

Wisconsin Legislature Enacts New Business Organization Law Benefiting Business and Communities Alike

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Wisconsin counties are currently experiencing very low rates of unemployment. In fact, as of April 2018, 64 of Wisconsin's counties had unemployment rates of less than 5%, and 36 of those Counties had rates under 2.9%. While there are certainly benefits to low unemployment, it also increases the challenge for businesses to attract and hire the best talent. This is particularly so for Wisconsin manufacturing, industrial and consumer discretionary businesses that are already facing looming wage inflation and having great difficulty in attracting and retaining talent. To solve this talent acquisition challenge, companies must find ways to distinguish themselves in an already crowded marketplace.

Recently, an innovative concept was turned into a legitimate tool to help Wisconsin businesses not only solve the talent acquisition challenge, but also protect shareholders and improve the communities in which the business operates. On November 27, 2017, Governor Walker signed into law 2017 Senate Bill 298, an act that created Chapter 204 of the Wisconsin Statutes titled, "BENEFIT CORPORATIONS." Thirty-four states have now passed similar legislation and six more states are in the process of working legislation through their state governments. The passing of this legislation in Wisconsin created a new category of business corporations, Benefit Corporations. While Chapter 180 (Wisconsin's business corporations statute) continues to generally apply to Benefit Corporations, the specific provisions of Chapter 204 control where there is any conflict between the two chapters.

To qualify as a Benefit Corporation, the corporation must have a "purpose of creating general public benefit." This "general public benefit" is considered to be in the best interest of the corporation. This aspect of the legislation forms the basis for many of the protections afforded directors and officers of a Benefit Corporation. The statute defines "general public benefit" as "a material positive impact on society and the environment by the operations of a benefit corporation taken as a whole, through activities that promote some combination of specific public benefits." (Wis. Stat. § 204.102(5)). "Specific public benefits" include the following:

- Providing low-income or underserved individuals or communities with beneficial products or services.
- Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.
- Preserving the environment.
- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.
- Increasing the flow of capital to entities with a public benefit purpose.
- The accomplishment of any other particular benefit for society or the environment.

(Wis. Stat. § 204.102(7)(a-g)).

A Benefit Corporation can exist in multiple corporate categories (i.e. an S-Corp and Benefit Corporation). A Benefit Corporation may be formed as a new entity, or an existing corporation may become a Benefit Corporation by amending its articles.

But, for Wisconsin businesses, the opportunities perhaps extend beyond the surface-level general public benefits. One of the biggest opportunities of Benefit Corporation status may lie in a Benefit Corporation's ability to appeal to a millennial workforce which increasingly holds the leverage over businesses competing for their employment services. According to Jennifer Deal of the Center for Creative Leadership, millennials are determined to "Do Good AND Do Well." Deal notes that millennials want work that not only compensates them appropriately, but allows them to contribute to society in positive ways. An effective Benefit Corporation organization will not only serve as a good corporate citizen, but it will appeal to a competitive millennial workforce by demonstrating to them that the business, and their work for the business, is having a positive impact on society.

Benefit Corporation status may provide a number of other incentives for Wisconsin businesses looking for a competitive edge, such as:

1. **Reduced Director Liability:** Unlike the traditional corporate model, which requires directors to maximize profits for the benefit of the shareholders, a director of a Benefit Corporation must consider a wider variety of issues when making decisions for the company. Instead of focusing solely on maximizing profits, a Benefit Corporation needs to consider shareholders, employees, customers, local communities, the environment, and other social causes. While this may seem to increase complexity given the wider range of considerations when making a business decision, this actually creates a safe harbor for directors. In fact, the Benefit Corporation law includes express exonerations from personal liability for actions taken if performed in compliance with the Benefit Corporation law, and the provisions of chapter 180 of the Wisconsin Statutes.
2. **Attract Investors:** Becoming a Benefit Corporation is a way to attract socially aware investors. Benefit Corporations may gain access to certain rating agencies and analytics platforms which serve as incentives for companies because some investors are using such analytics as part of their due diligence and portfolio management.
3. **Multiple Corporate Categories:** Companies do not need to choose between a Benefit Corporation and another entity structure. Aside from registering as a Benefit Corporation, a company may still elect to be taxed as a C or S Corp.
4. **Consumer Trends:** Consumers are becoming more socially aware, and buying patterns are reflecting their social concerns. In fact, recent studies suggest that two-thirds of global consumers would choose a sustainable product over an irresponsible competitor, and 52% of global consumers actively check the packaging to see if their products are sustainable. The trend of the socially-aware-consumer is likely to gain traction in the coming years. In fact, surveys demonstrate that a majority of millennials and younger consumers would be willing to pay more for a product knowing it was sustainable. Further, media outlets are showcasing Benefit Corporations more frequently in media features.
5. **Increased Savings:** Benefit Corporations may be eligible for increased savings and access to services. Registering as a Benefit Corporation may provide access to partner discounts on various service and marketing platforms.

At von Briesen & Roper, s.c. our attorneys are available to counsel you through the advantages and disadvantages of starting, or converting your business into, a Benefit Corporation.

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