

Small Business Notes

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Minnesota Enacts New Tax Conformity With Federal Tax Law

In the first days of the 2023 legislative session the Minnesota legislature enacted, and the governor signed, new legislation bringing the Minnesota tax code into conformity with the federal tax code for tax years 2017 through 2022. The conformity will especially affect businesses that received federal grants and loans that were federal tax free but not state tax free at the time of their award. Affected taxpayers may seek to amend their earlier returns. The Minnesota Department of Revenue has published two charts showing the effect of conformity: one organized by tax form number and one by name of federal statute. These are available at [2023 Federal Conformity for Income Tax](#).

Regulation of Data Practices and Consumer Privacy to Reach Into Business Processes

In its November issue of “News and Views” the U.S. Small Business Administration noted that protection of the security and privacy of consumer information was going to be a issue for small businesses in 2023.

The SBA suggested that businesses could reduce consumer anxiety through use of technology like Secure Socket Layers on businesses web sites. While that is true, a recent settlement agreement between online game company Epic Games and the Federal Trade Commission illustrates that regulation and consumer protection enforcement will reach much further into business processes.

In the settlement announced December 21, 2022 Epic Games will pay a \$275 million penalty for violating that provision of the Children’s Online Privacy Act that requires businesses operating online to obtain verifiable parental consent for collection of personal information from children under the age of 13.

Epic Games will also pay an additional \$245 million refund to consumers who were victimized by Epic’s use of “dark pattern” software that tricked users into making unwanted purchases, for example by effecting charges simply for turning on the game or previewing pages and features.

Small businesses that conduct business online with consumers of any age should be certain that their software and business processes do not violate federal or state law. DEED and the law firm of Lathrop GPM will release, on February 6, 2023, the 2023 online edition of their collaborative publication, [Legal Guide to Privacy and Data Security 2023](#).

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New Guidance for Sellers and Marketers of Health Related Products

The U.S. Food and Drug Administration (FDA) approves the safety and efficacy of drugs and health related devices. The U.S. Federal Trade Commission (FTC) regulates the advertising claims for such products. On December 21, 2022, the FTC released its new “Health Products Compliance Guidance” expanding and replacing its 1998 publication on advertising claims of dietary supplements to now include advertising claims for drugs, over-the-counter drugs, foods and food supplements, homeopathic products, health related consumer devices, and health related apps.

The new guidance extends the definition of “advertising” beyond the usual media ads and to include trade shows, press releases, topical brochures, and use of product influencers and ambassadors.

Advertising and marketing for all covered products will have to meet the requirement of “adequate substantiation” of claims. The guidance noted four important factors in meeting that requirement:

- “Competent and reliable” testing is required, defined as randomized, controlled human testing.
- *In vitro* testing, on its own, is not adequate to substantiate efficacy claims in humans.
- Anecdotal evidence, such as user outcome surveys or user testimonials, is not adequate to support claims.
- Public health outcomes alone are not sufficient to support claims.
- Claims must report all study processes and outcomes on which claims are made.

The full guidance is available at [Health Products Compliance Guidance](#).

Marketers and sellers of any product that is, or can be, sold as a health related product are advised to refer to that guidance.

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Federal Agencies Release Principles to Guide Definition of “Good Jobs”

Concurrent with the visit of U.S. Labor Secretary Marty Walsh to the 2023 World Economic Forum, the U.S. Department of Commerce and the U.S. Department of Labor released a joint statement of “Good Jobs Principles” intended to inform policy making at all levels of government, and to provide the private sector a “shared vision of job quality”.

Here are *highlights* of the principles:

- **Recruitment and hiring.** Qualified applicants are actively recruited. They are free from discrimination, unequal treatment, or selection criteria unrelated to job performance. Unnecessary educational credentials and experience requirements are minimized. Justice-involved individuals.
- **Benefits.** Full and part time workers are provided with family-sustaining benefits that promote economic security and mobility. This includes health insurance, a retirement plan, workers’ compensation benefits, and work-family benefits such as paid leave.
- **Diversity, equity, inclusion and accessibility.** All workers have equal opportunity, to include Black, Indigenous, people of color, LGBTQ individuals, women, immigrants, veterans, individuals with disabilities, individuals in rural communities, individuals without a college degree, individuals with or recovering from a substance abuse disorder, and justice-involved individuals. Empowerment and representation. Workers can form unions and can engage in protected, concerted activity. Workers contribute to decisions about their work, how it is performed, and organizational direction.
- **Job security and working conditions.** Workers have job security without arbitrary discipline or dismissal. Workers are free from harassment or retaliation. Temporary or contractor labor solutions are minimized.
- **Organizational culture.** All workers are engaged and respected, especially by organizational leadership.
- **Pay.** All workers are paid a stable and predictable living wage before overtime or other adjustments. Workers’ wages increase with skills and experience.
- **Skills and advancement.** Workers have equitable opportunities to advance to future good jobs through transparent promotion or advancement opportunities.

Readers here will not find that many of the principles will be controversial in application (e.g. minimizing temporary worker solutions) or can involve major changes to current forms of remuneration (e.g., benefits that promote worker mobility would, presumably, mean benefits like retirement accounts that would be completely portable).

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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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