

Small Business Notes

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Reminder: Minnesota Minimum Wage Rates to Increase in 2023

On January 2, 2023 the Minnesota minimum wage rate for large employers will increase to \$10.59 per hour (from \$10.33 per hour) and to \$8.63 per hour (from \$8.42 per hour) for small employers.

Large employers are companies with annual gross revenues of \$500,000 or more and small employers make less than \$500,000. Neither distinction includes the number of workers they employ.

Special circumstances apply to businesses in Minneapolis and St. Paul. For Minneapolis the rate for businesses with 100 or fewer employees will increase **on July 1, 2023** from \$13.50 per hour to \$14.50 per hour. The rate for businesses with more than 100 employees will increase **on January 1, 2023** from \$15.00 per hour to \$15.19 per hour. For St. Paul, the rate for businesses with 10,000 or more employees will increase **on January 1, 2023** from \$15.00 per hour to \$15.19 per hour; for businesses with 101 to 10,000 employees the rate will increase **on July 1, 2023** from \$13.50 per hour to \$15.00 per hour; for businesses with six to one hundred employees the rate will increase **on July 1, 2023** from \$12.00 per hour to \$13.00 per hour; for businesses with five or fewer employees the rate will increase **on July 1, 2023** from \$10.75 per hour to \$11.50 per hour.

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Small Business Administration (SBA) Publishes Proposed Rule to Allow More Non-Depository Institutions, Including FinTechs, to Become 7(a) Lenders

On November 7, 2022, the SBA published a proposed rule “Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization” ([87 FR 66963](#)). The SBA is proposing to lift the moratorium on licensing new Small Business Lending Companies (SBLCs) and add a new type of entity called a Mission-Based SBLC, which would be a non-profit entity licensed by SBA for the sole-purpose of making 7(a) loans in order to better meet the needs of underserved communities. SBLCs are defined as “non-depository lending institutions that are SBA licensed and are authorized by SBA to only make loans pursuant to Section 7(a) of the Small Business Act and loan intermediaries in SBA’s Microloan program”. ([13CFR120.10](#)).

With this proposed rule, SBA is proposing to lift the moratorium on licensing new SBLCs with its ability to accept new program participants being “tied to market conditions and SBA’s capacity to supervise and oversee additional lenders”. SBA is also proposing to increase the number of “regular” SBLCs to allow the agency to accept applications for regular SBLC licenses from time to time as published in the Federal Register. Based on its current oversight capacity, SBA anticipates that it presently has the ability to license and supervise three new regular (non-Mission-Based) SBLCs.

SBA is also proposing, for both the 7(a) and 504 Programs, to remove the requirement for separate Loan Authorization. It would, instead, rely on information entered into E-Tran to establish the terms and conditions under which a specific loan guarantee would be approved by SBA. E-Tran is SBA’s application portal.

Comments on the Proposed Rule will be due 60 days from the date of official publication, so presumably on January 6, 2023.

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U.S. Supreme Court Hears A New Case Involving a Small Business and Public Accommodation

On December 5, 2022, the U.S. Supreme Court heard oral arguments in the case of *303 Creative LLC v. Elenis*, No. 21-476, a case which seeks to answer the question of whether a small graphic design company has a free speech right to refuse wedding website design services to same sex couples and to post a notice to that effect on its website. Both the refusal and the posting would violate the Colorado Antidiscrimination Act (CADA). 303 Creative preemptively sued the Colorado Civil Rights Commission to enjoin enforcement of those prohibitions.

This is the second time the Court has heard a case involving public accommodation, and related denial of services, under the CADA. In 2018 *Masterpiece Cakeshop v Colorado Civil Rights Commission* involved a bakery that refused to bake a wedding cake for a same sex wedding. There the Court reversed a decision in favor of the Colorado Civil Rights Commission but did so on narrow grounds involving procedure that did not reach the constitutionality of the CADA.

Much of the oral argument in *03 Creative* centered around the question of who was engaged in “speech” in website design—the customer or the designer. For example, Justice Sotomayor noted that the designer is not actually inviting anyone to the wedding. Justice Kagan asked whether it was the amount of input from the customer that determined speech noting that many wedding websites are formulaic with only modest input from the customer. Justice Alito asked if the use of any selective criteria could cause a business to run afoul of public accommodation laws.

Noting that neither *303 Creative* nor the Colorado Civil Rights Commission appeared to dispute that it would be inappropriate to compel an artist to create artworks against their beliefs, Justice Kavanaugh suggested that the issue could be resolved on very narrow grounds by deciding whether or not website designers were artists.

The significance of the *303* case lies in the fact that it involves “creative services.” A ruling in *303’s* favor could allow creative services companies to discriminate not just on sexual orientation but on other prohibited bases as well.

A decision on the case is expected sometime in 2023.

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U.S. Small Business Administration Releases December 2022 Economic Bulletin

The SBA's Economic Bulletin for December, 2022, contained some significant findings on the current state of small businesses in the U.S.

- Self employment had only a slight decline during the 2020 – 2021 period of the pandemic and by 2022 had returned to the level it had before the recession of 2008 – 2010.
- Business owners' income dropped during the pandemic period but is again continuing the upward trend it had before COVID.
- Both the opening business and closing numbers for business establishments (that is, businesses with employees) reached historic levels in 2020.
- As of the first quarter of 2022 small businesses regained most of the net jobs lost in 2020.
- Loan demand has rapidly declined in the most recent quarter probably reflecting increased interest rates.
- Business loan delinquency rates have remained low in recent years for commercial and real estate loans.
- The number of small business loan applications has returned to pre-pandemic levels and loan delinquencies are close to their 2018 to 2020 levels.

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