

# EMPLOYER ADVOCATE

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## LEGISLATIVE

# 1993 Legislative Outlook

**T**he 1992 organizational session marked a time of change for Florida.

In November, 66 freshman legislators arrived in the capital city—41 percent of the entire Legislature. Nineteen of those 66 were freshman senators who had a hand in making history: For the first time in Florida, the Senate Democrats and Republicans battled for leadership with a 20-20 deadlock.

The result of two days of negotiations was an agreement of shared power and two presidents, each with a one-year tenure.

Sen. Ander Crenshaw (R-Jacksonville) got first bat at Senate president, and is the first Republican Senate president in 118 years. Sen. Pat Thomas (D-Quincy), although second at the plate, will take advantage of the underlying power inherent to a president designate.

When legislators return to Tallahassee on Feb. 2, 1993, many of the issues they will address are ones their predecessors agonized over during the first six months of 1992. Among the most controversial



*Legislators got a quick taste of what's in store for 1993 during the organizational session in November 1992.*

are the governor's tax proposals and predicted budget shortfalls, health care reform and environmental issues including solid waste management and an advance disposal fee program.

## The Budget

On Dec. 17, 1992, Gov. Lawton Chiles detailed his Smart Dollar Budget for the 1993-94 fiscal year. The governor's proposal included \$630.7 million in new general revenue to be raised by repealing sales tax exemptions on professional services, such as lawyers and accountants, and

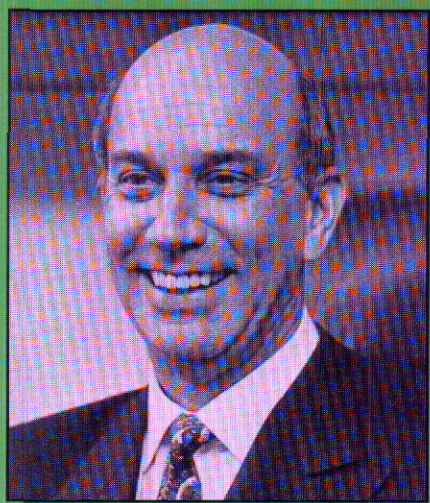
automatically increasing the state cigarette and alcoholic beverage taxes according to the consumer price index. The governor, after losing his battle to conservative legislators and industry for \$1.35 billion in increased general revenue in 1992, is making an attempt to win about half that amount (\$630 million) this session while reviving the bitter services-tax debate.

## Health Care Reform

Due to emphasis on health care reform during the pres-  
*Please see Session, page 3.*



## President's Message



# The Will Of The People

by Jon L. Shebel, President and Chief Executive Officer, Associated Industries of Florida

**T**he first impression is strong. This year's group of legislators have already displayed an independence of mind and a willingness to attack the issues.

This new trend began last year when the House Republican freshmen drafted a budget in response to Gov. Lawton Chiles' Fair Share Budget. Usually, freshman legislators are advised to go slow in their first term and to follow the lead of the "seasoned professionals."

These freshmen challenged the system and developed a budget that calculated state revenues and then allocated them based on priorities.

Sounds like good fiscal policy, doesn't it? In the capital city, it was revolutionary. While the Priority Budget was criticized for certain technical errors, it made an impression here that we can only hope is lasting.

The new leaders of both chambers, Senate President Ander Crenshaw (R-Jacksonville) and House Speaker Bo Johnson (D-Milton), are faced with the task of building consensus among traditional opponents.

The House is divided into camps of rural and urban representatives. In the upper chamber, a 20-20 split between the GOP and the Democrats creates the opportunity for thoughtful negotiation or ongoing gridlock. My knowledge of both men convinces me they have the courage and integrity to conquer factionalism without bargaining away the interests of the state.

Now that you've heard the good news; the last round of elections brought to light a serious flaw in our campaign structure.

Two years ago, the Legislature passed a campaign reform law, with Chiles leading the charge. The law set a \$500 cap on contributions, by corporations, political action committees and individuals, to individual campaigns for each election.

The law, however, allowed a loophole that made the fat cats purr with contentment. The act set no limit on contributions to political parties, and while it restricted the parties to contributions of \$50,000, certain types of party assistance such as polling services, research, technical assistance and voter mobilization efforts were excluded from the ceiling.

It is now clear those exemptions were freely exploited. A look at the contribution reports filed by the parties reveals the extent of the problem. The Republican report came in on time, was detailed and generally tallied with the accounts filed by the candidates.

The Democratic Party, on the other hand, held their report until the day of the election. By doing so, they risked some heavy penalties, but managed to postpone some justifiable criticism that could have hurt their candidates.

In only five of 40 races did the Democratic Party's record of contributions tally with those filed by the candidates. In fact, the reports of 15 Democrats showed party contributions ranging from \$50,000 to \$94,000 not listed in the party's report. In some cases, Democratic candidates pulled in more money from the party than from all other contributors combined. For instance, one Democratic challenger who

defeated a Republican incumbent enjoyed a \$94,000 subsidy from her party. Donations from her other supporters totaled \$42,856.

AIF does not judge candidates' campaigns based on party affiliation, however; we judge them on who they are as people and how well they represent their constituents.

There is one group of people who reap the biggest rewards under this system: the campaign consultants. Insiders call them "dirt diggers," "rip-off artists," "mud

merchants" or "slime slingers"; this year's elections granted them a financial bonanza.

Many of their so-called services slide through the loopholes in the current law. Some candidates have complained of losing control over

their campaigns once the party sends consultants in. All told, it's a situation that doesn't serve the state's best interests.

The new House Minority Leader, Rep. Sandra Mortham (R-Largo), has announced a reform bill to plug the gaps in the current law. Her package of proposals addresses fair campaign practices, campaign-finance reform and election administration.

Here at AIF, we intend to stay on top of this issue. Past sessions have been dominated by an entrenched network of power embedded in the leadership and party bosses. A certain lethargy, devoted to preserving the status quo, reigned in the Capitol. Too many members focused their attention on garnering the biggest offices, the most prestigious committee assignments and the security of tenure.

Based on the observations of a number of veteran business lobbyists during the organizational and special sessions and committee meetings that have taken place since the election, House and Senate members have shifted their attention to the needs and demands of their constituents, which is only right. The will of the people put them in office. Once there, the will of the people and the welfare of the state should be their only guide.

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# AIF Prepared To Face Challenging 1993 Session

*Health Care, Taxes, Workers' Compensation At the Forefront*

**A**t least 3,000 bills are filed each year during the legislative session, and it seems that half of them have some impact on AIF members.

Our Tallahassee staff monitors issues ranging from taxation and workers' compensation to the environment and labor relations, so we can react quickly to new issues and take firm positions.

The AIF Board of Directors, comprised of business leaders in various industries throughout the state, decides the stances AIF takes on nearly 100 issues every session.

For the 1993 legislative session, the three major areas of concern to AIF are the threat of new taxes, the health care crisis and the state of Florida's workers' compensation system. Each represents major financial burdens for Florida employers. To give you a brief overview, we have provided the following outline of the issues and AIF's positions.

## Taxation New Taxes

Gov. Lawton Chiles submitted his 1993 tax proposal containing more than \$600 million in new fees and taxes.



Every professional targeted in the governor's plan will fight increased taxes. Most likely, the Legislature will then shrink from that confrontation and instead attempt to procure money it's convinced it needs from its favorite source: employers.

Rather than burdening Florida businesses with more taxes, AIF supports a priority-driven budget, believing that government can live within the natural revenue growth of \$1 billion projected for this fiscal year.

The AIF Board will discuss taxation issues the day prior to the opening of the session.

*Please see Challenge, next page.*

## Session, from page 1.

identical campaign, the federal level will not be the only level at which major health care reforms are addressed. Most states will be looking at ways in which health care reform will be feasible, and Florida is no exception.

Businesses big and small shoulder the greatest burden of health care costs. It is a burden that has been increasing at a phenomenal rate, one which business will soon be unable to bear. As health care costs increase, fewer small businesses can afford to offer health insurance for their employees, and consequently, more individuals go without health insurance.

Large companies that offer health insurance, and people who can afford individual health policies will be picking up a greater share of costs from uninsured and non-paying patients.

Among health care issues that will return this legislative session are cost containment, proposals for unlimited access to health care and a uniform benefits plan.

## Solid Waste

The 1992 Legislature, after months of workshops and compromises between environmentalists and industry, failed to pass any legislation on solid waste management. In 1993 the House Committee on Natural Resources and the Department of Environmental Regulation will address and propose language relating to packaging fees and taxes, rates and dates, and flow control.

## Advance Disposal Fee Program

The ADF was created in the 1988 Solid Waste Act, and believed to be a future solution to the litter problem in Florida. Although Section 403.7197,

*Florida Statutes*, was adopted in 1988, it was not to go into effect until 1992.

At best it was a skeleton statute not intended for implementation. The 1992 legislative session, mired by budget woes, was not the atmosphere in which a comprehensive rewrite of the ADF program could come to fruition.

The ADF was perceived as a tax, and it was that perception that ultimately led to its downfall. However, legislators were able to pass an extension to the effective date which will enable the 1993 Legislature to review the program.

As these and other issues return and new conundrums rise to greet the 1993 Legislature, memories of last year's six-month extended session still linger.

We are optimistic that legislators this year will quickly address important issues of the state and Sine Die on the last day of session, April 2, 1993.



## **Challenge, from page 3.**

### **Florida**

#### **Value-Added Tax**

Some companies doing business in Florida support the creation of a Florida value-added tax (VAT). A VAT taxes a company based on the value that company adds to goods or services, rather than on profits the company earns.

Although the Legislature probably will not pass a VAT this year (because the governor is not supporting it at this time) the subject is certain to be addressed.

AIF does not support a VAT at this time because there are still too many questions concerning its implementation and impact. Enacting an improperly drafted VAT could hurt the Florida business climate and community. AIF will not endorse a VAT without first reviewing the economic impact it would have on Florida's economy and on Florida-manufactured goods sold out of state.

#### **Repeal of Sales Tax Exemptions**

For the past two legislative sessions, Rep. Willie Logan (D-Opa Locka) proposed the repeal of all sales tax exemptions over a four-year period.

The approach he champions allows the Legislature, through inaction, to repeal sales tax exemptions without debating the merits of retaining the exemption.

Some sales tax exemptions are vital to the continued existence of entire industries in Florida. Therefore, AIF opposes a wholesale repeal of sales tax exemptions, but supports an orderly review, and repeal, of unwarranted exemptions.

The AIF tax committee worked for almost two years building consensus around a list of exemptions suitable for repeal. If the AIF Board decides the

economy can support new taxes, AIF would support repeal of those targeted exemptions.

#### **Health Care Market-Based Health Care Reform**

The 1992 presidential election placed health care reform squarely in the glare of the spotlight. AIF has been chipping away at health care costs for three legislative sessions, yet it is clear health care costs will not stop climbing without wholesale market reform.

The only systematic health care reform proposed for Florida so far has been the creation of a government-run health care system supported by tax money. Fortunately, that approach is losing favor because it lacks the ability to control costs.

Currently, the favored approach is managed competition. Under this scheme, health care purchasers introduce competition for price and quality

into the health care market by forming large purchasing blocks and demanding quality at reasonable prices. AIF supports managed competition.

#### **Joint Venture Hospitals**

In the 1992 Legislative Session, AIF helped pass a law banning physicians from referring their patients to certain free-standing health clinics they owned interests in.

Several studies showed that physicians who owned these clinics, called joint ventures, were more likely to refer patients than physicians who did not participate in joint ventures, thus causing greater utilization of health care resources and increasing costs.

Physicians and their financial advisors quickly found ways around the law. One method is for physicians to purchase limited partnership shares in hospitals.

Hospitals, exempt from the self-referral ban, then turn around and purchase the joint facilities the physicians previously owned and were referring patients to. This allows physicians to continue to self-refer to free-standing facilities because, technically, they are owned by the hospitals.

AIF supports adding language to the self-referral ban that would prohibit hospitals from circumventing the law. Physicians would not be banned from owning interests in hospitals, but they could not refer to free-standing clinics the hospitals owned.

#### **Economic Credentialing**

The economies of health care are becoming increasingly important as hospitals serve

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more and more non-paying patients, and fewer and fewer paying patients.

Hospitals recover revenue lost on non-paying patients by shifting costs to paying patients. Today, however, fewer people are covered by health insurance, so, as the proportion of non-paying patients relative to paying patients increases, the onus of this cost-shift on paying patients has become unbearable.

To help decrease the amount of cost-shifting and recoup some losses, hospitals are searching for profit centers. Physicians in high-income specialties are fast becoming the profit centers, so hospitals are watching how well those staff physicians perform.

Physicians, in turn, feel they are under increased pressure to generate income for hospitals.

Physicians and hospitals each accuse the other of engaging in economic credentialing, which they both claim is a harmful practice that encourages overutilization of health care resources.

AIF believes that some forms of economic credentialing can be useful to hospital management; however, if abused, economic credentialing can cost business billions of dollars in higher health care costs.

AIF supports limits on economic credentialing so physicians don't become a sales force for hospitals, and hospitals don't become a dumping ground for physicians' non-paying patients.

## **Workers' Comp. Attorney Fees**

Workers' compensation costs must come down, but the two primary components in workers' compensation premiums, health care costs and litigation costs, are both on the rise.

Workers' compensation was designed to be a no-fault system, yet every year brings

vors bringing the Division of Workers' Compensation (Department of Labor and Employment Security) into the dispute process as an adjudicator.

Under current law the administrative process takes up to two years to resolve disputes, and medical payments continue during the period of dispute. The addition of adjudicators should dramatically reduce the period of dispute resolution, thereby saving money.

Next, AIF strongly supports limiting chiropractic care to a maximum of 12 visits or 30 days of treatment, and eliminating payment for other services, such as weight-loss clinics. These treatments are not truly medical, yet they are the driving force behind rising medical costs and premium increases.

Lastly, AIF supports testing managed care programs and jointly operated labor/management medical centers for cost-effectiveness. AIF also supports several other measures that streamline procedures, provide training to medical staff and control workers' compensation medical costs.

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*AIF supports a workers' compensation provision requiring employees to pay their own attorney fees. This would discourage attorneys from running up fees and bills.*

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greater attorney involvement. To bring premiums down, we must bring down the number of claims going to litigation.

One reason lawsuits are proliferating is because judges routinely award attorney fees in the range of \$200-\$300 an hour. AIF supports a workers' compensation provision requiring employees to pay their own attorney fees. This would discourage attorneys from running up fees and bills, and should reduce the number of cases that go to court.

## **Medical Costs**

Medical costs are the single largest factor in increasing workers' compensation premiums. More than half of all premium dollars now go to pay medical costs. There are steps the Legislature can take to curb increasing medical costs.

AIF supports a new, three-pronged approach to medical treatment for workers' compensation cases: First, AIF fa-

## **Looking Ahead**

These issues are just a sampling of the hundreds AIF will debate this legislative session. For a more complete analysis of issues, call our Tallahassee office at (904) 224-7173, and request a copy of *Proposed 1993 Legislative Issues*. This publication details AIF's positions on the environment, labor relations, tort reform and unemployment compensation in addition to the subjects covered in this article.

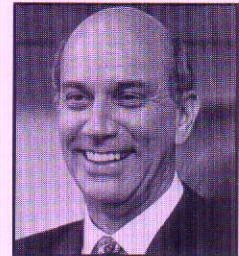


## AIF Staff Lobbyists

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### Jon L. Shebel

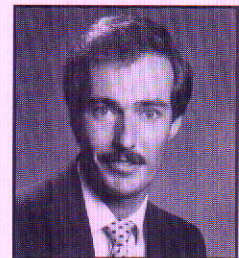
President and CEO of Associated Industries of Florida and affiliated corporations . . . 22 years as a lobbyist for AIF . . . directs AIF's legislative efforts based on AIF Board of Directors' positions . . . chief executive officer in all matters relating to legislative and corporate operations . . . former executive assistant to the minority leader of the Florida House of Representatives . . . graduated from The Citadel and attended Stetson University College of Law.



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### Richard M. Davis, Esq.

Executive Vice President Legal and Governmental Affairs . . . nine years with AIF . . . spearheads association's legislative effort, under direction of president, and coordinates all legal work . . . lobbies issues in labor law . . . graduate of Florida Atlantic University and Florida State University College of Law.



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### Jodi L. Chase, Esq.

Vice President and General Counsel . . . came to AIF from the Florida Chamber of Commerce in 1991 . . . lobbies health care legislation and environmental issues, ranging from wetlands and solid waste to growth management . . . undergraduate degree and law degree from Florida State University, both with honors.





# Legislative Consultants

## Taxation

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## Workers' Compensation

### Mary Ann Stiles, Esq.

Senior partner in the law firm of Stiles and Taylor . . . former vice president and general counsel of AIF . . . major drafter of the 1979 revisions to the Florida W.C. law on behalf of Florida employers . . . consultant to numerous state legislatures on Florida's wage loss approach in workers' compensation . . . author of AIF Service Corporation workers' compensation handbook for employers . . . graduate of Florida State University and Antioch Law School.



## Insurance and Workers' Compensation

### Don Reed, Esq.

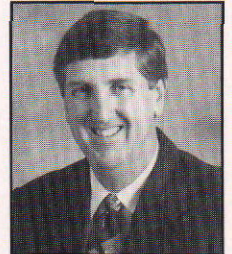
Partner in the law firm of Honigman, Miller, Schwartz and Cohn . . . over 18 years lobbying experience before the legis-



lative and executive branches of government . . . Supreme Court-certified court mediator . . . former member of the Florida House of Representatives and House minority leader . . . four-time recipient of the Allen Morris Award for Most Effective in Debate . . . graduate of Ohio State University and University of Florida College of Law.

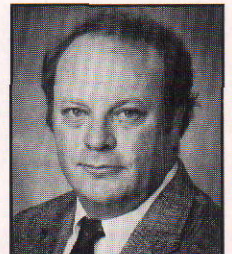
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### Edward L. Kutter, Esq.

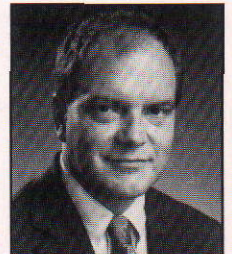
Senior partner with the law firm of Katz, Kutter, Haigler, Alderman, Davis & Marks . . . over 15 years working with the Legislature on insurance matters . . . former assistant general counsel of the Florida Insurance Department . . . counsel to AIF Property & Casualty Trust . . . undergraduate and law degrees from Florida State University.



## General Legislation

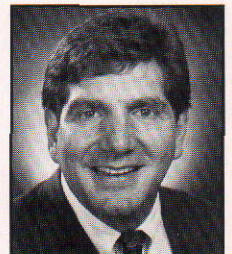
### Damon Smith

Partner in governmental consulting firm of Mirabella, Smith & McKinnon . . . former vice president of Chiles Communication, a governmental public relations firm . . . former district administrative assistant to then-U.S. Sen. Lawton Chiles . . . B.S. in journalism from University of Florida.



### Frank Mirabella

Partner in Mirabella, Smith & McKinnon . . . over five years lobbying experience before the legislative and executive branches of government . . . served as executive director (and one of three founders) of EXCEL, Inc., Excellence Campaign: An Education Lottery . . . former chief cabinet aide and public information director for the Florida Department of Education and Education Commissioner Ralph Turlington . . . B.A. in government from Florida State University.





# Public Hospitals — Care For the Whole Community

**P**ublic hospitals are responsible for the care of all citizens seeking medical attention, regardless of their ability to pay, and this responsibility is taken seriously by the dedicated, well-trained professionals who work there.

Physicians, nurses and other health care professionals who staff public hospitals are exposed to a wide range of illnesses and injuries.

The skill and expertise required to appropriately care for these illnesses is often overlooked by the communities and businesses that fund public health care systems.

And, people who can afford to pay for health care believe that public hospitals do not meet the standards of private hospitals and therefore don't use public hospitals.

These people couldn't be more wrong. Because of the extraordinary demands made on their services, public hospitals not only deliver outstanding care, they often introduce technology which is then adopted by private hospitals.

For example, the North Broward Hospital District (NBHD), introduced the PET

scanner and Lithotripsy to the area.

## NBHD Public Medical Centers Network

The NBHD, the fourth largest public hospital system in the country, with a total of 1,567 beds throughout northern Broward County, has four strategically located medical centers.

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*To increase accessibility  
to primary care for the poor  
NBHD is setting up  
clinics in various locations.*

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The NBHD wants residents in the community to better understand the public hospital system. The NBHD hopes that with increased understanding will come increased private patients. And private, paying patients are the key to insuring that excellent medical care is available to everyone.

In the late 1980s, the district recognized that to obtain its goals of providing health care to all members of the community, at a cost affordable to all, the first step would be advising residents about the type of serv-

ices their tax dollars covered. Next, the district felt it was imperative for the public to be made aware that the term "public hospital" did not denote lesser care.

The NBHD developed a campaign, following a study, that focused on the services offered through the district's hospital system. The result of this campaign has been an increased use of the district hospital system by the general public.

## Better Service Fewer Tax Dollars

The importance of this shift is that not only is the NBHD providing high-quality health care, there has been an infusion of commercial insurance funds into the system. These funds assist the district in decreasing the amount of tax dollars needed to provide care for the poor.

Without commercial insurance funds, the NBHD would have to limit the scope of services that could be provided to the underinsured and uninsured. The NBHD receives only \$89 million a year in taxes, yet spends \$114 million a year in uncompensated care.



Unfortunately, health care for the poor often comes in a public hospital emergency room, and the cost of delivering emergency care in an acute care setting is significantly higher than delivering primary care in a clinic.

The NBHD is attempting to change this process by joining state and county public health departments to become a primary health care provider.

In order to increase accessibility to primary care for the poor, the NBHD is setting up clinics in various locations. The availability of clinics will decrease the need to use emergency rooms for non-acute diseases, decreasing the cost of providing care.

## Caring For AIDS Patients

Public health systems are also the primary care provider for people suffering from AIDS and similar diseases.

Public hospitals continue to be more responsible for providing this care than private hospitals, and at times the demand overwhelms the system. In spite of this, the NBHD is a leader in caring for AIDS patients.

The NBHD is attempting to decrease the cost of treating AIDS patients by developing strategically located AIDS outpatient clinics, and in-patient and home health services

so patients can stay at home and maintain their dignity and independence.

As additional benefits, clinics, in-patient and home health services are not only less expensive than traditional in-hospital treatment, these

services are available at all district medical centers.

## Encouraging Participation To Lower Costs

As modes of health care delivery evolve, public health care systems will continue to be leaders.

Through aggressive community awareness programs, the NBHD, like public health systems elsewhere, en-

courages those who can afford to pay for health care to take advantage of its services.

Increased private funding decreases the burden of financial support from tax dollars. This process helps public hospitals fulfill their twin goals: controlling costs and insuring every citizen access to excellent, affordable health care.

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*MEDWORK decreases the time employees wait for treatment of minor emergencies and works with employers to return employees to work as soon as possible.*

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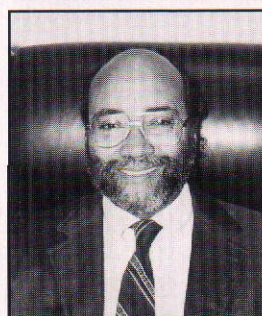
avenues of care are accessible to more people.

The NBHD also provides a free-standing facility for AIDS patients called Broward House. Broward House offers patients a home-like setting, which is more comfortable and hospitable during the final stages of the disease. Broward House provides round-the-clock care at a dramatically reduced cost.

## Meeting Business Health Care Needs

Finally, the NBHD developed an industrial medicine program, MEDWORK, to provide affordable, expedient workers' compensation care, and physical, drug and overall health screening programs to local businesses.

The NBHD MEDWORK program decreases the amount of time employees wait for treatment of minor emergencies and works with employers to return employees to work as soon as possible. MEDWORK



*by James W. Jordan Jr.,  
Senior Vice President,  
Health Systems Development,  
North Broward Hospital District.*



# Calculating Workers' Compensation Premiums

by J. Layne Smith, Esq., and  
Brian D. Solomon, Esq.

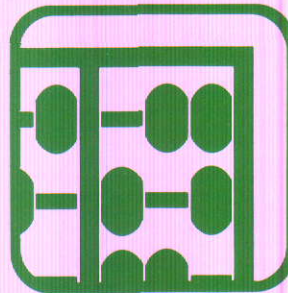
**T**he calculation of an employer's workers' compensation insurance premium for a policy year is based on the employer's payroll, job classification code and experience rating.

## Payroll

An employer's payroll is a vital component in calculating premium because the insurance carrier or self-insurance fund is required by statute and contract to reimburse each injured worker a percentage of the wages lost due to an on-the-job injury. Thus, an employer is required to make a good-faith estimate of the expected payroll for the policy period.

## Job Classification Code

Each employer is assigned a classification code which best describes the employer's business. For example, if the majority of an employer's payroll is paid to employees who remove or install roofs on commercial buildings, then the roofer's job classification



code—Code 5551—Roofing Construction, should apply.

Each job classification code is rated according to the level of danger associated with performing that type of work. Thus, the premium rate assigned to each job classification code depends upon the amount of risk associated with performing the type of work involved.

The Florida Department of Insurance approves the premium rate charged for each job classification code, based in part upon the probable frequency and severity of on-the-job injuries.

Obviously, a roofer's job is more dangerous than an office employee's job. Consequently, the premium rate for roofers is

more expensive than the premium rate for clerical employees.

## Experience Rating

Some employers are more accident-prone and less safety conscious than others. Experience rating modifies an employer's premium based on the employer's claims history.

The Florida Department of Insurance has approved a complex experience rating system which compares the actual claims history of an employer with the average claims experience of other employers with the same job classification code.

Based on this comparison, an experience modification factor is calculated for each employer. An employer's experience modification factor is the number by which the employer's premium is multiplied, resulting in either an increase or decrease in premium.

Employers with insufficient claims histories are assigned experience modification factors of 1.0, which represent the average claims history for similarly-classified employers.

Employers with lower-than-average claims histories are assigned experience modification



factors which are less than 1.0, resulting in a decrease in premium.

Employers with greater than average claims histories are assigned experience modification factors which are greater than 1.0, resulting in an increase in premium.

### **Premium Calculation Example**

The following example of a hypothetical business illustrates how an employer's payroll, job classification code and experience rating are used to calculate its premium:

Honest Abe Construction, Inc. engages exclusively in roofing construction, and it estimates that its payroll for the policy period will be \$500,000. The proper job classification code for roofing construction is Code 5551, which is rated at \$48.53 per \$100 of payroll.

To calculate Honest Abe's premium, divide its payroll (\$500,000) by 100, and then multiply by the job classification code rate of \$48.53, arriving at an unmodified premium of \$242,650.

Honest Abe has an experience modification factor of 1.50, which is multiplied by \$242,650, to arrive at a modified premium of \$363,975.

### **Workers' Compensation Premium Fraud**

Workers' compensation fraud is prevalent throughout the country. Some estimate that as much as 25 percent of the

cost of all claims filed are colored by some type of fraud.

In addition to claims fraud, premium fraud includes underreporting payrolls, misrepresenting that lower-rated job classification codes apply and disguising or hiding claims histories.

*An employer's experience modification factor is the number by which the employer's premium is multiplied, resulting in an increase or decrease in premium.*

Generally, employers who commit premium fraud do not pay enough in premium to cover the claims of their employees. As a result, these losses are spread among all employers through in-

creased rates. Thus, honest employers subsidize the losses incurred through premium fraud.

In addition, employers who engage in premium fraud have an unfair advantage over their competitors, passing on lower overhead to their customers, thereby underbidding honest employers.

Such conduct lowers the profits of honest employers who play by the rules, forcing some of them to lay off employees or go out of business.

J. Layne, Smith, Esq. and Brian D. Solomon, Esq. practice law with the firm of Bateman Graham in Tallahassee. They handle premium fraud and other complex commercial litigation throughout the United States.

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## **Associated Industries of Florida**

### **EMPLOYER ADVOCATE**

516 North Adams Street • P.O. Box 784  
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The *Employer Advocate* is published bi-monthly to inform subscribers about issues pertinent to Florida's business community. Articles are written by AIF staff and solicited from other knowledgeable professionals. Please direct all inquiries to Ann D. Bledsoe.

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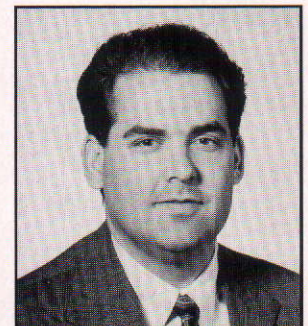
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## Department Of the Treasury

### Internal Revenue Service

Notice 784 (Rev. June 1992)

#### *Could You Be Personally Liable for Certain Unpaid Federal Taxes?*

If you are an employer, you must withhold Federal income, social security (or railroad retirement), and Medicare taxes from your employees' wages or salaries. If you provide communication or air transportation services, you also may have to collect certain excise taxes from persons who paid you for the services. (Get Pub. 510 for more information on excise taxes.) These taxes are called trust fund taxes and must be paid over to the Internal Revenue Service through tax deposits or as payments made with the applicable returns.

#### *The 100 Percent Penalty—*

If trust fund taxes are not willfully collected, not truthfully accounted for and paid, or are evaded or defeated in any way, then a 100 percent penalty may be due. This penalty is equal to the total amount (100 percent) of the trust fund taxes evaded, not collected, not accounted for, or not paid over to the

IRS. Interest is also charged on the penalty.

#### *Who May Be Charged the Penalty—*

The 100 percent penalty may apply to a person or persons determined by the IRS to be responsible for collecting, accounting for and paying over the trust fund taxes and who acted willfully in not doing so. If the taxes cannot be immediately collected from the employer or business, the IRS will determine who is the responsible person or persons and who acted willfully.

"Willfully" means voluntarily, consciously, and intentionally. A responsible person acts willfully if this person knows that the required actions are not taking place for any reason. Paying other expenses of the business instead of paying the trust fund taxes is considered willful behavior.

A responsible person can be an officer or employee of a corporation, or a partner or employee of a partnership. Any other person who had responsibility for certain aspects of the business and financial affairs of the employer (or business) may also be a responsible person. This category may include accountants, trustees in bankruptcy, members of a board, banks, insurance companies, or sureties. The responsible person could even be another corpora-

tion, a volunteer director/trustee, or employee of a sole proprietorship.

Responsible persons may include those who sign checks for the business or otherwise have authority to cause the spending of business funds. If the employer is a corporation and the responsible person or persons cannot be otherwise determined, the IRS will look to the president, secretary and treasurer as the most likely persons.

Once the penalty has been imposed and assessed, any assets (except exempt assets) of any responsible persons may be taken to collect the liability.

#### *Avoid the Penalty—*

Avoid the 100 percent penalty by making sure that all the taxes are collected, accounted for, and paid over to the IRS when required. Do this by making timely tax deposits and payments. IRS employees are available to assist persons who need information on tax deposits and payments. You may telephone the IRS tax information number in your area for help. **Pub. 937**, Employment Taxes and Information Returns, **Pub. 15**, Employer's Tax Guide, and **Form 941**, Employer's Quarterly Federal Tax Return, will also be helpful and are available from the IRS.

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