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of the Nebraska Grocery Industry

May/June 2016



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# Nebraska Food News...

## People... Places... Things...

*This section of the magazine is dedicated to announcing the changes, additions, promotions, etc., regarding members of the grocery industry in Nebraska. We invite members to submit information that can be included in this section.*

Customers are willing to spend more on something special, and grocery sellers in Omaha are remodeling and expanding to give it to them. A spate of millions of dollars of spring remodeling and building is bringing to town an expanded selection of meats and cheeses, organic produce, house-baked bread and other specialty foods. The changes come as food sellers here and nationally compete with restaurants and delivery services for customers who are short on time and looking for convenient, trendy and healthful choices. Supermarkets also are looking to set themselves apart, in response to intense competition from club stores like Costco, which is building a second Omaha-area store, and discounters like Walmart, which has opened 10 stores in the Omaha area since 2013 and captures about a third of the metro area's grocery market share, according to a market-tracking report.

At **Hy-Vee**, which is remodeling three west Omaha locations, the changes are coming on the perimeter of the store, the part of the supermarket where sales are growing fastest, store managers said. Changes include spruced-up floral departments, new charcuterie stations and artisan bakeries, and the addition of dry-aged beef. Customer demand is driving the changes, like the 20 additional linear feet of refrigerated space for craft beer at the Hy-Vee store on North 156th in Omaha. It's the fastest growing category in the wine and spirits room according to the spirits manager. New brides-to-be are also enjoying the new private consultation room in the floral department. The manager stated it allows her to better serve brides and other party planners. The brides are also referred to the cake and catering departments. The Linden Market store, which recently added a charcuterie department, is also offering classes in how to build a charcuterie and cheese board. The Hy-Vee at 180th and Q Streets already has an artisan bakery, is also in line for remodeling work, which will include new décor, new checkout lanes, and the charcuterie department. Frank Woodward, Hy-Vee western district vice president said, "We're providing our customers a whole new shopping experience on another level. Your competition is always trying to catch up with you. Stores that don't reinvent themselves risk becoming irrelevant."

The industry analyst stated shoppers still don't want to pay a lot for boxed and canned center-store staples, but with the economy strengthening, people are spending more money on food, and they're trading up in the perishable departments.

Stores like Hy-Vee used to remodel itself every 20 years. Now it's every 10 years.

**Whole Foods**, a high-end grocer, is also reinventing its business since its competitors are offering a wider selection of the organic products it has been known for. The retailer recently reported declining same-store sales for the third consecutive quarter. This spring it is rolling out a new brand of stores, called 365, with a smaller format and a focus on lower-priced staples.

Three **Baker's** stores are in line for remodeling. The stores at 132nd Street and west Maple Road, at 156th Street and west Dodge Road and at 17370 Lakeside Hills Plaza each will see about \$90,000 of work, building permits indicate. Company spokeswoman Sheila Lowrie confirmed that interior remodeling work is on the way but details were not provided. "We are always looking for ways that we can improve our customer shopping experience," she said.

The new **Fareway Meat Market** plans to open soon at Loveland Centre, at 90th Street and West Center Road. The gourmet meat and seafood shop will be home to a steel sculpture of a bull, in a nod to what will be one of the market's signature products – beef. At 6,000 square feet, the market will be a new concept for the Boone, Iowa, grocer. The intent is to provide all of the makings for an exceptional grilling experience, spokesman Garrett Pklapp said. Offerings also will include gourmet cheeses, beers and wines. The shop's main attraction will be a 56-foot meat case, which will also offer a large seafood selection. That's about 50 percent larger than the typical Fareway grocery store counter.

**SpartanNash** recently released a list of eight stores that will be rebranded as Family Fare stores. Seven are being remodeled. The store on 1510 Harlan Drive will have a name change but won't be remodeled. These stores are undergoing major remodels ranging from \$1 million to \$3 million for a total reinvestment of \$14 million. This is on top of earlier remodels of three Supermercado Nuestra Familia locations and six Family Fare stores in 2015. The remodeling work will include new interior and exterior décor, new and expanded product offerings, and welcome centers. The store on West Center Road will

have a Starbucks. With the Living Well sections, "We've made it affordable to eat healthy," said Tom Swanson, vice president for retail operations in SpartanNash's western region.

The Aldi chain will open its seventh Omaha location in late May. A grand opening event will feature free shopping bags for the first 1,000 customers, gift certificates for the first 100 shoppers, and a "produce for a year" sweepstakes.

Construction is in progress on two Fresh Thyme stores. The produce-centered market will open its first Omaha store near 147th and West Maple Road. An open date is projected for mid-June. The second location will open in the former No Frills at 132nd and West Center Road. A fall opening is expected.

Even gas station convenience stores, like Kum & Go, are upping their food selection. Ten Kum & Go stores around the Omaha metro area will see remodels this spring. These will include expansions to their kitchens so they can serve more freshly prepared food like pizza, sandwiches, salads, baked goods and breakfast items. Kum & Go is adding services that many other Omaha convenience stores have added. Bucky's, QuikTrip and Casey's stores here all have added or expanded their kitchens and food offerings in the past two years. \*Information for the above articles on Omaha grocers was taken from an article by Barbara Soderlin in the Omaha World Herald.

Eight years ago, Mike Brown was looking for an opportunity. He visited Adams and was immediately impressed by the number of businesses and the community's involvement in them for a village of only around 600 people. Adams has a consolidated school, two gas stations, a pharmacy, a primary care center... the list goes on. "None of this could happen, none of it,

if the town didn't support it, so it's all about the town," Brown said. "The reason I'm able to do what we do here is because of the town. Having been in the grocery business for years, Brown decided to purchase Adams Super Foods in 2008. He has since made several upgrades and improvements to the store. In November 2015, Brown purchased all new coolers for the dairy section and was able to expand the selections to include both the store's private label and Prairieland Dairy. He also purchased a rotisserie and warmer. Brown recently moved around some areas like the Hunt Brothers Pizza station, which was added about six years ago and has been very successful, and the meat counter. The next improvement he hopes to make is to expand the freezer section. It's these fresh, new updates that Brown thinks are essential to gaining and keeping loyal customers. "If a small-town grocery store can't keep up or isn't willing to put in the effort to keep up or make changes and be fresh with fresh ideas or new ideas...I think that's the reason why we've stayed where we're at," he said. The store also makes a weekly delivery to Sterling and two deliveries a week to Adam's Gold Crest Retirement Home.

Hy-Vee at 156th & Maple donated over \$4,500 to the Western Douglas County Chamber of Commerce food basket project. Store Manager, Jim Ewoldt and his staff of Hy-Vee volunteers donate hours of their time helping to collect, sort, pack and deliver food baskets to nearly 500 families in the western Douglas County area. Each year, under his leadership, the Hy-Vee employees dream up fun and innovative ways to connect with their customers and collect donations in the store to help provide needed cash to pay for food basket items. Their store is the largest cash donor to the food basket project, contributing nearly \$20,000 over the past several years.

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## Executive Director's Corner



By Kathy Siefken

### *Your Government at Work*

Sixty days does not seem like a long time for the legislature to meet but it is important to understand that it is sixty working days. Sixty working days takes the Legislature into mid-April. Next year will be a 90 day session, which will take us into June. During the 2016

Session there were days when debate dragged on for hours on seemingly inconsequential issues and then there were days where the pace of debate and the following vote was swift. This year there were 24 filibusters compared to only 13 last year and 9 the year before. A trend that, unfortunately, seems to be growing.

In this short session, 446 bills were introduced. An additional 664 bills were introduced in 2015, for a total of 1110 bills. Of these, 216 bills were passed into law in 2016 and 243 bills were passed in 2015. With all the filibusters, only those bills with priority designations were heard in the last three or four weeks of the session. 107 bills were designated as priorities and all but 4 were debated before they ran out of time – time that was eaten up by 24 filibusters. Eventually 78 of those priority bills were passed by the Unicameral. Bills that did not pass this year were

indefinitely postponed (killed) and according to the rules, those issues will need to be introduced again in the future to be acted upon. We saw growth in spending held to 3.6

percent, property tax relief and the failure of Medicaid expansion for the fourth time.

Eleven senators are being term-limited out of office at the end of this year. Senators Bloomfield, Campbell, Coash, Cook, Gloor, Haar, Hadley, McCoy, Mello, Schilz and Sullivan have served their two term limit. Five of these senators are chairpersons of a committee and one is the Speaker. They leave with a great deal of knowledge on issues and a passion to work hard for the citizens of this state. Between senators being term limited out and those who are up for re-election, a total of 25 races will appear on the General Election Ballot in November. Discussion has been held regarding the extension of term limits to three four-year terms but legislation has not passed to move in this direction. In 2017 we may potentially have 32 state senators with 2 years of experience or less.

A summary of those issues that NGIA worked this year can be found in this edition of our magazine. The most harmful bills introduced included mandatory sick leave and an increase in tobacco taxes by \$1.50 per pack. Both bills would have been devastating to our members. As we move toward next year, Interim Studies and Interim Hearings will be held. We will participate in these and continue to represent the grocery industry. If you have any questions regarding legislation, please feel free to contact our office.

Until next time ...

A handwritten signature in black ink that reads "Kathy".



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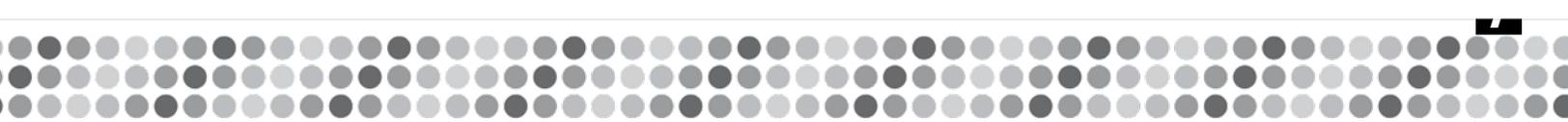
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## Politicians Should Think Twice Before Bashing Business

By *Thomas J. Donohue*  
*President and CEO, U.S. Chamber of Commerce*



Business is a popular punching bag this election cycle. To curry votes and tap into widespread voter discontent, candidates from both parties have attacked various industries, specific job creators, and capitalism itself. They conveniently neglect to mention all the good that the American business community does for our society.

Because private sector entities are structured, owned, and organized in different ways, it's difficult to find hard numbers that reflect businesses' total contributions to our country. But it's worth stating what we do know.

The United States is home to nearly 33 million businesses—from the mother operating an online store as an LLC to the local butcher operating as a sole proprietor to the global C-corporation. All told, these businesses provide Americans with approximately 110 million for-profit private sector jobs.

International trade adds \$13,600 to the average household's income and employs 41 million U.S. workers. And 97% of U.S. exporters are small businesses. Keep that in mind the next time you hear a politician tell you that America is a "loser" when it comes to trade.

American businesses of all sizes pay nearly

\$6.3 trillion in salaries and wages and finance \$862.5 billion in private health insurance and pension plans—proof positive that a good job is better than any social program government could ever devise.

Who benefits when businesses make profits? Profitable corporations are not only able to keep and expand their workforces, but they also pay some \$325 billion in local, state, and federal taxes. And since corporations represent just 5% (1.6 million) of all federal business tax returns, that figure does not reflect the billions paid by businesses that file as individuals. These pass-through businesses file more than 30 million tax returns. These revenues help pay for schools, our military, and programs for the sick, the poor, and the elderly.

American businesses also give generously to charities—corporate philanthropic giving totaled \$17.77 billion in 2014. When it comes to innovation, in 2013 businesses with five or more employees spent \$323 billion on R&D.

American businesses and their employees pay most of society's bills. No presidency, no Congress, and no government can succeed without a vibrant business community, a growing economy, and an innovative and free private sector.

All Americans—especially our political leaders—should remember these simple yet often forgotten facts. And the U.S. Chamber of Commerce will carry that message across the country this election year. If you beat up on business, you're going to hear from us.

## Lincoln Street Market Receives Recognition



Lincoln Street Market of West Point earned the "Excellence in Promotional Merchandising Award," at the Affiliated Foods Midwest Spring Food Show. Tom Grossero (l) presented the award to Roger Buss (r)

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## NGIA Awards Six Scholarships to Nebraska Students

The Nebraska Grocery Industry Association awarded six \$1,500 scholarships to students who work for, or whose immediate family member works for or owns the NGIA member company. Scholarship funds are raised through the Silent Auction that is held during the Annual Legislative Dinner in January, mini-tournaments that are held during the golf outings, and through a donation of income as a result of the sale of Mulligans at the NE Lottery Golf Outing. Applicants are assigned points in multiple areas, including ACT scores, a written essay, community involvement and references. In 2016 a total of 31 individuals applied for the NGIA Scholarship which is available to high school students, college students, and non-traditional students who plan to return to higher education. Applications must be received in the NGIA office no later than April 1 of each year.



**Janey Due** is an employee of Greg's Market in Exeter. She began working at Greg's Market in March of 2014. She attended Exeter -Milligan High School in Exeter. She plans to attend Doane College in Crete and will major in Occupational Therapy.



**Sarah Taylor** is the daughter of Myndi Taylor. Both Sara and Myndi are employed at the Hy-Vee store located at 3410 N 156<sup>th</sup> Street in Omaha. Sarah is a graduate of Burke High School. She plans to take Pre-Physical Therapy, majoring in

Biology/Psychology or Clinical Laboratory Science.



**Kyra Hayes** is the daughter of Brian Hayes who serves as a store director for B&R Stores in Lincoln. Brian has worked for B&R Stores since 1987. Kyra is a graduate of Pius High School in Lincoln. She plans a double major in Nursing and Spanish.



**Alyssa Pracht** was awarded a scholarship for current college students. She is the daughter of Dona Lovegrove Pracht. Both Alyssa and Dona are employed at Lovegrove's Grocery located in Waverly. Alyssa is studying in Berlin,

Germany this summer and is enrolled as a student at UNL. She plans to major in Music Education.



**Rachel Jarvis** is the daughter of Marty Jarvis. Both Rachel and Marty are employees of B&R Stores in Lincoln. Rachel graduated from Lincoln Northeast High School. She plans to major in Industrial Engineering with a minor in

Computer Science or Spanish.



**Jacob Steckelberg** is the son of Mike Steckelberg. Mike is an employee of O'Neill Super Foods, where he has been employed for 23 years. Jacob is a graduate of Chamberlain High School. He plans to major in Pre-Pharmacy then move on to Pharmacy School.

### NGIA Scholarship Applications:

An application can be found on the NGIA website at [www.nebgrocery.com](http://www.nebgrocery.com) We are in the process of updating the scholarship application to a fillable form that can be submitted either by United States Mail or emailed back to our office. We strictly adhere to the guidelines as developed and approved by the NGIA Board of Directors.

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This tournament is included in the annual sponsorship package.

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## Summary of Grocery Industry Day Fly-In in Washington



On April 19-21, 2016 Nebraska grocers attended the Washington Public Policy Fly-In with other industry members from across the nation. Those

representing Nebraska included Tim and Shelly Henderson of Valentine, Mogens Knudsen with stores in Holdrege and Lexington, Pat Hensley and Noreen Otto of Hy-Vee, Kari Armbruster and Keith Dailey of The Kroger Company and Kathy Siefken, NGIA Executive Director. This is a summary of the issues that we discussed with our Congressional Representatives.

### Issues discussed:

**Overtime** - discussion was held regarding the proposed rule on overtime paid for salaried workers. On July 6, 2015 the US Dept. of Labor (DOL) published its proposed rule on overtime pay for salaried workers. DOL sent the final rule to the Office of Management and Budget (OMB) for final review and release on March 14, 2016. The final rule could go into effect by July 2016. The proposed rule on overtime pay is expected to raise the salary threshold from \$23,660 to \$50,440 with annual increases. This is an increase of 113% with no adjustment for geographic differences. After all, the economy in Nebraska is very different from California and New York. We expect that if this proposed rule is approved as originally written it will force employers to reclassify exempt workers as non-exempt, hourly workers and will likely reduce schedule flexibility, management benefits and wage predictability. The Protecting Workplace Advancement and Opportunity Act (HR 4773 in the House and S 2707 in the Senate) has been introduced and requires DOL to conduct a study



on the impact it will have on small businesses. HR 4773 passed the House.

We asked that Senators support S2707, that the level of increase be reduced, a variation for regional differences be adopted, the automatic increases be removed and that an implementation period of at least one-year be put in place. We also asked that this issue go through a formal rulemaking process. This proposed change will have a very significant impact on all employees in the grocery industry, as well as other retail businesses, local schools, colleges, and more.

All Nebraska Congressmen supported this bill in the House and it passed as HR 4773. We thanked Congressman Ashford, Fortenberry and Smith for their support.

Sen Sasse: agreed that this was over burdensome and will write a letter to DOL

Sen Fischer: understood that this is an unreasonable request and will write a letter to DOL



**EMV and Payment Security/Chip and Pin:** Visa/MasterCard required US merchants to migrate to EMV by October 1, 2015. Those merchants that did not implement new chip technology have been forced to pick up the cost of any fraudulent transactions even though retailers have done everything possible to purchase and install EMV equipment. Retailers are still not able to use installed EMV equipment due to lack of certification. As a result retailers are being targeted by sophisticated organized crime rings by presenting counterfeit cards in stores. There is a very real concern regarding the level of suspicious chargebacks on other transactions that do not appear fraudulent and our members are left without recourse to dispute the charges. Grocers are fully PIN-enabled and accept PIN every day for SNAP and WIC along with many debit transactions. We are disappointed the card

companies chose not to implement chip-and-PIN despite its success in preventing fraud in other countries charged for fraudulent transactions.

Retailers have no leverage with Visa/MasterCard or the banks. We requested assistance in resolving this issue either through legislation or investigation. We asked that Congress investigate the criminal rings along with the delays and challenges retailers are facing as they attempt to become EMV-certified.

Congressman Ashford, Fortenberry, and Smith all showed concern with the dilemma retailers face and seemed sympathetic.

Senator Sasse & Fischer agreed it was unreasonable and will research the issue.



**GMO Labeling**

Members of the grocery industry agree that providing customers with information about the products we sell is very important. We need immediate congressional action to create a uniform national standard for labeling of products containing GMOs to ensure that state laws are pre-empted. A state by state patchwork of GMO labeling is confusing to consumers and undermines FDA and USDA food labeling oversights. Vermont's law requiring labeling of



GMO ingredients takes effect on July 1, 2016 and other states will be passing GMO legislation. Vermont passed GMO labeling and it will become the "law of the land"

if state pre-emption is not passed on a national level. Vermont's statute actually contains bounty provisions in that if unlabeled product is found on a retailer's shelves, the retailer is responsible and can be fined.

We thanked all three Congressmen for their

support of HR 1599, which passed in the House last fall.

We asked our Senators to support consideration of the "Biotechnology Labeling Solutions Act" (S 2609). The bill was voted on in the Senate but failed to pass. We asked our Congressional members to support the bill again as it will come back to the House after being amended by the Senate.

Even though Sen. Sasse does not like the bill, he voted in favor of the bill because he understands the need for state pre-emption. He believes very strongly that this is bad policy and that the legislature should not hand over its duties to USDA. He believes there is a possibility that USDA will over-reach as government is known to do.

Sen. Fischer voted to advance the bill but future negotiations will be difficult as those who support the bill have already given much and the other side must give more. She doubts they will find any more middle ground and that there will not be a federal GMO bill that will preempt states.

**Menu Labeling**

The grocery industry supports the Common Sense Nutrition Disclosure Act (HR 2017 and S2217) that will fix FDA final chain restaurant "menu labeling" regulations

that were expanded to grocery stores with 20 or more locations. Neither the House nor Senate bills exempt supermarkets, but makes the menu labeling regulations more workable in a grocery store setting. Both bills preserve local foods that are made differently and sold at only a few stores. They also allow the use of a menu board next to a salad/food bar, rather than individually labeling each item.

We thanked all three congressmen for supporting HR 2017, which passed the House.

Sen. Sasse - supports S2217

Sen. Fischer - supports S2217





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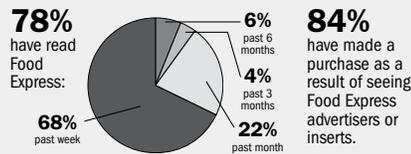
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## **The Center for Retail Compliance (CRC) Serves as Resource**

*By Tiffin Shewmake, Executive Director, CRC*

The Center for Retail Compliance (CRC) at [www.retailCRC.org](http://www.retailCRC.org) is a free resource specifically designed to help retailers understand, manage, and comply with environmental regulations. Retail facilities of all sizes and types are subject to some level of environmental regulation. Take waste for example. Many common consumer products such as cleaning products, perfumes, batteries, paints, and cosmetics may be considered hazardous waste when unsalable. Stores that don't follow specific requirements run the risk of expensive enforcement actions by federal or state regulators. Other types of waste may also be regulated, especially at the state or local level. In some areas, organic waste such as food or lawn waste must be recycled and there are an increasing number of take back and recycling requirements for products such as electronics.

Environmental regulatory areas that can apply in retail does not stop at waste but also includes air, water and product specific requirements. There are regulations for refrigeration to control ozone depleting substances, for emergency generators to reduce air pollution and on labeling for pesticides, including repellents, as well as products that contain certain chemicals. The array of requirements that can vary by jurisdiction makes compliance challenging. However, with increased scrutiny by regulators, retailers cannot ignore these requirements.

The CRC provides regulatory information and resources to help retailers identify what regulations may apply to their operations and to understand the requirements. Users can search by Store Department, Regulatory Area (such as air, water or waste) or State The CRC Tools page has more in-depth information including matrices of regulatory differences by state for key regulations, such as hazardous waste, and even a consumer bag matrix that has regulations from over 200 jurisdictions.

To help retailers stay up to date, the CRC has a Newsroom with retail-related environmental compliance and enforcement stories and a Hot Topics section with information on pressing topics including proposed rules or regulatory changes such as California's recent requirements on BPA warning signs or new rules on reverse logistics from the Pipeline and Hazardous Materials Safety Administration.

Just as important as the regulatory information, is the CRC material on Environmental Management Systems (EMS). Retailers can use this information to design and implement better compliance programs. Even stores not implementing a full EMS, can use the tools for gap analysis and planning to optimize their compliance program. A good compliance program can not only reduce the likelihood of non-compliance but regulators often look at a facilities' compliance program when considering violations and penalties.

The CRC, an initiative of the Retail Industry Leaders Association (RILA), is free and open for all retailers. Contact Tiffin Shewmake at [tiffin.shewmake@rila.org](mailto:tiffin.shewmake@rila.org) or visit [www.retailCRC.org](http://www.retailCRC.org) to see how the CRC can help you.

## **Nebraska Grocery Industry Association 2016 Calendar of Events**

- June 9 . . . . . NGIA Spring Golf Outing at Iron Horse
- June 20-23 . . . FMI Connect – Chicago
- Aug. 17 . . . . . AWG Kansas City Holiday Show
- Aug. 24-25 . . . SpartanNash Fall Trade Show in Minneapolis
- Sept. 9-10 . . . . Affiliated Foods Midwest Fall Trade Show in Omaha
- Sept. 11-15 . . . National Grocers Association: The Sustainable Growth Conference, Ithaca, NY
- Sept. 23-24 . . . AWG Springfield Holiday Show
- Sept. 22 . . . . . Hackers & Snackers Golf Extravaganza
- Sept. 27 . . . . . B&R Golf Outing

*If you would like to have your event listed on the calendar, please contact the NGIA office*

## Whitefoot Market has Long History



Gene Whitefoot has been in the grocery business in Boelus since Feb. 8, 1941. Seventy-five years later, he still works six days a week. He has lived his entire life in a two-block area of Boelus. He was born a block away from the grocery store and he now lives a block south of there. When he was 11 years old, Whitefoot started working at the store which was located at the corner of Delaware and Sixth Streets. He's been coming to work at the store ever since. He became the sole owner of the business in 1992 when it became known as Whitefoot Market.

His son, Wayne, is in charge of a very successful Whitefoot Catering, which operates out of the same building. That business caters events over a wide area. Last fall, Whitefoot Catering handled nine weddings in one day. Three other groups picked up their meals at the store. If not for the catering business the grocery store wouldn't be around. "Small stores are going by the wayside," Whitefoot said. "Wally World" has taken care of them, he said.

Whitefoot has been around downtown Boelus long enough that he remembers when area farmers came into town every Thursday night. A free movie would be shown outside for the kids. Farmers brought in their eggs and cream and got groceries in exchange. Neighbors would visit with neighbors. On those nights, the grocery store sometimes stayed open until 1 a.m. Every town had a bustling evening like that, he remembers. The only thing that varied was which night it was.

When Whitefoot was very young, Boelus had three grocery stores, a hardware store, a meat market, two elevators, two banks and two bars. In a town of 320 people, six places had gas pumps.

Boelus, which is now home to 185 people, is still doing all right. In addition to the grocery store and catering operation, Boelus has a steak house, filling station, bank and fertilizer plant.

*Modified from Extraordinary Person: Gene Whitefoot by Jeff Bahr (Jeff.bahr@theindependent.com), Grand Island Independent*



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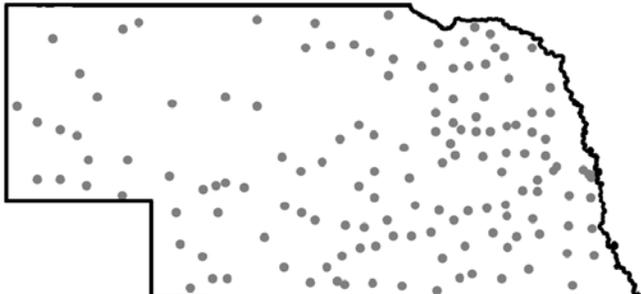
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## Nebraska Child Labor Law Issues

### 48-1203.01. Training wage; rate; limitations.

An employer may pay a new employee who is younger than twenty years of age and is not a seasonal or migrant worker a training wage of at least seventy-five percent of the federal minimum wage for ninety days from the date the new employee was hired. An employer may pay such new employee the training wage rate for an additional ninety-day period while the new employee is participating in on-the-job training which (1) requires technical, personal, or other skills which are necessary for his or her employment and (2) is approved by the Commissioner of Labor. No more than one-fourth of the total hours paid by the employer shall be at the training wage rate.

An employer shall not pay the training wage rate if the hours of any other employee are reduced or if any other employee is laid off and the hours or position to be filled by the new employee is substantially similar to the hours or position of such other employee. An employer shall not dismiss or reduce the hours of any employee with the intention of replacing such employee or his or her hours with a new employee receiving the training wage rate.

**Source:** Laws 1991, LB 297, § 3; Laws 1997, LB 569, § 2; Laws 2007, LB265, § 23.

### Child Labor Law: Employment Certificate Required

48-302. Children under sixteen; employment certificate required; enforcement of section.

No child under sixteen years of age shall be employed or permitted or suffered to work in any employment as defined in section 48-301 within this state unless the person or corporation employing the child procures and keeps on file, accessible to the attendance officers and to the Department of Labor and its assistants and employees, an employment certificate as prescribed in section 48-304 and keeps two complete lists of all such children employed in the building, one on file and one conspicuously posted near the principal entrance of the building in which such children are employed. Upon the termination of the employment of a child so registered whose certificate is so filed, such certificate shall be transmitted by the employer to the person authorizing the certificate pursuant to section 48-303 and shall be turned over to the child named upon demand. Any attendance officer or the Department of Labor or its assistants and employees may demand that any employer in whose place of business a child apparently under the age of sixteen years is employed or permitted or suffered to work, and whose employment certificate is

not then filed as required by this section, either furnish within ten days satisfactory evidence that such child is in fact over sixteen years of age or cease to employ or permit or suffer such child to work in such place of business. The same evidence of the age of such child may be required from such employer as is required on the issuance of an employment certificate as provided in section 48-304, and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child. In case such employer fails to produce and deliver to the attendance officer or the Commissioner of Labor within ten days after demand such evidence of the age of any child as may be required under the provisions of section 48-304 and continues to employ such child or permit or suffer such child to work in such place of business, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for a violation of this section that such child is under sixteen years of age and is unlawfully employed.

US Dept. of Labor Wage and Hour Division (WHD)

**Fact Sheet #38: Child Labor Rules for Employing Youth in Grocery Stores under the Fair Labor Standards Act (FLSA)**

This fact sheet provides general information concerning the application of the federal child labor provisions to grocery stores and supermarkets that employ workers who are less than 18 years of age. For detailed information about the federal child labor provisions, please read Regulations, [29 CFR Part 570](#).

The Department of Labor is committed to helping young workers find positive, appropriate, and safe employment experiences. The child labor provisions of the FLSA were enacted to ensure that when young people work, the work does not jeopardize their health, well-being, or educational opportunities. Working youth are generally entitled to the same minimum wage and overtime protections as older adults. For information about the minimum wage and overtime requirements in the grocery store and supermarket industries, please see [Fact Sheet 6](#) in this series, The Retail Industry under the Fair Labor Standards Act.

### Minimum Age Standards for Employment

The FLSA and the child labor regulations, issued at [29 CFR Part 570](#), establish both hours and occupational standards for youth. Youth of any age are generally permitted to work for businesses entirely owned by their

parents, except those under 16 may not be employed in mining or manufacturing and no one under 18 may be employed in any occupation the Secretary of Labor has declared to be hazardous.

**18 Years of Age**

Once a youth reaches 18 years of age, he or she is no longer subject to the federal child labor provisions.

**16 & 17 Years of Age**

Sixteen- and 17-year-olds may be employed for unlimited hours in any occupation other than those declared hazardous by the Secretary of Labor. Examples of equipment declared hazardous in food service establishments include:

Power-driven meat and poultry processing machines (meat slicers, meat saws, patty forming machines, meat grinders, and meat choppers), commercial mixers and certain power-driven bakery machines. Employees under 18 years of age are not permitted to operate, feed, set-up, adjust, repair, or clean any of these machines or their disassembled parts

Balers and Compactors. Minors under 18 years of age may not load, operate, or unload balers or compactors. Sixteen- and 17-year-olds may load, but not operate or unload, certain scrap paper balers and paper box compactors under certain specific circumstances. (See Fact Sheet #57, in this series, Hazardous Occupations Order No. 12. Hazardous Occupations Order No. 12, Rules for Employing Youth and the Loading, Operating, and Loading of Power-Driven Balers and Compactors under the Fair Labor Standards Act (FLSA)).

Motor Vehicles. Generally, no employee under 18 years of age may drive on the job or serve as an outside helper on a motor vehicle on a public road, but 17-year-olds who meet certain specific requirements may drive automobiles and trucks that do not exceed 6,000 pounds gross vehicle weight for limited amounts of time as part of their job. Such minors are, however, prohibited from making time sensitive deliveries (such as pizza deliveries or other trips where time is of the essence) and from driving at night. (See Fact Sheet #34: Child Labor Provision and the Driving of Automobiles and Trucks under the Fair Labor Standard Act.)

**14 & 15 Years of Age**

Fourteen- and 15- year-olds may be employed in restaurants and quick-service establishments outside school hours in a variety of jobs for limited periods of time and under specified conditions. Child Labor Regulations No. 3, 29 C.F.R. 570, Subpart C, limits both the time of day and number of hours this age group may be employed as well as the types of jobs they may perform.

**Hours and times of day standards for the employment of 14- and 15-year-olds:**

- outside school hours; school hours are determined by the local public school in the area the minor is residing while employed;
- no more than 3 hours on a school day, including Fridays;
- no more than 8 hours on a non-school day;
- no more than 18 hours during a week when school is in session;
- no more than 40 hours during a week when school is not in session;
- between 7 a.m. and 7 p.m.- except between June 1 and Labor day when the evening hour is extended to 9 p.m.

**Occupation standards for the employment of 14- and 15-year-olds:**

- They may perform cashiering, shelf stocking, and the bagging and carrying out of customer orders.
- They may perform clean up work, including the use of vacuum cleaners and floor waxers.
- They may perform limited cooking duties involving electric or gas grills that do not entail cooking over an open flame. They may also cook with deep fat fryers that are equipped with and utilize devices that automatically raise and lower the "baskets" into and out of the hot grease of oil. They may not operate NEICO broilers, rotisseries, pressure cookers, fryolators, high-speed ovens, or rapid toasters.
- They may not perform any baking activities.
- They may not work in warehousing or load or unload goods to or from trucks or conveyors.
- They may not operate, clean, set up, adjust, repair or oil power driven machines including food slicers, grinders, processors, or mixers.
- They may clean kitchen surfaces and non-power-driven equipment, and filter, transport and dispose of cooking oil, but only when the temperature of the surface and oils do not exceed 100° F.
- They may not operate power-driven lawn mowers or cutters, or load or unload goods to or from trucks or conveyors.
- They may not work in freezers or meat coolers, but they may occasionally enter a freezer momentarily to retrieve items.
- They are prohibited from working in any of the Hazardous Orders (discussed above for 16- and 17-year-olds).

Children under 14 years of age may not be employed

in non-agricultural occupations covered by the FLSA, including food service establishments. Permissible employment for such children is limited to work that is exempt from the FLSA (such as delivering newspapers to the consumer and acting). Children may also perform work not covered by the FLSA such as completing minor chores around private homes or casual baby-sitting.

#### **Work Experience and Career Exploration Program (WECEP)**

WECEP is a program designed to provide a carefully planned work experience and career exploration program for 14- and 15-year-old youths who can benefit from a career oriented educational program designed to meet the participants' needs, interests and abilities. The program is aimed at helping youths to become reoriented and motivated toward education and to prepare them for the world of work.

State Departments of Education are granted approval to operate a WECEP by the Administrator of the Wage and Hour Division for a 2-year period. Certain provisions of child labor provisions are modified for 14- and 15-year-old participants during the school term.

- They may work during school hours.
- They may work up to 3 hours on a school day; and as many as 23 hours in a school week.
- They also may work in some occupations that would otherwise be prohibited under a variance issued by the Administrator, but they may not work in manufacturing, mining or any of the 17 Hazardous Occupations.

Individual employers may partner with participating local school districts in those states authorized to operate WECEPs

#### **Work-Study Program (WSP)**

WSP is a program designed to help academically oriented students enrolled in a college preparatory high school curriculum pursue their college diplomas. Some of the hours standards provisions of Child Labor Regulation No. 3 are varied for certain 14- and 15-year-old students participating in a Department of Labor approved and school-supervised and administered WSP. Participating students must be enrolled in a college preparatory curriculum and identified by authoritative

personnel of the school as being able to benefit from the WSP

Students enrolled in an authorized WSP:

- May work no more than 18 hours in any one week when school is in session, a portion of which may be during school hours, in accordance with the following formula that is based upon a continuous four-week cycle.
  - o In three of the four weeks, the participant is permitted to work during school hours on only one day per week, and for no more than for eight hours on that day.
  - o During the remaining week of the four-week cycle, such minor is permitted to work during school hours on no more than two days, and for no more than for eight hours on each of those two days
  - o The employment of such minors would still be subject to the remaining time of day and number of hours standards contained Child Labor Regulation No. 3 and discussed earlier in this fact sheet.
- Are held to all the occupation standards established by Child Labor Regulation No. 3

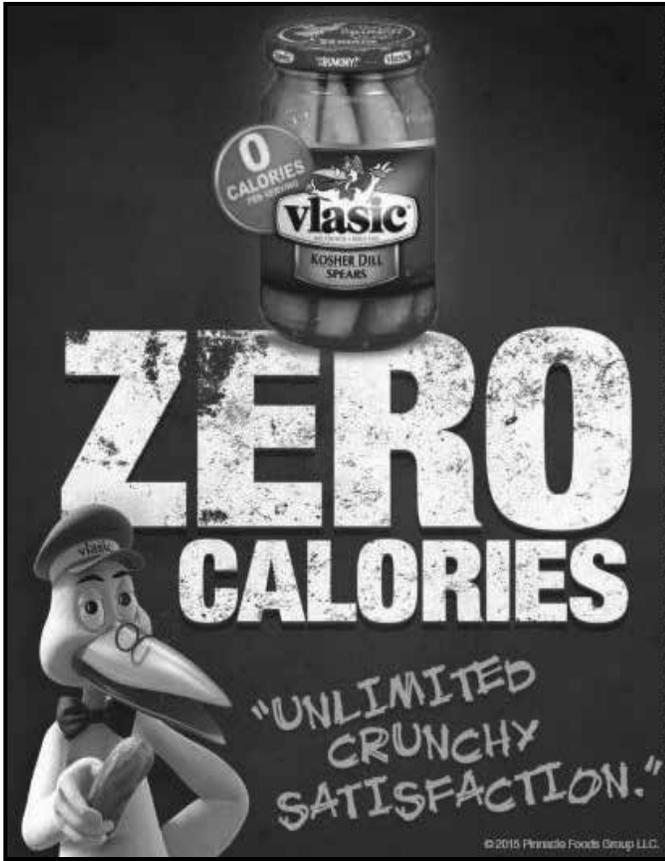
#### **Where to Obtain Additional Information**

For more information on the FLSA child labor provisions, including a complete list of all hazardous occupation orders, visit the YouthRules! Web site at [www.youthrules.dol.gov](http://www.youthrules.dol.gov).

For additional information on the Fair Labor Standards Act, visit the Wage and Hour Division Web site: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When state child labor laws differ from the federal provisions, an employer must comply with the higher standard. Links to your state labor department can be found at [http://www.dol.gov/whd/contacts/state\\_of.htm](http://www.dol.gov/whd/contacts/state_of.htm).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.



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## **NLRB Argues “Misclassification” as an Independent Contractor is Unfair Labor Practice**

By Steven M. Swirsky; Courtesy Epstein Becker Green Management Memo

In a further incursion into the area of the gig and new age economy, the Regional Director for the National Labor Relations Board’s Los Angeles office has issued an unfair labor practice complaint alleging that it is a violation of the National Labor Relations Act (the “Act”) for an employer to misclassify an employee as an independent contractor.

The Complaint, which is based on a charge filed by the International Brotherhood of Teamsters, through its’ Justice For Port Truck Drivers campaign, asserts that Intermodal Bridge Transport (“IBT”) “has misclassified its employee drivers as independent contractors, thereby inhibiting them from engaging in Section 7 activity and depriving them of the protections of the Act. The theory behind the ULP charge and complaint is that the Act gives employees the right to unionize and engage in other protected, concerted activity, and that if an employer misclassifies a worker as an independent contractor, it unlawfully deprives the worker of those rights.

The issuance of the complaint in this case comes less than a month after the Board’s General Counsel issued General Counsel Memorandum 16-01, Mandatory Submissions to Advice, identifying the types of cases that reflected “matters that involve General Counsel initiatives and/or priority areas of the law and labor policy.” Among the top priorities are “Cases involving the employment status of workers in the on-demand economy,” and “Cases involving the question of whether the misclassification of employees as independent contractors,” which as reflected in the IBT complaint the General Counsel contends violates Section 8(a)(1) of the Act.

Clearly organized labor is using the General Counsel Memorandum as an invitation to present cases raising the issues the General Counsel is seeking to litigate. We will continue to report as additional cases emerge from the General Counsel’s wish list of priorities and initiatives.

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## **Study Says Obama Has Issued \$85B in Regs in 2016**

(The Hill) TheHill.com reports that President Obama’s final year in office has been marked by a rapid increase in rulemaking to the cost of \$85 billion, according to a new study from this conservative group.

The study from the American Action Forum found that the Obama administration has issued 44 economically significant regulations since the beginning of 2016, with each projected to have an impact of at least \$100 million. This is the most any president has issued during an election year in the past two decades, the study notes. The total cost of rulemaking has reached \$85 billion in 2016.

The pace of regulations began to speed up in April as the Obama administration looks to finish rules before a late-May deadline after which the next administration could overturn them.

Lawmakers have 60 legislative days under the Congressional Review Act to pass a resolution blocking a new rule. But if lawmakers don’t get 60 days to review that clock would start again next year under a new administration.

The deadline is May 23, or “Regulation Day” as the American Action Forum calls it.

“Once Regulation Day passes, the next Congress will have an opportunity to review the administration’s Lame Duck rules,” wrote Sam Batkins, regulatory policy directory at the American Action Forum.

The Labor Department’s fiduciary rule, which requires retirement investment advisers to act in the best interest of their clients, was finalized last month and will cost an estimated \$31.5 billion in economic growth, according to the group.

The study also pointed to another 35 economically significant regulations — including the Labor Department’s overtime rules — that it says could be finalized before regulation day. “These regulatory costs essentially represent unchecked power for the president,” Batkins said.

## **FDA Issues Final Deeming Regulations Regarding Oversight of all Tobacco Products**

Today the US Food and Drug Administration (FDA) issued the long-awaited final deeming regulations which extend oversight to all tobacco products – including e-cigarettes, cigars, hookah tobacco and pipe tobacco, among others. Under the FDA's final deeming regulations electronic cigarettes and premium cigars will now be regulated the same way as tobacco cigarettes and regular cigars.

Under the rule, the U.S. Food and Drug Administration would have to approve all tobacco products not currently regulated that were introduced to the market after February 2007. The electronic cigarette industry was in its infancy at this point and these products will be subject to the so-called “predicate date” pre-market approval process.

Premium, hand-rolled cigars would also be included in the new regulation. This final rule also prohibits the sale of “covered tobacco products” to individuals under the age of 18 and requires the display of health warnings on cigarette tobacco, roll-your own tobacco, and covered tobacco product packages and in advertisements.

The new regulations can be viewed in the Federal Register at: [https://www.federalregister.gov/articles/2016/05/10/2016-10685/deeming-tobacco-products-to-be-subject-to-the-federal-food-drug-and-cosmetic-act-as-amended-by-the?source=govdelivery&utm\\_medium=email&utm\\_source=govdelivery](https://www.federalregister.gov/articles/2016/05/10/2016-10685/deeming-tobacco-products-to-be-subject-to-the-federal-food-drug-and-cosmetic-act-as-amended-by-the?source=govdelivery&utm_medium=email&utm_source=govdelivery)

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## **Websites Should be Accessible to Deaf and Blind Individuals**

By way of background, in September 2010, the DOJ announced that it would issue new regulations to address website accessibility, but has since delayed issuance of these new regulations. These proposed regulations are expected to provide formal agency guidance regarding retailers and other public accommodations' obligations to make websites accessible to deaf and blind individuals. Although it was previously thought that the DOJ would be issuing its new regulations in spring of 2016, the DOJ has now said that new regulations would not be issued until 2018. Thus, the state of the law regarding the applicability of Title III of the ADA to company websites will likely remain in flux for the next several years.

Nonetheless, even though no regulations currently exist, the DOJ has emphasized that businesses should make websites accessible to the disabled, and has relied on a set of guidelines called the Web Content Accessibility Guidelines (“WCAG”). Further, Title III of the ADA imposes specific obligations on places of public accommodation to ensure effective communication with patrons.

Carlson Lynch and other law firms have relied on both the WCAG and Title III's general obligations in their claims of website “accessibility failures.” An example of an accessibility failure would be when non-text content on a website does not have an equivalent text alternative, or when a web page does not have a title that describes a topic or purpose.

As a result of the threat of this litigation, it would be prudent for companies to have an individual or group of individuals test their websites for accessibility and, if necessary, potentially implement changes designed to improve accessibility. Taking that step and working with Carlson Lynch to avoid litigation would be a good step. Companies may also want to create or adopt a web accessibility policy consistent with the requirements set forth in the WCAG.



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For more information about food industry donations, please contact Mike Gudenrath at 402.905.4826.



[www.FoodBankHeartland.org](http://www.FoodBankHeartland.org)



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