



BUSINESS LEADER

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OPPORTUNITY KNOCKS: LEADING FOR PROGRESS IN 2017

In November, voters sent a message calling for change.



Raymond C. Drake



Anand Christopher

THE ELECTION IS OVER. TIME TO GET TO WORK.

ATTENTION SHIFTS NEEDED FOR PROGRESS

We spoke to representatives from various sectors about how they see the election results affecting their industries.

The election is over, and now the attention shifts to the need for progress in a variety of areas affecting Illinois businesses. The Safe Roads Amendment, workers' compensation reform, wage and hour regulations and more are on the minds of our member companies. We spoke to representatives from various sectors about how they see the election results affecting their industries.

SAFE ROADS AMENDMENT

The Safe Roads Amendment – also referred to as the “Lock Box” Amendment – says that all revenue raised for the stated purpose of funding transportation projects must end up directly funding transportation projects. The amendment overwhelmingly passed the state General Assembly earlier this year and was approved by voters on November 8. Billions of dollars have been diverted from the state’s road fund to unrelated causes. The amendment makes this practice unconstitutional.

Andy Kim is the co-founder and President of HaulHound, a technology company that finds available empty trucks for trucking companies operating over the roads. Their goal is to leverage the latest technology to eliminate the excessive time and miles wasted by not being able to connect shippers to empty trucks. Andy’s co-founder, Chris Faltin, is a third-generation truck driver whose family owned a small fleet. They developed the truck site to make the lives of other truckers easier.

“Truckers are out there working hard every day,” Andy says. “They need decent roads to drive safely, which in turn will also benefit the shippers who want their product transported safely and efficiently. So, at first glance, it seems to make sense to me that if we allocate money toward improving that infrastructure to make it safer and make transportation, more efficient, we should use that allocated money for that.”

“The Midwest, Chicago specifically, is a hub for transportation,” Andy continues. “We have tied together the national transportation economy. It is important to maintain the consistency of freight moving through and beyond to keep



John Fraenhoffer

the supply of goods readily available to not only Illinois residents, but to the whole country coast to coast. They rely on consistency of goods coming through and beyond the state. Consistent freight means consistent work and jobs for drivers. Consistent freight needs to be available to keep the drivers retained and not out of work, looking into other industries for a consistent paycheck.”

John Fraenhoffer is a structural engineer for Engineering Resource Associates, which provides infrastructure designs for new and rehabilitated facilities. They also do

municipal, structural and geotechnical engineering, along with transportation engineering.

“The Lock Box Amendment will have a positive effect and is very good news for civil engineering firms in Illinois,” John says. “That’s from the selfish side of it, I guess. The broader impact is that Illinois desperately needs to preserve every dime of infrastructure funding that it has. Our highways are the ‘arteries’ of our state. It is common for me to get in the car and go service a client in Chicago, St. Louis, Springfield or Decatur. The interstate highway system makes those trips easy to do and can all be done in a day. If you take all of that traffic and try to put it on two lane roads through towns, it would be impossible and the costs would be tremendous.”

“Tremendous public investment in our surface transportation has been critical to our economy and so, maintaining that and keeping it up to date and in good condition is just

critical,” John says. “The Lock Box Amendment preserves those user gas tax revenues, as the state can now only use those for the transportation systems. In addition, people tend to forget that when you have federally funded projects, there is always a local matching amount that



Ken Liss

is required and those monies play a key role in that matching amount. It would be a crime to lose federal funds because you didn’t have state funds available to match the federal funds. Everybody should remember that the money gets collected by the state, but besides the Illinois Department of Transportation spending it, a portion goes to the villages, cities and towns. It affects every unit that owns public right-of-way. It affects every community.”

Ken Liss is president of Andrews Engineering, a Springfield based company that does waste, energy, civil and environmental engineering. They have approximately 60 fulltime employees in four different offices.

“The Lockbox Amendment will directly affect my business,” Ken says. “We do IDOT work and right now we are down. We have a multi-year contract, but due to funding, I don’t think we have been tasked near 15 percent of the potential work. You might say that if the Lockbox is there, the money would be there to fund the work in the contract.”

“On the downside, I think it may further consolidate the control of transportation funds to a smaller decision group,” Ken says.” More and more contract dollars are being awarded to the northern part of the state. I’m in fear that downstate is going to be starved. What our company does is in the environmental work and managing contaminated properties. We are pretty vested in transportation work.”





“I would say the most important change needed is to agree to rolling back of some of the benefit increases,”
Karen says.

“I don’t think it should be only transportation funds in a lockbox; it should also apply to any funds originally earmarked for a specific initiative,”

Ken explains. “The way our government works is compromise when they tax by adding in other projects to ride along on the main funding initiative. When that measure passes, the money is allocated/spent on those things included in that initiative which may have nothing to do with the main initiative. The public is usually not aware of the smaller stuff. So, I think the lockbox concept should be applied to all funds in order to be allocated to what they were originally meant to fund. I think if you look back to when the gas tax was established or increased, what was promised as part of the tax that may not be funded now?”

WORKERS’ COMPENSATION REFORM

Karen Melchert is assistant vice president of state government relations at CNA, a commercial property casual insurance company. She is an attorney and started out in the law department supporting businesses before moving into government relations.

“In terms of the 2011 reforms, the cap on wage differential awards being set at age 67 is helpful since before it was a lifetime benefit,” Karen says. “When factoring into the negotiation of the settlement price,

life expectancy was greater than 65 or 67, so the supplemental income award was higher, so we think that was a really helpful development.”

“The across-the-board medical fee schedule being set at 30% was somewhat helpful, but it also backfired,” Karen says. “It has resulted in visits being cut to a level of below-Medicare on reimbursements. We’re beginning to see an impact in the availability of physicians who will take on workers’ comp claimants. The treatment of the person may be the same whether injured on the job or on personal time, but the paperwork and the reporting for a workers’ comp claimant is why they need a higher reimbursement rate.”

“I would say the most important change needed is to agree to rolling back of some of the benefit increases,” Karen says. “It would be great, but I don’t think that will happen soon. We need to be more in line with some of the other states, but we are way above on some of our benefits that are extremely rich. The 133 percent of the state average weekly wage for temporary total disability is very generous compared to our neighboring states. I’m not saying go back to where they were in 2005, but maybe walk them back a bit. One thing I do think we can get from our legislators is to change our fee schedule to make it a Medicare-based fee schedule, a fair reimbursement for services provided. For me, fixing our fee schedule would be the best thing to put it on a track where it is a stable and steady factor, and not all over the place like our current schedule.”

WAGE PAYMENT AND COLLECTION

Jeff Risch is chair of the Labor and Employment Group at SmithA-mundsen LLC, a law firm with



Jeff Risch

headquarters in Chicago and offices throughout the Midwest. He has been associated with the Illinois Chamber for several years, and chairs the Employment Law and Litigation Committee.

“The Illinois Wage Payment and Collection Act is a law that regulates and administers how and when employees are paid, whether they are hourly nonexempt or salaried exempt,” Jeff explains. “The Wage Payment and Collection Act was amended a few years ago to include a ten-year statute of limitations, so an employer’s liability risk under the act lasts a long time. Under Gov. Quinn’s administration, there were some changes made which in my opinion, attempted to alter the statutory language of the act. One of the rules established was that exempt salaried employees need to report and employers need to record a salaried exempt employee’s hours of work. Nothing in the statute requires that, so it confused a lot of employers operating in Illinois. Additionally, there is nothing in the statute that says that a use-it-or-lose-it vacation policy is unlawful.”

“In 2014, the Illinois Chamber put together a white paper submitted to the Illinois Department of Labor that attempts to clarify the rules that went into effect in 2014,” Jeff says. “So we are trying to get the Department of Labor to go through the administrative rule process so that we can get the rules in line with the statute and the case law. The Department of Labor cannot legislate, but that is essentially what they did in 2014.”

“The new overtime rules that are set to go into effect on December 1 under the Fair Labor Standards Act will affect employers in Illinois because they are increasing the salary threshold,” Jeff explains. “Under wage and hour law, employers have to apply the law that is most favorable to the employee. In 2004, Governor Blagojevich signed a law that said Illinois will continue its own white collar exempt rules and laws and was not going to follow any federal changes other than if the federal law increases the amount of salary. Illinois employers have to understand and operate under both federal law and state law. The confusion comes in despite the fact that the state law and federal law on white collar exemptions are very similar, so it’s all politics.”

“I think in Illinois, there will not be much impact from the election. Illinois kind of beats to its own drum these days. With a Trump administration, we will have administrative agencies being run by more pro-employer entities. The labor unions, particularly non-construction

unions, are going to find problems. I do envision continuation of e-verify, I-9 verification and dare I say, it’s just a matter of time before e-verification is mandated.”

“The Cook County and Chicago paid sick leave laws are going to be a nightmare of paperwork,” Jeff says. “The Illinois sick leave law that Governor Rauner signed, says that if you already provide sick leave, including paid time off, you have to provide up to half the time allotted for their family member who is sick. It doesn’t say you have to create paid sick leave. The Cook County and the Chicago ordinances do. Employers have to track it and be sure they track it properly. It’s another potential trap, another way to get sued, another class action ready to be filed. You’re dealing with time records, payroll records and payroll functions, recording of time. It’s going to be extremely problematic, though it will be expensive for employers, I see it as an administrative nightmare.”

ILLINOIS EMPLOYMENT DISCRIMINATION LAWS

Theresa Bresnahan-Coleman is an attorney with Langhenry, Gillen,



Theresa Bresnahan-Coleman

Lundquist and Johnson, LLC, a primarily defense-oriented law firm. They defend employers in a range of litigation.

“An important post-election priority is the time it takes to resolve matters that are filed at the state level with the Department of Human Rights,” Theresa says. “Those can take years to be resolved...”

“Illinois discrimination laws largely follow with some variations, what the federal laws provide,” Theresa says. “They prohibit discrimination based on race, age, national origin, sex, etc. Illinois law prohibits additional areas of discrimination. Sexual orientation is protected under Illinois law, as well as military status, unfavorable discharge, arrest record, and pregnancy. The EEOC also enforces the federal Pregnancy Discrimination Act, but under Illinois law, pregnant employees have additional protections now that they did not have previously.”

“It’s difficult to say what will change after the election in regards to Illinois law,” Theresa says. “One thing that comes to mind is medical marijuana. Gov. Quinn signed the Compassionate Use of Medical Cannabis Pilot Program Act into law just before the end of his administration, and once Gov. Rauner was elected it kind of came to a halt. It took a while for Gov. Rauner’s administration to look things over and see what was in place and get things moving on that front.”

“The Compassionate Use of Medical Cannabis Pilot Program Act is something that employers need to be aware of,” Theresa says. “I bring this up in the context of employment discrimination because the act is very new but it will be a challenge for how employers deal with employees who are qualifying individuals under the Act, given that Illinois law allows what is still banned by federal

law as a controlled substance. Many states are now allowing recreational use, and that’s going to be a huge challenge for employers and how to handle it with their drug policies.”

“An important post-election priority is the time it takes to resolve matters that are filed at the state level with the Department of Human Rights,” Theresa says. “Those can take years to be resolved. When a charge is first filed, it doesn’t take long for the mediator to be in contact with both parties. But, if the matter doesn’t resolve in mediation, an investigator takes over. Those investigations are supposed to be finished within a year, but the Department can ask for more time to complete their investigation. If the investigation results in a finding of substantial evidence of discrimination, the case then can be filed with the Human Rights Commission. It takes years to process a charge and an ensuing request for review, and employers would like to see these things resolved the right way in a quicker manner.”

CONCLUSION

The election is still fresh in the minds of all who are impacted. It will take some time to see the results once we get into the new year and the new session. The Illinois business community will be watching closely to see how things progress, and the Illinois Chamber will be working hard to protect the interests of those businesses.