

In this issue:

- U.S. House of Representatives Committee on Small Business Holds Hearing on Whether Certain U.S. Small Business Administration Programs are “Necessary or Redundant Spending”
- New Law Will Require Equal Pay Certification from Some State Contractors
- New Law Creates Public Benefit Corporations in Minnesota

U.S. House of Representatives Committee on Small Business Holds Hearing on Whether Certain U.S. Small Business Administration Programs are “Necessary or Redundant Spending”

On April 30, 2014, the U.S. House of Representatives Committee on Small Business met to take testimony from the Small Business Administration on four of its “self initiated” programs (that is, programs initiated at the SBA rather than programs specifically authorized by Congress) to address concerns raised by the Committee that these programs inappropriately divert funds from Congressionally authorized programs. Additionally, the Committee had earlier expressed concerns that these programs did not have in place necessary metrics to measure the success or failure of the programs.

The four initiatives are the Entrepreneurial Education Program which provides a seven month long entrepreneurial training program for high growth small businesses in underserved communities, especially in urban areas; the Growth Accelerators program which awards grants to non-profit organizations and academic institutions “to provide startups with critical resources to help them make rapid progress or product and customer development;” the Boots to Business program to provide basic entrepreneurial education to veterans transitioning to civilian life; and the Regional Innovation Clusters program which provides grant funds to non-federal entities that seek to create geographically confined groups of businesses in the same or similar industries.

The pre-meeting memo of the Committee staff noted that the Committee had, in February 2014 sought information from the SBA on the use of funds, goals for the programs, and criteria for evaluation of the programs. To quote that memorandum: “SBA’s response letter did not ameliorate or assuage the concerns of the Committee; if anything it raised further alarms. First these programs are initiated in an area already determined to be overcrowded from a federal perspective. Second, the programs also may duplicate private as well as extant federal initiatives to provide counseling and training to small business. Third, the SBA, as the Committee suspected, lacks adequate metrics to assess the quality of these programs.”

Continued...

It is unlikely that the testimony of the SBA associate administrators who testified (and whose testimony appears on the Committee website) will have any additional impact in reassuring the Committee since that testimony was extremely general and not directed in any substantive way to the issues raised. One can reasonably expect to hear more on this subject from the Committee. In the interim, the programs continue as before (the Growth Accelerator program has just solicited proposals for award of grant funds from third parties to deliver services).

New Law Will Require Equal Pay Certification from Some State Contractors

On May 11, 2014, Governor Dayton signed the Women's Economic Security Act that provides a number of new workplace protections for employees (e.g., expansion of parenting leave, requirements for reasonable accommodation of employee pregnancy, expansion of the nursing mother statute, protections against family status discrimination). Included in that law is new language, effective August 1, 2014, requiring many businesses that seek contracts with state agencies or the Metropolitan Council to provide the Minnesota Department of Human Rights with an equal pay certificate in order to be eligible to execute a contract for goods or services in excess of \$500,000.

The law covers a business that has forty or more full time employees in Minnesota, or in the state where it has its primary business location, on any single day in the past twelve months, except that it does not apply to businesses providing services under certain (mostly insurance related) statutes; to businesses having a license, certification, registration, provider agreement or enrollment as a prerequisite to providing goods or services; or to State Board of Investment contracts for investment products and services. The Commissioner of Human Rights may also exempt a business from the law's requirements if compliance would cause undue hardship to the business.

The fee of \$150, the period of validity of four years, and the substantive content of the certificate are all set by the new law.

The chief executive of the business must provide the Department of Human Rights with an equal pay compliance statement that affirms that:

- The business is in compliance with Title VII of the federal Equal Pay Act, with the Minnesota Human Rights Act, and with the Minnesota Equal Pay for Equal Work Law.
- The average compensation for female employees is not consistently below the average compensation for male employees within each EEO-1 job category in which employees will work under the contract, taking into account factors such as length of service, specific job requirements, experience, skill, effort, responsibility, working conditions, and other mitigating factors.

Continued...

- The business does not restrict employees of one sex to certain job classifications and it makes job retention and promotion decisions without regard to sex.
- Any wage and benefits disparities are corrected when identified.

The statement must also indicate how often wages and benefits are reviewed to ensure compliance and what system of review and evaluation is used.

The law does provide the Department of Human Rights with the authority to audit contractor businesses to ensure compliance. The certificate can be revoked or suspended if it is determined that the businesses did not make a good faith effort to comply with the equal pay requirements, or if it has multiple equal pay violations.

Technical assistance in complying with the new law will be available from the Minnesota Department of Human Rights.

New Law Creates Public Benefit Corporations

Effective January 1, 2015, new Minnesota law codified as Minn. Stat. § 304A provides for public benefit corporations in Minnesota. Such corporations may be operated for profit, may return financial gain to shareholders, but are required to consider the effects of corporate action on all stakeholders in general (a “general benefit corporation”) or on a specific subset of stakeholders (a “specific benefit corporation”). In practice this imposes different duties on the directors of general and specific benefit corporations.

For a general benefit corporation each director must consider the effects of any proposed, contemplated, or actual conduct on:

- The ability of the general benefit corporation to pursue a general public benefit and, if a specific benefit is also stated, the ability of the corporation to pursue that benefit;
- The interests of the corporation’s employees, customers, suppliers, creditors, the economy of the state and nation, community and societal interests; long and short term interests of the corporation and its shareholders; and the financial interests of shareholders.

A director may not give regular, presumptive or permanent priority to the financial interests of shareholders; nor give such priority to any other interest or consideration unless that interest or consideration is identified in the articles of incorporation.

For a specific benefit corporation each director must consider the effects of any proposed, contemplated, or actual conduct on:

- The financial interests of the shareholders;
- The corporation’s ability to pursue its specific public benefit.

Continued...

A director may consider the interests of employees, customers, suppliers, creditors, the economy of the state and nation, and the long term and short term interests of the corporation and its shareholders , but may not give regular, presumptive, or permanent priority to the financial interests of shareholders or to any other interest of consideration unless that interest or consideration is named in the articles of incorporation.

Past issues of
Small Business Notes
are available on the
Department of
Employment and
Economic
Development
website at
<http://mn.gov/deed/>

Copyright © 2014
Minnesota Department
of Employment and
Economic Development
(DEED)

Small Business Notes is published to offer timely, accurate, and useful information on topics of concern to small businesses in Minnesota. It is for general information purposes only. It is not legal advice and should not be relied on for resolution or evaluation of legal issues or questions. Readers are advised to consult with their private legal advisors for specific legal advice on any legal issues they may have.

Information in Small Business Notes on tax matters, both federal and state, is not tax advice and cannot be used for the purposes of avoiding federal or state tax liabilities or penalties or for the purpose of promoting, marketing or recommending any entity, investment plan or other transaction. Readers are advised to consult with their private tax advisors for specific tax advice on any tax related issues they may have.



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/>