The Voice of Minnesota Business

Washington, D.C.

June 8-10, 2015

EXPANDED JOINT EMPLOYER RESPONSIBILITY

Potentially reversing a thirty year precedent, the National Labor Relations Board (NLRB) has engaged in a two-pronged effort to expand "joint-employer" liability to include franchisors and employers that use contractors.

- The NLRB's General Counsel announced on July 29, 2014, that his office will pursue McDonald's as a "joint employer" with its franchisees in cases involving alleged unfair labor practices.
- Two months earlier, the Board signaled its intent to upend the joint-employer standard when it requested amicus briefs in Browning-Ferris Industries, a representation case. The case will determine whether companies can be held liable for the labor and employment practices of third-party vendors, suppliers, staffing firms and other contracted parties, such as franchisees, subcontractors or independent contractors, over which they have no direct control
- This one-two punch is part of a larger NLRB agenda to encourage union organizing at the expense of employers' rights and existing law.
- The Board's current standard deems businesses joint employers only when they share **direct and immediate control** over essential terms and conditions of employment including hiring, firing, discipline, supervision and direction. This clearly defined standard has been in place for more than three decades.
- The NLRB proposes an amorphous **indirect control** standard be adopted. Almost any economic or contractual relationship could trigger a finding of joint employer status under the proposed new standard.

Effects of Altering the Joint Employer Standard

- The practical effects of altering the joint employer standard could also include:
    - Companies inadvertently finding themselves vicariously liable for the actions of third parties they do not control.
    - Forcing companies to negotiate with unions over workplaces they don't actually control.
    - Allowing unions to use contract negotiations at a single franchise to force corporate-wide agreements on issues like card check and neutrality.
- The bottom line is that any employer that utilizes franchising, is involved in a joint venture, engages staffing agencies, or hires subcontractors, could unexpectedly be dragged to the bargaining table with a union, and face liability for unfair labor practice charges for which they had no responsibility.

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JOBS THROUGH TRADE

One of our nation's greatest opportunities for job growth and economic development is through growing trade exports. An essential element to growing trade opportunities for U.S. businesses is through Free Trade Agreements (FTAs). FTA's help level the playing field for trade so that U.S. companies can export their goods and services and create good jobs for American workers.

- Roughly three quarters of world purchasing power and almost 95% of world consumers are outside America's borders.
- U.S. exports of goods and services totaled nearly $2.3 trillion in 2014. Exports are a growing and substantial part of the U.S. economy, accounting for 13.5 percent of our nation's GDP. One in three manufacturing jobs depends on exports, and one in three acres on American farms is planted for hungry consumers overseas.
- However, many foreign countries still maintain steep tariffs and other barriers against U.S. exports, while the U.S. market is largely wide open. American workers and famers deserve the opportunity to compete—and succeed—on a level playing field.

Approve Trade Promotion Authority (TPA)

- By approving Trade Promotion Authority (TPA), Congress has the opportunity to open up even more overseas markets to U.S. companies, including two major Free Trade Agreements (FTAs) currently under negotiation - TPP and TTIP.
- However, to make those trade agreements a reality, Congress must first pass TPA. TPA requires the President and Congress to work together on trade agreements, enabling the President to negotiate on terms set by Congress.
- TPA builds on this constitutional partnership by requiring the executive branch to consult extensively with Congress during negotiations while assuring U.S. trading partners that agreements will receive an up-or-down vote.
- TPA also gives Congress the final say on a trade agreement in an up-or-down vote.
- More than 97% of the 300,000 U.S. companies that export their products are small and medium-sized companies. Small firms account for more than one-third of all U.S. merchandise exports.
- Trade agreements can tear down those barriers. That's why U.S. exports to new free-trade agreement (FTA) partners have grown on average four times as rapidly in the period following an agreement's entry-into-force as U.S. exports globally.
- While they represent just 10% of global GDP, America's 20 FTA partners buy nearly half of U.S. exports.

Reauthorize Export-Import Bank – The bank's charter expires on June 30.

- It provides loans, loan guarantees and export credit insurance to help cover financial gaps for U.S. exporters.
- It helps level the playing field for U.S. companies seeking new sales in the competitive global markets, especially important to small and medium-sized businesses, which account for nearly 90% of the bank's transactions.
- Operates at no cost to the U.S. taxpayer; charges fees for its services, follows accounting and risk-management standards and loans backed by collateral of goods being exported.
- In fiscal year 2014, Ex-Im Bank provided financing or guarantees for $27.5 billion in U.S. exports, thereby supporting more than 164,000 American jobs.
- Bank's default rate was .0175% in 2014 and actually turns a profit for American taxpayers. Last year, the Ex-Im Bank sent $674.7 million to the U.S Treasury as a surplus for American taxpayers. Over the past two decades, Ex-Im has generated a surplus of nearly $7 billion.

What Trade Means to Minnesota

- Minnesota's exports from manufacturing, services and agricultural industries are estimated at $33 billion.
- Minnesota exports from merchandise (including agricultural, mining and manufactured products) grew to a record $21.4 billion in 2014, despite a modest growth rate of 2.9 percent (or, up $600 million) between 2013 and 2014. U.S. growth was 2.8 percent. Total service exports were over $9 billion.
- Export-supported jobs linked to manufacturing account for an estimated 4 percent of Minnesota's total private-sector employment, or roughly 129,000 jobs.
- A total of 8,579 companies exported from Minnesota locations in 2013. Of those, 7,472 (87 percent) were small and medium-sized enterprises with fewer than 500 employees. Small and medium-sized firms generated over one quarter (28 percent) of Minnesota's total exports of merchandise in 2014.
- Minnesota exported 1,055 different detailed products to 207 countries in 2014, covering 86 percent of U.S. export goods and 88 percent of U.S. export markets. The state accounts for 1.3 percent of U.S. exports.
- Minnesota manufactured exports were valued at $19.7 billion in 2014, up 2.2 percent since 2013. U.S. manufactured exports grew 1.5 percent.

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MEDICAL DEVICE TAX

The Affordable Care Act (ACA) better known as "ObamaCare" included a Medical Device excise tax of 2.3% on device manufacturers. The Medical device excise tax went into effect January 1st, 2013.

Minnesota's medical device industry is critical to the state's economy with more than 350 device companies supporting more than 30,000 high-value jobs.

The Medical Device Tax Undermines Health Care Reform

This new 2.3 percent tax on the sale of almost all medical devices will harm the ability of American companies to compete. The tax will undermine America's global leadership position in product innovation, clinical research, and patient care. This tax weakens the medical device industry's ability to create and maintain well-paying jobs in the United States and hinders the development of breakthrough treatments.

The Medical Device Tax is Already Costing Jobs and Stifling Innovation

The medical device industry, which adds over $23 billion to the American economy annually, has already felt the impact of the medical device tax on jobs and innovation since its January 1, 2013, implementation. According to a recent survey by the Advanced Medical Technology Association (AdvaMed), two-thirds of the companies surveyed reported that they have had to "slow or halt U.S. job creation as a result of the tax." A recent survey by the Medical Device Manufacturers Association (MDMA) of 100 industry executives found that 72 percent "slowed or halted job creation" to pay for the tax, and 85 percent would hire more workers if the tax were repealed. The AdvaMed survey also found that the medical device tax has resulted in:

- Employment reductions of 14,000 industry workers in 2013 and years prior to implementation of the tax;
- An estimated 4,500 jobs lost in 2014;
- Almost 20,500 employees that will not be hired over the next five years;
- About 39,000 fewer industry jobs (considering both jobs lost and jobs not created); and
- Up to 156,000 jobs lost in indirect employment, leading to a total job loss of 195,000 jobs.

Similarly, the effect of the medical device tax on current and future innovation has been equally as alarming. The AdvaMed survey found that 53 percent of respondents have reduced research and development as a result of the tax and 75 percent said they have:

- Deferred or cancelled capital investments and plans to open new facilities;
- Reduced investment in start-up companies;
- Found it more difficult to raise capital (among start-up companies); and,
- Reduced or deferred increases in employee compensation.

Status of Repeal of Medical Device Tax

A bill sponsored by Rep. Erik Paulsen, and co-sponsored by 280 House members (including 40 Democrats), repealing the medical device tax advanced from the House Ways and Means Committee to the House floor last week. The vote on the House floor is expected soon.

Bills repealing the tax on medical devices have passed the House three times in the past. This time the House bill has a companion bill in the Senate. The Senate version, introduced by Sen. Orrin Hatch (R-Utah), who chairs the Senate Finance Committee, also has broad bipartisan support.

At this time, it is uncertain whether President Obama will sign or veto the bill.

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TRANSPORTATION / INFRASTRUCTURE

The U.S. needs to modernize and expand our nation's transportation, telecommunications, energy, and water networks. Without proper investment and attention to our infrastructure systems, the nation's economic stability, potential for job growth, and global competitiveness are at risk.

- One-third of major roads are in poor or mediocre condition.
- One in nine of the nation's bridges are rated as structurally deficient.
- The air traffic control system faces a multiyear overhaul.
- The rising costs of our infrastructure will significantly impact the economy, forcing U.S. GDP to underperform by $897 billion.
- Federal funds provided, on average, 52% of the funding for annual highway and bridge construction projects selected by states and locals from 2001-2011.

MAP-21 Reauthorization (Highway Bill)

The current Highway Bill (MAP-21), the bill that authorizes federal surface transportation spending (roads, bridges and transit), is now on its second short-term extension that expires on July 31, 2015. A multi-year reauthorization is needed to ensure funds adequately and predictably flow from the Highway Trust Fund to state and local authorities.

Highway Trust Fund

Currently the highway trust fund that finances the MAP-21 Highway Bill is experiencing a funding shortfall as demands exceed revenues coming in to the trust fund. Americans are driving less, vehicles are becoming more fuel efficient and the gas tax hasn't been increased in 22 years.

The U.S. DOT projects that the Highway Account of the Highway Trust Fund will run out of money for new projects in July. According to the Congressional Budget Office, to prevent insolvency of the Highway Trust Fund, federal surface transportation investment would have to be cut by 92%.

If the trust fund experiences a cash shortfall, the DOT will be forced to start taking steps to manage whatever cash it has left. If no action is taken a "slow pay" problem will emerge; based on current revenue and spending trends, CBO projects that the HTF faces a cumulative shortfall of roughly $169 billion over the next ten years.

A Plan for Modernizing American Infrastructure

- Pass multi-year highway bill to bring confidence to funding our nation's highway and transit systems.
- America needs a predictable, stable, and growing source of federal funding.
- Investment in America's transportation infrastructure must be a budgetary priority for the Congress.
- Without a predictable and reliable funding source to pay for the federal contribution to roads, bridges, and public transit projects, the transportation funding situation at the state level is going to get dramatically worse.