EMPLOYMENT DISINCENTIVES AND
SMALL BUSINESSES:
A PILOT STUDY

UNIVERSITY of PENNSYLVANIA

The Wharton School
INDUSTRIAL RESEARCH UNIT
PHILADELPHIA, PENNSYLVANIA 19104

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EMPLOYMENT DISINCENTIVES AND
SMALL BUSINESSES:
A PILOT STUDY

Report to the Small Business Administration
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by
Industrial Research Unit
The Wharton School
University of Pennsylvania

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Philadelphia
April 1984
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This pilot study of disincentives to employment by small business had its genesis with the Small Business Committee of the American Institute of Certified Public Accountants (AICPA). The distinguished members of the Committee felt, from talking to their small business clients, that many such businesses were needlessly and adversely impacted by governmental legislation and administrative regulation, and that their owners and managers were required to spend a disproportionate amount of time and effort coping with these problems, to the detriment of their businesses and employment potential. At the same time, this Committee knew that factual evidence was required in order to support this thesis, and that such evidence was not available. Accordingly, the Committee requested the Wharton School's Industrial Research Unit to propose a pilot study to the United States Small Business Administration (SBA) to investigate this issue.

The SBA accepted the proposal for a pilot study, and an interview guide was prepared with the assistance of the Committee with whom the undersigned met twice to obtain guidance and suggestions. Because of the limited size of the grant, interviews with small businesses were confined to the New York-Washington, D. C., corridor. Members of the AICPA Small Business Committee contacted clients and arranged for access for interviews. Indeed, if the time and money were available, the number of interviews could easily have been increased fivefold.

All the interviews were conducted by Ms. Evelyn M. Erb. A chemical engineer by profession, Ms. Erb worked for Atlantic Richfield Corporation before interrupting her work to enter the Master of Business Administration
program at the Wharton School where she is completing her first year. She also drafted the report under my direction and processed it, with the charts and tables, on the computer.

Our thanks are due to the members of the AICPA Small Business Committee for their assistance. All were most helpful, but without in any way reducing our gratitude to each and everyone, special mention should be made of William T. Diss who first suggested that the Wharton Industrial Research Unit be contacted, Ivan Bull who served as chairman of the Committee when this study began, and John R. Mitchell, Director, Private Companies Practice Section who assisted in every way possible.

Respectfully submitted

Herbert R. Northrup, Director
Industrial Research Unit
Wharton School
University of Pennsylvania

Philadelphia, Pennsylvania
April 18, 1984
INTRODUCTION

The Wharton School's Industrial Research Unit (IRU) was commissioned by the U.S. Small Business Administration (SBA) to make a pilot study of government disincentives that hinder the growth and employment capability of small businesses. This study grew out of discussions with the Small Business Committee of the American Institute of Certified Public Accountants (AICPA), which asked the IRU to request SBA funds for the pilot project. Much of the government's efforts to encourage business is in the form of incentives (e.g., tax credits and job training programs). Many of these incentives are structured to be utilized most effectively by large firms. For example, without a personnel department or specialized employee relations expertise it is likely to be more difficult to take advantage of job training programs; and although tax credits can be deferred, the smaller firm, with less income to shelter, would be better served by a direct payback. The concern is that traditional incentives may not be the best way to stimulate small business growth.

Perhaps the best way to stimulate small business growth is to remove the existing disincentives facing small businesses. The issue of disincentives facing small businesses is a timely one, largely because jobs created by small businesses account for two-thirds of the new jobs created in the past decade. The
objectives of this study were to determine, preliminarily by a pilot study, which government regulations affect small businesses, to what degree the impact of those regulations is beneficial or adverse to them, and how those regulations affect their employment practices.

Chief executives of twenty firms were surveyed by personal interviews. The names of the companies and their management were obtained from members of the Small Business Committee of the AICPA, who also enlisted the cooperation of the chief executives of the companies. All of the companies interviewed were in the mid-Atlantic region: New York, Philadelphia, Baltimore, and Washington, D.C. A "small business" was defined as a firm with less than 500 employees.

DESCRIPTION OF THE SURVEY INSTRUMENT

The survey instrument, which is attached as Appendix A, contains seven major parts designed to determine:

1. the company's profile;
2. its accessibility to information;
3. the major problems it has experienced in recent years;
4. the principal employment-related issues that have affected the business (unprompted);
5. the degree to which the impact of specific (prompted) employment legislation has been beneficial or adverse;
6. the impact legislation has had on the business' labor practices.
7. other disincentives to growth that the business has faced.

COMPANY PROFILE

The firms were divided into five categories as follows:

<table>
<thead>
<tr>
<th>Industry Type</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturing</td>
<td>8</td>
<td>40%</td>
</tr>
<tr>
<td>Association/Services</td>
<td>7</td>
<td>35%</td>
</tr>
<tr>
<td>Retail</td>
<td>2</td>
<td>10%</td>
</tr>
<tr>
<td>Wholesale</td>
<td>2</td>
<td>10%</td>
</tr>
<tr>
<td>Construction</td>
<td>1</td>
<td>5%</td>
</tr>
</tbody>
</table>

The majority of the twenty firms have been established since 1960. One-half of the companies were staffed with 50 to 150 employees. Their mean gross revenues were between $8 and $12 million. Nine of the twenty firms were unionized. Histograms 1 through 3 provide distributions of the respondent firms by date established, number of employees, and gross revenues.
ACCESS TO INFORMATION

All the firms interviewed had access to good accounting and legal expertise. Accounting expertise seemed to be a well-utilized resource; however, legal counsel was readily sought by only one-half of the firms. The prohibitive cost of legal fees was given as the reason why many firms hesitated to seek legal advice. Of the ten firms that consulted with their attorney without hesitation, four had attorneys on their staff, usually in a line management position.

In contrast, only seven of the firms interviewed had a full-time person to handle personnel issues. Of these, few were well versed in employment-related legislation. Most firms relied heavily on their trade associations to keep them informed of legislation and sought legal counsel when information or advice was needed on an employment issue. The issue of how readily a firm consults its legal counsel, especially with regard to employment concerns, was highlighted as an important one. Of course, whether or not a company has a personnel officer is a size-related issue. No company with fewer than 150 employees had any type of personnel department (See Histogram 4).
MAIN DIFFICULTIES IN RUNNING THE BUSINESS

In summarizing the interviews below we reproduce the views of the respondents. Whether their opinions as to the various laws are correct is not the subject of this report. What is significant is what the executives of these small businesses think, for their beliefs motivate their policies and actions.

Managers were asked what the main difficulties have been in running their businesses in recent years. Because of the severe recession in the past few years, three of the five major issues were reduced sales, difficulty raising capital because of high interest rates, and cash-flow problems. The other two major concerns were reduced profit margins, attributable either to inflation-related increases in equipment, material, and labor costs or to strong competition and difficulties with the union. Each of these concerns was raised by six firms. Five companies considered their difficulty finding competent employees a major concern. Other significant business concerns raised by two or more companies included industry-specific aspects of government regulation, misfitting upper management, trouble getting receivables paid, antitrust suits or other Securities and Exchange Commission (SEC)-related difficulties, and growth too rapid for the company to manage.
UNPROMPTED EMPLOYMENT-RELATED ISSUES OF CONCERN

Survey participants were then asked what employment-related pieces of legislation had affected their businesses either in a positive or in a negative way. The three most frequently mentioned adverse concerns were issues involving the National Labor Relations (Taft-Hartley) Act (NLRA), equal employment matters involving the Equal Employment Opportunity Commission (EEOC) or the Office of Federal Contract Compliance Programs (OFCCP), and health and safety issues concerning the Occupational Health and Safety Administration (OSHA). Employment insurance, workers' compensation, and the Employment Retirement Insurance Security Act (ERISA) issues were also considered to be adverse by several of the companies. Legislation that was considered beneficial by the businesses included tax credits and job training programs of various kinds. A complete list of the unprompted items that the firms mentioned, both adverse and beneficial, is found in Tables 1 and 2.

SPECIFICS ON PROMPTED PIECES OF EMPLOYMENT LEGISLATION

From a list of employment legislation items, each of the companies was asked to indicate which ones they had experienced, and to what degree the items had been either beneficial or adverse. The list of items follows:
These items were chosen because they were anticipated to be areas of concern. Table 3 ranks these issues by the number of companies considering them adverse. Almost every prompted issue was considered adverse by more than 50 percent of the firms that had experience with it, with two exceptions—the Age Discrimination in Employment Act and the minimum wage.

An index was developed to quantify the degree of impact government legislation had on a particular firm. This index can be used to compare the impact on one firm with that on another firm, even though the types of legislation that affect the two firms may be different. The index was designed by assigning a point...
rating to the answer of each prompted item. The points were assigned in the following manner:

<table>
<thead>
<tr>
<th>Rating</th>
<th>Points</th>
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<tbody>
<tr>
<td>Highly Beneficial</td>
<td>+2</td>
</tr>
<tr>
<td>Beneficial</td>
<td>+1</td>
</tr>
<tr>
<td>Neutral</td>
<td>0</td>
</tr>
<tr>
<td>Adverse</td>
<td>-1</td>
</tr>
<tr>
<td>Highly Adverse</td>
<td>-2</td>
</tr>
</tbody>
</table>

Thus, the more negative the employment legislation sensitivity index, the more adversely affected the company has been by government employment-related legislation. The more positive, the more beneficial the effect of the legislation has been. An employment legislation sensitivity index was determined for each of the twenty companies surveyed. The impact of issues that were not included in the list of prompted items was also integrated into the index value. Histogram 6 shows the number of firms with a given index value. Table 4 shows the correlation between a firm's index and its industry. Histogram 5 shows the correlation between a firm's index and its willingness to seek legal counsel.
TABLE 1
UNPROMPTED EMPLOYMENT-RELATED ISSUES
CONSIDERED ADVERSE BY SMALL BUSINESSES

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>NO OF COMPANIES WHICH RAISED THE ISSUE AS ADVERSE</th>
</tr>
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<tbody>
<tr>
<td>NLRA</td>
<td>5</td>
</tr>
<tr>
<td>EEOC</td>
<td>4</td>
</tr>
<tr>
<td>OSHA</td>
<td>4</td>
</tr>
<tr>
<td>Employment Insurance</td>
<td>3</td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>3</td>
</tr>
<tr>
<td>ERISA</td>
<td>2</td>
</tr>
<tr>
<td>HM Act 1973</td>
<td>2</td>
</tr>
<tr>
<td>Corporate Taxes</td>
<td>2</td>
</tr>
<tr>
<td>Prompt Payment Act</td>
<td>2</td>
</tr>
<tr>
<td>IRS</td>
<td>1</td>
</tr>
<tr>
<td>Difficulty Dismissing Employees</td>
<td>1</td>
</tr>
<tr>
<td>Restrictions on what an Employer can say about an employee</td>
<td>1</td>
</tr>
<tr>
<td>Paperwork involved with Government contracts</td>
<td>1</td>
</tr>
<tr>
<td>Environmental Cleanup Regulations</td>
<td>1</td>
</tr>
<tr>
<td>Zoning/Prohibitive license and occupancy fees</td>
<td>1</td>
</tr>
</tbody>
</table>
TABLE 2
UNPROMPTED EMPLOYMENT-RELATED ISSUES CONSIDERED BENEFICIAL BY SMALL BUSINESSES

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>NO OF COMPANIES WHICH RAISED THE ISSUE AS BENEFICIAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax credits</td>
<td>5</td>
</tr>
<tr>
<td>Job Training Programs</td>
<td>3</td>
</tr>
<tr>
<td>Set Asides</td>
<td>2</td>
</tr>
<tr>
<td>Tax Refinancing</td>
<td>1</td>
</tr>
<tr>
<td>ESOP</td>
<td>1</td>
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### TABLE 3
RESPONSES TO PROMPTED EMPLOYMENT-RELATED ISSUES

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>NUMBER OF COMPANIES CONSIDERING THE ISSUE ADVERSE</th>
<th>% OF COMPANIES HAVING EXPERIENCE WITH THE ISSUE</th>
<th>% OF COMPANIES HAVING ADVERSE EXPERIENCE WITH THE ISSUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>EEOC</td>
<td>10</td>
<td>17</td>
<td>59</td>
</tr>
<tr>
<td>Record-keeping Requirements</td>
<td>9</td>
<td>12</td>
<td>75</td>
</tr>
<tr>
<td>OSHA</td>
<td>8</td>
<td>13</td>
<td>62</td>
</tr>
<tr>
<td>NLRA</td>
<td>8</td>
<td>12</td>
<td>62</td>
</tr>
<tr>
<td>ERISA</td>
<td>7</td>
<td>14</td>
<td>50</td>
</tr>
<tr>
<td>Difficulties Reducing Labor Force</td>
<td>7</td>
<td>13</td>
<td>54</td>
</tr>
<tr>
<td>Payroll Taxes</td>
<td>7</td>
<td>20</td>
<td>35</td>
</tr>
<tr>
<td>Age Discrimination Act</td>
<td>5</td>
<td>9</td>
<td>56</td>
</tr>
<tr>
<td>Minimum Wage</td>
<td>2</td>
<td>6</td>
<td>33</td>
</tr>
</tbody>
</table>
TABLE 4
INDEX VALUES CORRELATED BY INDUSTRY

<table>
<thead>
<tr>
<th>INDIVIDUAL COMPANY INDEXES</th>
<th>INDUSTRY INDEX AVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>MANUFACTURING</td>
<td>- .5 - 7 -1 -2.5 -1 +2 -2 -5</td>
</tr>
<tr>
<td>SERVICE</td>
<td>+ 1.5 - 3 -1 -1 -8 -1 -2</td>
</tr>
<tr>
<td>RETAIL</td>
<td>- 2.5 - 3</td>
</tr>
<tr>
<td>WHOLESALE</td>
<td>0 -10</td>
</tr>
<tr>
<td>CONSTRUCTION</td>
<td>-10</td>
</tr>
</tbody>
</table>
HISTOGRAM 1
DISTRIBUTION OF COMPANIES
BY DATES ESTABLISHED

DATE ESTABLISHED

NUMBER OF COMPANIES
0 1 2 3 4 5 6 7
HISTOGRAM 2
DISTRIBUTION OF COMPANIES
BY NUMBER OF EMPLOYEES

NUMBER OF EMPLOYEES
0-49  50-99  100-149  150-199  200-249  250-299  300-349  350-399  400-449  450+

NUMBER OF COMPANIES
0  1  2  3  4  5
HISTOGRAM
CORRELATION BETWEEN SIZE OF COMPANY
AND ITS PERSONNEL EXPERTISE

PERCENT OF COMPANIES WITH PERSONNEL DEPARTMENT

NUMBER OF EMPLOYEES

0-149  150-299  300-449  450+

0  20  40  60  80  100
CORRELATION BETWEEN A COMPANY'S WILLINGNESS TO SEEK LEGAL COUNSEL AND ITS EMPLOYMENT LEGISLATION SENSITIVITY INDEX

HISTOGRAM 5

PERCENT OF FIRMS WITH A HIGHLY NEGATIVE INDEX

WILLINGNESS TO SEEK LEGAL COUNSEL

no hesitance  when needed  as last resort
HISTOGRAM 3
DISTRIBUTION OF COMPANIES BY
EMPLOYMENT LEGISLATION SENSITIVITY INDEX

NUMBER OF COMPANIES

EMPLOYMENT LEGISLATION SENSITIVITY INDEX, E
ELABORATION ON THE RESULTS

Each item, both prompted and unprompted, is discussed individually below.

EEOC

Of the seventeen firms that had experience with the EEOC, ten believed antidiscrimination legislation has an adverse or highly adverse effect on their businesses. This item of legislation was considered to be adverse by more companies than any of the other issues. Although the president of one firm interviewed believed that "if a company doesn't like EEOC, it has something to hide," three consistent concerns with EEOC were reiterated throughout the interviews. The weakest argument was that "it is not fair for the government to tell me who to pick for my workforce." More important, companies gave many examples of how costly the hearings are and how much management time they consume. The "EEOC investigates irresponsible charges. It requires management to spend enormous amounts of time in terms of data gathering and preparation, then the case will be dismissed." This sentiment was echoed by all five of the firms that had experience with EEOC hearings. These firms had spent between $2000 and $25,000 with the result that either the cases were thrown out or they are yet to be decided.
One undecided case involved a "female who voluntarily left a position. She was replaced by a male; then she claimed she was fired." Another case took three years to settle; the company was completely exonerated, but in the process, the plaintiff suffered devastating testimony against her.

The companies also believed that they are guilty until proved innocent. They cannot countersue. They believed that the burden of proof is on the company and, because of that, firms are being careful to keep accurate documentation. One CEO explicitly said, "If EEO were rigorously enforced, it would be a limitation on hiring and growth."

Record Keeping

Although this was the second most frequently adversely ranked issue, there are few anecdotes that epitomize the problem. It can also be difficult to separate the record keeping mandated by employment legislation from that the firm chooses to do for its own records, for other government purposes (e.g., taxes), or for financial purposes. In addition to IRS reporting, ERISA, EEOC and Department of Labor reporting requirements were frequently mentioned as cumbersome. Payroll records require a significant amount of time, and in at least one of the firms interviewed, the payroll is sent outside because of different record-keeping requirements in the
three different jurisdictions within which the firm operates. Government contract work was repeatedly pointed out as requiring unnecessarily voluminous records. One manager noted that some people view "government work" as a "specialty" because of the paper work required. At least five firms, because of their recent growth, have added personnel to handle the additional paper work. One company president estimated that the government record-keeping requirements add 20 percent to the personnel officer's workload.

**OSHA**

OSHA was perceived to be a disincentive by eight of the thirteen firms that had experienced it. The two main complaints related to the way the legislation was administered, rather than to the legislation itself. The administering of it was considered "inconsistent" at best, and even "antagonistic." The firms complained of OSHA's adversarial attitude. If the OSHA inspectors "came in with an attitude of wanting to prevent people from getting hurt rather than with an advocacy position," they would receive a better reception.

The charges and fines that OSHA assesses, according to some firms, are inconsistently applied. In one firm's original experience with OSHA, the inspector was very picky, "to the point of being foolish," but on the next visit, the inspector concerned
himself only with superficialities. The focus of OSHA's inspections on the details rather than on the gross safety hazards was also cited as a concern. One small business manager summed it up by saying that they "miss the forest for the trees; inspectors are frustrated businessmen. The inspections are a joke: The OSHA representative will be out checking extension cord lengths in the basement, instead of making sure there are guard rails on the icy twelfth story of a building."

Another serious charge against OSHA was detailed by a different firm. OSHA was called in to investigate an accident, but it did a complete investigation and fined the company. The company made "99 percent of the necessary changes--the missing 1 percent was attributable to a miscommunication regarding what needed to be reworked." This, of course, took time and money. OSHA came back for a follow-up investigation and fined the company again. This time the company consulted with attorneys. The second fine was then dropped. These events led the firm to "question the ethics of OSHA." Perhaps, if legal pressure had been brought to bear during the first investigation, the issue would not have gone as far. Because of inexperience with OSHA, reluctance to seek legal help immediately, and the desire to be a "good guy," the small firm believed it had been taken advantage of.

A third concern was the issue of anonymity of the OSHA informer. When an OSHA complaint is called in, the identity of
the caller is withheld from the management. The firm that raised this issue resented having to deal with "a phantom."

Many firms noticed a decrease in OSHA activity in the past year or so. They hypothesized that it was attributable to budget cuts, but were relieved whatever the reason was.

**NLRA**

The issue of union power was an emotional one for many firms. Twelve of the twenty firms had had some experience with the NLRA. None considered the legislation beneficial. Most believed that the legislation empowered the unions to do and say practically anything, while it restricted management's actions (or reactions) excessively. Four firms ranked the legislation highly adverse; four others rated it adverse; still four others considered it neutral. Managers from three other firms, although they had no direct experience with the NLRA, were adamant that they would "rather shut the place down, than work with a unionized staff."

One firm was made aware of the extent to which violence is treated differently when unions are involved. "A woman crossed the picket line and said 'Get out of my way, I'm coming through.' This was considered threatening a union member. Union members, however, damaged a car by scratching the paint with a key, but this was written off as 'boys will be boys.'"
The sentiment of most of the firms interviewed was clearly anti-union. One company president, although sympathetic to the original need for unions, said, "Unions are now as bad as the monopolistic powers they fought--they have become the most destructive thing to the advancement of society." Although these may sound like harsh words, they are just not the sentiment of a single company president. Other managers said, "Unions are infectious" or "Unions should be done away with."

The NLRA also makes it difficult to fire someone. Although this will be elaborated on in the section dealing with difficulties reducing the labor force, suffice to say that arbitrators rarely uphold a dismissal. Rather, they force the company into a step-wise dismissal process beginning with suspension, regardless of the blatancy of the offense precipitating the desire to fire the employee. For example, two employees, on company time, used a company forklift to jack-up an employee's car and change the tires. The arbitrator did not uphold the dismissal.

ERISA

One-half of the firms interviewed, which had experience with ERISA, considered ERISA to have an adverse or a highly adverse impact. Two reasons for these ratings were given. First, it requires considerable paper work and is generally considered a
"headache." Second, management has no discretionary ability to offer pension plans of different types to different groups of employees (for example, to offer a more generous plan to key managers or to offer the managers a plan, but not to offer one to the staff). One manager believed ERISA was adverse to the employees as well. His company amended its profit-sharing plan recently. "It cost legal fees and involved paper work hassles." More important, the company "ended up reducing the benefit to employees because the company had originally been putting in 10 percent of pretax profit, but under ERISA they opted to make the contribution discretionary."

Difficulties Reducing the Labor Force

Thirteen companies had had difficulties reducing their labor force. The Equal Opportunity Commission, the Age Discrimination in Employment Act and the National Labor Relations Act were all cited as contributing to the difficulties. According to one manager, "The attitude of the workforce is if you're laid off, sue before you apply for unemployment. A firm can't point blank fire an employee for showing up with alcohol, or drugs. We can't accuse someone of being a thief even if they walk out with their pockets full of money. If we do, we get sued for defaming their character." Another owner noted that "dismissed employees have many avenues to appeal dismissal -- they get money (if not their job) back. Also, when a poor employee's new potential employer calls for a reference, the
previous employer is restricted as to what can be said: "You can't say he's a bad employee."

At one firm, an accounts payable supervisor forged a check. She denied everything. The company wanted to let her go, although it could not charge her with forgery. To avoid potential EEOC complications, the firm hired a personnel consultant to handle the situation. Many of the firms have come to the conclusion that the only way to protect themselves is to document everything. The difficulty dismissing employees also makes firms more cautious in terms of who they hire.

Social Security Taxes

Almost one-half of the companies interviewed considered Social Security taxes to be either adverse or highly adverse. They believed that without the taxes either they could pay their employees higher wages, or they could lower their prices, create demand, and hire more people.

Most of the companies which rated the impact neutrally seem to have resigned themselves to the fact that "it is a part of doing business." One company explained that "it's our social obligation." Another neutral response was received from a government contractor, who said it was "recoverable in overhead," but who agreed with the other one-half of the firms interviewed when he noted that it is "too expensive."
Several firms viewed social security taxes as a severe disincentive to hiring new employees. One company that employs large numbers of part-time people does so because "social security taxes are a disincentive to hiring someone full-time." Another firm elaborated that "without the taxes, we could generate more sales, and therefore would have to hire more employees." Several firms resented having to contribute a greater proportion of the payroll to Social Security than did their employees. In response to the question of Social Security taxes, one manager said that the taxes were "unbelievably out of sight!" Another manager believed that "FICA is an employer burden which leads to consumer inflation." The responses to this question were based more on business sense than personal preferences and the result was clear: Social Security is a disincentive to hiring more employees.

**Age Discrimination in Employment Act**

This was the only piece of legislation that received ratings in every category ranging from highly beneficial to highly adverse. Two of the eight firms that had had experience with the ADEA considered the legislation beneficial. Four considered it to be from slightly adverse to highly adverse. Two considered it neutral.
One firm that ranked its effect beneficial, believed that the employees on the staff with the additional experience are especially desirable. Another company was able to employ older people part-time to accomplish the monthly envelope stuffing necessary for billing. "Even if there were a less expensive way to stuff those envelopes, I would still hire those people. It is a social event for them and it helps company morale."

Some of the companies that considered the ADEA adverse, viewed it as another item that makes it more difficult to dismiss an employee without worrying that the company will be sued. The ADEA "tainted the decision" of one company "to replace older employees with younger, more dynamic workers". Another business claimed that the legislation was adverse not only to the company, but also to the employees. The manager elaborated, "We'd prefer to have mandatory retirement at age 65. Previous to the ADEA, we tended to 'carry' people because we knew they'd be gone in a few years. Because of the Age Discrimination in Employment Act, we terminated a guy with poor job performance (that we might have otherwise carried)."

Because of the legislation, the firm was sure to have an ample amount of documentation on this employee prior to his dismissal. The manager continued, "We now have two other people over 65 that we are not dismissing strictly because we'd risk being sued."
Minimum Wage

Less than one-third of the firms interviewed had employees working at minimum-wage levels. Those employees paid at that level were mostly high-school students who worked in the summer or part-time throughout the year, or who were affiliated with a year-round "stay-in-school program." Of these six firms, four considered the minimum-wage requirement to have a neutral effect on their hiring practices; two considered it to have an adverse effect. The minimum wage had little effect on firms that had only a few employees paid at that level. The hiring practices of these firms were independent of the minimum wage. If the wage were increased, they would not decrease the number of students employed; if the wage were decreased, some of the firms would hire more students.

There is some disagreement about whether younger employees should be paid a lower minimum wage. Although two firms mentioned that the wage should be lower for those under 18, another firm thought that "paying younger people a lower minimum wage is not a good idea. The temptation to steal in the retail market is large enough as is." The manager added that "if the minimum wage is increased, we would not hire fewer people, rather we would hire a different type of person, probably not school kids anymore."
Not all the employees currently working at minimum wage, however, are students. One company noted that "wages are correlated to the market and not directly to the minimum-wage level. If the minimum wage were decreased, we would probably not get the same caliber of person at the lower wage -- and caliber is important." Another company's president believed, "The minimum wage contributes to unemployment." Without the minimum wage that company would hire more people.

**Unemployment Insurance**

Unemployment insurance was brought up as a concern by five companies. The expense was considered excessive. One manager in Washington, D.C., believed that unemployment compensation was a disincentive to work, claiming that it "pays too much, it's too easy to get on, and it lasts too long." Another entrepreneur complained that all new companies are lumped together with the same rating, and that the "ratings and policies seem exhorbitant."

**Health Maintenance Act of 1973**

This act was brought up specifically by one firm, but another mentioned the inconvenience as well. It requires that at anyone's request, the company offer a local HMO plan as an alternative to the company's regular health insurance coverage. This "increases
record-keeping requirements" and is discouraging in principle because the "rates keep going up while the service continues to fall."

Prompt Payment Act

The intent behind the Prompt Payment Act was to help government contractors by insuring that the government pays its bills promptly. It requires that payments accrue interest if not paid within forty-five days. According to one firm interviewed, previous to the passage of the act, 67 percent of its receivables were paid within thirty days; within a month after the act had passed, 100 percent of its receivables were paid on the forty-fifth day, and the company was forced to "double dip into the credit line."

Davis-Bacon Act

Wage determination, as described by the Davis-Bacon Act, was considered to be highly adverse by two firms whose growth had been restricted by the high cost of labor. The message of both firms was clear: "Without a doubt, without Davis-Bacon, we would hire more people."
Workers' Compensation

Four companies mentioned workers' compensation in their unprompted list of concerns. Two of these firms were predominantly concerned with the paperwork requirements. Another company which hires a large percentage of its workforce as part-time or contract employees, does so because "without having to pay workers' compensation or social security, they are less expensive." A fourth company had a complaint about the cost that it was paying because of the way job categories are defined. The company manager claimed, "[I] pay three times as much workers' compensation because my drivers are 'common carriers' instead of 'chauffers.'"

Securities and Exchange Commission

Not all small businesses stay small; for those that do not and consider going public, the power of the SEC is an additional concern facing them. Three firms mentioned difficulties with the SEC. One firm believed that people can "bring suits too easily" and that "the antitrust structure should be reviewed." "A company can grow from $5 to $25 million in revenue, and go unnoticed, but over $25 million, especially if they are in a less competitive market, they become targets for antitrust suits brought on by competitors with a very small market share."
Another company had an acquisition attempt thwarted by the SEC, which chose to "stonewall the request and didn't clear the acquisition before the agreements expired." This company is a publicly owned firm, but only has 225 employees. The manager noted that it is unusual for a company of that size to be public, and that it had certain disadvantages, one of them being the SEC. "In addition to losing a half-million dollars in the acquisition attempt, the SEC is now conducting an investigation and the company is having to cover legal fees to clear themselves. It's a situation where we are guilty until proved innocent."

A third firm, in the process of going public, is "anticipating difficulties, and is researching what's involved." It is "aware that the SEC regulations are very rigorous."

BENEFICIAL LEGISLATION

Tax Credits

Ninety percent of the firms questioned about tax credits considered them either beneficial or highly beneficial. Companies had been granted tax credits for a variety of reasons. Most commonly, companies had received investment tax credits, or research and development tax credits. Tax credits are also given to companies for employing handicapped persons and, through the Neighborhood Assistance Act, for hiring disadvantaged employees.
These employment-related tax credits received mixed reviews. A few managers noted that they were "beneficial but incidental." Another company had applied for an employment credit through a Department of Labor program, but because of repeated modifications to the form, the company had to resubmit the form multiple times. "After all the time spent, the cost was beyond the amount of the reimbursement." One company that employed many young people recalled that tax credits formerly applied to people under the age of 18 years old. This was recently changed to include only those from a disadvantaged class. The company found this type of classification to be less useful, largely because it's not the kind of thing the company can ask on a job application.

Another important observation about tax credits and their benefit to small companies was made by one company owner. He claimed that smaller companies have less of a need to shelter their income, and that even though tax credits can generally be deferred, small businesses might be better served by a direct payback or grant.

**Job Training Programs**

The second most frequently mentioned item of beneficial legislation was the category of job training programs. These, of
course, come in many types and are administered at all levels of
government from the county up. Nevertheless, of the nine firms that
have had some experience with some type of job training program,
five considered the programs beneficial, and the other four rated
them neutral. The companies in the latter category said the
programs just "didn't work" or that they "did not attract the
caliber of person that they needed." Of the companies with positive
experiences with job training programs, one firm had a documented
$28,000 of savings by using a county-run manpower development
program. Another company, staffed a new facility almost entirely
with people from a similar development program. One firm had taken
advantage of the "old CETA programs" with success, but believed that
"there aren't enough job training programs; more need to be created
through private industry."

Set Asides

Government-assigned set asides for minority-owned companies and
for smaller businesses were considered highly beneficial by those
companies which had been able to take advantage of them. Of those
firms interviewed, two were minority-owned companies. Both had
availed themselves of the special government contracts set aside for
minority firms. In fact, one company's most significant difficulty
was the transition off the 8-A set aside program.
Two other companies, however, disputed the "fairness" of these programs. Although neither of the two firms interviewed which had benefited from the 8-A programs fell into this category, one manager was skeptical about the legitimacy of most of the organizations that take advantage of the 8-A set asides. He believed, "90 percent of the time the company is just set up to get the government contracts." Another company manager pointed out that the 8-A set-aside recipients often use the government contracts as their sole source of work. Also, all too often "realistic or consistently administered graduation requirements have not been set".

The same manager noted that the small business set asides were also poorly administered. The "general small business standards are ridiculous. The maximum standards of gross revenues of $2.5, $4.0, or $7.5 million result in some small business-contract set asides being too large for them to handle. Firms with more than $7.5 million in gross revenue (his firm grossed $11 million last year) lose out on the set asides that may be too large for some of the smaller firms to manage.

CONCLUDING COMMENTS

There seemed to be an unwillingness among those interviewed to rate an item adversely, even though the company may have had a costly or time-consuming experience pertaining to that particular
item. For example, although one firm had discharged two Puerto Ricans, and to avoid a threatened EEOC suit, replaced the two employees with Puerto Ricans, the firm claimed that employment legislation has no effect on its hiring practices. This phenomenon may occur for two reasons: (1) because firms have accommodated to the legislation, and may be unaware of the impact it actually has on the firm; and (2) because the personal opinion of the manager may be that the legislation is generally favorable. The second reason makes it more difficult for the manager to separate the legislation's effect on his firm from its intent. For example, none of the four firms operated by women or minorities rated EEOC adversely.

There were two firms with a net rating of beneficial for the employment legislation sensitivity index. One was an association and hence had the option of simply passing on the costs of benefits packages, payroll taxes, legal fees, etc., to the companies that support its existence. The other firm was a manufacturing firm that had only been operating at its present location for a year. It was too new to have had many employment-related difficulties, and has been able to make good use of a job training program by almost completely staffing the new facility with people from a manpower development project.
In general, there seemed to be a correlation between an understanding of the employment legislation, the legal expertise available, and the legislation index the company generated. Small companies without a legal staff to keep them informed of current legislation often lack the information which they need about the law. As detailed earlier with the OSHA example, this can result in costly mistakes. Many companies try to keep informed through information provided by trade associations. Others hire labor lawyers or personnel consultants as problems arise. A few just do not consider employment legislation or personnel matters much of a concern at all. Small businesses are foremost concerned with the financial picture.

It is clear from the companies' indexes that employment legislation is generally considered adverse by small businesses. But how do these laws effect their employment practices? The companies mentioned both direct and second-order ramifications of the legislation. The EEOC, ADA, and NLRA restrict what companies can ask on applications, what kind of policies they can set, and what they can say to their employees. Another specific effect mentioned was that the use of company-administered entrance tests has been reduced. One could argue that these items restrict the employee selection process and therefore increase the frequency of dismissing inadequate employees (i.e., the turnover rate) and hence increase the training costs. Whether, because of increased training
costs owing to higher turnover, increased legal costs due to dismissal-spawned lawsuits, or excessively picky safety requirements, the costs of complying with the EEOC, ADA, or OSHA are real. More than twenty-five percent of the companies interviewed had been engaged in a legal dispute over at least one of these issues. The legal costs and the burden of proving one's innocence are the main complaints regarding them. On the other hand, record-keeping requirements, as they become excessive, actually open up clerical-level positions, but may restrict direct labor employment.

Direct out-of-pocket payments, like corporate taxes, payroll taxes, workers' compensation, medical, life and unemployment insurance, are what the small business manager really feels. If the costs of complying with legislation could be reduced, for example, by screening potential suits more carefully, by enhancing the understanding of the law, by enforcing it more equitably, and certainly by reducing any of the above mentioned expenses, the effect of the legislation would be less detrimental. Likewise, incentives could have a larger benefit to smaller businesses if they were in the form of direct dollar paybacks or grants rather than in the form of tax credits. The bottom line is profit margin and maintaining a competitive edge. One company president specifically preferred more government regulation. She explained, for example, that "I would like to offer my employees a pension plan, but unless
it is federally mandated, my competitors might gain an edge over me by choosing not to offer one." Most firms, however, believe the best way to maximize profit, is to minimize any type of government regulation, or if necessary, (as many admitted some employment legislation was perhaps necessary) to minimize the adverse effects thereof.

Finally, it must be emphasized that this is only a pilot study covering a narrow geographic area and a small number of small businesses. Whether the same results would be obtained if a nationwide sample were taken from a much larger group of small companies cannot, of course, be assured. It does appear, however, that such a study might well have beneficial results, and could enlighten Congress and state legislatures.
COMPANY PROFILE:

Area of Business Activity:

Specific Type of Business:

When was Company Established?

Average total number of Employees: ______.

If seasonal indicate range: _____ to _____.

Number of "Decision Makers" (partners, managers, asst. managers, etc.):_____.

Number of "Support Staff": ______.

Is your workforce unionized?

yes  no  partially

Approximate annual gross revenue: $__________.

Legal organization of Company

___ Single Proprietorship  ___ Franchise

___ Partnership  ___ Other:____________________

___ Corporation

Primary geographic location served:

___ City or County  ___ National

___ State  ___ International

___ Region  ___ Other:____________________

Other information related to size:

Is your company owned by or affiliated with a larger corporation?______.

How many establishments (incl. headqtrs.) are maintained by your company?______.

Do you report under Sub-chapter S?______.
ACCESS TO INFORMATION:

What kind of access to legal expertise does your company have?

- Attorney on Staff
- Attorney available when needed
- Attorney on Retainer
- No special access to a particular attorney

What kind of access to accounting expertise does your company have?

What kind of access to personnel expertise does your company have?

Where would you go for information on employment legislation?

Where would you go for advice on employment legislation/difficulties?

PERSONNEL DEPT QUESTIONS

Personnel Dept.? yes no

How many people?______

Components of Job Responsibility (Rank in order of most time consuming)

- Recruiting
- Policy Administration
- Benefits Administration
- Employee Moves (Dismissals, Transfers)
- Record-keeping
What would you say have been the main difficulties you have faced in the past year in running your business?

List/comment on other significant difficulties.
Have any government measures lessened or caused difficulties? If so which ones?

Have any particular pieces of employment legislation affected your business?

Principal issues?

If you had to pick three items of employment legislation most affecting you what would they be?
What sort of problems have employment legislation contributed to?

From the following list, which of these have you experienced and which have been most troublesome?

Do you anticipate any of these becoming troublesome?

<table>
<thead>
<tr>
<th>Employment Legislation</th>
<th>Experienced?</th>
<th>Troublesome?</th>
<th>Anticipate being Troublesome</th>
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<td>EEOC</td>
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<td>Age Discrimination Act</td>
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<td>Minimum Wage</td>
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<td>OSHA</td>
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<td>National Labor Relations Act (Taft-Hartley)</td>
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<td>Employee Retirement Income Security Act</td>
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<td>Office of Federal Contract Compliance Programs</td>
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<td>Difficulties Reducing Labor Force</td>
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<td>Record-keeping Difficulties</td>
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<td>Payroll Taxes</td>
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<td>Other (specify)</td>
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</table>
Has any employment legislation affected your labor policies?

In terms of  Number Recruited
                  Number Dismissed

Other?

Do you think that in the last twelve months you might have employed more or fewer people if the employment legislation had not existed, or has it made little difference?

Change in Personnel:
Change in Workload:
Discrepancy Due to:
QUESTIONS REGARDING SPECIFIC CONCERNS

Minimum Wage Effect

How many of your employees are paid no more than the minimum wage? 

Would a decrease in the minimum wage cause you to hire more people? 

Would an increase in the minimum wage cause you to hire fewer people? 

Are your hiring practices independent of minimum wage levels? 

Comments:

EEOC Effect

%Female Employees: 

%Minority Employees: 

Does your company have a written company policy regarding equal opportunity? 

How has your company's hiring been affected by EEOC? Is someone appointed to implement the company policy? 

Record-keeping Requirements

What employee records does your company keep primarily for government purposes? 

Which reports take the most time? 

How many man-hours per year does your company spend on filling out employee related government reports? 

Who is usually responsible for this government report and record-keeping? (title or position)

What percent of the owners' time or chief managers' time is spent on government reporting and record-keeping? 

Have you had to hire additional personnel to meet record-keeping requirements? 

Comments:
Union Effect

Which union(s) represent your employees?

How long has the union been in your facility?

What effect has the union had on your company hiring?