

In this issue:

- **Minnesota Adopts New Law on Formation and Operation of Limited Liability Companies**
- **New Minnesota Minimum Wage To Affect Most Employers**
- **U.S. Small Business Administration Eliminates Personal Resources Test for 7(a) Loans**

Minnesota Adopts New Law on Formation and Operation of Limited Liability Companies

On April 11, Governor Dayton signed legislation (2014 Minn. Laws Chap. 157) adopting the Minnesota Revised Uniform Limited Liability Company Act. That action will change Minnesota's current corporation based model to a partnership model found in other states and will provide a degree of flexibility in areas like the standards of conduct required of LLC members, managers, and governors.

Among the most immediate changes are:

- **Formation.** Under current law only natural persons can form an LLC. The new law provides that one or more persons—to include, for example, corporations or partnerships – may organize an LLC by filing the necessary articles of organization with the Secretary of State.
- **Standards of Conduct for Duties.** Under current law, members, managers, and governors are subject to an unmodifiable statutory standard of care and duty. The new law provides for changing the standards in the operating agreement so long as the change is not “manifestly unreasonable.”
- **Liability.** The new law retains the exemption from member liability for the LLC's debts and other obligations but does provide liability for members in cases like the filing of inaccurate information with the secretary of State, failure to make contributions, or receipt of an improper distribution.

The new law will apply to all Minnesota limited liability companies formed on or after August 1, 2015 and to those limited liability companies that choose to be covered by the law and so amend their governing documents. On January 1, 2018 the new law will apply to all Minnesota limited liability companies and the current law will be repealed.

New Minnesota Minimum Wage to Affect Most Employers

On April 14 Governor Dayton signed new legislation (2014 Minn. Laws Chapter 166) raising the state's minimum wage. While most employers in Minnesota are covered by the federal minimum wage requirements of the Fair Labor Standards Act because they engage in interstate commerce or use goods and materials that have moved in interstate commerce, Minnesota law provides for payment of the higher of the federal or state wage. The new law will have the effect of raising wage levels for almost all employees.

Large employers, those with annual sales of \$500,000 or more, will be required to begin paying the new wage of \$8.00 per hour beginning on August 1, 2014. (The current federal minimum wage for large employers is \$7.25 per hour. Note, however, that President Obama by Executive Order on February 12 raised the federal minimum wage for federal construction and service contractors to \$10.10 beginning January 1, 2015). The state minimum wage for large employers will rise to \$9.00 per hour on August 1, 2015 and to \$9.50 on August 1, 2016.

Small employers, those with annual sales of less than \$500,000, will be required to pay the new wage of \$6.50 per hour beginning on August 1, 2014. (The current federal minimum wage for small employers is \$5.25 per hour.) That will rise to \$7.25 on August 1, 2015 and to \$7.75 on August 1, 2016.

The new law makes exceptions for employees under the age of 18 who may be paid \$6.50 per hour beginning on August 1, 2014, \$7.25 beginning on August 1, 2015, and \$7.75 beginning on August 1, 2016. The law also provides for a training wage for the first 90 days of employment for employees under the age of 20 of \$6.50 per hour beginning August 1, 2014, \$7.25 per hour beginning on August 1, 2015 and \$7.75 per hour beginning on August 1, 2016.

The Commissioner of the Minnesota Department of Labor and Industry will adjust minimum wage rates for inflation beginning in 2018.

U.S. Small Business Administration Eliminates Personal Resources Test for 7(a) Loans

In a final rule published March 21, 2014 the U.S. Small Business Administration amended 13 CFR Part 120.102 to remove entirely the personal resources test for loan applicants for the SBA's major 7(a) lending program. Until the change, an applicant for a 7(a) loan had to demonstrate that no owner of 20 percent or more of the equity of the applicant business had funds which could be used as an equity contribution by the applicant to reduce the amount of the loan. The purpose of the change, according to SBA, was to enhance job creation through increasing eligibility for loans by more "robust" borrowers and thus mitigate the risk to SBA's portfolio.

Significantly, the SBA did indicate "Although the SBA will no longer require that the personal resources of owners be used to reduce the SBA funded portion of the total financing package, a lender that believes that prudent lending requires that assets either be injected or pledged as collateral for a particular loan would not be prohibited from so requiring".

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