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## Small Business Health Plans

Working in a coalition with the Small Business Legislative Council (SBLC), a top legislative priority for SSDAINCPR-AT is passage of Congressional association health care plans.

Prior to small business health care "reform" legislation enacted in most states in the early 1990s, SSDA/NCPR-AT and most state association affiliates had strong association plans. Those plans provided health care protection for members, served as excellent recruitment and retention tools, and brought in significant and steady income streams through administrative and promotional allowances. Many state and national associations have been challenged financially for the past 25-30 years.

Once again, SSDAINCPR-AT will be active in the legislative battle to secure the passage of legislation that would allow associations to again develop national plans. The concept is endorsed by President Bush.

When SSDA/NCPR-AT members come to Washington for the June 12-13 Federal lobbying effort, we will focus on this issue, Right-to-Repair legislation, and amendments to the Petroleum Marketing Practices Act ("PMPA").

### STATUS

In the last two Congresses, the House of Representatives passed legislation that would create AHPs. However, despite the best attempts by Senator Mike Enzi (R-WY), this legislation was never considered seriously by the Senate.

Now that Republicans are in the minority, the passage of this legislation is very unlikely. Even so, at the beginning of the 110th Congress, Congressman Sam Johnson reintroduced H.R. 241, the Small Business Health Fairness Act. Senator Enzi has also indicated that he will revisit the concept.

On the other side of the aisle, the new Chairman of the Senate Small Business Committee, Senator John Kerry (D-MA), has indicated that he would like to work on the Democrat's proposed alternative to AHPs, namely the Small Employers Health Benefits Program Act. This bill, which was introduced during the 109th Congress by

Senators Dick Durbin (D-IL) and Blanche Lincoln (D-AR), would give small businesses access to the same range of health insurance companies as is currently available to federal employees.

### BACKGROUND

The cost of health care is one of the most pressing domestic issues facing our country. The good news is, according to the Kaiser Family Foundation

## Memorial Day

### LET US REMEMBER

MEMORIAL DAY, the first of our summer holidays, means we will turn to our favorite pursuits — picnicking, boating, mingling with the crowds at the fairs, or the ballpark, putting in the yard, or lazing in the sun.

It began as Decoration Day, when garlands were placed on the graves of the Civil War dead. It became Memorial Day, an occasion for America to honor those who gave their lives in all wars. It has continued with solemn ceremonies in ceremonies across the country, with parades of school children proudly carrying American flags. And on this day families have decorated the graves of those whose memory they cherish.

Yes, we need to relax and enjoy the holiday, but let us not forget to display the Stars and Stripes in our yards; to take that journey to the cemetery with our tokens of geraniums and peonies and wreaths; to wear the Veteran's poppy with concern for his welfare.

Let us remember who we are and where we are — Americans in a free land with the power of self-determination, and pause to honor those who have preserved our heritage.

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# THE SOGGDA NEWS

Official publication of Southwestern Ohio Garage Gasoline Dealers Association is published 12 times yearly and dedicated to the betterment of the position of independents in the automotive and petroleum industry.

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**Vonnie Schriml**

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**Editor**

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### *Where Did These Common Phrases Come From?*

Bringing home the bacon — According to one story, this phrase originated in the 12th century, when an English village church promised a side of bacon to any man who could swear he had not quarreled with his wife for a year and a day. The man who "brought home the bacon" was held in high regard.

Flying by the seat of your pants — In the early days of aviation, pilots lacked today's sophisticated instruments. They had to feel the plane's response to their actions, largely, as it were, through the seat of their pants, figuring things out as they went along.


Put your two cents in — This phrase comes from gambling, where poker players had to place a small bet called an "ante" before they would be allowed in the game.

Bite the bullet — Before the invention of anesthetics, physicians would prepare their patients for surgery with a stiff drink and a lead bullet or stick to bite down on. The alcohol would dull the pain, and the biting would give them something besides the pain to focus on. (It probably also cut down on the screaming.)

Close, but no cigar — In old-time carnivals, the prize for winning a game of skill was often a cigar. If you missed the target, even if you were close, you didn't win the cigar.

Mother's Day  
 Anna Jarvis is credited with bringing about the official observance of Mother's Day, but she was actually carrying on the work of her own mother. Mrs. Anna Reeves Jarvis had tried to establish "Mother's Friendship Days" in the late 19th century as a way to help heal the emotional wounds of families torn by the Civil War. She died in 1905 before realizing her goal. Two years later, her daughter held a church ceremony in Grafton, W. Va., to honor and remember her. She donated 500 white carnations for the service — her mother's favorite

flower — to the church and many churches continue the tradition of passing out carnations on



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## General Counsel Corner

By: Peter H. Gunst, Esq.  
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### *Digging Up The Email*

When litigating against a large corporation, like an oil company, it is crucial to obtain access to its email. Email is the common mode of communication among corporate employees. Access to it is the best way of showing what the defendant was doing and what its motivation was. In addition, because of the informal and quasi-conversational nature of email, a corporate employee is likely to be less guarded as to his or her true intent in email.

Recent amendments to the Federal Rules of Civil Procedure, which govern the conduct of civil litigation in federal courts throughout the land, tacitly acknowledge the importance of full email discovery. Those amendments, effective December 2006, provide for early communication between opposing counsel concerning the disclosure and discovery of electronically stored information and also expressly provide for its production in civil litigation.

Too often in litigating against large corporations one gets the feeling that the opponent's effort to preserve and produce electronically stored information is lackadaisical at best. The recent amendments to the federal rules appear to intended to address just such concerns.

That such rule reforms can have real teeth is demonstrated by a recent decision by Judge Hochberg, a federal district court judge in New Jersey, who emphatically enforced local court rules that were closely analogous to the newly amended federal rules.

In complex and drawn out civil litigation, Judge Hochberg took the unusual step of conducting an eleven-day "Integrity Hearing" to get to the bottom of the plaintiffs' repeated complaints that the defendant, Health Net, Inc., had consistently sabotaged the plaintiffs' discovery efforts and ignored its discovery obligations by failing to maintain and produce a wealth of pertinent emails, which tended to establish that Health Net had knowingly submitted false cost data.

After hearing detailed testimony concerning Health Net's tactics, Judge Hochberg released an exhaustive written opinion on December 6, 2006, appropriately the day before Pearl Harbor Day.

The court's written opinion, *Wachtel v. Health Net, Inc.*, \_F.R.D.\_, 2006 WL 3538935 (D.N.J. 2006), leaves no doubt that Judge Hochberg was displeased mightily with what the Integrity Hearing had revealed. At one point castigating Health Net and its counsel, Judge Hochberg wrote:

Defendants' strategy has been a concerted war to waste huge time and resources of plaintiffs in pursuing this litigation. It gives "scorched earth litigation" a new standard of brashness. Defendants have also forced the court to devote years to police discovery abuses over and over again. Defendants continue to ignore the court's rulings over and over again. Defendants' persistent pattern of delay, defiance of Court Orders, evasive responses to Plaintiffs' discovery requests and lack of candor have resulted in crushing prejudice to Plaintiffs in the form of forgetful witnesses and extra-ordinary expenditures of time, effort, and money. The wanton waste of judicial resources caused by Health Net, as exemplified herein, is equally staggering.

To redress Health Net's misconduct and that of its counsel, Judge Hochberg imposed a variety of sanctions that stopped just short of rendering a default judgment against Health Net. These sanctions were imposed:

1. Crucial facts at issue concerning Health Net's knowing and willful use of outdated cost data to defraud the plaintiffs were deemed admitted because of its repeated suppression of emails pertaining to its submission of the outdated data.

2. Health Net was precluded from using at trial 20,000 pages of documents upon which it relied because of its failure to produce the documentation until after the close of discovery.

3. Health Net's claim that numerous documents were immune from discovery because they revealed communications with its attorneys was rejected because Health Net failed to provide a privilege log identifying the documents and stating the basis for its claim of privilege.

4. Health Net was required to pay monetary sanctions in an amount to be determined, which will be quite substantial, to reimburse the plaintiffs for the attorney's fees and expenses that they encountered as a result of Health Net's misconduct.

5. The court ordered the deployment of an independent "discovery monitor" to ensure that Health Net met all of its discovery obligations.

Finally, the court reserved the question of whether to impose sanctions personally against one of Health Net's lead counsel pending its review of a Report and Recommendation by a Magistrate Judge, who had found that sanctionable conduct had in fact occurred.

Judge Hochberg's opinion demonstrates that email discovery abuses can be dealt with effectively and in a meaningful manner. The recent amendments to the federal rules appear to invite just such a response where appropriate.

It must be emphasized that the rules concerning production of electronically stored information cut both ways. Plaintiffs, too, have an obligation to preserve and produce all relevant emails. Plaintiff's counsel must not only diligently ensure that the corporate defendant's emails are produced, but also that his or her client also provides full and forthright discovery.

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## Minimum Wage and Small Business Tax Relief Passed by Senate

On February 1, the Senate passed H.R. 2, the Minimum Wage bill and Small Business Tax Package by a vote of 94-3. The Senate overwhelmingly was able to pass its minimum wage bill by providing tax relief to small businesses.

The Senate bill includes a five-year extension of WOTC through 2012 and expansion of eligibility to disabled persons referred by Employment Networks, post-1911 disabled veterans, and residents of designated poverty areas up to age 40. These improvements, plus those enacted last year, go a long way toward fulfilling many of the recommendations supported by SSDA/NCPR-AT to expand job assistance for the disabled, veterans, and young men of color who are unemployed.

The House will again consider an increase to the minimum wage. In response, House Ways and Means Chairman Charlie Rangel (D-NY) and Ranking Member Jim McCrery (R-LA) introduced H.R. 976, the Small Business Tax Relief Act. This bill, if passed this week, will be sent to the Senate to be attached to a minimum wage hike.

As with the Senate bill, H.R. 976 extends tax code Section 179 small business expensing for an additional year through 2010. However, the House bill increases the limit from \$112,000 to \$125,000. The bill also expands the Work Opportunity Tax Credit (WOTC), as did the Senate's bill, but only extends it for one year instead of the five-year extension in the Senate version.

However, H.R. 976 differs from the Senate's bill in several substantial ways. First it includes a tip credit enhancement. It also waives the individual and corporate alternative minimum tax (AMI) limitations on the WOTC and the tip credits. Significantly, H.R. 976 will also allow unincorporated businesses owned jointly by a married couple to file as a sole proprietorship so that they both receive credit for paying Social Security and Medicare taxes (currently, only the filing spouse receives this credit).

Alternatively, the House bill does not include the Senate's provision that allows retailers that own their buildings to temporarily depreciate improvements to their building over 15 years instead of 39 years. Nor does it include any language allowing businesses to simplify their bookkeeping by allowing them to use the cash method of accounting for tax purposes. Finally, it does not establish a certification program for employee-leasing companies that provide and oversee employees for other corporations.

The House bill and the Senate bill also have different methods for raising revenue. The Senate bill would raise money chiefly by disallowing future losses on foreign tax-exempt property related to sale-in, lease-out (SILO) transactions. It would also set the effective date of a prohibition on certain inversion transactions about one year earlier, making the effective date March 4, 2002.

The House bill raises money by denying the lowest capital gains and dividend rate for dependants younger than 24 who do not earn more than half of their own income. It also increases, from 18 to 22 months, the time that the Internal Revenue Service (IRS) has to notify taxpayers of

failure to comply with tax obligations before the IRS is required to suspend interest and penalties. Finally, for three months in 2012, this bill increases the corporate tax on businesses that are worth over \$1 billion.

As can be deduced from these descriptions, the minimum wage bill still has a ways to go before a consensus is reached and a conference report can be agreed upon. The Senate version is a better bill for small businesses, so it will be interesting to see how well they dig in their heels to ensure that their tax relief is passed. While both Senate Finance Committee Chairman Max Baucus (D-MT) and Ranking Member Charles Grassley (R-IA) indicated that they were happy to see the House make an effort with some tax relief, the bill still comes up well short of what they expect. As Mr. Grassley put it, the House bill is "peanuts" compared to the last time a minimum wage bill was signed into law (1997).

While the Senate's bill has more provisions that benefit the small business community, the House bill has its merits as well. The ensuing negotiations between the two chambers of Congress will put the focus where it should be: on helping small businesses shoulder the looming burden of a minimum wage hike.

SSDA/NCPR-AT News



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## Flag Day June 14th

Flag Day was established in the late 1800s to recognize the importance of this cherished symbol. One of the most powerful images following the terrorist attacks of September 11, 2001, was a photograph of three fire fighters raising an American flag amid the ruins of the World Trade Center. Many people assume the flag was one that had flown on the building's observation deck and was recovered from the rubble, but it was actually from a yacht docked in the Hudson River marina at the time of the tragedy.

One of the New York City fire fighters spied the flag and carried it (and its pole) back to Ground Zero. There, two others helped him raise it. The fire fighters did it to raise morale after digging for six hours without finding survivors.

A photographer from a New Jersey newspaper caught the scene. Many papers and magazines ran the photo, which became a symbol of America's resolve in the face of calamity. The flag itself is now on display at the American History Museum, part of the Smithsonian Institution in Washington, D.C.

### ON THE JOB INJURY FACTS

FACT: BACK INJURIES CAUSE MORE THAN 100 MILLION LOST WORKDAYS ANNUALLY.

FACT: TRAINING AND EDUCATING EMPLOYEES IN GOOD LIFTING TECHNIQUES CAN HELP PREVENT BACK INJURIES.

FACT: NOT ALL WORKERS HAVE THE SAME RISK OF BACK INJURIES.

FACT: MANY FACTORS, INCLUDING AGE, GENDER, STRENGTH AND FITNESS INFLUENCE EMPLOYEES' CHANCES OF BEING INJURED.

FACT: MANY THINGS, INCLUDING TYPE OF WORK, NOISE, TEMPERATURE AND DESIGN OF A WORKSPACE, CAN AFFECT THE SAFETY OF A WORKPLACE.

FACT: BACK INJURIES ARE THE LARGEST SINGLE SOURCE OF INJURY COSTS AND INSURANCE CLAIMS IN THE MANUFACTURING WORKPLACE.

## Tire Inflation - It is a matter of safety!!!

Is the convenience store industry doing all it can to promote proper tire inflation to their customers? It would have to be said that this message has been neglected. The gas pump is the perfect place to promote safety messages, such as tire inflation. For your family's safety and that of others, properly inflate your tires! Check your tire pressure now! Pump toppers, the display screen at pay at the pump or nozzle toppers, all are perfect locations to get this message to your customers. According to a study done by the National Highway Transportation Safety Administration, NHTSA, under-inflated tires were responsible for over 60,000 accidents in a study recently conducted. A third of these involved injury or death.

What service do you provide?

1) The majority of the motorists using the tire inflator at your stores are not your regular store or gasoline customer. The service is required at a specific point in time and the motorist seeks the first air machine available. They use the service and drive away, most of the time not returning to that location. However providing this service to your everyday customers is crucial, and this customer should be reminded to check the pressure in their tires, frequently, no less than once per month.

2) The key component in providing this service is that the tire inflator has to work, 24/7/365. Not just when your store is open, and not whether it is pay or free, but working. The worst thing you can provide to your customer is a non functioning air machine in their time of need.

3) Most convenience store operators and major oil companies, (35 of the top 50) have found that to insure that their tire inflators are working properly: a comprehensive coin operated tire inflation program provided by AIR-serv best fits their needs.

The need for a tire inflation program is a given, and the next question is: should I offer a coin operated program or a free air program? The average cost per location to provide a free air program averages \$1500 per store per year. This includes equipment purchases, replacement parts and ongoing preventative maintenance and the labor to support the program. With a coin operated program, these costs are totally eliminated and a revenue stream is generated, thus creating a positive effect to your bottom line of approximately \$2000 to \$2500, per store.

All tire inflators installed under an AIR-serv program are equipped with a built in tire gauge that can be utilized free of charge. If tire inflation is needed, a nominal charge activates the machine for reliable service.

Over 1,000,000 motorists currently pay for tire inflation service everyday, in North America. Whether a system is coin-operated or free use, is of little relevance when your customer needs air. Whether the tire inflator works or not is of big relevance.

(KFF), the rate of increase in health insurance in 2006 was at its lowest since the beginning of the decade.

Premiums for employer-sponsored health coverage rose an average 7.7 percent in 2006, less than the 9.2 percent increase recorded in 2005 and the recent peak of 13.9 percent in 2003.

However, this is quickly brought into context with the bad news.

Specifically, premiums still increased more than twice as fast as workers' wages (3.8 percent) and overall inflation (3.5 percent). Furthermore, over the past six years, premiums have increased an incredible 87 percent. Family health coverage now costs an average of \$11,480 annually, with workers paying an average of \$2,973 toward those premiums, about \$1,354 more than in 2000.

The news is considerably more dire if one happens to work for a small business. Of the roughly 47 million American citizens who lack health insurance, nearly 60 percent are employed by small businesses. Furthermore, according to the KFF study, small businesses (defined in the study as those with 3 to 199 workers) have an average deductible of \$465 for single coverage, as opposed to those who work for larger firms, who pay an average deductible of \$260 for single coverage.

Clearly, this puts small businesses at a disadvantage. Interestingly, both sides of the aisle make the same underlying argument. That is, in order to level the playing field and make health care more affordable for small businesses, the federal government should allow small businesses to band together to attain more purchasing power.

The group purchasing provisions considered by past Congresses have at their foundation a number of goals: to improve the ease with which small employers purchase health insurance for their employees; to reduce the cost of health insurance plans offered in the small group market; to increase the number of workers in small firms who have health insurance; and sometimes, to increase the number of health coverage choices available to workers in small firms.

## THE REPUBLICAN PLAN

The Republican bill, the Small Business Health Fairness Act, would establish a number of provisions that plans must include to become certified as Association Health Plans (AHPs), and would exempt such plans from state insurance laws and regulatory oversight. The provision would remove states' authority to apply a large body of insurance laws and regulations including consumer protections, solvency and fair market practices, grievances and appeals procedures, premium taxation, and prohibitions on discrimination. Instead, the measure would establish the federal government as having the sole regulatory authority over these entities except in the case of state laws that prohibit the exclusion of a specific disease from coverage, or relate to newborn and maternal minimum hospital stays, and mental health parity.

This bill would establish non-discrimination provisions that would prohibit AHPs from rejecting less healthy applicants from coverage or targeting those individuals for higher premiums. Reserve and solvency requirements would replace states' laws that would no longer apply. [Those provisions and the other requirements of the bill would be enforced the "applicable authority" sometimes the Secretary of Labor and at other times, the state agencies responsible for the regulation of insurance.]

Certified AHPs would also include the following features:

AHPs must offer at least one insured health coverage option unless:

1. the self-insured plan existed before the date of enactment of the bill;
2. membership is not restricted to one or more trades; instead, employers representing a broad cross-section of trades and businesses or industries are

eligible;

3. the plan covers eligible participating employees in one or more of the high-risk trades (as listed in the bill).

- The association sponsoring the plan must have been in existence for at least three years and be operated by a board of trustees with complete fiscal control and responsibility for all operations.

- AHPs must have at least 1,000 participants and beneficiaries, and have offered coverage on the date of enactment or represent a broad cross-section of trades, or represent one or more trades with average or above average health insurance risk.

- All employers who are members must be eligible to enroll, all geographically available coverage options must be made available upon request to eligible employers, and eligible individuals cannot be excluded because of health status.

- Premiums for any particular small employer are prohibited from being based on the health status or claims experience of its plan participants or on the type of business or industry in which the employer is engaged.

The bill would establish requirements regarding who may participate on the board of trustees for qualified AHPs. The board may include owners, officers, directors, or employees of the participating employers or partners of the participating employer who actively participate in the business. Service providers to the plan may also be members of the board if they constitute not more than 25 percent

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# Telephone Skills: Test Your Telephone Effectiveness

## *Find out if your phone practices are winning or losing customers*

By Jeff Mowatt

If your customers aren't impressed by you or your co-workers on the telephone, they can switch businesses by merely hanging-up and dialing the competition. So, your telephone skills can have a significant impact on your business and your career.

To find out how you and your co-workers are perceived, take this telephone test. While you're at it, have a friend make a "mystery call" to see how your fellow employees measure-up.

1. How long does it take you and/or your switchboard operator to answer the phone?

- a) 5 rings or less
- b) 3 rings or less
- c) under 3 rings

After two rings, callers are wondering what's going on. Your phone should be answered in-person by the second ring or by your voice-mail system by the fourth ring.

2. Do you answer your phone with any of the following?

- a) "Hello."
- b) "(Company name only)"
- c) "(last name only)"
- d) "Good afternoon, this is (your full name), how can I help you?"

3. Have you ever said, "Please hold" to a caller?

- a) yes
- b) no

Never put a caller on-hold without asking for their permission, and then waiting for their response. Putting customers on hold without their consent is a sure-fire formula to lose customers.

4. How long does it take a person on hold to become annoyed?

- a) 2 minutes
- b) 30 seconds
- c) 1 minute
- d) 17 seconds

Studies show that after only 17 seconds, callers on hold become annoyed. The exception is when the greeter explains why the caller is being asked to hold and provides the estimated time required. Knowing beforehand how long they can expect to wait reduces the chance of annoyance, particularly among long distance and cellular phone callers. Another option to prevent frustration is to offer the caller the option of either holding or hanging up and having their call returned within a brief, specific time period.

5. When you're talking on the phone while a visitor walks in, who gets priority?

- a) the visitor
- b) the caller

The person who made the effort to show up in-person gets priority. That means you need to interrupt the caller. The quickest way to get that caller's attention is to call their name. "George, I have someone who just walked in, can I ask you to hold for a moment?" Wait for their agreement. Then acknowledge the visitor, tell them you'll be a moment and wrap-up your telephone conversation.

If you're talking to a customer in person when the phone rings, then get someone else to answer the phone, or use voice mail. Abandoning customers to answer the phone is downright rude and is a guaranteed way to lose customers. As obvious as this seems, it's one of the most common blunders in customer service.

6. When receiving a call for a co-worker, how are you most likely to respond?

- a) "Susan's not in right now, so I'll have to take a message."
- b) "Susan's still at lunch. Can I take a message?"
- c) "Susan's should be back soon. Could you call back in about 15 minutes?"

All of these statements have flaws that make the greeter sound unhelpful and unprofessional. Consider each response.

a) The statement, "I'll have to take a message," makes it sound like an inconvenient chore. Instead, change two words: "I'll be happy to take a message." The bonus is that you don't work any harder but you convey the impression of someone with a terrific customer service attitude.

b) It's completely irrelevant that the co-worker is at lunch. The caller might be thinking, "That's a long time to be at lunch!" It's also irrelevant whether your coworker is "in a meeting" or "with a customer" or "busy". The only relevant information is they're not coming to the phone. Therefore, "Susan is not available right now" is the most appropriate response, followed by, "I'd be happy to take a message."

c) asking a caller to phone back later gives the impression that you're too lazy or disorganized to take a message. This gives a potential customer a terrific excuse to call your competitor. Nuff said.

The training solution

If you're like most managers and business owners, you'll probably find that when you assess the phone practices within your organization, there's room for improvement. The good news is that with just a little training, it's easy to develop the skills that ensure that your customers keep coming back.

of the membership of the board and do not provide services to the plan other than those on behalf of the sponsor.

The bill would establish an “Association Health Plan Fund” from which the Secretary of Labor (or applicable authority) would make payments to ensure continued benefits on behalf of AHPs in dis-tress. The fund’s activities would be financed by annual payments

I

#### Enzi’s Five Principles

Senator Enzi outlined the following principles as the basis for his legislation:

1. Association-based plans should have the opportunity to harness the advantage of independent pooling and play a commercially meaningful role in the coverage marketplace, and if that puts market pressure on insurers, so much the better. At the same time, however, the coverage provided to association members should be subject to underlying regulatory and consumer protection requirements substantially comparable to those applica-ble to all entities offering similar coverage.
2. The current hodgepodge of varying state health insurance regu-lations should be streamlined, thereby easing adminis-trative and regulatory costs, and facilitating a larger number of plans in more states. Under such an approach, states would be encour-aged or required to adopt common sets of rules in targeted ar-eas of health insurance regulation, such as rating and underwrit-ing, though state oversight and enforcement authority would remain.
3. Individuals and businesses should have the opportunity to purchase lower-cost plans that are free or largely free of state bene-fit mandates. Though most purchasers will likely choose fuller coverage, it is important to assure that lower-cost alternatives exist as a safeguard for those who are struggling at the margin.
4. Primary responsibility for most insurance oversight and con-sinner protection should remain with the state insurance com-missions—including the right to assess health plans, including association health plans.
5. The focus of immediate efforts should be on policies that do not require significant Federal outlays.

#### Analysis

Opinions about the potential impact of AHPs on the small group insurance market span the continuum of possibilities. Advocates for AHPs view removing the state regulatory barriers and creating federal standards as ways to encourage the growth of pooling op-tions. By releasing multi-state pools from the regulatory burdens of each state in which enrollees reside, these provisions would increase die options available to small employers who want to offer health insurance as a benefit but cannot. In addition, some argue that the increased risk to small firm coverage could become spread across larger groups of employers making health insurance as accessible to workers in small firms as to those in large firms. Most importantly, their supporters say that releasing AHPs from most state benefit mandates will allow those groups to offer more affordable, slimmed down benefit packages that may be desirable to workers who are now uninsured.

Opponents raise concerns about the impact the legislation would have on adverse risk selection in the small group markets and the solvency of plans, and about the Department of Labor’s (DOL) abil-ity to ensure that enrollees are protected from enrolling in fraudulent or inept plans.

Insurers naturally have incentives to select the most favorable risks among the individuals or groups that are seeking coverage, while rejecting others. While the goal of insurance is to spread risk poli-cies or practices that allow beneficial risk selection have the oppo-site effect. This risk selection concern is raised regarding AHPs because of the provisions exempting AHPs from state laws mandat-ing that certain benefits be provided by plans, limiting and defining how policies are to be priced, and defining fair marketing and busi-ness practices. All 50 states have such laws, many of which are intended to maintain well-spread risk in the small employer insurance markets. Opponents fear that AHPs would attract healthier firms since firms with sicker employees would not want plans that exclude the state mandated benefits and protections. If AHPs attract predominantly healthy small firms out of the traditional small group market, firms with less healthy employees could face even higher premiums A risk selection spiral could become activated, to the detriment of those left outside of the AHPs and firms with sick employees would be especially at risk.

The bill tries to address the concerns about risk selection by includ-ing provisions that discourage AHPs from actively pursuing healthier employee groups and rejecting or discouraging higher groups from joining. The bill would prohibit discrimina-tory mem-bership policies and plan pricing based on health status of employ-ees or their dependents It would also prohibit AHPs from that member employers purchase health coverage through the AHP.

The bill restricts self-insured health plans from becoming qualified AHPs. However, self-insured plans that existed prior to enactment would be grandfathered in. The bill would also prohibit a participating employer from providing health insurance coverage in the individual market for any employee excluded from the AHP which similar to the coverage provided wider the AHP; if such exclusion is based on a health status related factor and such employee would otherwise be eligible for coverage under the AHP. Finally, it would require AHPs to offer their plans to all employers who are eligible to participate and also require,

# What Do You Know About MSDS?

By **Bud Abraham**

For anyone in the carwash or detail-ing business, Material Safety Data Sheets (MSDS) are just a small part of a workplace Hazard Communication Plan.

As a good businessperson, you know what your responsibilities are as an employer. You know that if you are using chemicals of any kind you must have a Hazardous Communications Program in place, and this program begins with having MSDS for every chemical used in your business.

The MSDS came about as a result of the Occupational Safety and Health Act, which then gave rise to the much-feared Occupational Safety and Health Administration (OSHA) that enforces the law. The intent of the act was to ensure that any employee who works with chemicals is aware of the hazardous ingredients in those chemicals, what the chemicals can do to the person, what to do if exposed, and the overall safety requirements that need to be taken.

An employer, then, is responsible to have MSDS on every chemical used, and be sure that employees know how to read and use the MSDS and that they follow the appropriate protective measures established by the employer.

## Only Part of the Program

Material Safety Data Sheets are only one part of the OSHA Hazard Communication Program.

The program must also involve:

- Identification and inventory of hazardous chemicals in the shop.
- Proper labeling of chemicals.
- Personal protection devices and attire to prevent exposure to the hazardous chemicals.
- Employee education about chemicals and their safe handling.

To comply, most employers focus on creating a paper trail to show they are complying — “Do I have all of the MSDS in a binder? Do I have a signature from each employee that he or she has received training?” — instead of adhering to the law’s intent.

## The Spirit of the Law

For proper worker safety and OSHA compliance, MSDS must be part of a workplace Hazard Communication Plan (HCP) that states:

- Which person in the company is responsible for the program.
- What can and cannot be done.
- Where information is located in the shop and how to get additional information.
- How the company intends to provide a safe and healthy work environment.

If you, per chance, do not have a Hazardous Communication Program, or do not even have a binder with MSDS in it, or no one can find it, you had better put the binder together immediately and then set about developing a Hazardous Communication Program. You simply cannot afford the consequences if you are caught without a program by an OSHA inspector.

Your state OSHA agency has a wealth of knowledge on how to develop one, and they will help. In fact, most states have a consulting agency that is not an enforcement

agency; they will simply help you comply with the law and are forbidden by law from reporting your company. If they do find violations, they will call them to your attention and help you develop a compliance program. Your only obligation, should you call them in for help, is to comply with their recommendations in a certain period of time. They are very nice people and are there only to help you and your employees. It is worth a call if you know in your heart of hearts that you are not in compliance.

## You Must Use the MSDS

The MSDS is only helpful when used. You and your managers must be as familiar with the contents of the MSDS, as you would expect your employees to be. Although there is no required format for MSDS, OSHA has prepared the non-mandatory OSHA Form 174 as a suggested format that covers the required information.

## What to Look For

OSHA does not require manufacturers to disclose trade secrets or proprietary ingredients unless they are hazardous. However, MSDS that contains only the phrase “trade secret” and fails to provide the information needed to secure the safety of employees should be a warning.

Perhaps consider another manufacturer who subscribes to the full disclosure of information on their MSDS.

## Proper Labeling

Another aspect of chemical safety is product labeling. While it’s cheaper to use secondary containers that are plain bottles and then just write “glass cleaner” or something similar on them, it violates the OSHA law. And, anyone in the detail business knows that it can cause serious accidents and damage to vehicles.

Get the right bottles for the products and throw them away when their labels are no longer readable. Get new bottles with compliant labels when you change products.

Avoid the fines and the risk that an employee will be injured; the bottle costs less than a dollar. Enforce the rule. If you don’t know the rule, look it up and comply.

## Get the Information

The key aspect of a Hazardous Communication Program is education. Training all workers on proper chemical usage and related safety techniques is a must.

Yes, there are paper trail compliance aspects related to OSHA, but like all education, the true measure of success is a change in people’s behavior — in this case both the owners and the workers.

Many times, an employer puts together a great Hazardous Communication Program only to find the employees don’t follow it.

It makes no difference however, you are still responsible if someone gets injured. It is your business. If the employees don’t comply, get rid of them. You cannot afford to have people like that around your business.

## Good Chemical Usage & MSDS Usage

Practical advice for use of MSDS include:

- Eliminate as many hazardous chemicals as possible from

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*continued on next page...*

SOGGDA News

## What Do You Know About MSDS? Continued from previous page...

your workplace by substituting less hazardous materials. Find the safest products that work and stick with them.

- Don't constantly change chemicals, and only change when the new product is safer and provides better results. Changing chemicals just to save a few cents a gallon becomes very expensive when you consider the cost of retraining every employee who comes in contact with the new chemical.
- Accurately and completely enforce the use of personal protective equipment (PPE?). This forces you to evaluate the hazards associated with the chemicals and to seek out less hazardous materials. If your workers are so valuable that you wouldn't fire them over a "simple safety rule," aren't they too valuable to be injured?
- Minimize the number of chemicals in use. It's almost impossible to fully learn the information on the 50 or more products you often find in a detail operation.
- Buy products be used for multiple purposes. This minimizes the amount of training, training time and training dollars required to ensure safe use of the product. It also reduces the number of accidents and workers' comp claims and your insurance costs as well.

MSDS, the Hazard Communication Plan, labels and the overall safety of your staff depends on you. Each of the above tools depends upon your diligent use and supervision to be effective. Without your commitment, they are simply papers with no meaning at all.

### Requirements

MSDS must be in English (and Spanish if you, have a num-

ber of Spanish-speaking employees) and include information regarding the specific identity of the hazardous chemical(s) involved and the common names.

Additionally, information must be provided on:

- The physical and chemical characteristics of the hazardous chemical.
- Known acute and chronic health effects and related health information.
- Exposure limits.
- Whether the chemical is considered to be a carcinogen.
- Precautionary measures.
- Emergency and first aid procedures.
- Disposal precautions and procedures.
- The identification of the organization responsible for preparing the sheet.

### A Clear Example

One area where you can gauge your employees' willingness to adhere to recommendations of the Material Safety Data Sheets (MSDS) is in the use of goggles when using cleaning chemicals.

Some MSDS for detailing chemicals require the use of goggles. It is logical to protect your eyes from a liquid that might be sprayed, splashed or even misted. A mist might even encroach around the sides of normal glasses.

That's why most manufacturers recommend goggles when using liquid chemicals. However, workers don't like to wear goggles; if they have to wear anything at all, they would prefer glasses. Unfortunately, many owners/managers would rather let them wear glasses than enforce the rule.

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Member/Dayton/Miami Valley

# Heat Stress

By Joe Hammond

## Introduction

Statistics show a rise in temperature can affect work-places in a negative way. The increased number of injuries and illnesses that crop up during the spring and summer seasons reflects this fact.

Heat stress or hyperthermia symptoms can range from minor illnesses to fatalities if the victim does not seek or get relief quickly.

The information in this article is vital for your safety at work, but it is also relevant for you and your family away from work.

What types of incidents can result from working in hot environments. Answers include:

- Falls occurring on the same level or falls from a higher to a lower level, falls into machinery and equipment, etc.;
- Danger to the worker operating tools or equipment, and to other workers nearby.

## Heat-related illnesses

This list shows heat-related ailments workers may get (in ascending order from the least harmful to the most dangerous).

**Heat rash** — Excessive sweating during hot, humid weather causes this skin irritation, also known as prickly heat. Though not usually harmful, good hygiene and changes of clothing can control the discomfort it causes. It most often affects areas of the body that do not receive good ventilation.

**Heat cramps** — Everyone has probably experienced these painful muscle spasms. Rest and fluid replacement are the prescribed treatments for this ailment.

**Heat syncope** — The body attempts to send blood out from core areas surrounding the internal organs to the skin's surface, where it can be cooled. Heat syncope occurs when this process breaks down and blood gathers and pools in the lower extremities. The victim is likely to faint due to poor blood circulation. To allow blood and body fluids to return to the upper part of the body's core area, the victim should lie down with his or her feet elevated.

**Heat exhaustion** — This is a dangerous condition for victims who do not receive quick help. The victim usually feels weak, has an elevated body temperature, and therefore, appears flushed. You should take the victim to a cooler, shaded environment and give him or her fluids right away.

**Heat stroke** — This is by far the most dangerous heat-related ailment. It happens when the body's cooling defense mechanisms become overwhelmed resulting in a continually rising core body temperature, permanent brain damage and even death. You should make every effort to immediately lower the victim's temperature with whatever means are at hand.

Remember to never give liquids orally to an unconscious person because this could cause serious injury and/or death.

## Heat-stress exposure

Ideas of what you can do to handle periods of heat-stress exposure.

- Begin shifts earlier in the day;
- Provide good air ventilation (when the air temperature is lower than body temperature);
- Provide cool water and make sure workers can drink it on a regular basis;
- Promote workers beginning their shifts fully hydrated and allow them to consume fluids at will;
- Design a work/rest regimen that decreases the work rate/load;
- Develop a heat stress program that includes:
  - o Training;
  - o Health screening;
  - o Acclimatization;
  - o First-aid providers.

## Fluids

The following are fluids that are best for re-hydration.

The first choice should be water. Encourage workers to drink one cup of cool water every 15 to 20 minutes even if they are not thirsty.

Around 60 percent of our body's composition is water. Therefore, we should replenish our loss of fluids through perspiration by regularly drinking water. Make sure everyone understands thirst is not a good indicator that body fluids need replacement.

## I

For un-acclimatized individuals, adding sliced fresh fruit to a container of water can help bolster lost electrolytes. Since many processed foods contain high amounts of salt, some experts do not recommend sports drinks.

You should avoid drinks that contain caffeine or alcohol. They promote loss of fluids through increased urination.

## Actions

Who are most likely to suffer from the effects of high temperatures and humidity?

Those most likely to suffer adverse effects are:

- Un-acclimatized individuals;
- Obese people;
- Elderly people;
- Pregnant women;
- Individuals under treatment who are taking medication(s).

Safety Leader's Discussion Guide 2007

# Safety & Health

## Classes for Ohio Workers

July - September 2007

The Ohio Bureau of Workers' Compensation Division of Safety & Hygiene Training Center offers 64 occupational safety, health, and ergonomic courses in twelve locations statewide and seven online courses. All courses are offered at no additional cost to Ohio employers who pay into the Ohio workers' compensation insurance fund. Courses are designed to emphasize practical application of safety principles, to help develop a safety culture, and to provide current and proposed standards for regulatory compliance.

For more information or to register, see reverse side for online directions or call **1-800-OHIOBWC**, option 2, 2, 2.



### Course Title

<u>Course Title</u>	<u>Length</u>
Accident Analysis	1.0 day
Advanced Rate Making	0.5 day
Asthma! Is Your Company at Risk?	1.0 day
Behavior-based Safety Systems	1.0 day
Bloodborne Pathogens	0.5 day
Certified Safety Professional (CSP)	3.0 days
Communicating Safety to Your Spanish Speaking Workforce	1.0 day
Comprehensive Industrial Hygiene Review (CIH)	4.5 days
Confined Space Assessment and Work	2.0 days
Controlling Costs Through Claims Management	1.0 day
Controlling Workers' Compensation Costs	1.0 day
Effective Safety Teams	1.0 day
Electrical Hazard Recognition and Abatement	3.5 days
Electrical Safety Audits	2.0 days
Emergency Preparedness Planning	1.0 day
Enhancing Safety Through a Drug-free Workplace	0.5 day
Ergonomics Applied	3.0 days
Ergonomics Basic Principles	1.0 day
Ergonomics: Developing an Effective Process	1.0 day
Fall Hazards in Construction and Maintenance	2.0 days
First Aid in the Workplace	1.0 day
Fundamentals of an Effective Safety and Health Program	2.0 days
Got Mold?	1.0 day
Hazard Communication	1.5 days
Hazardous Waste Operations and Emergency Response Awareness	0.8 day
Hazardous Waste Operations and Emergency Response Operations	2.0 days
Hazardous Waste Operations and Emergency Response Refresher	1.0 day
Indoor Air Quality	2.0 days
Job Safety Analysis	1.0 day
Lockout/Tagout and Safety-related Work Practices	0.5 day
Mechanical Power Press	2.0 days
NFPA 70E and You: Insight and Implementation	1.0 day
Noise and Hearing Conservation	2.0 days
Nonviolent Strategies for Caregivers	1.0 day
OSHA Recordkeeping	1.0 day
Personal Protective Equipment Selection Criteria	0.5 day
Powered Industrial Trucks: Developing a Training Program	1.0 day
Public Employers: Injury, Illness, Needlestick Recordkeeping	1.0 day
Restaurant and Food Service Safety	0.8 day
Safety and Ergonomics for Extended Care Facilities	1.0 day
Safety Works for Industry Module 1	0.5 day
Safety Works for Industry Module 2	0.5 day
Temporary Traffic Management	0.5 day
10 Step Business Plan	0.5 day
Train the Trainer	1.5 days
Violence in the Workplace	0.5 day
Wellness in the Workplace	0.8 day

### Online Courses

Avoiding Back Trauma
Ergonomics: Office Ergonomics
Getting Started with Safety
Industrial Hygiene Overview: Recognizing Occupational Health Hazards
Ladder/Stairway Safety
Preventing Cuts and Lacerations
Preventing Slips/Trips/Falls

upon request, that any employer who is eligible to participate be furnished information regarding all available coverage options.

Some consumer advocates and state regulators fear that those provisions may not be enough. The provisions, they say, do not provide for the fair marketing rules and patient protections as established by the states. Moreover, their concerns relate not only to the ability of AHPs to reject higher risks, but also to the incentives that encourage certain small firms to sort themselves into AHPs versus insured plans, such as the ability of AHPs to offer trimmed down benefits. Opponents cite Congressional Budget Office (CBO) estimates 20 million employees and dependants, 80 percent of workers in small firms, would face rate increases and 10,000 of the sickest people would lose coverage while overall enrollment in employer-sponsored health care would increase by only about 330,000.

Opponents believe the AHP legislation would preempt traditionally state-regulated areas such as solvency requirements, consumer protection rules, benefit mandates, and certain ratings laws. The proposal would place self funded AHPs under the jurisdiction of the DOL. Opponents claim the DOL lacks the funding and manpower needed to regulate AHPs.

### THE DEMOCRAT PLAN

The main cornerstone of the Democrat bill, the Small Employers Health Benefits Program Act, is the creation of the Small Employers Health Benefits Program (SEHBP), which is named after the Federal Employees Health Benefits Program (FEHBP). This bill would instruct the Office of Personnel Management (OPM) to administer this program and it would be open to any small business with 100 employees or fewer. Those small business employers who wish to join the program must enroll all of their employees, meaning that no employee could opt out of coverage or receive alternative coverage.

Businesses with low-wage workers, defined as those making \$25,000 a year or less, would be eligible for a refundable tax credits if the organization pays at least 60 percent of the workers' premiums. By offering a refundable credit; this plan would allow those businesses that paid little or no taxes in a year to still receive assistance to help pay their employees' premium.

The tax credits would equal 25 percent of the premium for single workers, 30 percent for couples with no children, and 35 percent for family coverage. If an employer decides to pay for more than 60 percent of the premium they would become eligible for "bonus" tax credits

#### Participation

Employees will be allowed to join the program either upon being hired or during an annual open enrollment period. OPM will provide employers with a booklet that details all the insurance plans available prior to the annual enrollment period. Employees will be able to choose from a wide range of options according to their need.

Employees who choose to enroll in an SEHBP plan will not face a pre-existing condition waiting period, provided they have at least six months of health insurance coverage immediately prior to enrollment. As a safeguard to prevent people from waiting until they get sick to enroll, health plans will be allowed to exclude coverage for pre-existing conditions for up to six months for people without coverage immediately prior to enrollment (reduced by one day for each day of immediately previous coverage).

One of the main points of contention Democrats had with the Association Health Plans (AHPs) legislation pushed by Republicans year was that AHPs would preempt important state insurance rides Under the Durbin/Lincoln bill, SEHBP enrollees would be covered by state consumer protection laws, such as benefit mandates and solvency standards. State insurance commissioners would continue to regulate solvency, grievance processes, internal review and net worth adequacy laws. Additionally, like in the FEHBP OPM would have the authority to require plans to limit enrollees' annual out-of-pocket expenses.

#### Insurance Companies

A common problem with most broad insurance plans such as this one, is the prospect of small businesses with large numbers of sick workers joining the SEHBP in order to take advantage of the guaranteed rates, while those businesses with healthier workers deciding not to join, instead choosing a different plan that offers a better rate because there is less risk in insuring their workers. This problem commonly referred to as adverse selection.

The Durbin/Lincoln bill contains several provisions that are signed to avoid this or a similar scenario. The first provision is "risk corridor" system, which would be similar to the Medicare Prescription Drug bill. The system is designed to limit the profits losses prescription drug plans would incur if their costs are lower higher than estimated.

The risk corridor would work in the following way: At the end of the calendar year, the Department of Health and Human Services (HHS) would compare each plan's expected and actual benefit costs, which would be estimated by the insurers at the beginning

## Finding Top Employees

News flash: If you don't have the right people working for you, it's not their fault—it's yours. You hired them. Unless your problem is coming from poor management, ask yourself the following questions when your employees don't perform the way you expected:

### Do You Use a 'Shopping List'?

You know what happens when you go shopping without a list? It takes twice as long to find the items you need, you invariably buy something you don't need, forget something you need and wind up having to make another trip. Hiring right begins with knowing what you want.

What kind of employee do you want? What capacities, attitude and skills do you need? Do you know where the kind of employees you want congregate so you know where to advertise and how to attract them?

### Are You Hiring for Attitudes—or Shifts?

Don't wait until you need someone to cover a shift and you have to lower your hiring standards to get that shift covered. Take responsibility for creating a pipeline of people. Ask your current good employees to refer friends to you. When your business is fully staffed, recruit the way temp agencies do, by interviewing and registering people you would want to have working for you.

### Do Your Managers Know How to Hire?

If not, invest some time and money in teaching them a great hiring system, one that separates the good prospects from the poor ones. Set high benchmarks: Make it easy for applicants to apply and get an interview, and hard to get a job. Make certain there's always someone on the job who can hand out and accept applications in a professional manner.

### Do People Want to Work for You for the Right Reasons?

Design recruiting messages that appeal to the kinds of people you want to hire. Do people want to work for your company because you have great managers? Because you can offer flexible hours? Because employee age isn't an issue with you?



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wage)

Polygraph Protection

Ohio Minor Labor Laws

### Are You Asking the Right Questions?

Train your managers to interview effectively. Remember that what you see from an applicant in the interview is probably better than what you'll ever see again.

Look carefully at work histories. Make sure you get work and personal references and double-check what the applicant tells you by contacting the references they provide.

### Have You Given People Good Reasons to Work for You?

Ask your best employees why they chose to work for you, why they stay and what you could do to improve their jobs. Then see how many of the following proven employee draws your company can offer: fun work environment; flexible hours; interesting work; great managers and friendly co-workers; personal acknowledgement; corporate values and company actions that make a positive difference in the world; tuition reimbursement; and/or paid time off to do volunteer work.

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