

RETAIL PROPHET

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ALL HANDS ON DECK!

Buffalo Ridge Resort and Business Center owners take it upon themselves to set-up, tear-down, and pitch-in wherever a helping hand is needed! Learn more about this historical property on page 23.



SOUTH DAKOTA
RETAILERS
HOSPITALITY • RETAIL • TRADES



EXECUTIVE DIRECTOR'S UPDATE

LET'S TRY ***THIS*** NEW THING

As I travel around the state and talk with business owners, one of my favorite questions is, “how did you get into business?”

The answers are as varied as the membership of the South Dakota Retailers Association – some saw a need in their community and took a risk to fill it, others took over the business from their parents, or married into it, or bought it from the former owner, or wanted to pursue the dream of owning their own business, or any of dozens of other scenarios that led entrepreneurial men and women to launch their careers in retail, hospitality, grocery, and trades.

The vast majority of our members offer multiple products and services, some seemingly unconnected to the others and different than what they offered at the start. A manufacturing company in central South Dakota builds steel agricultural equipment and also installs water lines and solar panels. A thriving business in the southeast began as a traditional hardware store and has grown into the go-to place for grills and grilling products.

A family-owned business in the northwest started in computer sales and service, and has grown to provide office and school supplies, furniture, and also facilitates rodeo entries. Breweries now offer cold-brew coffee. A family with an auto repair shop also has a bookkeeping service. Distilleries and ethanol plants are making hand sanitizer. A farming family started making ice cream with milk from their own cows and now has an ice cream store, restaurant, and catering business.

When asked how they came to offer these additional products and services, many business owners need time to think about it. After a minute, I often hear something like, “Well, we saw an opportunity, talked it over, and said let’s try **THIS** new thing.”

ON THE COVER:

Jessica and Rick Christians, Buffalo Ridge Resort and Business Center Owners pose with Event Coordinator Abby Vlamincik near a large weekend event tent. 2020 has created many challenges and successes for the Gary, SD business. Read more on page 23.

Let's try THIS new thing.

They had the courage to try something new because they had tried other “new things” numerous times in the past; they took advantage of opportunities that came their way; they took a risk, rolled the dice, and jumped in with both feet.

Most business owners also talk about a choice that accompanied their decision to try something new. When it came time to expand, they said, “if we're going to do it, we're going to do it right; we're going all-in.”

This is the spirit of entrepreneurship in South Dakota and the drive that's going to keep businesses churning in the months and years to come. We're knocking at the door of the third decade of the 21st Century, and the motto of successful businesses all across the state seems to be similar – let's try THIS new thing.

As you're looking at what's next, we're here to help. Want to extend new benefits to your employees? Give us a call. Need human resources assistance? Get in touch with our contract HR attorney for free. Want to connect with other entrepreneurs and get their insights? Send us an email and we'll connect you with your peers or join us for business sessions and networking at our annual meeting in Pierre on January 11, 2021.

Thanks for your membership. If we can be helpful as you try your next “new thing,” please let us know.

-Nathan

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BOARD PRESIDENT'S NOTES

DIFFERENT, BUT THE SAME!

As a young boy, I traveled from store to store with my dad. Even though it was more miles than I could usually stay awake for, I enjoyed every minute of it.

Ever since I can remember, I have been in our stores. One of my first memories was when I let my German Shephard in the meat cooler after closing time on a Sunday night. My mom and dad were working after hours at our grocery store in Gregory, and I got bored and went out to our vehicle to visit my dog, Schultz. I guess he seemed hungry to me, so I brought him inside the store into the walk-in meat cooler. That was back in the day of hanging meat, so you can guess how thrilled my parents were to walk in on me watching Shultz enjoying a nice side of beef!

I “worked” (a.k.a messed around) and ate candy bars at the Gregory store until we moved to O’Neill, Nebraska when I was 8. As I became more interested in the business and spending

time with my dad, I traveled with him and saw firsthand the different ways we marketed in our stores. Products and merchandising were diverse in each grocery store. We also had a restaurant called the Dog and Suds in Wagner that was entirely different than the grocery business.

In 1996, we grew in the convenience store business starting in Mission. Last year we got into the auto parts and hardware business in Pine Ridge, which is notably different for a guy like me who barely knows the difference between a flathead and the other type of screws. Last month we took over the grocery store inside Al’s Oasis, which we envision will be a completely different format than our other grocery stores.

My dad taught me that every community and every one of our locations is different. There are different products, community events, team needs, and unique

merchandising techniques in each of our towns. As an owners and managers, we must have the ability to recognize these differences and tweak our models to adapt and fulfill the needs of our communities.

In O'Neill, Fairbury hot dogs were a great seller because they were the official hot dog of the Nebraska Cornhuskers, but we couldn't sell any in South Dakota. In Gregory, we know that high school football is huge, and we are big supporters. We sell big value meat packs in Pine Ridge, but in Scotland and Gregory, our sizes and packaging are much smaller. And we know that we better be ready for business for the Wagner Labor Day, Whiteriver Frontier Days, and Lake Andes Fish Days celebration.

We employ individuals with special needs, and we have team members with

college degrees and beyond. In Mission and Pine Ridge, most of our team members know some Lakota, and our employees in Scotland need to know a few Bohemian phrases.

For all of us South Dakota Retailers, how we go to market and how we sell is different in our communities. One size does not fit all. The only constant is customer service and how we need and value customers. Trade may be different across this great state, but appreciating our customers is always the same!

- R.F.



DRIVING FORCE FUNDRAISER

SOUTH DAKOTA RETAILERS ASSOCIATION POLITICAL ACTION COMMITTEE



DRIVING FORCE FUNDRAISER

Join us for an evening of drinks, appetizers, and networking with fellow SDRA members! Step outside and take your best shot in one of our complimentary golf bays. Connect with the regional business community while helping sustain the Association's Political Action Committee (PAC).

**Monday, September 14
Great Shots in Sioux Falls**

4:30 – 7:30 p.m.

Drinks and Appetizers Provided

\$100 Suggested Donation

All donations support the SDRA PAC

**REGISTER TODAY!
sdra.org/special-events**

***This event is in place of the SDRA
Golf Event Fundraiser***

USDA PUBLISHES SNAP ONLINE PURCHASING Q&A FOR RETAILERS

The U.S. Department of Agriculture's Food and Nutrition Service (FNS) has posted a document to its website containing technical questions and answers for retailers interested in participating in Supplemental Nutrition Assistance Program (SNAP) online purchasing. The document includes frequently-asked questions regarding SNAP online transactions, refunds, interoperability amongst states, and more. USDA opened up the application process to all retailers and states at the beginning of the COVID-19 pandemic, and almost all 50 states have launched to date.

NGA is advocating for provisions that would make it more feasible for independents to participate in SNAP online purchasing to be included in the next COVID-19 bill that Congress is currently negotiating. Visit [fns.usda.gov/snap/online-purchasing-retailers-technical-qas](https://www.fns.usda.gov/snap/online-purchasing-retailers-technical-qas) to read FNS' SNAP online Q&As, which may be updated as additional technical questions are received.

GIG ECONOMY TIPS TAXPAYERS SHOULD REMEMBER

The gig economy, also called sharing or access economy, is activity where taxpayers earn income providing on-demand work, services or goods. Often it's through a digital platform like an app or website. While there are many types of sharing economy businesses, ride-sharing and home rentals are two of the most popular.

Here are some things taxpayers should remember:

- Income from these sources is taxable, regardless of whether an individual receives information returns. This is true even if the work is full-time, part-time or if an individual is paid in cash.
- Taxpayers may also be required to make quarterly estimated income tax payments and pay their share of Social Security, Medicare or Medicaid taxes.
- While providing gig economy services, it is important that the taxpayer is correctly classified.
- This means the business or the taxpayer must determine whether the individual providing the services is an employee or independent contractor.
- Taxpayers can use the worker classification page on [IRS.gov](https://www.irs.gov) to see how they are classified.
- Independent contractors may be able to deduct business expenses, depending on tax limits and rules. It is important for taxpayers to keep records of their business expenses.

Since income from the gig economy is taxable, it's important that taxpayers remember to pay the right amount of taxes throughout the year to avoid owing when they file.

- An employer typically withholds income taxes from their employees' pay to help cover income taxes their employees owe.
- Gig economy workers who are not considered employees have two ways to cover their income taxes:
 - Submit a new Form W-4 to their employer to have more income taxes withheld from their paycheck, if they have another job as an employee.
 - Make quarterly estimated tax payments to help pay their income taxes throughout the year, including self-employment tax.

The Gig Economy Tax Center on [IRS.gov](https://www.irs.gov) answers questions and helps gig economy taxpayers understand their tax responsibilities.

MODERN RETAIL TAKING BETTER PHOTOS

Professional, high-quality images are critical to your small business marketing and branding strategy. When people hear information, they're likely to remember only 10% of that information three days later. If a relevant image is paired with that same information, people retain 65% of the information three days later.

- Visual content is more than 40X more likely to get shared on social media than other types of content.
- Facebook posts with images see 2.3X more engagement than those without images.

PHOTO TAKING TIPS - WITH YOUR PHONE!

LENS: The lens is an essential piece for taking a good photo. Carrying your phone in your pocket or purse often leaves the screen grimy with fingerprints, food, etc. Be sure to wipe your lens off with a cloth, or even your shirt before taking a photo. This small step can turn a blurry photo into a much crisper image.

ANGLE: It's a habit to grab your phone and shoot from shoulder-height. But especially when it comes to product photos, it is important to change your perspective! When taking pictures of food, consider an angle that puts you "eye-to-eye" with that cheeseburger (or cookie!); for apparel or smaller merchandise, make a flat lay, and take a picture from a bird's-eye view. Want to showcase how full your store is? Get up high! Want to remind your customers that your shop is dog-friendly? Go low, and shoot from your furry friend's perspective!

LIGHT: When possible, always take your photos where natural light is available. This might require creating a little photo set up by a window or door, but the additional sunlight is worth the hassle!

BURST: If you have a moving subject and want to get the perfect shot, hold down the button to take a photo, and your phone will enter burst mode and take multiple shots in a row. You can then scroll through this set of shots later, select the perfect one and discard the rest. Taking a video and screen-shotting the ideal frame is another way to achieve the perfect shot on a moving subject.



SOCIAL MEDIA PROMPTS

Feeling stuck on social? We get it! It is hard creating new content week after week!

But, having an online presence is extremely important in today's business world. Give your customers a reason to come visit or call your business! See TEN social media prompts below to get you started on the path to social success!

1. What is the founding story of your brand?
2. Two truths and a lie with a key team member
3. A peek behind your supply chain
4. Customer Testimonial
5. Product Testimonial & Tag someone who needs to know!
6. Giveaways
7. Inspirational/Funny Quote
8. Industry Commentary
9. Celebrate a Social Media Holiday (National Day of...)
10. Behind the Scenes "Day at the Office"

◀ HHDesigns stages a flat lay shot to show off a recent sweater design. Extra points for fun props!

High-angle and natural light make this ice-cream sandwich from the KreeMee look even more delicious! (For National Chocolate Chip Cookie Day.)

THE HEAT IS ON!

THE SUMMER MONTHS CAN BE STIFLINGLY HOT IN SOUTH DAKOTA AND HIGH TEMPERATURES CAN POSE A SERIOUS HEALTH THREAT TO PEOPLE WHO WORK OUTSIDE OR ARE ENGAGED IN INDOOR OCCUPATIONS WITH HOT CONDITIONS.

The Occupational Safety and Health Administration (OSHA) reminds employers that workers have the right to working conditions that don't pose a risk of serious harm.

Here are some of OSHA's suggestions for reducing heat exposure and the risk of heat-related illness.

ENGINEERING CONTROLS

- Air conditioning in vehicles and break rooms
- Increased general ventilation
- Cooling fans
- Local exhaust ventilation at points of high heat production or moisture, such as exhaust hoods in laundry rooms
- Reflective shields to redirect radiant heat
- Insulating of hot surfaces such as furnace walls
- Elimination of steam leaks
- Cooled seats or benches for rest breaks
- Use of mechanical equipment to reduce manual work (such as conveyors and forklifts)
- Misting fans that produce a spray of fine water droplets

WORK PRACTICES

- Modify work schedules and activities for workers who are new to warm environments.
- Schedule shorter shifts for newly hired workers and existing workers who aren't acclimated to heat. Gradually increase shift length over the first 1 to 2 weeks.
- Require mandatory rest breaks in a cooler environment (such as a shady location or an air conditioned building). The duration of the rest breaks should increase as heat stress rises.
- Consider scheduling work at a cooler time of day, such as early morning or late afternoon.

- Reduce physical demands as much as possible by planning the work to minimize manual effort (such as delivering material to the point of use so that manual handling is minimized).
- Rotate job functions among workers to help minimize exertion and heat exposure.
- Workers should be encouraged to drink at least 8 ounces of water every 20 minutes while working in the heat not just if they are thirsty.
- Have an emergency plan that specifies what to do if a worker has signs of heat-related illness, and ensures that medical services are available if needed.
- Administer appropriate first aid to any worker who is developing a heat-related illness.
- In some situations, employers may need to conduct physiological monitoring of workers.
- Implement a buddy system for new workers and in heat stress environments; workers should watch out for each other for symptoms of heat-related illness.
- Avoid drinking hot beverages during lunch and afternoon breaks.

PERSONAL PROTECTIVE EQUIPMENT

In some workplaces, personal protective equipment – such as cooling neck wraps, insulated suits, reflective clothing, or infrared reflecting face shields – might be needed. In extremely hot conditions, thermally conditioned clothing might be used.

Workers should be aware that use of personal protective equipment – such as certain types of respirators, impermeable clothing, and head coverings – can increase the risk of heat-related illness.

TRAINING

Make sure workers and supervisors are trained about the hazards of heat exposure, different types of heat-related illness and their prevention, and procedures for responding to possible heat-related illness.

VISIT [OSHA.GOV/SLTC/HEATSTRESS](https://www.osha.gov/sltc/heatstress) FOR MORE INFORMATION.

RIA Fiduciary 401k Plan Option™

Executive Summary

401k plans through an RIA (Registered Investment Advisor) platform provide timely, accurate, and responsive retirement plan services. Plan design includes low cost and fee transparency. 3(38) Fiduciary Investment Manager services provided by Wealth Management LLC.

How does this plan benefit the employer?

Lower cost

- **Elimination of high-cost funds:** The plan uses only institutional class funds
- **Lower cost of administration:** The bundled RIA solution is generally lower cost than those provided by an insurance company or payroll provider
- **Transparent, easy-to-understand fees:** No hidden fees or revenue sharing

More employer services

- **Single point of contact:** You get to know the consultant working on your plan
- **USA-based customer service:** no offshore call centers
- **Education for employees:** custom website provides education and online services for employee access at any time
- **Fiduciary coverage:** 3(38) Fiduciary Investment Manager, Wealth Management LLC, selects and monitors the investments, including professionally managed portfolios

When can an employer group join?

- Any calendar month

Why would an employer participate?

- **Philosophy:** There is a difference between having something done, and having it done as well as it could or should be done
- **Service:** Striving to exceed expectations for timeliness, accuracy, and responsiveness
- **Plan design:** TPA professional experience and qualifications in plan design
- **Performance:** Screening process evaluates 18,000 funds to determine lineup
- **Price/fees:** Transparent fees tend to lead to lower costs
- **Employee outcomes:** Plan design and a transparent lower fee structure may drive toward better employee retirement outcomes

What about an employer's current plan?

- Current plan may be transferred, rolled, or converted to the new 401k plan

What if an employer does not have a current plan?

- Start-up plans and start-up advice available

The Hahn Financial Group, Inc. (HFG) is an SEC Registered Investment Advisor focusing on retirement plans, Self-Funded Health Plans with Stop-Loss, and wealth management. HFG serves for-profit and not-for-profit small/large employers, groups, associations, cooperatives, hospitals, and religious entities. We believe in 100% transparency in all we do.

HFG offers strategies and advice focused on our clients' challenges and unique opportunities.

For more information, contact:

Hahn Financial Group, Inc.
1-800-516-4246 (HAHN)
3101 S Phillips Ave
Sioux Falls, SD 57105
office@hahnfinancialgroup.com



SOME BUSINESSES MAY STOP COLLECTING TOURISM TAX AT THE END OF SEPTEMBER

Tourism-related businesses in South Dakota collect and remit a 1.5% state tax that is used primarily for tourism promotion. Some categories of businesses collect the tax all year; others collect it only four months per year.

VISITOR INTENSIVE BUSINESSES COLLECT THE TOURISM TAX FROM JUNE 1 THROUGH SEPTEMBER 30:

- Antique shops
- Book stores (*excluding post-secondary, college and university book stores*)
- Candy stores
- Flea markets
- Gift shops
- Indigenous arts/crafts shops
- Jewelry
- Lapidary shops
- Leather goods shops
- Marinas
- Novelty shops
- Pottery shops
- Rock shops
- Souvenir shops
- T-Shirt shops

If 50% or more of total annual receipts are derived from the sale of tangible personal property during the months of June, July, August and September then tourism tax is due on sales during these periods.

TAX APPLIES YEAR-AROUND:

- Lodging (including hotels, motels, campgrounds, resorts, cabins and bed and breakfasts)
- Visitor attractions (including amusement parks, museums, racetracks, ski areas, and water slides)
- Recreational services
- Recreational equipment rentals
- Lease of motor vehicles for 28 days or less
- Spectator events (this includes events such as concerts, rodeos, art festivals, and craft fairs)

For more information, read the Tourism Tax Facts at dor.sd.gov/media/2hljdrss/tax-fact-tourism.pdf

TOURISM TAX STATS FOR THE LAST DECADE

FISCAL YEAR	STATE TOURISM TAX WAS DUE	ON TAXABLE SALES OF
2020	\$12,503,565.98	\$833,569,881.37
2019	\$13,393,063.12	\$892,869,601.78
2018	\$12,917,388.08	\$861,157,991.43
2017	\$12,494,860.20	\$832,989,744.03
2016	\$12,869,980.09	\$857,997,853.85
2015	\$11,416,980.13	\$761,143,813.92
2014	\$10,649,876.89	\$710,005,289.70
2013	\$10,113,274.15	\$674,282,277.91
2012	\$9,544,378.68	\$636,078,003.57
2011	\$9,488,451.91	\$633,185,615.26

* FISCAL YEAR: JULY 1 - JUNE 30

SHORTER HOURS FOR YOUNG TEENS AFTER LABOR DAY

Do you employ workers who are 14 or 15 years old? Their allowable work hours are more restrictive after Labor Day than during the summer months. Under federal child labor laws, in nonagricultural occupations the permissible jobs and hours of work, by age, are:

WORKERS AGE 18 OR OLDER

May perform any job, whether hazardous or not, for unlimited hours.

WORKERS AGE 16 AND 17

May perform any non-hazardous job, for unlimited hours.

WORKERS AGE 14 AND 15

May work outside of school hours in non-manufacturing, non-mining, non-hazardous jobs:

- Up to 3 hours on any day in which school is in session;
- Up to 18 hours in any week in which school is in session;
- Up to 8 hours on a non-school day;
- Up to 40 hours in a non-school week (a “non-school week” means there is no school on any day in that week).

After Labor Day, any work performed by a 14- or 15-year old employee must occur between the hours of 7 a.m. and 7 p.m. (From June 1 through Labor Day, evening hours are extended to 9 p.m.)

WORKERS UNDER 14

The federal Fair Labor Standards Act sets 14 as the minimum age for most nonagricultural work. With a few exemptions:

For example, children of any age are generally permitted to work for businesses entirely owned by their parents (except in mining, manufacturing or hazardous jobs). At any age, youth can deliver newspapers; perform in radio, television, movie, or theatrical productions; and perform babysitting or perform minor chores around a private home. Also, at any age, youth may be employed as homeworkers to gather evergreens and make evergreen wreaths.

HAZARDOUS JOBS

For information on hazardous jobs, visit the U.S. Department of Labor’s Youthrules website at youthrules.gov/know-the-limits/hazards/index.htm.

YOUTH OPPORTUNITY TRAINING WAGE

In general, teen workers in South Dakota must be paid the same minimum wage as adult workers. However, both federal law and South Dakota law allow employers to pay a training wage of \$4.25 or more per hour to employees under the age of 20 for the first 90 calendar days of employment. After that 90 days, teen workers generally must be paid the full state minimum wage unless they fall into a category that is exempt.

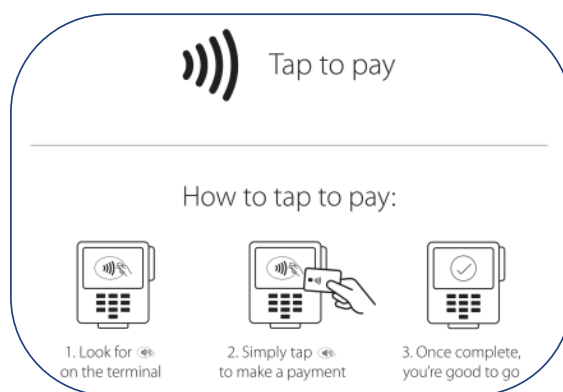
COVID-19 ACCELERATES CONTACTLESS PAYMENT DEMAND

In our current consumer climate, demand for contactless payments has grown significantly. According to Visa, this March, 31 million Americans tapped a card or mobile device as their form of payment, an increase of 50% from six-months prior.

Within the United States, there is a lack of awareness regarding contactless payments. Many American consumers are unaware if they have a credit card that is contactless or if the business accepts contactless payments.

If you currently accept contactless payments, provide signage near their payment devices to let consumers know contactless cards or mobile devices are accepted. Businesses also need to educate and train employees on handling contactless payments and assisting consumers in using it effectively. If you process credit cards through the South Dakota Retailers Association, many of the new terminals are set-up with this technology. Expect more information in the coming months regarding this growing demand.

Visa offers free signage at merchantsignage.visa.com (see below).



Have questions on credit card processing?
Contact Carrie Wheelhouse at cwheelhouse@sdra.org or (605) 224-5050 for assistance!

South Dakota's only local vision plan



Over 145 SDRAs businesses signed up!

- South Dakota's largest provider network!
98% of South Dakota's vision centers accept Optilegra
- LASIK surgery right here in South Dakota!
Vance Thompson Vision (Sioux Falls)
Black Hills Regional Eye (Rapid City)
Wright Vision Center (Rapid City)
- Huge savings!
Save hundreds on your eye care bill with the doctor you trust
- No Cost to the Employer!
SDRA businesses can choose a Voluntary plan where plan costs can be 100% payroll-deducted from the employee
- Small groups are welcome!
SDRA members only need 1 employee to sign up!
- One of the most popular employee benefits!
Employees love getting a new pair of glasses or contacts each year
- Speak with someone right here in South Dakota!
Based in Sioux Falls, our team all grew up in SD

For more information: 1.800.658.5545 services@sdra.org

LODGING AND PER DIEM RATES FOR GOVERNMENT EMPLOYEES TRAVELING ON STATE OR FEDERAL BUSINESS

FEDERAL PER DIEM

The federal allowance for lodging, meals and incidental expenses (per diem) may change effective October 1 each year. Rates vary according to location within the state and may vary according to the month.

Check the U.S. General Services Administration website at [gsa.gov/travel/plan-book/per-diem-rates](https://www.gsa.gov/travel/plan-book/per-diem-rates). Scroll down to the map and click on South Dakota to find lodging and meal rates for your area. Additional information including FAQs (frequently asked questions) can be found near the bottom of the page.

STATE LODGING RATES

For employees traveling on state business, the State of South Dakota will pay up to a maximum of \$75.00 (plus tax, if applicable) per day for lodging year-round. This rate, which applies to all areas of the state, has been in effect since July 1, 2019 and is not currently set to increase.

The South Dakota Fleet and Travel Office maintains a list of lodging establishments that offer “state rates”. Visit boa.sd.gov/fleet-travel/lodging-at-staterates.aspx for information on how to be added to or removed from the list, or to view the list of establishments that offer state rates.

STATE EMPLOYEE MEAL PER DIEM

The meal allowance for state employees in conjunction with state business are generally:

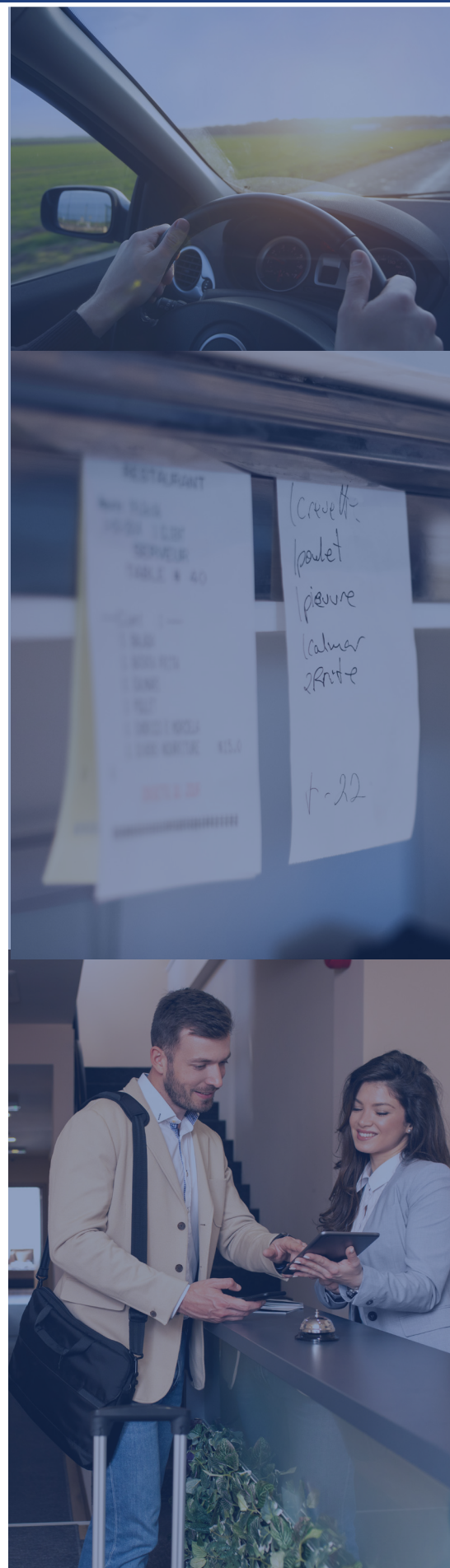
- \$6 for breakfast
- \$14 for noon lunch
- \$20 for dinner
- up to a maximum of \$40 a day

These meal rates have been effective since July 1, 2019 and are not currently set to increase.

TAX ON STATE EMPLOYEE LODGING AND MEAL PER DIEMS

When a state employee traveling on state business stays at your lodging establishment or purchases meals from your business, the transaction may or may not be taxable, depending on how payment is received.

- When lodging or meals are direct billed to a state agency and the agency pays with government funds, no sales tax applies. The key is the payment must come directly from the governmental entity’s funds.
- State employees who pay for lodging or meals with personal funds (personal credit card, check or cash) are subject to state and municipal sales taxes. The employee will request reimbursement from their agency for the transaction, including sales tax.



YOUR QUESTIONS, ANSWERED.

OVERCHARGED SALES TAX

Q: We discovered our new POS system was overcharging sales tax. We didn't know about the excess charge when we filed our sales tax report so our tax remittance was based on gross sales. What steps should we take to rectify this situation?

A: The South Dakota Department of Revenue says you will need to amend your original filing and should report the additional tax as soon as possible. The agency recommends that you speak with a Department of Revenue agent immediately to make sure it is handled properly. Since this is extra tax that was collected but not remitted on a timely basis, the state's computer system will automatically calculate late fees. You may request a waiver or reduction of those fees if this was indeed an unintentional error and you can show that you are acting in good faith and taking steps to get it corrected promptly.

RESTAURANT STAFF FOOTWEAR

Q: Are kitchen workers and/or servers in foodservice establishments required by state laws or regulations to wear a specific type of footwear such as close toed shoes and are they restricted from wearing any particular types of footwear?

A: While there are no state laws or requirements on the books concerning footwear for restaurant staff, the South Dakota Department of Health recommends establishments create a policy due to safety concerns. In developing your policy, be sure to keep in mind the potential for injury from things such as someone dropping a knife, breaking a glass, spilling hot liquid, slippery floors, etc.

NOTE: This information is not legal advice, and may not apply to every business. SDRA does not have an attorney on staff, and we are not able to provide legal advice. Answers to questions and other information contained in this newsletter or provided in written, verbal or electronic form by SDRA are intended for informational purposes only. For legal advice or for assistance with contracts, purchase agreements or lease agreements, please consult an attorney.

TEMPORARY FOOD SALES

Q: I own a retail business and don't ordinarily sell food items. I'd like to make and sell walking tacos at my store during an upcoming community event. Would I need to obtain a foodservice license or take ServSafe training?

A: The South Department of Health (DOH) says a business that doesn't ordinarily sell prepared food would need to obtain a foodservice license to sell/serve food to customers for a special event.

The agency says there is a provision in law that allows license exemption if a business offers prepared food at no cost in conjunction with a grand opening or promotion, etc. This is limited to no more than 3 times per year and no longer than 3 consecutive days (SDLC 34-18-17).

Otherwise, if a business is planning to sell prepared food as it appears in the situation you describe, DOH recommends obtaining a temporary food service license. Visit doh.sd.gov/documents/Food/tempfood.pdf for information.

DOH says the state would not require you to attend a foodservice training class or pass a certification exam, since temporary foodservice is exempt from that state requirement. (Note: SDRA offers ServSafe training and certification for establishments that are required to meet those standards. See page 16 for more information.)

If your city has a health department, be sure to check with them for any local requirements or restrictions.

TAX ON BRANDED ITEMS GIVEN OR SOLD TO EMPLOYEES OR CUSTOMERS

Q: *We buy shirts, vests and caps with our logo that are not for public purchase. Some items are part of the employee uniforms. Other items are given to employees for personal wear or are given away to customers and others as promotional items. Should we be paying sales tax when we buy these items?*

A: If a business in South Dakota purchases clothing, uniforms, aprons, hats, vests, etc., and gives those items to employees, customers or others at no charge, then the business is responsible for paying state sales or use tax and applicable municipal tax on the purchase.

If the business charges the employee or customer for the clothing, the business can purchase the items for resale without paying tax. The business would then charge state sales tax and applicable municipal tax when the items are sold to an employee or customer.

TAX ON COMPUTER SOFTWARE

Q: *I downloaded computer software from an out-of-state website. Is the fee for the software taxable?*

A: If you operate a retail business in South Dakota and you purchased and downloaded computer software from an out-of-state website, that company may not have charged you sales tax. In that case, you owe state and applicable municipal use tax on the transaction.



SERVSAFE® TRAINING OPPORTUNITIES

IN-PERSON CLASSES ARE AVAILABLE

Beginning in September, SDRA will be offering in-person ServSafe instruction again! The national eight-hour course and the state-accepted recertification four-hour course will be available in September and October across the state. See below to view the full schedule for Sioux Falls, Rapid City, Aberdeen, and Watertown.

Online coursework is still an option. The online coursework is completed on your own, at your own pace, but requires a proctored exam (*taken in the presence of a designated individual*). Online exam sessions will be available in Rapid City, Sioux Falls and the Retailers Association office in Pierre. **To register for the online coursework, call our office at (800) 658-5545.**

LOCATION AND DATES OF ONLINE EXAMS (PRE-REGISTRATION IS REQUIRED):

RAPID CITY

BW Ramkota
2100 N. LaCrosse St.
Thursday, October 1 | 4:30 p.m.
Friday, October 2 | 4:30 p.m.

SIOUX FALLS

Best Western Plus Ramkota
3200 W Maple St.
Wednesday, September 16 | 4:30 p.m.
Wednesday, October 7 | 4:30 p.m.
Wednesday, November 4 | 4:30 p.m.

PIERRE

SDRA Office
320 E Capitol Ave
Call (800) 658-5545 to schedule.
The Pierre exam requires a personal laptop or tablet with Wi-Fi capabilities.

SERVSAFE® NATIONAL CERTIFICATION (8-Hour Class + Test)

ABERDEEN

Dakota Event Center
720 Lamont St. S.
Wednesday, October 14

SIOUX FALLS

Best Western Plus Ramkota
3200 W Maple St.
Wednesday, September 16
Wednesday, October 7
Wednesday, November 4

CLASS INFO:

INSTRUCTION AND TEST

8:00 A.M. - 6:00 P.M.

Please arrive 15 minutes early for registration. Bring your ServSafe® textbook with the Examination Answer Sheet, and a valid ID.

RAPID CITY

BW Ramkota
2100 N. LaCrosse St.
Thursday, October 1
Friday, October 2

WATERTOWN

Watertown Event Center
1901 9th Ave SW
Wednesday, September 9

STATE RECERTIFICATION (4-Hour Class*)

*The 4-hour program does not maintain the national ServSafe® certification, but it does meet the requirements of the South Dakota Department of Health. The 4-hour class is based on the ServSafe® course, but there is no test at the end of the course, and no workbook beforehand.

ABERDEEN

Dakota Event Center
720 Lamont St. S.
Tuesday, October 13

SIOUX FALLS

Best Western Plus Ramkota
3200 W Maple St.
Wednesday, October 21

CLASS INFO:

INSTRUCTION

1:00 - 6:00 P.M.

Please arrive 15 minutes early for registration and bring a valid ID.

RAPID CITY

BW Ramkota
2100 N. LaCrosse St.
Tuesday, October 27

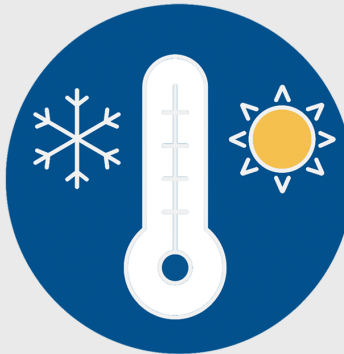
WATERTOWN

Watertown Event Center
1901 9th Ave SW
Tuesday, September 8

DUE TO COVID-19, THE FOLLOWING IN-PERSON CLASS PRECAUTIONS HAVE BEEN MADE:

- Masks required
- Limited student availability due to social-distancing recommendations
- Limit personal items in the classroom (book, photo identification, pencil only)
- Practice social distancing when entering/leaving the room and during breaks
- Hand sanitizer provided and use encouraged

THE SERVSAFE® TRAINING PROGRAM INSTRUCTS EMPLOYEES IN FOOD-BORNE ILLNESSES AND THEIR PREVENTION. IT ALSO EQUIPS STUDENTS TO PROPERLY TRAIN OTHERS IN FOOD SAFETY.



SIGN UP STUDENTS TODAY AT SDRA.ORG OR [605] 224-5050



ADDITIONAL TRAININGS VISIT SDRA.ORG/SERVSAFE FOR MORE INFORMATION



South Dakota businesses who sell alcohol are advised to provide approved training to their employees. If your establishment is caught selling alcohol to an underage person, your business will be fined and the penalty is doubled if the employee who sold the alcohol has not been through ServSafe® Alcohol Training or an approved training program. SDR members receive a 20% discount.



The number of Americans affected by food allergies is trending higher every year. Dining out is a serious concern for individuals with this life-threatening condition and they are often unsure which restaurants can safely accommodate them - if at all. The online ServSafe® Allergens Training is a way to make sure you and your employees have the basic information you need to ensure everyone takes the steps necessary to keep your customers safe. SDR members receive a 10% discount.



ServSafe® Workplace is a comprehensive suite of training programs rooted in the cultural and social issues affecting today's restaurant and hospitality work environments. These programs equip employees and managers with training to help manage emerging risks and advance the positive culture of the foodservice and hospitality industries. These programs will combine online training to create consistent messaging, while providing additional free resources such as breakroom posters, videos, and discussion guides to reinforce key training points.

Christopher Hoyme's

FIVE COMMON WAGE AND HOUR MISTAKES

When you make a mistake, often you can apologize and move on. When it comes to employment law mistakes, however, a simple apology probably won't suffice. Those errors can be very costly for your business in terms of potential litigation, possible financial penalties, and a risk of damage to your reputation.

HERE ARE SOME OF THE MOST COMMON WAGE AND HOUR MISTAKES MADE BY SMALL BUSINESSES.

MISCLASSIFYING EMPLOYEES

Employee or independent contractor? This question trips up employers of all types.

Employers often think short-term employment automatically qualifies someone as an independent contractor. A person may have been hired to work on a specific project, to help with a temporary spike in business, to fill in temporarily for a staff member who is on leave, or for some other short-term need. But temporary status doesn't equate to independent contractor status.

It's important to distinguish between employees and independent contractors. A business doesn't have overtime or withholding obligations for an independent contractor as they do with an employee. But, incorrect classification may result in back pay, benefit administration issues and potential penalties.

Unfortunately, there's not a precise definition of "independent contractor". All the activity a person is engaged in must be considered, such as:

- Who controls how, where and when the work is done

- Who determines what tools or equipment to use
- Who decides where to purchase supplies and services
- Who makes hiring decisions
- What is the permanency of the relationship
- Are there opportunities for profit and loss
- Are expenses reimbursed
- Is the worker free to seek out other business opportunities
- How is the individual paid, i.e. hourly wage, salary, or flat fee

For more information visit the U.S. Department of Labor's (DOL) website: dol.gov/agencies/whd/flsa/misclassification.

NOT PAYING OVERTIME

Employers sometimes think they can avoid paying overtime by paying a worker on a salary basis. But in order for an employee to be correctly classified as exempt from overtime pay requirements, the employee must meet the duties or industry requirements for the exemption.

Under the Fair Labor Standards Act, employees generally must receive

overtime pay if they work more than 40 hours in a 7-day workweek – regardless of whether they're paid on an hourly or salary basis - unless they fall into a category that is exempt from minimum wage and/or overtime pay requirements.

Among the exempt categories:

- Executive employee
- Administrative employee
- Learned or creative professional employee
- Computer employee
- Outside sales employee
- Employees of certain seasonal amusement or recreational establishments

Specific criteria must be met for an employee to be classified as exempt.

Check DOL fact sheets:

- Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees: dol.gov/sites/dolgov/files/WHd/legacy/files/fs17a_overview.pdf
- Exemption for Seasonal Amusement or Recreational Establishments: dol.gov/sites/dolgov/files/WHd/legacy/files/whdfs18.pdf

INCORRECT USE OF COMP TIME

Some employers offer comp time in lieu of overtime pay to their hourly workers.

However, federal law doesn't permit a private-sector employer to substitute paid time off for overtime pay that has been earned by a nonexempt worker – even if the worker would rather receive comp time than overtime pay. If a nonexempt employee works more than 40 hours in a 7-day work week, they generally must receive overtime pay.

An employer may allow an employee to take time off in the same work week in order to avoid paying overtime.

Example: An employer's work week is Sunday midnight through the following Saturday at 11:59 p.m. The employee normally works eight hours per day, Monday through Friday. On Monday, the employee worked ten hours. The employer could allow the employer to only work six hours on Friday in order to avoid paying overtime.

DEDUCTING WAGES FOR BREAK PERIODS

Employers sometimes require staff to clock out for coffee breaks or other short periods of time during the workday when the employee is at the business but not performing any work.

Generally, short breaks are compensable. Here's the general rule:

- **Breaks:** While federal and South Dakota employment laws don't require employers to provide break periods, if an employee does take a break of less than 30 minutes, under the FLSA that time generally must be counted as work time and is compensable.
- **Meal periods:** A "bona fide meal period" doesn't have to be counted as work time. The employee must have at least 30 continuous minutes when they are completely relieved from all work duties, whether active or inactive. For example, if an employee is expected to answer the phone or respond to emails during their 30-minute meal period, they haven't been completely relieved of work duties, so that time becomes compensable.

FAILURE TO PAY FOR ALL HOURS WORKED

Several mistakes fall under this category. Among the most prevalent: paying only for the scheduled work time when employees clock in earlier or clock out later than their assigned time. Employees must be paid for all hours they are permitted to work, even if it's not scheduled. An employer can round up or down to the nearest quarter hour, but that rounding can't consistently favor the employer. If unauthorized work is a significant problem, the employer may want to consider warning the employee that failure to

adhere to the assigned work time may result in disciplinary action up to and including termination.

Another common mistake in this category is failure to pay employees for time spent in training or meetings. Under the FLSA, employees must be paid for attendance at lectures, meetings, training programs and similar activities unless four criteria are met:

- It is outside normal hours; and
- It is voluntary; and
- It is not job related; and
- No other work is concurrently performed.

Don't assume your wage and hour errors will go unnoticed. In fiscal year 2019 (fy19), DOL's Wage and Hour Division recovered a record \$322 million in back wages owed to workers, averaging \$1,025 per employee. Food service establishments accounted for a high number of cases, with \$42.8 million in recovered wages.

Paying correctly is the right thing to do. It not only helps you avoid the financial crunch and stigma from an investigation and enforcement action, it will also help you keep good employees. And we all know you can't run a good business without good employees.

Christopher E. Hoyme is a Principal in the Omaha, Nebraska, office of Jackson Lewis P.C. Hoyme represents management in all facets of employment litigation, and is a member of the South Dakota State Bar Association.

FREE LABOR LAW ANSWERS

SDRA's retainer allows our members to get basic labor law answers from an employment law firm, at no cost. This service has a value of \$475 per hour!

Email: hoymec@jacksonlewis.com | Call: 1-800-729-1441

Tell them you are an SDRA member!



ELECTION 2020

ballot measures

ON NOVEMBER 3, SOUTH DAKOTA VOTERS WILL DECIDE THE FATE OF THE FOLLOWING BALLOT ISSUES. BE AN INFORMED VOTER!

CONSTITUTIONAL AMENDMENT A | An amendment to the South Dakota Constitution to legalize, regulate, and tax marijuana; and to require the Legislature to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use.

Our View: Recreational marijuana does not belong in South Dakota's constitution and it remains illegal under federal law. Legalizing recreational marijuana will hurt our workforce, lead to increased use by young people, and fail to produce the revenue windfall some have promised.

If Amendment A passes, the only way to correct any flaws would be to put it back on the ballot for another public vote in two years. The proposed amendment would add 15 new sections to our state's foundational document; many of its provisions have real potential for unintended consequences, which could not be fixed by the legislature. Many businesses are struggling to find workers due to failed drug tests; Amendment A will only exacerbate this situation. Since being legalized in Colorado, marijuana usage for ages 12 and older has increased 58 percent, putting young people at risk. And the social problems and tax burdens of treating addiction offset any revenues. **We encourage a NO VOTE on Amendment A.**

**AMENDMENT
NO WAY
VOTE NO**



A vote **YES** is to adopt the amendment.



A vote **NO** will leave the Constitution as it is.

Attorney General Explanation: This constitutional amendment legalizes the possession, use, transport, and distribution of marijuana and marijuana paraphernalia by people age 21 and older. Individuals may possess or distribute one ounce or less of marijuana. Marijuana plants and marijuana produced from those plants may also be possessed under certain conditions.

The amendment authorizes the State Department of Revenue ("Department") to issue marijuana-related licenses for commercial cultivators and manufacturers, testing facilities, wholesalers, and retailers. Local governments may regulate or ban the establishment of licensees within their jurisdictions.

The Department must enact rules to implement and enforce this amendment. The amendment requires the Legislature to pass laws regarding medical use of marijuana. The amendment does not legalize hemp; it requires the Legislature to pass laws regulating the cultivation, processing, and sale of hemp.

The amendment imposes a 15% tax on marijuana sales. The tax revenue will be used for the Department's costs incurred in implementing this amendment, with remaining revenue equally divided between the support of public schools and the State general fund.

Judicial clarification of the amendment may be necessary. The amendment legalizes some substances that are considered felony controlled substances under current State law. Marijuana remains illegal under Federal law.



INITIATED MEASURE 26 | An initiated measure to legalize marijuana for medical use.

Our View: Unlike Amendment A, IM-26 pertains to medical marijuana (not recreational) and would be placed in statute (not the constitution). Although it would add 95 new statutory sections, any unintended consequences could be addressed by the legislature. **The South Dakota Retailers Association is NEUTRAL on IM-26.**

Attorney General Explanation: This measure legalizes medical use of marijuana by qualifying patients, including minors. "Medical use" includes the use, delivery, manufacture-and for State residents, cultivation-of marijuana and marijuana-based products to treat or alleviate debilitating medical conditions certified by the patients' practitioners.

South Dakota patients must obtain a registration card from the State Department of Health. Non-residents may use out-of-state registration cards. Patients may designate caregivers to assist their use of marijuana; the caregivers must register with the Department.

Cardholders may possess 3 ounces of marijuana and additional amounts of marijuana products. Additionally, if a resident cardholder is allowed to grow marijuana plants the cardholder may possess a minimum of 3 plants, as well as marijuana and products made from those plants.

The measure legalizes marijuana testing, manufacturing, and cultivation facilities, as well as marijuana dispensaries. These establishments must register with the Department.

The measure legalizes some substances that are considered felony controlled substances under current State law. Marijuana remains illegal under Federal law. The measure limits State and local law enforcement's ability to assist Federal law enforcement authorities.

The 95-section measure contains numerous other provisions not described here. It will likely require judicial or legislative clarification.

CONSTITUTIONAL AMENDMENT B | An amendment to the South Dakota Constitution authorizing the Legislature to allow sports wagering in Deadwood.

Our View: Sports betting is already widespread, even though it is not expressly authorized in South Dakota's constitution. This amendment would allow "wagering on sporting events" within the city limits of Deadwood, potentially providing a revenue source for businesses who are currently seeing South Dakotans go to nearby states to bet on sports. If it passes, complex legislation would be needed to implement it - or to establish parameters. **We encourage a YES VOTE on Amendment B.**

A vote **YES** is to adopt the amendment.

A vote **NO** will leave the Constitution as it is.

Attorney General Explanation: The constitution currently authorizes the Legislature to allow certain types of gaming in the City of Deadwood: roulette, keno, craps, limited card games, and slot machines. This constitutional, amendment authorizes the Legislature to also include wagering on sporting events as a type of gaming allowed in Deadwood.

Under federal law, any gaming authorized by the Legislature to be offered in Deadwood would also be allowed at on-reservation tribal casinos upon amendments to current tribal gaming compacts.

SOUTH DAKOTA LODGING LAW FAQ

LODGING CONFIRMATIONS

Q: DOES SOUTH DAKOTA REQUIRE LODGING ESTABLISHMENTS TO PROVIDE GUESTS WITH CONFIRMATION OF LODGING RESERVATIONS AND RATES?

A: It is a good practice to provide confirmation. However, state law only requires written confirmation if requested by the guest.

Under 37-24-6 (9), South Dakota classifies it as a deceptive practice if a lodging establishment knowingly fails to “mail or to deliver by electronic means to a future guest a written confirmation of the date and rates of reservations made for any accommodation at a hotel, motel, campsite, or other lodging accommodation when a written request for confirmation is received from the future guest.”

LODGING PRICES

Q: WHAT IS SOUTH DAKOTA'S LAW PERTAINING TO CHARGING A LODGING GUEST MORE FOR THEIR SECOND AND SUBSEQUENT NIGHTS?

A: If you raise the price of a room or campsite, the guest must be properly notified and they must sign an acknowledgment that they have been notified of the rate increase.

It's spelled out in South Dakota law 37-24-6 (7) which says it is illegal to:

“Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging accommodation which is different than

the rate, price, or fee charged on the first night of the guest's stay unless, at the initial registration of the guest, a written notification of each price, rate, or fee to be charged during the guest's reserved continuous stay is delivered to the guest and an acknowledgment of receipt of the notice is signed by the guest.”

The law requires the innkeeper to maintain that record for one year.

REFUNDS ON LODGING DEPOSITS

Q: CAN I CHARGE A DEPOSIT FOR LODGING OR CHARGE CANCELLATION FEES?

A: These types of charges are legal if guests receive proper notification.

Specifically, state law 37-24-6 (10) makes it illegal to: “Require money in advance of arrival or a handling fee in the event of cancellation of any hotel, motel, campsite, or other lodging accommodation unless the innkeeper has a written policy or a separate contract with the guest stating so that is mailed or delivered by electronic means to the guest at or near the making of the reservation.”

It's advisable to check your credit card processing contract to see if it contains any restrictions regarding deposits or cancellation fees. Also, keep in mind that in the case of a chargeback dispute, the bankcard company could favor the customer if your policy is too harsh.

RECORDING LICENSE PLATES

Q: DOES SOUTH DAKOTA REQUIRE LODGING ESTABLISHMENTS TO RECORD THE LICENSE PLATES OF GUESTS?

A: Yes. It is part of a list of requirements included in state law 34-18-21.

The law says: “Each person conducting a lodging establishment or campground shall keep a record of guests. Such a record may be kept in a register or on separate cards and shall be opened for inspection and copying by the secretary of health for the purpose of protecting the health or life of persons or for an emergency which may affect the public health. The inspection and copying shall take place during business hours and shall be conducted by an authorized department inspector after presentation of identification.”

The law goes on to say that the records must contain the:

- Name of the guest
- Number in the party
- Place of permanent residence of the guest
- Date of registration
- Date of departure
- Daily rate charged
- Motor vehicle license number of the registrant
- Each rate, price, or fee charged to the guest for the guest's stay at the lodging establishment or campground

The law requires the establishment to keep these records for at least one year.



HISTORIC PAST, CURRENT CHARM

EXPLORE BUFFALO RIDGE RESORT AND BUSINESS CENTER

Are you craving a change of scenery? Nestled in the small town of Gary, SD, a population of just over 200, lies an impressive compound of buildings yielding a hotel, business center, restaurant, and campground, all complete with modern amenities.

SDRA Member, Buffalo Ridge Resort and Business Center has a long history in the community and the state. Initially, the building was used as the Deuel County Courthouse; however, after Gary lost the county seat, the grounds were transformed in 1900 to open the first South Dakota School for the Blind. After more than 60 years of operation, the school moved to Aberdeen due to its proximity to secondary education and travel opportunities.

Following nearly 30 years of vacancy, the property was purchased, and conceptualization for tomorrow began! With a rich past and an exciting future, the building renovations commenced, and the vision of Buffalo Ridge soon became a reality. In 2009, as part of an Independence Day celebration, the Herrick Hotel, Woodbury Hall, and the Talking Waters Campground opened; the Rock Room Bar and Grill followed a year later.

But like many businesses in 2020, this year did not turn out exactly as they had planned.

However, even as business conferences and some large gatherings canceled, the campground quickly filled up, and many Minnesota couples searched for alternative wedding venues. Buffalo Ridge Resort managed a successful summer despite COVID-19 restrictions.

"We kept going and pushing just as we would have any other year. Not letting the uncertainty of 2020 faze us, said Event Coordinator Abby Vlaminck. "Instead, we all came together and worked hard to make sure we got and executed every single event!"

The versatility of the resort helped push through an unpredictable summer. With a campground at capacity, weekends full of weddings and family reunions, and live music on the restaurant patio, the grounds felt alive during a year no one could predict. For a location with a remarkable past, the years to come look equally as bright!

Want to know more about the historical Buffalo Ridge Resort and Business Center? Visit them today at buffaloridgeresort.com or stop in the next time you're in Gary!

WHAT TO KNOW ABOUT GIFT CARD EXPIRATION DATES AND FEES

THIS ARTICLE IS INTENDED FOR GENERAL INFORMATION AND REFLECTS SDRA'S UNDERSTANDING OF THE STATE AND FEDERAL LAWS. IT IS NOT INTENDED AS LEGAL ADVICE. SDRA DOES NOT HAVE AN ATTORNEY ON STAFF AND CAN'T PROVIDE LEGAL ADVICE ON HANDLING OF GIFT CARDS, GIFT CERTIFICATES OR OTHER ISSUES.

When COVID-19 caused businesses across the state to shut down for a period of time, loyal customers and local organizations in many communities decided to show support by purchasing gift cards. Following on the heels of the high volume of gift card purchases, retailers have been asking SDRA whether their gift cards can contain an expiration date.

UNDER FEDERAL LAW, GIFT CARDS GENERALLY MUST BE GOOD FOR AT LEAST FIVE YEARS.

The Credit Card Accountability Responsibility and Disclosure (CARD) Act provides that gift cards sold on or after August 22, 2010 cannot expire within five years from the date they were activated or the date that funds were last loaded on to the gift card, whichever is later.

The restriction applies to store gift cards which can be used only at a particular store or group of stores; gift cards with a MasterCard, Visa, American Express, or Discover brand logo; and other general-use prepaid cards.

Under the federal law, gift certificates, store gift cards and general-use prepaid cards may contain an expiration date only if the terms of expiration are clearly and conspicuously stated.

It's also important to note that money from expired gift cards and gift certificates may be subject to South Dakota's unclaimed property law.

EXEMPTIONS

- Reloadable prepaid cards that are not marketed as or intended to be used as gift cards or gift certificates are not covered under the federal expiration date law since these types of cards are generally intended to be used more like a checking account.
- Prepaid cards given as a reward or as part of a loyalty program or promotional program are not covered - such as a free \$15 gift card given by a store if a customer purchases merchandise or services of a certain amount.
- While gift certificates and store gift cards are covered under the rule, the federal regulations exempt devices that are issued in paper form only (including for tickets and events), meaning they do not have to be good for at least five years.
- For more information on what is excluded from the federal law, refer to (D) EXCLUSIONS on page 20 at [ftc.gov/sites/default/files/documents/statutes/credit-card-accountability-responsibility-and-disclosure-act-2009-credit-card-act/credit-card-pub-l-111-24_0.pdf](https://www.ftc.gov/sites/default/files/documents/statutes/credit-card-accountability-responsibility-and-disclosure-act-2009-credit-card-act/credit-card-pub-l-111-24_0.pdf).



DORMANCY, INACTIVITY OR SERVICE FEES ON GIFT CARDS

The final rule that implemented the gift card provisions of the CARD Act restricts dormancy, inactivity, or service fees with respect to gift certificates, store gift cards, or general-use prepaid cards sold on or after August 22, 2010.

Dormancy, inactivity, and service fees may only be assessed for a certificate or card if:

- There has been at least one year of inactivity on the certificate or card;
- No more than one such fee is charged per month; and
- The consumer is given clear and conspicuous disclosures regarding the fees.

Fees subject to the restrictions would include monthly maintenance or service fees, balance inquiry fees, and transaction-based fees, such as reload fees, ATM fees, and point-of-sale fees.

More information on the federal law and final rule:

- Credit Card Accountability Responsibility and Disclosure Act of 2009: govinfo.gov/content/pkg/BILLS-111hr627enr/pdf/BILLS-111hr627enr.pdf (Gift Card information starts on page 18)
- Regulation E definitions, exclusions, form of disclosures: See 205.20, Requirements for gift cards and gift certificates atecfr.gov/cgi-bin/text-idx?rgn=div5;node=12%3A2.0.1.1.6#se12.2.205_120
- Federal Reserve Highlights of Final Gift Card Rule: federalreserve.gov/newsevents/pressreleases/files/bcreg20100323a2.pdf

SOMETHING TO KEEP IN MIND

South Dakota's Division of Consumer Protection often receives calls from shoppers who are angry that a store didn't honor an expired gift certificate. Before deciding to include an expiration date on your store cards/certificates, weigh the pros and cons. Keep in mind you may be potentially alienating a loyal customer or a potential new customer.

UNREDEEMED GIFT CARDS

Money from the sale of an unredeemed gift card or gift certificate may have to be turned over to the State of South Dakota as unclaimed property.

If a gift certificate, gift card, or a closed-loop prepaid card* contains an expiration date or if it has dormancy fees or other fees associated with it, state law 43-41B-15 provides that if the card or certificate isn't redeemed within three years, the money reverts to the state Unclaimed Property Fund, handled by the State Treasurer's office.

Gift cards, gift certificates and closed-loop prepaid gift cards - which are redeemable at a single specific business or affiliated group of businesses - are exempt from the state

unclaimed property law IF they contain no expiration date and have no fees associated with them.

** Closed-Loop Prepaid Cards: State law 43-41B-43 defines a closed-loop prepaid card as an electronic payment device that meets the following conditions:*

- 1. Is purchased or loaded, or both, on a prepaid basis in exchange for payment for the future purchase or delivery of goods or services; and*
- 2. Is redeemable upon presentation to a single merchant or an affiliated group of merchants for goods and services. "Smith's Cafe" or "Jane's Book Store" would be examples of a single merchant. Target or Hy-Vee would be examples of an affiliated group of businesses.*



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UNITED STATES
SMALL BUSINESS ADMINISTRATION

BUILD IT AND THEY WILL COME ...OR MAYBE THEY WON'T!

THEY CALL IT THE KEVIN COSTNER FIELD OF DREAMS SYNDROME: AN ENTREPRENEUR OPENS A BUSINESS AND EXPECTS CUSTOMERS TO MAGICALLY APPEAR. “BUILD IT, AND THEY WILL COME,” AS THE LINE WENT IN THE MOVIE.

At South Dakota’s Small Business Development Center (SBDC), they know the reality is far more complex. Getting a business up and running, making it profitable and remaining competitive takes extensive planning, budgeting, marketing, and analysis.

That’s where SBDC comes in. They offer free, confidential assistance to first-time entrepreneurs and existing businesses.

South Dakota’s seven regional SBDC offices are part of a network of offices across the country funded in part by the U.S. Small Business Administration. In South Dakota, the offices also receive funds through the University of South Dakota, the Governor’s Office of Economic Development, local economic development entities, communities, and businesses.

State SBDC Director Mark Slade says developing a business plan is a crucial step for any business. SBDC provides

tools and resources to walk a person through that process, including a Business Planning Guide available at sdbusinesshelp.com/resource-category/business-planning-guide.

Once a person has drafted a business plan, SBDC will review it to ensure it is complete and realistic, will help strengthen the plan and make sure the person isn’t overlooking a significant aspect of starting or expanding a business.

Slade says SBDC is probably best known for helping clients develop financial projections.

“For a lot of entrepreneurs, that’s the biggest challenge,” Slade told SDRA. “They kind of know the mechanics of the business, how to run the business, how they plan to market the business, if they need employees and how many. But then we sit down and help that entrepreneur through the process of taking all of that information and turning it into a profit and loss statement, turning it into a cash flow statement and a balance sheet.”

SBDC offers software that will take financial figures and lay it out in a format that bankers want. It can be used for some ratio analysis to compare to

industry averages to help determine if the businessperson needs to make some adjustments in their planning.

Slade said the financial analysis can be an eye-opening experience. He cited the example of a client that was planning to move to South Dakota to start a manufacturing business. Their financial plan included spending millions of dollars on equipment, but they hadn’t realized some equipment purchases would be subject to hundreds of thousands of dollars in use tax until SBDC alerted them to that fact.

Once the financial analysis is complete, SBDC can help identify potential loan and funding sources. Special loan packages may be available based on the type of product or service being offered, the number of jobs being created, the level of wages being paid, and the geographic location of the business.

SBDC can also work with businesses on marketing strategies. Slade says that is often the least-well-thought-out piece of the puzzle for entrepreneurs who assume that just being the best at something will get customers to turn out.

“You may be the best mechanic in the world,” he noted, “but how do you get that word out and get it out effectively, and message it in a way the customer is likely to give you a call? Even if you have the best customer service around, how do you get that first customer in the door?”

Slade says a lot of entrepreneurs think they can rely solely on word of mouth to generate customers, but he cautions that there generally is not enough time to build up the necessary client base that way before the business owner runs out of money. “There’s still a fundamental need to get out there and do the traditional marketing, especially in those early phases,” he said. “And it’s important not to under-budget that piece at the onset of your business.”

Slade says signage is one area that tends to be under-budgeted by businesses. He encourages businesses to get estimates on professional signage when developing a business plan.

He also says many businesses are making a mistake by not having even a basic web presence.

“They’re just putting themselves at a disadvantage right out of the gate,” he pointed out. “Even if it’s just an informational site to get their name out there: who am I, my products and services, the hours, some photos from inside the shop. You have to have

some kind of online presence to have that extra component of marketing.... That’s one step in getting in touch with the customer.”

SBDC is also affiliated with other programs that assist businesses.

The Procurement Technical Assistance Center (PTAC), a program affiliated with SBDC, learned that the pro shop at Ellsworth Air Force Base was looking for skiing gear they could rent out to military personnel and their families. PTAC advised a retail sporting goods store in Sioux Falls to put in a bid, and helped them develop a proposal that landed the contract. Over a period of years, that store became the sole source supplier to the Air Force nationwide for that particular brand of snow gear.

Other programs affiliated with SBDC work with businesses that are importing or exporting products. They have a manufacturing group that consults with manufacturers and larger retailers. To help fill a workforce gap, the group is increasingly working with robotics and automation.

Slade is proud of the successes in which his agency has played a role. In some cases, that has meant helping guide someone to a decision not to pursue a business or not to expand a business, if the risk far outweighs any reward potential. But often, it means helping a business get off to a running start.

“You’ll drive up and down some of these Main Streets and you’ll see business after business after business that we’ve helped get up and going,” Slade said.

Build it and they will come – with some well-thought-out financial planning and effective marketing, and some free guidance from SBDC.

ABOUT SBDC

South Dakota Small Business Development Centers offer one-on-one, confidential no cost business consulting for new and existing businesses. They can assist with development and improvement of business plans to create a roadmap for a business, help with financial analysis and projections, and provide research and industry benchmark comparisons.

All South Dakota counties are served by regional SBDC offices located in:

- Aberdeen
- Brookings
- Pierre
- Rapid City
- Sioux Falls
- Watertown
- Yankton

Visit sdbusinesshelp.com for more information.

9 SIGNS YOU COULD BE A DISTRACTED DRIVER

By United Fire Group, SDRA's endorsed provider business insurance including worker's compensations insurance.

When you hear “distracted driving,” texting is usually what comes to mind. But in today’s age of multitasking, driving distracted means far more than simply texting. If you can identify with any of these statements, you are driving distracted.

- You keep your phone on the passenger’s seat while you drive.
- You often eat while driving.
- You talk on your phone while you drive.
- You use a hands-free in-dash system.
- You adjust your GPS system during your drive.
- You find yourself going over the events of your day on your drive home from work.
- You are quick to attend your child in the backseat while you drive.
- You’ve been known to do a quick makeup or hair touch-up when you are in slow stop-and-go traffic.
- You like to have a lot of other people in the car because it keeps you from being distracted by your phone.

All of the above statements involve at least one type of distraction. According to Dr. Daniel McGehee, director of the National Advanced Driving Simulator Laboratories (nads-sc.uiowa.edu/), there are three types of distracted driving: visual, manual and cognitive.

VISUAL DISTRACTION

Visual distraction occurs when drivers take their eyes off the road, whether it’s glancing at your phone on the passenger seat, checking the GPS screen for directions, or even turning around to check on your child in the backseat.

MANUAL DISTRACTION

Manual distraction involves taking your hands off the wheel and often happens along with visual distraction—eating, changing the settings on an infotainment system, inputting an address into a GPS, or putting on makeup.

COGNITIVE DISTRACTION

Cognitive distraction is usually thought of as simply daydreaming, but the increase in crashes can likely be attributed to hands-free devices such as Bluetooth®, and text-to-type apps.

These take your mind off the drive as you talk with someone other than a passenger in the car. And having passengers in your car is not always the safe option either. This is the case for teenagers in particular.

According to the National Safety Council (NSC) (nsc.org/in-the-newsroom/10-thingsparents-may-not-know-about-teen-driver-safety-1), having other teenage passengers in a

vehicle is one of the biggest distractions for teenage drivers.

PREPARATION IS KEY

What can be done to relieve the growing epidemic of distracted driving? Simply be prepared. Take care of any likely distractions before your trip: eat before or plan to eat after you arrive, locate directions on a GPS, adjust any in-dash infotainment settings and locate necessities like sunglasses to eliminate the need to take your hands off the wheel.

Once you’re ready, put your phone in the glove box or turn it off completely.

Also consider downloading an app that shuts your phone down automatically when it senses movement. The newest Apple® iPhone® update has a Do Not Disturb While Driving feature built in.

While distraction behind the wheel is not a new concept, with awareness and preparation, we can work to reduce those distractions and increase our chances of arriving at our destination safely.

For more statistics, information and educational content regarding distracted driving, visit ufgworthit.com.

BRAD WILSON,
CIC, AIC, SDWCS | President
KIM CURRY, CSR
GARY DREWES | Marketing Rep

WHAT MATTERS:
*Insurance that
fits my business.*



If insurance designed specifically for retailers is important to you, consider UFG. As the endorsed insurance carrier for SDRA members, you'll enjoy:

- Customizable coverages, including workers compensation.
- Preferred pricing.
- The opportunity to earn a safety group dividend.

To learn more, speak to an independent agent in your area. Find one at ufginsurance.com.



HEALS ACT PROVISIONS

Current as of date of print 8/17/20: Talks on a new coronavirus relief package (HEALS Act) won't be finalized until September.

Lawmakers have returned to their home states; the next jobs report won't be released until early September.

GROUPS SUE OVER ADMINISTRATION'S VISA RESTRICTIONS

The National Retail Federation and several prominent business organizations including the National Association of Manufacturers, U.S. Chamber of Commerce, TechNet and Intrax filed a lawsuit in federal court in late July, opposing President Trump's proclamation suspending new nonimmigrant visas.

Signed on June 22, the proclamation affects a number of visas, including H1-B visas for highly skilled workers, H-4 visas for their spouses, H2-B guest worker visas, L visas companies use to bring international workers to the United States and most "cultural exchange" J visas.

The lawsuit was filed in U.S. District Court in San Francisco and claims that the proclamation goes beyond Trump's authority, is inconsistent with federal law on labor market protections in connection with nonimmigrant visas, is not "rationally related" to its stated purpose of addressing a temporary

spike in unemployment, and violates the federal Administrative Procedures Act. The suit seeks an injunction prohibiting the proclamation from being carried out and asks that the proclamation be set aside.

- From National Retail Federation

U.S. DEPARTMENT OF LABOR SEEKS INPUT ON PAID FAMILY LEAVE

The U.S. Department of Labor is asking small businesses and other stakeholders for feedback regarding the impact of paid family and medical leave.

The Department's Women's Bureau is requesting comment on the effectiveness of current state- and employer-provided paid leave programs and the impact that access or lack of access to paid leave programs has on women and their families.

The agency says information provided will help identify promising practices related to eligibility requirements, related costs, administrative models of existing paid leave programs and access to information about paid leave.

Written comments must be submitted by September 14. For more information visit [federalregister.gov/documents/2020/07/16/2020-14874/request-for-information-paid-leave](https://www.federalregister.gov/documents/2020/07/16/2020-14874/request-for-information-paid-leave).

- From US Department of Labor

WASHINGTON WATCH



OSHA PUBLISHES THEN WITHDRAWS BROAD POSITION ON REPORTING COVID-19 HOSPITALIZATIONS AND FATALITIES

In mid-July, the Occupational Safety and Health Administration (OSHA) quietly updated its COVID-19 FAQs to add guidance that took an extremely broad (and arguably unenforceable) interpretation of an employer's responsibility to report COVID-19 hospitalizations and fatalities. Just as quietly, over the last weekend in July, it removed the updated Reporting FAQs.

Now employers are left to speculate whether the guidance is gone for good, or whether they need to be on the alert for the guidance to return.

All employers – including low-risk employers exempt from most OSHA recordkeeping requirements – must contact OSHA to report certain serious work-related injuries and illnesses. Employers have 8 hours to report a work-related fatality that occurs within 30 days of the work-related incident precipitating it. Employers have 24 hours to report an in-patient hospitalization if the hospitalization occurs within 24 hours of the work-related incident.

This standard has been almost impossible for employers to comply with through the COVID-19 epidemic.

Read more on the Jackson Lewis OSHA law blog at oshalawblog.com.

- From Jackson Lewis, PC

CONCERN OVER EXCESSIVE DEBIT SWIPE FEES DURING PANDEMIC

Two members of Congress are asking the Federal Reserve to examine whether debit card industry practices are diminishing competition and costing American merchants potentially billions in excessive swipe fees.

Under current law, enacted as part of the 2010 “Durbin Amendment,” banks that issue debit cards must enable at least two unaffiliated debit networks to be available for each debit card transaction so merchants can have a choice of competitive options. This requirement enables lower-cost debit networks to compete for business with the dominant Visa and Mastercard duopoly.

Sen. Dick Durbin of Illinois and Rep. Peter Welch of Vermont sent a letter to Federal Reserve Chairman Jerome Powell noting that Americans are increasingly making online card payments during the COVID-19 pandemic. They urged the Fed to investigate reports that card-issuing banks are failing to enable their debit cards to be used by at least two debit card networks for online transactions. They called on the Fed to ensure that such anticompetitive practices in the debit card industry are identified and addressed.

“U.S. retailers and restaurants cannot afford to pay unnecessarily high fees for debit card transactions at a time when they have been hit hard by the pandemic and its economic effects,” they wrote. “The Federal Reserve should consider appropriate enforcement action and policy responses to correct any such anticompetitive incentives and regulatory violations.”

- From Sen. Richard Durbin

welcome

NEW MEMBERS

ABERDEEN

Inked by Megan
Summit Joint Performance
West Oak

ALCESTER

Sew Storm Quilt Shop LLC

BERESFORD

Fiesta Foods

BRANDON

McDonalds

BURKE

Gunvordahl Gunvordahl & Norberg Prof
LLC

CENTERVILLE

The Seed Coffeehouse and Eatery

CHAMBERLAIN

DeHaa's Processing LLC

CUSTER

South Dakota Outdoor Shop

EAGLE BUTTE

Vilas Pharmacy - Eagle Butte

FAULKTON

The Shops

HARRISBURG

Resort by SDK

IPSWICH

Vilas Pharmacy - Ipswich

MADISON

First Premier Bank
Jack's Meats

MENNO

Wolf Pup Daycare LLC

MIDLAND

Midland Food & Fuel

MITCHELL

Northside Powersports
Papa Murphy's

MOBRIDGE

Perfect Fit

MURDO

SugarCoated by Sophie

PARKSTON

Ralph's Donut Shoppe

PHILIP

Dakota Pharms

REVA

Reva Store

SIOUX FALLS

Call to Freedom
Sioux Falls
Jans Corporation
McDonalds
NuRev Group Inc
PeopleReady
Smoken Dakota Kennels LLC
The Masters Club Fitness & Lifestyle
Wellness

STURGIS

Werlinger Auto Body

TEA

Wilder Customs

TIMBER LAKE

Dakota Silk Screen

NATIONAL MEMBERS

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Black Bear Diner

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LDEGREEFF@SDRA.ORG

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TLANGER@SDRA.ORG

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KVANLITH@SDRA.ORG

AN ICE COLD POP!

SOUTH DAKOTA RETAILERS ASSOCIATION

MEMBER SERVICES

Legislative and regulatory issues are the primary focus of the South Dakota Retailers Association, and we have built a solid reputation in our work on behalf of the retail community.

We serve as a legislative watchdog on retail issues at the South Dakota Capitol during the Legislative Session, and during interim legislative and regulatory hearings throughout the year. Our legislative team has an outstanding track record of enacting legislation that is beneficial to the retail community and defeating laws and regulations that would be over-restrictive and burdensome. Through our affiliation with many influential national organizations, we also maintain a strong presence in Congress.

CREDIT CARD PROCESSING

Low, competitive rates

- Free programming, low statement fee
- Point of sale, e-commerce, gift/store card, virtual terminal
- Get a quick, free quote on SDRA's credit card processing

ENHANCED BUSINESS INSURANCE

Customize your insurance policy

- Business owners and workers' comp insurance
- Competitive premiums and 5% discount for members
- Potential dividends

HEALTH PLAN

Third party administrator health plan with stop loss

- Available for groups of two or more
- Control of plan design, \$0 copay for generic drugs, unlimited provider access
- Employer retains unused claims dollars in low claim years

DENTAL INSURANCE

Helps attract and retain good employees

- Available for groups of two or more
- 100% coverage on preventive services

VISION BENEFIT

Popular employee benefit

- Accepted by 98% of vision centers in South Dakota
- Group rates for one to 50 employees

SDRA 401K PLAN OPTION

Timely, accurate, and responsive retirement plan

- Transfer, rollover, or start an employer-based retirement plan with the SDRA's new approved and discounted member service.

DATA SECURITY & PHISHING EMAIL TRAINING

Protect your information 24-hours a day

- Firewall management, anti-virus, anti-malware
- Free security assessments
- Email phishing service helps determine whether your employees are opening dangerous links in phishing emails, and trains them how to identify harmful links

EMPLOYEE HANDBOOK TEMPLATE

Exclusive SDRA member benefit

- Discounted cost: \$1,400 SDRA member price
- One free hour of consultation to customize your handbook

SHIPPING DISCOUNTS

Savings on inbound and outbound shipping

- Discounts on FedEx, UPS Freight, YRC Freight shipping

MUSIC LICENSING DISCOUNT

Save on required licensing fees

- Discounts on BMI music licensing fees for eligible retail, restaurant and bar members

MEMBERS RECEIVE DISCOUNTS ON:

SERVSAFE FOODSERVICE TRAINING

- Classroom and online ServSafe certification/recertification options
- 4-hour state-approved recertification training

SERVSAFE ALLERGEN TRAINING

Online training gives you and your employees the basic information you need to take steps necessary to keep customers safe.

SERVSAFE ALCOHOL TRAINING

Designed for on-sale businesses, but off-sale businesses can also use the program. Training is valid for four years.

FREE LABOR LAW HELP (\$475 per hour value)

Our retainer with the Jackson Lewis, PC labor law firm allows you to get free answers to basic employment law questions.

SDRA members can call or email questions on essential issues such as minimum wage, overtime pay, child labor, hiring and firing, Americans with Disabilities Act, workers' comp issues, leave time and more. Our members also receive a 20% discount on other Jackson Lewis legal services pertaining to labor issues.

SDRA HELP DESK

The SDRA office is here to help. Our institutional knowledge can assist in answering common business questions. If we don't have the answer we'll direct you to people who do. Please feel free to contact our office at questions@sdra.org.

QUOTES ON MEMBER BENEFITS
800.658.5545 | SDRA.ORG



swapshop

BRAND NEW! CHAIRS AND SHOPPING CARTS

Sixty-five stackable black chairs and twenty-four shopping carts measuring 27"x16"x19" available immediately. Both items are brand new and located in North Sioux City, SD. Contact Don at Lantis Fireworks for more information: 712-251-6070.

ROYVIEW GOLF COURSE FOR SALE

Owners retiring; prosperous and well established on Roy Lake in Lake City, SD. Includes 32 acres + 6 acres of lake front with 896 sq. ft. clubhouse and additional buildings for cart storage -and all equipment.

Mature trees and amazing view of Roy Lake while you golf. Once in a lifetime opportunity. Call Tom or Deb at 605-448-2386 or email royview@venturecomm.net.

SWAP SHOP LISTINGS FREE FOR SDRA MEMBERS

To receive a free Swap Shop listing in the newsletter, the business must be a current SDRA member. For nonmembers, there is a fee of \$40 per listing and a 60 word limit. Listings are subject to editing by SDRA.

To place a listing in Swap Shop, **e-mail** smortenson@sdra.org, **call** (605) 224-5050, or **fax** (605) 224-2059 Attn: Shuree.

WHAT YOU CAN LIST IN SWAP SHOP Items which may be listed for sale include retail businesses that are members of SDRA, used retail fixtures and used retail equipment.

worldpay

Payment processing that fits

SDRA offers integrated credit card processing through Worldpay, a trusted payments leader for more than 40 years. In-store or online, for one location or many, we take care of payments so you can take care of business.

- Fast processing and payment funding
- Payment security tools and assistance
- Competitive rates
- 24/7 customer service
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To learn more about Worldpay for your business,
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LIVING FORCE FUNDRAISER

SOUTH DAKOTA RETAILERS ASSOCIATION **POLITICAL ACTION COMMITTEE**

Join us for drinks, appetizers, and networking! Step outside and take your best shot in one of our complimentary golf bays.

The SDRA PAC supports reasonable, common-sense candidates for public office. We encourage free enterprise and value our state's pro-business climate.

Monday, September 14, 2020

Great Shots in Sioux Falls, SD | 2215 W Pentagon Place

**4:30 – 7:30 p.m. | 6:00 p.m. Remarks
Drinks and Heavy Appetizers Provided**

**\$100 Suggested Donation
All donations support the SDRA PAC**

REGISTER TODAY: [SDRA.ORG/SPECIAL-EVENTS](https://sdra.org/special-events)

**CAN'T ATTEND, BUT WOULD LIKE TO CONTRIBUTE?
VISIT: [SDRA.ORG/POLITICAL-DONATIONS](https://sdra.org/political-donations)**