



# BUSINESS LEADER

Volume 6 Number 1 March 2020

## Progressive Income Tax

A graduated income tax would be devastating for businesses, workers and growth in Illinois.

The Chamber is dedicated to educating Illinois voters on why the constitutional amendment should be defeated.





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# BUSINESS LEADER

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## Business Landscape Continues to Change



**TODD MAISCH**  
**PRESIDENT AND CEO**

*Though there are many uncertainties in the business world today, the Illinois Chamber is dedicated to being a stable, and constant support during these unprecedented times.*

Hello. As you know, the business world is a very different place than it was in our last issue. The corona virus (COVID-19) continues to change the landscape of how businesses are operating. The Chamber has and will continue to keep our members updated as the situation evolves.

In this issue of Business Leader Magazine, we will address the topic on everyone's mind's today: information on best practices for dealing with COVID-19 in their place of business.

We will also touch on our legislative priorities that we had planned to focus on this session. As session gets further delayed these priorities may change, but our commitment to pro-business solutions remains the same.

You will also hear from the Executive Director of Tax Institute at the Illinois Chamber Keith Staats in his column that dives into the problems with the progressive income tax amendment that will be on the ballot this November.

Allison P. Sues, partner at SmithAmundsen LLC, contributed an article on the potential legal risks that come with merging recruitment with technological innovation when employers seek to reduce costs and time in the hiring process through artificial intelligence (AI) tools.

Suzannah Wilson Overholt, also a partner at SmithAmundsen LLC, discusses how employers can combat

negative effects of the opioid crisis increasing accessibility to various treatments through their health plans and adopting policies allowing time for necessary treatment for employees in need.

We have a preview of our Annual Luncheon scheduled for Thursday, September 24, 2020 in Chicago, and a member spotlight on the Illinois Municipal Electric Agency that delivers the bulk of power and energy to 32 municipal electric systems from across Illinois.

Though there are many uncertainties in the business world today, the Illinois Chamber is dedicated to being a stable, and constant support during these unprecedented times. Please reach out to us with any ideas on how we can better assist you in helping to create stronger business and a stronger Illinois.



**ILLINOIS  
CHAMBER**

**Strong Women. Stronger Illinois.**

**1920**  
women granted right to vote

**1963**  
congress passes equal pay act

**1972**  
equal rights amendment passed

**1983**  
first woman in space

**2007**  
first woman elected speaker of the house

**2013**  
ban lifted on women in combat

**2016**  
first woman presidential nomination

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*This is the second of a series of articles on the proposed constitutional amendment to authorize a graduated income tax.*

*By Keith Staats  
Executive Director  
Tax Institute  
Illinois Chamber of Commerce*



# Progressive Income Tax

## Debunk / Round Two

This is the second of a series of articles on the proposed constitutional amendment to authorize a graduated income tax. As discussed in my last article, the Illinois Chamber of Commerce strongly opposes the graduated income tax. The case against the graduated income tax is clear.

The proponents of the graduated income tax in the Illinois General Assembly passed the proposed amendment in tandem with legislation, P.A. 101-0008, to implement a graduated income tax on individuals by establishing tax rates. This legislation only becomes effective if the voters approve the graduated income tax constitutional amendment.

The legislation is a carefully crafted political document. P.A. 101-0008 was designed to allow the proponents of the constitutional amendment to argue that a graduated income tax will raise sufficient additional revenues by taxing only the “rich.” However, as I discuss below, when you dive into the numbers and review the proposed state budget for FY 2021, this argument falls apart.

Under P.A. 101-0008, the burden of the tax increase would fall on approximately 62,000 individual

taxpayers, and all corporations. Taxes on individuals would increase by \$3.7 billion and corporate income taxes would increase by \$332 million. Taxpayers with incomes below \$250,000 would receive a modest tax cut totaling \$693 million. The combination of tax increases and modest tax cuts for some taxpayer is projected to result in net additional revenues of \$3.4 billion.

The additional revenues raised from P.A. 101-0008 would go into the black hole that is the State of Illinois budget. The additional revenues would not provide revenues to address the State’s \$6-7 billion dollar bill backlog, the \$137 billion underfunding of the pension systems, or towards any sort of property tax relief.

Let’s dive into the numbers.

## HOW THE ADDITIONAL REVENUES ARE RAISED

P.A. 101-0008 raises the marginal tax rate for individuals with income above \$250,000, and joint filers with income above \$350,000, to 7.75% from the current flat rate of 4.95%. The legislation slightly reduces the marginal rates on income below \$250,000 for most, but not all taxpayers.

### *The tax increases are steep*

In the case of individual filers, the marginal tax rate increases to 7.85% on income from \$350,001 - \$750,000. Individuals with income over \$750,000 are taxed at 7.99% on a *non-graduated* rate from the first dollar of income – not at the series of increasing marginal rates imposed on lower income taxpayers.

The marginal rate on joint filers increases to 7.75% on income between \$250,000 and \$500,000. Income of joint filers from \$500,000 and \$1,000,000 is taxed at a 7.85% marginal rate. Joint filers with income over \$1,000,000 are taxed at 7.99% on a *non-graduated* rate from the first dollar of income – not at the series of increasing margin rates imposed on lower income taxpayers.

Thus, P.A. 101-0008 does not impose a graduated rate structure on all taxpayers. Those with the highest incomes continue to be taxed at a flat rate.

P.A. 101-0008 also increases the corporate income tax rate from 7.00% to 7.99%. When the personal property tax replacement income tax is added, corporations would have a total tax rate of 10.49%.

### *The tax reductions are quite modest*

The legislation provides limited tax decreases to some individuals. The decreases result from a combination of reducing the marginal rates on income below \$100,000 below the current 4.95% flat rate, and by increasing the property tax credit against the individual income

tax from 5% to 6%. The increase in the property tax credit is limited to individuals with income of less than \$250,000 and married couples with income of less than \$500,000. The legislation also provides a child tax credit of \$100 for individuals with income of less than \$40,000 and joint returns with income of less than \$60,000. The child tax credit is phased out for higher incomes by reducing the credit by \$5 for each \$2,000 by which income exceeds either \$40,000 or \$60,000.

The decreases are quite modest when compared to the increases on higher earners. For example, a couple filing a joint return with \$100,000 in taxable income would see a reduction of income tax prior to any credits from \$4950 to \$4885 a reduction of \$65. If that couple also owns a home and pays \$5000 annually in property taxes, the increase in the property tax credit would result in an increase in the credit of \$50 from \$250 to \$300. If the couple has a child, they would be ineligible for the child tax credit because of the phase-out of the credit for joint filers with incomes exceeding \$60,000.

### *Inflation is ignored and there is a “marriage penalty”*

P.A. 101-008 does not index the tax brackets for inflation. As a result, every year there will be stealth tax increases on individuals caused by “bracket creep” due to inflation. It is also notable that the legislation does not eliminate the “marriage penalty.” The 7.85% bracket begins at \$350,001

for single filers and \$500,000 for joint filers. The highest bracket – 7.99% begins at \$750,000 for individuals and \$1,000,000 for joint filers.

## **HOW THE ADDITIONAL REVENUES ARE TO BE SPENT**

The Governor’s proposed budget for the fiscal year beginning July 1, 2020 projects \$1.4 billion dollars in additional income tax receipts for the second half of the fiscal year if the graduated income tax constitutional amendment is passed by the voters. At the time the Governor’s budget was proposed, it projected natural growth from existing revenue sources of about \$600 million.

Of the new revenues, only \$100 million would be designated as an additional payment toward the state’s \$137 billion pension shortfall. The total amount devoted to pensions in the proposed budget would still fall far short of the actuarially-required amount to begin reducing the pension backlog. The budget also does not devote significant funds to pay down the state’s bill backlog which has been between \$6 and \$7 billion during the current fiscal year.

The proposed budget does not provide enough new funding to local governments to allow for any type of property tax relief. The largest portion of local property tax bills are for education. The Governor’s proposed budget would devote an additional \$350 million to K-12 education funding if the graduated income tax amendment is adopted and P.A. 101-0008 becomes

*Under the Governor's proposed budget, if the graduated income amendment does not pass, the budget proposes to underfund the amount of income tax receipts deposited into the corporate income tax refund fund by \$300 million.*

effective. This amount of additional funding distributed through the new education funding formula adopted two years ago, will not result in a reduction of the property taxes devoted to K-12 education.

Passage of the graduated income tax amendment has not been coupled with any meaningful state spending reforms. The additional funds to be generated by the adoption of the graduated income tax and P.A. 101-008 will just be sucked into the bottomless black hole of state spending.

### **IF THE GRADUATED INCOME TAX AMENDMENT DOES NOT PASS THE GOVERNOR THREATENS TO BALANCE THE BUDGET ON THE BACKS OF BUSINESS**

The Governor's proposed budget "reserves" the \$1.4 billion in anticipated additional state revenues from the adoption of the graduated income tax in case the amendment is unsuccessful. Over half of that amount would come from the pockets of Illinois businesses.

Three hundred million dollars of the amount "reserved" would come from shorting the corporate income tax refund fund. The Illinois Income Tax Act requires that a portion of all state income tax receipts are to be deposited in the income tax refund fund. The actual percentage of corporate receipts devoted to refunds is adjusted annually to ensure that there are sufficient funds available to pay income tax refunds to corporations and individuals as those refunds are requested and due. If the State does not pay refunds in a timely manner, state law provides that taxpayers are entitled to receive interest on the late refunds.

Under the Governor's proposed budget, if the graduated income amendment does not pass, the budget proposes to underfund the amount of income tax receipts deposited into the corporate income tax refund fund by \$300 million. Corporate income tax filers would not receive funds to which they are entitled when those refunds are due because there would be insufficient funds in the refund fund. Illinois business will be forced to make a "stealth" loan to the State of Illinois in the amount of \$300 million. Currently, Illinois is required to pay interest on unpaid income tax overpayments at 5%.

The Governor's proposed budget also proposes to "reserve" \$400 million of the state's contribution to state employee group insurance costs. This is another stealth loan to the state by the Illinois businesses that are involved in providing health care to Illinois state employees and retirees. Depending on the nature of the payment, the state will owe interest on these late payments at an annual rate of either 12% or 9%.

### **VOTERS SHOULD NOT BE FOOLED**

Voters should not be enticed into voting for the graduated income tax amendment by the promise of token tax decreases that will likely be temporary. The appetite for spending tax dollars by past, current, and future General Assemblies is insatiable. If the graduated income tax amendment passes, it is inevitable that the General Assembly will be back to raise taxes on a greater and greater percentage of Illinois taxpayers of lower and lower incomes.





For small businesses, there's  
**BIG NEWS**  
that could save lives, property and prevent economic loss.

Fire sprinklers can control a fire so your business will not close down for days... or for good like this business. But now there's another reason to install fire sprinklers in your building. **A recent federal tax incentive allows a small business to fully expense the cost of installing or retrofitting a fire sprinkler system within one year.\***

Fire sprinklers prevent the spread of fire, protecting your business, employees, and patrons. If your building is not protected with fire sprinklers, now is the time to retrofit. If your building is protected, make sure the system is properly inspected, tested, and maintained by a licensed fire sprinkler contractor.

*\*Consult with your tax professional. Refer to the changes in Section 179 of the tax code per Public Law 115-97.*



**Northern Illinois Fire  
Sprinkler Advisory Board**  
*Save Lives. Protect Property.*

**[FireSprinklerAssoc.org/federal-incentives](https://firesprinklerassoc.org/federal-incentives)**

#### **FIRE SPRINKLERS OFFER THESE BENEFITS:**

- Prevent loss of life and injury
- Protect property and investment
- Prevent economic loss due to business closure
- Insurance savings and decreased liability risks
- Prevent potential eyesore to community (post-fire)
- Protect firefighters and first responders

# Overview of Significant Bills

By Chamber Staff



## TAXES

The Illinois Chamber of Commerce Council directors are tracking a number of bills this year concerning taxes, energy, employment law, technology and more. Below is an overview of some bills of significance this year.

### TAXES

First and foremost, the progressive income tax amendment is set for a vote on the November 2020 ballot. Along with many other groups and local chambers throughout the state, the Illinois Chamber will be fighting this tax every step of the way.

We will also be opposing the Cook County Assessor's so-called "data modernization" legislation that would radically change how property taxes are assessed and could result in large tax increases and possible exposure of proprietary information.

Additional tax bills include:

#### **HB 4670 (McCombie) Enhance the R&D credit by modifying the base period calculation**

This Chamber Tax Institute initiative amends the research and development credit against the Illinois Income Tax. The legislation makes the credit permanent. The credit is also amended to change the calculation of the credit. The change in calculation will help existing Illinois companies that maintain a steady level of research and develop in Illinois. Currently, the credit may be claimed only by companies new to Illinois and only to increases in

research and development by existing Illinois companies.

#### **SB 2516 (Bush) Permanent research and development tax credit**

Amends the Illinois Income Tax Act providing that the research and development credit applies on a permanent basis.

#### **SB2906 (McConchie) Amends the Uniform Penalty and Interest Act to automatically rescind certain underpayment penalties**

Amends the Uniform Penalty and Interest Act providing that if a Department of Revenue audit discloses that a taxpayer has paid at least 95 percent of the tax required to be shown due on the return for the tax period at issue, the underpayment penalty that would otherwise be due is rescinded automatically.

This bill also provides that the penalty for failure to pay the tax shown due or required to be shown due on a return shall be 15 percent (instead of 20 percent) of any amount that is paid after the date the Department of Revenue has initiated an audit or investigation of the taxpayer.





# EMPLOYMENT LAW

## EMPLOYMENT LAW

In employment law, federal changes regarding sick leave have been top of mind around the country due to the corona virus impact on the workforce. We will continue to engage on this issue when session returns.

Though we were not always supportive of the legalization of recreational cannabis, the Chamber came to the table to ensure we negotiated the strongest workplace protections in the nation into the final law. We expect some of those protections to come under attack this year and we will be vigilant in opposing any legislation that would weaken the rights of employers to maintain a drug-free workplace.

We will continue to engage in discussions on sexual harassment and ethics legislation. While many of these laws start in the public sector, experience tells us that this kind of legislation typically trickles out to the private sector and we are prepared if and when new legislation is proposed that would change regulations for businesses.

### **HB4623 (Morgan) Employee Cannabis Use Termination Guidelines**

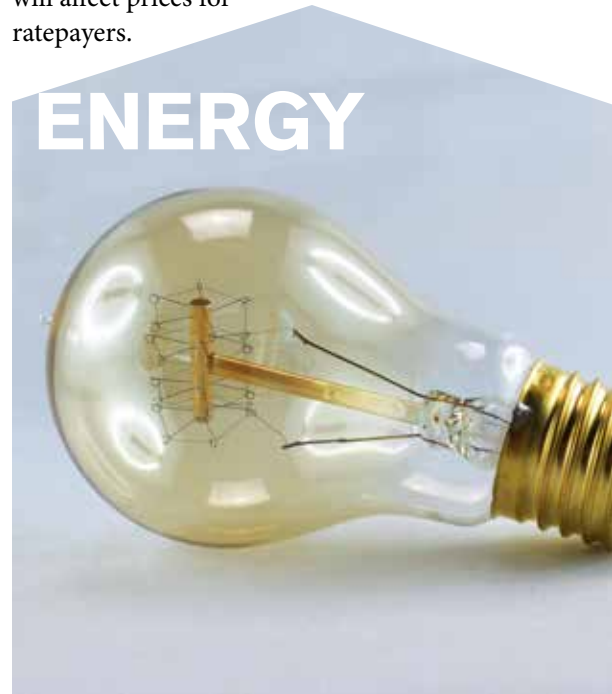
Seeks to protect registered qualifying patients from having their employment terminated if the registered qualifying patient solely fails a drug test. An employer is allowed to enforce preemployment drug testing, zero tolerance, random drug testing or drug free workplace policies if the policy is applied to registered qualifying patients in safety sensitive positions. It adds that no cause of action is created or implied if an employer disciplines or terminates the employment of a registered qualifying patient when enforcing a drug policy that is in compliance.

### **SB3307 (Van Pelt) Employer/Employee Expense Reimbursement Guidelines**

In a provision requiring an employer to reimburse an employee for all necessary expenses or losses incurred by the employee within the employee's scope of employment, requires the employer to reimburse the employee within 30 days after receipt of the necessary expenditures or losses. An employer is not liable unless the employer required (rather than authorized or required) the employee to incur the necessary expenditure or the employer failed to comply with its own written expense reimbursement policy. For an expenditure to be reimbursable, the expense must be required by the employer.

## ENERGY

We are expecting energy to be a major issue this session. The Chamber strongly believes that global climate policy should not be decided in Springfield, Illinois. We will continue to fight against legislation that includes unrealistic goals for carbon emission that will drive up energy prices for homes and businesses. We will closely be monitoring new de-facto subsidies for nuclear powerplants and any legislation that will affect prices for ratepayers.





# TECHNOLOGY AND DATA SECURITY

## TECHNOLOGY AND DATA SECURITY

Our Technology Council expects another busy year fighting onerous biometric legislation that could impact businesses of all sizes from data companies to local florists. We are also watching for the resurgence of restrictive data privacy legislation similar to recent legislation passed in California that we were able to fend off last year.

### HB5204 (Wheeler) Cybersecurity Legal Defense

This bill creates an affirmative defense for every covered entity that creates, maintains, and complies with a written cybersecurity program that contains administrative, technical, and physical safeguards for the protection of either personal information or both personal information and restricted information and that reasonably conforms to an industry-recognized cybersecurity framework.

A covered entity's cybersecurity program will be designed to do all of the following: protect the security and confidentiality of information, protect against any anticipated threats or hazards to the security or integrity of information; and protect against unauthorized access to and acquisition of the information that is likely to result in a material risk of identity theft or other fraud to the individual to whom the information relates.

### HB5374 (Durkin) BIPA damages right to civil action limitation

This legislation amends the Biometric Information Privacy Act. It provides that an action brought under the Act must be commenced within one year after the cause of action. It provides that a prevailing party may recover: against a private entity that negligently violates the Act, actual damages (rather than liquidated damages of \$1,000 or actual damages, whichever is greater); or against a private entity that willfully (rather than intentionally or recklessly) violates the Act, actual damages plus liquidated damages up to the amount of actual damages (rather than liquidated damages of \$5,000 or actual damages, whichever is greater).

This bill also provides that prior to initiating any action against a private entity, the aggrieved person provides a private entity 30 days' written notice identifying the specific provisions the aggrieved person alleges have been or are being violated.



## HB5375 (Durkin) BIPA, no right to action

This bill amends the Biometric Information Privacy Act. This legislation removes the private right to action under BIPA. It Provides instead that any violation that results from the collection of biometric information by an employer for employment, human resources, fraud prevention, or security purposes is subject to the enforcement authority of the Department of Labor.

This bill also provides that all complaints will be filed with the Department within one year from the date of the violation. Provides that any other violation of the Act constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act, with enforcement by the Attorney General or the appropriate State's Attorney.

## INFRASTRUCTURE

We will work with the Governor's Office, legislators and stakeholders throughout the implementation of the Rebuild Illinois capital bill. Besides the roll out, we will continue to be involved in discussions about public-private-partnerships and other innovative funding ideas to ensure Illinois doesn't go another decade without a capital program.



# HEALTH CARE

## HEALTH CARE

COVID-19 has rightly has taken over as the number one topic facing the Chamber's Healthcare Council members, and the public at large. With an uncertain future when the Illinois General Assembly will reconvene, leaders have discussed an abbreviated session to address critical legislative items, like passing a budget prior to the start of the next fiscal year on July 1.

In the health care realm, one of those critical items is General Assembly approval of a new hospital Medicaid assessment, which brings in billions of dollars to the state budget. For those who are unaware, the assessment is essentially a tax on hospitals, which is then matched with federal funds and used to partially fund the state's Medicaid program. It is estimated that the legislation must be passed by the first week in April in order to be approved by the federal government in time, but COVID-19 has certainly complicated timelines at each level of government.

We remain a leader in the fight against dangerous restrictions on best-in-class processes to sterilize medical equipment and materials, such as surgical kits, that could negatively impact the quality of the health

care for our employers and employees. There are also several insurance mandates that could make health care more expensive for employers and limit employees' ability to receive benefits.

In the employer insurance space, we have concerns with legislation that would roll back prior authorization policies (HB5510) that help keep insurance affordable, although we are hopeful that a negotiated resolution can result that will be agreeable to both the Illinois State Medical Society and the broader employer community.

In other legislative news, there are several bills that we have tracked this session that are problematic to the business community.

## HB3493 Creates the Prescription Drug Affordability Act

Creates a prescription drug affordability board to regulate the price of pharmaceuticals in the state. This draconian bill was voted down in committee on March 4. We opposed this legislation because it would have an incredible chilling effect on the research and development of new life-saving drugs, and would send a signal that Illinois doesn't want to be a life sciences hub.

# INFRASTRUCTURE







## HEALTH CARE

### **HB 4362 Creates the Wholesale Importation of Prescription Drugs Act**

Sets up an incredibly problematic drug importation scheme, jeopardizing the health and safety of patients.

### **HB2604 Creates the Safe Patient Limits Act**

Creates forced nurse staffing ratios among Illinois hospitals, ballooning local budgets. We support SB3636, which is a common-sense alternative that gives nurses a greater say in staffing decisions.

### **SB2470 Insurance Coverage Changes**

Restricts cost-saving measures that would prevent health insurance plans from changing drug formularies or provider networks within a plan year. There are many good reasons to change plans, including when a new more affordable drug hits the market.

We will continue to engage in these issues and others that come our way once session returns. For a complete listing, we encourage you to stay tuned by signing up for our Government Affairs Report that comes out every Friday during session and stay in touch by engaging with our staff on any issues of interest. You can learn more about both by going to [ilchamber.org](http://ilchamber.org) or emailing [ddurham@ilchamber.org](mailto:ddurham@ilchamber.org).

## FEEDBACK

*By Laurie Silvey  
Associate VP, Business Services Division  
Illinois Chamber of Commerce*

### **HOUSE BILL 402**

This year, the Chamber has made it a priority to support initiatives to help support small and medium sized businesses. Illinois State Representative Mike Murphy introduced Chamber-backed legislation to allow small and medium size businesses to create a tax-free fund to save for major capital expenditures. The program allows for future savings similar to how 529 savings accounts allow parents to save for college.

House Bill 402 amends the Illinois Income Tax Act to create an income tax deduction for up to \$50,000 per tax year contributed to a small business asset purchase account and all interest earned on such accounts during the tax year.

This legislation provides that a “small business asset purchase account” means an account established by a taxpayer, the proceeds of which are used to purchase property used primarily in Illinois for which a federal income tax deduction is claimed under Section 179 of the Internal Revenue Code.



*Todd Bringuet  
Sales and Design Team Manager  
Ace Sign Co.*

This idea originated with **TODD BRINGUET** the owner of Ace Sign Co, a family-owned business in Springfield, that was started six generations ago in 1878.

“The concept really started with being focused on doing things in a way that is very sustainable,” Bringuet said. “My great-grandfather and my grandmother always believed in building towards the future. We pay our employees first and then pay the bills and if we are fortunate, we have that opportunity to continue to advance the growth of the business. Equipment has a life and needs to be replaced; and if you aren’t continuing to advance technologically you will begin shrinking eventually.”

He continued, “Unfortunately, tax policies have the unintended consequence of discouraging savings. This legislation will allow people to think ahead more proactively to save for the future needs of the company. The Chamber did a fantastic job of creating that really quick connection to something people already should understand in this environment.”

Bringuet wants his business to be viable for many years. “If we can continue to build our sign company within Illinois and that creates more opportunity for more incomes that are a part of the Illinois economy and jobs, that’s a great thing.”

The account would allow businesses to save up for big capital projects. “You can’t use 100 percent of the savings in one calendar year. You have to prioritize and so this kind of helps us carry over some of the bigger challenges from one year to the next,” Bringuet said.

Bringuet appreciates the help from the Illinois Chamber for getting this bill in front of the legislature. “Todd Maisch (president and CEO of the Illinois Chamber) was one of the individuals who understood the concept,” he said “Businesses throughout Illinois are dealing with trying to grow and stay sustainable. Forming the framework of the language and working with Rep. Mike Murphy and Illinois State Sen. Chuck Weaver (R-Peoria) to bring it to the General Assembly has been a satisfying process.”

## HOUSE BILL 4151

The Chamber is opposed to troublesome legislation concerning workers compensation. House Bill 4151 (Hoffman) amends the Workers’ Compensation Act and removes three provisions regarding the eligibility of commissioner candidates including the provision that arbitrators must rotate their placement every two years. This would roll back a key reform of the 2011 Workers’ Comp deal.

Partner with Keefe Campbell Biery and Associates **SHAWN BIERY**, explained their opposition to the bill.

“If I understand HB4151 accurately, the best change will be that the Chairman shall have the discretion to assign arbitrators by county, rather than no arbitrator shall hear cases in any county, other than Cook County, for more than two years in each three year term,” Biery said

“In my humble opinion, the past change in the Act to force the Arbitrators to rotate seemed like a knee jerk reaction to a bad apple or two. I should call it a weak kneed decision because the leaders at the state level



*Shawn Biery  
Partner  
Keefe Campbell Biery & Assoc.*

# FEEDBACK

## HOUSE BILL 4151

were not able to just take the bad apples out of the equation and instead have subjected all of us to a rotation that was unfair to the Arbitrators who had to move around every couple years, rather than be trusted to honor the roles they had been placed into without favoritism.”

The other changes include amending the WC Act to make sure that going forward, each commissioner appointed required to be authorized to practice law in this State by the Illinois Supreme Court and to maintain this authorization throughout his or her term of employment.

Biery says this is a good thing. “I believe it also removes the provisions which require commissioner candidates to have served as an IWCC arbitrator for at least three years; or have at least four years of professional labor relations experience. Nothing is more frustrating to practitioners than having hearing officers who have limited experience in the venue so I would prefer they maintain some requirement of experience, preferably in the WC arena.”

## HOUSE BILL 4212

The Chamber is opposed to HB4212 that would keep auto dealers open on Sunday. It repeals the provision that no person may operate a place of business for the purpose of buying and selling motor vehicles and other associated activities on Sunday. These activities include buying, selling, bartering, exchanging, or leasing, or offering for sale, barter, exchange, or lease, any motor vehicle on Sunday.

“The first problem I see is that it’s very difficult to get qualified technicians already,” said Director of Legislative Affairs for the Illinois Dealers Association **JOE MCMAHON**, who works with about 750 new car franchise members. “If they have to work seven days a week, it will be even harder to keep employees in the field.”

He argues that staying open that extra day will not alter the number of vehicles sold but would increase costs. “You would incur more salary, heat, electricity and other operating costs,” he said. “Most people do most of their research online these days and they’re ready to go when they come into the dealership. We believe that increasing dealership operating costs without increasing sales will lead to higher prices for cars and the customers.”

He points out that the employees like being closed on Sundays. “The dealerships love it, their employees are happy,” McMahon said. “Everybody is used to being closed on Sundays and they like knowing they’re not going to miss out on sales and enjoy that day off.”



*Joe McMahon  
Director of Legislative Affairs  
Illinois Automobile Dealers  
Association*

*“Everybody is used to being closed on Sundays and they like knowing they’re not going to miss out on sales and enjoy that day off.”*

## BIPA

The influx of BIPA lawsuits that began in 2017 has been an unwelcome surprise for Illinois employers, particularly those employers that use finger scans for timekeeping purposes. Enacted in 2008, BIPA was directed primarily at protecting consumers. The statute's self-described "intent" references biometric information's "promise" in "streamlin[ing] financial transactions and security screenings," and the use of biometrics by "major national corporations ... at grocery stores, gas stations, and school cafeterias," with no mention of employees or employers, for that matter. Further, employers report that BIPA received no attention from the Illinois Department of Labor where they look for guidance on compliance.

Early attempts by employers to limit the cases were turned back by the Illinois Supreme Court in *Rosenbach v. Six Flags Entertainment Corp.*, No. 123186 (Ill. Jan. 25, 2019), which held that the plaintiff was sufficiently "aggrieved" under BIPA to proceed with his case if he alleged only technical violations of the statute even if he had suffered no actual injury as a result of the alleged violation.

The unwelcome surprise has quickly turned into a nightmare for Illinois employers as the plaintiffs' bar exploits numerous ambiguities in the language of the statute. For instance, the statute contains no time



Ada Dolph  
Partner, Seyfarth Shaw LLP

limitation on how long a plaintiff has to file suit over an alleged violation. It also contains no sensible definition of when a violation occurs, leaving an opening for the plaintiffs' bar to argue that a violation occurs each time an employee punches in an out of work and for lunch and breaks, amounting to multiple alleged violations per day. Multiply several alleged violations per day over plaintiffs' chosen five-year time period to sue, and you have extraordinary and unconstitutionally punitive statutory damage exposure for Illinois businesses.

Perhaps the most damning fact of all is that despite hundreds of class action lawsuits purporting to represent thousands of Illinois employees, there has yet to be any plaintiff who has been found to have been actually harmed by the collection of her finger scan for timekeeping purposes.

Illinois House Representative Leader Jim Durkin's (R-Western Springs) House Bill 5374 is an important step to reduce abuses of Illinois employers under BIPA by the plaintiffs' bar. It allows employers who rightly had no notice of this statute 30 days to cure any reported violations and implement policies governing the collection and storage of biometric information, quickly and efficiently achieving the goal of protecting biometric informa-

tion. HB5374 also rights the ship in the area of damages exposure for employers, removing the automatic statutory penalties and requiring a plaintiff to show she was actually damaged by the alleged collection or dissemination of the biometric information. It also cleans up perplexing ambiguities in the statute that could be read to require that employers terminate employees who refuse to consent to providing biometric information (requiring that an employee sign a release "as a condition of employment"), ensures sensitive policies governing biometric information are shared only with parties who have reason to know, and makes clear that collectively bargained resolutions to these issues should be honored.

Illinois State Senator Cunningham's (D-Chicago) introduction of SB3776 is a welcome indication that Illinois employers' concerns about this issue are being heard on both sides of the aisle, limiting damages for current and former employers to a plaintiff's "actual damages." However, it fails to address the concerns regarding the plaintiffs' bar's excessive counting of violations over a too-long time period. It should go further to reduce abusive litigation in the name of BIPA against well-meaning Illinois employers.

# 2020 Annual Luncheon

**Wintrust Financial Corporation Founder and Chief Executive Officer to headline 2020 Annual Luncheon**



*Edward J. Wehmer  
Founder and  
Chief Executive Officer  
Wintrust*

The 2020 Illinois Chamber of Commerce Annual Meeting & Luncheon is set for Thursday, September 24, 2020. The networking reception and luncheon will be held at the Grand Sheraton Chicago from 10am – 2pm.

This year's event will begin at 10am with our annual pre-event networking reception presented by the Illinois Chamber of Commerce policy councils. The luncheon will follow with our keynote speaker and other special guests, including Todd Ricketts, co-owner of the Chicago Cubs.

Additionally, we will have a presentation of the Edie Awards, presented in partnership with the Illinois Economic Development Association. These awards are given annually to recognize outstanding economic development projects that were completed during the previous year in Illinois. The nomination period for the awards will open soon.

This year's keynote will be Edward J. Wehmer, Founder and Chief Executive Officer of Wintrust (Nasdaq: WTFC). Founded in 1991, Wintrust is a financial services holding company, based in Rosemont, Illinois, and is currently the second largest bank group headquartered in the state.

Through its family of community banks, and a number of related companies and divisions, the company provides traditional commercial and community banking services, wealth management guidance, commercial insurance premium financing, mortgage origination, short-term accounts receivable financing and certain administrative services. Wintrust provides customer and community-oriented, personal and commercial banking solutions to those located in and around Chicago, southern Wisconsin and northwest Indiana.

# WINTRUST



Wehmer graduated from Georgetown University in 1976 and is a certified public accountant. His primary career focus has been banking, beginning at the accounting firm Ernst & Young, LLP, where he specialized in banking focused mainly on bank mergers and acquisitions for seven years. After leaving Ernst & Young, Ed was senior vice president and chief financial officer of River Forest Bancorp, a \$4 billion bank holding company in Chicago, Illinois from 1985 to 1991. While there, he was also president of the firm's largest subsidiary, Lincoln National Bank, in Chicago. He left in 1991 to start Lake Forest Bank & Trust Company, the first Wintrust bank.

Wehmer is a member and lead independent director of the board of directors of Stepan Company (NYSE) in Northfield, IL. He also serves as Chairman of the Board of Northwestern Memorial Foundation at Northwestern Medicine, on the audit committee of Northwestern Memorial Health Care, is a trustee for Lurie Children's Hospital and Foundation, and Vice Chair on the Board of the Finance Committee of the Archdiocese of Chicago. He is also a director of The Catholic Extension Society of America.

Ed and his wife, Dorothy, live in Lake Bluff, Illinois.



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# The Supervisor's Handbook

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## Combating the Opioid Crisis from Within

By Suzannah Wilson Overholt  
Partner, SmithAmundsen



*Studies indicate that the majority of employees would not seek help for a prescription opioid problem due to perceived stigma in the workplace.*

The average life expectancy in the U.S. has declined for three consecutive years. The Centers for Disease Control and Prevention (CDC) links that decline to three factors: the rise in drug overdoses, an increase in liver disease, and a rise in suicide rates.

More than 2 million Americans from all walks of life suffer from an opioid use disorder (OUD), and about two-thirds of those people are in the workforce. This has a tremendous financial impact on employers: In 2016, U.S. large employers covered \$2.6 billion on treatment for OUD and overdose, up from \$0.3 billion in 2004.

Both OUD and substance use disorder (SUD) more generally have a negative impact on the workplace through increased absenteeism, impaired job performance, and a decrease in the eligible workforce either due to candidates failing pre-employment drug screenings or fewer candidates applying as a result of their dependency.

Employers can combat these issues by increasing accessibility to various treatments through their health plans and adopting policies allowing time for necessary treatment.

Studies indicate that the majority of employees would not seek help for a prescription opioid problem due to perceived stigma in the workplace. Educating employees about the risks and signs of opioid use disorder and taking steps to minimize stigma surrounding OUD/SUD can help address – and reduce – the problem before it starts.

This can be accomplished by discussing the prevalence of OUD/SUD in America across all races, genders and socio-economic groups and recognizing individuals who have overcome the disease.

If an employee does come forward to seek help with OUD or SUD, understanding the interplay of leave policies is important. As usual, the FMLA and ADA play the leading role here. Under both, there is a distinction between an employee's ongoing substance use (not protected) and seeking treatment for that use (protected).

Under the FMLA, the employee has to be in treatment or scheduled to start treatment for such time to qualify as FMLA covered leave. The addiction to be treated must constitute a serious health condition. The employee has to be referred for rehabilitation by a health care provider and the rehabilitation needs to be provided by a health care provider or



by a provider of health care services, as those terms are defined by the FMLA.

The ADA provides that a person who has successfully completed a supervised drug or alcohol rehabilitation program or is participating in a supervised rehabilitation program and who is no longer engaging in substance use may be deemed a qualified individual with a disability.

Employers may also want to evaluate their zero tolerance policies

related to drug tests and drug and alcohol related conduct. Rather than require dismissal for a failed drug test or inappropriate behavior linked to OUD/SUD, a revised policy could refer the employee for treatment.

Any crisis requires a response plan to overcome and move beyond it. The opioid crisis is no different and, like most other issues, is best addressed through education and the consistent implementation of appropriate policies and procedures.

## Support your employees' efforts for better health and wellness

### Indirect costs from obesity-related illnesses may impact your organization

Employees with obesity are at a 76% increased risk of having a short-term disability<sup>1</sup>



Obesity may cause employees to miss more work days (absenteeism)<sup>2</sup>



Employees with obesity may file more workers' compensation claims<sup>3</sup>



Visit **NovoNordiskWorks.com** for resources that can help you understand, monitor, and improve employees' health

References: 1. Arena VC et al. *J Occup Environ Med.* 2006;48(11):1118-1124. 2. Finkelstein EA et al. *J Occup Environ Med.* 2010;52(10):971-976. 3. Østbye T et al. *Arch Intern Med.* 2007;167(8):766-773.

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## The Legal Risks of Using Artificial Intelligence in Hiring and Recruiting

By Allison P. Sues  
Partner, SmithAmundsen



*Employers are turning to AI to assist with many aspects of the recruitment and hiring process, including automating the sourcing of potential candidates ...*

As employers seek to reduce costs and time in the hiring process through artificial intelligence (AI) tools, they should also be aware of potential legal risks that come with merging recruitment with technological innovation.

Employers are turning to AI to assist with many aspects of the recruitment and hiring process, including automating the sourcing of potential candidates, screening from an existing candidate pool, and using AI assessment tools, such as conversational chatbots and video interviewing tools that can measure a candidate's strengths based on factors such as facial expression, word choice, body language, and vocal tone.

While these AI tools can be helpful in streamlining and strengthening the recruitment process, they can also cause unintended disparate effects on protected classes and place employers at risk for discrimination claims.

For example, an AI tool may prioritize candidates that live within the same zip code as the office because studies show that employees with favorable commutes stay longer with their employers. However, such an automated selection may eliminate candidates from areas primarily composed of minorities and have a negative disparate impact on African American and Latino candidates.

As another example, an AI tool may prioritize candidates with similar profiles to current successful employees in the company, which could put women or minorities at a disadvantage if the current workplace profile has more white men in higher positions.

The EEOC is currently looking at two instances of alleged discrimination in AI recruitment and hiring, and more charges and lawsuits on this issue are expected to appear.

The EEOC has made clear that employers using AI in their hiring process can be liable for unintended discrimination, and AI vendors regularly include non-liability clauses in their contract with employers. Therefore, employers must take steps to vet their AI tools and validate that

they are not causing unintended discrimination in recruitment.

Employers should test the AI algorithm's functionality in pilot systems to determine whether the results may be biased. For sizeable employers, an internal Chief AI Officer may be used. Smaller employers may prefer to contract with a data scientist.

Either way, these people should work with the employer's counsel to validate the data, assess for bias, and determine risk for legal liability, all while protecting the information under the attorney client privilege. While AI in recruitment is not regulated on a federal level yet, Illinois has just enacted a first-of-its-kind law called the Artificial Intelligence Video Interview Act.

Effective since January 1, 2020, this law requires employers who use AI to analyze video interviews of candidates to do the following:

- Employers must notify applicants that AI will be used in their video interviews.
- Employers must explain to applicants how the AI works and what characteristics the AI will be tracking in relation to their fitness for the position.
- Employers must obtain the applicant's consent to use AI to evaluate the candidate.



- Employers may only share the video interview with those who have AI expertise needed to evaluate the candidate and must otherwise keep the video confidential.
- Employers must comply with an applicant's request to destroy his or her interview video within 30 days.

The teeth of this Act remain uncertain as it does not explicitly provide for a private right of action or damages for violations of the statute. Regardless, employers should tread cautiously and proactively in utilizing AI in video interviews or at any other stage of the hiring and recruitment process.



# Responding to the Coronavirus Outbreak: Five Questions and Answers for Employers

By Scott Cruz  
Partner, Labor and  
Employment Practice Group  
Greensfelder, Hemker & Gale



*Note, an employee who has been diagnosed with COVID-19 would qualify for leave under the Family and Medical Leave Act (“FMLA”) as such an infection would constitute a serious health condition under FMLA.*

The coronavirus outbreak, known as COVID-19, has been spreading around the world, including the United States. Employers must respond in rapid fashion and face a series of questions regarding the impact the virus will have on the workplace. Below are answers to five questions all companies must know.

## **What if an employee presents with symptoms of COVID-19? Can we require the employee to leave work, and stay home?**

Yes. If an employee presents at work with symptoms generally associated with COVID-19, e.g. a fever or difficulty in breathing, especially after being in a high-risk location, the employer may send the employee home, and require that the employee remain at home to protect the other employees in the workplace from being infected, for the recommended 14-day quarantine period. The legitimate business reason for doing is the Americans with Disabilities Act’s (“ADA”) direct threat defense, specifically, that the employee’s presence would be a “direct threat” to the health or safety of the employee or others that cannot be reduced or eliminated by reasonable accommodation.

While an employee may allege that he or she is being “regarded” as disabled under the ADA, or that he or she is being singled out based on his or her particular race, the direct threat defense under the ADA should protect employers who are applying this policy uniformly and in a non-discriminatory manner.

## **What if an employee voluntarily discloses that he or she has tested positive for COVID-19 while having been in the workplace and working closely with others?**

The answer is largely the same as above: the employee should immediately be sent home and required to stay home. Note, an employee who has been diagnosed with COVID-19 would qualify for leave under the Family and Medical Leave Act (“FMLA”) as such an infection would constitute a serious health condition under FMLA.

Under the Occupational Safety and Health Administration (“OSHA”), all employers are required to provide a safe and health workplace, and under the ADA’s direct threat defense, that employee poses a direct threat to the health and safety of others in the workplace. Employers also should request that the infected employee identify all co-workers whom he or she has come in close contact with in the workplace in the past 14 days, and since the positive test.

The employer should inform those employees that they may have been exposed to COVID-19 and sent home to seek treatment from their health care provider to ensure they have not contracted COVID-19. It is important for employers to remember their obligation to not violate confidentiality laws by disclosing the name of the infected employee to others.

**Is an employer required to pay employees whom it is prohibiting from returning to work based on its reasonable belief that the employee may have been exposed to, or has contracted COVID-19?**

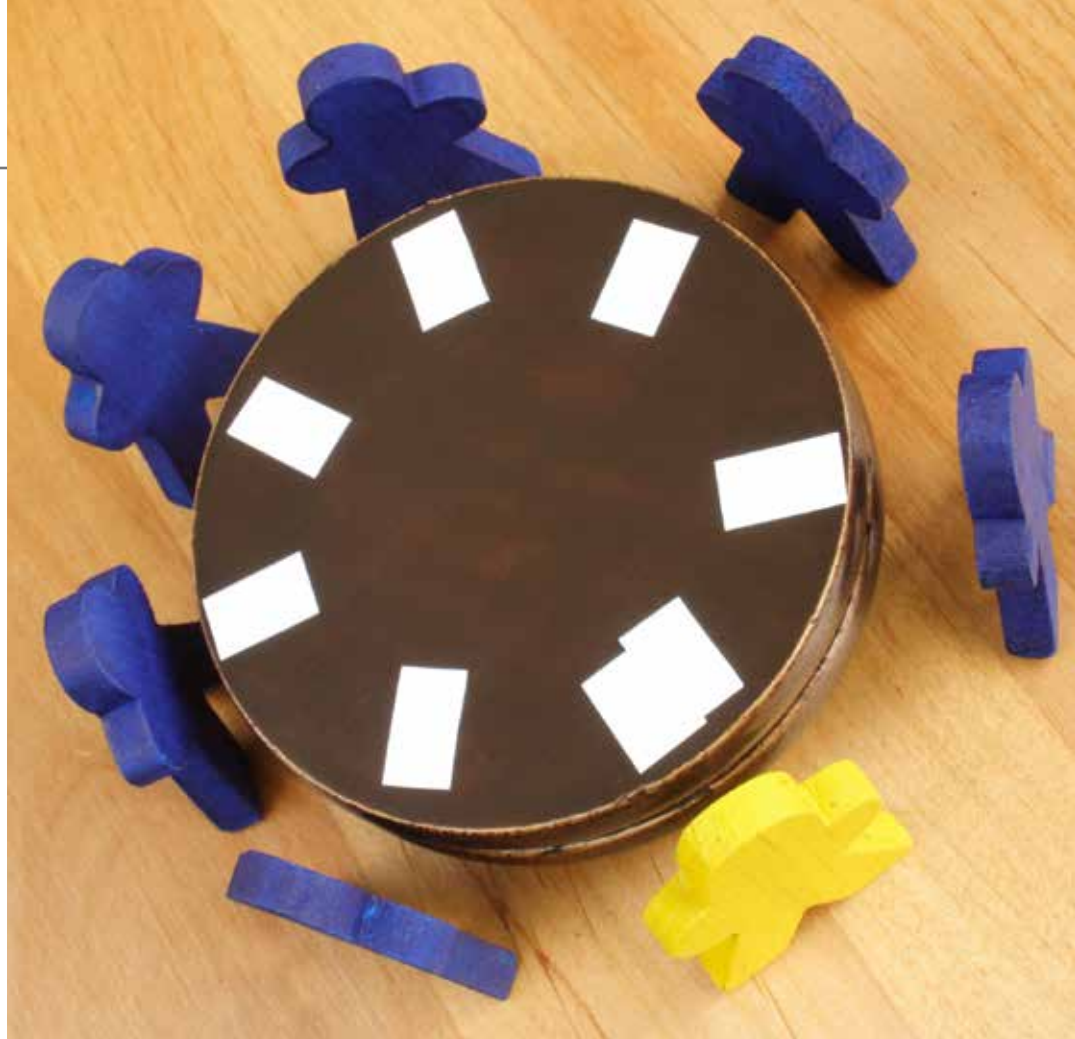
The answer is largely dependent on the employer's specific policies and the employee's specific classification under the Fair Labor Standards Act ("FLSA"). Exempt employees must be paid their full salary for any workweek in which they perform more than a *de minimus* amount of work. That payment may consist of the required use of accrued paid time off, unless such required use is inconsistent with the employer's paid time off policy.

Once the accrued paid time off is exhausted, the employer may not deduct from an exempt employee's salary unless the employee performs no services for the entire workweek.

Non-exempt employees are only entitled to be paid for any time he or she is performing work; again, absent an employer's paid time off policy and/or state or local law providing otherwise (e.g. paid sick leave, PTO or vacation).

**Can employers require employees whom its suspects have been exposed to, or have contracted COVID-19, be tested as a condition of returning to work?**

Yes, under the ADA's direct threat defense, and its obligation under OSHA, employers may require such employees to undergo job-related fitness for duty exams prior to



returning to work, which includes confirmation by the employee's health care provider of a negative test result.

**Can employer restrict international or domestic travel to high risk locations?**

So long as the travel is for business related reasons, yes; if for personal reasons, then likely not, or face a potential national origin discrimination claim if the personal travel is to the employee's home country. However, upon the employee return, especially if the travel was to a high-risk location, the employer should require the employee to stay home for the 14-day quarantine period and require a fitness for duty exam to return to work.



*Staci Wilson is the Director of Government Affairs. She provides legislative and regulatory advocacy at the federal, state and local levels.*

The Illinois Municipal Electric Agency (IMEA) is a not-for-profit unit of local government providing delivery of bulk power and energy to 32 municipal electric systems from across Illinois. Each IMEA Member community owns and operates its own electric distribution system. The Agency sells its members their power needs under long-term power supply contracts. To accomplish this goal, IMEA has assembled a portfolio of power supply ownership and power purchase agreements. IMEA was formed in 1984 by representatives of local government who wanted to achieve economies of scale in the production and procurement of wholesale electricity and the Agency does this by carefully planning its increasingly diverse power supply that it delivers it to its member municipalities.

IMEA backs its commitment to power supply excellence with a 24-hour-a-day, seven-days-a-week Operations Center. In addition, IMEA provides engineering, legal, communications, economic development, legislative and regulatory oversight services and an energy efficiency program for its Members. Under Management Services Contracts, IMEA manages the Illinois Municipal Utilities Association (IMUA) and the Illinois Public Energy Agency (IPEA). IMUA is a statewide trade association that provides a variety of services to municipal utility members, including advocacy before the Illinois General Assembly and other administrative and regulatory bodies both in Illinois and at the federal level, including Congress. IMUA also offers an array of training programs and activities for municipal electric,





natural gas, telecommunications water and wastewater treatment utilities. IMUA also administers a mutual aid program designed to assist members with restoration of energy services in the event of natural disasters, such as storms, floods and tornadoes. The IPEA is a wholesaler of natural gas to 12 municipal systems and two co-operative natural gas systems across Illinois.

Electricity keeps our communities and businesses thriving. IMEA's strategy is to diversify its sources as a means of hedging against market volatility, which allows our Members to have the ability to forecast their year-over-year power supply costs accurately. IMEA is committed to providing our members with a power supply that maintains a balanced

portfolio of generation projects, market purchases and power purchase agreements. Overall, IMEA is transitioning our generation to a cleaner, more diverse portfolio in a responsible fashion while ensuring reliable supply and providing stable costs to our members.

In June 2019, IMEA finalized a 15-year power purchase agreement with Geronimo Energy, taking a 50 MW stake in the planned 194 MW Green River Wind Farm in Lee and Whiteside Counties in Illinois. This cost-effective contract will provide enough carbon-free generated electricity to power 16,000 homes per year. The farm has recently begun commercial operations.

IMEA newly commissioned three utility-sized solar generation projects

in IMEA Member municipalities of Altamont, Naperville and Rock Falls. The Agency will take all the output of these facilities under 20-year power purchase agreements. Construction is set to begin this year. IMEA also signed an agreement with Ranger Power, a developer planning to put 149 MW of power online with its Big River Solar project in White County, starting in June 2021. IMEA will take a 25MW share of the solar projects output, starting in June of 2025.

The Chamber, and in particular through its involvement with the Energy Council, provides timely and effective legislative updates. Their quarterly meetings are interesting and productive.



*Pictured at right: Rantoul Solar Site*

**Illinois Chamber**

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The Unifying Voice for Business in Illinois.

**Newsradio WTAX @WTAX Mar 26**

State, federal **#unemployment** numbers skyrocket; @ILChamber's Maisch calls for "rebalancing" to help businesses while preserving lives **#twill** [Listen here](#)

**Illinois Chamber @ILChamber Mar 25**

Thanks to our IL financial community for working with @GovPritzker, @IllinoisDCEO Director @erinbguth & the administration to deliver meaningful relief for our small businesses. We are very proud of our member @ilbanker for stepping up during this crisis. [ow.ly/r8lx50yVT2D](#)

**Crain's Chicago @CrainsChicago Mar 19**

Over 40,000 Illinois residents filed for unemployment benefits in just two days. Illinois Chamber President and CEO Todd Maisch spoke to @GregHinz with @CrainsChicago on the number of unemployment claims in Illinois that has increased this week and will likely continue to grow. [Read article here](#)

**Illinois Chamber @ILChamber Mar 4**

Executive Director of the Illinois Chamber Energy Council Alec Messina penned an op ed for Midwest Energy News Network on the need to prevent unprecedented energy rate hikes that could come with the passage of the Clean Energy Jobs Act (CEJA).

**Illinois Chamber @ILChamber Mar 4**

Illinois Chamber President and CEO Todd Maisch discussed the dangers of a progressive income tax in last week's op ed in the @Suntimes. [Read article here](#)

