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Increased Risk for Business Defendants Possible

Businesses are on alert this legislative session, as they should be, for increased taxes, new restrictions in human resources, and more health insurance mandates. These are all things that will increase the cost of doing business in the state and many of them are on the road to adoption in the Legislature. Another issue the business community must weigh in on is an attempt to turn back the clock on tort reform to make it more likely that businesses with valuable assets or adequate insurance will pay more than their fair share of damages if they are named in litigation.

HB 143 appears harmless enough. The bill has only one paragraph, a paragraph that defines "party" or "parties" as *only those individuals or entities who are plaintiffs or defendants in the lawsuit when the jury or court is determining the proper apportionment of fault*. This paragraph is far from harmless.

To understand the impact of HB 143, two components of current law must be understood.

- The 50% Rule - In an attempt to balance the interests of plaintiffs and defendants in cases with multiple parties and varying levels of fault, current law states that if a defendant is less than 50% at fault, that defendant can be held responsible only for those damages directly attributable to it. On the other hand, if a defendant is 50% or more at fault, that defendant can be held responsible for the entire claim. Many believe this "50% rule" strikes an appropriate balance between the interests of plaintiffs and defendants because it puts a defendant at risk of assuming more than its fair share of liability only if that defendant is at least 50% at fault.
- Current Definition of "Party" - Current law, as interpreted by the New Hampshire Supreme Court, defines "party" to include *all parties contributing to the occurrence that gave rise to the action*. Thus, "party" may include entities that are not officially before the court at the time judgment is imposed, either because they reached a settlement prior to litigation, because the plaintiff did not choose to name them as a defendant, or because they are immune from liability. Current law does not require that the plaintiff sue every party that contributed to the occurrence; only that, when apportioning fault, the entire scenario be considered. This makes logical sense from a truth and fairness-seeking perspective.

The impact of HB 143 is simply this. First, it defines "party" narrowly, thereby dividing the pie of fault by fewer slices, increasing the likelihood that the 50% rule will be triggered (perhaps by a defendant who is less than 50% at fault when the entire scenario is considered), and increasing the likelihood that one party will be held responsible for more than its fair share of the claim. Second, it allows plaintiffs to determine who will be defined as a "party" and who won't. Who do you think plaintiffs will choose?

The New Hampshire House already approved HB 143. In so doing, it exhibited little regard for those businesses and individuals that carry appropriate levels of insurance and for the impact of increased risk on insurance premiums. In fact, the committee report adopted by the House states, "...while no system is perfect, it is better for the loss to be borne by the defendant's insurance company rather than the innocent plaintiff." This theory may be true when a defendant is a major contributor to a particular occurrence that leads to damage, and that is where current law strikes the balance. **But, should minor contributors also be at risk for the entire claim simply because they happen to have assets or insurance?**

Members of the Senate Judiciary Committee need to hear from businesses on this - and soon. Committee contact information is available at <http://www.gencourt.state.nh.us/senate/members/sencom.asp> (click on each name).

Valerie Acres
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CHAMBER INSIGHT:

The House of Representatives passed several major bills this week, including a mandatory seatbelt law and a bill establishing civil unions in New Hampshire. The business community, however, was focused on HB514, relative to the minimum working wage. HB514 increases the minimum wage in New Hampshire from \$5.15 to \$7.25 over the next year. HB514 mirrors the current federal legislation being considered by Congress that increases the federal minimum wage.

The Greater Manchester Chamber of Commerce supports the main thrust of HB514 to increase the minimum wage to \$7.25. However, the minimum wage issue is not without its complexities. The minimum tipped wage, the base wage paid to tipped employees, is directly tied to the level of the regular minimum wage. Under currently law employers are required to pay tipped employees a minimum wage of \$2.38 per hour or 45% of the minimum wage depending on whichever is higher. As you can see, if HB 514 passes the minimum tipped wage will increase significantly.

While increasing the minimum tipped wage may not seem like a troubling issue, this aspect of HB514 is very concerning to the business community. The fact is tipped employees are undoubtedly some of the best paid employees tipped industry, which is primarily the restaurant industry. The NH Lodging and Restaurant Association (NHLRA) estimates tipped employees on average earn anywhere from \$16 to \$20 dollars per hour. Clearly these employees are not the target of HB514, which aims to boost the pay of our true minimum wage workers.

The solution to this issue (proposed by the NHLRA and supported by the Chamber) is to freeze the minimum tipped wage at an acceptable amount and no longer tie it to a percentage of the minimum wage. Numerous surrounding states have followed suit and done so in previous years. By freezing the tipped wage, businesses will be able to give pay increases to the employees who are truly earning close to the minimum wage, not

tipped employees earning upwards of \$16 per hour. By not freezing the minimum tipped wage we will be further exacerbating the pay difference between minimum wage employees and tipped employees. In the restaurant industry this can have tremendous consequences. Without an amendment to HB514, it may become progressively harder to get workers to accept the “back of the house” non-tipped jobs, which obviously are vital to the overall success of the industry.

Opponents of freezing the minimum tipped wage will argue that the increase is negligible and will not adversely impact the business community. The fact is, however, many small independently owned restaurants and diners operate on a very thin margin. A .80 cent per hour increase in the minimum tipped wage may very well dramatically impact the bottom line and fiscal solvency of many small independent businesses and hurt their ability to operate.

In sum, while the Chamber supports the main thrust of HB514 to increase the minimum wage, we believe the legislature needs examine the unintended consequences of not freezing the minimum wage. It would truly be a shame if HB514 ends up hurting the workers it is intended to help. HB514 will soon be up for consideration in the Senate. The GMCC will closely monitor the bill and support efforts to attach an amendment freezing the minimum tipped wage.

If you have questions on this matter or other legislative issues, please do not hesitate to contact the Chamber.

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