Fall is here and we are getting closer to the annual veto session of the Illinois General Assembly; candidates are jumping in and out of races; and we are still faced with a disastrous fiscal situation in Illinois. Never has it been more important to be informed and involved in the political scene.

Our IMSCA staff continues to work on legislative and regulatory concerns even though the legislators are not in session. They spend time researching issues, networking with the Capital Development Board (CDB) and other state agencies, and communicating our concerns to elected officials. Much of this communication and networking occurs at political fundraising events. This is one reason why our IMSCA-PAC is so important and it is vital to keep it well funded. It assists our lobbying team in creating relationships and gaining a seat at the table to fight for issues that are important to you and your business. The IMSCA-PAC section on IMSCA’s website, www.imsca.org, contains more information and a form for PAC contributions. You protect yourself and your property with other forms of insurance, and protecting your business is worth an investment in IMSCA-PAC.

A big thank you to everyone who participated, either by sponsorship or attendance, in the Day at the Races at Arlington Park Racetrack. The private Secretariat Suite provided a perfect venue to watch the races. Food and beverages were abundant and I believe some people even made a few dollars by betting on the ponies. This event, along with a raffle for a NASCAR experience raised over $16,000 for IMSCA-PAC.

As we move closer to the next legislative session, please keep informed and involved in IMSCA. Regular legislative updates are provided by Louie and Jessica and when they put out a plea for action, it is vital that you respond. Attend any and all forums and events held by IMSCA and candidates where you will be able to increase your knowledge of the issues and those running for office. YOUR participation in the political process does make a difference.

Since this is my last article as president of IMSCA, I would like to thank you for the opportunity to serve in this capacity. Also, a huge thank you to Louie and Jessica for their untiring efforts, and their dedication to the protection of the construction industry in Illinois. Most members probably have no idea of the number of hours (day and night) that these two put in on our behalf. Please thank our team when you see them, and offer your support in every way possible.
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A recent survey by construction data firm BidClerk revealed that construction activity in Illinois’ major metropolitan regions grew nearly 30 percent during the first quarter of 2013. As a result, Illinois construction firms may soon need to hire more employees to keep up with demand. Now is a good time to make sure you have adopted employment practices designed to minimize the risk of litigation, government investigations, and labor disruptions that may prevent you from taking full advantages of new opportunities. Here is a rundown of labor and employment risk that contractors regularly encounter, and how Much Shelist can help.

**Employee or Independent Contractor?**

One of the biggest issues facing contractors is worker classification. Historically, the temptation to treat workers as independent contractors has been great — no tax withholding, no employee benefits, no unemployment compensation insurance. But federal and state authorities are increasingly cracking down on employers that illegally treat employees as independent contractors. The construction industry has been specifically targeted with more aggressive enforcement and, in some cases, substantial penalties. Every construction employer should assess whether it has a valid basis for classifying a worker as an independent contractor; experienced labor and employment counsel can assist with this analysis.

**Wage and Hour**

Navigating federal and state wage and hour laws can be a significant challenge for construction employers. The rules are complex, and the penalties can be steep. Our attorneys can help you comply with rules and regulations regarding minimum wage and overtime, working off the clock, meals and breaks, waiting and “on call” time, wage deductions, and exempt status issues. Considering these issues ahead of time will help minimize your risk if you are audited or sued.

**Union Issues**

Dealing with unions is practically inevitable for contractors in metropolitan areas. Whether you currently are unionized or not, you may need to become party to project labor agreements, respond to strikes, picketing or secondary boycotts, implement reserved gates, or defend against or institute unfair labor practice charges. Unionized construction employers face additional issues handling grievances and arbitrations or dealing with claims of delinquent contributions or unfunded liability under union-sponsored pension plans. Experienced labor counsel can keep your projects conflict-free and minimize headaches.

*Avoid Getting Burned When the Market Gets Hot: Address Your Construction HR Practices Now*
Prevailing Wage
Contractors performing any public work should consider whether they are subject to prevailing wage or Davis-Bacon, as the consequences of failing to pay required minimum rates can be severe. It is a common mistake for contractors to assume that because a project is not owned by a public agency, prevailing wages do not apply. On the contrary, many projects that receive public funding — though not owned by the government — are still subject to prevailing wage requirements. Our attorneys can assist you with reviewing bid and project documents, determining if prevailing wage requirements apply, obtaining written assurances from customers that projects are not subject to prevailing wages, and assisting with disputes.

Discrimination and Harassment
The diverse workforces of construction firms may create a heightened risk of discrimination and harassment claims. And, as discussed in our last issue, general contractors may be liable for the wrongful conduct of their subcontractors. You can minimize the risk of liability for such claims by implementing carefully drafted policies, providing training to your workers and supervisors, and properly addressing problems before they erupt.

Workplace Safety
Occupational Safety and Health Administration (OSHA) compliance and the potential for surprise OSHA inspections is an ongoing threat in the construction industry. Many OSHA followers expect that new and stricter workplace safety measures may be adopted in 2013, including some particularly affecting the construction industry such as new regulations regarding crystalline silica, heat-related injuries and confined space hazards. Our attorneys can assist with OSHA compliance, investigations and litigation.

Immigration
To comply with immigration laws, all employers must require employees to complete a Form I-9 verifying their identity and eligibility to work in the United States. The employer must verify that the supporting documents presented by the employee appear genuine and that to the best of the employer’s knowledge, the employee is authorized to work in the United States. The construction industry is particularly vulnerable to immigration violations, and authorities are aggressively targeting construction firms to ferret out infractions.

The bottom line for construction firms is that they face many HR pitfalls, especially those companies that may be in a stage of growth as a result of the expanding real estate market. Experienced labor and employment counsel can help you navigate applicable laws and regulations, minimize risks, correct problems before they become liabilities, and ensure that your time, energy and resources stay focused on growing your business and capitalizing on new opportunities.
The 2013 spring legislation session adjourned without lawmakers passing a substantial pension reform bill – leaving the deeply underfunded pension crisis unresolved. Two competing pension reform bills were sponsored by House Speaker Michael Madigan and Senate President John Cullerton. The two leaders were unable to find a compromise solution to the pension problem. Speaker Madigan sponsored a pension reform bill that was not supported by unions, who vowed to challenge Madigan’s bill in court based on constitutional grounds. It was reported that Madigan’s version would immediately reduce Illinois’ unfunded pension liability by $21 billion.

President Cullerton’s pension reform plan, which had union support, would have reportedly cut the state’s nearly $100 billion unfunded pension liability by only $9.13 billion.

When lawmakers left the Statehouse upon session adjournment in May, Governor Quinn announced he would call legislators back to Springfield during the summer to address the state’s continued pension crisis. During the special session on June 19th, it was decided the best way to resolve the differences between the House and Senate versions of pension reform, was to appoint a conference committee. A conference committee is an even number of legislators, 5 from the Senate and 5 from the House of Representatives, who attempt to resolve differences between differing versions of a specific bill or joint resolution passed by their respective bodies. The conference committee reports recommendations back to the General Assembly for further action. Although conference committees were commonly used for years in the General Assembly, their formation to resolve differences on legislation has become a thing of the past. The use of these committees was abandoned because there were always additional items inserted in the bills that were designed to accommodate certain groups of individuals of influence.

Legislators who were appointed to the conference committee includes: Senator Daniel Biss (D-Evanston), Senator Kwame Raoul (D-Chicago), Senator Linda Holmes (D-Aurora), Senator Matt Murphy (R-Palatine), Senator Bill Brady (R-Bloomington), Representative Elaine Nekritz (D-Northbrook), Representative Art Turner (D-Chicago), Representative Mike Zalewski (D-Chicago), Representative Darlene Senger (R-Naperville) and Representative Jil Tracy (R-Quincy). These legislators have been assigned with a tall order – to develop an effective and cost-saving compromise to solve the pension crisis.

The conference committee has met in a series of private, small-group meetings.

Any pension reform is expected to face a constitutional challenge.
meetings since July. The committee hasn’t agreed on a final plan, but reductions to cost of living increases (COLA) and employee contributions toward their pensions are being considered. An actuarial review of the plan, which also includes other elements, found it could result in $145.6 billion in savings for Illinois through FY 2045. Additionally, the state’s $100 billion unfunded pension liability would be cut by $18.1 billion. The pension system for state, university, college, legislative and local school district workers would be fully funded in 30 years.

Any pension reform is expected to face a constitutional challenge. Unfortunately, it seems the road to pension reform continues to be a long one. Governor Quinn, who is frustrated by the continued inaction on pension reform, recently suspended lawmakers’ pay until a pension reform bill is passed. As a result, House Speaker Michael Madigan and Senate President John Cullerton filed suit against the governor for withholding their pay. The judge presiding over the case ruled lawmakers’ pay to be reinstated, plus interest.” This lawsuit, in addition to the growing unfunded pension liabilities, will ultimately negatively impact our state and its citizens. We can hope these issues will get resolved during the fall veto session that begins on October 22nd. Some lawmakers aren’t holding their breath - believing instead the pension crisis will loom on until after the 2014 general election.
General Contractors often issue Letters of Intent to Subcontractors on Projects to allow Subcontractors to begin preparation of shop drawings and ordering of long-lead items while the parties formalize a written Subcontract. Once finalized and executed, the Subcontract terms generally govern the issues that arise throughout the Project. But what happens if the Parties never execute a formal written Subcontract? Is the Letter of Intent itself a binding contract between the Parties, even if it contemplates the execution of a future formal written Subcontract? Or is the Letter of Intent merely an agreement between the parties to continue negotiating towards the award of a Subcontract?

To answer those questions, Illinois courts look to the intent of the Parties to determine whether or not a Letter of Intent is a binding contract. Although a Letter of Intent may be enforceable, Letters of Intent are not necessarily enforceable unless the Parties intend them to be contractually binding. Illinois case law sets forth the following principles regarding Letters of Intent: (1) the fact that parties contemplate execution of a future formal agreement does not necessarily render a Letter of Intent mere negotiations where it is clear that the ultimate subcontract will be substantially based upon the same terms as the Letter of Intent. Put another way, where the Parties have agreed to all terms of the Subcontract, the mere reference in the Letter of Intent to execution of a future Subcontract in writing will not negate the existence of a present contract; (2) if the Parties intended the Letter of Intent to be legally binding, that intention will not be defeated by Letter of Intent statements that a more formal agreement is yet to be executed; and (3) parties may specifically agree that negotiations are not binding until a formal agreement is in fact executed. If the parties construe the execution of a formal agreement as a condition precedent to a binding subcontract, then no subcontract arises until that formal subcontract is executed.

There is no problem, if both Parties agree that the Letter of Intent is either a binding contract or not. But what if the Parties disagree? Illinois courts first look to the Letter of Intent itself, to determine whether the intent of the Parties is clear or ambiguous. If no ambiguity exists in the Letter of Intent, the Parties’ intent must be derived from the Letter of Intent itself. If the Letter of Intent is ambiguous (unclear or capable of more than one interpretation), the courts will allow parol evidence (evidence in addition to the Letter of Intent) to determine the actual intent of the Parties.

What factors do courts consider to determine the intent of the parties? To
determine whether the Parties intended to reduce an agreement to a writing, courts may consider the following factors: (1) whether the type of agreement involved is one usually put into writing; (2) whether the agreement contains many or few details; (3) whether the agreement involves a large or small amount of money; (4) whether the agreement requires a formal writing for full expression of all terms and conditions; (5) whether the negotiations contemplated a formal written document at the end of negotiations.

Other factors courts may consider to determine the intent of the Parties to be bound by the Letter of Intent are: (6) where in the negotiation process the process of reducing the Letter of Intent into a formal agreement is abandoned; (7) reasons why the drafting of a formal agreement was abandoned; (8) the extent of assurances previously given by the Party that disclaims the formation of any contract; and (9) the other party’s reliance upon the anticipated completed transaction.

The case of Quake Construction, Inc. v. American Airlines, Inc., 141 Ill. 2d 281 (1990) illustrates a situation of an ambiguous Letter of Intent, requiring the consideration of parol evidence to determine the intent of the Parties. In Quake, after orally awarding the Subcontractor a project, the General Contractor requested the Subcontractor to provide its sub-subcontractors’ license numbers for use on the Project. The Subcontractor informed the General Contractor that the sub-subcontractors would not provide license numbers without the issuance of signed subcontracts. The General Contractor issued a Letter of Intent to the Subcontractor to induce the Subcontractor to issue sub-subcontracts to its subcontractors, in order to get the license numbers for use on the Project. Later, the General Contractor and the Subcontractor agreed to certain changes to a draft Subcontract, but the draft Subcontract was never executed. Ultimately, after a preconstruction meeting, the General Contractor informed the Subcontractor that its involvement on the Project was terminated. The Subcontractor sued the General Contractor for breach of contract, claiming damages for time spent procuring the contract, preparing to perform work and loss of anticipated profits. The General Contractor denied the existence of a Subcontract between the Parties.

The Court reviewed the Letter of Intent and determined that the document was ambiguous, requiring the Quake Construction case to be remanded back to the trial court for consideration of parol evidence to determine whether the Parties intended the Letter of Intent to be a binding agreement. The Court held that the Letter of Intent included detailed terms of the Parties’ agreement (even though the Letter of Intent did not contain terms regarding payment, damages and termination); (2) the Letter of Intent stated that the General Contractor awarded the contract for the Project to the Subcontractor; (3) the Letter of Intent stated that “this notice of award authorizes the work”; (4) the Letter of Intent indicated that the work was to commence approximately 4 to 11 days after the Letter of Intent was written; and (5) the Letter of Intent contained a cancellation clause. That cancellation clause exhibited the Parties’ intent to be bound by the Letter of Intent because no cancellation clause would be necessary unless the Parties intended the Letter of Intent to have some binding effect.

On the other hand, the Court found that the Letter of Intent could be interpreted to find that the Parties did not intend to be bound by the document because (1) the Letter of intent referred several times to the execution of a formal Subcontract by the Parties; and (2) the cancellation clause could be interpreted to mean that the parties did not agree to be bound until the Parties entered into a formal agreement.

The Supreme Court remanded the case to the trial court for consideration of parol evidence because the Parties’ intent could not be determined based upon the ambiguous Letter of Intent.

Lesson learned: If a Letter of Intent is to be binding, it is important for Subcontractors to ensure that the Letter of Intent is clear. The goal is to avoid potential losses for performance on Projects partially performed under an ambiguous Letter of Intent and expending fees litigating over the Parties’ actual intent.
Illinoisans will have the opportunity to vote for a new Governor in the November 2014 General Election. The official gubernatorial candidates will be determined in the March 2014 primary. A long list of potential candidates has already emerged…so let’s get started on determining who’s who on the list.

It appears Governor Quinn will run un-opposed in the March primary election for the Democrats. For a short time, Attorney General Lisa Madigan was playing with the idea of running for the seat, but decided against it. Another potential Democratic candidate was Senator Kwame Raoul, but he recently announced he does not intend to take on Governor Quinn. In addition, Bill Daley of Chicago announced his candidacy, but ultimately withdrew it, leaving Quinn as the sole Democratic candidate so far. It’s possible that Bill Daley’s absence from the Democratic primary will offer Governor Quinn’s campaign a boost, because Quinn will not have to spend a lot of campaign money early on and can save it for the general election.

The Republican field is a bit more crowded with four candidates who have announced their candidacy. The Republican candidates include Illinois State Senator Kirk Dillard, State Treasurer Dan Rutherford, Illinois State Senator Bill Brady and businessman Bruce Rauner.

Voters will notice something different in the upcoming election cycle. Lieutenant governor candidates must run on the state ticket with candidates for governor in the Illinois primary. Governor candidates - up until now have run separately from the lieutenant governor candidates. The running mate’s name must appear on the circulated petitions to qualify for the March primary. This new process will mirror the election process for president and vice president. This change has the potential to help or hurt a campaign so candidates are making their running mate decisions carefully.

In essence, the lieutenant governor choice will be the candidate’s first big 2014 political decision.

Some candidates have already announced who their running mates will be. Senator Kirk Dillard chose State Representative Jil Tracy. Representative Tracy serves the 94th legislative district and lives in Quincy. She has served in the Illinois General Assembly since July 2006. She is an attorney and her previous experience includes serving under Attorney Generals Jim

Choosing a strong and capable leader of our state is not only important to your business...but also for the future of our state.
Ryan and Lisa Madigan. After losing the Republican primary in 2010 by a narrow margin, Senator Dillard hopes Representative Tracy will improve his numbers in rural areas and small towns. Dillard is currently polling in third place among the potential Republican candidates. Dillard has a difficult time fundraising, and so far hasn’t been able to keep up with the financial pace of other candidates.

State Treasurer Dan Rutherford has chosen attorney Steve Kim. Kim specializes in international business law and made an unsuccessful bid for Attorney General in 2010. Kim has stated he hopes the Rutherford/Kim ticket attracts support of the Asian-American voters. Rutherford is polling 7 to 10 points higher than the rest of the Republican field. Rutherford’s advantage is he has name recognition throughout the state, and is also seen as the “downstate candidate”. This distinction is important to downstate voters.

Senator Bill Brady made an unsuccessful bid for Governor in 2010. In that election cycle, Brady did not play well among women and suburban voters. Senator Brady recently announced Maria Rodriguez as his running mate. Rodriguez is the former Village President of Long Grove, IL. She made an unsuccessful bid for Congress in 2010, losing to Congressman Joe Walsh. Brady’s pick of a conservative suburban female could boost his support in the collar counties where voters tend to vote independent. Brady is polling in second place behind Rutherford. I predict that Brady’s campaign will suffer from a lack of downstate votes because the majority of those will go to Rutherford.

Candidate Bruce Rauner has yet to announce his running mate. He is currently polling in last place behind all other Republican candidates. Rauner’s advantage is that he has a lot of money available to him to run a campaign. However, he needs to be able to speak coherently about the issues facing our state, namely the pension crisis.

Illinois currently has the highest unemployment rate behind Nevada. Illinois has been in complete control by Democrats for eleven years and Illinois is in a financial mess. Whoever is elected as our next governor has a difficult job ahead of him. It is extremely important that the next Governor has the necessary skills to work with House Speaker Michael Madigan and Illinois Senate President Cullerton.

I encourage all members of the construction industry to participate in the upcoming primary and general elections. It is your right as a citizen to vote, and I hope you exercise that right. Choosing a strong and capable leader of our state is not only important to your business as a sub-contractor, but also for the future of our state. If you are currently not registered to vote, please contact IMSCA staff and we will help you get registered.
Josh Weger is Deputy Director for Construction at the Illinois Capital Development Board. In his position he oversees the agency’s Construction Management and Professional Services divisions and is responsible for ensuring an efficient, effective and accountable State government construction program.

Prior to joining CDB, Weger spent eight years with the Illinois Department of Commerce & Economic Opportunity (DCEO), where he held positions including Managing Director for Policy Development, Planning & Research and Southeast Region Manager. Prior to joining DCEO, Weger spent two years with the Office of the Illinois Auditor General and two years with the Illinois House of Representatives.

As the construction management agency for the state of Illinois, the Capital Development Board (CDB) oversees the construction and renovation of state agency, university and community college facilities and administers construction grant programs for K-12 schools, early childhood education centers and community healthcare centers. Four years ago Governor Pat Quinn secured passage of Illinois Jobs Now!, a six-year, $31 billion economic development and public infrastructure program – the largest of its kind in America. The IJN! program appropriated $3.86 billion to CDB for specific projects, and under the leadership of Board Chairman Peter O’Brien and Executive Director Jim Underwood, we have been leading the charge to build important new facilities around the state and make renovations to existing facilities. In May, the General Assembly voted to release CDB’s last $1.5 billion of IJN! funds, allowing us to proceed with the final phase the program. Now is a good time to review what CDB has accomplished so far, and preview what lies ahead.

In the first four years of the IJN! program, CDB has completed more than 300 various construction and renovation projects. Key examples include:

- Southern Illinois University Carbondale Transportation Education Center - $56.7M
- University of Illinois Urbana-Champaign Lincoln Hall renovation - $52.5M
- Early childhood education center grants awarded - $45M
- Community healthcare center grants awarded - $30.5M
- Southern Illinois University Edwardsville new Science Building - $26.2M
- Lewis & Clark Community College National Great Rivers Research Center - $16.2M
- Western Illinois University Quad Cities Campus phase I - $15.8M
- Joliet Junior College Facility Services Center - $8.82M
- Kewanee Youth Center sprinkler system - $6.5M
- Illinois State Fairgrounds various repairs - $6M
- James R. Thompson Center HVAC system replacement - $4.2M
- Dixon Correction Center various repairs - $3.3M
- Centralia Correctional Center new roofing system - $3.3M
- Vandalia Correctional Center various repairs - $2.3M

CDB normally uses a traditional design/bid/build process to execute construction projects, and project life cycles can range from one to four years, depending on size and complexity. As a result, most IJN! projects are currently in the design or construction phase. Key projects in design include the following:

- University of Illinois Chicago Advanced Chemical Technology Building - $106.5M
- Western Illinois University Performing Arts Center - $71M
Now that the legislature has authorized bonding for all funds appropriated to CDB, the governor’s budget office will sell bonds to provide funding for the remainder of the IJN! projects. Some projects awaiting release of funds include:

- Lake Land College Workforce Relocation Center - $9.88M
- Lake Land College Rural Development Center - $7.5M
- Lincoln Trail College Technology Center - $7.57M
- Wabash Valley College Student Center - $4.02M
- Illinois Math & Science Academy laboratory renovations - $3.6M
- Waubonsee Community College replace temporary buildings - $2.6M

Not only do state construction projects build important new facilities and provide renovations for existing buildings, they also create thousands of local jobs. According to construction industry economists, a $1 million investment in nonresidential construction creates 9.7 direct jobs and 4.6 indirect jobs. This is why public works construction programs like IJN! are among the most effective economic development tools available to state policymakers.

As the leader of the state’s green building initiatives, CDB is firmly committed to energy efficient state buildings. More than 50 IJN! projects are slated to meet Leadership in Energy & Environmental Design (LEED) requirements. Most notably, the UIUC Lincoln Hall renovation will be certified LEED Gold, and the UIUC Electrical & Computer Engineering Building and the College of Lake County Student Services & Adult Education Center will be certified LEED Platinum.

CDB’s talented and professional staff is committed to achieving our agency mission to deliver construction and renovation of state agency, university and community college facilities in an efficient, effective and accountable manner. We recognize and appreciate the essential role that Illinois’ mechanical and specialty contractors play in helping us pursue our mission. CDB looks forward to a continued strong partnership with your industry as we do our part to realize the vision of the Illinois Jobs Now! program.
THANK YOU!

To everyone who supported the IMSCA-PAC “Day at the Races” and the NASCAR Experience Raffle – We appreciate your support!

Thanks to your support, we were able to raise a total of $16,150.00 for IMSCA-PAC. We hope those who attended the “IMSCA-PAC Day at the Races” had a great time at the racetrack. We also want to send congratulations to Billy Serbousek of Illinois Chapter NECA for winning the NASCAR Experience raffle!

Billy Serbousek of Illinois Chapter NECA (left) pictured with, Jessica Gray (right) was the winner of the NASCAR Experience raffle.

(L. to R.) Louie Giordano, Evan Williams, Jeff Weiss, Dan Bully and Paul Buddy are pictured enjoying the racing action from the balcony view.

(L. to R.) Jeff Weiss, Paul Buddy, Vice Pres. of the IL PHCC Auxiliary Becky Davis and IMSCA President Bev Potts are shown networking with colleagues while watching the races from the indoor suite.

Art Arriaga is enjoying the abundant lunch buffet that was provided to guests.