

BX BUILDERS EXCHANGE DAYTON

The Construction Journal
JAN 2019

**Legally Speaking:
The Regulatory
Slowdown**

**Team Building Night:
April 24, 2019**

**Share with Employees:
Five Tax Breaks
for New Parents**

**Marijuana and Drug Testing:
Getting Into The Weeds**



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THE CONSTRUCTION JOURNAL

Editor
RACHEL A. PINKUS



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dbx@assnsoffice.com

The Construction Journal is a review of
construction activity in the Miami Valley.

The Journal contains Plans on File,
Mechanic's Liens, Statistics, Industry News,
Notices and Builders Exchange Activities.

All information contained herein is considered reliable
to the best of our knowledge, and we accept no
responsibility for incorrect material secured from
outside sources.

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THE PLAN ROOM POST

From Plan Room Manager, John Grandetti



**John Grandetti,
Plan Room Manager**

Thank You: Hard to believe that we are at the end of another year already! We cannot thank you, our members, for making this another great year at the Builders Exchange! As we head into 2019, we have a few changes and programs to discuss.

Staff Changes: If any of you have had the good fortune of meeting Ashley Myers in our front office, I am disheartened to report that she will be leaving her position on January 4th to take a job at her daughters' daycare. We cannot thank Ashley enough for her customer service and effort for helping make the Builders Exchange work for the membership. A new face will be in place sometime in January if everything goes as planned.

Toolbox Viewer: Our members have longed used the Pro Viewer to do basic take offs and estimates for jobs on the site. Early in the fall we introduced the Toolbox Viewer. It has comparable features to IPIN Pro but eliminates the need to download software and removes a lot of the technical updates we had to make in order to get the viewer to work.

All of the tools are still present for the most part, and some got a nice update. We would encourage you to begin exploring this new viewer and check out the member help section to get a tutorial on the viewer.

And if you didn't know you could do online take offs with your BX membership, give me a call and I'd be more than happy to show you how to do it!

GM Program: If you have company titled GM vehicles, I would strongly encourage you to mention this to your dealer the next time you make an auto purchase. AS BX members, you are eligible for discounts on a wide range of vehicles simply by paying dues.

Healthcare Benefit: Healthcare is a tricky issue to handle, and politics has driven even more uncertainty into the market as of the past month. As a BX member, you are eligible to receive a quote for insurance through BX Benefits

If you have any questions, please contact the office so that we can get your information and see if the BXB Benefit Plan is right for your company.

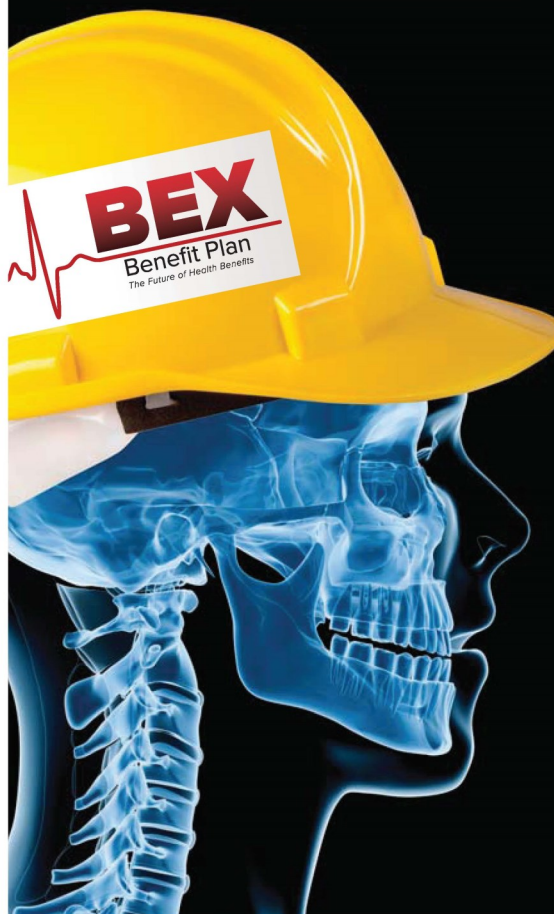
**The Builders Exchange of Dayton
Announces "Unlimited Notary Service" to
any BX Dayton Member!**

Contact Rachel Pinkus for details 937-278-5723



Examine your healthcare dilemma...

...take a look at the new
BEX Benefit Plan,
a better way to deal
with your company's
healthcare benefits!



The health insurance industry has changed dramatically in the last several years with the advent of the Affordable Care Act (ACA). This has forced many companies to change health plans and pay substantially higher premiums.

A new health benefit program called BEX Benefit Plan is an innovative alternative to the ACA. It's designed specifically for the Ohio construction industry, allowing for more coverage options and provider choices, including plans with copays and prescription drug cards. The BEX Benefit Plan uses demographics as well as medical underwriting to help determine a company's contribution rate, while still allowing for pre-existing conditions.

BXBenefits has been chosen as the exclusive agent to bring this self-funded Multiple Employer Welfare Arrangement (MEWA) health plan to the industry. Our member companies can expect the highest quality of service and dedication while receiving valuable advice, review and planning on a wide variety of comprehensive insurance products, all designed to meet the needs of the Ohio construction community.

For more information about the BEX Benefit Plan, contact Scott Tovissi at 877-987-9292 or email him at scott@bxbenefits.com.

Plan Advantages

- Utilizes Medical Mutual's SuperMed Plus provider network of physicians and hospitals
- Uses demographics and medical underwriting to determine each company's contribution rate
- Pre-existing conditions that are disclosed are covered as any other illness
- Eligibility, enrollment and COBRA administration are fully integrated
- All employers are provided with a Summary Plan Description (SPD) for the BEX Benefit Plan that meets the compliance regulations of the Employee Retirement Income Security Act (ERISA). (All employers are required to provide SPD's for all of their health and welfare benefits)
- Sole Proprietors are eligible to apply
- Plan year and deductible both run on a calendar year basis
- Flexibility in traditional plan offerings as well as Health Reimbursement Accounts and Health Savings Accounts if those suit your needs
- Self-Insurance Trust is reinsured to provide terminal liability to all participants
- Provides small employers with a cost competitive alternative to the Affordable Care Act (ACA)
- It is the only Multiple Employer Welfare Arrangement (MEWA) in Ohio designed specifically for the construction industry.
- Builders Exchange Benefits, Inc. (BXB) is the exclusive broker for this plan and will assist employers and employees wishing to enroll
- The BEX Benefit Plan, like all MEWA Plans, must meet the stringent standards of the Ohio Department of Insurance, the Department of Labor and the Internal Revenue Service. This is done to protect the plan participants



Dayton Builders Exchange
2077 Embury Park Road, Dayton, OH 45414
937-278-5723 • www.bxdayton.com



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1813 North Franklin Street, Suite 200, Pittsburgh, PA 15233
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THE REGULATORY SLOWDOWN

Can you Hear the Hush?



In the last year or so, has your business seen fewer regulations being foisted upon it? Are there fewer government agencies knocking at your doors these days? The answer is probably “yes” to both. It is almost as if a “hush” has come over the arena of federal agencies that played such a significant role in your day-to-day operations just a few years ago. The reasons for this are many.

Of course, the Trump Administration continues with its 2:1 “regulatory rollback initiative” to offset the more than 22,700 regulations of the Obama Administration which had an estimated cost of \$120 billion per year. But what is even more significant are the agency hiring freezes, reductions in governmental staffing primarily through attrition, and budget cutbacks. And, of course, federal regulatory agencies are simply becoming less aggressive than in the recent past. President Trump touts that –

The Administration has cut 22 regulations for every new rule introduced – far exceeding his 2:1 initiative.

Agencies and departments issued 67 deregulatory actions and imposed only three new rules in FY 2017.

1,579 planned regulatory actions have been withdrawn or delayed.

Congress has used an obscure 1996 law – the Congressional Review Act – to rescind 14 regulations enacted late in the Obama Administration – a law used only once before.

The White House has approved less than 200 regulations since inauguration day compared to 510 promulgated in President Obama’s first year. All of these actions by the Trump Administration have been done in response to the Federal Register of regulations which today has swollen to 185,000 pages from just 20,000 in 1960.

But, far more significant than the regulatory rollback is how the agencies have appeared to curtail their activities. Here are just a few examples:

The Department of Labor Wage-Hour Division has not actively pursued the Obama Administration’s overtime pay regulations which originally caused most employers to revisit the exemptions of their employees and caused much time to be spent dealing with

the anticipated regulations which got put on hold by a federal court at the last moment.

OSHA has delayed its new beryllium general safety standard until May 2018 and its ranks of field investigators known as compliance officers has been reduced through attrition by about 4%. One OSHA Area Director even purchased his own photocopy paper recently to keep things running.

The Department of Transportation has pulled back a 2016 proposed regulation for heavy trucks to electronically limit speed – in addition, a dozen transportation safety rules under development or adopted have been repealed, withdrawn or delayed.

The Office of Federal Contract Compliance is rolling back the Vietnam Era Veterans’ Readjustment Assistance Act veterans hiring quotas from 6.7% to 6.4% for affirmative action plans.

The National Labor Relations Board is considering cutting in half the number of regional offices it has and decreasing the authority of its Regional Directors in making case decisions – the NLRB’s budget has been shaved to the lowest level since 2009.

The Environmental Protection Agency is considering rolling back 67 environmental rules including clean air and water rules – the most recent being greenhouse gas emissions and fuel economy standards for automobiles – more than 700 employees have left the EPA in the last year.

While agency enforcement activities have declined, private attorneys representing claimants in civil court actions are filing more actions than ever before. And, the damages sought in these types of cases far exceed what most agencies would demand for resolution. Therefore, businesses must not get a false sense of security over this regulatory rollback – stay vigilant about compliance.

Of course, the “vote is still out” on this “deconstruction of the administrative state.” After all, the regulatory maze in Washington is hard to understand and evaluate. Moreover, midterm elections have come and gone and this Democrat majority could rejuvenate regulatory initiatives. But for now, there appears to be a “hush” which has come over the arena of federal agencies – much appreciated by businesses battered by a barrage of regulations in recent years.

For further information, contact Bob Dunlevey at Taft/Law (937) 641-1743 or email rdunlevey@taftlaw.com.

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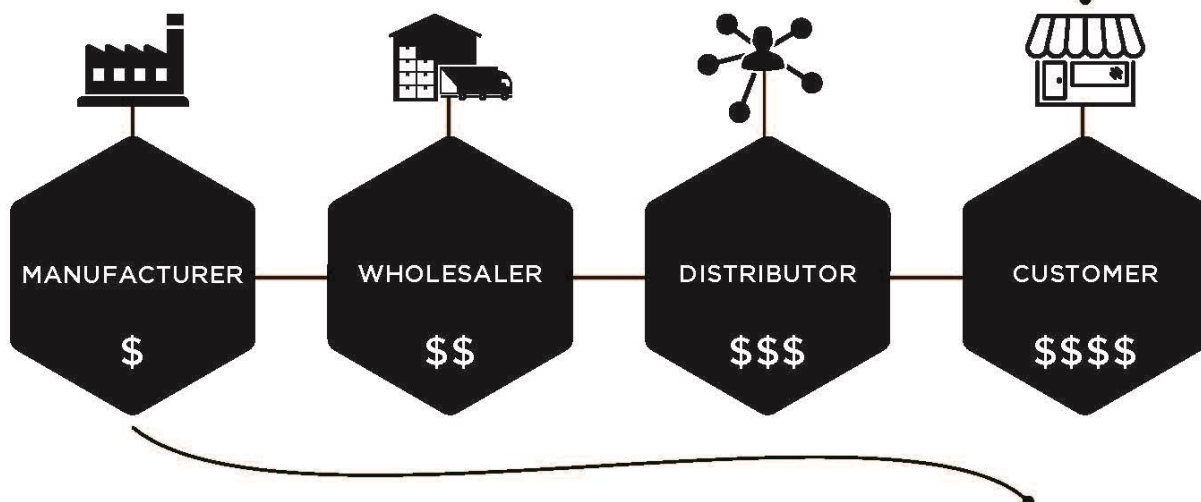
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- You also have access to our database of 44,000 companies to add to your bid list
- You may use the Builders Exchange website and database of projects to find jobs we are already reporting on to place in your Private Planroom or, if you would like to keep your job private, send us the plans and specs and we scan and name all images at no additional cost to you
- Create your own Invitation to Bid, with your scope, personal notes and information
- With one click, you can send out as many ITB's as you need. Don't worry about tying up your phone lines and server as all information goes through our system. You are given the option to send the ITB's by e-mail, fax or both.
- Create standard bid lists for projects (i.e. companies who always work on your church projects can be selected as a group)
- The system gives you the ability to track who has viewed the project, what they have looked at, and when they looked at it
- The "nag" feature persuades your subs and suppliers to respond to your ITB by the date you set. Must respond "yes", "no" or "undecided" at the date you specify or they cannot access your private planroom. Saves you from scrambling to get bids in close to bid day.
- Your subs and suppliers can access the drawings and specs at no charge to you or them. They do not have to be a member of the Builders Exchange. Your ITB gives them a Code Number exclusive and usable only to that particular subcontractor. They can also order prints through the Builders Exchange at \$3.00/page or print them to their plotter at no cost. They can print specs at no cost to them.
- All customer service for you and your subs is included in the costs. If your subs and suppliers have questions, they call our toll free number to speak to one of our Private Planroom Plus specialists.
- The cost for member companies is \$2,400/year, plus \$.05 per fax page sent out. Total cost is billed annually; fax costs are billed quarterly. General Contractors currently using the system have found that sending all ITB's to companies with a valid e-mail address (which is free) keeps their distribution costs down and increases their responses and response time from bidders.

Are you interested in learning more or seeing the system in action?
Please call John Grandetti at (937) 278-5723 to ask questions or set an appointment.



Team Building Night

April 24, 2019

Sinclair Conference Center Great Hall

The Builders Exchange of Dayton and The Subcontractors Association of Western Ohio have joined together again to offer the

"Sixteenth Annual Team Building Night"

In addition to the great networking opportunities during the cocktail hour and Table Top Displays, Team Building Night will also include the presentation of:

**BX Craftsmanship Awards,
BX Project Manager Award
BX Architectural and Engineering Awards
SAWO Subcontractor of the Year
SAWO General Contractor of the Year
SAWO Architect/Engineer of the Year
SAWO Public Official of the Year
and many other industry recognitions!**

TEAM BUILDING NIGHT SCHEDULE

**4:00 P.M. – 6:00 P.M. REFRESHMENTS WITH TEAM BUILDING
NIGHT TABLETOP DISPLAYS & NETWORKING**

6:00 P.M. – 6:45 P.M. DINNER

6:45 P.M. – 7:30 P.M. ASSOCIATION AWARD PRESENTATIONS

This Annual Event is a great way for area industry associations to highlight their members and showcase their latest successful projects. Team Building Night is also a fantastic way for you to honor the supervision and craftsmanship you've benefited from this year. We encourage all members to participate.



REGISTRATION FORM

Wednesday, April 24, 2019
SINCLAIR COMMUNITY COLLEGE CONFERENCE CENTER'S GREAT HALL
301 W. FOURTH STREET, DAYTON

Name of Firm

☐ We would like to have a complimentary display table. Space is limited.

☐ We will be attending, but will not be needing a tabletop.

We will have the following in attendance for the Team Building Night table top reception and dinner. The registration fee is \$85 per person. This includes the cocktail hour, dinner, and parking.

Total cost is \$_____

Enclose a check made out to the Builders Exchange of Dayton or provide credit card information below:

☐ VISA ☐ American Express ☐ Master Card ☐ Discover

Name _____ Billing Zip Code _____

Card Number _____ Expiration Date _____

Return To: BX of Dayton
2077 Embury Park Road
Dayton, Ohio 45414
Fax: (937) 278-0317



SPONSORSHIP FORM

Wednesday, April 24, 2019
Sinclair Community College Conference
Center's Great Hall
301 W. FOURTH STREET, DAYTON

(Name of Firm)

We have checked below our sponsorship participation:

- ☐ **Team Building Night Sponsor**
(listed in the Team Building Program and includes one registration) - \$200.00
- ☐ **Team Building Night Newsletter Ad**
☐ Full Page, Full Color—\$250
☐ 1/2 Page, Full Color—\$150
☐ 1/4 Page, Full Color—\$85
☐ 1/8 Page, Full Color—\$55
- ☐ **Nametag Sponsor**
(listed in the Team Building Program and includes one registration and logo on all nametags) - \$300.00
- ☐ **Refreshment Sponsor**
during networking time (includes 2'x3' sponsor sign and listed in the Team Building Program as a sponsor and includes one registration) - \$350.00
- ☐ **Dinner Sponsor**
(includes 2'x3' sponsor sign at entrance to dinner, full page ad in Team Building Program and highlighted in following issue of the DBX newsletter and includes two registrations) - \$650.00

Enclosed is a check made out to the Builders Exchange of Dayton or charge my credit card;

☐ Master Card ☐ VISA ☐ American Express

Name on Card _____ Billing Zip Code _____

Card Number _____ Expiration Date _____

Please return form and check to:

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****In order to use the program, your dealer will need to obtain a membership verification letter from Laurel Screptock at Builders Exchange, Inc. (866-907-6300 or Lscreptock@bxohio.com)**



For Members of Builders Exchange, Inc. (Planrooms in Cleveland, Toledo, Cincinnati, Dayton)



FIVE TAX BREAKS

for New Parents

New parents have their work cut out for them. Not only are they dealing with lost sleep, they also face the extra cost of raising a child. At least there are a lot of potential tax breaks available to them. Check out this list and share it with any new parents you know.

1. Child Tax Credit

Tax law changes this year not only double the size of the Child Tax Credit, they make it available to more parents than ever before. The credit increases to \$2,000 from \$1,000 (with \$1,400 of it being refundable even if no tax is owed). Meanwhile, the eligibility phaseout threshold increases sharply to \$400,000 from \$110,000 for married joint filers (and to \$200,000 for single taxpayers).

2. Child and Dependent Care Credit

If you pay a nanny, babysitter, daycare or a relative to take care of your child while you and your spouse are at work, you can claim the Child and Dependent Care Credit. It's up to \$1,050 on \$3,000 in expenses for one child and twice that for two or more children. The key is that you and your spouse (if you are married) must both be working, and you can't claim expenses for overnight care.

3. Below the kiddie tax threshold

If you have property that produces income, such as bonds, stocks, mutual funds, interest or realized capital gains, you can lower your tax by transferring a certain amount of that income to your children. Why? Your child has a lower tax rate than you do on unearned income. This works up to a certain dollar limit before "kiddie tax" rules come into play.

4. Adoption Credit

About 135,000 children are adopted in the U.S. each year. If you are welcoming an adopted child into your family, the Adoption Credit can be claimed on up to \$13,840 in expenses, such as fees, legal counsel and court costs.

5. Educational benefits of a 529 plan

There are many provisions in the tax code to help cover the high cost of education. Consider establishing 529 college savings

programs for your new addition. While contributions are made with after-tax dollars, any investment gains are tax-free as long as they're used to pay qualified education expenses. The tax reform passed last year now also allows you to use these funds to pay private elementary and secondary school tuition as well as college

Become Debt-Free

The average household carries \$137,063 in debt, while the median household income is less than \$60,000, according to data from the Federal Reserve and U.S. Labor Department. While it's easy to get into debt, it can be hard to get out. Here are five tips personal finance experts recommend to lower your debt burden:

1. List and prioritize

Create a list all of your debts by amount owed and the interest rate you are paying. Then prioritize your repayment based on one of two strategies:

- The Avalanche. Focus on paying the debt with the highest interest rate first, to minimize the total interest you'll pay.
- The Snowball. Focus on paying the debt with the smallest balance first. While this may seem counter-intuitive, it's recommended for those who have difficulty sticking to a repayment plan. The smallest balance gets paid off sooner and then its debt repayments can be devoted to the next debt. This gives you a powerful psychological boost and sense of achievement.

2. Pay more

Pay more than the minimum amount due. Your lender receives more interest income from you if you pay the minimum, but that's not what you want. Think of ways you can increase your income to make the extra payments, such as:

- Taking a second job or freelancing.
- Asking for a raise at work.
- Devoting extra cash to debt repayment, such as your refund check.

3. Spend less

Review your monthly expenses to find

things that you can eliminate to increase your debt repayment. You can reward yourself by renewing these luxuries, but only after you've paid off what you owe. You could cut spending on things like:

- Cable TV
- Gym fees
- Restaurants
- Entertainment

4. Downsize and declutter

Not only does it help to spend less, it may also be worth getting rid of what you already have. Consider selling possessions you no longer need, or finding a place to live with lower rent or smaller mortgage payments. Be ready to make some sacrifices in exchange for financial freedom. Things that you may be able to part with include:

- Sporting equipment
- Extra or recreational vehicles
- Electronics, games
- Collectibles

5. Negotiate

It's worth calling your lenders to see if there's a way to lower your interest rate. They will often do this if you've been a longtime customer with a history of timely payments. In some cases, you can even get them to forgive part of your debt. Also consider using zero-percent balance transfer options with different credit card providers. While these may come with fees, 12 months of no interest can be worth it.

Reducing your debt burden can seem overwhelming, but small steps can yield big results. As always, should you have any questions or concerns regarding your situation please feel free to call SJ Meyer & Associates.

This Article has been provided by SJ Meyer & Associates Accountants and Advisors. SJ Meyer & Associates serves as the Association CPA.



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TekCollect

Discover Your Solution

TekCollect specializes in early intervention on delinquent accounts. Their persistence, professionalism and pricing are unparalleled and it is completely Web-based for the most convenient, accessible, real-time account management solution available.

They cater specifically to small and medium-sized businesses, enabling them to establish long-term relationships, provide personalized service and generate aggressive results. They successfully manage a portfolio of 30,000 clients around the country and recovery ratios are three times the national average.

DBX Member Benefits

All **DBX** members receive key account status. A designated TekCollect Account Manager will contact you on a monthly basis to review the status of your accounts receivable, implement custom solutions, and provide ongoing personal attention and support.

MONTHLY SERVICES INCLUDE

- Ensuring consistent account placements
- Evaluating skips and running them through databases free of charge
- Examining the monthly contact ratio to determine if additional phone campaigns are necessary

TekCollect also offers **DBX** members additional advantages:

- Account recovery specialists
- Discount pricing per account
- Secure, Web-based account placement, updates, audits and reports
- Prompt online verification of debtor payments to preserve ongoing customer relations
- Secondary Contingent Recovery Division for hard-to-collect accounts
- FREE Accounts Receivable Analysis at no cost and no obligation

For all DBX members, TekCollect's custom program includes two phases of aggressive collection efforts. The Primary Phase involves a series of professional contacts beginning with an Audit/Balance Verification notice. They follow up with strategic telephone campaigns, plus up to six high-impact written contacts, the final being an Attorney Demand. All delinquent accounts are reported to the credit bureaus, and for any debtors they are unable to contact, TekCollect will conduct electronic database skip tracing. Payment is directed to the **DBX** member for immediate account reconciliation to help preserve and maintain the customer relationship.

Please contact Diane Schumm directly to get started:

Diane Schumm, Vice President Corporate Services
TekCollect Debt Collection Service

(866) 652-6500
Diane.Schumm@tekcollect.com
tekcollect.com

TekCollect

ADDRESSING COMMUNITY NEED. DRIVING SOLUTIONS. MEASURING RESULTS.

A Day in the Life of Your United Way Contribution

DAWN OF A NEW DAY



6:30 AM

SAM IS EATING BREAKFAST

at a residential shelter for abused and neglected children. He won't be joined by his brothers and sisters or parents at the breakfast table. United Way funding supports Sam's growth into a healthy and productive adult.

8 AM

A SINGLE MOM DROPS

her toddler off at a child development center. Because it is United Way supported, she knows her child is receiving quality care and education. United Way funding also supports her pursuit of work and a college degree.



10 AM

A LEGAL AIDE OF WESTERN OHIO

advocate enters the courtroom and waits to hear the ruling on Demetri's case. She has invested hundreds of hours with Demetri, his parents, teachers, doctors, and counselors. The judge has carefully considered the advocate's recommendation. Because of United Way, Demetri and other children served by LAWO advocates will see the cycle of violence, abuse, and neglect stop in their lives.

A GOOD AFTERNOON

NOON

LORETTA AWAITS THE ARRIVAL

of her noon meal. She is a homebound senior looking forward to the visit from a volunteer. United Way supports the delivery of more than 100,000 meals to seniors in the Greater Dayton Area.

3 PM

RACHEL AND HER BROTHER

arrive at the Boys & Girls Club. They will receive tutoring, mentoring, a snack, fun activities, and safe, responsible supervision. 99% of these children will be promoted to the next grade level.



4 PM

ALAN RETURNS TO THE

men's shelter after a day of work. He will receive an alcohol screening and possibly a random drug screening before doing his chores. He prepares to go to a life-skills class, which will assist him in preparing for independence after leaving the shelter. 90% of the men at the shelter will remain self-sufficient for at least one year after completing the program.



**United Way of the
Greater Dayton Area**

PLEASANT DREAMS

5 PM

CASSANDRA IS LEAVING THE

Wesley Community Center. She did her laundry today, checked her mail, and took a shower. Cassandra is homeless and visits the center a couple times per week. She has been attending for a couple years. Cassandra now trusts the case managers and staff at Wesley. She will enter transitional housing soon and begin a life of self-sufficiency.

9:30 PM

AARON AND HIS FAMILY

are going to bed with their tummies full. They received a food box today from the food pantry. This box of food will assist them for three days. United Way helps provide over 26,000 food boxes each year. Aaron doesn't have to focus on hunger today; he can focus his energy on work, shelter, and caring for his family.



12 AM

A FAMILY WATCHES THEIR

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Marijuana and Drug Testing: Getting Into The Weeds

By: Steve Watring
Auman, Mahan & Furry



Marijuana use is now legal to some extent under the laws of most states and in some municipalities. But marijuana use still is illegal under federal law. What is an employer to do?

In general, an employer can still consider marijuana use, even prescribed marijuana use, to be a violation of its policy. This means that in most states, an employer can refuse to hire or terminate someone for medical

marijuana use. Marijuana is a Schedule I controlled substance, meaning that it has no legal uses under federal law. The Americans with Disabilities Act does not protect the current illegal use of drugs. Most state medical marijuana laws do not expressly prohibit an employer from discharging or taking any other adverse action against an employee for using medical marijuana. While almost every adverse employment action carries a degree of risk, the risks here appear to be relatively low in most states.

The United States Department of Transportation and the Department of Health and Human Services have long been the standard bearers in the area of drug testing and have long included marijuana as a mandatory substance to be tested. Even if your company is not directly subject to these regulations, many state and federal laws incorporate by reference DoT and DHHS procedures and requirements.

Said another way, DoT and DHHS regulations often are woven into the fabric of other drug testing laws and regulations. For example, if your company wants to bid or perform on any state or federal government projects that require a drug policy or drug testing, your safest course of action is to include marijuana as a part of your policy and as one of the tested substances. Compliance with drug policies and drug testing may be a condition to participation in any number of government programs, and those programs generally mandate inclusion of marijuana as a covered substance.

The DoT has repeatedly driven a bulldozer through the idea that users of medical marijuana should get a pass when tested positive. In fact, as recently as June 20, 2017, the DoT updated and re-issued a "Medical Marijuana Notice" reaffirming that use of medical marijuana under state law cannot be considered a valid medical explanation for a positive DoT drug test.

Therefore, if your company is directly covered by DoT regulations, you should not exempt marijuana use under your policy, even if that use is legal under state law. In my opinion, the same thing is true if you are indirectly made subject to those regulations because of other government laws.

If your drug policy is not subject to government regulations, you

can choose to exempt marijuana use from your policy. For most employers, I believe that the better approach is to cover marijuana use. If your policy is worded correctly, you still should have multiple options for how to deal with an employee who tests positive. But if you would rather not treat it as a violation, that is your right.

For DoT testing, any positive result for marijuana must be reported as a positive. For non-DoT testing, once you decide how you want to handle marijuana use under your policy, the next step is to interface with your drug screening company or Medical Review Officer. Otherwise, you are leaving the decision up to them. For example, some drug testing professionals have a policy of reporting a positive medical marijuana test as a negative result absent contrary instructions from the employer. Even worse, you probably won't even know that the employee actually tested positive. The drug testing professional should honor your requests in this regard, at least with respect to medical marijuana. If they won't honor your preferences, find someone who will.

Despite all of the above, it is important that employers understand how quickly the law is changing. There is a growing list of states and cities that to some extent prohibit employers from terminating employees for marijuana use that is legal under state law. Perhaps worse, some state laws are poorly written and ambiguous on the topic.

It is difficult to keep track of these developments without a score card. It has become a whole new area of the law. In fact, I recently heard speakers from the "Cannabis Practice Group" from the lawyers in the San Francisco and Los Angeles offices of a large national law firm. Just this year, the marijuana laws have changed significantly in Arkansas, Missouri, Michigan, and Utah. Like it or not, this is only the beginning.

When we lawyers write articles like this, we usually add some kind of disclaimer saying that the article is for general information and should not be used for legal advice. This usually is just to cover ourselves. This time, please take it to heart. I am going to share some generalities with you to help guide you through this. That is no substitute for sound legal advice based upon the current laws in the states or cities where you have employees. The laws of every state are different, and most are subject to differing interpretations.

In some states, an employer still can treat any marijuana use as a



CONTINUED ON PAGE 19

terminable offense even if that use is legal under state law. Even in states where this is not true, you usually don't have to permit employees to use marijuana at work, and you can fire them if they do. In these states, it probably is going to work a lot like consuming alcohol at work. You can fire the employee—but you need to be able to prove it.

Also, most state laws make clear that you don't have to permit employees to be "under the influence" of marijuana at work. The problem is that, unlike with alcohol, there is no reliable drug test that will prove an employee is under the influence of marijuana at a specific period of time. If your state law says that you still can terminate someone for being under the influence of marijuana, be careful. You better have some good evidence that the employee actually was under the influence based upon observation. A drug test alone won't do it.

Finally, as you read this, there is an ongoing effort to create legal precedent that an employer has the obligation to accommodate medical marijuana under disability discrimination laws. In my view, this largely is an attempt to parse and twist statutory language to arrive at a result that was never intended. But that is what lawyers get paid to do. While I do not think this will work in most states, it already has worked in a few.

So what's an employer supposed to do? Believe it or not, my best practical advice in most situations has not changed. When an

employer calls me about an employee that may be using drugs, my starting point is to see if it would be better to address the situation as a performance issue rather than a drug use issue. If you have enough basis to terminate an employee for performance reasons, why muddy the waters? While there are situations where it makes sense to go down the suspicion of drug use route, there are more situations where going down that road is exactly the wrong thing to do. With the uncertainty of the law, this is true now more than ever.

If you think you need to go down that road, you need to check for detours, delays, roadblocks and alternative routes before you start. This means you need to find out what the law is, and get good legal advice on how to proceed. The law is just too unsettled and changing too rapidly to do anything else.

Steve Watring (saw@amfd Dayton.com) is a partner in the labor and employment law group of Auman, Mahan & Furry. He has counseled employers, written articles and given speeches on drugs and alcohol in the workplace since the 1980's. Steve formerly served as chair of the Dayton Chamber of Commerce's Drugs Don't Work Committee. He is a Certified Specialist in Labor and Employment Law. He holds a Preeminent rating from Martindale-Hubbell, and has been recognized as a Super Lawyer.

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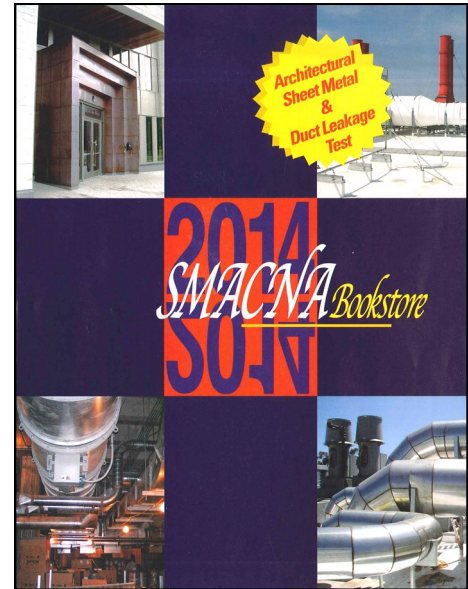
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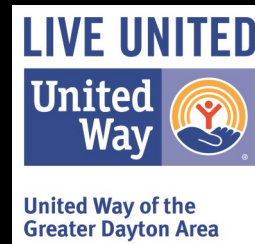
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