Commentary

Electric vehicle discussions must include relevant stakeholders

By JOSH SHARP

To promote electric vehicle adoption and help establish a nationwide network of EV charging stations, five governors in the Midwest region (Illinois, Indiana, Michigan, Wisconsin, Minnesota) agreed to join what they term the Regional Electric Vehicle Midwest Coalition. Based on the group's initiative, the goal of this coalition is to foster increased cooperation between participating states to advance our transportation sector's transition to EVs.

As the governors move forward with this collaboration, they must do the following: ensure that the private sector is a key stakeholder in these decisions, and advocate for policies that will produce the greatest number of EV charging stations, or risk hindering the transition to EVs.

The most effective strategy for the deployment of EV infrastructure is the same as what resulted in fueling stations being conveniently located across the country — fair competition and private sector investment.

Utility companies are usually at the forefront of lawmakers' minds when it comes to EVs. With the need to meet increased electricity demands to accommodate this initiative, they deserve that consideration in the process. However, utility companies are often provided government funding and can use their monopoly on energy production to eliminate competition in the EV charging market.

One anti-competitive advantage that is allowing utility companies to corner this emerging marketplace is demand charges, which are extra fees utility companies charge for electrical usage during peak times to ensure the electrical grid is prepared to withstand energy needs.

Small businesses are often overburdened by these charges, thus discouraged from moving forward with EV charging installations.

Many small fuel stops and convenience stores have tried to join the EV transition and host direct current fast charging (DCFC) stations. These chargers allow EV customers to charge their cars in a shorter time frame. But, when a DCFS is used, it almost always peaks energy usage, triggering additional fees. When added to the basic cost of electricity, EV chargers quickly become unprofitable. According to research, nearly all businesses operating DCFC chargers lose money.

Another unfair advantage is that utility companies are getting approved to increase fees on their current ratepayers to cover the cost of constructing and operating EV chargers, where convenience stores and other fueling stations must use private capital for this investment.

This ability for utility companies to unfairly compete in this market will inevitably lead to fewer EV charging stations, given how vital the private sector's role is in fueling our transportation sector. Therefore, the private sector must be among the key stakeholders that are brought to this discussion to create a fair partnership for fund development.

When these governors state they will develop an approach "informed by industry, academic, and community engagement," I hope the private sector will have their voices heard. Small fuel stops were an invaluable asset to creating the interconnected national transportation network we all know today, and they will continue to help forge a new EV future if lawmakers support fair competition.

Josh Sharp is CEO of the Illinois Fuel and Retail Association in Springfield.

Requirement to hire or offer jobs to predecessor employees is back

By JAMES KEANEY

On Nov. 18, 2021, President Biden issued an executive order on "Nondisplacement of Qualified Workers Under Service Contracts." This executive order largely mirrors one previously issued by former President Obama (but later revoked by former President Donald Trump) that had required successor employers on federal contracts under the Service Contract Act (SCA) to hire or offer employment to the employees of the predecessor employer.

In his executive order, President Biden justifies the reinstatement of this requirement based on his policy statement that "procurement interests in economy and efficiency are best served when the successor contractor or subcontractor hires the predecessor's employees, thus avoiding displacement of these employees," "reduc[ing] disruption in the delivery of services during the period of transition between contractors," "maintain[ing] physical and information security," and "provid[ing] the Federal Government with the benefits of an experienced and well-trained workforce that is familiar with the Federal Government's personnel, facilities, and requirements."

Under the executive order, contracts under the SCA valued at or above $250,000 must contain specific clauses that essentially require successor contractors and subcontractors to hire or offer employment with a right of first refusal to the predecessor employees under the prior contract. Offers of employment must be expressly made and kept open for at least 10 business days.

However, the required contract language makes clear that these predecessor employees must still be "qualified" for the particular positions of employment. Moreover, successor contractors "are not required to offer a right of refusal to any employee(s) of the predecessor contractor for whom the contractor or any of its subcontractors reasonably believes, based on reliable evidence of the particular employees' past performance, that there would be just cause to discharge the employee(s) if employed by the contractor or any subcontractors."

The executive order addresses other requirements and issues, such as the timely exchange of employee lists between predecessor and successor contractors during the contract transition period, the possibility of exceptions to the rule, and the potential for enforcement actions and sanctions in the event of non-compliance (which include, but are not limited to, orders requiring employment, payment of lost wages, and debarment from federal contracts for up to three years).

The executive order directs the Secretary of Labor to issue final regulations within 180 days and, within 60 days thereafter, for the Federal Acquisition Regulatory Council ("FAR Council") to adopt them into its regulations.

However, it states that it is "effective immediately" and will "apply to solicitations issued on or after the effective date of the final regulations issued by the FAR Council." For other solicitations outstanding or issued before that time, the executive order "strongly" encourages the adoption of this new requirement in them.

If you're an SCA federal contractor, do not wait or hesitate to reach out to a member of our Labor & Employment Team at Sandberg Phoenix to understand how this new regulatory requirement may impact your business or business prospects and, if it will, how to prepare for such changes.

James Keaney is an attorney at Sandberg Phoenix law firm. He wrote this column for the firm's Employer Law Blog.

Job-reference myths can be a roadblock

This information is provided by Allison & Taylor Inc., a nationally recognized reference-checking company.

Few things are more important to one's livelihood than their employment, so it's critical to ensure that nothing in your job-seeking arsenal is costing you future employment.

In particular, if you have been fired or have resigned, you need to carefully consider commonplace myths that could inhibit your job seeking efforts. Many candidates take little time or effort to assure that their references are portraying them in the best possible light. Very often, this oversight occurs because of incorrect assumptions about how references (and reference checking) work.

Among the questions for which you need to know the answers: How are references conducted? What are employers allowed to say? And are yours working for, or against you?

One myth: Companies are not allowed to say anything negative about a former employee during a documented reference check.

The truth: While many companies may have policies that dictate only title, dates of employment and eligibility for rehire can be discussed, reference persons frequently violate those rules in providing bad references about former employees despite company policies.

Think about the boss with whom you had philosophical differences ... or the supervisor who sexually harassed you. Can that person be trusted to maintain a professional standard? In many cases the answer is no; approximately half of Allison & Taylor clients receive a bad reference, despite the fact that many companies have strict policies in place prohibiting negative references.

Another myth: Former employers direct all reference checks to their human resources departments, and those people won't say anything negative about me.

The truth: Most human resources professionals will follow proper protocol during reference checks. However, in addition to what is said, reference checkers also evaluate how something is said. In other words, they listen to tone of voice and note the HR staffer's willingness to respond to their questions.

Another myth: It's best to have my employment references listed on my resume and distribute them together.

The truth: Your references should be treated carefully and with respect; you don't need companies that may or may not have a real interest in hiring you pestering your employment references. Keep your references separate from your resume, and only provide them when requested.

Another myth: I sued my former company and according to job reference laws, they are now not allowed to say anything.

The truth: Job reference laws can be bypassed and may not entirely protect you. Under job reference laws your former employer may not be able to say anything definitive, but do not put it past them to carefully take a shot at you while still in accordance with the law.

As an example, a former boss or an HR staffer may say "Hold on a minute while I get the legal file to see what I am allowed to say about Mr. Smith." Although not allowed to "divulge anything" as stated by job reference laws, they just indicated there were legal issues surrounding your employment. This implication can torpedo your job prospects.

Many people discover the error of their assumptions the hard way - by losing out on the perfect job because of reference issues. Check your own references before you provide them to employers to ensure you can address potential problems before they cost you the job.

Governments need to act on bolstering home ownership

Provided by Ron Deedrick, local government affairs director, Illinois Realtors

Illinois needs an estimated 270,000 more homes to meet demand. Statewide we have less than two months of housing inventory available, but Illinois trails all five other states in our Midwest region for new housing permits this year.

The situation is even more crucial when we consider the economic impact that housing has in Illinois. In 2020, the real estate industry accounted for $143.5 billion or 16.5 percent of the Illinois gross state product. This far exceeds any other sector of our economy. The National Association of Raealtors calculated that the average home sale in Illinois generates almost $70,000 in local economic impact. Whether it's new furniture, trips to the hardware store or even a tip to the pizza delivery person on move-in day, home sales put real dollars into the local economy.

We encourage local governments to dedicate some of these additional revenues from the federal government to encourage homeownership. Down-payment assistance grants or forgivable loans on construction of new homes and fixing up blighted properties are just a few ways that communities can make the American Dream more attainable.