



Saving Time, Trouble and Dollars on Health Insurance

TAB Marketplace Is Launched

TAB has created a unique opportunity for you and your employees to acquire high quality health insurance. Using the TAB Marketplace, which is a healthcare exchange, you can delegate all of the healthcare decisions and administrative matters to each and every employee who would normally have health insurance in your organization.

Typically, a company would allocate a certain amount of dollars to an employee. They could then spend that money in the TAB Marketplace on the kind of coverage that best suits their needs. Instead of you or your human resources department being responsible for crafting an insurance product to meet your employees' needs, they would be making those choices through a simple to use online portal. That means you, as an employer, only have to decide which insurance carrier you want to use, and then you only would be responsible for one bill per month based on your decision on how much to allocate per employee. Everything else would be left up to the employee.

"We believe that this is an opportunity for savings for our members across the board," said TAB CEO Bill Hammond. "Equally, if not more importantly, it will relieve them of the administrative burden that they have faced for many years with regard to health insurance. A major headache in their day-to-day operations will be gone." When TAB made the decision to offer such an extensive program, we wanted to make sure we partnered with a company that is recognized as one of the best in the business. After an extensive evaluation process, it was determined that Arthur J. Gallagher's presence, experience and capabilities in Texas created the perfect



The TAB Marketplace can solve your health insurance problem.

WORKFORCE Q&A

What happens in terms of damages and injunctive relief when a court blue-lines the non-compete agreement?

(see page 2)

EVENT

**2014 TAB Biennial
Chamber Partners Conference**

**December 2-3
Doubletree University Austin
1617 IH-35 North
Austin, TX 78702**

TAB invites you to join the discussion regarding the legislative priorities of the state chamber and other regional issues at the 2014 TAB Chamber Partners Conference. Find more information on our webpage: txbiz.org/events

TAB MISSION

To make the Texas business climate the best in the world.

WORKFORCE Q&A



Punam Kaji,
Haynes and Boone, LLP

What happens in terms of damages and injunctive relief when a court blue-lines the non-compete agreement?

In Texas, the court can modify a non-compete that is overbroad to make the terms enforceable. Employers often ask: “Can we draft the non-compete broadly and let the court modify the non-compete if litigation is required?” Employers should be aware of the potential risks of this strategy.

Reduced Damages and Injunctive Relief: If the court has to reform an overbroad non-compete agreement, damages for breaches occurring prior to the reformation are excluded—the employer will not receive any money damages for any breach of the agreement prior to the reformation. *See Juliette Flower Homes, Inc., v. Welch Associates, Inc.*, 793 S.W.2d 660, 663 (Tex. 1990); *see also Deaton v. United Mobile Networks, L.P.*, 926 S.W.2d 756, 762 n.10 (Tex. Ct. App.—Texarkana 1996, no writ.). Therefore, an employer could lose critical damages based on the court’s decision to modify an agreement that is unenforceable as written. Though money damages are precluded, injunctive relief is still available based on the terms of the modified agreement. Accordingly, the employer can only enjoin the employee from breaching the modified non-compete agreement. In this regard, the employer loses some control by allowing the court to determine the terms of the injunctive relief.

Attorneys Fees: Under the Texas Business and Commerce Code (the “Code”), an employer is precluded from recovering attorney’s fees following reformation of a non-compete. Alternatively, the employee can recover damages if (1) “the primary purpose of the agreement to which the non-compete is ancillary to obligates the promisor to render personal services;” (2) the employee shows the employer knew at the time of the execution that the covenant was not reasonable; and (3) “the employer sought to enforce the covenant to a greater extent than was necessary to protect the goodwill or other business interest of the employer.” Tex. Bus. Code & Com. Code § 15.51. If the employer intentionally drafted an overbroad non-compete, taking a gamble with modification by the court, the employee may have has a better chance of meeting the elements to recover attorney’s fees. *See Sentinel Integrity Solutions, Inc. v. Mistras Group., et al.*, No. 01-12-00370-CV, slip op. at 18-25 (Tex. Ct. App.—Harris [1st Dist. 2013] (discussing rationale for granting \$750,000 in attorney’s fees to defendant employee). In sum, drafting an overbroad non-compete agreements can have its consequences despite a court’s ability to modify the non-compete.

Employment Relations questions?

**Don't forget to call TAB's Employment Relations Hotline
for your next HR Question
1.800.856.6721, ext. 164 or E-mail smcgee@txbiz.org**

TEXAS BUSINESS REPORT

**Volume 29 | Issue 11
November 2014**

TAB STATEWIDE OFFICERS

State Chairman, Dale Young
Summit Consolidated Group

Chair Elect, Terri Ricketts
Progressive Waste Solutions (IESI)

Treasurer, Sara Tays
TenPoints Consulting

Secretary, Gary Gibson
Star Furniture Company

CEO, Bill Hammond
President, Chris Wallace
Texas Association of Business

TAB TEAM CONTACTS

Sandra McGee, Senior Vice President
Employment Services & Finance
smcgee@txbiz.org

Aaron Cox, Vice President
Chamber Relations
acox@txbiz.org

Cathy DeWitt, Vice President
Workers' Compensation, Tort Reform and
Employment Relations
cdewitt@txbiz.org

Stephen Minick, Vice President
Environmental Quality and Energy
sminick@txbiz.org

Nelson Salinas, Governmental Affairs Manager
Education
nsalinas@txbiz.org

Amanda Martin, Governmental Affairs Manager
Insurance & Health Care
amartin@txbiz.org

Robert Wood, Communications Director
rwood@txbiz.org

Jennifer Clarke, Events Director
jclarke@txbiz.org

Randall Chase, Marketing/Social Media Director
rchase@txbiz.org

Sharon Berger, Member Services Manager
sberger@txbiz.org

TAB REGIONAL OFFICES

Central Texas Area - Emily Waite
ewaite@txbiz.org - (940) 781-0338

Coastal Texas Area - Daryl Davis
ddavis@txbiz.org - (816) 582-3311

North Texas Area - Mark Sadowski
msadowski@txbiz.org - (214) 906-3361

Northwest Texas Area - Marshall Jeffus
mjeffus@txbiz.org - (940) 642-5428

Southeast Texas Area - Miles Resnick
mresnick@txbiz.org - (409) 363-1481

Southeast Texas Area - Russ Penson
rpenson@txbiz.org - (816) 286-9122

Gulf Coast Area -
Chelsie Kramer, Regional Executive Director
ckramer@txbiz.org - (713) 591-9751

North Texas Area -
Emma Niewald, Regional Executive Director
eniewald@txbiz.org - (817) 917-5322

Texas Business Report (ISSN0892-6816) is published on the 15th of every month by Texas Association of Business, located at: 1209 Nueces Street, Austin, TX 78701. Subscriptions are available at a rate of \$2.00, which is deducted from TAB members' annual dues. Articles may be reprinted with permission. Legislative advertising paid by TAB.

Periodicals Postage Paid at Austin, Texas.
POSTMASTER - Send address changes to:

Texas Business Report,
1209 Nueces Street, Austin, TX 78701

Feds Move Closer to UI Drug Testing Rules

Proposed rules out for comment.

Rules that will allow limited drug testing for people receiving unemployment benefits appear to be on the way.

"TAB led the charge to get these federal rules done so we can implement a state law allowing for limited testing passed in 2013," said Bill Hammond, TAB CEO.

The U.S. Department of Labor had been dragging its feet for months in an effort to delay the Texas law and similar laws in other states from taking effect. "We were strongly against the federal government trying to stop Texas from implementing policies that it thought would best serve taxpayers and businesses," said Hammond. "If you are using drugs, then you are not ready to reenter the work force."

The proposed rule would permit a state to conduct a drug test on an unemployment compensation applicant when the applicant initially files to establish unemployment benefit rights but not on an individual filing a continued weekly claim for benefits. This limits permitted drug testing by the state to only the initial application, even though individuals are obligated to be able to work, available to work and actively seeking work each week that they claim benefits. State standards governing drug testing of unemployment insurance applicants also must be in accordance with guidance in the form of program letters or other issuances by the U.S. Department of Labor.



"We knew that this would be limited drug testing," said Cathy DeWitt, TAB Vice President of Governmental Affairs, who led the TAB effort to get these rules established.

The proposed rule limits the occupations for which there may be drug testing by the state to:

1. An occupation specifically identified as requiring an employee to be tested for controlled substances in a state law that took effect no later than Oct 9, 2014 and still remains in effect.
2. Specific occupations, including:
 - ★ An occupation that requires the employee to carry a firearm

★ An occupation (as in effect on Oct 9, 2014) identified by the appropriate specified federal agency to include:

- Aviation flight crew members and air traffic controllers
- Commercial drivers
- Railroad operators crew members
- Public transit operators
- Pipeline operators and maintenance crew members
- Crew members and maritime credential holders on a commercial vessel

These rules currently are under review with public comment being taken until Dec. 8.

"We at TAB commend the Texas Legislature for stepping up and passing a bill in Texas that will demand personal responsibility," said DeWitt.

Marketplace

continued from page one

partnership for TAB and its members. **Tiffany Vallejo from Gallagher** is able to answer all of your questions and get the process started. Call her at **1-844-407-8847**. There also is information on our website and links to the **TAB Marketplace at www.txbiz.org**.

In the TAB Marketplace, offering benefits is made easier for the employer using what is known as a "defined contribution strategy." That is a fancy way of saying that the employer or company determines the fixed amount they wish to allocate to each employee for benefits, and the employee takes that amount to the Marketplace to "shop." The Marketplace is customized for your company, allowing you to choose the portfolio of benefits that will meet your specific needs.

Benefits currently included in the TAB Marketplace are: Health Plans, Accident, Critical Illness, Hospital Indemnity, Dental, Vision and Telemedicine. Throughout 2015 and beyond, additional benefits will be added including life insurance, disability, pet insurance and more.

For EMPLOYERS:

1. Analyze the organization's workforce and benefit plan needs with a Gallagher representative;
2. Determine the defined contribution strategy/how much each employee will receive; and
3. Choose the carriers and plans that will be offered within their company's "store."

For EMPLOYEES:

1. Complete a questionnaire (from this a profile will be created for each employee and their dependents);
2. Receive and review benefit portfolio recommendations that are provided with detailed explanations;

continued on page 5

MEMBER PROFILE

Ryan – An award winning tax services firm

Ryan is a global tax services firm with the largest indirect and property tax practices in North America and the sixth largest corporate tax practice in the United States. Headquartered in Dallas, the firm provides a comprehensive range of state, local, federal, and international tax advisory and consulting services on a multi-jurisdictional basis, including audit defense, tax recovery, credits and incentives, tax process improvement and automation, tax appeals, tax compliance, and strategic planning. With more than 45 global tax practice areas, Ryan has expertise in every major aspect of tax. Last year alone, the firm delivered more than \$2 billion in tax savings for multinational corporations worldwide.

But Ryan's value proposition is far greater than the industry-leading tax recovery services that Ryan is recognized for. Ryan also is focused on our clients' overall tax performance—providing innovative solutions to the underlying causes of the errors it identifies—and creating greater opportunities to measure and improve efficiency, develop a more strategic approach to tax, and deliver higher value to its shareholders. Empowered by the dynamic myRyan work environment, which is widely recognized as the most

innovative in the tax services industry, Ryan's multi-disciplinary team of more than 1,900 professionals and associates serves over 9,000 clients in more than 40 countries, including many of the world's most prominent Global 5000 companies.

Ryan is the first company to ever achieve the prestigious International Customer Service Standard (ICSS) Gold

Certification from the Customer Service Institute of America (CSIA). This exclusive, three-year certification is the result of an extensive review of Ryan's client service and quality management processes and independently validates a new international standard of client service excellence set by the firm. Its Net Promoter® Score also ranks at the top of the 2014 United States Benchmark, which means clients rate the firm among the most respected brands in the world.

The Ryan culture is one that believes in shared success. Through the Ryan Foundation, a host of charitable and volunteer activities are managed, allowing the firm's associates to give back and make life better for those in need. Ryan

associates have contributed millions of dollars and countless hours of service to their local communities throughout the world.

More information about Ryan can be found at www.ryan.com.

“The Texas Association of Business is a valued and trusted partner of Ryan in support of our mission to defend the rights of our clients, as well as taxpayers everywhere, from unlawful and burdensome tax regulations.”

***- G. Brint Ryan,
Chairman and CEO
Ryan***



Ryan values generosity and sharing in their success



Ryan's global headquarters is located in Dallas, Texas

TAB Family Ties

Some of us can find some amazing things when we research our family trees. Outgoing TAB Board Member Scott Childress knows that first hand. One of his great-great uncles is George Campbell Childress, the author of the Texas Declaration of Independence.

“My uncle, George Campbell Childress, was recognized as the sole author of the Texas Declaration of Independence,” said Scott Childress. “He also introduced a resolution that a single star of five points be adopted as the emblem of the new republic.”

According to Scott: George Campbell Childress, the sole author of the Texas Declaration of Independence, exercised an important role in the convention of “Delegates of the People of Texas” which proclaimed “that our political connection with the Mexican nation has forever ended: and that the people of Texas do now constitute a free sovereign and independent republic.”

The convention of delegates from the municipalities, as the political districts were then called, of that part of what had recently been the “Estado Libre de Coahuila y Tejas” of Mexico and had more recently, in 1835, organized a provisional government of a new state, Texas, of Mexico, met at Washington, Texas, 1 Mar 1836. George C. Childress and his uncle



Childress statue at Washington on the Brazos

Sterling C. Robertson were the delegates from the municipality of Viesca (renamed Milam by the first Congress of Texas which convened that year).

When the convention met, it was called to order by Childress and then proceeded to

organize. Early in its first day's session, Childress introduced the following resolution: “Resolved that the President appoint a committee to consist of five delegates to draft a Declaration of Independence.” The resolution passed. Childress was appointed member and chairman of the committee.

The following day, 2 Mar 1836, “Mr. Childress, from the Committee, presented a Declaration of Independence which he read in his place.

It was received by the house, committed to a committee of

the whole, reported without amendment, and unanimously adopted, in less than one hour from its first and only reading.” Most believe that Childress had gone to the convention with a draft already prepared.

By the way, both the city and county of Childress are named after him.

Do you have an interesting family story?

Email it to Communications Director Robert Wood (rwood@txbiz.org), and it could be featured in a future Texas Business Report.

Marketplace

continued from pg 3

3. Accept the recommended portfolio or shop the “store” to build their own benefits package; and
4. Review and finalize their selections.

The employee's selections will be sent securely to the appropriate carrier electronically through the TAB Marketplace. Additionally, a payroll file feed can be created to automate deduction reports for the organization's payroll provider, creating yet another layer of efficiency for employers.

As mentioned earlier, one of the most important features of the TAB Marketplace is that it allows member companies to control costs for 2015 and beyond. The TAB Marketplace was also carefully designed to help your employees make decisions that will save them money and get the right kind of health care coverage for themselves and their families.

The TAB Marketplace offers the easiest and most cost effective way for your company to meet the new requirements of the Affordable Care Act, and it is exclusively for TAB members.

National Award For TAB Board Member

Outgoing TAB board member Elizabeth Darling, President and CEO of the One Star Foundation, was presented a national award.

Darling was presented with “The NonProfit Times 2014 Power and Influence Top 50” at the National Press Club in September. Darling was the only Texan named. “It is not something one can apply for,” said Darling. “It is by reputation and chatter

throughout the nonprofit sector. It came as a complete surprise to me and a great opportunity for OneStar and for Texas.”

The NonProfit Times annually highlights 50 of the sector's leaders for their innovation, influence on the broader sector and for developing organizational models that can be replicated. The NonProfit Times is the country's leading business publication for nonprofit management.



Elizabeth Darling presented award



1209 Nueces Street
Austin, Texas 78701
(512) 477-6721 phone
(512) 477-0836 fax
www.TXBIZ.org

Talk **About** Business

Lack of Congressional Action Could Make Deductions Disappear



Bill Hammond, TAB CEO

The Congressional election is behind us, but there is much work that should be done in the so called “lame duck” session between now and the end of the year. One of the most important issues that will impact business is the passing of tax extenders legislation. It is something that Congress must do this year to ensure our economy and job growth continues to move forward.

These tax extenders refer to dozens of expired tax deductions and credits that not only affect the business community, but also could have a negative impact on charitable organizations, teachers and environmental causes if not renewed before the end of the year.

It also is critical for Congress to act quickly, because not doing so would impact the opening of the tax filing season according to Internal Revenue Service Commissioner John Koskinen. He told a convention of accountants that the tax filing season would be delayed if Congress drags its feet on the issue into the month of December.

The debate may center on how long these tax extenders will last. It appears the U.S. Senate would like

to approve them through the 2015 tax year, but the House may want to only approve them through the 2014 tax year, leaving the new Congress to deal with the issue again next year.

I believe that some of these provisions should be made permanent. Items like the research and development tax credit have proven to be major job creators. More than 70 percent of R&D credit dollars support salaries of workers performing research here in the United States. According to Ernst and Young LLP, the credit benefits around 18,000 medium and large companies. The Treasury Department reports that companies receiving the credit employ almost one million workers, and many of those are high-tech, high paying jobs.

As you can see, this is not just an issue that impacts business. For example, a teacher’s ability to deduct classroom expenses, the ability for Texans to deduct sales taxes and the ability to deduct some higher education expenses for parents are all on the line if these extenders aren’t renewed.

There may be some who believe we should wait and overhaul the

entire tax system instead of doing another temporary patch. While a tax overhaul is much needed, our economic recovery is still far too weak to further delay these provisions that have proven to create jobs and help people meet everyday expenses. These credits and deductions literally mean billions to our national economy, and to our economy in Texas.

This should not be a Republican or Democratic issue. This is a policy that benefits all parties. It is an economic issue. This is a chance for Congress to keep the economic recovery going and help businesses of all sizes, families, teachers and college students. Now is not the time for business as usual partisanship in Congress. I think we all saw the message sent by voters on Election Day: It’s time to get things done.

While it is easy for people to pit the needs of business against the needs of families, in this case, everyone benefits from these tax deductions and credits. It is essential that all of us tell our leaders in Congress to act on a tax extender bill, and act on it quickly, before we delay the tax filing season and add more uncertainty to our economy.