The legislative wrap-up for the first part of the 133rd legislative session

Over the first six-plus months of this new, two-year session of the Ohio General Assembly, the business community found itself in a very unusual position, playing primarily defense.

This was in stark contrast to the eight-year period that began in 2011 when John Kasich replaced Ted Strickland as governor and Republicans recaptured majority control of the Ohio House following two years of Democrat control. From 2011 to 2018, improving Ohio's business climate was a major emphasis for both the Kasich administration and the Ohio legislature.

Due to initiatives put into place during this time to streamline the regulatory process, simplify the complex and burdensome municipal income tax structure and cut taxes on small business owners — just to cite a few — Ohio's business climate subsequently improved considerably, even receiving national accolades. Site Selection magazine ranked Ohio fourth nationally in its 2018 “Top State Business Climate Rankings,” and the annual CNBC “America’s Top States for Business” study, released in July of this year, put Ohio in the top 10.

Unfortunately, based on what’s happened so far this year, Ohio isn’t likely to rise further in these types of rankings.

The year began inconuously enough, with Gov. Mike DeWine in February proposing an increase in the gas tax to fund a $1 billion transportation budget in March that did not include any new taxes, tax increases, or any shifting of taxes onto the business community.

The Ohio Chamber supported the goal of ensuring adequate and reliable funding for Ohio’s transportation system and welcomed a budget proposal predicated on consistency and predictability in the tax code. It didn’t take long, however, for the House to make changes to both the transportation budget (House Bill 62) and operating budget (House Bill 166) and, in the process, put the business community on the defensive.

When the transportation budget came out of the House, it had ditched DeWine’s balanced proposal to raise both the diesel fuel and gasoline taxes the same amount, instead opting to increase the diesel tax rate by 20 cents per gallon but the gas tax by only 10.7 cents. The Senate, reacting to the concerns expressed by the Ohio Chamber that businesses would face a dramatic increase in shipping costs if diesel fuel taxes increased by 20 cents, restored parity to the proposed gas and diesel fuel tax increases.

In the end, the Senate backed down, and the compromise proposal sent to the governor lacked parity, raising the gas tax by 10.5 cents but diesel by a disproportionate 19 cents per gallon, both effective July 1, 2019. The 19-cent increase on diesel moves Ohio well past the state average of 30.2 cents of tax per gallon and leaves us with the sixth-highest tax rate on diesel fuel in the country. This does not make Ohio more competitive and will lead to higher costs for businesses at every point on the supply chain.

The operating budget process played out similarly, but with a much more favorable result. Even though the governor’s original proposal called for no significant tax changes, the House opted to send the Senate a budget containing a $1 billion tax increase on small business owners. This was a result of the House reducing the business income deduction (BID) available to owners of pass-through entities from $250,000 to $100,000 and removing the provision that caps the income tax rate at 3 percent above this limit. The Senate — responding to aggressive activism by small business owners across Ohio — restored the full deductible amount but not the flat 3 percent rate.

Prompted by strong opposition from DeWine to any tax increase on small business owners, the small business tax hike was largely avoided when the legislature finally agreed on a compromise on HB 166. The final package kept the BID fully intact.

Also worrisome in a similar way to the above-mentioned issues is how a comparatively minor, yet no less important, issue was handled during the budget process. When the Senate made its revisions to HB 166, it included an extension for two additional years of a temporary $500 increase in the employer taxable wage base and a temporary freeze on maximum weekly unemployment benefits.

These changes are set to expire at the end of 2019 and were put into place late in 2016 after efforts to secure a broader package of reforms needed to put our unemployment compensation system on a path to solvency failed. Unfortunately, when the negotiations over HB 166 were complete, this extension was inexplicably left on the cutting room floor.

It should be alarming to all employers that, not only is the unemployment compensation system still in a precarious financial position because the legislature has failed to pass a comprehensive fix, but the one minor change agreed to previously by both business groups and organized labor couldn’t be preserved. As a result, beginning next year, the system will be in even worse shape.

While the first six months of 2019 certainly could have been worse for Ohio employers and our business climate, the time and energy spent fighting to effectively preserve the status quo still had its ramifications. Chiefly, it left little time for the legislature to advance a number of other pro-business priorities sought by the Ohio Chamber. In fact, 2019 marks the first time since 2009 that not a single bill that the Ohio Chamber included in our Free Enterprise Index legislative scorecard was signed into law during the first six months of a new General Assembly.

The looming question now is the obvious one: Is what happened during the first six months of this General Assembly an outlier, or simply a sign of things to come? Only time will tell.
You voiced your concerns.

We listened.

The employer opioid toolkit was developed to help you.

We’re All for Ohio.

Ohio’s employers are asking what they should do about the opioid crisis in their own workplaces. The Ohio Chamber of Commerce convened a task force to explore the options. One task force recommendation was to arm employers with a toolkit of resources to help them be better prepared to prevent and respond to the problem.

With the help and expertise of member company Working Partners®, and financial support from member company Anthem, we have developed A Dose of Reality for Employers, an employer opioid toolkit containing several resources available free to any company doing business in Ohio.

To access the toolkit, go to www.ohiochamber.com/opioid-toolkit.
On Valentine's Day this year, Gov. Mike DeWine released his proposal for the two-year workers' compensation budget. His proposal increased spending by 8.7 percent compared to the last budget, for a total of nearly $650 million, but contained no policy changes for the bureau. In fact, the budget bill—HB 80—was only six pages long.

The bill would not stay six pages long, however. The Ohio House had plans to introduce policy from business groups, the trial bar, and labor groups, so early in the process, the Ohio Chamber submitted amendments that would have added several of our public policy priorities.

The Ohio Chamber amendments would have ensured employers are not penalized when employees refuse to submit to medical examinations or when employees fail to attend medical appointments. Our amendments would have also prevented claims being open longer than necessary due to medical billing practices and would have specified that workers’ compensation benefits are not available to employees when their economic loss is due to reasons other than a workplace injury.

Unfortunately, when the Ohio House released its substitute version of HB 80, the bill only contained one of our amendments. What the 115-page substitute version did include were numerous substantial and fundamental changes to Ohio’s workers’ compensation law that would negatively impact employers in the state. The provision that garnered the most media attention and was most visible was the inclusion of PTSD coverage for first responders when there is no corresponding physical injury.

Removing the physical injury requirement from workers’ compensation law would upend over 100 years of precedent by allowing mental injuries to be compensated for the first time since voters enacted the constitutional amendment that created the Bureau of Workers’ Compensation in 1912. Additionally, there is a substantial risk that once one category of employee receives coverage for one type of mental disability that other employees and other mental diagnoses will soon be covered by workers’ compensation.

The Ohio Chamber opposed this new coverage, but there were other substantial policy changes that led us to key vote the bill as it left the Ohio House. These changes included preventing state fund employers from objecting to settlement claims when the claim is out of their experience. Removing the employer from the settlement process is problematic because the bill still allowed an employer to work for the same company, which would have put the employer at risk of compensating an aggravation of the same injury after a settlement was reached.

The as-passed-by-the-House version also would have prevented employers from enacting policies providing employees with supplemental sick leave benefits by requiring the reinstatement of any sick leave taken due to a workplace injury. The bill also sought to change the procedure for filing employee misclassification complaints and would have levied a fine of $500 per day for each employee who was misclassified, starting when a compliant is filed.

In addition to these significant and fundamental policy proposals, the House also added language that required individuals to attest that they are a legal or unauthorized resident of the United States.

The Ohio Chamber key vote alert asking House members to vote no yielded 25 no votes from House Republicans, but the bill passed by a margin of 56 to 38. The bill then went to the Senate, where it had only 25 days to hold hearings and pass the legislation by the constitutional deadline of June 30.

In the Senate, the Ohio Chamber and our business allies met with members of leadership and the chair of the Senate Insurance & Financial Institution Committee to share our concerns with the proposals included in the budget bill.

In the Senate, the Ohio Chamber opposed this workers' compensation law would upend over 100 years of precedent by allowing purely mental injuries to be compensated.

Removing the physical injury requirement from workers’ compensation law would upend over 100 years of precedent by allowing purely mental injuries to be compensated.

For 30 years, the Policy Conference at Salt Fork has brought together members of the Ohio House and Senate with public policy professionals to discuss cutting-edge issues and strengthen the relationships necessary to build a better state.

Legislators and public policy professionals who attend Salt Fork rave about its importance, especially in this era of term limits. Working together and forging good public policies for Ohioans takes interpersonal skills and knowledge of one another and the ability to prioritize in a vacuum. Salt Fork is a place, an event, a happening, a process.

"Salt Fork is one of the top events of every General Assembly," says Michael M. FitzGibbon, president of The FitzGibbon Group. "Not only will you be provided with education on key issues impacting Ohio, but there are plenty of networking opportunities with legislators and peers."

This year’s conference will be held Wednesday, Sept. 4 through Friday, Sept. 6. With the theme “The Opportunity Ahead,” the policy sessions will focus on the opportunities our state has for the future.

A welcome reception kicks off the conference Wednesday evening followed by dinner and the opening program. Who to better kick off a conference attended primarily by a politically minded crowd of Ohioans than Kyle Kondik, the person who literally wrote the book explaining Ohio’s remarkable record as a predictor of presidential results? An Ohio native, Kondik is the managing editor of Sabato’s Crystal Ball, the University of Virginia’s authoritative, nonpartisan newsletter on American campaigns and elections, and the author of “The Bellwether: Why Ohio Picks the President.” He is a graduate of the E.W. Scripps School of Journalism at Ohio University and a former reporter, editorial page editor and political columnist at newspapers in Northeast Ohio. Kondik is going to tell us if the Buckeye State will tell us if the Buckeye State will be “Ohio’s Focused Future” with JobsOhio President and Chief Investment Officer J.P. Nauseef. The second session is “Employer Perspectives on Today’s Health Care Benefits Challenges & Opportunities.” The third session of the day will focus on “Transportation Needs of Ohio’s Workforce.”

Thursday afternoon, attendees can participate in one of our social activities. For those interested in learning more about The Wilds, we have chartered a bus for a tour to the nonprofit safari park and conservation center. Other afternoon activities include golf, tennis, boating or relaxing at the lodge. There’s another reception Thursday night, followed by dinner and the always popular Capital Square Has Talent variety show.

Two policy sessions cap off the conference on Friday. “Strengthening the Foundations of Ohio Communities” will be followed by “Fall Legislative Preview.” Key General Assembly members will have a panel discussion on what lies ahead for the remainder of the 133rd General Assembly. “Ohio Chamber’s Salt Fork event always covers the top priority issues facing our state and combines it with the chance to network and catch up with everyone at the statehouse in a relaxed atmosphere,” says Yvonne Lesicchio, senior director of Legislative & Regulatory Policy for the Ohio Farm Bureau. “It’s truly a great event.”

A detailed agenda, along with the link to register, are on our website at ohiochamber.com. Click on the picture of the Salt Fork lodge.
SUCCESS THROUGH SHARING — STARTING THE CONVERSATION

Ohio Chamber of Commerce hosts Sharing Solutions, a U.S. Chamber Foundation initiative to combat the opioid crisis

Success is saving one life, one family, one job; when it comes to the opioid epidemic. Communities in Ohio and across the nation are struggling every day with the epidemic, and many of those hardships make their way into the workplace. However, the workplace can also be one of the best places for prevention and intervention.

The Ohio Chamber of Commerce partnered with the U.S. Chamber of Commerce Foundation to host “Sharing Solutions Ohio: Opioids and the Workforce” in July, a program focused on creating dialogues on how the business community and workplace play a critical role in combating the opioid crisis.

WHERE TO START
Knowing where to start is one of the main concerns among business leaders, employers and employees.

While the internet is teeming with information regarding opioids and the opioid epidemic, it can be overwhelming, scattered and lacking a business perspective. This became the starting point for Sharing Solutions.

Sharing Solutions is a comprehensive program containing resources and information from across the nation. It can be found online at sharingsolutions.us. With the main goal of gathering and providing information, Sharing Solutions takes resources, such as the Ohio Chamber’s Opioid Toolkit, and makes them available to individuals who may not have found them otherwise. This system has allowed employers and employees to combat the opioid crisis through sharing their solutions.

“Our mission is to educate the public,” says Carolyn Cawley, president of the Ohio Chamber Foundation. “Through the use of different chambers’ kits and pulling together resources, we hope to do everything we can to stop the opioid epidemic from tearing apart our communities.”

The U.S. Chamber Foundation used these resources to create Sharing Solutions. But with Ohio having the second-highest rate of drug overdose deaths in 2017, according to the National Institute on Drug Abuse, it’s clear that it’s not just about gathering and providing information. It’s about changing the conversation to create life-changing results.

CHANGING THE CONVERSATION AND TAKING ACTION
The opioid epidemic is multifaceted. Action to combat it can take place anywhere from prevention and treatment to recovery and overdose situations. But, oftentimes, stigma gets in the way of conversations that lead to action. This is where sharing stories comes in.

Nicholas Gonzales, health and wellness compliance officer for Kroger, spoke at the July event about how removing the stigma around addiction is the first step in not only raising awareness but taking action. One way Kroger and Gonzales combat drug abuse is through the Prescription Drug Safety Network, a coalition that focuses on the next generation and that has already educated about 14,000 students. It provides students with the knowledge and resources to make decisions when it comes to prescription drugs.

“It’s about removing the stigma and replacing it with empathy,” says Gonzales. “We [Kroger] put effort into education and closing that gap between awareness and action.”

Pushing the boundaries of conversation to create action was also a driving force for Chad Jester, president of the Nationwide Foundation. The Nationwide Foundation helped form the Denial Ohio campaign, a media campaign by the Ohio Opioid Education Alliance that highlights preventive measures that people can take to mitigate risks, such as how to dispose of leftover prescriptions or properly read prescription labels. Because addiction can start as soon as five days after first use, according to the Center for Disease and Control, these risks and triggers are vital. The campaign also highlights that whatever is happening in the community is also happening in the workplace.

“This issue [opioid crisis] is impacting you whether you know it or not,” says Jester. “Be a part of the solution.”

SHARING SUCCESS AND SOLUTIONS
The Denial Ohio campaign and the Prescription Drug Safety Network were just two of the many success stories at the Sharing Solutions event. A panel of local leaders shared stories and methods that worked for them.

John Rush, president and CEO of OhioCares, worked with the company with a mission derived from the desire to transform the community through the power of a second chance. Rush offers incentives and training to employees with addiction backgrounds to encourage recovery and, with the help of others, he is able to remove 90 percent of his staff are in recovery.

“When businesses understand how much they can gain from giving employees a second chance — loyalty, increased productivity, a supportive culture and so much more — they can see that someone isn’t past their future,” says Rush.

Dee Mason, founder and CEO of Working Partners, and Lindsey Pavlik, vice president of human resources at Casto Management Service, also shared how investing in employees in recovery or with addiction pasts has created an impactful workplace.

“The workplace must be a part of the solution” when it comes to combating the epidemic, says Mason. At the center of these shared moments is that success isn’t only about creating a stronger workforce or bettering the community, it’s sometimes just about helping another person.

“Success can sometimes be saving that one life,” says Anton Bizzell, M.D., and fellow for the U.S. Chamber Foundation. “We’ve worked in silos for too long… when we come together, we will win every time.”

FURTHER RESOURCES
More information and additional resources regarding the Sharing Solutions initiative can be found at sharingsolutions.us. Information on the Ohio Chamber’s specific efforts through our opioid toolkit can be found at ohiochamber.com/opioid-toolkit. Additional resources are free, and we urge Ohio business leaders to not only use the materials but also to share them with employees and other business leaders.

By Lillian van Wynegarden, Communications Coordinator

OhioVoters

It needed something new. C&N Contractors Inc., a general contractor in Springfield, Ohio, needed a revamped website. But with one look at the papers quickly piling up on his desk, the task seemed daunting to Paul Qusille, the corporate controller.

However, when a marketing intern shared that she had been hired with a new design, things changed. She used her skills and knowledge to assess the redesign, and five months later, C&N Contractors had the building blocks for a new website. The experience allowed interns to not only use the materials but also to share them with employees and other business leaders.
OCCPAC – INVESTING IN PRO-BUSINESS CANDIDATES

“Advocacy is the business of making friends.”

That’s what my first mentor in the government relations field once told me. And it’s as true in multiple ways. When it comes to getting legislators to be friends of Ohio businesses, or closer friends, for that matter, one of the tools we have is the Ohio Chamber of Commerce Political Action Committee (OCCPAC).

A political action committee, or PAC, allows associated individuals to pool together political monetary donations for the purpose of supporting certain candidates, platforms, or issues. The sole purpose of OCCPAC is to support pro-business candidates for Ohio General Assembly and Ohio Supreme Court offices who demonstrate their commitment to strengthening Ohio’s economic climate.

Sometimes these candidates are currently in office running for re-election, or running for a open seat, which typically means the incumbent is term-limited and can’t run for re-election, or the incumbent vacated the seat. For open seats, we may choose the most pro-business candidate early and back him or her. We know that for the vast majority of our members, state government happenings aren’t top of mind or day to day. You’re busy working, running and conducting business — which is also the biggest reason you don’t see our crowd conduct noisy protests (but that’s neither here nor there). In fact, we know you are only thinking about the Ohio Chamber on the rare occasion when we mail you something in the mail, or we have your attention for a brief blip in your day when we hit your inbox with an email. Knowing what OCCPAC stands for and making a donation gives chamber members an effective way to be politically active and engaged in supporting pro-business elected officials, without having to do any of the candidate vetting themselves.

When we give a contribution to a candidate from OCCPAC, it’s essentially us telling them “we believe in you,” or “we support you,” with the understanding that he or she will be a champion of pro-business issues. When we give a contribution to an incumbent legislator who we know will run for re-election, for example, it is essentially saying both those phrases, along with a “thank you for being a good friend.” PAC contributions help us make friends with incoming and current elected officials to ensure our representative lean to support sound policy we support, or oppose bad policy we oppose. The more friends the Ohio Chamber has in state government, the better we can advocate on your behalf for a business-friendly agenda.

WHO CAN DONATE?

Individuals who are owners or employees of Ohio Chamber of Commerce member companies may contribute to OCCPAC. Corporations may not submit a donation from a corporate account; donations must come from individuals.

WHERE DOES MY DONATION GO?

Your donation goes into a separate, standalone account from which OCCPAC will give disbursements either as direct campaign contributions to candidates or as independent expenditures for candidates (radio, TV, social media ads, etc.). OCCPAC aims to support pro-business candidates and state offices that include the state legislature, statewide executive offices and statewide judicial offices.

HOW MUCH SHOULD I DONATE?

Every donation tremendously helps OCCPAC, but there is no minimum amount required to make a donation. Typical donation amounts are $25, $50, $100, $250, $500, $1,000, $2,000 or more. The more you invest, the more we can do on behalf of our business community.

2020 is going to be a particularly intense election year, and we hope you get engaged. If you have any questions about how OCCPAC or the Ohio Chamber can help you to share, I’d love to answer or hear them. Feel free to reach me at alagunzad@ohiochamber.com.

HOW MUCH CAN I DONATE?

Because OCCPAC operates only at the state level, Ohio law currently sets a limit of $313,092.35 per calendar year per election for an individual’s total donation to OCCPAC.

WHERE DO I DONATE?

There are two ways to make a donation to OCCPAC. Donors may send a personal check to 348 E. Third, St., Suite 100, Columbus, Ohio 43215, made out to OCCPAC, or through our online OCCPAC donation portal at ohiochamberfoundation.com/recognizedoccpac.

WHAT HAPPENS AFTER I DONATE?

Donors to OCCPAC are considered members of the PAC. PAC members receive regular exclusive updates through a newsletter that shares developments and analysis on Ohio politics.

If you are interested in making a donation to OCCPAC, here’s what you need to know.

If you are interested in making a donation to OCCPAC, here’s what you need to know.

By Anthony Lagunzad, Director, Political & Grassroots Programs

www.ohiochamber.com
RESTORED CITIZENS IN THE WORKPLACE

One of Brad Lamone’s most trusted managers at Engineered Profiles has a felony conviction. She also has glowing performance reviews and the support of her employees and supervisors, says Lamone, vice president of workforce development.

The Columbus-based plastics company works with an organization that identifies and trains ex-offenders interested in pursuing careers in manufacturing. The qualified employees, Lamone says.

“These candidates have been some of our best employees,” he says. “I’m just amazed that other companies aren’t looking at these individuals.”

Approximately one in six Ohioans, or 2 million individuals, have a misdemeanor or felony conviction. Ex-involvement with the criminal justice system has been exacerbated by Ohio’s opioid crisis. Criminal convictions are not uncommon among Ohio’s potential job candidates, and the stigma and lifelong penalties associated with them can be devastating.

Currently there are more than 850 laws and administrative rules that restrict Ohioans with criminal records, creating barriers for one in four jobs, according to research by Policy Matters and the Ohio Justice and Policy Center.

“Now that marijuana is legal in Ohio, my employer won’t be testing for it anymore.”

Employers are allowed to establish and enforce a drug-free workplace program, including testing for marijuana. In best-practice drug testing, there is an established cut-off level for marijuana. For a marijuana user, if an employer tests them and it shows a positive result, there is no such thing as a prescription for marijuana, because the Food and Drug Administration has not approved marijuana as a medicine. Instead of being given a prescription, qualifying patients in Ohio are given a written recommendation from their doctor and placed on the patient registry so they can purchase marijuana from a dispensary. It’s not prescription, employers can’t treat it like one (e.g. include it under the prescription drug rule in their drug-free workplace policy). As a result, employees following a doctor’s medical marijuana recommendation could be violating their employer’s drug-free policy if they test positive for marijuana.

Recognizing the difficulty that individuals with justice exposure were having in securing employment and the growing concern among employers about filling job vacancies, the Ohio legislature in 2018 expanded the state’s Certificate of Qualification of Employment (CQES) program. A CQES ensures that employers have control over filling job openings by lifting restrictions in the law and administrative rules that prevent them from hiring individuals with criminal convictions. A CQES does not seal or expunge the criminal record, but it does give assurances and protections to would-be employers by providing them legal immunity from negligent hiring suits, according to the SCORE Ohio website.

Employers can be assured that applicants with a CQES have paid their dues to society and are not a threat to public safety. Obtaining a CQES as a long process. Applicants must complete a 15-page application detailing their criminal history, employment history and ties to the community, and must include references. Once the Ohio Department of Rehabilitation and Correction (DOC) has verified the application, the petitioner must file

it in the court of common pleas in the county where he or she resides.

A copy is sent to the court, the probation department and the prosecutor’s office.

The court conducts an investigation to determine whether to issue the CQES. The prosecutor can object to the granting of the CQES, and the probation department can also provide information to the court. If the court determines that the applicant has been rehabilitated, it can issue the CQES. An employer can verify that a CQES has been issued at ODRC’s website.

Employers that hire applicants with a CQES should be clear on any potential lawsuits if the employer knew about the CQES at the time of hiring. This provides a – and for employers that are unsure about hiring those with criminal records. Employers may also be eligible for Ohio Work Opportunity Tax Credit and Federal Bonding Program for hiring those re-entering the community.

Additionally, companies that take a chance on individuals with justice exposure are creating a great pool of employees, says Lamone. At Engineered Profiles, job retention among its restored citizens is twice that of its traditional employees.

For more information about CQES, visit www.scoreohio.org.
SHAPING THE GAMING LANDSCAPE

MGM NORTHFIELD PARK BRINGS LAS VEGAS ENTERTAINMENT EXPERIENCE TO NORTHEAST OHIO

Glistening in the sun outside MGM Northfield Park stands Leo the Lion, the golden lion statue that serves as the iconic symbol for Northfield Park’s gaming facility. The 7-foot-tall, 350-pound lion welcomes guests to the dining, gaming and does-it-all entertainment destination in Northfield, bringing the magic and mystique of MGM’s Las Vegas roots to Northeast Ohio.

MGM Northfield Park, a part of MGM Resorts International and originally the Hard Rock Rocksino, joined the MGM resorts family of national and international locations in April 2019, becoming the only MGM destination to bring the Hard Rock brand to Northeast Ohio. The 7-foot-tall, 350-pound lion welcomes guests as the iconic symbol for Northfield Park’s gaming facility. The 7-foot-tall, 350-pound lion welcomes guests as the iconic symbol for Northfield Park’s gaming facility.

“The Ohio Chamber of Commerce offers us the ability to grow relationships with members of the chamber,” says Chris Kelly, president and COO of MGM Northfield Park. “The Ohio Chamber of Commerce offers us the ability to grow relationships with members of the chamber.”

“The game facility took further steps to shape Ohio’s gaming and hospitality landscape by joining the Ohio Chamber of Commerce, a move that will help it learn and grow in the industry.”

“We exist to entertain the human race,” says Brown. “We develop and create immersive experiences that redefine conventional notions of entertainment and are extraordinary in every way.”

The gaming facility took further steps to shape Ohio’s gaming and hospitality landscape by joining the Ohio Chamber of Commerce, a move that will help it learn and grow in the industry.

“With our community,” says Brown. “We develop and create immersive experiences that redefine conventional notions of entertainment and are extraordinary in every way.”

“We are excited to share our experiences and learn best practices from others in the chamber,” says Chris Kelly, president and COO of MGM Northfield Park.

“The Ohio Chamber of Commerce offers us the ability to grow relationships with our local and state partners, and to collaborate with diverse and talented teams in our community.”

TRENDS IN WAGE AND HOUR LITIGATION: EMPLOYER TIME-ROUNDING POLICIES

In the wage and hour world, major lawsuits (class and collective actions) often follow trends. First was the trend of lawsuits claiming that non-exempt employees were misclassified as salaried-exempt. Then came trends involving independent contractors who claimed to be employees, and non-exempt employees who claimed to be working off the clock. While these types of lawsuits are still prevalent, another emerging trend involves rounding of hours worked under the employer’s timekeeping system.

In the digital era, most employers use an electronic system to track hours worked. These systems can be programmed to record work time precisely, or to round time in increments (e.g., five, 10 or 15 minutes). Under the Fair Labor Standards Act (FLSA) and most state laws, including Ohio’s, time-rounding is lawful so long as the practice is “neutral,” meaning that it does not systematically undercompensate employees.

To be lawful, the policy must first be facially neutral—that is, it rounds both up and down over the applicable segment. Assume, for example, that an employer docks employees 15 minutes when they work more than seven minutes late. Is this practice lawful? Yes, but only if the employer also pays employees for all scheduled time if they start work between one and seven minutes late.

Similarly, the policy must apply equally to rounding that occurs before the shift starts and after the shift ends. A policy that does not apply evenly is facially unlawful.

Even facially lawful time-rounding policies can have problems. In recent cases, plaintiffs have argued that a neutral time-rounding policy was nevertheless unlawful because, over time, the rounding policy favored the employer more than it favored employees. This argument is especially prevalent when attendance policies discourage rounding utilization in a manner that benefits employers—for example, where the employer disciplines employees who begin work five minutes late but does not provide extra pay to employees who begin work five minutes early.

Another wave of cases has involved determining when employees are actually “working” in relation to their time punches. For example, the employer may have a 15-minute rounding policy that applies once the shift starts and employees who clock in early or clock out late are not paid for this extra time. This policy is facially lawful because, regardless of their time punches, employees are not entitled to be paid unless they are actually working. But in several cases, that is precisely what the plaintiffs have claimed—that those who begin their shifts early or end late often conduct actual assignments during such time; therefore, they are not being properly paid for all hours worked.

In order to assess the legal risk of their rounding and timekeeping policies and successfully defend against these types of claims, employers should consider taking several steps:

• Evaluate the time-rounding and time attendance practices for any discrepancies that might lead to uneven rounding practices (e.g., policies that round to 15-minute increments before and after the shift begins but that impose discipline if an employee clocks in one minute late).

• Analyze the impact of time-rounding policies to determine whether there is a substantial net disadvantage to employees or a particular group of employees.

• Implement policies that prohibit employees from performing any work before or after the scheduled shift unless authorized, that require employees to report all time worked and that prohibit retaliation for reporting instructions to work off the clock.

• Train supervisors and managers to understand the employers’ rights and obligations regarding time and attendance policies, rounding policies and engaging in extra work or working off the clock.

• Finally, employers should consider whether rounding makes sense for their business. With digital systems, diminished administrative burdens relating to tracking time and cutting paychecks may no longer justify the increased risk of a rounding system. On the other hand, rounding may still make sense, particularly if challenges relating to the location or availability of time clocks make precise time-tracking impractical. In addition, as a matter of morale, employers simply may not want employees to feel pressured to work immediately upon clocking in.

Whatever the approach, the proliferation of lawsuits in this area makes time-rounding an important issue to consider from a strategic perspective, with a solid understanding of the potential risks and the ways to mitigate them.

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BUSINESS AS USUAL? HARDLY

This issue of Ohio Matters is arriving later in your mailboxes than you would have liked it to because we were waiting on the state’s biennial budget to be finalized. By law, Ohio’s budget has to be signed by the governor by June 30. As you know, that didn’t happen, and a temporary extension of 17 days was put into place.

To say that the first half of the Ohio legislative session has been business as usual would be flat out wrong, as issues arose that we never would have expected from our elected officials. There seemed to be no clear agreement on a number of top business issues.

It started with the Transportation Budget (HB 62) early this year. While the Ohio Chamber of Commerce understood the need for additional funding to assist in paying for the construction, maintenance and repair of our state’s roadways, we expected any new tax burden to be shared equally. Unfortunately, the final version of HB 62 puts the burden disproportionately on Ohio businesses, with the diesel tax increase nearly double the gas tax increase.

While Gov. Mike DeWine had proposed a general fund budget with no new taxes, when the budget came out of the House, it contained an unexpected $528 million a year tax increase on small businesses. This would have been done by eliminating the business income deduction (BID) that was adopted by the legislature just a few years earlier. The House’s version of the budget would have reduced the amount of business income a pass-through business would have been able to deduct from $250,000 to $100,000, while also eliminating the flat 3% tax rate on any remaining business income. Thanks to an all-out advocacy effort by our members that included several of them coming to Columbus to testify in the Senate Finance Committee, as well as calls and letters to members of the House and Senate, we were able to largely preserve the BID and avoid a tax increase. This is a significant victory for small businesses.

While the state budget was being debated, the Bureau of Workers’ Compensation budget was also in the works. What should have been an easy piece of legislation turned into a budget with a variety of harmful policy measures that would have been detrimental to employers. Again, Ohio Chamber members and allies in the business community pulled together to make sure the final version did not negatively impact business.

The first part of this legislative session is a great example of why you need the Ohio Chamber of Commerce, even though it looked like it should have been business as usual, it wasn’t. Every year, we vet hundreds of pieces of legislation and proposed regulations to review their impact on business. We are the ones looking out for businesses large and small, aggressively championing free enterprise, economic competitiveness and growth for the benefit of all Ohioans. For us, that’s our business as usual. 

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