



Newsletter

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The Voice of Independent Business in State Government

OBAMA HEALTH CARE LAW MAY HAVE TOUGH SLEDDING AHEAD

All American employers regardless of size will be impacted one way or another with the new health care law. In this newsletter we lay out some of the key timelines. The delayed implementation at a minimum creates serious doubt about how firm all of this is.

There is no doubt that any major shifts in the control of Congress in this year's elections could result in sweeping changes to the law before it is even implemented. If those who opposed this law take over control of Congress this November it is likely they will work to "defund" the program and secondly they would attempt to pass health care reform that is much more attractive to small businesses.

Fundamentally, the most immediate impact to employers could result in 2 things. 1) Massive new paperwork which could potentially drive up costs to employers and 2) Numerous large employers beginning to drop coverage ahead of the imposition of the law.

Multiple promises have been made that the law is fully funded but recent history on almost all government health care initiatives demonstrate that they are usually woefully underfunded and dramatically overpromised. For example, the recently enacted "Hospital Tax" on Wisconsin hospitals was promoted as a way to capture more federal dollars for low income health coverage reimbursement. In the first year, Wisconsin hospitals paid massive new taxes and the promised reimbursement program was out of money months before the fiscal year ended.

The result? Hospitals across Wisconsin had costs go up sharply and now have major shortfalls...where do you think those costs will be shifted? Most likely to the thousands of small employers who generously offer health insurance to their employees.

Just another example of government overpromising, under-delivering and setting up financing models that small employers would get thrown in jail for if they tried it in their business.

Please check our website at www.wibiz.org for more details and specifics on the federal health care bill and its impacts on small business.

SOME NEW FEDERAL HEALTH CARE BILL KEY TIMELINES

The recently approved federal health care bill is over 300 pages long and has huge implications on small business, your paperwork, costs, fees, potential penalties and mandates. Many of the changes begin in 2014 and beyond. We highlight some key timelines of major provisions here.

2010

Small business tax credit: Those who provide some qualified health coverage are eligible for a temporary tax credit. However, there are complex tests to resolve actual amounts. Firms under 10 employees or less may receive full credit. Firms with 11-25 employees are eligible for reduced credit and employers with over 25 employees get no credit. Employee wages also impact eligibility. As average wages go up, the credits are reduced. Some argue this can create the perverse incentive to keep wages down.

2011

W-2 reporting: Employers will be required to report health benefits for employees on their W-2's

HSA penalties and restrictions: Penalties for using HSA's for non-qualified purchases goes to 20% and the purchase of over-the-counter medications are prohibited with these funds.

2012

1099 reporting: Employers will be required to send 1099 forms for each business to business transaction over \$600, thereby increasing paperwork tremendously in numerous situations.

2013

"Medicare" payroll tax hike: Taxes on some wages and self employment income go up and the money is diverted for the first time to non-Medicare spending.

2014

Most of the small business insurance taxes are implemented in this year: A tax will fall on many plans that small businesses purchase but not on self-insured plans.

Growth of government subsidies: The federal government begins subsidizing individuals up to 400% of the federal poverty level-\$88,000 for a family of four.

Medicare eligibility expands

Individual and Employer Mandates begin

“John’s Corner”

What’s at Stake in this Fall’s Elections?

In the past I’ve tried to explain the true depth of Wisconsin’s economic nightmare.

Extremely high unemployment, exceptionally high income and property taxes which have helped build higher and higher government spending leaves our state’s economic situation in very poor shape. When you realize Governor Doyle’s current state budget raised spending 6% but was so unbalanced that the state had to delay paying over \$400 million in principle on debt, you realize we have major long term problems.

Throw in the fact that the Governor and legislators who voted for the budget used \$2 billion (yes that’s right-\$2 billion) in one time federal money to fund ongoing spending and the math goes from bad to worse.

We all have heard numerous financial experts predict nationwide economic difficulty for the foreseeable future, in part because of so much government debt and spending. Without getting too much into all the potential issues—several things are very obvious. Our state’s finances are upside down and they won’t be fixed before the election.

So who will be in charge of fixing the financial mess we find ourselves in?

For the past 2 years Democrats have controlled all levels of the state legislature and Governor’s office. However, they have very slim margins in both houses of the legislature that are very likely at risk given all the problems with the economy. Historically, the party in power pays the price for high unemployment and financial instability.

Democrats control the State Assembly by a 52-46 margin with 1 Independent. There have been numerous retirements and it certainly appears control of the Assembly is up in the air. The same can be said for the State Senate where Democrats hold a slim 18-15 margin.

Finally, the Governor’s race is wide open which sets up the likelihood that there will be a remarkable number of newly elected people to clean up the mess someone else created.

We have all seen the significant political upsets across the country throughout this year’s election cycle and many expect the same in Wisconsin. It appears very clear that many voters are so frustrated with the state of the economy and the irresponsible government spending and deficits that they are consistently voting for people who are seen as outsiders. The trend is happening everywhere.

What does it mean for you as a small business owner?

Ultimately, it means you have a great opportunity to impact the upcoming elections. I would encourage all of our members to ask tough questions and be very outspoken about the reality of the challenges you face every day as a small business owner.

I would encourage you to ask specific questions and ask for straight answers when you see a candidate for any legislative seat or any of the candidates for Governor.

Here are several examples-

1. Will you support an overall reduction in state spending to balance the state budget?
2. Will you oppose any expansions of sales, income and property taxes?
3. Would you oppose any expansions of any government program until we can balance the state budget and start paying down our debt again?
4. Will you oppose any legislation that would raise my electricity rates or other costs of doing business while unemployment is so high?

These questions are suggested because they will help expose the candidates view on limiting government. If they refuse to commit, you can expect that they will be working to raise your taxes and costs of doing business very soon. The simple math of our state’s crisis suggests that any new spending could only come from tax hikes.

Every candidate wants to be seen as a friend of small business. It gives you tremendous capacity to force these candidates to answer the critical questions that impact your ability to control your costs and survive these difficult economic times.

Speak out- Defend yourself and Remember We Need Small Business to Succeed if We Are Ever Going to Get Out of this Economic Crisis.

Want to know who is running where? The official candidate filing deadline is July 13th. We will post all candidates names and district they are running for on our website. Please check www.wibiz.org for all the information

LEGISLATIVE SESSION ENDS WITH WIB MEMBER VICTORIES

The long battle to protect Wisconsin small employers from being trapped by hidden “automatic renewal clauses” in business service contracts has ended with success!

Governor Doyle signed the bill WIB fought hard for into law on April 21st. The new law provides new protection for small businesses who have a variety of contracts for services. It requires significant new notification so employers are fully aware of their rights and don't get trapped. Our success on this bill after previous difficulties can be attributed to our improved lobbying efforts and coalition building. Mike Metz worked tirelessly to get this done and WIB appreciates the consistent efforts of Senator Wirch (D-Kenosha).

WIB also made progress on increasing the limits on small claims cases. We believe increasing the limits from \$5000 to \$10000 would increase the number of small employers who get long overdue costs recovered from delinquent accounts. The WIB led bill passed the Assembly but was held up in the State Senate. We'll continue that effort in the next session.

WIB PART OF SUCCESSFUL COALITION TO KILL HIKES IN ENERGY RATES

Late in the legislative session, there was a growing effort to pass a bill that was labeled by advocates as the “Clean Jobs Act” The reality was that it would have significantly raised utility rates for small business and Wisconsin residents. WIB joined a coalition of 20 business groups to successfully defeat the proposal. It's never a good time to raise energy costs to employers but doing it in this economic climate would have been devastating.

Our WIB staff is ready to help you with any questions - call 1-800-362-9644 or email office@wibiz.org if you need anything! Thank you for being a part of WIB.

UNEMPLOYMENT COMPENSATION FUND CONTINUES TO RUN RECORD DEFICIT

*It May Be Time to Abandon the Unemployment
Advisory Council*

With continued major job losses plaguing Wisconsin, our state unemployment fund is in worse shape than almost any similar fund in the nation. For years Wisconsin was a model of fiscal discipline and health when it came to unemployment compensation. We have a unemployment advisory council which is comprised of 5 labor representatives and 5 management reps who have been charged with advising the Department of Workforce Development on the administration of unemployment policies and the health of the fund.

For decades, the legislature relied on the direction of the council to help guide management of the Unemployment Fund. However, over the last several years the fund has plummeted into a deep deficit and the council has not been able to come forward with any responsible recommendation for bringing the fund out of deficit.

Now, Wisconsin employers are faced with a fund that has been forced to borrow almost \$1.5 billion just to pay claims. The long term impact will likely result in efforts to increase employment taxes on already stressed Wisconsin small businesses.

We have borrowed the \$1.5 billion from the federal government who has loaned this money to us with delayed interest. Accrual of interest resumes on January 1, 2011. Of the 30 states that have borrowed from the federal government, Wisconsin is in almost the worst shape per capita.

WIB believes it is time to reform the Wisconsin Unemployment system and its advisory council. If the council is in charge of oversight, wouldn't you think there would be aggressive action to stop the bleeding? Unfortunately, labor unions have blocked any serious efforts and just like other state programs the financial problems only get worse.

We remain very concerned that efforts will increase to hit employers for higher taxes and we will work hard to prevent that from happening.

We believe one solution is to disband the council. If we are billions in the hole and there are no real attempts underway to fix the fund, it would appear the advisory council is impotent in managing the fund.

The Department of Workforce Development ultimately needs to step up and provide some leadership to fix this problem. Our members are counting on it.

WIB LEGAL LINE



Gary L. Antoniewicz
Boardman Law Firm

REFUSAL TO REHIRE - WORKERS' COMPENSATION

*BY GARY L. ANTONIEWICZ
BOARDMAN, SUHR, CURRY & FIELD LLP*

Wisconsin's workers' compensation law imposes requirements on employers to rehire employees injured while at work. Sec. 102.35(3) of the statutes provides in part:

Any employer who without reasonable cause refuses to rehire an employee who is injured in the course of employment, where suitable work is available within the employee's physical and mental limitations, . . . has exclusive liability to pay to the employee wages lost during the period of such refusal, not exceeding one year's wages.

In a recent decision in *DeBoer Transportation, Inc. v. Charles Swenson, et al*, the District IV Court of Appeals reversed a decision of the Labor and Industry Review Commission ("LIRC") and held that LIRC incorrectly interpreted the "reasonable cause" standard for refusal to rehire. In this case, DeBoer had a reorientation program for drivers who had been off work for more than 60 days. This program included an "overnight check-ride" for drivers.

Swenson who had been off work due to a work-related injury was required to complete the reorientation upon his return, including the overnight ride, even though prior to his injury, Swenson just drove days. Swenson refused to complete the overnight portion because he cared for a terminally ill father part of each day. He stated he would only go overnight if DeBoer paid for care of his father. DeBoer refused to waive its requirements or pay for care and Swenson was not rehired.

LIRC found that DeBoer lacked "reasonable cause" for rehiring Swenson and owed lost wages. LIRC determined that DeBoer

failed to show that making an exception to its policy would have compromised worker safety or that accommodating Swenson would be a financial burden.

In reversing LIRC and finding for DeBoer, a divided Court of Appeals held that the agency's interpretation of the statute was "unreasonable" and placed too great of a burden on the employer. The Court stated:

¶14 We conclude that the reasonable cause standard in Wis. Stat. § 102.35(3) does not contemplate requiring employers to either deviate from a facially reasonable and uniformly applied policy, or explain why it would be burdensome to do so, when a returning employee requests the deviation to accommodate a non-work or non-injury-related personal need. . . .

The upshot of the decision is that returning employees are subject to reasonable and uniformly applied policies imposed by employers. An employer is not necessarily obligated to justify the policy in each instance and for each employee. The decision eases the burden on employers of proving "reasonable cause."

The other lesson learned by employers is the value of having well articulated and uniformly applied policies. The fact the policy in question was well-established was important as well as the fact that on its face, the policy had a legitimate business rationale. The analysis by the Court does give businesses something to think about.

Opponents might argue the case opens the door to refusals to rehire. This is simply not the case as the decision still requires a facially reasonable and uniformly applied policy. All the decision does is state that employers do not have to deviate from their policies and do an analysis of each employee's non-work circumstances and whether policy deviation is a substantial burden.

This is a reasonable decision and is based upon common sense. At this time, it is not known if a further appeal will be made.

If you have questions about these issues or any workplace problems, call the WIB toll-free members HOTLINE at **800-362-9644**

Madison, WI 53701
P.O. Box 2135

