Minnesota Department of Employment & Economic Development

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Small Business Notes

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New U.S. Supreme Court Decision Clarifies the Definition of "Concrete Injury" for Consumer Suits for Privacy Violations

The 2016 U.S. Supreme Court decision in *Spokeo v. Robbins* addressed the issue of whether or not a person who had his or her personal information disclosed online but with no further harm as a result of the disclosure had a right to sue. The case came to the Court from the U.S. Court of Appeals for the Ninth Circuit which had held that disclosure alone was enough of an injury to permit a plaintiff's suit. The Supreme Court vacated the Court of Appeals decision holding that the Court of Appeals had not addressed disclosure only was a sufficiently "concrete" harm to allow for suit. On that issue of concreteness the Supreme Court remanded the case to the Court of Appeals which, in 2017, held that disclosure-only, as a harm, was sufficiently concrete to allow the suit to continue.

On June 25, 2021, the Supreme Court handed down its decision in another privacy case *Trans Union v. Ramirez*. In that case a class of 8,185 plaintiffs sued the credit reporting agency Trans Union for failure to have in place reasonable procedures to ensure the accuracy of credit reports provided on individuals to third parties (some of the members of the class had had their information disclosed and some had not). Writing for the majority, Justice Kavanaugh wrote that an injury should only be seen as concrete when individual plaintiffs can say that they were "personally harmed" by the defendant's actions. He noted that the Court would have no trouble concluding that the 1,853 class members whose personal information had been disclosed to third parties did meet the standard for concrete harm; but the remaining 6,332 class members whose information was not disclosed to third parties did not meet the standard of concrete injury.

Privacy and data security are an increasingly important issue for small businesses. DEED's Small Business Assistance Office and the national law firm of Lathrop GPM have a collaborative publication *A Legal Guide to Privacy and Data Security* (2021 edition) that is available online at the Small Business Assistance Office site, https://mn.gov/deed/business/help/sbao/.

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Supply Chain Issues Persist for Small Businesses

Much of the recent attention to supply chain disruption and delay in the wake of the COVID-19 pandemic has focused on large to very large manufacturers unable to complete production on their products because of delays and shortages of commodity products like semiconductor chips and other electronic components. (See, for example, the article in the Business News section of the August 31 *Wall Street Journal,* "Products Wait Unfinished for Parts.")

But an August 21 release of the U.S. Small Business Administration's "Small Business Facts" showed the persistence of the supply chain disruption and delay issue for small businesses. The percentage of small businesses reporting supplier delays in the seven days of June 7 to June 21, 2021 averaged 37.2 percent a substantial increase over the 29.4 percent for the same period in 2020. The most affected industries were manufacturing (61.4 percent experiencing delays), retail trade (57.4 percent experiencing delays), wholesale trade (57.4 percent experiencing delays), and accommodation and food (46.4 percent experiencing delays).

This difficulty is compounded by increases in the producer price index with much higher prices for commodities. That index went from 185.5 in May of 2020 to 224.4 in May of 2021. The costs of copper and lumber were the highest ever. When coupled with upward pressure on wages, these factors: supply delay, increase in intermediate goods' prices, and upward pressure on wages can create a market failure event for many small businesses which will not be able to raise prices without loss of markets, nor lower prices without damaging -and perhaps bankrupting- the business.

If these pressure continue, it is doubtful that even injections of government small business relief capital like the PPP program will be able to stave off serious losses to individual businesses.

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Minnesota Department of Revenue Begins Processing Paycheck Protection Refunds

As noted here in *Small Business Notes* for July, 2021, the Minnesota Legislature in 2021 enacted conformity with federal tax law relating to the taxability of proceeds of loan forgiveness under the Paycheck Protection Program for 2020. Prior to the enactment of that legislation those proceeds were taxable as income under Minnesota law even though they were not taxable under federal law.

Minnesota Revenue will begin processing of the refunds the week of September 13th. The process is set up to process an initial 1,000 individual tax returns per week with increases to a goal of 50,000 returns by the end of October.

Over 2,000 corporate entity returns involving Payroll Protection forgiveness have already begun processing manually and refunds to those entities will continue to be sent out through September.

The great majority of filers needed to do nothing to get the refunds, and Revenue has informed those that will need to file an amended return to obtain the refund (fewer than 8,000 filers).

U. S. Small Business Administration Announces Enhancements to Economic Injury Disaster Loans (EIDL)

In a September 9, 2021, press release (Number 21-81) the U.S. Small Business Administration (SBA) announced changes to its EIDL program.

- The loan cap on these loans will increase from $500,000 to $2 million.
- These loans funds may now be used to pay commercial debt and federal business debt.
- The start of repayment of the loans is deferred until two years from the date of loan origination.
- SBA will institute a 30 day “exclusivity window” for loans under $500,00 during which those loans will expedited for disbursement of funds. [Note that the release was silent as to the date that window will begin, but it is presumably not later than September 9th.]
- New business affiliation rules modeled on those for the Restaurant Revitalization Fund will make applications easier.

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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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