

Small Business Notes

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New Federal Law Offers Opportunity for Small Business Reorganization in Bankruptcy

On August 23rd, the President signed the "Small Business Reorganization Act of 2019 which adds a new subsection to Chapter 11 of the Bankruptcy Code to ease the burdens of business reorganization in bankruptcy to give small businesses a greater chance to avoid liquidation. Chapter 11 prior to this Act was intended for administering reorganizations involving very large, high asset and high liability companies. Small businesses generally do not have the resources, for example of legal counsel or accountants, to meet the burdens of filing with the result that many small businesses were forced to liquidate. The other reorganization chapter, Chapter 13, was available only to sole proprietorships since only individuals are eligible for that section's classification of debtor-in-possession. The new law (P.L. 116-54) adds a new Subchapter V to Chapter 11 which defines a small business debtor as an entity with unsecured and secured debt not exceeding \$2,725, 625.

The new law provides for the appointment of a trustee to administer the business and facilitate the development of consensual plan of reorganization among the debtor and creditors. That plan is to include a brief history of the business operations of the debtor; a liquidation analysis; and projections with respect to the ability of the debtor to make payments under the proposed reorganization plan. The plan may be confirmed by the bankruptcy court over the objections of creditors provided that the plan "does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan."

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U.S. Department of Justice Settles Claim Involving Fast Food Franchisee's Employment Discrimination Against Work-Authorized Non-U.S. Citizens

On August 5th, the U.S. Department of Justice, acting through its Immigrant and Employee Rights Section, entered into a settlement agreement with R.E.E., Inc. which owns and operates McDonald's restaurants in the Rio Grande Valley of Texas. The case and settlement are instructive to small businesses on the need to comply with the provisions of the federal Immigration and Nationality Act (INA) which prohibits citizenship and national origin discrimination in hiring, firing, or recruitment as well as unfair documentary requirements, and retaliation and intimidation when these actions are directed to work-authorized non-U.S. citizens.

The Department of Justice's investigation into the complaint (filed by an employee who claimed she was improperly terminated because of her citizenship status due to R.E.E.'s practice of rejecting valid identification and work authorization documents and requiring more and different documents from non-U.S. citizens for employment eligibility verification in violation of the Immigration and Nationality Act) determined that R.E.E. had engaged in a "pattern or practice of unfair immigration related employment practices at its restaurants," and the termination of the charging employee was improper. The settlement specifically addressed R.E.E.'s practice of rejecting documents valid under the Immigration and Nationality Act (e.g., a driver's license and unrestricted Social Security card) and requiring presentation of a Permanent Resident Card.

The settlement requires that R.E.E.:

- Pay a civil penalty of \$82,000 to the federal government;
- Pay \$8,746.43 to the terminated employee for lost wages plus accumulated interest;
- Seek out, through notices posted in the restaurants operated by R.E.E., other individuals who lost pay from failure to hire, delay in hiring, or other periods of lost work, as a result of R.E.E.'s employment eligibility verification practices;
- Avoid discrimination by honoring documents that are facially genuine, relate to the person using them, and satisfy the requirements of the Immigration and Nationality Act;
- Not request more or different documents than those required by law;
- Not reject valid documents because of an individual's citizenship status, immigration status, or national origin;
- Permit all employees to present and document or combination of documents acceptable under the law;
- Create employment policies on acceptance of valid documents and the prohibition against reprisal toward any employee who opposes any unlawful employment practice;
- Train employees on the policies developed and report to the Department of Justice on the attendance of personnel, such as human resources staff, who have any responsibility in the employment verification process.

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U.S. Department of Labor Issues Final Rule Adopting New Standards for Salary Minimums for Exemption from Overtime Pay Requirements for Executive, Administrative, or Professional Employees

On September 24th, the U.S. Department of Labor released its final rule “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees. The final rule, which total 245 pages of text, is substantially the same in terms of the exemption amounts as the proposed rule issued in March, 2019. (The Department of Labor notes that the proposed rule received 116,000 comments from interested and affected parties which were considered in drafting and publishing the final rule.) The final rule is effective January 1, 2020.

Under current regulations, to qualify for the exemption from payment of overtime for executive, administrative, professional, outside sales, or computer positions a minimum salary of \$455 per week (\$23,660 per year) must be paid to the employee. The new rule increase that minimum to \$684 per week (\$35,568 per year). This is \$200 more per year than the minimum proposed in the March 2019 proposed rulemaking.

Employers can satisfy the salary minimum up to 10 percent of the minimum by paying incentives, non-discretionary bonuses or commissions that are paid annually or more frequently than annually.

The exemption threshold for a “highly compensated employee” will increase from \$100,000 to \$107,432.

Census Bureau to Publish New Report on Business Owner Demographics of Non-Employer Small Businesses

Prior to 2012, the U.S. Census Bureau, every five years, released its Survey of Business Owners that reported on the business owner demographics of both businesses with employees and businesses without employees other than the owner. That survey was eliminated in 2012 and replaced with the Annual Business Survey. The next appearance of that survey will be in December 2019 and contain statistics on the race, sex, ethnicity, and veteran status of businesses with employees but not on businesses without employees.

In addition, the Census Bureau will publish yearly its new data initiative to be called Non-Employer Statistics by Demographics (abbreviated NES-D). Unlike the earlier publications, it will not be survey based but will rely on matching administrative data from many different federal resources to identify the non-employer business owner demographics. The Census Bureau believes that such an approach will yield the desired data more quickly and at less costs than the use of surveys.

A full description and example of the new approach is provided in the Census Bureau’s working paper “[Non-Employer Statistics by Demographics \(NES-D\): Using Administrative and Census Records Data in Business Statistics](#)”.

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Past issues of Small Business Notes are available on the Department of Employment and Economic Development website at [Small Business Notes](#)

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