

INDEPENDENT BUSINESS ASSOCIATION

16541 Redmond Way NE #336C
Redmond, WA 98052

SMALL BUSINESS REPORT SMALL BUSINESS REPORT SMALL

IBA Small Business Report - April 12, 2018

2018 Campaigns Begin And Will Affect YOU!	Page 1
What You Need To Do	Page 1
NEW State Carbon Tax Proposed—I 1631	Page 1
I-977 Collecting Signatures	Page 2
New L&I Overtime Exemption Rules	Page 2
New State Paid Family/Medical Leave Law Coming Soon	Page 3
Implementing Washington's Paid Family/Medical Leave Law	Page 3
Details About Washington Paid Family/Medical Leave Law	Page 4
Details About Washington Paid Family/Medical Leave Law	Page 5
Tax Cuts and Deficit Budget Worry Investors and Economists	Page 6
Courts Side With EEOC	Page 6
Protecting Against Ransomware Virus	Page 7
Contractor Advertising Laws	Page 7

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.

Copyright 2018 by Independent Business Association



IBA SMALL BUSINESS REPORT



April 12, 2018

2018 Campaigns Begin & Will Affect YOU!

You and your small business will be significantly affected by the outcome of the 2018 elections. 2018 will be a HUGE political year for you and you need to protect yourself and your small business by getting involved.

All U.S. Representatives are up for election. All state Representatives are up for election, Half of the state Senators are up for election in 2018.

Nationally, the Democrats will spend \$100+ million of dollars to try to take control of the U.S. Senate or the U.S. House of Representatives. Republicans will also spend \$100+ million of dollars to try and retain control of the U.S. Senate and the U.S. House of Representatives.

If the Republicans retain control, expect more of what you have experienced in the past 18 months. If the Democrats take control, expect a gridlocked Congress and few if any good things happening for you and your small business for the next two years.

Statewide, will be very similar to the national scene. Republicans will spend millions of dollars to take control of either the state Senate or the state House of Representatives. The state Senate currently has a 1 vote Democrat majority and the state House currently has a 2 vote Democrat majority.

Like the national election, the state election has a significant number of state legislators retiring. Some of them are key legislators such as the Senate Majority Leader (D) who effectively leads the state Senate. The House Republican leader is also retiring. A long

list of other legislators are also retiring, some Democrats and some Republicans. Those are "open" seats with no incumbent. Incumbent legislators have a significant election advantage because they have higher name identity with voters and have a vote-record to run on. There are enough "open" seats to leave politics in the state up for grabs.

What You Need To Do

Since whoever is elected will become part of your business and make decisions that will directly affect your business, you should approach this election like you would when hiring a new key employee. You should plan to identify the candidates in your area and determine which ones will support you and your small business by interviewing them, attending a campaign event to learn what they stand for, or researching them via the Internet.

Then decide which candidate(s) you support:

- Contribute to their election campaign. No candidate gets any public funds to run or fund their campaign. Most candidates for the state Legislature need \$100,000+ in contributions to run a successful campaign and to pay for:
 - Yard signs
 - Printed campaign materials
 - Mailings
 - Advertising
 - Etc.
- Volunteer to help the candidate. They need volunteers to help with:
 - Building and putting up yard signs
 - Making phone calls
 - Preparing mailers
 - Other projects identified by the campaign.

NEW State Carbon Tax Proposed - I-1631

You will pay more for gasoline, diesel natural gas and electricity if Initiative 1631 proposed by environmental groups becomes law. I-1631 proposes to impose a new Washington state carbon tax of \$15 per metric ton of carbon dioxide emission from fossil fuels (natural gas, gasoline, diesel, electricity generated by fossil fuels) sold in Washington State. I-1631 will raise about \$5 billion over eight years to reduce carbon emissions in Washington state. Following is a brief summary of I-1631:

- Imposes a carbon pollution tax equal to \$15 per metric ton (MT) of carbon dioxide emissions (about 15 -cent increase in gasoline/diesel prices) on the sale or use of fossil fuels within the state of Washington and the generation of or import of electricity in Washington generated using fossil fuels, beginning July 1, 2019.
- Increases the tax rate by \$2.00 per metric ton (MT) per year, beginning July 1, 2021 until Washington State has reduced its carbon emissions by the state's 2035 greenhouse gas reduction goal and the state's emissions are on a trajectory that indicates that compliance with the state's 2050 goal is likely.
- Directs the carbon tax revenues to be distributed into four accounts for activities that reduce greenhouse

MEMBER ASSISTANCE
425-453-8621
www.ibamember.com

gas (GHG) emissions connected to energy use and other activities in Washington; provide assistance to vulnerable communities and workers in fossil fuel industries; increase climate resilience; and support rural economic development. Revenue from the tax would go into two funds: (1) 70% into a fund for air quality and energy programs and projects and (2) 25% into a fund for water quality and forest health projects. The funds may be used as follows:

- **Clean air and clean energy account**
 - Programs, activities, or projects that deploy eligible renewable energy resources, such as solar and wind power;
 - Programs, activities, or projects, including self-directed facility investments, that increase the energy efficiency or reduce carbon emissions of industrial facilities;
 - Programs, activities, or projects, including self-directed investments, that increase energy efficiency in new and existing buildings;
 - Programs, activities, or projects that reduce transportation-related carbon emissions;
 - Accelerate the deployment of zero-emission fleets and vehicles;
 - Reduce vehicle miles traveled or increase public transportation;
 - Increase fuel efficiency in vehicles and vessels;
 - Programs, activities, or projects that improve energy efficiency, including programs, activities, or projects related to developing the demand side management of electricity;
 - Programs, activities, or projects that replace the use of natural gas with gas not derived from fossil fuels, includ-

- ing but not limited to bio methane and synthetic gas;
- Programs, activities, or projects that deploy distributed generation, energy storage, demand side management technologies, and other grid modernization projects; and
- Programs, activities, or projects that result in sequestration of carbon.

Clean water and healthy forests account

- Clean water investments that improve resilience from climate impacts;
- Healthy forests investments to improve resilience from climate impacts; and
- Establishes a Clean Energy Investment Program for both investor-owned utilities (IOUs) and consumer-owned utilities (COUs) to allow an electric or gas utility to claim a credit of up to 100 percent against the carbon tax for approved investment in projects that reduce or offset carbon emissions from the utility.

A carbon tax initiative was on the November 2016 Washington State ballot and lost by a vote of 41% yes, 59% no.

The sponsors of I-1631 will have to collect more than 260,000 valid voter signatures by July 6th to get it on the November 2018 ballot. In reality, the sponsors will have to collect over 350,000 signatures to achieve the 250,000 valid voter signatures.

IBA recommends you not sign I-1631.

I-977 Collecting Signatures

Initiative guru Tim Eyman has proposed I-977 to apply the public records law to state legislators and is now col-

lecting signatures. I-977 is an initiative to the Legislature. You can get a copy of the I-977 petition via the Internet by cutting and pasting the following address in your web browser: www.voterswantmorechoices.com/pdf/977petitionbw.pdf

New L&I Overtime Exemption Rules?

Do you have salaried employees who are exempt from overtime pay?

If so, you need to carefully read this.

The Department of Labor & Industries has announced that it will be undertaking rulemaking regarding the Executive, Administrative, and Professional ("EAP" or "white collar") overtime exemptions for these salaried workers. This is an update of the current rules that were last adopted in 1976. Those rules set the minimum salary to qualify for the Executive, Administrative or Professional overtime exemption at \$155 per week.

The Department explains that these exemptions establish a salary threshold and duties test for an employee to be exempt from paying overtime to these workers. The rules governing this exemption have remained largely unchanged since 1976, are out of date, and no longer function as intended.

The average state wage has increased from \$155 per week in 1976 (\$8,060 annually) to \$1097 per week (\$57,057 annually), or 7.08 times more than the \$155 contained in the current rule for administrative employees.

It is very likely that the new state overtime exemption rules will only apply to salaried workers who earn at least \$1000+ per week and who also meet the requirements of being classified as an Executive, Administrative or Professional employee.

The Department may decide to revise the state's "duty tests" for Executive, Administrative and Professional employees to attempt to limit which workers will be eligible for these overtime exemptions.

In 2015, the President Obama Administration proposed to rewrite the definitions of who qualifies for the Executive, Administrative and Professional overtime exemptions. Those rules were highly controversial and were stopped by a court case. They are still pending under the President Trump administration.

As part of this state process, the Department will prepare a Small Business Economic Impact Statement required by RCW 19.85 (A law IBA put in place in 1982) to compare the impacts of the new rule on small businesses as compared to large businesses. The law requires the Department to minimize any disproportionate impact of the rule on small business as compared to large businesses

The Department will use a stakeholdering process like the one they used for the paid sick leave and enforcement (as mandated by Initiative 1433). The Department intends to file its proposed rules in the fall of 2018.

IBA will be participating in this stakeholdering EAP rule development process as it did for the paid sick leave rule process. IBA was disappointed by the paid sick leave rule process that resulted in a rule that had found **cost for small businesses is approximately 5.5 (550%) to 9.0 times (900%) more than the per employee cost for the 10% of the largest businesses.**

While RCW 19.85 requires the Department to mitigate any cost difference, the Department did little to nothing to mitigate that cost difference in the paid sick leave rule. L&I ignored many cost reducing recommendations by IBA.

Only with your input will IBA be able to protect your businesses from excessive costs from these rules.

You will have several opportunities for input which IBA will explain in the future:

Between June 15 and July 10th

Between July 20th and August 10th

In the fall of 2018 is when the rules will be proposed for final adoption and another opportunity for you to comment.

New State Paid Family/Medical Leave Law Coming Soon

Most employers are still trying to implement the costly and very challenging new Washington State Paid Sick Leave Law that became effective on 1/1/2018, but there is another new state Paid Leave Law, the new Washington State Paid Family/Medical Leave Law, that will start on 1/1/2019. This is a result of legislation worked on by IBA to avoid another disastrous initiative like the Paid Sick Leave Law initiative approved by voters in 2016.

You will find the new Washington State Paid Family/Medical Leave Law will be much easier and less costly for small employers to implement in 2019 than the 2018 Paid Sick Leave law. Small employers with fewer than 50 employees will pay nothing for the new Paid Family/Medical Leave program.

On pages 4 and 5 of this Report, IBA explains how the new Paid Family/Medical Leave works as compared to the state's Paid Sick Leave law.

The Paid Sick Leave law is 1.5 pages long with few details and directed the

Department of Labor and Industries to write rules to fill in how the law will work. The Paid Family/Medical Leave law is 71 pages long and includes the details of how the law will work and contains the small business protections

Disclaimer: The following information is business advice and is not legal advice. The reader should not rely on the following information to comply with any law or regulation. The reader is advised to consult a qualified employment law attorney for compliance and legal advice related to these laws.

Implementing Washington's Paid Family/Medical Leave Law

Yes, the Washington State Paid Family and Medical Leave Law is now being prepared to be implemented on January 1, 2019 and you, an affected small business owner, are invited to participate in this preparation and implementation.

The Washington State Employment Security Department is charged with implementing this new law. They are requesting as many people as possible to take a short survey to help them to determine if people are aware of this new law that passed in 2017, and some of the basics of how it will work to help them prepare their communications about this new program starting the fall of 2018. You can take this survey via the Internet at:

www.ibaw.net/pfmlsurvey.pdf

IBA is actively involved in the work to prepare and implement this new law on January 1, 2019. IBA was one of the key negotiators of this new law and effectively worked to accomplish the following for small businesses:

- No premiums for employers with fewer than 50 employees, their

Subject	Paid Sick Leave Law 1/1/2018	Paid Family/Medical Lv. Law 1/1/2019
What does the law cover	Short term leave when the worker is sick or to care for a family member with health care needs.	Longer term leave for a worker with health care needs, the birth or adoption of a child, to help with the health care needs of a family member. There are actually two combined leave programs in the Paid Family/Medical Leave law. They are: Family Leave (more details below) Medical Leave for the worker's own serious health conditions
Who qualifies for benefits under this law?	All workers of all employers.	All workers of all employers who have worked at least 820 hours in the qualifying period.
How is the law administered?	The employer administers the law.	The Employment Security Department administers this law
Who pays for the leave benefit?	The employer.	For small employers with fewer than 50 employees, the worker pays for the benefit through payroll deductions collected and remitted by the employer. Larger employers will pay part of the cost of the premium
How long can a worker take this leave?	The worker earns (accrues) one hour of paid sick leave for every forty hours the worker works. The worker can request to take paid sick leave after 90 days of working for the employer and can use his/her accrued paid sick leave.	Up to 12 weeks of Family Leave benefits annually for: Bonding after the birth or placement of a child who is under the age of 18; A family member's serious health condition; or Certain military assignments like leave for short notice deployments, military events, urgent childcare and related activities, and post-deployment activities. With an additional 2 weeks of benefits due to pregnancy complications. Up to 12 weeks of paid medical leave benefits annually for their own serious health conditions Total leave in a year, up to 16 weeks or 18 weeks due to pregnancy complications.
How much is the worker paid?	The worker is paid his/her "normal hourly compensation" which the employer must calculate in accordance with DLI (Department of Labor and Industries) rules	The worker will receive their average weekly wage based on their two highest quarters in the qualifying period to a maximum weekly benefit amount of \$1,000—adjusted annually
Continued on the next page		

<u>Subject</u>	<u>Paid Sick Leave Law 1/1/2018</u>	<u>Paid Family/Medical Leave Law 2019</u>
How does the law work?	<p>Summary: Disclaimer: The following information is business advice and is not legal advice. The reader should not rely on the following information to comply with any law or regulation. The reader is advised to consult a qualified employment law attorney for compliance and legal advice related to these laws.</p> <ul style="list-style-type: none"> • Each worker earns (accrues) one hour of paid sick leave for every forty hours the worker works. • The employer must keep records of sick leave earned by each worker. • Employer must report to the worker each month or with each paycheck how much paid sick leave the worker has earned (accrued), how much paid sick leave the worker has used, and how much unused paid sick leave the worker has available. • The worker can take paid sick leave for their own health care needs or for the health care needs of a family member in accordance with DLI (Department of Labor and Industries) rules. • The employer must determine the amount of paid sick leave time used by each worker. • The employer must pay the worker their “normal hourly compensation” as defined by DLI (Department of Labor and Industries) rules for the time the worker took paid sick leave using hours of paid sick leave previously accrued by the worker • Workers may submit complaints to the DLI (Department of Labor and Industries) against their employer if the worker feels the employer has violated the Paid Sick Leave law and the Department will investigate and may find no wrongdoing by the employer or issue a penalty of up to \$20,000 against the employer. • If a worker believes their employer took a negative employment action against the worker for using or seeking to use paid sick leave, the workers may submit a complaint to the to the DLI (Department of Labor and Industries) against their employer for retaliation and the Department will investigate and may find no wrongdoing by the employer or issue a penalty up to \$40,000 against the employer 	<p>Summary: Disclaimer: The following information is business advice and is not legal advice. The reader should not rely on the following information to comply with any law or regulation. The reader is advised to consult a qualified employment law attorney for compliance and legal advice related to these laws.</p> <ul style="list-style-type: none"> • Beginning on 1/1/2019. • The initial workers’ premium will be 0.4 percent of wages of a worker’s social security payroll. • Small employers with fewer than 50 workers will deduct the full premium from the workers’ earnings and remit to the ESD (Employment Security Department). • Larger employers may deduct from the employees’ wages 100 percent of the premiums due for the family leave and up to 45 percent of the premiums due for the medical leave • Beginning on 1/1/2020, workers who have 820 hours of employment in their qualifying period will be eligible to take paid family leave in accordance with rules adopted by the ESD (Employment Security Department). • A worker will be able to take leave with appropriate notice to their employer. • The worker will apply to the ESD (Employment Security Department) for Paid Family/Medial Leave Benefits • The ESD (Employment Security Department) will verify the claim eligibility. • The ESD (Employment Security Department) will calculate and pay the worker his/her weekly benefit amount for eligible leave. • The Paid Family/Medical leave premium amount will be adjusted annually based on the use of the Paid Family/Medical Leave benefits paid out. Small employers with 50 or fewer workers will not pay the premium but will deduct the premiums from the workers’ earnings and remit to the ESD.

workers pay the full cost of the program through payroll deductions. Much better than the recently implemented WA Paid Sick Leave Law.

- Employer does not administer this new law or the benefits paid to workers, the WA Employment Security Department administers the law, decides who gets benefits, and how much those benefits are, and the Department pays the benefits; not the employer. Much better than the recently implemented WA Paid Sick Leave Law.
- The employer only needs to report their unemployment tax information each quarter and remit their worker payroll deductions to pay for the program, no other reporting is required. Much better than the recently implemented WA Paid Sick Leave Law.
- Employers are protected from unemployment insurance cost increases if an employer replaces a worker on Paid Family and Medical Leave and later lays-off the replacement worker. Much better than the recently implemented WA Paid Sick Leave Law.

The Employment Security Department is proposing and adopting rules to implement the Washington Paid Family and Medical Leave Law in phases as follows:

Phase 1 is related to the following topics:

- Collective bargaining agreements
- Premium liability
- Voluntary plans

You can comment on these draft rules via the Internet at:

www.ibaw.net/pfmlcomment1.pdf

Phase 2 is related to the following topics:

- Employer responsibilities
- Penalties
- Small business assistance

You can access more information about this rulemaking process by cutting and pasting the following address in your web browser:

www.ibaw.net/pfmlrules.pdf

Tax Cuts and Deficit Budget Worry Investors & Economists

President Trump signed the new fiscal year 2019 federal budget on February 7, 2018 and signed the new tax reform legislation on December 22, 2017. According to TheBudget.com, in the tax reform legislation and the fiscal year 2019 federal budget will cost \$4.407 trillion. The U.S. government estimates it will receive \$3.422 trillion in revenue. That difference between revenues and spending creates a \$985 billion deficit for October 1, 2018, through September 30, 2019.

Spending is in three categories: Mandatory (\$2.739 trillion), Discretionary (\$1.305 trillion) and Interest on the National Debt (\$363 billion). This article provides a detailed breakdown of each. You can also find links to past budgets at the end.

You can find the full TheBudget.com report by cutting and pasting the following address in your web browser: <https://www.thebalance.com/u-s-federal-budget-breakdown-3305789>

Bloomberg reports that Bank of America Corp. senior U.S. economist Joseph Song warned in a report that the federal deficit was on track to exceed 5 percent of gross domestic product by 2019, by far the largest for the economy while at full employment since World War II.

“Deficit financed tax cuts and spending increases in a full-employment economy will result in more Fed tight-

ening and higher interest rates.”

In the short term, the combination of tax cuts and more government spending will throw fuel onto the economy, boosting growth, employment and probably wages.

Investors remained on edge as the resurgent threat of inflation and higher bond yields renewed concerns that rising interest rates will drag on the economy.

Alexis Crow, head of PricewaterhouseCoopers LLP's geopolitical investing group in New York. “Since the crisis, debt has not disappeared. It's an unsustainable situation.”

You can find the full Bloomberg report by cutting and pasting the following address in your web browser:

<https://www.bloomberg.com/news/articles/2018-02-08/trump-s-soaring-budget-deficit-risks-intensifying-market-frenzy>

Courts Side With EEOC

IBA recently alerted you that the federal EEOC was expanding its interpretation of the federal discrimination laws to include sexual orientation and transgender individuals. Now two federal courts of appeal have joined with the EEOC and have agreed that discrimination based on sexual orientation and trans-gender individuals is discrimination under federal discrimination laws. The federal discrimination law identifies discrimination based on “*race, color, religion, sex, or national origin*” The courts have now ruled that “sex” includes sexual orientation and transgender individuals. IBA is unaware of any court decision dealing with bi-sexual but expects the courts to also include bi-sexual under the federal discrimination law application. Below is a summary of the recent court decisions. This will stand as the national law unless it is reversed by another Court of Appeals or the U.S.

Supreme Court.

In February 2018, the Second Circuit Court of Appeals rendered a decision in *Zarda v. Altitude Express* that significantly expands employees' rights under Title VII of the Civil Rights Act of 1964. The judges held that sex discrimination under Title VII encompasses discrimination based on sexual orientation. This decision came 11 months after the Eleventh Circuit declined to recognize sexual orientation as a protected category under Title VII in *Evans v. Georgia Regional Hospital* and 10 months after the Seventh Circuit disagreed, holding that sexual orientation is covered by Title VII, in *Hively v. Ivy Tech Community College*.

Does discrimination based on gender identity fall within Title VII of the Civil Rights Act of 1964's protection against discrimination "because of sex"? In March 2018, the federal Sixth Circuit Court of Appeals recently adopted the Equal Employment Opportunity Commission's (EEOC) interpretation of the federal discrimination laws and said "yes" and reversed a lower court that had ruled to the contrary in *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.* The status of being transgender (or transitioning) is now—on its own—a recognized protected status under Title VII in the Sixth Circuit. Although the decision was only a slight extension of existing precedent, which protected trans-gender and transitioning individuals to the extent their exhibited behavior did not conform to gender stereotypes, the reasoning employed by the court raises the question of whether the Sixth Circuit could—in the future—reverse its previous position and extend Title VII protections to sexual orientation.

Protecting Against Ransomware Virus

Small businesses face a HUGE problem if their computer becomes infected

by ransomware. Ransomware hijacks your computer and does not let you access your data files and more unless you pay a ransom to the people who created the ransomware virus. Ransomware infects computers from infected email attachments and from nefarious websites.

Recently, the Boeing Company was a victim of ransomware as was the city of Atlanta, Georgia. The Seattle Times has published a great article about how to protect yourself and your business from ransomware. You can access the article at:

www.ibaw.net/ransomware.pdf

Contractor Advertising Laws

As the construction season will soon be in high gear, contractors must be very vigilant about ensuring they are complying with contractor advertising and document laws to avoid a penalty of up to \$10,000.

The law requires that if you:

- advertise,
- solicit bids or
- offer to perform work,

You must always include your contractor registration number.

This includes:

- Yellow Page ads,
- Newspaper ads,
- Craig's List
- Angie's List
- Estimates
- Bid proposals
- Any items that include but are not limited to:
 - Business cards,
 - Brochures,
 - Websites,
 - Pens,
 - Magnets,
 - Flyers,
 - Ads,
 - Etc.

While the state law has not caught up with the internet technology and other forms of advertising, your firm does not want to become the test case by the Department of Labor and Industries and the Washington State Attorney General of whether your advertising is in compliance with the state's contractor registration advertising law. IBA recommend that contractors show their contractor registration number on all webpages and company based social media. As you can see in the law, which follows, it also covers all radio and television advertising.

Also note that the law states that it is illegal for a contractor to claim to be "insured and bonded" if they only have the bond and insurance required by the state's contractor registration law.

Below is the state law and you will see that it attempts to cover all advertising.

After you've registered you must use your contractor registration number on all your business communications. (emphasis added by Dept. of Labor and Industries)

By law, when you advertise, solicit bids or offer to perform work, you must always include your contractor registration number. This includes business cards, Yellow Page ads, newspaper ads, estimates and bid proposals.

Washington State Law, RCW 18.27.100 states

(3) All advertising that shows the contractor's name or address shall show the contractor's current registration number. . . . **Advertising by air-wave or electronic transmission is subject to this subsection .**

(4) No contractor shall advertise that he or she is bonded and insured because of the bond required to be filed and sufficiency of insurance as provided in this chapter.