



# Newsletter

February 2016

Wisconsin Independent Businesses...Helping you where you need it.

## Get the latest Small Business news from the State Capitol

For more than four years, WIB has published a bi-weekly electronic newsletter – the Capitol Week in Review.

This free member communication provides timely information about recent state government actions which impact small, independent businesses.



We have redesigned our e-newsletter to make it more reader-friendly for both desktop and mobile users.

If you would like to subscribe to our *Capitol Week in Review*, please e-mail Brian Dake at [bdake@wibiz.org](mailto:bdake@wibiz.org).

## Our Lobbying “To Do” List for 2016

The 102nd Session of the Wisconsin State Legislature is scheduled to adjourn on or around April 1.

During the past year, we have made significant progress on our public policy priorities, however we still have a lengthy “to do” list for 2016.

Throughout this newsletter, we will discuss these issues in greater detail.



- Phase-Out of Wisconsin’s Personal Property Tax
- More Accountability and Integrity to the Worker’s Compensation Program
- Tougher Penalties for UI Benefit Fraud
- Improve the State’s Tax Administration Process
- Create a More “Small Business-Friendly” State Regulatory Process

### In this Issue:

- 2 Adding More Accountability and Integrity to the Worker’s Compensation Program
- 3 Tougher Penalties for UI Benefit Fraud
- 4 Legal Line: Update on U.S. Department of Labor Salary Rule Proposal
- 6 Phasing out the Personal Property Tax
- 6 Improve the State’s Tax Administration Process
- 7 Permanent Tax Relief for Small Businesses...Reform of the IRS
- 8 Creating a More “Small Business-Friendly” State Regulatory Process

# Adding More Accountability and Integrity to the Worker's Compensation Program



We are pleased to report significant progress on our efforts to bring more accountability and integrity to the state's Worker's Compensation program.

In 2013, WIB surveyed members on the subject of Worker's Compensation. We asked for background information as well as recommendations to reduce Worker's Compensation insurance costs for small employers and cut down on waste, fraud and abuse. The following conclusions were drawn from the member responses:

1. Worker's Compensation insurance is a major expense for small businesses - more than half of the respondents paid more than \$10,000 in Worker's Compensation insurance premiums.
2. Medical costs are driving Worker's Compensation insurance premiums - by a significant margin, survey respondents recommended medical cost containment measures to control the cost of premiums.
3. More Accountability within Worker's Compensation Program - respondents believe greater government oversight of the actions of employers, injured workers, insurers and health care providers is needed to root out waste, fraud and abuse.

More than three years later, member input continues to guide our Worker's Compensation-related lobbying. We are pleased to report significant progress on our efforts to bring more accountability and integrity to the state's Worker's Compensation program.

In early January, State Representative John Spiros (R-Marshfield) and State Senator Steve Nass (R-Whitewater)

introduced legislation on behalf of the Wisconsin Worker's Compensation Advisory Council (WCAC) which includes 14 separate amendments to the state's existing Worker's Compensation law. There are five amendments which we believe improve the Worker's Compensation program. They are:

## **1. Violations of Employer AODA Policies**

Under this legislation, if an employee violates an employer policy against drug or alcohol use and such violation is causal to the employee's injury, then neither the employee nor the employee's dependents may receive, under the worker's compensation law, any compensation, including the death benefit, relating to that injury. This provision does not reduce or eliminate an employer's liability for the cost of treating the employee's injury.

## **2. Employee Suspension or Termination**

Under this legislation, an employer is not liable for temporary disability benefits during an employee's healing period if the employee is suspended or terminated from employment due to misconduct, as defined in the unemployment insurance law, or substantial fault, as defined in the unemployment insurance law.

## **3. Apportionment of Permanent Disability**

Under this legislation, if an injured employee has incurred permanent disability, but a percentage of that

*continued on page 5*

## TOUGHER PENALTIES FOR UI BENEFIT

# FRAUD

In 2014, Unemployment Insurance (UI)  
"fraudsters" collected more than  
\$20.5 million in UI benefits.

In 2014, the Wisconsin Department of Workforce Development (DWD) identified 13,054 cases in which Unemployment Insurance (UI) benefits were paid to claimants who intentionally provided false or inaccurate information. These "fraudsters" collected more than \$20.5 million in UI benefits.

The existing penalties for UI fraud include repayment of fraudulently obtained benefits, reductions in future benefits, civil forfeitures, court fines and jail time. Even with this array of penalties, UI fraud continues to be a multimillion dollar problem in Wisconsin.

State lawmakers want to stem the tide of UI fraud with tougher, more consequential penalties and WIB is actively supporting these efforts.

Under legislation co-authored by State Representative Samantha

Kerkman (R-Salem) and State Senator Rob Cowles (R-Green Bay), 2015 Assembly Bill (AB) 212\Senate Bill (SB) 140, a UI claimant would be ineligible for UI benefits for a period of seven years if the UI claimant commits two acts of concealment or impersonation in two consecutive benefit years.

By way of background, the term concealment means to intentionally mislead the DWD by withholding or hiding information or making a false statement or misrepresentation.

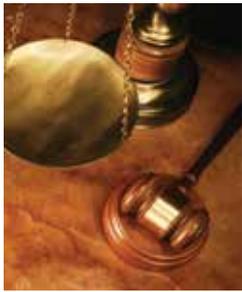
Separate legislation co-authored by State Senator Chris Kapenga (R-Delafield) and State Representative Samantha Kerkman, 2015 Senate Bill (SB) 401\Assembly Bill (AB) 533, stiffens the criminal penalties for UI fraud based on the value of UI benefits obtained by fraud.

Under their proposal, if the value of the UI benefits obtained by fraud were less than \$2,500, the criminal penalty would be a fine of up to \$10,000 or imprisonment not to exceed 9 months, or both. The penalties increase to a fine of up to \$25,000 or imprisonment not to exceed 10 years, or both if the value of the UI benefits obtained by fraud exceeds \$10,000.

We are pleased to have the support of DWD for this legislation. In their public testimony, the Department noted that the existing consequences for UI fraud benefits "fuel the perception that UI benefits theft is less severe than stealing from a bricks and mortar store, a bank, or an individual's home. This legislation will correct this imbalance, protect the integrity of the program, and help deter future UI fraud attempts."

We agree.

**UI FRAUD HOTLINE: 1-800-909-9472 (Mon - Fri 8am - 4pm)**



## Legal Line

# *Update on U.S. Department of Labor Salary Rule Proposal*

There has been much concern among small businesses about the proposed changes to the U.S. Department of Labor's ("DOL's") Salaried Basis Rules. Currently the minimum allowable amount for salaried managerial, administrative or professional employees is \$23,660 a year in order to qualify for exemptions from overtime regulations.

In 2015, DOL proposed a rule significantly raising the minimum salary for overtime exemption. The new proposed minimum annual salary is \$50,440. There is also an "escalator" provision for raising the proposed amount by the cost of living each year. The rule does not change the other "duties tests" for determining overtime exempt status although DOL states that it will be asking for comments at a later date.

Many small businesses do not, and cannot afford to pay the proposed amount, especially with a COLA increase each year. The result is that many managers and administrative personnel would have to be paid time and one-half overtime, or be restricted to fewer hours than necessary for "management." Positions may have to be eliminated and/or pay plans retooled to one of the alternative overtime models which are less expensive, but are cumbersome to administer.

Now the DOL has announced a delay in the process.

In the summer of 2015 it published the proposed rules, with the required "comment period" prior to implementation. Usually the DOL considers comments and then finalizes and implements new rules within

several months, early 2016 in this case. However, in this case, DOL was overwhelmed with comments. It has announced that it now has no expected timeframe. It will take some time to consider the commentary, and reach final decisions. The final rule may well be modified. It is likely that no final rule will be implemented until mid to late 2016 or even 2017.

In the meantime, small businesses can breathe a little easier. This major change is not imminent, and there is more time to prepare. The end result may not be as large of a salary increase as originally proposed. However, change will likely come in the future.

The end result may not be as large of a salary increase as originally proposed. However, change will likely come in the future.

So, this is the time to be aware, and thoughtfully consider options.

So, this is the time to be aware, and thoughtfully consider options.

*continued on page 5*

continued from page 4

**Start keeping a record of the time worked by managers and salaried administrative staff.**

Consider the efficiency of current schedules and coverage. Though changes in regulations can be a hassle, they also provide the opportunity to get away from “that’s how we have always done it,” and explore new and more effective practices.

**Start to consider the available alternative pay methods.**

The current DOL Rules provide several compensation plans for non-salaried employees, which are hourly based but less than the pure time and a half overtime method. The auto and farm equipment industries have special “hourly exemptions” for sales, commissioned, and flat rate work. Some managers can fall within these exemptions. The retail sales industry also has “hourly exemptions” for commissions, fluctuating hours, or other situations. These may be viable. There is now more time to consider and plan without a rush to find a quick fix.

So, the current message is that there is a significant delay of any major changes to the Salaried Basis Rules. Businesses do not need to fret or panic. At the same time, do not forget or ignore the issue. There will ultimately be changes. Use the breathing room to study and prepare.

All opinions expressed in this article are those of the author and do not necessarily reflect those of any group or organization publishing this article. The author is solely responsible for the content herein. This article is not intended as legal advice and the author has no attorney/client relationship with any reader. This is general information only and readers are encouraged to seek specific advice and assistance from their attorneys’ accountants and other professional advisors.



*Gary Antoniewicz is an attorney with the Madison-based law firm Boardman & Clark LLP. Gary practices business and dealership law. For over 30 years, Gary has provided legal advice and counsel to small and family-held businesses throughout Wisconsin.*

## **Worker’s Compensation Program**

*continued from page 2*

disability was caused by an accidental injury sustained in the course of employment and a percentage of that disability was caused by other factors, whether occurring before or after the time of the accidental injury, the employer is liable only for the percentage of permanent disability caused by the work-related accidental injury.

### **4. Reduction in the Statute of Limitations for Traumatic Injuries**

Under this legislation, the current 12-year statute of limitations for filing a claim for worker’s compensation due to traumatic injury is reduced to 6 years.

### **5. Investigation and Prosecution of Fraudulent Activity**

Under this legislation, the Wisconsin Department of Workforce Development could request assistance from the Wisconsin Department of Justice (DOJ) to investigate and/or prosecute fraudulent activity on the part of an employer, employee, insurer, health care provider, or other person related to Worker’s Compensation.

WIB is lobbying in support of the WCAC proposal. We believe there is sufficient bipartisan support to pass these important measures into law.

Soon, state lawmakers will also take action on the recommendations of the Unemployment Insurance Advisory Council (UIAC). The UIAC is recommending denial of UI benefits for individuals who receive permanent total disability payments through Worker’s Compensation.

This “double-dipping” should not be permitted. Worker’s Compensation benefits are provided to individuals who are unable to work due to injury and a condition of UI eligibility is that the individual is able and available for work. We are lobbying in support of this UIAC recommendation.

In addition to our advocacy on behalf of these legislative proposals, we are also reminding legislators of the need for changes to the Worker’s Compensation program that will help control the medical costs for the treatment of injured workers. Forty-five states currently have laws in place which keep the health care costs of treating injured workers in check. Wisconsin does not and we cannot continue to be an “outlier” on this issue.

# Phasing-Out the Personal Property Tax

Since the beginning of 2015, WIB has been advocating for the repeal of the state's personal property tax.

Legislation co-authored by State Representative Bob Kulp (R-Stratford) and State Senator Duey Stroebel (R-Saukville), 2015 Assembly Bill (AB) 750, would phase it out as follows:

- a) Personal property placed in service before January 1, 2016, is taxed based on its depreciated value for the 2016, 2017, 2018 and 2019 assessment year;
- b) Personal property placed in service after January 1, 2016, is exempt from property taxation; and
- c) As of January 1, 2020, all personal property would be exempt from property taxes.

WIB has joined with a coalition of organizations representing tool-and-die makers, manufacturers, grocers, restaurants, contractors and insurance agents to support this legislation.

In our advocacy efforts, we are running into resistance from state lawmakers concerned about the fiscal impact of this legislation on local units of government.

*continued on page 7*

## Improving the State's Tax Administration Process

For small employers who are subject to an audit by the Wisconsin Department of Revenue (DOR), the process is often complicated and costly. Auditors may request tax documents and records that go back a number of years and the timeframe to provide this information is short. If the audit reveals an additional tax liability, interest charges accrue on that liability.

Over the past year, WIB has been working with other business advocacy groups and lobbying legislators to improve the state's tax administration process. We are making progress.

Under current law, DOR may disallow tax deductions, credits and exemptions as well as impose financial penalties on taxpayers who fail to produce tax records within a specified period of time (generally speaking 60 days).

Legislation co-authored by State Senator Howard Marklein (R-Spring Green) and State

Representative John Macco (R-Ledgeview), 2015 Senate Bill (SB) 503\Assembly Bill (AB) 623, eases this compliance burden. Their proposal specifies that these penalties may not be imposed until after DOR has issued a summons seeking the

records and documents, and the taxpayer has failed to comply with the summons.

If a taxpayer owes additional state taxes, DOR charges the taxpayer 12% annual interest on the outstanding liability. This rate is known

as the non-delinquent rate. By contrast, if a taxpayer is owed a refund, DOR pays just 3% on the tax overpayment after a certain period of time. This interest rate disparity is the highest in the nation.

Legislation authored by State Representative Jesse Kremer (R-Kewaskum) narrows this gap. 2015 Assembly Bill (AB) 226 reduces the 12% non-delinquent interest rate paid by taxpayers by 0.5% annually until the rate reaches the Federal Reserve Bank prime rate plus 4%.

Over the past year, WIB has been working with other business advocacy groups and lobbying legislators to improve the state's tax administration process. We are making progress.

# Permanent Tax Relief for Small Businesses...Reform of the IRS

Just before the holiday break, President Obama signed the Protecting Americans from Tax Hikes (PATH) Act of 2015 into law. This bipartisan legislation converts several temporary tax relief measures into permanent federal tax code changes, renews nearly three dozen tax breaks for at least one year and reins in the IRS bureaucracy.

The “small business-friendly” tax relief provisions of the new federal law include:

1. Permanent extension of the Section 179 expensing limitation and phase-out amounts at \$500,000 and \$2 million, respectively. These amounts are indexed for inflation for taxable years beginning after 2015. Wisconsin’s tax code automatically conforms with federal tax code changes to Section 179 expensing.

2. Permanent extension of 15-year straight-line cost recovery for qualified leasehold

improvements, qualified restaurant buildings and improvements and qualified retail improvements.

3. Five-year extension of bonus depreciation for property acquired and placed in service during 2015 through 2019. The bonus depreciation percentage is 50% for property placed in service during 2015, 2016 and 2017; 40% in 2018, and 30% in 2019.

*(Source: U.S. House Ways & Means Committee Summary of PATH Act)*

Members should consult with their accountant or tax professional for further guidance on the tax law changes included in the PATH Act.

Beyond the beneficial tax breaks for small employers, the PATH Act expressly prohibits the use of personal e-mail accounts by



IRS employees to conduct any official business. This new law also requires the IRS to terminate an employee who, for political purposes or personal gain, undertakes official action.

We view the PATH Act as an important first step toward meaningful, comprehensive federal tax reform. We need a federal tax code that is easy to administer, simple to follow and fair to all.

## Phasing-Out the Personal Property Tax

*continued from page 6*

Personal property taxes are levied, collected and spent locally. In calendar year 2014, local units of government took in approximately \$290 million in personal property taxes. Without this revenue, local governments would have to shift the property tax burden to other classes of property (residential) or reduce spending.

While there is bipartisan support for this legislation, that support appears to be contingent upon at least some state reimbursement to local governments to offset their loss of personal property tax revenues.

The state’s current fiscal condition and budget outlook are positive, but we do not believe there are

sufficient state funds to make these so-called “hold harmless” payments to local governments at this time.

Repealing the state’s personal property tax remains on our “to do” list. We continue to work with state lawmakers to eliminate this small business tax.

# Creating a More “Small Business-Friendly” State Regulatory Process

To reduce the regulatory burden imposed by state government agencies on small, independent businesses, WIB advocates for changes in state law which make it easier to eliminate obsolete and unnecessary regulations and harder for state agency bureaucrats to put excessively burdensome regulations in place.

We are currently lobbying in support of two regulatory process reform proposals that will help us achieve these important objectives. They are:

## **2015 Assembly Bill (AB) 80**

AB 80 requires state government agencies to provide lawmakers with a listing every two years of current regulations that are obsolete, unnecessary or duplicative.

We believe this list will help focus legislative attention on those regulations which unduly burden small businesses.

This legislation also creates an expedited procedure to eliminate these types of regulations — a process we believe can lead to the elimination of existing regulations in a matter of months, not years.

## **2015 Assembly Bill (AB) 251\ Senate Bill (SB) 168**

This legislation requires state government agencies to hold public hearings before they begin creating new regulations thereby providing small businesses with the opportunity to provide input at the front-end.

State agencies often lack the technical expertise to discern the true compliance costs of government regulations. This bill allows the Legislature to request and receive independent analysis by trained economists when a state agency cost estimate of a proposed regulation is inadequate.

Wisconsin Independent Businesses...Helping you where you need it.

PO Box 2135, Madison, WI 53701

