

NEW HAMPSHIRE UNION LEADER

BIA Business Perspective: Reopening NH businesses requires special care from policymakers

By Jim Roche BIA President
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AS STATE policymakers work through a gradual reopening of our economy, it's important they successfully address several policy matters that will directly impact the ability of enterprises large and small, in all corners of the state, to return to economic health.



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These include a legal safe harbor for employers who have acted in good faith during the pandemic, terminating the trigger that will otherwise raise business taxes on all employers, replenish the unemployment insurance trust fund without raising taxes on positively rated employers, and helping all enterprises access testing equipment, particularly thermometers.

Return-to-normal plans now include social distancing measures recommended by the Centers for Disease Control and public health officials, verifying employees' COVID-19 status through temperature screenings and testing, PPE equipment requirements, contact tracing as necessary, and more. Each of these will prove essential to preventing the spread of the virus while concurrently helping enterprises and the economy return to normal. But embedded in each are myriad, legal liability concerns.

For example, employers could risk legal action if they don't accommodate employees who insist on returning to work, even without appropriate health screenings, or because they are at higher risk due to age or underlying health conditions. Or conversely, employers may risk legal action if they terminate an employee who refuses to return to work and declines to provide adequate support for such refusal. Or

businesses may face liability action from those who claim they were exposed to COVID-19 by the employer's particular action, or failure to act.

It doesn't matter if a lawsuit has merit. Once filed, the business will have to spend precious resources to defend itself. Without a legal safe harbor for enterprises acting in good faith, businesses will be deterred from reopening, and for others, from returning to pre-pandemic operations. This will be counterproductive to a quick return to economic health. There are already examples of small businesses choosing not to reopen in part due to the uncertainty of the legal climate moving forward.

Working with some of the state's top lawyers and business leaders, BIA recently provided draft safe harbor language to the governor and legislative leaders. Nearly two dozen leading chambers of commerce and trade associations recently endorsed this language, and with BIA, called on Gov. Chris Sununu to create a legal safe harbor using his emergency powers. BIA also called on state legislators to do the same once the legislative session fully reconvenes. It is unlikely Congress will reach a consensus on this issue, so the need for state action is vital.

Regarding business taxes, a key component of the state budget compromise between the

Legislature and governor in September 2019 was language regarding the Business Profits Tax (BPT) and Business Enterprise Tax (BET). The compromise retained both taxes at their 2019 rate.

However, the future rate of both taxes, whether they were reduced, increased, or stayed at the 2019 rate, was dependent upon the performance of the economy as reflected in total revenues to the state's general fund.

We know now that business tax receipts and other important state tax revenues are falling as a result of the shrinking economy brought on by the pandemic. Through no fault of their own, many businesses throughout the state have lost customers and revenue. Some are closing.

To enact BPT and BET tax increases at this time (as current state law calls for if state revenues are 6% below budgeted expectations), would be extremely indifferent to the struggles of employers of all sizes and will adversely impact their ability to rehire

employees at the very time rehiring is desperately needed. This will also be counterproductive to a quick economic recovery. We support Gov. Sununu's position on this matter: now is not the time to raise business taxes.

It's clear that massive increases in the ranks of unemployed due to COVID-19 is having a dramatic, negative effect on the state's unemployment insurance trust fund balance. Positive rated employers (those that have not caused a drawdown in the trust fund) will see their unemployment taxes automatically increase as trust fund balance thresholds that trigger tax decreases are lost. Similar to our concerns over increasing business taxes, increasing unemployment insurance taxes is highly counterproductive in the current environment. State policy makers must find ways to mitigate such increases.

Finally, many BIA members report challenges accessing testing equipment, specifically non-touch thermometers, a key ingredient in returning to normalcy. Employers are trying to comply with the "Universal Guidelines for All New Hampshire Employers and Employees" released with the Stay at Home 2.0 emergency order. It reads, "Employers should take the temperatures of their employees on-site with a non-touch thermometer each day upon the employees' arrival at work."

Businesses are finding it very challenging to procure these thermometers, hampering their ability to follow guidelines and screen employees for COVID-19. Policy makers must ensure testing equipment gets into the hands of employers so they can provide safe workplaces for employees to return to work.

Individual sectors of New Hampshire's economy, indeed subsectors within sectors, have their own unique challenges in attempting to return to "normal." But the concerns articulated above are nearly universal and should occupy a place at the top of policy makers' to-do list.

Jim Roche is president and CEO of the Business and Industry Association. The BIA, New Hampshire's statewide chamber of commerce, produces this column monthly exclusively for the Sunday News.
