SUMMER 2020

Substance

Illinois Mechanical & Specialty Contractors Association

Giuseppe Muzzupappa,
IMSCA President

VISION 20/20:
Blurred But Not Blind

I'd like to start by wishing all our IMSCA members and associations the best of health and safety during these unique times. No one person could have predicted this unprecedented COVID-19 pandemic. Further, no one could have foreseen the impact it would have on our daily (sometimes hourly) lives, and the lives of everyone around us.

There's no doubt the first two quarters of the 2020 New Year have been anything but a challenge. However, it's times like these that remind us of the importance of relationships and connectivity, and the significance of strength and resilience. As the Assistant Director of NECA, Northeastern Illinois Chapter, I've been amazed at the perseverance and the dedication of my organization's members and staff; constantly finding ways to help companies through this ever-changing environment. I have witnessed the exact same with many IMSCA contractors and the associations that represent them. I can wholeheartedly say – your industry is proud of you!

Despite the current challenges at the State Capitol, IMSCA Executive Director Jessica Newbold Hoselton, in coordination with the Officers, continues to provide as much information, as quickly as possible, relating to Illinois Legislation and the impact it has on your business. In this issue of SubStance Magazine, we look forward to a recap of legislative activity in Jessica's State Capitol Report. Also included in this edition, IMSCA's legal counsel Jim Rohlfing educates us with a global history lesson on pandemics. His colleague, Jason Tremblay at Saul Ewing, Arnstein & Lehr provides a Construction Industry Return to Work update. If your company is considering or currently executing a transition of ownership, check out the Business Succession Planning article by Sarah Delano Pavlik of Delano Law Offices, LLC. Lastly, I'm delighted to report former Executive Director of MCA Chicago and IMSCA President Steve Lamb has emerged from retirement life to provide us with an article on the responsibilities and duties of a Pension Fund Trustee.

In closing, I want to remind you that the annual IMSCA-PAC Raffle is in full effect and has been extended until the September meeting date. Although it's not an ideal time to ask for money, PAC contributions are one of the few ways IMSCA can get a seat at the [virtual] table with lawmakers. Plus, there's a chance to win some great prizes. We would greatly appreciate any support.

Thank you for being a committed member of IMSCA. Your membership is more valuable now than ever. It is a privilege to serve you during turbulent times or not, and I am truly grateful to do so. Stay safe and thank you very much. ■

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Legislative Representation for over 2,000 Construction Employers

IMSCA
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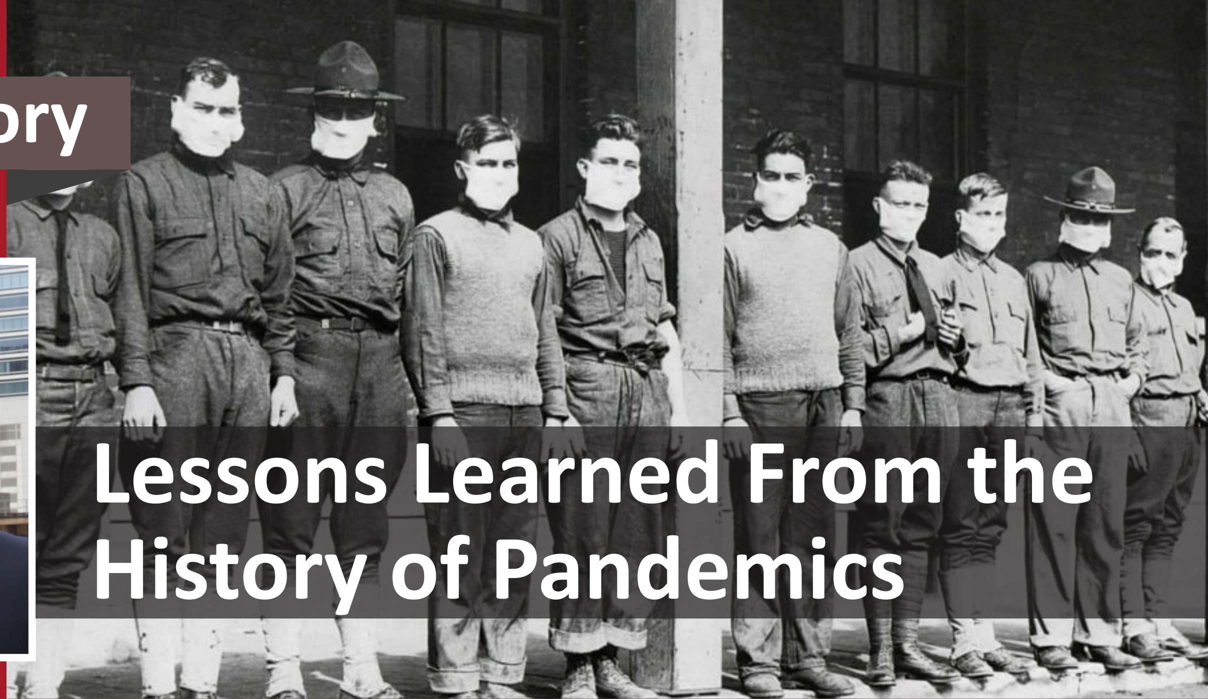
featured **story**



Lessons Learned From the History of Pandemics

James T. Rohlfing is a partner in the national law firm of Saul Ewing Arnstein & Lehr, and a member of the firm's Construction Practice Group and Litigation Practice Group. Mr. Rohlfing represents subcontractors and other participants in the construction industry. He is editor of Illinois Construction Law Manual, a treatise published by Thomson Reuters. Mr. Rohlfing is the current general counsel as well as the past president of the Illinois Mechanical & Specialty Contractor's Association (IMSCA), the largest organization for subcontractors in Illinois. He is an active member of the ABA Construction Forum, the Society of Illinois Construction Attorneys (SOICA), the Chicago Bar Association's Construction Law committee, and the Association of Subcontractors and Affiliates in Chicago. He has drafted and assisted in passing Illinois legislation critical to the construction industry and he has testified on numerous occasions on construction law issues before committees of the Illinois Legislature.

As of June 2020, the number of deaths worldwide from COVID-19 approaches one half of one million people. Throughout recorded history, more people have died from the bacteria, viruses, and parasites that cause disease than from any other causes of death, including wars and natural disasters. Despite humanity's previous experiences with pandemics and disease, the COVID-19 crisis is perhaps the most consequential historical event in the lifetimes of people living today. Our advanced healthcare systems and our capacity to diagnose, treat and cure illness have led us to believe we can contain wide scale epidemics. Our dependence on global supply chains has not prepared us for shortages in component parts of everything from soup to nuts – literally. As commerce begins again and an end to the pandemic appears on the horizon, a reflection on the history of pandemics should shed light on how to effectively balance the needs of commerce and public safety until a vaccine is available.

Epidemics started to become a scourge of civilization when people transitioned from communities of hunter gatherers to a more communal lifestyle, which included farming and livestock, as early as 9000 B.C. This facilitated the transmission of diseases from livestock to humans and also, among people who lived in proximity to one another. As trade routes developed among towns and cities, diseases spread along those routes and pandemics, epidemics over multiple countries or continents, became more common and widespread. The Plague of Athens, which struck that city in 430 B.C., is said to have influenced Sparta's victory over Athens, while subsequent plagues in the first few centuries A.D. weakened the Roman Empire and contributed to its demise. The first known pandemic of bubonic plague, the Plague of Justinian, was recorded beginning in the mid-sixth century and killed from 30 to 100 million people over the following two centuries. Though leprosy might have been around

> *"Despite humanity's previous experiences with pandemics and disease, the COVID-19 crisis is perhaps the most consequential historical event in the lifetimes of people living today."*

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as early as 1500 B.C., its spread was precipitated by the growth of European cities, and other factors, including increased trade, the crusades and bad hygiene in the 12th century. Social distancing measures, and efforts to quarantine people infected were employed throughout history to reduce the impact and spread of epidemics.

The most fatal pandemic in history, the Black Death, a severe episode of the bubonic plague, peaked in Europe in 1348 and resulted in the deaths of 75 to 200 million people in Europe and surrounding continents, which was about one half of Europe's population at the time. The bacteria that causes the bubonic plague is believed to have originated in central Asian and spread west. When Asian warriors were attacking a Genoese city in 1346, they catapulted plague-infected corpses into the city hoping to spread the disease to the enemy. The plague contaminated the city and the sea-faring Genoese traders who, with an assist from rats and fleas on their ships, eventually spread the disease to the port cities of Europe. The disease promptly traveled inland disproportionately killing those in densely populated areas, especially the poor and malnourished.

The Black Death was far more challenging than COVID-19 because, at that time, there was no effective medical care or even an understanding of what caused the disease. People had a vague sense it was spread from other people, but they did not know how it spread or how to slow it from spreading further. Bodies piled up in the streets and doctors were overwhelmed. Fear was rampant and commerce and social life in some cities and towns ground to a halt. Clergy were afraid to minister to their flocks, parents rid themselves of infected children, and some doctors refused to treat afflicted patients. It was popularly believed the plague was caused by a bad conjunction of the stars and planets or unbalanced humors or liquids in the body corrupted by bad air. Suspected cures included bloodletting, burning of strong-smelling substances to keep away the bad air, and the wearing of magic amulets.

Additional pandemics and epidemics have caused widespread disease and death in Europe and beyond, up to and including in modern times. For centuries, the smallpox epidemics were rampant in many European communities - and it was a particularly gruesome infliction for early Americans who had no natural immunity to the disease. According to some historians, George Washington's decision to inoculate the colonial army in the winter of 1777 against smallpox is credited as being one of the most important decisions in bringing about American victory against the British. Throughout the 19th century, several waves of cholera, which is caused by a bacteria spread by contaminated water, inflicted widespread death and destruction, but an emerging understanding of "germs" led to dramatic changes in healthcare, public institutions that addressed health and safety, and public policies to address the causes and response to disease. Communities that learned to treat sewage and took measures to clean streets, install underground sewage systems, especially egg-shaped sewers, helped to reduce transmission of cholera. In addition, people with the means to escape urban areas or, at least blighted and waste-filled areas of cities, had a greater chance of avoiding infection.

The Spanish flu of 1918 was a particularly deadly influenza pandemic which began in the spring of 1918 and came to an end in the summer of 1919, as those that were infected either died or developed immunity. It is estimated to have infected 500 million people – about a third of the world's population at the time and brought about the deaths of 50 million people. The rapid transmission of the virus, has been attributed to the close contact of soldiers in ships and trenches during the First World War. Then, as troops returned home from the war, they brought the disease with them and precipitated its rapid spread around the globe. Philadelphia, which held a welcome home parade and rally for the troops suffered 748 deaths attributable to the disease per 100,000 people while St. Louis which promptly began quarantine measures experienced a much lower death rate of 358 per 100,000. At least one study has shown cities that imposed early and stricter isolating measures recovered more quickly from the economic decline than did cities that relied on shorter and less severe quarantine measures.

We have learned much from previous struggles with pandemics that applies to the global response to COVID-19. Social distancing, quarantines, and other measures to avoid infections and treat people, have been important tools in the pandemic playbook for centuries. Front-line workers or those without the option of working at home, or leaving the cities for their summer cottages, have always been impacted more severely by pandemics. Alongside all the suffering that pandemics have inflicted on the world, there are glimmers of positive effects. Perhaps if Isaac Newton had not been isolated at the family farm in 1665 escaping the bubonic plague, he would not have discovered major insights in mathematics and physics that changed the world. Maybe the improvements in sanitation techniques, such as underground sewers, would not have become so widespread so quickly, saving millions of lives. From reviewing pandemics through history, we learn that humanity survives, healthcare becomes more able to address outbreaks, and public health measures improve our ability to fight dangerous microbes. We have also learned that our own COVID-19 experiences will end soon enough, and when they do, the world will have advanced its ability to deal more effectively with inevitable future pandemics. ■

Family Business Succession Planning

Sarah Delano Pavlik is the managing member of Delano Law Offices, LLC, in Springfield. She focuses her practice on estate planning, including succession planning, and advising family and closely held businesses. Admitted to practice law in both Texas and Illinois, she is Board Certified in Estate Planning and Probate Law by the Texas Board of Legal Specialization and is a registered CPA in Illinois.

The extraordinary events of 2020 have been extremely difficult for many businesses, including family businesses.

When you hear the term “family business,” do you think of the mom and pop restaurant or auto repair shop? What about Walmart and Mars, Incorporated (M&Ms)? Family businesses come in all types and sizes. According to a Forbes magazine 2013 article, “family businesses generate over 50% of the US Gross National Product” and “about 90% of all U.S. businesses are family-owned or controlled by a family.”

“Succession planning is one of the most difficult tasks for most business owners because of the emotional issues involved.”

Every family business, no matter the size, needs a succession plan. Statistics show that approximately 30% of all family-owned businesses survive into the second generation, 12% into the third generation and 3% into the fourth-generation and beyond. One reason family businesses don’t survive is that there is no succession plan in place at the founder’s death, leading to a void in leadership, family fighting lack of financing or other critical problems.

If you’re like most business owners, you’ve devoted yourself to your business, and you may not be able to even think about leaving. But you will leave one day (whether because of a sale of the business, death or disability), and your departure could destroy your business if you don’t plan for it.

Succession planning is one of the most difficult tasks for most business owners because of the emotional issues involved. The business and the owner often seem like one, and the owner may refuse to relinquish any control. If the owner fails to properly train a successor, the business may flounder.

Once the emotional issues have been addressed and a successor or successors have been identified, there are complex legal and financial issues. The problems and solutions can be very different depending upon whether the successors are family members or unrelated parties.

If the successors are unrelated parties, such as key employees, the first step is generally a buy-sell agreement. This agreement will specify when the successors can acquire the business and at what price. The buy-sell agreement can be triggered at the owner’s death, disability or retirement. The price can be stated as a set amount, as a formula, or as determined by an appraisal at the time of the sale.

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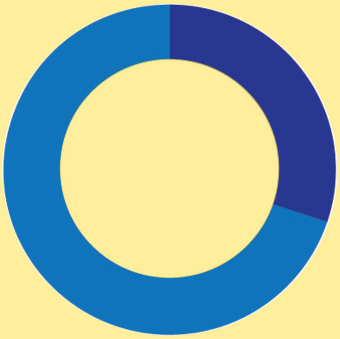
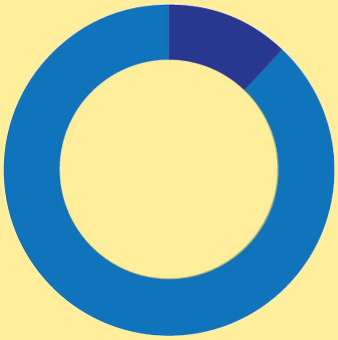
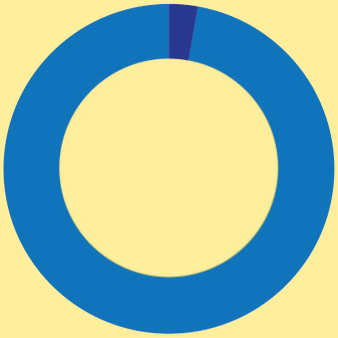


30%
successfully transition into the second generation



12%
reach the third generation



3%
survive to the fourth generation and beyond

After the price has been determined, you must address funding. How will the successors pay to acquire the business? Will they be allowed to pay over time or must they pay all at once? Should the successors purchase life insurance on the life of the owner which they can use to purchase the business at the owner's death? Should the company own the insurance or the successors?

The owner must also consider estate tax issues. As of January 1, 2016, the federal estate tax exemption amount is $5,450,000 per person and the estate tax rate is 40%. The Illinois estate tax exemption amount is $4,000,000. If the owner allows the successors to purchase the business over time, will his estate have sufficient liquidity to pay estate taxes? Should the owner purchase additional life insurance to pay estate taxes? If so, the insurance should be held in a life insurance trust or it will only increase the estate tax liability of the owner.

Although estate tax can be daunting, most closely held businesses do not fail because of estate taxes. They fail because of fighting among family members or because no one who remains has the ability or the vision of the owner.

If there are multiple owners, there are multiple options. If one owner dies, the business can buy back his interest, or the other owners can buy the interest from the deceased owner's estate. Each of these options will have different income tax consequences depending on the type of entity of the business, such as an S corporation, a C corporation or a partnership.

The owner may wish to transfer an ownership interest in the business now to the successors without giving up control of the business. This can be accomplished in several ways. If the business is a corporation, the corporation can be re-capitalized into voting and non-voting shares. Non-voting shares can be transferred to the successors giving them an ownership interest in the business but keeping control in the owner.

If the successors are family members such as children, the owner may wish to transfer an interest in the business to the children in trust. The owner cannot serve as trustee of the trust, however, the owner's spouse can serve as trustee. In this way, the owner can transfer ownership for the benefit of his family but know that control remains in the hands of someone he trusts.

A buy-sell agreement can also be used in family situations. If the owner has several children but only one is active in the business, he may wish to sell the business to that child rather than give it to her. In that case, a buy-sell agreement can require the owner's estate to sell to the child and specify the terms of the sale. The purchase price can be for less than fair market value, but such a price will not be binding for estate tax purposes. For example, if the owner and his daughter execute a buy-sell agreement specifying a purchase price of $5,000,000, that price will be binding on the owner's estate. However, if the fair market value of the business is $10,000,000 at the time of the owner's death, $10,000,000 will be the value for estate tax purposes. (As always with tax law, certain exceptions apply.)

The owner's estate planning documents must also be coordinated with the succession plan. The owner's will must direct the disposition of the business, and the owner should have a trust or power of attorney to provide for control of the business in the event of his incapacity.

Ultimately, succession planning is a comprehensive task involving business, financial, tax and family issues. A successful plan will probably require the input of an attorney, an accountant and a financial planner or insurance agent. It may also require a consultant to address personal and emotional issues. If properly implemented, however, the succession plan can allow a business to survive the departure of the founder and to flourish, rather than to disintegrate. ■

This article is for informational and educational purposes only and does not constitute legal advice.

WHAT'S THE BIG DEAL ABOUT BEING A MANAGEMENT TRUSTEE?

Steve Lamb was Executive Vice President of MCA Chicago for 24 years. He has been a professional management trustee for Teamsters Local 703 and Iron Workers Local 853, both in Chicago. He is Chairman of the International Foundation of Employee Benefits Professionals (IFEBP) Master Trustee's Advance Leadership Summit.

The year is 1947. World War II has ended and America is booming. Unions, who were forbidden from seeking wage increases during the war, are determined to catch up. Strikes and slowdowns are occurring all across the country. There is a deep concern (possibly slightly exaggerated) that the Communist Party is making inroads amongst the union leadership. And an equally deep concern that some union leaders are being tempted to dip their hands into the huge amounts of cash going into the newly conceived union benefit funds (not exaggerated). Although Truman is President, the Republican Party has taken control of both the House and Senate for the first time since the 1930's. Senator Robert Taft and Congressman Fred Hartley co-author a bill known as the Labor Management Relations Act of 1947. It passes by large margins in both Houses. President Truman vetoes the bill, and his veto is overridden. The law, which comes to be known as the Taft Hartley Act, puts major restraints on organized labor. Among other things, the law makes it illegal for any representative of organized labor, or any labor organization, to receive anything of value from management. However, certain exemptions were carved out, one of which allows labor organizations to accept money from management in the form of contributions to certain benefit funds IF the benefit funds are set up as trusts with an equal number of labor and management trustees. Long story short, without management trustees there can be no union welfare or pension funds!

So, what IS the big deal? Why is it so difficult to convince representatives of management to sit as trustees – especially on pension funds? Probably the biggest drawback is potential personal liability. For the first several decades, the courts applied what came to be known as the "prudent man" rule to the actions of trustees – act like one and you were probably ok. But increasingly over the last couple of decades the courts have begun to apply the "prudent expert" rule – it is not enough to act like a prudent man. You must now also possess the knowledge and experience to conduct yourself as a quasi-expert in the field. And with the passage of ERISA in 1974, and a couple of other major pieces of legislation in 1980 and 2006, the requisite knowledge has become more and more complex.

> *"A truly knowledgeable management trustee who also happens to be a principal for one of the contributing employers is still the best combination"*

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THE NEW NORMAL – CONSTRUCTION INDUSTRY RETURN TO WORK UPDATE

Jason Tremblay is a business attorney and litigator who advises companies in a wide range of industries on employment law and commercial matters. Jason's breadth of experience as a litigator and problem solver enables him to be a trusted advisor and outside general counsel to his clients. His experience in employment matters includes counseling, negotiation and litigation on issues critical to the evolving workplace including wage and hour disputes, restrictive covenant matters, FMLA, ADA, ADEA and Title VII claims. Jason also provides his clients with an array of services including drafting and negotiating employment and independent contractor agreements, and counseling clients relating to employment and contract related issues. Beyond these services, Jason also draws on his experience to help business owners triage the issues they face and, when necessary, direct them to outside sources of assistance.

Now that shelter-in-place orders are being gradually lifted around the country, including recently in Illinois, companies in all industries are again opening for business. Employers, even those that did not close completely as a result of being deemed an "essential business," must be extra vigilant in making workplaces safe for the return of their workforces and the operation of their businesses. The construction industry which has largely remained open during the COVID-19 pandemic is not immune from these issues and should continually evaluate worker safety and make improvements to maximize the chances that all construction workers remain safe during this pandemic.

On May 26, 2020, and specifically related to the construction industry, the U.S. Department of Labor's Occupational and Safety and Health Administration ("OSHA") issued non-binding guidance specifically aimed at bolstering worker safety in the construction industry. The recent OSHA Guidance located at www.osha.gov/news/newsreleases/national/05262020 provides a number of recommendations to increase construction job safety. OSHA has also published an Alert entitled "COVID-19 Guidance for the Construction Workforce" available at https://www.osha.gov/Publications/OSHA4000.pdf which also outlines specific recommended steps to maintaining a safe construction worksite. Among other recommendations, OSHA suggests keeping in-person meetings (including toolbox talks and safety meetings) as short as possible, limiting the number of workers in attendance at those meetings, using social distancing practices, and staggering shifts to minimize the number of workers on a particular worksite. OSHA also suggests implementing safety protocols for cleaning shared tools, such as wiping down shared tools with alcohol-based cleaners before and after use. OSHA also recommends screening calls when scheduling indoor construction work to assess potential exposures and circumstances in the work environment before worker entry and ensuring indoor workspaces have good air flow.

As companies and industries re-open, and as businesses return to the new normal, below are some recommend steps all companies should take.

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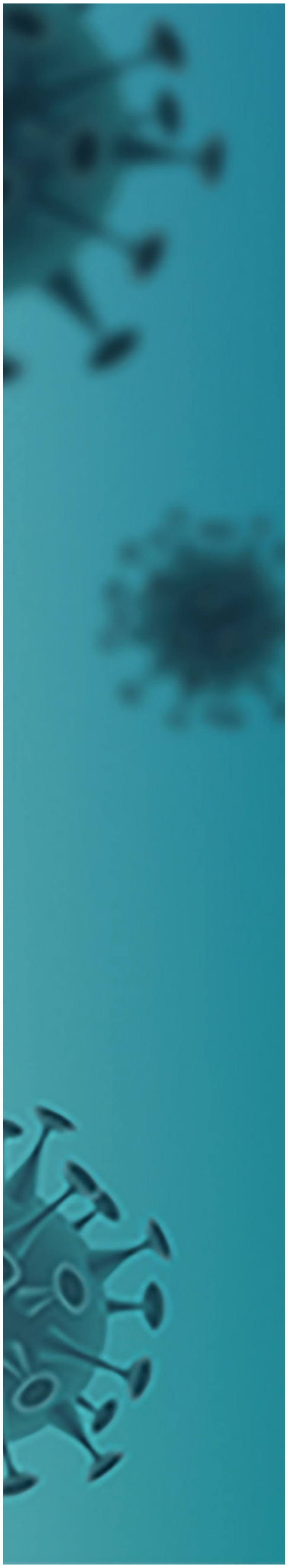


Checklist for Health and Safety Planning as Business Resumes

Review Available Guidance:

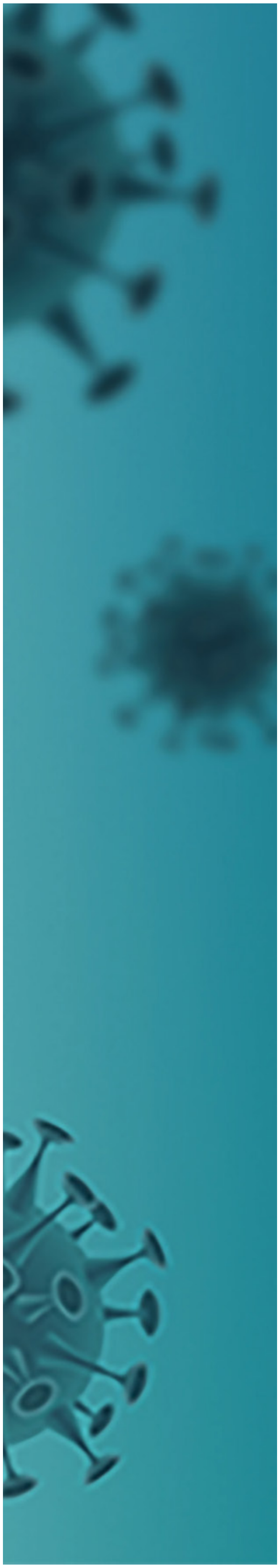
- Review available government guidance (particularly *OSHA* and *CDC*)
- Review industry/third-party guidance (e.g., *National Association of Homebuilders*, *Lear Corp.'s sample Safe Work Playbook*)

Consider PPE: Facilities/Cleaning Protocols:

- Evaluate and communicate heightened cleaning requirements and expectations for employees and vendors with primary sanitation responsibilities
- Evaluate and/or renegotiate new or existing contracts with vendors
- Ensure cleaning is undertaken according to current *CDC* recommendations
- Ensure workplace common areas and/or customer-facing areas receive additional cleaning on a regular basis
- Communicate to employees and third parties who will appreciate reassuring communications regarding heightened sanitation efforts
- Make cleaning/sanitizing supplies available to employees and third parties (i.e., visitors/customers)
- Require employees to take personal responsibility for sanitation, even if it is not among their normal duties:
    - Communicate protocols for shared areas, tools, and equipment
    - Enforce sanitation and cleaning protocols
    - Maintain flexibility to adapt to best practices
- Plan for potential supply shortages, at least in the short term
- Create and display signage reminding employees and third parties of the importance of regular and proper handwashing

Employee Monitoring and Screening:

- Review *EEOC guidance*
- Require employees experiencing COVID-19 symptoms (*CDC guidance*) to leave work, promptly seek testing, and report results (note paid leave requirements for *FFCRA-covered employers*)
- Evaluate whether and how to screen and/or monitor employees and third parties
- ADA-covered employers may measure employee body temperature, so long as CDC and state health authorities continue to find heightened threat of transmission
    - Implement any monitoring or screening protocols uniformly for similarly for situated employees
    - Screening or monitoring results and illness information must be kept confidential
    - Records of testing may demonstrate employer took reasonable measures to prevent spread
    - But testing is intrusive, time consuming, and may be of limited actual value (e.g., some with COVID-19 do not have a fever)
- Draft and promulgate policies and signage regarding staying home when feeling sick



Checklist for Health and Safety Planning as Business Resumes *(continued)*

Social Distancing Plan:

- Create and promulgate a written social distancing plan
- Evaluate employees' unique duties and the physical positioning of work locations
- Evaluate use of common areas, such as conference and break rooms and public spaces
- Create signage reminding employees and third parties need to maintain social distancing
- Re-evaluate social distancing plan on a regular basis as guidance evolves and to maintain consistency with federal (OSHA, CDC, etc.) and state-level guidance
- Consider staggered scheduling or "soft" opening
  - o Staggered schedules may allow time for testing and create less crowded locker rooms, entryways, or other common areas
  - o Opening or expanding operations incrementally will allow employers to test and adjust plans and procedures
- Consider modified employee schedules to reduce the number of employees present in the workplace (e.g., alternating teams, staggered shifts or start times, continued teleworking)

Remote Work

- Solicit feedback and evaluate what worked and what did not during recent closures and periods of teleworking
- If appropriate, continue telework for certain positions and evaluate whether teleworking is temporary or permanent, including alternating or staggered teleworking
- Evaluate what, if any, long-term restructuring of positions may be beneficial
- Employees may request to continue teleworking by choice temporarily or permanently

Communications, Training, and Monitoring

- Communication and training is key to effective planning and risk mitigation
- Internal communications should educate and encourage employees, while external communications reassure customers and other third parties
- Train managers and employees on new policies, procedures, and protocols
- Identify managers responsible for implementing plan and monitoring compliance
- Name point person(s) to whom employee questions and concerns may be directed
- Train managers on patience and risk of retaliation issues
- Monitor effectiveness and compliance on an ongoing basis, a plan that is not followed may actually create more risk than no plan at all

Flexibility

- Employers must continue to monitor applicable orders as they evolve or are lifted
- Orders will likely be lifted in phases and a patchwork of restrictions will continue
- Multi-state employers must take comply with evolving orders in multiple locations
- Monitor changing guidance and best practices
- Create planning materials that could be used if there is a second wave of infections and closures or a future pandemic or other event
- Evaluate relevance and application of existing policies in the wake of the COVID-19 shutdown, and, where relevant, create new policies arising based on plan
- Create, review, and revise pandemic preparedness plans to prepare for a second wave of COVID-19-related shutdowns or other future pandemics considering

Illinois State Capitol Report

JESSICA NEWBOLD
IMSCA
Executive Director

The Illinois General Assembly wrapped up a four day special legislative session in the early hours of Sunday, May 24th. Legislators were able to accomplish their basic goals and a few other important legislative measures. Lawmakers approved legislation allowing mail-in voting for the 2020 General Election, expansion of unemployment insurance benefits and health care assistance for those hit hardest by the COVID-19 pandemic. Legislators also threw a lifeline to struggling bars and restaurants by approving legislation allowing them to sell "to go cocktails" for pickup and delivery. Most importantly, legislators approved a $40 billion placeholder state budget, and to the surprise of many, also passed a bill revamping the tax structure for a Chicago casino which was seen as a major hurdle to getting one built in the city.

The approved spending plan relies heavily on federal funds and authorizes Governor Pritzker to borrow up to $5 billion from the Federal Reserve. The state is also hoping to get flexibility from the federal government on how it spends $3.5 billion in federal coronavirus relief funding Illinois has already received. It was recently announced that Illinois will be the first state in the nation to borrow from the Federal Reserve. Illinois plans to borrow $1.2 billion for one year.

The budget largely maintains funding levels from the FY 20 budget, however, the Capital Development Board (CDB) and the Illinois Department of Transportation (IDOT) each received funding increases for FY 21. The CDB is receiving an FY 21 budget of $36.4 million, which is an increase of $4.6 million over FY 20. This increase comes in the form of operational expenses for an increased headcount and job-related outreach necessary to implement the "Rebuild Illinois" infrastructure plan that was passed last year. Appropriations for IDOT total $3.8 billion, which is an increase of $85 million over FY 20. The majority of the increase represents an increase in transportation revenue coming from the capital proposal. Other state agencies that received funding increases include the Department of Public Health, the Department of Human Services and the Department of Children and Family Services while schools, universities and other state agencies funding remains level. Democrats characterized the approved budget as "a series of tough choices", and the approved spending plan is a result of working with the federal government and placing Illinois on a road to slow and steady financial recovery. The spending plan was approved along party lines, as Republicans objected to an increase in state spending during this time of fiscal uncertainty and

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disagreed with the reliance on funding from the federal government.

The approval of the revised tax structure for a Chicago casino was viewed as tremendously important to the entire state because of its role in funding the statewide "Rebuild Illinois" construction plan. The approved changes for the city casino will send an estimated $500 million in annual revenue to the statewide infrastructure plan. This is a mere estimate because statewide gambling revenues have also been down as a result of the coronavirus outbreak. Along with many other businesses, casinos have been closed and it is still uncertain when and how they will be able to reopen. Casino operators will likely need to make some changes in how they operate in a post-COVID-19 world.

While the Illinois General Assembly succeeded in passing a spending plan, the unfortunate reality is our state's finances remain up in the air. The COVID-19 pandemic continues to negatively impact our state and national economy, and created an unexpected loss of revenue across the nation. The Commission on Government Forecasting and Accountability recently released May revenue numbers. The report shows the state's base general fund revenues are $1.34 billion below 2019 levels. This decrease is directly related to COVID-19's hit on our economy which includes sales tax decreases and income tax deadline delays, among others. Hopefully Illinois' revenue numbers will start to improve as the economy slowly reopens.

In addition to approving a spending plan for the state, lawmakers were also able to approve other important pieces of legislation. Issues that were addressed that are of most importance to the Illinois construction industry includes legislation addressing complicated issues involving workers' compensation and unemployment insurance as a result of the coronavirus outbreak, and sunset extensions for statutes that were set to expire by the end of the year.

The workers' compensation and unemployment insurance legislation was negotiated through the "agreed bill process". It is important to remember that changes to the workers' compensation system has a long history of adhering to this process – meaning, changes do not move forward unless all negotiators agree on language. Those who were involved in the negotiations on this issue include the Illinois Manufacturers' Association, Illinois Retail Merchants Association, the Illinois AFL-CIO and the Illinois Trial Lawyers Association. HB 2455 Senate Amendment #2 was the result of these negotiations and received bi-partisan support. The business community reported that while this legislation allows essential employees to receive rebuttable presumption, the approved bill will make it easier for employers to rebut those claims using an ordinary level of rebuttal; meaning an employer simply has to show "some evidence" that the employee could have contracted COVID-19 elsewhere, and that the employer was engaged in best practices. While this is not a perfect piece of legislation, it will make it easier for businesses to defend claims and will be significantly less costly than the Governor's emergency rule that was ultimately blocked with legal action. Details included in the approved bill are:

- The term "COVID-19 first-responder or front-line worker" is defined as: all individuals employed as police, fire personnel, emergency medical technicians, or paramedics; all individuals employed and considered as first-responders; all workers for health care providers, including nursing homes and rehabilitation facilities and home health care workers; corrections officers; and any individuals employed by essential businesses and operations as defined in Executive Order 2020-10 dated March 20, 2020, as long as individuals employed by essential businesses and operations are required by their employment to encounter members of the general public.
- Employers can use the lowest standard to rebut the rebuttable presumption. An employer simply has to show that they were following CDC or IDPH guidance and practices.
- The employers experience modification will not change due to COVID-19.
- A home or residence is not the workplace.
- The presumption ends December 31, 2020.
- The employee has to have been exposed and contracted the virus. Simple exposure does not qualify.
- Prior to June 15, an employee has to have a positive diagnosis or medical test; on or after June 16, a positive test is required.

HB 2455 also includes changes to the unemployment insurance system. The Illinois Unemployment Insurance Trust Fund totaled nearly $2.5 billion at the start of the year. Due to a record number of layoffs as a result of the coronavirus outbreak, the fund has been drained. Early projections indicate that the Trust Fund could be in debt by $8 to $14 billion over the next three years. In order to receive federal aid, Illinois had to make two important changes to our unemployment insurance system, including: waiving the one-week waiting period, and making the layoffs a non-chargeable event for the employer. Additional details of what is included in the unemployment insurance package include:

- Employers will not be charged for layoffs between March 15, 2020 and December 31, 2020. These costs will be socialized in the system.
- Illinois will receive $2.1 billion in matching federal dollars to pay for the extended benefits

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(seven weeks) that kick in when the state's unemployment rate reaches a certain level.

- Illinois will receive $20 million in federal money to pay for administrative costs at the Illinois Department of Employment Security.
- Non-instructional educational employees (custodians, bus drivers, etc.) who work for school districts will receive unemployment insurance benefits if they are not paid over a 12-month period of time. These are employees who typically take second jobs in the summer and may not be able to find short-term employment this summer. The federal government will fund half of the cost.
- Business and labor agreed to cooperate on efforts to obtain additional federal assistance to help resolve the coming Trust Fund deficit. Illinois' previous record deficit was $3 billion so the coming debt could significantly surpass that total.

One of IMSCA's legislative initiatives this year was SB 3496, which sought a 5-year extension to a law originally passed in 2012 and again in 2016. Section 6 of the Illinois Mechanics Lien Act provides that to obtain a lien under the Act, work must be done or the material furnished within 3 years from beginning the work for owner-occupied residential property, and within 5 years for other types of property. This law was set to expire December 31, 2020. IMSCA's proposed language was included in the regulatory sunset bill package, HB 2174 Senate Amendment #2, and is renewed through December 31, 2021.

The Capital Development Board's statutory authority to use the single prime delivery method was set to expire on January 1, 2021. SB 1857 House Amendment #3 extends this statute through January 1, 2022. No other changes to the CDB's ability to use single prime are being made, and the current parameters for using single prime remain the same.

The Illinois General Assembly is not scheduled to return to Springfield until November 17, when they will meet for Veto Session. Since the spring legislative session was derailed due to the COVID-19 pandemic, it is likely the fall veto session will be more busy than usual. IMSCA will continue to provide updates on issues that may arise that are of importance to the Illinois construction industry. ■

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WHAT'S THE BIG DEAL ABOUT BEING A MANAGEMENT TRUSTEE?

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This has led to the increasing use of "professional" trustees – individuals not otherwise associated with the Fund, who have gained the expertise through training or extensive experience and are paid to act as trustees.

Here's the other side. This position is too important to leave to professional trustees (full disclosure – I have been a professional trustee on three different sets of funds)! While a professional trustee brings an intimate understanding of the workings of trusts, they often do not have the same understanding of the industry involved. A truly knowledgeable management trustee who also happens to be a principal for one of the contributing employers is still the best combination. Let's be honest, much of what happens at the trust fund level influences what happens in collective bargaining. Moreover, working together as trustees gives labor and management representatives the opportunity to get to know and trust each other in a far less adversarial situation than at the bargaining table.

So what about the liability? First, despite all the concern, suits against fund trustees are still relatively rare. Second, funds are able to purchase millions of dollars of fiduciary liability insurance. And the trustees' sponsoring organizations are able to purchase Errors and Omissions Insurance. Both of these coverages should be free to the trustee. Third, there is a vast amount of high quality training available for trustees with all levels of experience – the International Foundation of Employee Benefit Professionals (IFEBP) alone offers dozens of classes a year. Again, all of this training should be free to the trustee. Finally, almost every fund now has a veritable stable of professional advisors: lawyers; actuaries; and consultants. In most, but not every, case if a trustee acts on the reasonable advice of a fund professional, they will be judged to have acted in good faith.

I was a construction association executive for almost 35 years, and for most of those years I served as a management trustee on various funds. I felt that trust fund work was one of the most important and rewarding aspects of my job. Yes, there is some risk, but it is minimal, and contractors (of all people) are certainly familiar with risk! I strongly encourage all of you management folks not to leave this critical position to outsiders.