

VOLUME 27, No. 12
DECEMBER 2013

Small Business Notes

Minnesota Department of Employment and
Economic Development (MN DEED)

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Important Federal Tax Provisions of Benefit to Small Businesses Set to Expire December 31, 2013

A number of important tax provisions that had been extended through December 31, 2013 by the American Taxpayer Relief Act of January 2013 were not included for further extension in the House and Senate compromise budget deal. Among the provisions useful to small businesses which will expire on December 31 are:

- The increase in Internal Revenue Code section 179 expensing limitations. As originally extended the limit on the expensing of otherwise depreciable property was extended to \$500,000 and the threshold for phase-out increased to \$2 million. Without further extension the expense limit will decrease to \$25,000 and the phase out threshold to \$200,000 for tax years beginning after December 31, 2013.
- The Internal Revenue Code section 41 credit for increasing research and experimentation expenses will expire for amounts paid or incurred after December 31, 2013.
- As originally extended Internal Revenue Code section 1202 increased to 100 percent the exclusion allowed for gain on the sale or exchange of certain qualified small business stock held for more than five years by a non-corporate taxpayer. After December 31, 2013 the exclusion returns to 50 percent of the gain.

Federal District Court Says Employer Can Have Americans With Disabilities Act Liability for Exclusive Reliance on Medical Opinion Regarding Potential Employee's Ability to Perform Job Tasks

On December 11, 2013 the United States District Court of the Eastern District of Michigan, Southern Division, gave summary judgment to the plaintiff in a case involving an employer's withdrawal of an offer of employment based on the opinion of a physician performing a required post-offer physical examination of a job candidate. [*Adam Lafata v. Dearborn Heights School District No. 7*, No. 13-cv-10755].

Lafata was employed as a building supervisor at a community center at which he performed maintenance, repair, and operations tasks that involved regular use of ladders and the carrying of objects weighing more than forty pounds. He applied for and was interviewed for a position as Plant Engineer with the defendant school district. At the interview Lafata was told that the job required activities like the climbing of ladders and the lifting of more than fifty-five pounds. Lafata, when asked, responded that he would have "no problem" with the physical tasks of the job.

The school district made an offer of employment conditional on Lafata's successfully meeting three requirements of state law: passing a background check, passing a drug test, and passing a physical reflecting his ability to perform the essential functions of the job. That physical examination was conducted by a physician contracted with by the school district.

Based on his observations of Lafata at that examination the physician opined that he was suffering from a genetic disorder that causes muscle deterioration and loss of strength. The physician did not ask Lafata about his current employment duties or employment history. Lafata was directed to ask his personal physician for additional information to be provided to the examining physician. That personal physician indicated that she had also diagnosed Lafata with the same condition but that his strength was "more than adequate for his job and daily activities" and that he was "suitable" for the job for which he had applied. The examining physician, however, informed the school district that his conclusion was that Lafata could do only ground level work and should be restricted from climbing ladders and lifting more than forty pounds.

Based on the examining physician's report, the school district withdrew its offer to Lafata who sued alleging a violation of the Americans with Disabilities Act and moved for summary judgment.

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In granting summary judgment the court noted the “undisputed fact” that neither the examining physician nor the school district had engaged in *any* analysis to determine whether reasonable accommodations were available that could enable Lafata to perform the essential functions of the job and the district’s failure to rebut Lafata’s showing – through his physician’s statement and his present performance of very similar job duties – that he could perform the job functions without or, if necessary, with reasonable accommodations.

There are two important take-aways from this case. First is the need to consider any and all contrary evidence, such as an applicant’s ability to perform current duties or his statement that he would have no problem with the physical requirements of the job, when given a physician’s determination of inability. The school district official in charge indicated in her deposition “Again, I believe that because the physician is a professional he would give us the professional opinion as to the man’s ability and I didn’t feel-believe that I was capable of contradicting him.” Second is the need to consider the availability of reasonable accommodations that would allow an applicant to fulfill the job duties. In this case, when asked if there had been any discussion of reasonable accommodations before the offer revocation letter was sent the school district official answered: “the simple answer to that is no.”

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Department of Employment and Economic Development

1st National Bank Building ■ 332 Minnesota, Suite E-200 ■ Saint Paul, MN 55101-1351 USA
651-259-7114 | Toll Free: 800-657-3858 | Fax: 651-296-5287 | TTY/TDD: 651-282-5909 | <http://mn.gov/deed/>

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