

Ohio Matters

An Official Publication of *The Ohio Chamber of Commerce*

By James Investment Research Inc.

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ECONOMIC OUTLOOK 2020

This is a tale of two economies.

We find a divergence between confident consumers and wary businesses. The consumer, buoyed by a low unemployment rate, decent wage growth, higher net worth, lower debt service and a rising stock market continues to spend.

The business sector, on the other hand, has sharply pulled back on investments. Industrial production and the Institute for Supply Management (ISM) manufacturing survey are in territory usually associated with a contracting economy. (See figure 1.)

This is important to the state of Ohio because the largest portion of Ohio's GDP is manufacturing. At the same time, job openings and manufacturing payrolls here have been slipping. Lastly, trade tensions and global economic weakness are undermining overall business confidence.

This tug of war will only end if the consumer can convince businesses to reverse their negativity as they did in 2015 and 2016. The other unfortunate possibility is that businesses start cutting jobs, which would erode consumer confidence.

While late in the economic cycle, workers' pay is still rising faster than consumer prices, and almost everyone who wants a job has one. The outlook for the consumer sector remains solid; the manufacturing sector is facing some challenges because of tariffs and geopolitical uncertainties.

In the end, we believe the consumer will carry the day, so we are not likely to see a recession in the coming year.

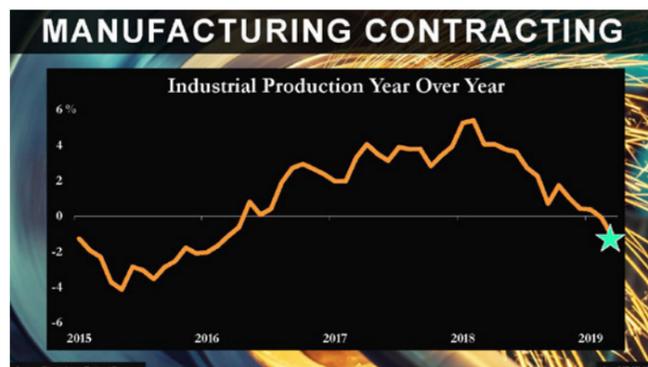


Figure 1



Figure 2

In the end, we believe the consumer will carry the day, so we are not likely to see a recession in the coming year.

However, we expect sluggish economic growth here and abroad. (See figure 2.)

STOCKS

Bull markets rarely die of old age. This is good, because the current stock market rally, which began in March 2009, is the longest bull market in history. It has also produced one of the highest 10-year total returns on the S&P 500. (See figure 3.)

As a result, valuations are now extremely elevated. Fortunately,

the momentum of the stock market is still positive.

Corporate profit growth has stagnated since 2011, so corporations have been buying back shares to increase earnings per share. Corporate stock repurchases have amounted to \$2.4 trillion over the past 10 years, one of the reasons the market had such strong returns. (See figure 4.)

In addition, low interest rates have allowed corporations to issue debt to repurchase shares, which then boosts earnings per share. Unfortunately, these extreme corporate debt levels pose a risk for investors.

Typically, this phase of the presidential cycle is favorable for stocks. However, due to the uncertainty about the trade war and impeachment, stocks may have already enjoyed most of this benefit in 2019. (See figure 5.)



Figure 3



Figure 4

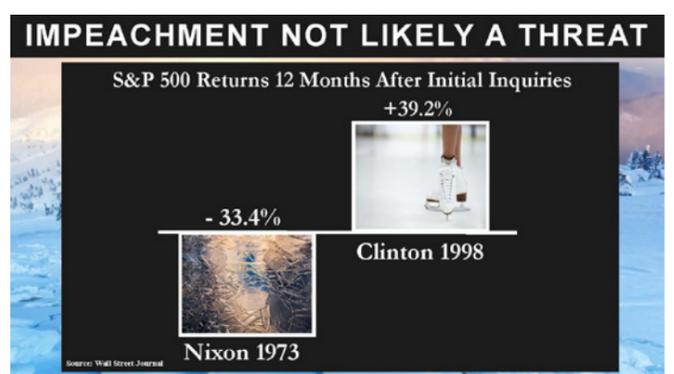


Figure 5

We are finding some relative value opportunities in the finance and energy sectors. Due to the lateness in the economic cycle and the popularity of passive investing, we believe large stocks should continue to advance, but smaller stocks offer opportunities. International stocks have underperformed U.S. stocks for many years, but valuations are very attractive in some developed and emerging market. This provides potential opportunities.

Overall, we expect modest gains in the market, and we should see some rotation into unloved areas.

James Investment Research is a member of the Ohio Chamber of Commerce. Reach it at (937) 426-4640. Visit its website at <http://www.jir-inc.com>.



*In 2019, we all worked toward
greater outcomes.*

*Together we all shared
greater success.*

*In 2020, we look forward to
even more accomplishments.*

We're all for Ohio.

Thank you for your membership with the Ohio Chamber of Commerce. By working together, we are going to make this New Year Ohio's best yet as we bring you:

- A redesigned website
- Cost-saving member services
- More educational opportunities
- Valuable information on the 2020 election
- An informative Annual Meeting
- A voice at the Statehouse

And we are doing this all while carrying out our mission to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans.



By Gov. Mike DeWine

BETTERING OHIO'S BUSINESS CLIMATE

Ohio is a great place for businesses to succeed. We are located within a day's drive of 60 percent of the population of the U.S. and Canada. And



Ohio has an eager and well-trained workforce, coupled with a culture of innovation. Since taking office last January, Lt. Gov. Jon Husted and I have been driving that point home, from Cleveland to Cincinnati and from London to Tokyo. During the past year, we have been working hard to make the business climate better by:

>> Making Ohio the best place in the Midwest to start and maintain a business.

- My administration is promoting workforce development and training through our new TechCred program, in which businesses work with colleges or tech schools to design appropriate classes for employees looking to gain new skills. The business then applies for funding to pay for the training. For more information, visit TechCred.Ohio.gov.
- We are improving the transportation infrastructure for businesses and residents by investing in our roads to keep them safe and reliable. With funding included in the new transportation budget, we were able to move important projects forward.

- We also continue to work with JobsOhio and its regional partners to bring investment and new jobs to the state. During the first three quarters of 2019, JobsOhio finalized 206 projects, with 16,086 new job commitments and 33,839 retained jobs, for a total of \$2.91 billion in annual payroll. Additionally, new and existing companies made \$4.85 billion in total capital investment commitments.

- We returned dividends of \$1.5 billion to Ohio employers following strong returns on investments by the Ohio Bureau of Workers' Compensation. This is in addition to a historic cut in rates for public and private employers.

- We also maintained the Business Income Deduction, which allows business owners to take the first \$250,000 of their income tax-free.

>> Creating international business ties.

- In September, I led a business development mission to Japan and attended the Midwest U.S. - Japan Association (MWJA) annual conference in Tokyo. Japan is Ohio's top international investor, with more than 72,860 Ohioans employed at 852 Japanese-owned establishments across the state. During the mission, Neaton Auto Products Manufacturing announced it was investing \$15 million to expand its factory in Preble County and adding 70 new jobs to its workforce of 800 Ohioans.

- In October, Husted traveled to London to finalize a deal with the London Stock Exchange Group's Elite program to open its first American headquarters in Cleveland in 2020. The Ohio headquarters will provide small- to medium-sized U.S. companies access to the skills and networks to help them reach the next stage of growth.

- I also met with Jason Kenney, the premier of Alberta, and Doug Ford, the premier of Ontario, in the fall to promote Ohio's trade relationship with Canada and the two provinces. Canada was Ohio's largest export market in 2018.

>> Generating opportunities through programs and incentives.

Those who invest in the 320 qualified opportunity zones designated in Ohio by the U.S. Treasury as part of the Tax Cuts and Jobs Act of 2017 will be benefiting from capital gains tax breaks while undertaking projects that bring steady employment and affordable housing to neighborhoods that desperately need them. To further entice investors, we added a 10 percent tax credit on top of the federal incentive. Communities are using our free marketing tool at OpportunityZones.Ohio.gov to promote their zones and projects.

>> Eliminating unnecessary regulations.

The Common Sense Initiative was created to reform regulatory policies and help make Ohio a business-

friendly state. The initiative, overseen by the lieutenant governor and advised by the Small Business Advisory Council, reviews Ohio's regulatory system to eliminate duplicative rules and regulations that stand in the way of job creation. When we took office, there was a backlog of 1,233 rules awaiting attention. Today, the backlog has been cleared, and we are looking at creative ways to improve the regulatory environment in Ohio.

Meanwhile, we have unfinished business to attend to on our STRONG Ohio violence prevention initiative and its related bill, which protects constitutional rights and enhances state laws in a way that will protect our communities and help those who are a danger to themselves and others. The bill, sponsored by Sen. Matt Dolan, R-Chagrin Falls, is making its way through the legislature.

We announced H2OHIO, a \$172 million investment in targeted solutions to help ensure safe and clean water for all Ohioans, in November. We will be looking to farmers during spring planting to adopt best practices and help decrease runoff in order to prevent algal blooms in Lake Erie and other water sources.

In the next year, my team will continue the successful initiatives already under way and look for new opportunities to boost the state's economy and promote a higher level of prosperity for Ohioans. 📌

WILL SECOND-HALF MOMENTUM FOR PRO-BUSINESS POLICIES CARRY FORWARD INTO 2020?

The most significant pro-business legislative accomplishments of 2019 were not actions that enhanced Ohio's business climate. Instead, the Ohio Chamber's major 2019 accomplishments preserved the status quo, saving the small business income deduction (BID) and defeating a proposed expansion of workers' compensation benefits.

State lawmakers fashioned the state's operating budget for the next two fiscal years. During this, the House tried to limit the BID, which allows owners of sole proprietorships and pass-through entities to deduct 100 percent of their business income up to \$250,000 on their Ohio personal income tax return and taxes any remaining business income at a flat 3 percent rate.

The Ohio Chamber and our Ohio Small Business Council mobilized against this plan that would have raised taxes on small business owners by \$528 million per year. Reacting to vocal grassroots opposition from small business owners across the state, the legislature removed most of the BID changes from the final state budget it delivered to Gov. Mike DeWine.

The problematic workers' compensation proposal to give first responders coverage for post-traumatic stress disorder was put forward by the House, which included legislation establishing the Bureau of Workers' Compensation's two-year budget. It was stripped from the bill by the Senate, but this issue is far from settled.

The legislature then tackled several issues that would benefit employers. This was a welcome change and hopefully indicates a desire to prioritize the need to foster a competitive business climate that makes Ohio a great place to conduct business.

In December, lawmakers finalized House Bill 2, creating the new TechCred program. This innovative program, supported by the Ohio Chamber, is designed to help employers overcome workforce challenges. TechCred will assist employers in "upskilling" their existing workforce and gives employees the ability to earn industry-recognized, technology-focused credentials, better preparing them for a job in our advanced technology-infused economy. Through this program, businesses can identify specific qualifications needed and can be reimbursed by the state for up to \$2,000 of training once an employee earns a credential. The next online application period opened Jan. 2, 2020. Visit techcred.ohio.gov to apply or for more information.

AWAITING ACTION

A dozen Ohio Chamber-backed bills have passed one chamber and await final action in the other. Among these are bills to protect consumers and businesses by prohibiting local governments from imposing a tax, fee or ban on disposable plastic bags and other containers, reduce from eight years to six the timeframe employers

face liability for breach of a written contract and increase penalties for those who physically damage or tamper with critical infrastructure projects, such as telecommunications networks, railroads, pipelines, electric generating facilities and water sewer systems. Work on several of these 12 bills could be completed early in 2020.

Other key bills are still in their original chamber but are making progress. Most significant is HB 352, a longstanding Ohio Chamber policy objective that makes needed reforms to Ohio's employment discrimination laws. HB 352 reforms our confusing and burdensome employment discrimination statutes to better align with federal law and the laws of other states. Attorneys who practice in this area and are members of the Ohio Chamber's Employment Law Committee testified in support of the bill in November. Not one organization or individual testified against it. This should mean HB 352 is ready for the House Civil Justice Committee to favorably report at its next hearing, likely in mid-January. Following that, it will await a vote by the full House.

More controversial is the issue of surprise medical bills. Many employers are concerned about the burden that surprise medical bills — costly, unexpected bills patients get after they receive care from an out-of-network provider they thought was in their network — create for their employees. Both the Senate and the House have bills to protect patients

by ending surprise billing. However, their approaches are vastly different, and no clear path forward has yet emerged that could garner support in both chambers. The Ohio Chamber is supportive of taking patients out of the equation, but only if this can be done without creating a process that would lead to increased health insurance premiums for employers.

From a business perspective, the 2019 legislative year ended with much positive momentum, particularly when contrasted with the first half of the year. The challenge will be carrying that positive momentum into 2020, translating it into even more action, especially given that 2020 is an election year.

An election year can mean a slowing of the legislative process, in part because incumbents seeking re-election want to be back home in their districts interacting with their constituents more than they want to be in Columbus working on public policy. With a St. Patrick's Day primary and a mid-April spring break — along with an array of other issues, such as the capital budget, gun legislation, sports gaming, school vouchers and drug sentencing reform — it is probably unreasonable to expect all of the Ohio Chamber-backed bills to get done before the legislature wraps up its pre-general election work in mid-June.

Nonetheless, you can count on the Ohio Chamber to continue to aggressively push lawmakers to make the issues above a top priority. 📌

By Anthony Lagunzad, Director, Grassroots and Political Programs

MAPPING THE BATTLEGROUND: LOOKING AHEAD TO ELECTION YEAR 2020



It's here. Election year 2020 has officially arrived. Admittedly, it feels like we've been on this national election cycle since 2016. But let's leave the presidential race and talking points to the media and take a look at how down-ticket Ohio Statehouse races are shaping up.

Out of the 99 Ohio House seats, 17 incumbents are vacating their seats due to term limits, retirement or attempts to run for other elected offices. The distribution of those open seats by party matches up with the current distribution in the House — 12 open seats are Republican-held districts, five are Democrat held, and the Ohio House currently maintains a 64-member Republican supermajority.

One interesting component is how many "incumbents" appointed in the past year will be running for their seat for the first time. With nine of those new appointees (so far) this General Assembly, just over a quarter of all Ohio House districts will have relatively fresh names and faces running in those races in November.

On the Ohio Senate side, only half of the 33 districts are up in 2020 due to the four-year terms. Of those 16 even-numbered districts, five are open seats. All five of these open seats are red Republican districts, but the Ohio Democratic party is running a candidate in all 16 Senate races on the ballot in 2020. Just like the House, the Senate also has four members appointed in 2019 who will be running for re-election but will be on the ballot for their district for the first time.

The previous two national elections in 2016 and 2018 have changed the game for campaigns at the state level. With a lot of the partisan lift coming from presidential candidates for the general

election, a substantial emphasis has been placed on the primary election, with Statehouse candidates announcing campaigns to run for 2020 open seats as early as a year ago. A few of either safe-Republican or safe-Democrat open districts are seeing five or more candidates from that party filed to run in the primary. All told, Republicans are running candidates in 96 House races, and Democrats, looking to eliminate the Republican supermajority, are fielding candidates in 83. On the heels of picking up a net five seats in 2018, the Democrats' goal this year is to have a net gain of at least two seats in the House. This would block the House GOP supermajority that currently allows them to override gubernatorial vetoes.

Everything about the primary election is inherently forward-looking to the general election in November. For the Democrats, the goal is to continue their trend from 2018 and potentially even shut out Republicans from their remaining held seats in urban counties such as Cuyahoga (Cleveland), Franklin (Columbus), Hamilton (Cincinnati) and Lucas (Toledo). Democrats picked up a handful of seats in these counties in 2018 from Republicans. The trend both in Ohio and nationally during the Trump era has been for Democrats to successfully challenge suburban areas that were once — and recently — strongly Republican-leaning. As part of this effort by the Dems to flip red districts blue, there are three high-priority Republican-held flip targets in the Senate and four in the House, with an additional focus on a few competitive races in neighboring counties. As far as GOP flip targets, they're looking toward far Northeastern and Southeastern Ohio. In these regions, there are two Democrat-controlled

seats opening up in the House due to term limits in 2020, with two senators — one Democrat and one Republican — seeking re-election. These same regions, in contrast to the suburban areas becoming bluer, voted overwhelmingly red for Donald Trump in 2016 after being historically blue. Moreover, the GOP is putting forth candidates and resources to attempt to take those suburban districts they lost in 2018 back. The collective state GOP political arm, which includes both Statehouse chamber caucuses, has substantially more cash on hand than the Democratic Party as of the last reporting deadline.

In surveying the field and how it's shaping up, the ultimate goal for the Ohio Democratic Party in 2020 is to take back enough seats to eliminate the Republican supermajority in both Statehouse chambers. Of course, for Republicans, it's to hold onto those supermajorities.

While Statehouse contests get more attention, of higher priority for the business community in 2020 are the two races for Ohio Supreme Court seats. Republicans currently hold a 5-2 majority in the court, but the only statewide elections in 2020 are two Supreme Court races where Justices Sharon Kennedy and Judi French, both Republicans, are up for re-election. In its current makeup, the Ohio Supreme Court majority is fair and balanced. We are fortunate not to have justices who use their power to legislate from the bench. However, both Republicans and Democrats are putting heavy emphasis on these races because of 2018's election results. In an election year that otherwise saw Republicans sweep the races for governor, attorney

general, auditor, secretary of state and treasurer, both Republican candidates for the high court lost.

One of the challenges with judicial campaigns is that party identification is not attached to candidates' names on the ballot. So the main campaigning objective is to increase name identification, which is more difficult to establish in these campaigns than other races due to the relative obscurity of the court compared to the executive branch or the legislature. Voters, unfortunately, simply don't get as excited about state-level judicial races. Should the Democrats repeat a Supreme Court sweep in 2020, they will then hold a 4-3 majority for the first time in nearly two decades. The concern that should motivate the business community to make these races a priority is not partisan, but the potential for a shift in judicial philosophy toward activism and results-oriented justice.

So there you have it, the 50,000-foot view of Ohio politics for the 2020 election year. But as always, anything can happen between now and Tuesday, Nov. 3. You can access general info about the 2020 primary and general elections on the Ohio Chamber's website at <https://ohiochamber.com/politicalgrassroots/>. If you are interested in seeing a deeper analysis of individual state-level races, become a member of OCCPAC and make a contribution at <https://ohiochamber.com/politicalgrassroots/occpac> to receive the OCCPAC Ohio Politics Insider Newsletter. 📧

GRANTS HELP OHIO BUSINESSES PROMOTE PRODUCTS INTERNATIONALLY

Provided by the Ohio Development Services Agency

You have a product or service that many in the world would want to buy, and now you can get help letting the world know that you're here.

The Ohio Development Services Agency is ready to provide that help. Through the International Market Access Grant for Exporters, known as IMAGE, companies can be reimbursed for some of their expenses in promoting their products and services to the world. Development will reimburse 50 percent of qualified expenses, up to \$10,000.

That assistance can make a big difference for the small and medium-sized businesses that IMAGE supports. BioThane Coated Webbing, a North Ridgeville, Ohio, manufacturer of coated webbings and assemblies, gained international customers with the help of IMAGE funding.

"BioThane used IMAGE funds to exhibit at a trade show in Germany," says Kim Madjar, BioThane's director of sales and marketing. "While there, we established a new customer from Poland. We have increased sales with this customer and have established a relationship with its sister company



in Canada. Now, BioThane is successfully selling custom products to these international markets. The IMAGE grant made this possible and is making a huge difference for a small business like us."

International sales are a major factor for the Ohio economy, and the Export Assistance Office at the Development Services Agency works to help companies grow their foreign markets.

"Exporting is vital to the Ohio economy, with nearly \$55 billion worth of international sales by Ohio companies in 2018," says Lydia L. Mihalik, director of the Ohio Development Services Agency. "IMAGE is key to helping small businesses compete in the global marketplace."

The IMAGE program is funded, in part, through the U.S. Small

Business Administration's State Trade Expansion Program. Popular qualifying activities include, but are not limited to, exhibiting at trade shows, participating in trade missions, international advertising, translation services and website development.

For more information about the grants and to apply, visit IMAGE. development.ohio.gov. Applications are being accepted until Feb. 28.

In addition, Development's Export Assistance Office and the Export Assistance Network of regional offices can help companies with other international business initiatives, as well. To learn more, visit exportassistance.development.ohio.gov. To find the nearest Export Assistance Network office, visit https://development.ohio.gov/bs/bs_itac.htm. 📧

By Justin Barnes, Executive Director, Ohio Chamber of Commerce Research Foundation

NOTES FROM THE RESEARCH FOUNDATION

BUSINESS LEADERS WARY OF FUTURE UNCERTAINTY



Figure 1. Prosperity Pulse Index

In early December, the Research Foundation released the results of our third quarter 2019 Prosperity Pulse business leader survey. We conduct this survey at the end of each quarter, to keep tabs on how business owners feel about the economy, challenges facing their operations and what to watch out for in the coming months.

In the 3Q survey, we found that business owners, while remaining largely optimistic about the future of their companies, continue their trend of expressing concerns about the impact of ongoing trade negotiations and a deepening political divide. As you can see in Figure 1 above, the overall Prosperity Pulse index dropped nearly 13 points from the previous quarter, marking the second-lowest score in the last two years. The drop is attributed to a decrease in the number of respondents who anticipated profits for their business in the fourth quarter, combined with reduced planned capital investments. Despite those drawbacks, businesses in sectors across the economy had strong hiring plans for the fourth quarter, with 92 percent of respondents indicating they planned to add to their headcounts.

TOP 5 CONCERNS of OHIO BUSINESS LEADERS

| | 3Q 2019 | 2Q 2019 (last quarter) | 3Q 2018 (last year) |
|----------------------------------|---------|------------------------|---------------------|
| 1. Cost of Healthcare | 1 <-> | 1 <-> | 1 <-> |
| 2. Cost of All Employee Benefits | 2 <-> | 2 <-> | 3 ↑ |
| 3. State / Local Taxes | 4 ↑ | 4 ↑ | 9 ↑ |
| 4. Workforce | 6 ↑ | 6 ↑ | 4 <-> |
| 5. Ohio's Political Environment | 7 ↑ | 7 ↑ | 2 ↓ |

Figure 2. Top Issues of Concern

The survey also revealed some of the top concerns weighing on Ohio's business leaders. While the cost of health care is and remains the No. 1 concern for Ohio businesses, state and local taxes climb the rankings, and workforce issues and the state's political environment re-enter the top five. We anticipate that the results of the next survey will reflect some of the recent activity surrounding the announced plans to implement the United States-Mexico-Canada Agreement (USMCA), although ongoing negotiations with China and the impact of tariffs on other countries may still give businesses pause.

These surveys help the Research Foundation provide insight from business owners to thought leaders and public officials across the state. With a busy fall ahead and the election year on the horizon, the Prosperity Pulse will remain a great barometer of economic performance in Ohio.

To see the full results of the 3Q Prosperity Pulse survey, or any of the previous editions of the survey, visit <http://www.ohiochamberfoundation.com/projects>.

Thank you to all the business owners who responded to our quarterly Prosperity Pulse survey last fall. As we circulate the next survey in the coming weeks, be on the lookout and make sure your voice is heard. 📢

INTERNS HELP OHIO BUSINESSES BOOST INTERNATIONAL SALES

Provided by the Ohio Development Services Agency

More than 50 Ohio college students are preparing to focus on the international marketplace over the next eight months, and they will boost Ohio companies' sales in the process.

Companies can apply now to have a highly motivated and knowledgeable intern join their staff during the summer of 2020. The Ohio Development Services Agency will reimburse companies half of the intern's salary, up to \$3,600.

Companies have found success through the Ohio Export Internship Program in the past. Bionix Development Corp. in Toledo, which develops, manufactures and markets innovative single-patient-use medical products, has participated in the program for multiple years.

"Our intern came to Bionix well-prepared," says Brett Smith, director of market development at Bionix. "She was able to research, analyze and provide a well-developed plan for addressing specific European markets. She also fit our culture well."

Companies looking to expand existing export initiatives or start a new one can get the help they need through the internships.

Since the internship program began in 2012, 274 students have worked with 176 Ohio companies to improve their international sales. The interns' work has resulted in 315 new international markets, distributors or customers for the companies.

"The Export Internship Program is a great opportunity for all involved,

an opportunity for the students to grow and learn in their field of study and a great opportunity for the businesses to grow in international markets," says Lydia Mihalik, director of the Development Services Agency. "There's great opportunity in international markets, and what that means is an expanding workforce within the state of Ohio."

Fifty-four students will be part of the Ohio Export Internship Program for 2020 and will start the upcoming journey by taking export-focused coursework during the spring semester at one of four universities that are partners with the Development Services Agency.

Those universities are:

- The Ohio State University, Max M. Fisher College of Business
- Cleveland State University, Monte Ahuja College of Business
- Youngstown State University, Williamson College of Business
- University of Dayton, School of Business Administration

Eleven of the students will travel from their home institutions to take the export course. Those universities are Ohio Wesleyan University, Shawnee State University, Denison University, Bowling Green State University, Ashland University, University of Akron and Baldwin Wallace University.



Above: Kendrik Smith interned with Engineering Consultants.

Right: Lauren Hole served her internship with Bionix.



"There's great opportunity in international markets, and what that means is an expanding workforce within the state of Ohio."

— Lydia Mihalik, director of the Development Services Agency

After completing the course in May, the students will be assigned to Ohio companies that apply to be a part of the program, and they will work at the companies for 12 weeks, from May into August 2020.

The Export Assistance Office at Development is closely involved throughout the program. Staff visits with students during the spring semester class and with the companies that apply. Those contacts help Development's staff determine which intern will be a good fit for a particular company.

During the internships, Export Assistance Office staff continues to mentor the students throughout the summer.

The internships culminate in the

annual Ohio Export Internship Program Showcase, where the students' achievements are celebrated in a ceremony at the Ohio Statehouse.

"I think the export internship program is very well run and managed," says Chuck Ferrell, vice president of sales and marketing at Engineering Consultants Group Inc. in Akron. "ECG wants to thank the state of Ohio for these services and the Ohio Development Services Agency for their leadership and support."

Company applications are being accepted now for on-site meetings that have begun and run through February 2020. The final deadline for companies to apply is Feb. 1, 2020.

For more information and to apply, visit eip.development.ohio.gov. 📢

FIVE DRUG-FREE POLICY AND PROCEDURE MUST-HAVES

Written documents are critical for an effective and comprehensive drug-free workplace (DFWP) program. A documented, memorialized program provides legal protection in the event that the general public or a disgruntled employee challenges your organization, especially as it pertains to drug and alcohol testing (considered search and seizure by the U.S. Supreme Court). A program must adhere to federal and state law and any other authority to which the company is subject.

To be consistent and fair, an effective program dealing with employee drug use needs specific and clear policy statements and written directives. Details in all documents must be compulsory and complementary. Without detailed, company-specific procedures, an enterprise can be left potentially exposed when faced with real-life alcohol and drug issues.

Here are examples of five operational issues that are often overlooked — but shouldn't be.

1 Alcohol consumption. Is there ever a time when employees are allowed to drink in connection to work, e.g., at holiday gatherings, entertaining prospective clients, attending conferences? If so, clear, written parameters concerning that use need to be included in your policy or program documents.

Specific guidelines not only serve to prevent problems associated with overconsumption but can also help insulate the company in the event there is litigation for damages caused by an intoxicated employee.

2 Use of prescription drugs. Employees have protections under federal law regarding their use of prescription medications, but the side effects of some medications can jeopardize safety. Do employees know what to do if that happens? While you don't want to prevent employees from properly using medication, your program documents should offer directives for what employees should do if they are taking something that could jeopardize safety or productivity.

3 Post-accident testing. Testing an employee after an accident is prudent, but what counts as an accident in your organization? To prevent management from making decisions based on subjective criteria — e.g. they think the employee was high — you need a detailed, objective definition of what constitutes an accident that qualifies for post-accident testing. Having a written and meticulously followed policy leaves little doubt about when to send, or not send, an employee for post-accident testing.

4 Program coverage. A company's DFWP typically applies to both

full- and part-time employees. But what about temporary employees, interns, independent contractors, or volunteers? Are these individuals subject to all — or just some — of the program rules and testing applications? Are they excluded altogether, or covered under a different contractual agreement? An operationally sound program should clearly articulate the expectations of all individuals that could impact the safety, productivity or public image of your organization.

5 Employee assistance. DFWPs are designed to help employees, in addition to helping the organization. Does your program provide specific directions to employees struggling with alcohol or other drug issues? Where can they go for help, and what if they need time off to seek that help? What safety precautions should the company take if an employee voluntarily shares information about a program or is identified as having a problem via a positive test? These decisions will be influenced not only by your organization's preferences and needs but by any compliance mandates you follow. However, whatever action is taken in this situation must be dictated by your program's written documents.

Addressing real-life situations like these, along with others you will encounter while operating your

DFWP, makes your program live in a functional way.

The procedures for handling situations may be contained in a single drug-free workplace policy, or, to prevent the policy from becoming too cumbersome, in a separate program procedures document.

Remember, a program dealing with employee drug use doesn't live in a silo separate from nondrug free workplace policies and procedures. Practices need to be interwoven with all other related corporate policies, e.g. HR, safety, administrative. To deal with drug issues responsibly, an employer needs to have policies and procedures around drug testing, fair-chance practices, time-off guidelines, applicable insurance, benefits and other available assistance, re-entry support and more. Regardless of where you put the information, operational details on all related corporate practices must be congruous and documented.

While operating your DFWP, if something occurs, you must be able to pull out your policy and procedures to guide your actions. If something happens and you don't know how to respond, don't wing it. Find a specialist who knows the law, can help you work through the situation and ultimately add a new operational procedure to your program. 📌

DISCLAIMER: This article is designed to provide accurate information regarding the subject matter covered. It is provided with the understanding that those involved in the publication are not engaged in rendering legal counsel. If legal advice is required, the services of a competent professional should be sought.

This article was provided by Ohio Chamber Member Working Partners. It is one of many support articles available on the Ohio Chamber's website at <https://ohiochamber.com/opioid-toolkit/>, then scroll to the bottom and click on "Drug-Free Workplace Resource Library." Contact Working Partners at (614) 337-8200.

NEW RULING GIVES EMPLOYERS ADDITIONAL DISCRETION TO PROHIBIT EMPLOYEES FROM USING EMAIL FOR NONBUSINESS PURPOSES

By Traci Martinez and Jill Kirila, Partners at Squire Patton Boggs (US) LLP

On Dec. 16, 2019, the National Labor Relations Board's (NLRB) decision in *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino* ruled that employers can prohibit use of their email system for nonbusiness purposes, thereby overturning the board's controversial 2014 decision in *Purple Communications*. In *Purple Communications*, the board held that employees who are granted access to an employer's email system have a statutory right under the National Labor Relations Act (NLRA) to use that email system during nonwork time for purposes protected by Section 7 of the NLRA, including organizing union activity.

In the *Caesars Entertainment* case, the board analyzed pertinent portions of *Caesars Entertainment's* handbook policy to determine whether the rule improperly impeded or chilled employees' NLRA rights to engage in protected concerted activity, including the following.

CONFIDENTIALITY

Do not disclose or distribute outside of [the company] any information that is marked or considered confidential or proprietary unless you have received assigned nondisclosure agreements through the Law Department.

Computer resources may not be used to:

- Share confidential information with the general public, including discussing the company, its

financial results or prospects, or the performance or value of company stock by using an internet message board to post any message, in whole or in part, or by engaging in an internet or online chatroom

- Convey or display anything fraudulent, pornographic, abusive, profane, offensive, libelous or slanderous
- Send chain letters or other forms of nonbusiness information
- Solicit for personal gain or advancement of personal views
- Violate rules or policies of the company
- Visit inappropriate (nonbusiness) websites, including, but not limited to, online auctions, day trading, retail/wholesale, chat rooms, message boards and journals. Limit the use of personal email, including using streaming media (e.g., video and audio clips) and downloading photos.

The administrative law judge, applying the principles of *Purple Communications*, held that the prohibition on sending nonwork information interfered with the employees' rights under the NLRA. Thereafter, on Aug. 1, 2018, the board issued a notice for the parties to file briefs answering whether the board should adhere to, modify, or overrule *Purple Communications*.

After extensive briefing by all parties, including over 30 amici briefs filed,

the board held that, "There is no basis for concluding that a prohibition on the use of an employer's email system for nonwork purposes in the typical workplace creates an 'unreasonable impediment to the exercise of the right to self-organization.'" The board further noted that an employer has a property right to control the use of its communication systems. Accordingly, the policy was deemed lawful under the NLRA.

This decision marks a continuing return to an approach by the board that better balances an employer's right to have legitimate policies and rules for its employees that govern important aspects of their employment and company business, with employees' right to act concertedly to improve terms and conditions of their employment. One note of caution, however; the board concluded that this ruling applies to the "typical" workplace, where there are other means of communication between employees on nonwork time. Thus, in the rare instance where use of employer email or IT resources is the only means of communication, the policy may draw additional scrutiny.

For employers interested in implementing new rules related to employee use of computer resources and emails, contact your employment legal counsel. 📌

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OHIO CHAMBER'S WEBSITE REDESIGN PROVIDES EASIER NAVIGATION AND VALUABLE RESOURCES

The Ohio Chamber of Commerce's website got a brand-new look toward the end of 2019, making it sleeker and easier to navigate. With information on everything from membership to the latest bills the Ohio Chamber is tracking, the new website makes staying up to date with the Ohio Chamber easier than ever.

NEW DESIGN

While the Ohio Chamber's website still contains vital information on advocacy, policy and membership, the layout makes this information easier to find, while boasting a bold new design. The roaming navigation bar at the top of the page allows users to easily browse pages on the website without losing where they started. The navigation bar is also more succinct, with categories like "Advocacy & Policy," "Communications," "Membership" and "About Us" containing all needed information.

There are new organizational tools throughout the website, making it easier to find specific information quickly. For example, drop-down menus and tabs help users find specific issues of *Ohio Matters* or *Legislative Update* without navigating away from the page.

Complementing the new navigational elements, the design offers sleeker graphics, high-resolution images on every page and updated links and language.

VALUABLE RESOURCES

The Ohio Chamber's website provides valuable resources for members to address a variety of needs. The Opioid Toolkit is a free resource for companies doing business in Ohio. The toolkit provides a five-module video course for employers, as well as additional videos and printouts on topics like how to navigate CBD questions and how to create a recovery-supportive workplace. Ohio Chamber member Working Partners also provides a Drug-Free Workplace Resource Library within the toolkit, which includes a compilation of articles on a drug-free workplace.

The Ohio Chamber's Health Benefit Program is a new resource on the website. As a member of the Ohio Chamber, the Health Benefit Program may help small businesses save up to 15 percent on a self-funded health plan. The program is tailored specifically for Ohio businesses with two to 50 employees and provides access to the UnitedHealth Premium Program.

HR Academy — a resource for Ohio businesses and law firms to help maintain a comprehensive understanding of employment law and issues — can also be found on the site. The Ohio Chamber partners with top employment lawyers across Ohio to host webinars on topics related to employment law to help HR professionals. Those professionals can also earn credits, such as HRCI, SHRM or CLE, at the same time.

Other valuable resources on the Ohio Chamber's website include:

- *Ohio Matters*, the Ohio Chamber's bi-monthly publication, with in-depth stories on legislative issues, member company information and more
- *Legislative Update*, an email sent every Monday to all Ohio Chamber members on the latest legislative news from our blog, allforohio.com
- *Bill Tracking*, a resource that showcases all the bills the Ohio Chamber is currently tracking
- *Free Enterprise Index*, a resource that shows how legislators voted, providing necessary information to identify pro-business legislators, gauge legislator performance and highlight issues that impact Ohio's business climate

VISIT THE NEW SITE TODAY

Explore the Ohio Chamber's website at www.ohiochamber.com.

NEW MEMBERS

We welcome the following new members to the Ohio Chamber of Commerce. These companies joined the Ohio Chamber between Nov. 5 and Dec. 19, 2019. As of Dec. 19 we have welcomed a record 618 new members. We looking forward to working with all of these new companies, as they are #allforohio.

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| Able Fence of Columbus Inc., Columbus | K&A Professional Wood Services LLC, Mansfield |
| Advanced Mechanical Services, Fairborn | K9to5 Doggy Daycare LLC, St. Mary's |
| Advanced Plastic Systems, Gahanna | Kessler & Associates Inc., Dayton |
| Alliance Building Group LLC, Xenia | Knowlton Industrial Steel Supply Inc., Norwich |
| Allied Builders, Dayton | Koch Sporting Goods, Cincinnati |
| Alumina Railing Products Inc., Cleves | Lakeside Supply Co., Cleveland |
| AMEND Consulting, Cincinnati | Law General Contracting, St. Louisville |
| ARES Inc., Port Clinton | Lee Cleveland Property Management, Pepper Pike |
| Armcorp Construction Inc., Celina | Life Rocks LLC, Cincinnati |
| Articulation, Columbus | Luken Construction Inc., Cincinnati |
| Assured Partners Consulting Inc., Boardman | M.J. Mock & Associates LLC, Centerville |
| AssuredPartners NL LLC, Cincinnati | Malbasa Financial Services, Cleveland |
| Auto Additions Inc., Westerville | Mathie Benefits Inc., West Chester |
| Avalon RV Center, Medina | Maximum Accessible Housing-WEST, Cleveland |
| Benchmark Insurance Management Inc., Westerville | McGohan Brabender, Dayton |
| Benefit Strategies Agency LLC, Findlay | Milligan Construction Co., Sidney |
| Benefits Network - a Division of Risk Strategies, Cincinnati | Mistras Group Inc., Newark |
| Borgers Ohio Inc., Norwalk | NFP Corporate Services (OH) Inc., Independence |
| Brad Smith Roofing Co. Inc., Westlake | Noebull Automotive, Columbus |
| Buckeye Beach Park, Thornville | Northwest Therapy Service Inc., Bellefontaine |
| Burnside Law LLC, Portsmouth | Ohio Athletic Committee, Sandusky |
| Carey Electric Co., Vandalia | Ohio Green Works LLC, Waynesville |
| Catchweight, New Albany | Ohio Library Council, Columbus |
| City Plating and Polishing LLC, Cleveland | Ohio Quarter Horse Association, Columbus |
| Cleveland Air Comfort Corp, Cleveland | Ohio Tool Systems Inc., Richfield |
| Coil Processing Repair Inc., Celina | Precision Alignment and Tire, Delaware |
| Columbus Pest Control Inc., Columbus | Primatech Inc., Columbus |
| Concord Fabricators Inc., Grove City | Quest Restoration, Toledo |
| Controllix Corp., Walton Hills | Quicken Loans Inc., Mentor |
| Craynon Fire Protection, Dayton | Rader Environmental Services, Findlay |
| Cresco Labs, Chicago | Radico Inc., Columbus |
| Cunningham Insurance Ltd., Mt Vernon | Restoration Brew Worx, Delaware |
| Dawn Enterprises Inc., Valley View | Restoration Park Church, Medway |
| DeMary Truck, Columbus | Richland Residential Inc., Middleburg Heights |
| Dick Baker Roofing Inc., Columbus | Sandusky State Theatre, Sandusky |
| DiDac Tex, LLC, Oakwood | Savin Sales Associates Inc., Chagrin Falls |
| Dietz, Futrell and Walters Insurance, Beverly | Schroedel Scullin & Bestic LLC, Canfield |
| Dryden Builders Inc., Centerville | Shawnee State University, Portsmouth |
| DS Benefits Group, LLC, Medina | Shoreline Construction & Excavating Ltd., Russells Point |
| Duling-Warnock Residential, Hilliard | Smarty Pants Learning Centers Inc., Cleveland |
| Eagle Concrete Construction LLC of Ohio, Springboro | Sokol Eisenberg Insurance, Columbus |
| EDP Renewables North America LLC, Chicago | Springfield Township, Clark County, Springfield |
| Elford Development Ltd., Columbus | Stratton Creek Wood Works LLC, Kinsman |
| ELK Promotions, Columbus | Srinteg Corp., Cleveland |
| Energy Insurance Agency, Lexington, Kentucky | TAH Benefits, Westerville |
| Faircreek Church, Fairborn | The Benefit Source Inc., Beachwood |
| Falcon Tool & Machine Inc., Dayton | The Columbus Architectural Studio LLC, Columbus |
| Fayette County Board of Developmental Disabilities, Washington Court House | The Daimler Group Inc., Columbus |
| Find My Benefits, Cleveland | The Nigh Law Group LLC, Columbus |
| First Insurance Group of the Midwest Inc., Defiance | The Sandel Corp., Gahanna |
| First Tracks Technology, Lewis Center | The SEBO Group, Columbus |
| Front Health, Columbus | The Siekmann Co., Plain City |
| Frontier Electric Services, Columbus | Thomas R. Bates, CFP, LLC, Columbus |
| Girl Scouts of Ohio's Heartland Council Inc., Columbus | Thompson-Cunningham Insurance, Worthington |
| Grady Enterprises Inc., Columbus | Total Athletic Development Inc., Granville |
| Greer & Whitehead Construction Inc., Harrison | TR Hedge & Associates, Dublin |
| Hamman Family Partnership, Mt. Sterling | Tri-Craft Inc./Tech-Matic Inc., Middleburg Hts |
| Helping Hands Health and Wellness Center, Columbus | Vanderhorst Financial Services LLC, Sidney |
| Hill & Hamilton Inc., Bellefontaine | Vapor Emporia, Findlay |
| IAB Benefits LLC, Columbus | Verhoff Alfalfa Mills Inc., Ottawa |
| Innogy Renewables US, Chicago | Village of Sunbury, Sunbury |
| IP Security Reps, Springfield | Village of Wintersville, Wintersville |
| J A Knapp Agency, Sunbury | Worker Owned Restaurant Corp., Athens |
| Jon Edwards Steel, Columbus | Worthington United Methodist Church, Worthington |
| | Zimmer Development Co., Wilmington, North Carolina |

A PROFILE OF OHIO CHAMBER MEMBERS



As of this writing, the Ohio Chamber of Commerce added a record 600 new members in 2019. So what is the profile of Ohio Chamber membership?

Of our 8,000 members, 20% are in manufacturing. This is the largest industry group represented in our membership. The rest of the top 10 industry categories are:

- 11% nonprofits and other chambers of commerce
- 10% retail
- 10% construction
- 5% transportation
- 4% health care
- 4% industrial
- 4% business services
- 4% insurance
- 3% wholesale

As for company size,

- 33% have one to 10 employees
- 24% have 11-25 employees
- 18% have 26-50 employees
- 7% have 51-100 employees
- 7% have 101-200 employees
- 5% have 201-500 employees
- 2% have 501-1,000 employees
- 3% have 1,000-10,000 employees
- And 1% of our membership has over 10,000 employees.

The majority of our members are located in Northeast Ohio, 24% in Central Ohio, 21% in Northwest Ohio and 7% are in the southeastern part of the state.

As you can see, we represent a variety of members – just like Ohio’s business community, which is made up of a variety of businesses in all industries and of all sizes. This year we added new members like Facebook, SHARE and Air Stream, plus many more. We have featured these new members in social media posts throughout the year and highlighted some of them in this publication.

Our elected officials want to hear from a variety of businesses, as well, which is what makes our organization such a unique advocate for business. When one of our team members is testifying in front of a committee at the Statehouse, our elected officials know they are speaking on behalf of a diverse and influential group.

There are many times when we need members to help carry our message. Whether it is contacting elected officials to let them know how their decisions will impact the business community, or coming to Columbus to testify in person, our elected officials are interested in hearing from our members.

Because this is an election year, it is very important for you to let the candidates for the Ohio House, Senate and Ohio Supreme Court know the issues that are important to your business. Invite them to your company

so that they can learn first-hand how their decisions impact business.

Later this year, we will announce our endorsements for those running in the Ohio House, Senate and Ohio Supreme Court. We have a thorough endorsement process so that you can be assured the people we endorse are supportive of economic growth and Ohio’s job creators. We encourage our members to become active in the political process by not only voting in the March 17 and Nov. 3 elections, but also by supporting our endorsed candidates by sharing the information with your employees, contributing to the Ohio Chamber Political Action Committee or even helping out on their campaigns.

The variety in our membership base best reflects the entire business community in our state. It’s the uniqueness of our membership that really sets us apart. Whether you are a sole proprietorship or part of a large international company, your voice is heard at the Ohio Chamber of Commerce. 🇺🇸

Andrew E. Deebel

EDITORIAL POLICY

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POSTMASTER

Please send address changes to *Ohio Matters*, Attn: Database Manager, Ohio Chamber of Commerce, 34 S. Third St., Suite 100 Columbus, Ohio 43215

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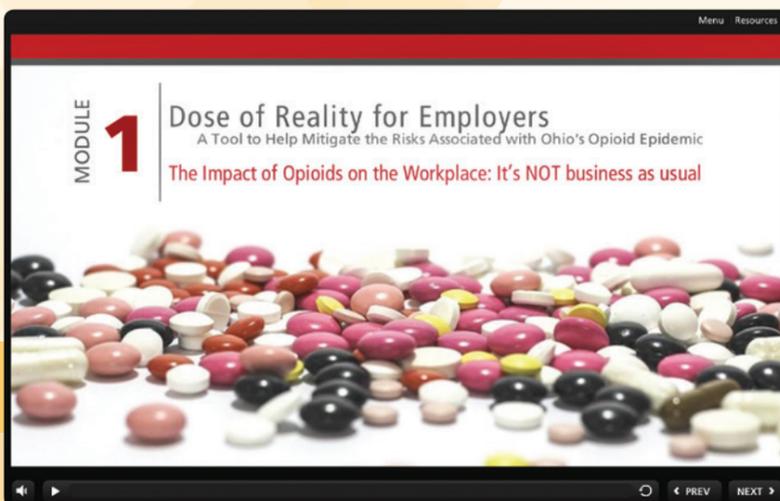
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A FREE online toolkit to help mitigate the risks associated with Ohio’s opioid crisis. This toolkit is available to all companies in Ohio. We encourage everyone to use and share the information.

www.ohiochamber.com/opioid-toolkit

For more information, contact Julie Wagner Feasel at the Ohio Chamber of Commerce at jfeasel@ohiochamber.com or 614-228-4201.



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