

# **INDEPENDENT BUSINESS ASSOCIATION**

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## **SMALL BUSINESS REPORT SMALL BUSINESS REPORT SMALL**

### **IBA SMALL BUSINESS REPORT - June 15, 2018**

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**NOTICE:** The information contained in the publication is intended to alert the reader to issues, laws, regulations and events which may affect the operations of a small business. The information is presented in a summary form and is not intended to assure compliance with laws or regulations which may apply to any specific business. The information is not intended as legal advice. The reader is advised to seek the advice of a qualified attorney, accountant or other advisor to obtain specific compliance advice with respect to the laws, regulations or other issues which may apply to a specific business.

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# IBA SMALL BUSINESS REPORT



## June 15, 2018

### Selecting Your Next Business Partners

You will be selecting your next business partners (**state legislators that will decide the laws and taxes you must comply with and pay**) on August 7<sup>th</sup> (Primary Election where the top two candidates for each legislative office will be selected) and on November 6<sup>th</sup> (General Election when voters select the legislators that are elected from the top two candidates) this year. The 2019 Legislative Session begins right now with the election of our state's legislators, the people who will decide the issues affecting you and your business. There are 122 legislative positions up for election in August and November of this year. Electing the right legislative candidates is a critical business decision for you to make, NOW!. IBA is here to help you make the best decision for you and your small business.

#### How do you select the right business partners for you and your small business?

How do you know which candidates are running in your area? IBA has prepared a list of the candidates running in your area and provides you important information about them. We will identify who the candidates are in the next item in this Report.

- You need to support the candidates who support you and your small business best. We will explain more later in this Report.
- IBA does not know all of the candidates, we only know the legislators who are now in office.

- We will tell you who the current pro-small business legislators are in your area, but we can't tell you about the candidates who are running and have no voting record.
- You need to support the pro-small-business-candidates identified by IBA (see candidate list), in your area
- You need to interview the candidates running in your area against the current legislators who don't have a pro-small-business- voting-record and the other candidates in your area. IBA has prepared a sample list of interview questions (see item that follows) to help you interview the candidates in your area who are running. We will explain more later in this Report.

### Who Are The 2018 WA State Legislative Candidates?

IBA has prepared a list of the 2018 Washington State Legislative Candidates.

How do you identify the candidates running in your area?

- You must first identify your legislative district by calling **1-800-562-6000** or search on the Internet at: <http://app.leg.wa.gov/DistrictFinder/>
- Use your street address to identify your legislative district (a number between 1 and 49).
- Your business may be in a different legislative district than your home, so check both.
- Now check the IBA list of 2018 legislative candidates that is available via the Internet at:

[www.ibaw.net/bizpartner2018.pdf](http://www.ibaw.net/bizpartner2018.pdf)  
Now look for your legislative district number in the left column for the candidates running for the legislature from your home and business districts. Those are the legislative races you must focus on.

### Sample Candidate Interview Questions:

- Start by telling the candidate that you are a small business owner, where, and what type of business you operate.
- Please tell me about your work and/or business experience
- Have you ever worked for a small business? If "yes" please tell me more.
- What percentage of all businesses in Washington State do you think are small businesses? (answer should be more than 90%)
- What do you think are the biggest concerns of small businesses in Washington State?
- Do you support a state capital gains tax? (answer should be "no")
- Do you support a state law requiring employers to eliminate workplace bullying? (answer should be "no")
- Do you support a state law requiring employers to provide 14 day advance work schedules to their employees? (answer should be "no")

#### MEMBER ASSISTANCE

425-453-8621

[www.ibamember.com](http://www.ibamember.com)

- Why are you the best candidate running for this office for a small business owner like me?
- Would you support an increase in the state's business taxes? (answer should be "no")

## How Do Pro-Small Business Candidates Win Election?

Great question? **"With your help!"** is the critical answer. They absolutely must have your help to win election. They can't win election without your help. So how can you help?

1. They need you to contribute to their election campaign. There is no state or federal money for any candidate running for office. You should plan to contribute at least \$100 to the candidate you feel is the best candidate running for that office because it will cost a Washington State legislative candidate \$100,000+ to \$1 million (for a highly contested races) to run a successful campaign for the Legislature. Why does it cost so much to win a campaign for the Legislature? Each legislative district has about 81,000 voters. If you send one mailing to each of those voters, it will cost you over \$40,000 for the printing, postage, addressing, etc., etc., etc. to send just one mailing. Each candidate must mail all voters in their district many times to get their message out. Signs cost about \$5 to \$10 each, more for the bigger ones. A Washington State Legislator gets paid about \$45,000 per year, so this clearly is not enough money to run a successful campaign. You can contribute to pro-small business campaigns in your area right now. The candidate's mailing address and details are on the IBA list of candidates.
2. Volunteer! Every candidate needs volunteers to help prepare mailings,

help build and place yard signs, make phone calls, and help contact their neighbors, etc., etc., etc. The candidate will find you an activity that you prefer. This is a great way to build a great relationship with the candidate, and once the candidate gets elected, you have a great partner for your business that you can talk to.

3. Endorse the candidate for election. Many voters look to see who is endorsing a candidate. Your endorsement costs you nothing but can help gain votes for the candidate.

Sure you're busy, but imagine higher taxes, wasteful state spending, and the cost if just some of the anti-small business legislation pushed by the labor unions become law. Your option is to help elect pro-small business candidates now or face those very ugly realities in the future.

## Your Small Business Is Big Business

Congratulations, your small business and the tens of thousands of other small businesses are the economic engines for Washington State and the USA.

Each May is Small Business month and the U.S. Small Business Administration and other institutions celebrate the unique creations that small businesses are. You too should celebrate your small business.

Small businesses are amazing creations. Each is unique. Small businesses are often the greatest job creators in the USA and worldwide. The U.S. Small Business Administration reports that there are 574,455 total Washington small businesses 99.6% of all Washington businesses. 143,785 of those small businesses employ over 50% of the state's private sector workers – 1.339 million workers in Washington

State. There are 430,670 small businesses that do not employ any workers but are self-employed business owners.

### Small Business Are Job Creators

Firms with fewer than 20 workers employ nearly 500,000 workers in Washington State. Firms employing fewer than 20 workers experienced the largest gain in new jobs, adding 37,689 net new jobs in 2015.

### WA Small Firms By Industry With Workers

Construction	21,066
Professional & Technical	19,421
Health Care	16,221
Other Services	15,397
Retail Trade	14,155
Lodging & Food Services	13,102
Administrative, Support	8,190
Real Estate	8,094
Wholesale Trade	6,926
Manufacturing	6,279
Finance and Insurance	4,702
Transportation & Warehouse	4,126
Arts, Entertainment	2,674
Educational Services	2,584
Information	1,914
Agriculture	1,376

### Small Business Are Innovators

The U.S. Small Business Administration reports that small innovative firms are 16 times more productive than large innovative firms in terms of patents per employee.

### Small Business Are International Traders

A total of 12,211 companies exported goods from Washington in 2015. Of these, 10,901, or 89.3%, were small firms. They generated 19.3% of Washington's \$79.6 billion in total exports.

### Celebrate your Small Business and Thank You for your contributions to the state's economy and employment!!

## Initiatives Out Collecting Signatures

Every June, special interest groups gather signatures on a number of initiatives. There are two types of initiatives, (1) **Initiatives to the People** that go on the next general election ballot if they collect enough signatures, and (2) **Initiatives of the Legislature** that are put before the Legislature if they collect enough signatures and allow the Legislature to (1) adopt the initiative or (2) propose an alternative to the initiative in which case both go on the next statewide general election ballot (3) if the legislature does not act, the Initiative goes on the ballot in the next November election. 2018 is no exception. There are a number of initiatives now collecting signature. The Initiatives to the People for 2018 include:

**I 1608**—Government Transparency - Makes collective bargaining sessions of public worker contracts open to public observation.

**I 1617** - Let the Voters Decide - Any tax increase must expire one year after taking effect unless approved by a two-thirds vote of the Legislature or majority vote of the people.

**I 1631** - Creating a new State Carbon Tax - Imposes a new carbon tax on major sources of carbon dioxide such as vehicle fuels, electricity generating facilities, etc.

**I-1637** - No Gun Until 21 - Raises the age to purchase a gun to 21.

These initiatives must collect a minimum of 259,622 valid registered voter signatures by July 6, 2018 to be put on the November 2018 ballot.

There is one Initiative to the Legislature collecting signatures at this time.

**I-976** - \$30 Vehicle License Tax - This would limit the license tax for a vehicle to \$30.

This initiative must collect 259,622 valid registered voter signatures by January 4, 2019

There is also one Seattle referendum now collecting signatures to repeal the recently enacted Seattle employee tax on larger businesses. Only Seattle voters may sign this referendum for the signature to be valid.

## WA Supreme Court Approves School Funding Fix

On June 7, 2018, the Washington State Supreme Court approved the Legislature's plan to fund public schools in Washington State in response to its 2012 McCleary decision that the Legislature was failing to adequately fund K-12 public education.

Since 2012, the Legislature and taxpayers have increased K-12 public school funding from \$13.4 billion in the 2011-13 biennium to \$22.8 billion in the current two-year budget.

The increased funding came from something that Legislators call a "levy swap". The "levy swap" set up a statewide school property tax levy to fund K-12 public schools to replace the local school maintenance and operation property tax levies. This fulfills the original court decision that found that too much of the K-12 public school funding was coming from local school levies, not from the state.

In 2019, local school levies cannot fund "public education" as defined in the levy swap legislation. Local school levies can only fund enrichment programs (*supplement state minimum in-*

*structional offerings, enhanced staffing ratios, enhanced program components, or professional learning allocations*) that are outside of definition of "public education." Local school levies should be going down in most areas of the state in 2019 and beyond to offset some or all of the new statewide property tax school levy.

The Washington Education Association, (the state's teacher's union) was behind the McCleary lawsuit and ultimately achieved its primary goal, increase teacher salaries dramatically.

## Interest Rates & Inflation Rising. What To Do?

Many of us have gotten comfortable with low interest rates, cheap money, as the Federal Reserve exercised its Quantitative Easing during the Great Recession recovery to stimulate the economic recovery. For most of the past eight years, interest rates have been 1% or below as the Federal Reserve offered very low interest rate bonds.

For the past two years, the Federal Reserve has begun to increase interest rates. The interest rate on the benchmark 10-year Treasury note has moved from 1.4% in June, 2008, to 2.06% in September 2017, and to a temporary high above 3% in May 2018. That means interest rates on consumer loans (houses and cars, etc.) are going up. So too will interest rates on business loans and business credit.

The Federal Reserve is expected to increase interest rates by ¼ point later this month.

Small businesses generally thrive when the economy is strong. Right now, the economy is doing quite well, which is why the Fed is comfortable raising

rates. (One Fed official even referred to it as a 'Goldilocks' economy for being "just right.")

While the Federal Reserve doesn't directly control the rates a business might pay on a credit card, line of credit or loan directly, but these rates tend to move in the same direction as the Fed's benchmark rate. When the Fed raises its benchmark rate, it takes some time for the change to be reflected in the interest paid by businesses.

Jared Hecht, co-founder and CEO of Fundera — a marketplace for small business loans — said he has yet to see rates for small business loans increase much, but he expects they will soon.

Hecht also said that while the cost of borrowing may go up with rate increases, it often becomes a better market for lending as the higher rate gets lenders more interested in making loans to smaller businesses.

Rising interest rates will likely increase costs for new small business loans, existing variable rate loans and credit cards.

But any way you slice it, a higher interest rate means higher costs that will eat into cash flow and profitability. Short-term loans to cover cash gaps, often needed by small businesses, may get more expensive or difficult to acquire, said Barry Coleman, who helped develop the small business counseling program at the National Foundation for Credit Counseling

While consumers may be feeling good in a strong economy and willing to pay for your goods and services, they eventually may feel pinched by rising rates and pull back on spending. Some businesses may also need to consider price increases to manage their increased expenses.

**What Should Small Businesses Do?**

Small businesses and their owners have a few options in an environment of rising interest rates, experts say.

The simplest of those is to clean up your personal and business credit. Credit scores are a key factor for lenders when they decide whether to fund a small business. Make your payments on time, use credit only when absolutely necessary and keep your utilization low. The better the credit score, the better the rates.

The next is to think big picture about your strategic plans. If there are expansions or major investments you need to make, consider the timing in relation to rates and the economy.

"Because rates are still relatively low, small businesses haven't lost that opportunity to take advantage of low interest rates, especially as the economy is growing," Coleman said.

Coleman also noted that businesses have more options than ever on where to borrow, thanks in part to the growth of online financial firms. And big banks — those with assets over \$10 billion — currently have a record 52.5 percent approval rate, Coleman said. That compares with small banks, which are considered the go-to for small business loans, at around 49 percent.

Additionally, if you have existing debt, try to form a relationship with your lender to help mitigate any bumps down the road, Hecht suggested.

Compare various products and various lenders to find the best fit as well. Hecht said business owners can often make a borrowing deci-

sion too hastily, when taking time to research before they commit could save them money.

Inflation is starting to show up in labor costs and supply cost. The Labor Department reported on 6/6/2018 that hourly compensation accelerated at a 3.3% rate in the January-March quarter. Compensation rose at a 2.9% pace in the fourth quarter and increased at a year-over-year rate of 2.6%.

Inflation now poses a genuine issue to deal with.

Small business owners must now factor in inflation in their labor costs and supplies costs and reflect it in their pricing.

Don't let inflation erode your profits

**New Domestic Violence Law Affects Employers**

**Disclaimer:** This information is intended to alert the reader of a new domestic violence law that involves employers and this information is not legal advice. This information does not provide any assurance of compliance with this new law. The reader is advised to consult with a qualified employment law attorney for advice on how to comply with this new law.

Beginning on June 7, 2018, a new law passed by the 2018 Legislature, HB 2661, requires employers to do 2 things:

1. Makes it unlawful for an employer to discriminate against an applicant or employee because the individual is an actual or perceived victim of domestic violence, sexual assault, or stalking.
2. Makes it unlawful for an employer

to refuse to make a reasonable safety accommodation requested by a victim of domestic violence, sexual assault, or stalking unless the business can demonstrate the accommodation would impose an undue hardship on the business.

This new law also includes an anti-retaliation provision that prohibits employers from taking a negative employment action (such as an unfavorable evaluation, lack of a promotion, termination, or otherwise subject an employee to discipline for the exercise of any rights provided under the law) with respect to an employee that is an actual or perceived victim of domestic violence, sexual assault, or stalking

This law will be a huge challenge for employers to determine what they must do to comply with the law. There are no directions or recommended actions for employers to take to comply with this new law.

The law will be implemented and enforced by the Department of Labor and Industries.

IBA will be seeking information from the Department of what is expected of employers to comply with this new law.

## WA EAP Overtime Exempt Employee Rule Development

IBA has participated in a number of meetings on the Department of Labor and Industries rulemaking effort to update the state overtime exemption rule for Executive, Administrative and Professional (EAP) employees.

On June 8, the Department provided a presentation on data the Department is likely to use for this new rule. Some of that data from the meeting was con-

cerning:

- The average weekly wage by County ranged from \$624/wk. to \$1,625/wk.
- King county's average weekly wage was 2.6 times higher than in the lowest county—Skamania
- The state's average weekly wage in 2016 was \$1,133 (\$58,914/yr.)
- Average wages by industry sector ranged from \$4,401 for information/technology workers to \$980 for retail workers, a 4.4 time difference

IBA keeps pressing the following issues:

- The Department's new EAP rule cannot be a single statewide wage rate as there are very significant wage differences between areas in the state.
- Small businesses don't pay the same wages as larger businesses and there must be a lower small business wage rate in these rules for small businesses.

IBA will keep you advised.

## Interesting Discrimination Ruling & YOU

The following case highlights the importance of a business not engaging in discrimination against its customers. The bottom line is; businesses that discriminate against customers are likely to be sued for discrimination and lose.

On June 4<sup>th</sup> the U.S. Supreme Court issued a surprising 51 page ruling on a Colorado bakery that was sued by its clients for refusing to create a wedding cake for a gay couple by claiming it violated the baker's right to free speech and free expression of religion under the federal constitution and cost the business tens of thousands of dollars to defend. The decision had the five conservative justices and two of the liberal justices concurring in this

decision.

This precedes a similar case in Washington State where a florist in the Tri Cities area refused to create floral arrangements for a gay couple's wedding due to the florist's right to free speech and free expression of religion and was found in violation of the state's laws against discrimination by the Washington State Human Rights Commission and confirmed by the Washington State Supreme Court. This florist has also appealed this decision to the U. S. Supreme Court.

The baker's case is notable, but it is not a sweeping decision for businesses across the nation. The Supreme Court's decision was based on a very unique set of circumstances, *"The government, consistent with the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices."*

Evidence presented to the U.S. Supreme Court showed that the Colorado Civil Rights Division had a very hostile attitude toward the baker's position and the Court stated: *"the Commission's treatment of Phillips' case, which showed elements of a clear and impermissible hostility toward the sincere religious beliefs motivating his objection. As the record shows, some of the commissioners at the Commission's formal, public hearings endorsed the view that religious beliefs cannot legitimately be carried into the public sphere or commercial domain, disparaged Phillips' faith as despicable and characterized it as merely rhetorical, and compared his invocation of his sincerely held religious beliefs to defenses of slavery and the Holocaust."*

While an interesting decision for the baker, it is a very narrow decision that does not change business practices in Washington State. The WA Human Rights Commission and the WA Washington state Attorney General will sue a business that discriminates based on age; race; color; national origin; creed; sex; pregnancy; sexual orientation; gender identity; veteran; military status; disability mental or physical, actual or perceived; etc. against customers including refusing to do business with any customer, including LGBT customer and the lawsuit will be very costly to defend against.

## Updating Employee Policy Handbooks

**Disclaimer:** This information is intended to alert the reader of employee policy handbook issues and is not legal advice. The reader must be aware that laws and regulations change and that court decisions impact laws and regulations affecting employee policy handbooks. This information does not provide any assurance of compliance with laws, regulations, and court decisions concerning employee policy handbooks. The reader is advised to have any employee policy handbook reviewed by a qualified employment law attorney before using.

Our friends from Business Management Daily advise us to update our employee policy handbooks to address the following:

- Your social media policy is probably out of date.
- You may need a new policy on smart devices and a new no-camera rule that won't interfere with worker rights. There was a major case before the NLRB on restricting cell phone cameras in the company facilities.
- A wrong worker wage and benefit discussion policy may be illegally restricting employee discussions on pay and benefits and result in an unfair labor practices complaint and penalties
- Incorporate the new NLRB "balancing test" to justify your handbook rules as lawful, particularly rules that are designed to promote civility in the workplace.
- Rewrite your anti-discrimination statement to include sexual orientation and transgender discrimination.
- Clarify vague policies on overtime and off-the clock work to avoid future claims or lawsuits.
- Update your leave policies to reflect the new rights of same-sex married couples.
- Update your policies dealing with pregnant employees and nursing mothers to meet new state and federal laws.
- Your company restrictions of employee use of company email maybe in violation of a NLRB ruling and may need to be changed.

IBA has found an excellent, low-cost, source to help small employers to update their employee policy handbook that is available via the Internet for \$34.99 or in print for \$39.99. This publication provides the following:

- 98 specific employee policy handbook topics – a listing of the table of contents of this publication is available via the Internet at: [www.ibaw.net/noloemphandbook.pdf](http://www.ibaw.net/noloemphandbook.pdf)
- It is 400+ pages long.
- Includes sample policies and legal cautions throughout.
- Great way for you to start preparing a draft employee handbook

- IBA and this publication both caution that you MUST have your draft employee handbook reviewed by a qualified employment law attorney before you use it.

You can order this publication via the Internet at:

[www.ibaw.net/noloemphandbook.pdf](http://www.ibaw.net/noloemphandbook.pdf)

## Law Firm Sued For \$100 Million For Discriminating Against Pregnant Women and Mothers

Three female Morrison & Forester attorney associates in California have filed a \$100 million gender bias lawsuit accusing the law firm of systematically discriminating against pregnant women and mothers in pay and promotions.

This case provides important examples of what small employers must avoid doing.

This lawsuit comes on the heels of a new Washington State law that prohibits an employer from discriminating in providing career advancement opportunities based on gender and discussions of workplace wages and other matters that took effect on June 7, 2018 and includes:

- Employers shall not discriminate career advancement for employees in "similarly employed" jobs if the performance of the job requires similar skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative.
- The employer may defend based in good faith on a bona fide job-

related factor or factors for the differential.

- IBA Opposed HB 1506 due to concerns over the risk of false claims.

The women at the Morrison & Foster law firm say female attorneys who become pregnant, have children and take maternity leave claim they were put into the “mommy track,” that denied them opportunities for advancement and higher pay.

The women suing Morrison & Forster say that Morrison and Forester's “mommy track” is a dead end.

In the Morrison & Forester case in California, the women allege they were denied work opportunities because of their gender, and that they were cut out of their practice groups following maternity leave.

Thus they are suing Morrison & Forster on behalf of all female attorneys at the firm.

There are other reports that many law firms and other large businesses have been sued in similar cases, even after the firms had expanded their maternity leave programs, family leave programs, and work flexibility (flexible schedule or work from home) programs.

You can read more about this via the Internet at:

<https://biglawbusiness.com/morrison-foerster-sued-for-pregnancy-bias>

Bottom line, small employers need to be very aware of the new Washington State Law that allows workers to sue their employer for career track discrimination.

If employees sue a large law firm, they won't think twice about suing a small business.

## \$15 Million Sexual Harassment Award

Sexual harassment is a top reason em-

ployers are being sued and small businesses must be very aware of how to protect themselves from such lawsuit. This case provides important information of what not to do to avoid these types of lawsuits.

A New York jury awarded a nurse a \$15 million judgement for sexual harassment - including punitive damages.

The jury split the judgement between a Physician and the Hospital she worked in because the physician had inappropriately grabbed, fondled and tried to kiss the nurse on two different occasions. The jury held the hospital liable because:

- The nurse was sexually harassed by the physician with the knowledge of the hospital which failed to take reasonable steps to prevent the harassing physician's misconduct.
- A supervising physician was a witness to at least a portion of one harassment incident wherein harassing physician grabbed nurse from behind, spun her around and tried to push his tongue into her mouth and the supervising physician failed to intercede.
- The jury found that supervising physician was the Medical Director of the hospital, chaired the performance improvement committee, sat on a number of other committees including the board of trustees and had the power to unilaterally suspend the harassing physician who engaged in egregious conduct, but did not.
- The fact that the supervising physician witnessed a portion of one of the harassment incidents placed the hospital on actual notice triggering a responsibility on their part to take reasonable steps to take corrective action which the

hospital failed to do.

After the jury's judgement, the harassing physician and the hospital moved that the court invalidate the jury's judgement and grant a new trial to the physician and hospital. The judge rejected the motion and the judgement was held valid.

You can find more details about this decision via the Internet at:

<http://www.nydailynews.com/new-york/flushing-hospital-nurse-15-million-award-sexual-harassment-suit-article-1.369554>

## Lessons For Small Business Owners:

- Sexual harassment claims are very serious business and can be very costly.
- If anyone in management is aware of any harassment, the business must take aggressive corrective action in a timely manner.
- Any report of harassment must be fully and promptly investigated.

Employers must provide and document effective anti-harassment training and provide reminder training. IBA has found a sample sexual harassment training video that is available via the Internet at:

[www.ibaw.net/sexharrasstrain.pdf](http://www.ibaw.net/sexharrasstrain.pdf)

## Seattle Repeals Employment Tax

In a shocking move and within a month of adopting a \$275/employee/yr. employment tax on large employers, the Seattle City Council repealed that tax on June 12, 2018 after strong opposition from the business community and labor unions affected by the new tax. For more details via the Internet, go to:

[www.ibaw.net/seattletaxrepeal.pdf](http://www.ibaw.net/seattletaxrepeal.pdf)