

INDEPENDENT BUSINESS ASSOCIATION

7345 164th Ave NE Ste. 145 - 336C
Redmond, WA 98052

SMALL BUSINESS REPORT SMALL BUSINESS REPORT SMALL

IBA SMALL BUSINESS REPORT - February 15, 2019

An Assault On The Self-Employed & Small Businesses?	Page 1
Contact Your Legislators Now	Page 2
Why “Concerns” By IBA	Page 2
1,000+ Small Businesses Go To Olympia	Page 3
Protecting Your Retirement Money	Page 3
Non-Compete Requirements	Page 3
State-Run Long Term Program Proposed	Page 3
Senators Object To 32% Cost Increase YOU Must Pay For	Page 4
Contact Your Legislators Now	Page 4
2019 Legislature Reaches 1st Deadline	Page 4
Employers Confused About New State Paid Family Leave Law	Page 4
Next Paid Family Leave Law Update	Page 5
President Trump May Propose National Paid Family Leave Law	Page 5
Avoid Wrongful Discharge Lawsuit	Page 5
New Washington Equal Pay Opportunity Act And YOU	Page 6
Safety Issue: Written HazCom Program	Page 7
Watch Out For Unions Organizing Your Firm	Page 7
Things Employers Need To Know	Page 7

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.

Copyright 2019 by Independent Business Association



IBA SMALL BUSINESS REPORT



February 15, 2019

HB 1056 Domestic violence/workplace Creates a domestic violence task force to identify how the workplace can help curb domestic violence. **IBA Position: Concerns**

HB 1072 Prevailing wage laws Imposes new penalties on prevailing wage violations **IBA Position: Concerns**

HB 1172 Capital gains tax Creates a state Capital Gains Income Tax that will apply when a small business is sold or transferred. **IBA Position: Opposed**

HB 1395 Direct contractor liability Makes prime contractor responsible for any unpaid wages or benefits not paid by subcontractors to its workers **IBA Position: Concerns**

HB 1445 Unemployment benefits/family responsibility Extending the eligibility for unemployment benefits for a worker with defined family responsibilities. **IBA Position: Opposed**

HB 1450 Noncompetition Covenants Creates new regulations and requirements for non-compete agreements. **IBA Position: Concerns**

HB 1491 Employee Scheduling Imposes Seattle like worker advance scheduling requirements statewide for restaurants and hospitality industry. **IBA Position: Opposes**

HB 1492 Industrial ins. wage

loss Creates a new way to calculate state Industrial Insurance time-loss and pension benefits **IBA Position: Opposes**

HB 1514 Wage liens Allows a worker claiming unpaid wages to file a lien on the employers property, etc. **IBA Position: Opposes**

HB 1515 Employer-employee status Redefines who is an employee and who is an independent contractor. Assumes all independent contractors are employees. **IBA Position: Opposes**

HB 1518 Employer health care funding Requiring employers to fund health care for employees covered by the state's medical assistance program. **IBA Position: Concerns**

HB 1601 Employer-employee status Redefines who is an employee and who is an independent contractor. Assumes all independent contractors are employees. **IBA Position: Opposes**

HB 1728 Isolated worker protections Establishes new isolated worker protections, **IBA Position: Concerns**

SB 5035 Prevailing wage laws Imposes new penalties on prevailing wage violations **IBA Position: Concerns**

SB 5064 Personal information Adding new regulations and sanctions against firms who release consumer personal information **IBA Position: Concerns**

SB 5090 Wage and salary information Prohibiting employers from asking workers about their previous wage history **IBA Position: Concerns**

SB 5130 & HB 1228 Funding state fish barrier removal Creates a graduated real estate excise tax **IBA Position: Concerns**

SB 5217 Industrial ins. wage loss Creates a new way to calculate state Industrial Insurance time-loss and pension benefits **IBA Position: Opposes**

SB 5222 WA health trust Creates a state funded single payer health care system. **IBA Position: Concerns**

SB 5226 Off-duty worker conduct Prohibiting employers from refusing to hire, discharge, discriminate in terms of employment because a worker participates in or has participated in any lawful activity or exercises his/her constitutional right of free speech **IBA Position: Opposes**

SB 5258 Isolated worker protection Establishes new isolated worker protections, **IBA Position: Concerns**

MEMBER ASSISTANCE
425-453-8621

SB 5314 Capital gains tax
Creates a state Capital Gains Income Tax that will apply when a small business is sold or transferred. **IBA Position: Opposed**

SB 5374 Rest and meal periods Expanded rest and meal break regulations **IBA Position: Concerns**

SB 5478 Noncompetition covenants Creates new regulations and requirements for non-compete agreements. **IBA Position: Concerns**

SB 5513 Employer-employee status Redefines who is an employee and who is an independent contractor. Assumes all independent contractors are employees. **IBA Position: Opposes**

SB 5541 Revenue reform task force Creates a new task force to recommend how the state of Washington could increase its state tax revenues. **IBA Position: Concerns**

SB 5690 Employer-employee status Redefines who is an employee and who is an independent contractor. Assumes all independent contractors are employees. **IBA Position: Opposes**

SB 5717 Employee scheduling Imposes Seattle like worker advance scheduling requirements statewide for restaurants and hospitality industry. **IBA Position: Opposes**

SB 5740 Worker Retirement Savings Proposes that employers deduct from workers pay to fund their retirement and put the deductions into a state trust fund. **IBA Position: Concerns**

SB 5807 Unlawful employment practices Prohibits employers, as a condition of employment, that any employee or prospective employee refrain from using a substance that is lawful under state law **IBA Position Opposed**

SB 5822 Universal health care system Creates a task force to develop a state universal health care system. **IBA Position Concerns**

Contact Your Legislators NOW!

Now is the time to contact your Legislators and express your position on any of the 2019 legislative proposals listed above.

You have three legislators, one state Senator and two state Representatives. You can identify them using the process described above.

You can call **1-800-562-6000** and the Legislative Attendant will take your message and have it delivered to your legislators.

To effectively express your position on legislation you must do four things:

1. Start by saying you are a small business owner and where you are from (city). This gets your legislator's attention. Most legislators like small businesses.
2. What the issue is – preferably by bill number – HB ##### or SB #####, etc. For a generic issue like “new state taxes” just state the issue “new state taxes” if you don't have a bill number. **Important Note:** One issue per call, not multiple issues.
3. What your position is on the issue: state whether you support or oppose the legislation or issue.
4. Why you are taking your position on the issue. Give a brief reason why:

For example: “I am a small business owner from West Seattle and I oppose HB 1172 and SB 5314 capital gains income tax. While the capital gains tax legislation exempts retirement savings, my business is my retirement funding and the legislation will impose the capital gains tax when I sell my business. Please oppose HB 1172 and SB 5314.

If you call, remember the legislative attendant must write down what you are saying so speak clearly, slowly and be concise.

Concise emails and email follow-ups are also a great way to contact your Legislators. Legislators have a limited time to read long emails as they spend over six hours a day in committee meetings and on the floor voting on issues. Being concise is critical.

After you know your Legislative District, go to: www.ibaw.net/2019legislators.pdf to find your legislators' phone numbers and email addresses

Why “Concerns” By IBA

As you have seen previously, there are many legislative proposals that IBA has taken the position of “Concerns.”

Why, Concerns, why not Opposed?

Good Question!

Successful politics is the art of getting along and compromise. The current makeup of the Legislature is not generally small business friendly. If IBA were to go in and oppose every proposal of concern to small business, IBA would not be able to work effectively with the current Legislature and find ways to mitigate or eliminate impacts on small businesses.

IBA has a long standing image of working cooperatively and constructively on issues of concern to small businesses. This is why IBA was successful in negotiating that small business workers pay 100% of the premiums for the Paid Family Leave program and small employers do not pay any of the premium costs.

1,000+ Small Businesses Go To Olympia Non-Compete Requirements

About 1,000 hair stylists came to Olympia to talk with their Legislators and oppose several piece of legislation that could put them out of business.

This is what it takes sometimes to get the attention of your Legislators.

You can view some of the photos of this HUGE turnout via the Internet at: www.ibaw.net/smallbizinolympia.pdf

Protecting Your Retirement Money

When you retire, selling your business and or selling your business property may be the largest sources for funding your retirement.

Unfortunately, Governor Inslee and many legislators are looking at taxing you when you sell your business and/or sell your business property.

IBA opposed SB 5129 that will impose a new 9% state capital gains income tax on the sale price of a small business. A new state capital gains income tax is effectively a state sales tax when you sell your business.

IBA testified with concerns about SB 5130 that will dramatically increase your Real Estate Excise Tax (REET) when you sell property, including any business property you own and that might help fund your retirement.

SB 5130 is being proposed by Governor Inslee to increase the state's REET tax. The current State REET state tax rate is a flat 1.28 percent (effectively a state sales tax when you sell real property). SB 5130 proposed to increase the REET to 2.0 percent if the selling price is equal to or greater than \$1 million but less than \$5 million (a 39% increase) ; or 2.5 percent if the selling price is equal to or greater than \$5 million (a 95% increase).

Many small businesses require a non-compete requirement when hiring a new employee. The Legislature is concerned about the application of non-compete agreements and is considering legislation to regulate non-compete provisions.

HB 1450 and SB 5478 Non-Compete Agreement Requirements. The legislation proposes the following:

Non-Compete Disclosure The employer must disclose the terms of a non-compete in writing no later than the time of the acceptance of the offer of employment.

Minimum Requirements of a Non-Compete If an employer imposes a non-compete, the employer must pay the worker at least \$185.661 (three times the state's average annual wage which will increase annually).

Non-Compete Null and Void for independent contractor If the firm hiring an independent contractor does not pay \$247,548 (four times the state's average annual wage which will increase annually), the non-compete cannot be enforced against an independent contractor.

Violations A violation of this chapter is an unfair or deceptive act in trade or commerce, an unfair meth-

od of competition, and an unreasonable restraint of trade for purposes of applying the consumer protection act (3 times damages).

State-Run Long – Term Care Program Proposed

As an employer, you may become the collector of a new state employee long-term care premiums for your employees.

Sponsors and supporters of HB 1087 and SB 5331 explain that as we get older, there is a 75% chance each of us will require some assisted-care or long-term care. Most people do not have any long-term care insurance and most people rely on the state's Medicaid program as their source of assisted-care or long-term care. Because so many people rely on Medicaid for assisted-care or long-term care, the state is facing huge potential costs in the future to pay for assisted-care or long-term care Medicaid services.

The 2019 Legislature is considering costly-to-administer legislation to set up a new, state-run, employee funded Long-Term Services and Support Program.

The legislation proposes that starting on January 1, 2022, employees in Washington will have to pay 0.58 percent of their wages to fund the Long-Term Services and Supports Trust Program (Trust Program). They will become eligible for benefits when they pay:

- (1) three years within the last six years, or
- (2) for a total of 10 years, with at least five of those years paid without interruption.

Beginning January 1, 2025, a qualified individual may become eligible for benefits if he or she has been deter-

mined by the Department of Social and Beginning January 1, 2023, self-employed persons may elect coverage under the Trust Program.

2019 Legislature Reaches 1st Deadline

Upon becoming eligible for benefits, a person may receive up to 365 benefit units (benefit unit = up to \$100, increased by 3% annually) over the course of his or her lifetime.

On Friday, February 22nd, the 40th day of the 105-day regular 2017 Legislature, reaches its first, self-imposed deadline. All bills, except budget bills and bills necessary to implement the state's budget (this can be almost any bill) must have passed its assigned committee in its chamber of origin (House of Representatives or Senate) or the bills are technically dead. These self-imposed deadlines are set to help the Legislature move toward a timely completion of its work. Understand that no bill is ever totally dead in a legislative session. If the bill is mentioned in a proposed budget, the bill is then brought back to life.

The DSHS is responsible for making determinations regarding eligible beneficiary status, .

Senators Object To 32% Cost Increase YOU Must Pay For

The ESD shall collect and assess employee premiums, assist the Commission in monitoring the solvency and financial status of the Trust Program, and perform investigations to determine compliance with premium payments.

You will help pay for helping salmon to spawn, grow and return according to a 2013 federal district court injunction ordering the state to increase its efforts in removing culverts blocking or impeding fish passage. The court ordered the state to replace the culverts with the worst impacts on fish habitat by 2030. In 2016 the Ninth Circuit of Appeal confirmed the injunction. On June 11, 2018, the U.S. Supreme Court affirmed the injunction. SB 5130 proposes to fund the removal of these fish barriers.

The Washington Health Care Authority shall arrange for the services to be provided.

The bill adds an intent, that the beneficiary has the choice of provider type must be at least the same or greater than currently available through Medicaid long-term services and supports, but does not guarantee this.

There are 440 fish passage culverts identified as the worst.

A Commission is established to create rules and policies, including criteria for qualified individuals and eligible beneficiaries, minimum qualifications for the registration of long-term services and support providers,

The cost to replace those culverts has ballooned from \$6.3 billion in 2013 to more than \$8.3 billion in 2019 thanks to government inefficiencies and prevailing wage laws.

Monies collected from the premium must be deposited in the Long-Term Services and Supports Trust Account. The Trust Account may only be used for supporting the Trust Program. If funds in the Trust Account are appropriated for any other purpose, the Legislature must notify qualified individuals by mail that the person's premiums have been appropriated for an alternate use, describe the alternate use, and state its plan for restoring funds so that premiums are not increased and benefits are not reduced.

Senator King and other Republican Senators are raising serious concerns about rapidly increasing costs for these court ordered fish passage improvements.

Call Your Legislators

Now is the time to contact your Legislators and express your position on any of the 2019 legislative proposals listed above. See "Contact Your Legislators" on page 2 of this IBA Small Business Report for more information about contacting your Legislators.

IBA has identified 108 bills affecting small businesses that IBA is opposing or has concerns with.

The next critical 2019 legislative deadline is March 13th when bills introduced in the Senate and bills introduced in the House must have pass their original chamber, either the Senate or House, or they're technically dead.

Employers Confused About New Washington State Paid Family & Medical Leave Law

The Washington State Employment Security Department recently did a survey of employers about the new Washington State Paid Family & Medical Leave law and found a great deal of confusion.

Incorrect: The new Washington State Paid Family & Medical Leave Law only applies to employers with 50 or more employees

Correct: The new Washington State Paid Family & Medical Leave Law applies to all Washington employers. Employers with fewer than 50 employees pay no employer premiums but must deduct worker premiums from their worker's current pay or the employer must pay the workers premiums. The employer cannot collect a worker's Paid Family & Medical Leave premium retroactively, the employer must collect the premium from the worker's pay each pay period.

Incorrect: The new Washington State Paid Family & Medical Leave Law is the same as the Federal Family and Medical Leave Law.

Correct: The new Washington State Paid Family & Medical Leave Law is much different than the Federal Family and Medical Leave Law. The Federal Family and Medical Leave law does not provide any payment while the worker is taking FMLA leave. The Washington State Paid Family & Medical Leave law does pay eligible workers while taking Washington State Paid Family & Medical leave.

Next Paid Family & Medical Leave Update

Employers are scheduled to have a new Employer Toolbox issued by the Employment Security Department on March 8, 2018.

IBA expects the March 8th version will include details about employer reporting of paid family leave premiums which are due by April 30, 2019. IBA will keep you advised.

President Trump May Propose National Paid Family Leave Law

During President Trump's "State of The Union" address, he said, *"I am also proud to be the first president to include in my budget a plan for nationwide paid family leave – so that every new parent has the chance to bond with their newborn child."*

Washington state is one of 5 states that has adopted a paid family and medical leave law.

President Trump's paid family and medical leave concept may use the federal unemployment funds to fund the program. Many paid family leave supporters don't believe President Trump's concept will work.

Washington has one of the most small business friendly paid family & medical leave laws in the nation. IBA is hoping that President Trump's proposal will not make Washington's Paid Family & Medical Leave law less small business friendly.

Avoid Wrongful Discharge Lawsuits

Our friends at Business Management Daily recommend employers take 4 steps to minimize their chance of getting sued for terminating (firing) a worker.

Disclaimer: The following information is general business information to alert the reader of major business issues in Washington State affecting Washington based small businesses. This information does not include every requirement of every law or rule. This presentation is not legal advice

and should not be used as legal advice and does not assure compliance. The reader should contact a qualified attorney for legal advice on how to comply with state laws and rules.

- Make sure your employment handbook does not create an employment contract that requires a 'for-cause' termination.
- Make sure your job review does not create an employment contract that requires a 'for-cause' termination.
- When you terminate an employee:
 - Make sure you have a totally independent (not involved in the termination decision) witness in the room when you terminate the employee.
 - An employee's termination should not be a surprise to the employee being terminated. Your company employee performance procedures in your Employee Handbook should have triggered written notices of poor performance with improvement directions, warnings of poor performance with improvement directions, discipline actions due to poor performance with improvement directions, and possibly even a last chance letter with improvement directions.
 - Make sure you have your personnel records for that employee current and complete.
 - Terminate the employee in private, not in view or earshot of other employees, except for your witness.
 - Don't discuss, argue, or debate the termination with the worker being terminated. The more you say, the greater the chance you will be the subject of a wrongful termination lawsuit.
 - Be calm. No yelling, swearing, belittling, etc.
 - Don't be sympathetic or compassionate. Sympathizing etc. can

be used against you in a wrongful discharge lawsuit. Be clear and professional.

- Make sure you make the worker's final payment in accordance with state and federal law. Paying the last paycheck at time of termination usually addresses this.
- Maintain confidentially. Do not talk with other workers or others (i.e. customers, suppliers, competitors) about the termination other than saying name will not be working here any longer. No details or explanations,
- Treat the terminated employee with respect and dignity. No negative terms, name calling, no "good riddance," etc.
- Make sure you understand our state laws on worker access to his/her personnel records and be sure to abide by them. See <https://www.lni.wa.gov/WorkplaceRights/files/policies/esc7.pdf>

The New Washington Equal Pay Opportunity Act and YOU

Your business is subject to the new Washington State's Equal Pay Opportunity Act (EPOA) and requires employers to provide equal pay and equal career advancement opportunities to their employees, regardless of gender. The Department of Labor and Industries has just released a publication about how the law works. The Law promotes fairness among workers by requiring employers to do a number of things that are listed below.:

Disclaimer: The following information is general business advice to alert the reader of major business issues in the Washington State affecting Washington based small businesses. This presentation does not include even-

ry requirement of every law, rule, decision or opinion or court decision. This information should not be used as legal advice and does not assure compliance. The reader should contact a qualified attorney for legal advice on how to comply with these laws and rules, decisions, etc.

Equal pay. Employers must provide equal compensation to "similarly employed" workers, except for some specific reasons unrelated to gender. "Similarly employed" means the same employer and similar working conditions, skills, effort and responsibility.

Equal career advancement opportunities. Employers must not limit or provide career advancement opportunities based on gender.

Open wage discussions. Employers cannot stop employees from disclosing their wages with other workers or require agreements with employees that stop them from disclosing their wages.

Protection from discrimination, retaliation and firing. Employers cannot take any negative action against an employee for:

- Asking or talking about wages with other workers.
- Asking the employer to provide a reason for the employee's wages or lack of opportunity for career advancement.
- Helping or encouraging a fellow worker to take an action protected by the Equal Pay Opportunity Act.
- Filing a complaint.
- Taking any action protected by the Equal Pay Opportunity Act.

Enforcement. Employees may submit complaints to the Department of Labor & Industries (L&I). L&I will investigate complaints, and can charge employers fines, damages and interest for viola-

tions. Employees also have the right to take legal action against an employer. Once a civil complaint is filed in court, L&I cannot investigate the complaint. An employer has the burden of proof that any pay or advancement difference is acceptable under the law.

Acceptable reasons for a difference in pay:

- Education, training or experience.
- Seniority.
- Merit.
- Measuring earnings by production quantity or quality.
- Regional difference in compensation levels.

A difference in pay cannot be based on an employee's wage or salary history.

Other reasons for a difference in pay that may be acceptable:

- Job related factors consistent with business need.
- Reasons not based on gender.
- Local minimum wage laws.

A difference in pay cannot be based on an employee's wage or salary history.

Questions?

For more information, contact L&I's Employment Standards program at 1-866-219-7321 or

esgeneral@lni.wa.gov.

To file a complaint, go to www.Lni.wa.gov/EqualPay.

The text of this law can be found at: <https://app.leg.wa.gov/RCW/default.aspx?cite=49.58>

What Small Business Owners Should Do

Labor law attorneys are recommending employers comply with this law by:

- Employers need to review their compensation systems carefully to ensure compliance, including an analysis of the compensation of similarly employed workers

and documentation of reasons for any pay differentials.

- Employers also should revise policies for setting the compensation of newly hired and promoted employees, consider implementing formal pay scales, and discontinue practices that **requests an applicant's pay history** or prohibit/restrict employees from disclosing/discussing wages in violation of the EPOA.
- Employers should also correct any wages that used a workers' pay history to set their current pay.
- Finally, training for HR administrators and managers is highly recommended to ensure that individuals making decisions about compensation and career advancement opportunities understand their new obligations under the state's EPOA.

Other than the information above, the Department of Labor and Industries has provided no direction to employers about how it will implement this law. At this time, it will take a number of decisions by the Department and the courts to understand how this law will be applied.

Safety Issue: Written HazCom Program

All employers that have hazardous materials in their workplace are required to have and implement a written GHS HazCom program. Failing to have a written GHS HazCom plan in place is the third most common safety and health violations in Washington State and could result in a fine of up to \$13,260.

Your written GHS HazCom should include

A. Container Labeling

Explain that all products that contain hazardous substances must have a GHS HazCom label on it,

what the labels mean and how to read the label.

B. Safety Data Sheets (SDS)

You, the employer, must gather Safety Data Sheets for all products in your workplace that contain hazardous materials and make those SDS's available to your employees.

C. Employee Information and Training

You, the employer, must provide training to each of your employees who may work with materials that contain hazardous substances. The procedures your company will use to inform and train your employees.:

D. Hazardous non-routine tasks

Periodically, employees are required to perform hazardous non-routine tasks. (Some examples of non-routine tasks are confined space entry, tank cleaning, and painting.) Your GHS HazCom program must address these non-routine tasks

F. Multi-employer work places

You, the employer, must include a section in your GHS HazCom program to provide workers who are not your employees information about any hazardous materials they may encounter while at your facility and where to get information if they are exposed to such materials.

G. List of hazardous chemicals

You, the employer, must include as part of you GHS HazCom plan a list of all known hazardous chemicals used by your employees and where to get more information about the materials like reviewing SDSs and where the SDS's are located.

H. Identify Responsible Person/People

Identify the person (people) responsible for implementing your company GHS HazCom program.

You can access more information and a "fill-in-the-blanks" written HazCom

plan for your business via the Internet at: www.ibaw.net/ghshazcom.pdf

Watch Out For Union Organizing Your Firm

Our friends at the labor law firm Seyfarth Shaw have just issued a report that millennial workers generally favor unions more so than their predecessors and that small businesses are more likely to face unionization if they employ millennials.

Seyfarth Shaw concludes by saying that employers of all sizes must get better educated on the signs of a union organizing effort in their business and what they can and cannot do. One of the most effective union organizing actions is to catch an employer in an unfair labor practice, file a complaint of an unfair labor practice against the business, and force the business to negotiate with the union as part of settling the unfair labor practice. You can read the full Seyfarth Shaw report at: www.ibaw.net/unionizingyourbusiness.pdf

Things Employers Need To Know

IBA has prepared an IBA Special Report about unionizing issues that small businesses need to be aware of. You can access this IBA Special Report at: www.ibaw.net/smallbizunionize.pdf

The Seyfareth Shaw report goes on to say that according to the Pew Research Center, about 75% of young adults under age 30 support unions more than older workers.

Seyfarth Shaw goes on to say that union membership grew in 2017 and 75% of that increase comprised workers under age 35.