

The Brief

SPRING 2026



Taking the Fight to the States

While the federal government has shifted toward deregulation, states have increasingly enacted mandates and regulations that place heavy burdens on small business owners. These state actions often introduce requirements that are not only difficult to comply with but also, in some cases, unlawful.

To address these increasing challenges, the NFIB Legal Center actively responds by filing lawsuits and submitting amicus briefs in state courts. These legal actions help ensure that small businesses are represented and their concerns are heard during crucial state legal battles.

WORKER CLASSIFICATION UNDER SCRUTINY IN MINNESOTA

NFIB joined a coalition of business organizations and filed a [lawsuit](#) in a Minnesota state court challenging a new independent contractor rule that was passed as part of a catch-all omnibus bill. The statute established a fourteen-factor test for determining independent contractor classification, making it nearly impossible to hire independent contractors. It also imposes severe financial and criminal penalties on even well-meaning small businesses that fail to comply.

NFIB's lawsuit contends that the Minnesota bill violates the Minnesota Constitution's Single Subject and Title Clause because it addresses multiple subjects and lacks a clear title. Therefore, we argue that the new independent contractor statute is unlawful, and the courts should prevent the state from enforcing it.

A WIN AGAINST OREGON'S COSTLY PROJECT LABOR AGREEMENT MANDATE

The Legal Center achieved a significant victory in Oregon by challenging an overly broad union mandate. Last year,

we filed a lawsuit against Governor Tina Kotek's executive order requiring state agencies to negotiate project labor agreements (PLAs) with labor organizations for all state-managed construction projects. Shortly after filing, a circuit judge temporarily halted the PLA mandate, and on March 12, 2026, the judge permanently blocked it, ruling the mandate unconstitutional.

Our challenge successfully argued that a PLA mandate goes far beyond the governor's authority and intrudes on the state legislature's authority. Thanks to the court's decision, small business owners will be able to continue to bid on public projects without needing to comply with the governor's unlawful mandate.

WASHINGTON'S DRACONIAN ENVIRONMENTAL PENALTIES CHALLENGED

In March, the Legal Center submitted an amicus brief supporting a small business owner's legal challenge against bureaucratic overreach before the Washington Supreme Court in the case [Fode v. Department of Ecology](#). The case involves a state agency that hastily imposed hundreds of thousands of dollars in fines instead of providing a farmer with the necessary technical assistance mandated by state law. Our brief contends that the state has a duty to help farmers find ways to achieve their goals—specifically, to assist them in securing water rights—rather than swiftly issuing warnings and fines.

Although states can burden small business owners as easily as the federal government, NFIB's Legal Center is here to challenge unlawful requirements and mandates as they occur, offering much-needed regulatory relief for NFIB members.

To keep up with our amicus work and the outcome of these cases, please visit the Legal Center's website at: [NFIB.com/legal](https://www.nfib.com/legal)

OSHA's Proposed Heat Rule Would Impose Costly Mandates and Significant Red Tape

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) is advancing a comprehensive Heat Injury and Illness Prevention Standard that would affect nearly all small businesses nationwide—including indoor workplaces such as warehouses, restaurant kitchens, garages, and retail storage areas.



While safeguarding workers from extreme heat is important, OSHA's proposal is excessively rigid, one-size-fits-all, and impractical for small businesses. Here's why small business owners should be concerned and why the NFIB Small Business Legal Center is fighting the proposed rule.

A UNIFORM RULE THAT OVERLOOKS PRACTICAL REALITIES

OSHA's regulation would be triggered when the heat index hits 80°F (with stricter measures at 90°F), regardless of industry, location, or type of work. Unlike state heat regulations that focus on outdoor work, OSHA's proposal applies to indoor environments as well. This means a small auto repair shop in Virginia, a family-owned warehouse in Ohio, and a local restaurant in Maine could all face identical federal mandates, despite diverse heat risks and work conditions.

During OSHA's recent Small Business Advocacy Review process, I had the opportunity to highlight how this approach fails to account for real-world operations and seasonal differences.

COSTLY ADMINISTRATIVE & COMPLIANCE BURDENS

Under the proposed rule, most employers would need to develop a written Heat Injury and Illness Prevention Plan (HIIPP), appoint a heat safety coordinator, monitor and record heat conditions throughout the day, train staff annually, and keep detailed records for inspections. For small businesses without a human resources department or safety staff, this means higher administrative costs and greater legal exposure.

MANDATORY PAID BREAKS AT HIGH TEMPERATURES

At the "high heat" threshold, the rule would require paid rest breaks every two hours, regardless of customer demand or staffing. For small businesses, this could result in lost productivity during busy periods and increased labor costs. OSHA has also not explained how these breaks interact with overtime regulations, creating legal uncertainty.

ENHANCED ENFORCEMENT AND LIABILITY

Even without a final rule, OSHA has already ramped up heat-related inspections and enforcement initiatives. Once finalized, OSHA would have broader grounds for citations and greater discretion to second-guess employer

judgments—including a checklist-style enforcement approach that penalizes technical violations even without worker harm. Small businesses could face hefty fines and legal liabilities over paperwork errors or good-faith mistakes.

In a [comment letter to OSHA](#), NFIB formally warned that the proposal is economically infeasible for small businesses and fails to account for situations where compliance is impractical or could pose hazards. These concerns largely remain unaddressed.

Although the rule is not final, [OSHA is moving swiftly](#). If adopted as is, it would impose significant compliance costs and liability risks on small businesses, even though most already protect workers with practical, flexible solutions—without inflexible federal mandates.

While OSHA's intent may be good, the proposed heat standard is fundamentally flawed. It risks burdening small businesses with rigid rules, excessive paperwork, higher costs, and increased liability—without meaningful safety improvements.

Small business voices must continue to be heard before this rule becomes law.

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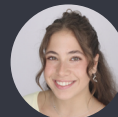
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AM I ELIGIBLE FOR A TARIFF REFUND?

You are only eligible for a refund if you directly paid tariffs applied under the International Emergency Economic Powers Act (IEEPA). To find out if you qualify, start by reviewing your import entry paperwork filed with U.S. Customs and Border Protection (CBP). On [CBP Form 7501](#), look at the [Harmonized Tariff Schedule of the United States \(HTSUS\)](#) classification number, specific program indicators (SPI), and duty lines. If IEEPA tariffs were applied, they should show up as an additional duty line tied to a specific tariff action, specifically under Chapter 99 of the HTSUS.

Refunds are not available for Section 232, Section 301, Section 201, anti-dumping and countervailing duties, or most-favored nation tariffs. If you are unsure whether you directly paid IEEPA tariffs on imports, ask your customs broker or review your records in the Automated Commercial Environment (ACE) portal.

FEDERAL COURT ORDERS

On March 4, 2026, Judge Richard Eaton of the U.S. Court of International Trade issued an order in *Atmus Filtration, Inc. v. United States* requiring the federal government to begin processing refunds for tariffs imposed under IEEPA. The ruling followed the U.S. Supreme Court decision that invalidated IEEPA tariffs. For small business owners, this means that if you directly paid IEEPA tariffs on imported goods, you may be eligible for a refund.

CBP has stated that, due to existing technology limitations, internal processes, and staffing capacity, additional time is needed to update its systems prior to issuing refunds. Accordingly, the court ordered CBP to provide regular progress reports documenting the agency's efforts toward implementing the refund process.

WHAT IS THE REFUND PROCESS?

In a progress report filed in court on March 12, 2026, CBP indicated that it will utilize a tool known as CAPE—Consolidated Administration and Processing of Entries—to process refunds in bulk. CAPE is expected to:

1. Allow importers to upload a CSV file listing affected entries;
2. Recalculate entries excluding IEEPA tariffs;
3. Review and establish liquidation and refund dates; and
4. Issue electronic payments directly to the importer's bank.

This four-part system, operated through an online claims portal, is how CBP will coordinate refunds of potentially \$166 billion in IEEPA tariff collections, plus interest. CBP's refund claims portal is expected to be operational by April 20, 2026.

If you directly paid IEEPA tariffs on imports and are eligible for a refund, you must [enroll in ACH](#) through CBP's [ACE Portal](#) to receive payment once CBP's refund process is finalized.

For additional information and guidance regarding tariff refunds and eligibility requirements, watch the Legal Center's webinar: [What the Supreme Court's tariff decision means for small businesses—and could you get money back?](#)

**Save the Date:
Upcoming Legal
Center Webinars You
Won't Want to Miss!**

**May 6: Buying, Selling,
Expanding Your Business
with attorney Jim Wilson**

**June 3: OSHA Basics
for Small Business with
attorney and OSHA
expert, Felicia Watson**

NFIB Intervenes in Case Against Vehicle Emissions Standards

It's no secret that vehicles—even used vehicles—have become expensive, and like most Americans, small business owners are struggling to afford them. The Small Business Legal Center is working to ease the burden with our recent **motion to intervene** in the case *American Public Health Association v. Environmental Protection Agency (EPA)* at the U.S. Court of Appeals for the D.C. Circuit. NFIB's intervention supports EPA's **elimination** of the 2009 Greenhouse Gas (GHG) Endangerment Finding. The Endangerment Finding permitted the federal government to impose emissions regulations on diesel- and gas-powered motor vehicles under the Clean Air Act, while also limiting consumer choice. This resulted in higher manufacturing costs, which have been passed on to consumers through higher vehicle prices.

EPA's new rule revokes the Endangerment Finding and blocks any new federal GHG vehicle emission standards from being enacted. According to EPA, the agency lacked the legal authority to regulate GHG emissions, stating only Congress had that power. This interpretation would ensure that the Clean Air Act is read based on its plain language, preventing EPA from claiming authority it does not possess.

The cost of operating vehicles is one of the most significant expenses for small business owners, and reducing it is a top priority for NFIB. EPA's repeal of the Endangerment Finding would greatly lower regulatory hurdles impacting vehicle production, potentially saving consumers around \$1.3 trillion. NFIB is proud to support the new rule and will keep taking legal steps to cut unnecessary costs for our members.

The NFIB Small Business Legal Center, a 501(c)(3) public interest law firm, protects the rights of America's small business owners by serving as the voice of small business in the courts and the legal resource for small business owners nationwide. It is not a legal defense fund for small business, but a legal tool to affect precedent-setting legal decisions that will influence small business' bottom line.

SBLC MEDIA MENTIONS

February 4, 2026

[Small Business Trends](#)

Small Business Trends featured NFIB's amicus brief submitted in the case *National Association of Wholesaler-Distributors v. Leah Feldon, et al.* in the U.S. District Court for the District of Oregon. NFIB's brief argues that Oregon's extended producer responsibility (EPR) law goes beyond regulating state waste disposal and instead imposes regulatory burdens on out of state producers, raising concerns under the U.S. Constitution's Commerce Clause. Beth Milito is quoted, "Oregon's EPR regime goes beyond the authority granted to states in the Constitution by attempting to regulate businesses outside of Oregon."

February 18, 2026

[Phoenix Business Journal](#)

Phoenix Business Journal released an op-ed by NFIB Arizona State Director, Chad Heinrich, which discusses NFIB's amicus brief in the case *Mills v. Arizona*, a case challenging Arizona's engineering licensing requirement. Heinrich explained how overly burdensome occupational licensing rules can restrict workforce participation and limit small businesses' ability to hire qualified workers.

February 24, 2026

[Insurance News Net](#)

Insurance News Net highlighted NFIB's amicus brief in *Corner Post*,

Inc. v. Board of Governors of the Federal Reserve System, a case before the U.S. Court of Appeals for the Eighth Circuit. NFIB's brief argues that the Federal Reserve exceeded its statutory authority by allowing banks to include additional costs when setting the debit card swipe fee cap, resulting in higher costs for small business merchants. Beth Milito is quoted: "In recent years, card payments have become the default for most Americans. Small business merchants have no choice but to accept debit cards as a form of payment in order to provide for their customers' needs. The district court correctly determined that the Federal Reserve considered improper costs in setting the interchange fee amount."

March 26, 2026

[Financial Regulation News](#)

Financial Regulation News covered NFIB's lawsuit challenging Minnesota's new independent contractor classification law. Filed in Minnesota state court, the case argues that the state's recently enacted fourteen-factor test—passed as part of a 2024 omnibus bill—imposes excessive compliance burdens on small businesses and exposes them to severe financial and criminal penalties for good faith classification errors. NFIB contends the law violates the Minnesota Constitution.

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