

Ohio Matters

An Official Publication of *The Ohio Chamber of Commerce*

JULY/AUGUST 2016

GET INFORMED.

Business success during truncated legislative session
Ohio legalizes medical marijuana
Unemployment compensation solution reached

SHARE SUCCESS.

Ohio Chamber publishes 131st General Assembly voting record
Ohio Chamber PAC endorses O'Connor, Fischer and DeWine for Ohio Supreme Court
The physics of wellness at work
Attorney General alerts Ohioans about scams through "Ohio Protects"

STAY CONNECTED.

New overtime regulation brings changes
Succeeding from an informed perspective

BUSINESS SUCCESSES DURING TRUNCATED LEGISLATIVE SESSION

Through the first four months of 2016, perhaps the biggest story coming out of the state capital was not a particular policy achievement, but rather the presidential candidacy of Ohio Gov. John Kasich. While the governor did not secure the GOP presidential nomination, the fact that he was an active candidate until May 4 contributed, at least in part, to a relatively slow beginning to the second year of the two-year General Assembly session.

However, the pace picked up significantly in May, culminating in the passage of some important legislation in the final days prior to the General Assembly finishing its first half of legislative activity on May 25. Here are the highlights from the first part of the year. Read the full story online by clicking on the Wrap-Up link on our website at <http://ohiochamber.com/issuesandlegislation/legislative-update>.

EDUCATION AND WORKFORCE DEVELOPMENT

House Bill 474 and House Bill 383 are both supported by the Ohio Chamber but address different aspects of the state's education and workforce development systems.

HB 474 has a provision that would offer an alternative pathway for Ohio students to obtain a more affordable college education, as it would

allow community colleges to offer bachelor's degrees in as many as 10 disciplines or subject areas. The bill is currently in the Higher Education subcommittee of the House Finance Committee.

HB 383 would achieve another long-standing objective of the Ohio Chamber, making a one-semester course in financial literacy a requirement for high school graduation in Ohio. HB 383 has passed the House and is in the Senate Education Committee.

ENERGY AND ENVIRONMENT

Last fall, a legislative study committee issued its report containing recommendations for further legislative action regarding Ohio's existing renewable energy and energy efficiency mandates. The committee made five recommendations, including: 1) indefinitely postponing the statutorily imposed escalation of these mandates; 2) permitting more commercial and industrial customers to opt out of paying for the mandates; 3) letting additional sources of energy count toward benchmark compliance; 4) incentivizing energy efficiency improvements; and 5) formally declaring the General Assembly's authority to regulate Ohio's energy policies.



As expected, several pieces of legislation addressing one or more of these recommendations were subsequently introduced. Although no bills have advanced out of committee so far, when legislators return this fall, the Ohio Chamber will continue to push the legislature to enact further reforms that would protect Ohio employers from the escalating costs associated with these energy mandates.

HEALTH CARE

In Ohio, one-size-fits-all government mandates never go away. At least a half-dozen bills – which would force health insurance companies to provide coverage for specific health benefits in all the plans they offer, or limit the amount that covered individuals can be required to pay for certain benefits or services, regardless of what that benefit or service costs – have been introduced. However well intentioned these mandates may be, in the end, they increase the cost of health insurance – particularly for small businesses – and stifle the plan design flexibility that many employers rely on to help control health care costs.

Two of these bills have received significant consideration, although neither has passed. House Bill 248 mandated coverage for prescription opioid drugs that employ abuse deterrent technology and would have limited cost-sharing requirements for these more expensive drug formulations. However, once the bill's sponsors understood how the bill would have resulted in higher health insurance

QUICK GLANCE

Chamber supports education and workforce development bills

Recommendations made on renewable energy and efficiencies

Health care mandate bills awaiting votes

HB 390 to save employers \$400 million

Small claims award amounts increase from \$3,000 to \$6,000

Regulatory reform bills get hearings

premiums, they agreed to remove both the mandate and the cost-sharing limitations. After HB 248 was amended to remove these provisions and the Ohio Chamber withdrew our opposition, it passed out of committee and currently awaits a vote by the full House.

A second bill containing a health insurance mandate has also passed out of committee in the House. House Bill 350 requires coverage for the screening, diagnosis and treatment of autism spectrum disorder in all grandfathered plans and group plans offered to employers with more than 50 lives.

The Ohio Chamber has urged the legislature to pursue an alternative approach to helping families that are struggling with the physical, emotional and financial toll of a

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*They are the candidates
who work to make Ohio's
business climate stronger.*

*We all work to build a
stronger state.*

We're all for Ohio.



This year, the Ohio Chamber of Commerce Political Action Committee (OCCPAC) will endorse candidates running for the Ohio House, Senate and Supreme Court. Since its inception in 1978, OCCPAC has been a success for both individual candidates and the Ohio business community. This issue highlights OCCPAC's endorsement of the Ohio Supreme Court candidates. The September/October issue will highlight Ohio House and Senate endorsements.

OCCPAC has helped:

- Create a new majority on the Ohio Supreme Court that understands and respects the proper role of the judiciary
- Elect dozens of members of the Ohio General Assembly who champion free enterprise and pro-growth policies for the benefit of all Ohioans

For more information on how you can support OCCPAC-endorsed candidates, contact Rich Thompson at rthompson@ohiochamber.com or (614) 228-4201.



By Samantha Cotten, Director, Public Policy Communications

OHIO LEGALIZES MEDICAL MARIJUANA

Law maintains robust protections for Ohio employers

QUICK GLANCE

Under HB 523:

Employers don't have to accommodate medical marijuana use.

Employees can't sue for adverse actions resulting from use.

The bill does not interfere with federal restrictions on employment.



Samantha Cotten

In early June, Gov. John Kasich signed into law House Bill 523, making Ohio the 25th state to legalize marijuana for medicinal use.

However, it has been a long road for the legislature to get to this point.

The journey began last fall when Responsible Ohio's ballot initiative, Issue 3, which would have legalized marijuana for both medicinal and recreational purposes, was soundly defeated by an Ohio Chamber-led coalition. Through this process, Ohio lawmakers learned that between 70 and 80 percent of Ohio's population supports medical marijuana in some form. In response to its constituents, the legislature began to learn more about medical marijuana.

Earlier this year, the Ohio Senate embarked on a listening tour, going to major metro areas around the state to ask citizens for feedback and information on the topic, and the Ohio House created the Medical Marijuana Task Force to examine the

issue in a more formal setting.

This laid the groundwork for HB 523. Although the Ohio Chamber never endorsed the legalization of medical marijuana, our staff worked to make sure the bill contained safeguards for Ohio employers.

HB 523 included for employers a number of protections advocated for by the Ohio Chamber. The inclusion of these provisions was crucial in allowing employers to maintain both safety for workers and comprehensive human resources policies. Further, the law establishes clear and unambiguous rules that will help prevent costly legal battles over how medical marijuana will be handled in the workplace.

The law contains several critical protections for employers.

- Employers are not required to permit or accommodate an employee's use, possession, or distribution of medical marijuana.
- Employers are allowed to discharge, refuse to hire, discipline or take adverse employment actions against an individual with respect to tenure, terms, conditions, or privileges of employment due to the individual's use, possession, or distribution of medical marijuana.
- Employers can still establish and enforce a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy.
- The law explicitly states that it is not meant to interfere with any federal restrictions on employment,



Our staff worked to make sure the bill contained safeguards for Ohio employers.

including Department of Transportation regulations.

- It does not permit a person to sue an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment due to medical marijuana.
- The Bureau of Workers' Compensation (BWC) may still grant rebates or discounts on premium rates to employers that participate in a BWC drug-free workplace program.
- An employee who is discharged due to his or her use of medical

marijuana would be ineligible for unemployment compensation benefits if the medical marijuana use was in violation of an employer's drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating the use of medical marijuana.

- The law reiterates that an employee is ineligible for workers' compensation benefits if the employee was under the influence of marijuana, whether recommended by a physician or not, and being under the influence was the proximate cause of the injury.

The Ohio Chamber applauds the work of the Ohio Legislature for handling this difficult issue in a comprehensive manner. The above protections will allow for a safe and productive working environment for all Ohioans and provide businesses with the flexibility to create human resources policies that they desire for their workplaces. 🍀

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BUSINESS SUCCESSES DURING TRUNCATED LEGISLATIVE SESSION

child's autism diagnosis. The cosponsors of HB 350 are open to considering alternatives, and conversations are likely to occur over the summer that could lead to revisions to the bill that will help autistic children get the services they need without penalizing small businesses.

LABOR AND EMPLOYMENT

The passage of HB 390 is expected to save Ohio employers more \$400 million, and the major accomplishment of paying off Ohio's outstanding federal unemployment compensation debt is covered in a detailed article on page 4. However, more still needs to be done this fall to truly fix Ohio's unemployment compensation system. The system, which has been insolvent and structurally unsound for years, needs comprehensive reforms to both benefit payouts and employer contributions.

House Bill 394, an Ohio Chamber priority bill that was introduced late last year, would make these much-needed improvements. Without them, the state and Ohio employers could find themselves in the same situation with the next economic downturn.

Another positive for businesses, a direct result of work by the Ohio Chamber, came via House Bill 523, the highly publicized bill that legalizes medical marijuana in Ohio. For more information on the passage of this bill, see above.

Fixing the state's confusing and burdensome employment discrimination statutes is a top priority for the Ohio Chamber. Ohio's laws are an outlier both among states and when compared to similar federal statutes. To remedy some of these issues, the Ohio Chamber worked to introduce Senate Bill 268, the Employment Law Uniformity Act. SB 268 is pending in the Senate

Civil Justice Committee, but we are pushing for its passage before the end of the year.

SMALL BUSINESS

The Ohio Chamber and its Ohio Small Business Council have been advocating for more regulatory reforms, including Senate Bill 303 and House Bill 503. These companion pieces of legislation are aimed at streamlining and improving the state's rulemaking process. Both bills have had several hearings, with the Ohio Chamber providing testimony. However, both are still in their assigned committees.

Small businesses achieved a victory with the passage of House Bill 387. This legislation increases the maximum amount that can be awarded by small claims courts from \$3,000 to \$6,000. Small claims court provides a less-costly venue for small businesses to adjudicate certain disputes, and its relaxed rules and quick decisions provide small businesses with an easier and more efficient method to resolve claims that otherwise may not be filed.

TAXATION AND ECONOMIC DEVELOPMENT

House Bill 182 makes several positive revisions to the Joint Economic Development District (JEDD) law. JEDDs are essentially contracts for infrastructure and other development between a city and a township that are financed by imposing a municipal income tax on businesses and employees within the township. The bill grants new protections for businesses, including allowing a landowner or business owner to apply for exemption from a JEDD and permitting designated parcels of land to be excluded from a JEDD. HB 182 passed both the House and Senate and was signed by the governor on June 13.

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UNEMPLOYMENT COMPENSATION DEBT SOLUTION REACHED

Plan will save Ohio employers
\$400 million in 2017



Don Boyd

As a result of the economic downturn of 2008, Ohio was forced to borrow more than \$3 billion from the federal government to pay unemployment benefits. Because this amount was not paid back within the two-year grace period, the state incurred a penalty that increased federal unemployment tax (FUTA) on employers. As a result of the debt, Ohio businesses are currently paying \$147 per employee, versus the regular (base) FUTA rate of \$42. In addition, Ohio employers faced an increase in 2017 if a solution was not reached.

Fortunately, the Ohio Chamber, together with leaders in the Senate, House of Representatives and Gov. John Kasich's office, forged a solution that was added to House Bill 390 and passed into law. This action is projected to save Ohio employers more than \$400 million in 2017.

The plan aims to pay off the debt by borrowing funds from the state equal to the amount of debt still owed to the federal government on Sept. 30, 2016. As a result, the federal penalty will be lifted, allowing the FUTA to return to the base rate of \$42. To repay this loan, the state will tack on a one-time loan repayment surcharge to next year's state unemployment tax bill. The surcharge will be a dollar-for-dollar amount to repay the loan and will be spread out across all employers on a per-employee basis. Based on current projections, this surcharge will be approximately \$45 per employee. The loan repayment surcharge, in addition to the base FUTA of \$42, means that employers will pay about \$87 per employee next year, nearly 50 percent less than the \$168 per employee employers would have paid if no action were taken and the FUTA penalty increased.

As a result of the debt, Ohio businesses are currently paying \$147 per employee, versus the regular (base) FUTA rate of \$42.

This tax savings is by far the greatest victory for Ohio employers in 2016. However, the work is not done. Ohio's Unemployment Compensation system is fundamentally flawed. It has been insolvent and structurally unsound for nearly a decade. The UC system needs comprehensive reforms to both benefit payouts and employer contributions.

House Bill 394, an Ohio Chamber priority bill, would make these much-needed improvements. Without these changes, the state and Ohio employers could find themselves in the same situation with the next economic downturn. We will continue to keep you updated on the progress of HB 394 when the legislature returns in the fall. 🍂

***OHIO CHAMBER
PUBLISHES 131ST
GENERAL ASSEMBLY
VOTING RECORD***


Free Enterprise Index shows which legislators are pro jobs

For more than 20 years, the Ohio Chamber of Commerce has published a legislative voting record, the definitive publication examining how state lawmakers vote on pro-jobs, pro-economy issues. For these reasons, we have renamed our voting record the Free Enterprise Index.

As Ohio's leading business advocate, we work to make Ohio a stronger state in which to do business, making sure that Ohio lawmakers are held accountable for their work and how their decisions impact Ohio businesses. We have assembled a list of key pieces of legislation that the Ohio Chamber has supported. By holding legislators accountable, we are better able to make Ohio a state that champions free enterprise and economic competitiveness. With our Free Enterprise Index as a guide, you, as an Ohio Chamber member and voter, will be better able to make an informed decision about who you will support come Election Day.

So far, legislators in the General Assembly have cast several votes on critically important bills that will profoundly impact the business climate in Ohio. The current list of votes provides a snapshot of where legislators stand on pro-business issues as they head back to their districts to stand for re-election in the fall.

During this session the chamber prioritized 13 voting record votes, seven in the Ohio House and six in the Ohio Senate.

As an Ohio Chamber member, you will receive a hard-copy version of the Ohio Chamber Free Enterprise Index in your mailbox in the coming weeks. Additionally, please visit ohiochamber.com to keep track of your legislator's voting record in real time. This is an important resource to earmark for when the legislature returns for a busy lame-duck session following the election. 

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BUSINESS SUCCESSES DURING TRUNCATED LEGISLATIVE SESSION

Two other tax-related bills moving forward are Senate Bill 264 and House Bill 466, both of which are supported by the Ohio Chamber. SB 264 extends the successful sales tax holiday another year. The bill exempts clothing, school supplies and instructional materials from sales tax during the first weekend of August.

HB 466 exempts digital advertising services from sales tax. This bill is necessary to prevent the Ohio Department of Taxation from assessing auto dealers, in particular, for advertising on websites.

WORKERS' COMPENSATION

House Bill 207 brings much-needed common-sense reform to Ohio's workers' compensation system. The bill allows an employer whose employee is injured in a motor vehicle accident caused by a third party to apply to the Ohio Bureau of Workers' Compensation (BWC) to have that claim charged against the BWC Surplus Fund and not its experience.

Employers will also benefit from another law passed last year, when the BWC got the ability to contract with insurers to provide new, optional coverage for Ohio employers with employees working out of state, simplifying the system for those employers. 🏡

By Rich Thompson, Director, Political Programs

OHIO CHAMBER PAC ENDORSES O'CONNOR, FISCHER AND DEWINE FOR OHIO SUPREME COURT

In addition to its recommendation of pro-business candidates for the Ohio Legislature and executive offices, the Ohio Chamber of Commerce Political Action Committee (OCCPAC) also endorses Ohio Supreme Court candidates. OCCPAC has been educating Ohio's employers since the late 1990s on the importance of the Ohio Supreme Court to the business community. Among the state's many business associations, the Ohio Chamber has taken the lead in supporting candidates who understand and respect the proper role of the judiciary. We continue to do so in 2016 with the endorsement of three candidates in this pivotal election year.

This year, there are two open seats due to the forced retirements (due to age) of Justices Judith Ann Lanzinger and Paul Pfeifer. In 2018, there are two more forced retirements of sitting justices. Over the next two election cycles, the current philosophical balance of the Ohio Supreme Court could be in play. This underscores the business community's need to be engaged, lest we see a return to the days of the "Gang of Four" of the late '90s, when justices created laws instead of interpreting them.

CHIEF JUSTICE MAUREEN O'CONNOR



Chief Justice Maureen O'Connor was endorsed by OCCPAC in 2002, 2008 and 2010.

Her diverse background as an attorney, judge, prosecuting attorney and lieutenant governor has served her well as Ohio's chief judicial office holder. The chief justice is running unopposed in November.

During her tenure on the Supreme Court, O'Connor has demonstrated a strong commitment to interpreting laws and applying them as written, rather than legislating from the bench. That commitment is critical to having a fair and predictable legal

environment in Ohio, and we are pleased to endorse her once again.

JUDGE PAT DEWINE



Judge Pat DeWine is running for the open seat created by the upcoming retirement of Justice Paul Pfeifer. DeWine's

judicial philosophy is guided by the principle of judicial restraint, which is aligned with OCCPAC's line of reasoning.

While serving on Ohio's First District Court of Appeals, DeWine has written a variety of opinions that resulted in favorable decisions in areas of law such as medical malpractice, discrimination, insurance, employment and workers' compensation. OCCPAC believes DeWine's judicial experience on Ohio's Appeals Court provides him with the experience he will need to serve on Ohio's highest court.

JUDGE PAT FISCHER



Judge Pat Fischer is running for the open seat created by the upcoming retirement of Justice

Judith Lanzinger. Fischer's judicial philosophy is consistent with the Ohio Chamber's longstanding preference for candidates who refrain from judicial activism and do not attempt to legislate from the bench.

Fischer has spent more than two decades in private practice, primarily representing corporate clients. He believes judges should enforce the constitution and statutes as written. We are proud to endorse a candidate who seeks to apply the law as written.

When voting this November, we encourage you to highly consider these candidates for the Ohio Supreme Court. 🍷

Among the state's many business associations, the Ohio Chamber has taken the lead in supporting candidates who understand and respect the proper role of the judiciary.

By Michelle Zarou, Attorney, Shumaker, Loop & Kendrick

THE PHYSICS OF WELLNESS AT WORK



Newton's Third Law of Motion states that for every action, there is an equal and opposite reaction, and that law is evident in the workplace wellness environment. Employers believe they are doing right by their employees by starting a wellness program. It's a win-win — the employees gain better health and longer, more fulfilling lives, while the employer saves on health care costs, with decreased absenteeism and happier employees. But then employers are hit with the government's equal and opposite reaction — a tangled web of regulations to ensure that access to health insurance is not compromised by supposedly "voluntary" wellness programs, and to prevent the misuse of Protected Health Information (PHI).

The first two of the four statutes regulating in this arena are the Health Insurance Portability and Accountability Act (HIPAA) and the Affordable Care Act (ACA), which govern wellness programs tied to group health insurance plans. These rules require that workplace wellness programs not be overly burdensome on employees, be reasonably designed to promote health or prevent disease and offer a different, reasonable means of qualifying for any reward if the employee cannot meet the test or standard as stated due to underlying medical conditions, with notice of this opportunity.

HIPAA and the ACA only apply to health-contingent wellness plans, which require employees to meet specific standards related to health in order to get rewards. Both statutes also limit health-contingent wellness incentives, such as discounts on health insurance, to 30 percent of the total cost of health insurance coverage available in the average employee-only plan. The ACA raised the ceiling to 50 percent of such coverage for certain smoking cessation programs. In addition, HIPAA limits the PHI that employers can receive.

On May 17, 2016, the Equal Employment Opportunity Commission (EEOC) finalized regulations governing the treatment of wellness programs under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). The EEOC issued these regulations to fill the gap left by HIPAA and the ACA, to ensure coverage of all workplace wellness programs, whether they are health-contingent or merely participatory, (i.e., generally available without regard to health status, such as reimbursements for gym memberships).

The ADA final rule has the following major requirements.

- **Confidentiality.** The final rule reiterates the ADA's longstanding confidentiality protections and restricts employers to receiving health information in the aggregate. Employers also may not require employees to waive the ADA's confidentiality protections, nor agree to the sale, transfer, or other disclosure of their medical information in order to participate in a wellness plan.
- **Voluntary program.** The ADA has long contained an exemption from its confidentiality provisions for voluntary wellness programs, but without any definition of the term voluntary. To be voluntary, an employer may not (i) require an employee to participate; (ii) deny any employee access to health insurance or benefits for failing to participate; or (iii) retaliate against, interfere with, coerce, intimidate or threaten any employee for failing to participate or achieve certain outcomes.
- **Notice.** Employers must also provide employees written notice of the medical information that may be collected, how it will be used and who will receive it, as well as the restrictions on disclosure and methods the employer will use to prevent improper disclosure. The EEOC has issued a sample form of notice that is available at <https://www.eeoc.gov/laws/regulations/ada-wellness-notice.cfm>.
- **Reasonably designed.** Any program, including disability-related inquiries or medical examinations, must be reasonably designed to promote health or prevent disease, which can be shown if the program

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ATTORNEY GENERAL ALERTS OHIOANS ABOUT SCAMS THROUGH THE 'OHIO PROTECTS' OUTREACH INITIATIVE

My office's mission is to protect Ohio families, and keeping consumers safe from scams, cons, rip-offs, bad business practices and identity theft is an important part of that mission.

In the past year alone, the personal information of one-quarter of Ohioans ages 18 and older has been exposed to identity theft and fraud. According to the AARP Fraud Watch Network, older Americans are scammed out of nearly \$3 billion every year.

When scammers and con artists prey on Ohioans, consumers aren't the only victims. Legitimate businesses that play by the rules, strive to give good service to their customers and pay their taxes are harmed, as well. For example, storm-chasing opportunists who go door to door in the wake of weather-related damage, promise repairs they never deliver and leave town with their victims' money deprive established local contractors of potential work.

Last year, our Consumer Protection Section fielded some 27,000 complaints, opened more than 240 investigations, filed more than three-dozen lawsuits and obtained close to 60 judgments and compliance agreements. And since we created our Economic Crimes Unit in 2011, our investigations have helped county prosecutors and local law enforcement with 134 indictments and 111 convictions.

We stay busy. And we never let up. That's because those who scheme and try to scam, con and rip off Ohio consumers also stay busy. And they, too, never let up.

As a result, we're escalating our efforts to help Ohioans recognize scams, cons, fraud and identity theft and give them the tools to protect themselves. Knowing how to avoid falling for a fake offer makes consumers less vulnerable and enables honest enterprises to compete fairly for their business.

In June, we launched a new multimedia campaign called "Ohio Protects." This initiative will help Ohioans become more aware of scams that may not be obvious at first and show them how the Ohio Attorney General's office can assist them. Fahlgren Mortine, an Ohio-based advertising firm, was chosen through a competitive process to create the campaign.

The Ohio Protects initiative builds on what we already do. Many consumers who contact us to report scams also ask us to keep calling out the scams and expose those who would deceive and defraud the public. Others confess that they never thought they or a relative or friend would get scammed. It's easy to let your guard down — that's what con artists count on — but knowledge and vigilance can help stop scammers in their tracks. The Ohio Protects initiative promotes both.

To help get our message across, the Ohio Protects initiative uses \$2 million in funding we've secured through consumer protection settlements. No taxpayer dollars are being spent on the Ohio Protects initiative.

The Ohio Protects campaign features:

- A dedicated microsite — www.ohioprotects.org — that will educate consumers on a variety of consumer protection topics and direct them to our office for additional help
- Three 30-second videos (available for viewing at www.ohioprotects.org/videos) that use humor to highlight some of the common scams and frauds targeting Ohioans, such as contractor fraud, computer repair scams and IRS scams
- A paid media strategy that includes broadcast and cable television, radio, cinema, social media and online video and banner placements — all platforms that will reach Ohio consumers throughout the course of their daily activities. The advertising buys started in June and will run through the end of the year in all of Ohio's media markets. They are also available with closed captioning in both English and Spanish.

I'm pleased that our Ohio Protects initiative is supported by business groups including the Ohio Chamber of Commerce.

With the Ohio Protects initiative, we're stepping up our efforts to protect Ohio consumers from scams, cons, fraud and identity theft. We want them to be vigilant against bogus offers or demands for money because, as it says in the video tagline, "It's never this obvious." And we want them to know the Ohio Attorney General's office is their first line of defense and their resource of choice for consumer protection. ■



Ohio Chamber President Andrew E. Doehrel with Ohio Attorney General Mike DeWine

Knowing how to avoid falling for a fake offer makes consumers less vulnerable and enables honest enterprises to compete fairly for their business.

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THE PHYSICS OF WELLNESS AT WORK

has a reasonable chance of improving health or preventing disease, is not overly burdensome, is not a subterfuge for violating the ADA or other laws and does not use a highly suspect method to promote health or prevent disease.

- **Accommodations.** Wellness programs must be available to all employees, and employers must provide reasonable accommodations to employees with disabilities to ensure their ability to participate.
- **Limitation on incentives.** The final rule uses ACA's 30 percent limit on incentives, as well as the limit of 50 percent for smoking cessation programs, as long as medical testing is not used to confirm compliance with the anti-tobacco program. If employees are tested for nicotine use, then the 30 percent limitation applies. The rule applies to any incentives used, even when an employer does not sponsor group insurance coverage.

Similarly, Title II of GINA prevents employers from accessing genetic information about employees or using such information to make employment decisions. Genetic information is broadly defined to include medical history information, including the medical histories of family members. The GINA final rule applies the ADA limitation on incentives to spouses of employees, but only if the spouse must answer questions about current or past health status or take a medical examination in order to receive the inducement. The rule also prohibits employers from providing participation inducements to an employee's children. Children may participate in the plan as long as they are not offered inducements in exchange for information about their current health status or genetic information.

The final rule requires that any wellness-based genetic or health service be reasonably designed to promote health or prevent disease, using the criteria listed in the ADA regulation. It also requires employers to inform participants that they are not obligated to answer questions about genetic information, and that inducements are available whether or not employees answer such questions. Further, an employer may not deny health insurance to an employee whose spouse refuses to participate in a wellness plan.

While both the ADA and the GINA regulations become effective on July 17, 2016, the applicability date for the rules governing incentives and notice is the first day of the first plan year that begins on or after Jan. 1, 2017. Thus, now is the time for employers to wrap their arms around the physics of the government's equal and opposite regulatory reaction to the rise of workplace wellness programs. ■

Mechelle Zarou's practice encompasses all areas of labor and employment law, including wrongful discharge, discrimination, workers' compensation, unemployment compensation, business immigration, labor negotiations and arbitrations, and unfair labor practice charges. Reach her at (419) 321-1460 or mzarou@slk-law.com.

THE OHIO CHAMBER IN ACTION

1. Ohio Chamber President and CEO Andrew Doehrel speaks at a press conference announcing the launch of "Ohio Protects," with Ohio Attorney General Mike DeWine.
2. Our Public Affairs Committee met in June to get to know Ohio Supreme Court candidates Judge Pat DeWine and Judge Pat Fischer.
3. In June, the Ohio Chamber, along with chamber member Plante Moran, hosted a middle market seminar on doing business with China and Mexico.
4. Our Ohio Chamber Champions had a special reception in June at the Columbus Club.



By Mark D. Katz and William Edwards, Attorneys, Ulmer & Berne LLP

THE NEW OVERTIME REGULATION

What you need to do to be ready

On May 18, 2016, the Department of Labor issued its Final Rule after receiving more than 270,000 comments on its proposed overtime rule published last year. While it made several changes from the proposed rule, the net effect on employers is basically unchanged from that which was set forth in the proposed rule.

The key provision of the Final Rule dramatically increases the minimum salary level for employees to be eligible for the executive, administrative and professional exemptions. The amount presently in effect, based on the 2004 regulation, is \$455 per week, or \$23,660 per year. While the proposed rule sought to increase that amount to \$970 per week, or \$50,440 per year, the administration — taking the comments of the business community into consideration — determined that the minimum compensation level should be set at \$913 per week, or \$47,476 per year.

This amount can be met by payment of a regular salary, but up to 10 percent of the required salary level could be met through payment of nondiscretionary bonuses or other incentive payments such as commissions to reach the minimum level. The new regulation points out that these bonus/incentive payments must be paid at least quarterly.

The effective date for this new overtime regulation is Dec. 1, 2016, unless there is a future action to stay or invalidate the regulation. The minimum salary amount established by this regulation is subject to a mechanism for automatic adjustment every three years, with the initial adjustment scheduled to be made on Jan. 1, 2020.

COMPLIANCE OPTIONS

Because the regulation only applies to employees classified as exempt who are presently paid less than \$917 per week, employers should prepare a roster of the affected employees or a list of the positions that typically fall within this category. Next, the employer should determine the amount of overtime hours typically worked by the subject employees. This figure will be needed to determine the best method to achieve compliance with the new regulation. While most employers do not track the hours worked by exempt employees, a reliable estimate should be made in order to make a compliance decision.

Once the universe of affected employees is defined — although the duties requirements for the exemptions have not been modified by this Final Rule — this is a good opportunity to review the duties of these employees to ensure that they are properly classified as exempt and subject to the new regulation. Once you confirm that the duties requirements of the exemption are satisfied, you have several options to meet compliance.

If the exempt employee works considerable overtime hours and is presently paid relatively close to the new minimum salary level, give strong consideration to raising the salary to meet the exemption requirements.

If the exempt employee works a relatively low number of overtime hours and is paid substantially less than the new minimum salary amount, the best option may be to reclassify that employee as nonexempt, which would trigger overtime eligibility.



The administration determined that the minimum compensation level should be set at \$913 per week, or \$47,476 per year.

The compensation for this reclassified employee could be based upon an hourly rate, with 150 percent of that rate being paid for hours worked over 40 in a workweek. Alternatively, if the number of hours worked is not fixed and typically fluctuates, you could establish an arrangement whereby the salary paid will be deemed for all hours worked, with overtime paid on a half-time basis.

Say, for example, that an employee's salary is \$750 per week and the employee works 50 hours in week one. This employee's "regular rate" that week would be \$750 divided by 50 hours, or \$15. Because the \$750 salary covered all hours worked, half the regular rate, or \$7.50, would be the hourly overtime premium

for each of the 10 overtime hours worked, for a total of \$75. Therefore, the total weekly compensation for that week would be \$750, plus \$75, or \$825.

In week two, assuming the employee works 60 hours, the regular rate would be reduced to \$12.50 (\$750 divided by 60 hours), and therefore the overtime premium would be \$6.25 times the 20 hours of overtime worked, for an additional \$125. Thus, the total weekly compensation for this employee would be \$750, plus \$125, or \$875.

In summary, the employer should create a matrix and perform the necessary calculations to determine the best methodology to reach compliance with the new regulation. Alternatively, the employer should consider reorganizing workloads, adjusting schedules, or, if possible, hiring part-time employees to perform some tasks. 📌

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SUCCEEDING FROM AN INFORMED PERSPECTIVE



Knowledge is like money: to be of value it must circulate, and in circulating it can increase in quantity and, hopefully, in value.

— American author Louis L'Amour

Knowledge is powerful; you need information to succeed. In this issue, and in the September/October issue, we are providing you with knowledge of what is happening in Ohio politically and legislatively so that you can make informed decisions when you vote in November. I highly encourage you to share this information with your employees and co-workers.

The main feature in this issue provides you with insight into what has happened at the Ohio Statehouse legislatively since the beginning of the year. The article on the front page highlights the top business legislation. It has been shortened from the email version of *Legislative Wrap-Up*. If you do not receive *Legislative Wrap-Up* or *Legislative Update* via email, or if you'd like to add someone from your company to the email list, contact Julie Wagner Feasel at jfeasel@ohiochamber.com.


Is your state representative or senator truly concerned with job creation and expansion in Ohio?

With 2016 being an important election year, we profile the Ohio Supreme Court candidates who have been endorsed by the Ohio Chamber Political Action Committee (OCCPAC). Chief Justice Maureen O'Connor, who was been endorsed by OCCPAC in 2002, 2008, 2010 and 2016, is running unopposed. Judge Pat Fischer and Judge Pat DeWine both currently serve on the First District Court of Appeals. Fischer is running for the seat being vacated by Justice Judith Lanzinger, and DeWine is running for the seat being vacated by Justice Paul Pfeifer. Fischer, DeWine and O'Connor have demonstrated a strong commitment to interpreting the law, not creating it. Endorsements for the Ohio House and Senate will be published in the September/October issue.

Our blog, at www.allforohio.com, is our newest way of helping you gain knowledge on business-related issues. Information is regularly posted to this public blog not only by our staff, but also by our members. Allforohio.com is also where we

post breaking news that impacts your business.

When new information is posted on the blog, we let people know through our social media outlets. Be sure to follow the Ohio Chamber of Commerce on Facebook and LinkedIn, and on Twitter @OhioChamber. The great thing about social media is that you can share everything we post, spreading the information to more people.

Finally, we would like to share our political and legislative insights with you, in person. If you would like to have a member of our team speak to your company or local chamber, please contact us. As Benjamin Franklin once said, "An investment in knowledge always pays the best interest." As a business organization, that sounds like a winning investment. 

Andrew E. Dechul

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