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SMALL BUSINESS REPORT SMALL BUSINESS REPORT SMALL

IBA SMALL BUSINESS REPORT - November 12, 2015

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NOTICE: The information contained in the publication is intended to alert the reader to issues, laws, regulations and events which may affect the operations of a small business. The information is presented in a summary form and is not intended to assure compliance with laws or regulations which may apply to any specific business. The information is not intended as legal advice. The reader is advised to seek the advice of a qualified attorney, accountant or other advisor to obtain specific compliance advice with respect to the laws, regulations or other issues which may apply to a specific business.

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IBA SMALL BUSINESS REPORT



November 12, 2015

2015 Election Results And YOU!

The biggest news from the 2015 election is the low voter turnout. Only 37% of eligible voters voted in the 2015 Washington State General Election. There are people dying around the world as they seek the right to vote and have a say in their government. This is one of the historic low voter turnouts for a major state election. Below are the highlights of the results that affect you and your small businesses.

Initiative 1366 – requiring the Legislature to put a constitutional amendment requiring a 2/3s vote of the Legislature to increase state taxes on the ballot in 2016 or deal with a 1% reduction of the state's sales tax rate. This is passing 52% to 48%. While not all votes have yet been counted as of this writing, there are not enough uncounted votes to change the outcome of I-1366

One more pro-small business Legislator. The House of Representatives now has 50 Democrats and 48 pro-small business Republicans. This is great news for small business owners like you with the election of pro small business Republican Teri Hickle in Federal Way.

Tacoma minimum wage increase. Voters in Tacoma had a choice over two minimum wage increases. One would have set the minimum wage in Tacoma to \$15 on 1/1/2016. The other would increase the minimum wage in Tacoma to \$10.35 per hour beginning February 1, 2016; \$11.15

per hour beginning January 1, 2017; and \$12.00 per hour beginning January 1, 2018, adjusted annually thereafter based on the Consumer Price Index (CPI). By 71%, Tacoma voters chose the second option to increase the Tacoma minimum wage to \$10.35 per hour beginning February 1, 2016; \$11.15 per hour beginning January 1, 2017; and \$12.00 per hour beginning January 1, 2018, adjusted annually thereafter based on the Consumer Price Index (CPI). Most small business owners in Tacoma considers this a BIG WIN!

Seattle voters are approving a \$930 million property tax increase to improve Seattle's transportation system with no clear set of projects or results after the \$930 million is spent. This is the same city where the low income activists are clamoring for rent controls and other housing cost protections because the cost of housing in Seattle is too high. Pretty amazing to vote for higher property taxes while screaming about the cost of housing. Very strange!

Tacoma approved one transportation improvements tax increase and appear to be rejecting the other. They approved a 0.1% increase in the Tacoma Sales Tax rate and are rejecting the proposed property tax increase.

What Will The 2016 Legislature Do?

With Initiative 1366 likely passing, the 2016 Legislature will have a diffi-

cult choice of whether to pass a constitutional amendment requiring a 2/3s vote of the Legislature to increase taxes and put it on the ballot in 2016, repeal I 1366, or deal with a 1% reduction of the state's sales tax rate. That state tax reduction over the next six years is projected to reduce revenues for the state General Fund by \$8 billion.

It takes a 2/3s vote of the Legislature to pass a constitutional amendment and put it on the ballot for voter approval. It also takes a 2/3s vote of the Legislature to repeal I-1366.

Expect opponents to I-1366 to file a lawsuit against the constitutionality of I-1366 immediately after approval of I-1366 is final. We're confident they are working on the lawsuit right now.

The timeline for a legal challenge to I-1366 is very challenging:

- November 3, Voting
- December 3, Election Results are certified
- January 11, 2016 the 2016 Legislature begins it work
- April 15, 2016 I-1366 requires that the Legislature must have passed a Constitutional amendment requiring a 2/3s vote of the Legislature to increase taxes and put it on the general election ballot in 2016 or suffer a 1% reduction of the state's sales tax rate effective on April 15, 2016.

The Court challenge to I-1366 will be

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filed with the State Supreme Court on December 4th. The Legislature will very likely ask the Court to expedite its decision on I-1366 as the Court did earlier this fall when there was a challenge made to the Washington State Supreme Court of whether I-1366 could be on the November 3rd ballot. The Court heard the arguments on whether I-1366 could be on the November 3rd ballot and issued a verbal ruling the next day.

Whether the Court will take the same approach on the constitutionality of I-1366 or not, is not clear at this writing, but the Court is likely to rule on the constitutionality of I-1366 by March 1, 2016 so the Legislature can decide what to do on I-1366.

If the Court does not issue a ruling by March 1, 2016, the Legislature will be left with a very tough decision. Since the state cannot afford a 1-cent reduction in the state's sales tax rate and still fund public schools and other state programs the Legislature will either have to pass a constitutional amendment requiring a 2/3s vote of the legislature to increase taxes, or repeal I-1366. Either action by the Legislature will require a 2/3s vote of the Legislature and will become a very challenging issue for legislators.

IBA will be in Olympia in 2016 and we'll keep you informed.

Higher State Minimum Wage In 2016??

In a surprise announcement on November 5th, the Washington State Restaurant Association announced it would be willing to increase the state's minimum wage to \$10.35 per hour beginning in mid-2016; \$11.15 per hour beginning January 1, 2017; and \$12.00 per hour beginning January 1, 2018 along the same lines as what voters in

Tacoma approved as the minimum wage increase in Tacoma in the November 2015 election. The Washington State Restaurant Association played a big role in crafting the alternative minimum wage increase proposal that Tacoma voters approved overwhelmingly. The Restaurant Association will also seek to include a provision that the state minimum wage preempts all local minimum wage rates to stop this hodge-podge of different minimum wage rates in different cities in WA state.

As you know, while the Washington State minimum wage rate is currently \$9.47/hour, it will automatically increase in future years based on Seattle's Cost of Living increases. There are higher minimum wage rates in Seattle, Tacoma, SeaTac and soon to be considered in Spokane.

The Washington State Restaurant Association is the first major business organization to indicate a willingness to support a higher state minimum wage than the current state law. While others in the business community will likely support an increase in the state minimum wage as being suggested by the Restaurant Association, others, likely farmers, will not. We need and want your opinion on whether IBA should support or oppose an increase in the state's minimum wage similar to what Tacoma has just adopted. Please provide your position on increasing the state's minimum wage along the lines being supported by the Washington Restaurant Association via the IBA Small Business Directive on page 7 of this IBA Small Business Report or via the Internet at: www.ibaw.net/directive

To put this into perspective, if Washington State has a 4% inflation rate in the future, the state's minimum wage under current law would be \$9.86 in 2017, \$10.24 in 2018, \$10.75 in 2019,

and \$11.08 in 2020. The proposal the Washington State Restaurant Association is supporting is effectively a 17% increase in the Washington State minimum wage from the current minimum wage based on a 4% inflation rate.

Please provide your position on increasing the state minimum wage via the IBA Small Business Directive on page 7 of this IBA Small Business Report or via the Internet at: www.ibaw.net/directive

New Federal Budget Deal Avoids Government Shutdowns For Two Years

The threat of government shutdowns over the past several years as well as in future years has resulted in huge challenges to our national economy and also to our national economic security and has caused many concerns for small business owners. Two days before Speaker John Boehner resigned as Speaker of the House and resigned as a member of Congress, Speaker Boehner finalized negotiations on a federal budget deal with President Obama and the Senate to keep the government open and operating for the next two years and avoid the threats of a "government shutdown" due to the failure of Congress to pass a federal budget that authorizes the continued operation of federal agencies, or the need to increase the federal deficit limit in order for the federal government to be able to continue to pay its bills.

This deal actually increases federal spending above the previously agreed to "Sequestration" levels of spending agreed to in 2013 by the Republican controlled House of Representatives, the Democrat controlled Senate, and President Obama.

The Budget Agreement passed on October 29, 2015 spends \$10.7 trillion, an increase in federal spending over two years of \$50 billion the first year and \$30 billion the second year which, effectively raises the sequestration caps for that spending. The bill also allows the federal government to continue to borrow money and pay the debts until March 15, 2017 at which time the debt limit will have to be renegotiated.

Revenues needed to pay for much of the additional budget spending is provided by:

- Selling off some of the Strategic Petroleum Reserve to the tune of 5 million barrels yearly through 2020 increasing to 10 million barrels in 2025,
- Increasing pension premiums for the Employee Retirement Income Security Act of 1974,
- Selling off 30 mega-hertz of electromagnetic spectrum to non-federal interests, and
- Ensuring proper Social Security payments and reducing S.S. fraud.
- Limiting the number and duration of calls to cell phones by agents collecting federal debt,

The 144 page 2015 budget bill includes 52 pages dealing with the disability insurance provision of the federal Social Security disability program. That key provision will prevent a 20 percent benefit cut scheduled to kick in next year for SSDI's 11 million beneficiaries by diverting revenue from Social Security's better-known retirement insurance program -- a strategy some Republicans previously said amounted to "raiding" that program's coffers.

According to the HuffPost Politics (http://www.huffingtonpost.com/entry/paul-ryan-disability-social-security-budget_562fa01ce4b06317990f7e1b)

"Those provisions will likely require workers with disabilities to wait longer to receive their earned benefits and

may prevent some from receiving their earned benefits completely," Nancy Altman, president of Social Security Works, said in a statement that was mostly supportive of the deal.

The deal would also test ways of encouraging disability recipients to rejoin the workforce, which they rarely do. Benefits for people who decide to participate in a pilot project "shall be reduced by \$1 for each \$2 by which" their earnings exceed their work expenses as related to their disability. Gradual benefit offsets for working disability recipients were a key focus of a hearing Congressman Ryan chaired in July. As Congressman Ryan explained, the Social Security Administration can terminate disability benefits if a recipient earns too much money.

"Here's the crux of it: If you make just one dollar more than you're allowed, you get kicked off the program," Congressman Ryan said at the time. "In other words, it's a lot safer to stay on the sidelines. No surprise then that only one-half of one percent earn enough to get off the program."

Congressman Ryan also promised at the time that the benefit cut wouldn't happen.

"No 20 percent cut. Full stop. Not gonna happen," he said.

Overtime and Wage and Hour Claims

Disclaimer: The following information is only intended to alert the reader of issues related to paying workers under the federal Fair Labor Standards Act and is not and must not be considered legal advice. The reader must consult with a qualified attorney to determine the correct way to pay workers in compliance with the federal

Fair Labor Standards Act.

Federal and state agencies are increasing their efforts to identify and investigate employers who do not properly pay their workers.

Most common Wage and Hour violations are:

- Not paying proper overtime
- Not paying for when workers don and doff work required clothing
- Not paying for travel time
- Not paying, starting when the employee reports for work
- Not paying for standby time
- Not keeping track of "lunch breaks" and "other breaks"
- Misclassifying non-exempt workers
- Not Keeping Accurate Payroll Records

Employers must have accurate and complete records of the hours their overtime eligible employees work, including verification when meal breaks were taken.

While most employers feel confident they are complying with the worker pay laws, most employers are in violation in many different ways. One of the more common is not documenting meal-breaks or start and end-of-shift times. The worker makes a complaint that they were not given a meal break where they are totally free of any work duties. The employer lacks documentation that those breaks were taken and employee verification that the employee was free from all work duties. The government agencies do an investigation and estimate the number of overtime hours the worker should be compensated for due to a lack of a full meal break and issues a back pay demand on the employer. The employer has no records to counter the agency's estimate and the employer is stuck paying the back wages and an equal amount in liquidated damages.

Failing to comply with these requirements can result in an investigation of

an employer's pay history going back 2 or 3 years.

An employer can be liable for back pay owed plus and equal amount in liquidated damages.

A worker can file a lawsuit against an employer for failing to pay the worker as required and recover the back, unpaid wages plus an equal amount in liquidated damages, plus the worker's reasonable attorney fees and court costs.

Agency wage investigations and worker claims for back wages can easily reach \$100,000+. The more workers a business has, the larger the potential costs for back wage claims.

Overtime and Piece-work

Disclaimer: The following information is only intended to alert the reader of issues related to paying workers for overtime and is not and must not be considered legal advice. The reader must consult with a qualified attorney to determine the correct way to pay workers for overtime for their business.

The federal Fair Labor Standards Act requires that all covered, nonexempt employees, must be paid overtime pay at no less than one and one-half times the employee's regular rate of pay for hours worked in excess of 40 in a workweek. This includes workers paid on a piecework basis.

To learn which work-related activities are considered hours worked, review the FLSA Hours Worked Advisor.

<http://webapps.dol.gov/elaws/whd/flsa/hoursworked/default.asp>

A workweek is a fixed and regularly

recurring period of 168 hours, or seven consecutive 24-hour periods.

<http://webapps.dol.gov/elaws/whd/flsa/otcalc/i2.asp>

Keeping The Right Payroll Records

Disclaimer: The following information is only intended to alert the reader of issues related to keeping the correct payroll records and is not and must not be considered legal advice. The reader must consult with a qualified attorney to determine the correct payroll records requirements for their business.

The federal Department of Labor requires that employers keep and maintain the following records:

Employee's full name and social security number; Address, zip code;

Birth date, if younger than 19;

Sex and occupation;

Time and day of week when employee's workweek begins.

Hours worked each day and total hours worked each workweek.

Basis on which employee's wages are paid;

Regular hourly pay rate;

Total daily or weekly straight-time earnings;

Total overtime earnings for the workweek;

All additions to or deductions from the employee's wages;

Total wages paid each pay period;

Date of payment and the pay period covered by the payment.

You can find more information about this recordkeeping requirement via the Internet at:

<http://www.dol.gov/dol/topic/wages/wagesrecordkeeping.htm>

Employment Law Experts also recommend that employers also keep the following records:

- Records on wage computations are based should be retained for three years." 29 CFR §516.6. www.law.cornell.edu/cfr/text/29/516.6

- This includes
 - time cards,
 - piece work tickets,
 - wage rate tables,
 - work and time schedules, and
 - records of additions to or deductions from wages."

Important New Social Security Benefit Change

Individuals who are, or are near, 62 or 66 years old will want to pay close attention to this report and may have to act within the next six-months. On Nov. 2, President Obama signed into law a federal budget bill. That legislation makes **VERY SIGNIFICANT CHANGES** to Social Security filing rules and **MAY REQUIRE YOU TO TAKE ACTION WITHIN THE NEXT SIX MONTHS.**

The new Social Security rules will affect commonly used filing strategies known as "file and suspend" and restricted application for spousal benefit. The best thing to do is talk to a qualified financial advisor. Here's a basic outline of the new changes.

Disclaimer: The following information is only intended to alert the reader of issues related to receiving social security benefits and is not and must not be considered legal advice or tax advice. The reader must consult with a qualified attorney and tax preparer to determine the correct actions to take to collect social security benefits.

Two strategies have been utilized by couples who are 66 or older to delay claiming benefits based on their own

earnings records while still allowing one spouse to claim a “spousal benefit” based on the other person’s earnings.

Here’s what those eligible for social security do:

- One spouse files for benefits and then immediately suspends receiving them.
- Then the other spouse files a restricted application to collect a spousal benefit only, not benefits based on his or her own earnings record.
- This allows both partners to take advantage of delayed retirement credits, which grow their own earned benefits by 6% to 8% each year (between the ages of 66 and 70).

According to the Wall Street Journal: Implementing this combination of strategies is rather popular among retirees, for it can increase total Social Security retirement income by as much as \$60,000 or even more, according to some experts.

[1] <http://www.wsj.com/articles/new-social-security-rules-to-end-key-filing-strategies-1446304336>

The new rules contained in the federal budget bill will no longer allow this combination of filing strategies to be used.

Here’s what people who want to take advantage of the current law must do

- If you are 66 or will turn 66 in the next six months, you must file within the next six months to take advantage of the current law.
- Similarly, if you’re 66 or will turn 66 **within the next six months** and you have children under 18 or disabled adult children, you can still file **within the next six months** and suspend so these family members can claim

dependent benefits after the rules are enacted.

- If you are at least 62 this year, **you can still file within the next six months** a restricted application to receive spousal benefits only once you turn 66.
- In general, widows and widowers won’t be affected by the new rules – there will still be the same amount of flexibility surrounding strategies for claiming survivor benefits.

The new Social Security filing rules are even more complex than before, so it’s more important than ever to meet with an advisor to make sure you understand them because of the significant impact they could have on your retirement income and planning strategies.

<http://www.wsj.com/articles/new-social-security-rules-to-end-key-filing-strategies-1446304336>

New State Safety and Health Poster

All employers in Washington will soon receive or have received a new required Job Safety and Health poster from the Washington State Department of Labor & Industries (L&I).

This new poster is required by a major change in what employers must report to L&I. Under the new requirement, **employers must now report to L&I within 24 hours if a worker suffers an amputation or loss of an eye and is not admitted to the hospital.** This is in addition to the existing requirement to report within eight hours any workplace fatality or inpatient hospitalization.

L&I changed the requirement to comply with this same new federal Occupational Safety and Health Administration (OSHA) requirement.

Employers should discard their old Job Safety and Health poster and replace it with the new one dated 09-2015.

L&I requires employers to post three workplace posters. The other two were not changed, so employers don’t need to replace them if they have the current version.

The other two posters and valid dates are:

Notice to Employees — If a Job Injury Occurs (valid date 12/2012) for employers who receive industrial insurance coverage through L&I; or ***Notice to Employees – Self-Insurance*** (valid date 12/2012) for self-insured businesses.

Your Rights as a Worker in Washington State (valid dates 06/2013 or 12/2012).

All of the posters include both English and Spanish language.

L&I posters are always free and can be downloaded and printed at www.Lni.wa.gov/RequiredPosters.

This link also contains information about other government posters and answers to questions about the required posters.

Employers may receive advertisements from private vendors that sell these and other government posters; however, all three L&I posters are always free through L&I. Posters required by other agencies are also available free via the Internet.

Your WA Driver’s License May No Longer Be Acceptable To Board An Airplane or Access A Federal Agency

Warning, you may not be able to board an airplane or get into a federal

building after April, 2016 using your current Washington State Driver's License. No, this is not April and no, this is not an April Fool's joke. It appears to be another federal government tragic comedy.

The Seattle Times reports: Homeland Security says the days are numbered for using your standard Washington driver's license to board an airplane. <http://www.seattletimes.com/life/travel/qa-on-using-your-drivers-license-at-airport-security/>

Why is this happening? In 2005, Congress passed legislation clarifying what is acceptable federal identification. That legislation requires legal proof of U.S. residency in order for state driver's licenses and ID cards to be valid for federal purposes, including, eventually, boarding commercial flights. Washington State does not verify your legal residency status when it issues a standard Washington State Driver's license so the federal government has told Washington State officials that the current standard Washington State driver's license will no longer be acceptable ID for federal ID purposes, including boarding an airplane.

When will this happen? Sometime between January and April 2016 unless the federal government gives another extension like it has before.

What can you do to address this problem? Washington State has an enhanced driver's license that you can get by updating your valid standard Washington driver's license. You can upgrade for \$3 per year for the time remaining on your license. Processing can take up to three weeks. More information via the Internet go to: dol.wa.gov/driverslicense/edl.html

What are the requirements for children flying with me? TSA does not require children younger than 18 to provide identification when traveling

with a companion within the United States.

State legislators are aware of this problem and will seek to find solutions during the 2016 Legislative Session. If this ID issue is a concern of yours, we recommend you contact your legislators at: app.leg.wa.gov/DistrictFinder.

Increase Your EPL Insurance??

A longtime IBA Member recently alerted IBA that employers should seriously consider increasing their Employer Practices Liability Insurance, (EPL Insurance). Unfortunately, this business owner learned by experience.

This employer did more than what most employers do to ensure their business was complying with all of the state and federal employment laws. Unfortunately an unknown tryst between two workers resulted in a sexual harassment claim against the employer.

While the claim seemed minor and the attorneys defending the employer told this business owner the claim would be easy to beat, it wasn't.

The employer had a \$100,000 employer practices liability insurance policy thinking it was plenty. It went to court and the amount of the settlement to avoid facing a costly trial and court judgement was well over \$100,000 for the attorney fees both for the attorney representing the employer and having to pay the fees of the attorney representing the employee plus the settlement amount.

Employment practices liability insurance, known in the trade as EPL insurance or EPLI, provides coverage to employers against claims made by employees alleging discrimination (based on sex, race, age or disability, for example), wrongful termination, harass-

ment and other employment-related issues, such as breach of contract.

You're at risk of an employment claim from the moment you accept applications for employment. For example, if you choose not to hire an applicant, that applicant could allege some sort of discrimination.

Or, if you hire that person and later fire that person due to poor attendance or some other reason, that discharged employee could claim wrongful termination.

Experts recommend ways to significantly lower your employment practices liability risk. You can get these recommendations via the Internet at:

www.ibaw.net/employeeliabilityrecc.pdf

Home Refinance Program Expires Soon

Act quickly to take advantage of a federal program to help make homeownership more affordable. It ends on December 31, 2015. More than 2.2 million families have used the HARP program to reduce their home mortgage payments. It is designed specifically for current homeowners with mortgages owned or guaranteed by Freddie Mac or Fannie Mae (the GSEs) and high loan-to-value (LTV) ratios which make it difficult if not impossible to refinance through traditional programs. The majority of HARP borrowers are actually underwater on their mortgages with the majority having LTVs in excess of 105 percent.

Worth checking out with a mortgage lender to see if you qualify and can reduce your home mortgage payments.

Small Business Directive

Click on the following link or go to the following Internet address to complete and send this IBA Small Business Directive via the Internet. www.ibaw.net/directive
You can also send your completed directive to IBA at iba@isomedia.com or fax it to **425-358-3213**

Please insert your business name here:

We ___Support ___Oppose ___Have No Position on increasing the state minimum wage increase the state's minimum wage to \$10.35 per hour beginning in mid-2016; \$11.15 per hour beginning January 1, 2017; and \$12.00 per hour beginning January 1, 2018.

Please explain why you are taking the position you are on increasing the state minimum wage as described above - thank you

attach additional paper as needed or send IBA additional comments via email at iba@isomedia.com—put in the subject line, “**B&O Tax Reform**”

Please return your completed directive to IBA by email at iba@isomedia.com or fax it to **425-358-3213**, or by mail to: **IBA 16541 Redmond Way #336C, Redmond, WA 98052**