contact Ashley Brown at (614) 228-4201 or abrown@ohiochamber.com.

because it limited concerted action for mutual aid and protection.

It likewise struck a policy, which reminded employees to “practice caution and discretion” when posting content on social media that could affect the employer’s business operation or reputation, as unlawfully overbroad because it reasonably would be read to require employees to refrain from criticizing the employer in public.

The NLRB found that policies telling employees they need permission before posting anything about the company on social media and “don’t pick fights online” were unlawfully overbroad because employees would reasonably construe them to restrict protected discussions with their co-workers.

The NLRB’s recent decisions have not been fully litigated in the courts. But courts faced with these issues have generally determined that the well-developed rules for the traditional workplace extend to the cyber workplace. In other words, employees are afforded protection for protesting the terms and conditions of their employment online so long as they are not for personal, unlawful, or disparaging acts. For now, social media policies should balance the interest of the employer in its public image with the NLRB’s aggressive stance on protected concerted activity through social media outlets.

CLASSIC TRAPS

After you re-examine your policies to make sure you’re in compliance with recent changes, it is worth a look to make sure your business is not falling into some of the common traps. Some of the most common federal labor law traps for nonunion employers include:

- **Right to representation.** Even nonunion employees have the right to representation when being questioned by their employer. Employers, however, are not required to inform employees of this right. If a nonunion employee requests to have a co-worker present at a disciplinary meeting, the employer should consult with counsel before making a decision to deny the request.

- **Compensation.** Employers may not prohibit employees from discussing compensation.
- **Complaints.** Rules prohibiting employees from complaining about conditions of employment to customers have been upheld, but employers may not prohibit employees from complaining about conditions of employment with other employees.
- **Threats to contact agencies.** Employee threats to contact state agencies about employment conditions are protected activities under the act. For example, the threat to make a report to OSHA for the benefit of all employees is covered.
- **Walkouts.** Nonunion employees may stage walk-outs — without notice — and stay protected under the act. In the height of irony, members of a collective bargaining unit must give reasonable notice prior to a walk-out. The NLRB has taken the position, however, that nonunion employees do not need to give any such notice and a walk-out without any notice can be considered concerted activity.
- **E-mail.** Although prohibitions on e-mail solicitations and distributions are lawful, employers have been found to have committed unfair labor practices if they selectively enforce these rules. Thus, these rules should be uniformly applied. Likewise, blanket prohibitions on the use of email for matters other than company business have also been found to violate the LMRA. The NLRB takes the position that email can be used to engage in concerted activity and any provision that prevents employees from doing that violates the LMRA.

Not only must nonunion employers keep up with the recent developments in federal labor law, they must also keep the aims of the LMRA in mind to avoid these classic federal labor law traps. 📌

Tyler Tarney and Pat Kasson are attorneys in the Columbus office of Reminger Co. LPA. For more information, visit <http://www.reminger.com>.

BOARD MEMBER SPOTLIGHT

Thomas E. Secor
President, Durable Corp.



What does your company do?
Durable began in 1923 in Seattle, Washington, moving to Ohio in the 1930s. We have been located in our present location in Norwalk, Ohio, since 1941. This is our only location presently. We are both a manufacturer and master distributor.

Our primary product lines are loading dock bumpers, wheel chocks, entrance floor tile and a variety of matting products; anti-fatigue/safety is the largest. Our main manufacturing raw material component is used bias-ply tires. Given the predominance of steel-belted tires in the U.S., we also source components from China and India. We currently employ 39 individuals, increasing our employees by two this year, and operate a facility in excess of 78,000 square feet on more than eight acres.

How does your company impact the Ohio economy and benefit the Ohio business community?

With annual sales in excess of \$10 million and annual payroll in excess \$2 million, the revenue generated to suppliers and taxing authorities is significant. With the exception of our bias-ply manufacturing components, all other component items are purchased from Ohio vendors.

What is your role at your company?

I am the president and have been here since 1993.

What do you hope to gain from your membership with the Ohio Chamber?

The Ohio Chamber has been one of my most valuable business resources to enable me to run a company in Ohio. The staff’s knowledge and ability in dealing with legislation and regulation have been invaluable. The interaction afforded between elected

officials and their staff and, most important, the guidance to navigate the governmental bureaucracy, are excellent. The chamber has allowed me to become a relevant participant in legislation and regulation affecting particularly small business.

How has serving as a member of the board helped you or your company?

My service as a board member has never been to aid or assist myself or Durable, but rather to lend whatever talents and expertise I may have to maintain and improve the Ohio Chamber.

How long have you been on the board?

I’m not sure exactly when I got involved with the Ohio Chamber but I believe it has been over 20 years now, initially with the Education Committee and then primarily with the Ohio Small Business Council (OSBC).

What are some of the goals and objectives of your company?

Our company goal is to continue to be a provider of quality products with exceptional customer service.

How has the Ohio Chamber helped your company achieve those goals/objectives?

The Ohio Chamber is there to preserve and protect the business environment in Ohio to allow all companies a fair opportunity to compete in the marketplace. 📌

DENTAL AND VISION INSURANCE NOW AVAILABLE THROUGH THE OHIO CHAMBER

In listening to our members, one of the common concerns we hear across the board is the rising cost of health care. Renewal rates can be disheartening, to say the least. Because of this, we have sought ways to lower these costs. We have been diligently working on a program, exclusively for you, our members. We are very excited to announce our new standalone dental and vision plans for small businesses from Delta Dental and Anthem Blue Cross Blue Shield’s Blue Vision.

As many of our small business owners know, dental and vision plans for companies of fewer than 49 employees can be incredibly expensive, making it nearly impossible to keep health care costs manageable. Even if these plans

are in the budget, many times they are subpar compared to those of larger groups. These Ohio Chamber member-exclusive plans offer small businesses rates that were once only available to large groups. As well, these plans cover the gamut of dental and vision services.

Delta Dental’s plans range from basic diagnostic and preventive service with no copays for in-network offices to 50 percent coverage for prosthodontic services. Anthem’s Blue Vision plans range from routine eye exams with \$10 copays to \$100 allowances for eyeglasses. If you happen to be an international traveler and lose your glasses, Blue Vision plans cover providers in 20 countries and territories and will send you a pair of glasses with adjustable lenses

to fit your prescription within 24 hours. Most important, both Delta Dental and Anthem’s Blue Vision have huge networks: Delta contracts with 84 percent of Ohio dentists, and Blue Vision works with more than 33,000 doctors at over 26,000 locations nationwide, partnering with huge names like LensCrafters, Pearle Vision, Sears, 1-800 Contacts and many more.

The best news is, if you already have a Delta Dental or Anthem Blue Cross Blue Shield’s Blue Vision plan, you can still take advantage of these savings.

By combining Delta Dental and Anthem Blue Cross Blue Shield’s Blue Vision with our health insurance products, we are seeing major cost savings. In fact, with the savings



of our health plans (an average of 15 percent), small businesses can now afford to add dental and vision coverage and still save money. 📌

We at the Ohio Chamber of Commerce have the utmost confidence we can help your business decrease health care costs while keeping your employees happy with their choices in health care coverage. If you have questions or would like a risk-free quote, contact Laz Picciano, project manager for the Ohio Chamber of Commerce, at (614) 629-0926 or lpicciano@ohiochamber.com.



BECOMING A BUSINESS ADVOCATE

Building relationships is an important part of being an effective advocate in any walk of life, but it's especially true in politics. This is not because lawmakers support or oppose legislation based solely on friendships, but because credibility and trust are the foundation for successfully educating elected officials on public policy positions. This is especially true in a time of term limits.

Members of the Ohio General Assembly have eight short years to serve their constituents (even though some switch back and forth between the House and Senate). So they must become familiar with the public policy process and a multitude of complex issues in a fairly short time. Finding knowledgeable individuals on whom they can rely is fundamental to their success.

There are many ways people can build relationships with their elected officials. The real-world knowledge business leaders possess is a valuable commodity in the legislative process. Communications, whether in writing or in person, about how proposed legislation will affect a business's ability to grow and prosper are appreciated by legislators.

So are invitations to tour a business facility. Opportunities to learn,

especially from constituents who may be affected by a lawmaker's actions, are part of building the base of knowledge necessary to become an effective public policy maker. And plant tours are especially beneficial because employees see a legislator learning, taking the time to understand their needs. If you would like to host an elected official at your place of business, we may be able to help you arrange that. Rich Thompson, our director of political programs, can talk to you about what that entails. Contact him at (614) 228-4201 or rthompson@ohiochamber.com.


GET INVOLVED

Becoming active in the political process is another good way to see and be seen. Commitment to a candidate's successful election or re-election begins a transition from knowledgeable constituent to loyal supporter. And a loyal supporter who has valuable information about an important public policy issue is a credible, trustworthy and influential source.

Another way to get to know members of the House and Senate is to participate in the Ohio Chamber's Policy Conference at Salt Fork Sept. 6-8 at Salt Fork State Park in Guernsey County. Salt Fork, as those who know

and love the event call it, is a one-of-a-kind chance to build relationships with Ohio lawmakers and public policy specialists from around the Statehouse. It's a unique experience to learn about key public policy issues while enjoying a beautiful part of Ohio. Several hundred people will attend, including numerous members of the Ohio General Assembly.

The policy sessions at the event are excellent. This year's Wednesday night speaker is J.D. Vance, Ohioan and New York Times bestselling author of "Hillbilly Elegy." The full agenda will be announced later this month.

Those who have attended Salt Fork in the past rave about its importance. Working together and forging good public policies for Ohioans takes interpersonal skills and knowledge that can't materialize in a vacuum. This year, make a commitment to yourself to develop influential relationships by attending. It will be an experience you will never forget, and you'll return with a greater understanding of the public policy process, better relationships with Ohio lawmakers and a true sense of accomplishment. 

Andrew S. Daebel

EDITORIAL POLICY

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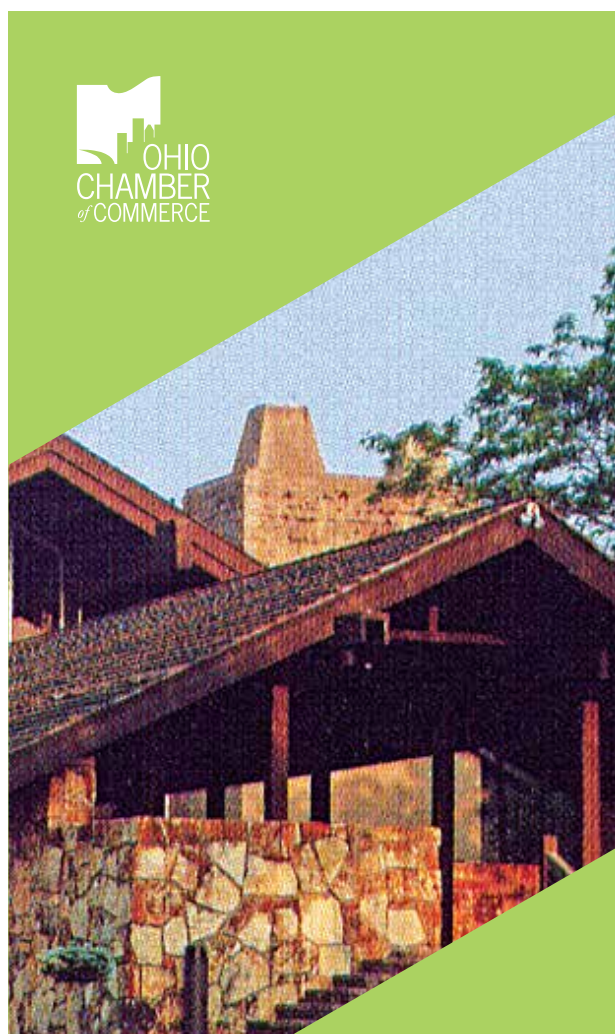
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SAVE THE DATE:
SEPT. 6-8, 2017

POLICY
CONFERENCE
AT SALT FORK

Wednesday night speaker: J.D. Vance,
author of New York Times bestseller "Hillbilly Elegy"

Registration is available now at www.ohiochamber.com

#ALLFOROHIO