



# National Small Business Poll

NEIB National

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## Small Business Poll

*Liability*

# NFIB National Small Business Poll

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The *National Small Business Poll* is a series of regularly published survey reports based on data collected from national samples of small-business employers. Eight reports are produced annually with the initial volume published in 2001. The *Poll* is designed to address small-business-oriented topics about which little is known but interest is high. Each survey report treats different subject matter.

The survey reports in this series generally contain three sections. The first section is a brief Executive Summary outlining a small number of themes or salient points from the survey. The second is a longer, generally descriptive, exposition of results. This section is not intended to be a thorough analysis of the data collected nor to explore a group of formal hypotheses. Rather, it is intended to textually describe that which appears subsequently in tabular form. The third section consists of a single series of tables. The tables display each question posed in the survey broken-out by employee size of firm.

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Small Business  
Poll



*Liability*

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## *Liability*

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# Executive Summary

- Sixteen (16) percent of small-business owners are “very” concerned and another 31 percent are “somewhat” concerned that they will be defendants in a liability suit in the next few years. The primary reasons for their fear are the vulnerability of their industry to suits, they can be dragged into suits in which they have little or no responsibility, and suits occur frequently. However, 36 percent are “not too” concerned and 17 percent are “not at all” concerned. Those not concerned cite steps they have taken to minimize a suit and the belief that a suit is only a remote possibility.
- Eleven (11) percent of small-business owners were defendants in a liability suit during the past five years. The incidence is virtually identical to that reported by a similar sample of owners in 1995. There effectively has been no change in the frequency of liability suits filed against small businesses, at least in the last decade.
- The most common types of liability suits filed against small businesses are product or professional liability and personal injury, i.e., premise liability. A customer is the most likely person to bring the suit.
- Most cases do not go to court. By a 9 to 1 margin, they are settled before trial. However, many small-business owners are disappointed. About half feel that they are pushed into settlement by their insurer when they would prefer to fight.
- Fourteen (14) percent of those not sued have received a credible threat of a liability suit over the last five years. The nature of the case threatened and the position of people threatening them are similar to those filing suit. The exception is premise liability where suits are filed with much greater frequency than are threats made. In total, nearly one-quarter of small employers in the last five years have either been sued or credibility threatened with a liability suit.
- Over 20 percent report that they spend more time on liability problems and potential liability problems than such vital business activities as introducing new technologies or processes, evaluating changes in employee wages and benefits, obtaining or repaying business loans, evaluating the competition or looking for ways to cut costs.
- Most small businessmen and women take multiple steps to protect themselves against the consequences of a liability suit. Among the most common are educating employees about ways to prevent a suit, checking with insurance agents or brokers about the adequacy of insurance, and seeking legal advice. Less common are changing products, services or operations to limit exposure or to withhold them for fear of a suit.
- Just three percent of small-business owners have filed a liability suit against someone else in the last five years, practically the same percentage who said they did so in a 1995 poll. Small businessmen and women are about four times as likely to be defendants in a liability suit as a plaintiff.
- Small employers believe that liability law tilts in favor of plaintiffs. Fifty-eight (58) percent claim that the law leans toward those suing others; five percent claim it leans toward those being sued – an 11 to 1 ratio. Just 21 percent believe the law is balanced between the interests of plaintiffs and defendants. Sixteen (16) percent don’t know.
- Small-business owners located in states having a more positive climate for conduct of liability suits experience fewer suits both as a defendant and as a plaintiff.

# Liability

“Reform” of the nation’s liability laws has been near the top of the small-business legislative agenda for years. Delegates to successive White House Conferences on Small Business have ranked liability as one of their most pressing problems and surveys of the broader population have yielded the same result. Traditionally a matter for the state legislatures, liability has become sufficiently contentious so that it now occupies center stage in both state capitals and in Washington. Often lost in the legislative maneuverings surrounding liability reform, however, is the basic purpose of liability laws and how these laws are a consideration in every day business operation. Faulty products, inappropriate service, dangerous premises, callous employee treatment, and even well-intentioned but eventually damaging conduct can all be the subject of liability suits with or without reform. Continuing interest and widespread application makes liability an appropriate topic for this issue of the *National Small Business Poll*.

## Concern

Sixteen (16) percent of small-business owners are “very” concerned that they might be sued in a liability case sometime in the next few years (Q#1). Another 31 percent say that they are “somewhat” concerned. But 36 percent are “not too” concerned and 17 percent are “not at all” concerned. A similar question was posed in a 1995 survey of small-business owners sponsored by NFIB. At that time, concern was substantially greater with 65 percent “very” or “somewhat” concerned and 35 percent “not too” or “not at all” concerned. Since the frequency of liability suits and credible threats of suits is no different today than at the time of the prior survey, there appears little reason for the lesser concern.

Small businessmen and women who express concern about being sued most often described the basis of their concern as the industry their firms are in. They believe these industries are particularly vulnerable to suits. Over one in three (36 percent) cite a vulnerable industry as their primary reason for concern(Q#1a). Those

in the services, particularly the professional services and construction, are the most likely to cite the vulnerability of their industry.

The reason given second most frequently (21 percent) is that small-business owners could be dragged into a suit where others are responsible. That means owners believe they exercise relatively little control over the possibility of being sued. Those fears appear warranted as will be demonstrated later. The third most cited reason (20 percent) is that suits occur frequently. The term “frequently” is subjective, but suits appear to occur often enough that a healthy segment of the small-business owner population offer it as their most important reason for concern about liability suits. Other reasons are noted less often.

The most commonly mentioned reason (44 percent) for not being concerned about the possibility of liability suits is that small businessmen and women have taken steps to minimize them (Q#1b). In effect, they think that they have inoculated themselves. Most small employers have taken steps to limit their exposure as will be seen, and

these steps have apparently translated into less anxiety over a possible liability suit. Thirty-four (34) percent believe that being sued is a “remote possibility” and nine percent say that they have more important things to be concerned about.

## Liability Suits

Eleven (11) percent of small-business owners report that they have been sued in a liability case during the last five years (Q#4). The number is virtually identical to the 12 percent who said in 1995 that they had been sued in the preceding half-decade. The two figures indicate the frequency of liability suits filed against small firms has neither increased nor decreased substantially from the earlier measuring period to the latter.

Also as in the 1995 survey, there is a direct relationship between the size of the firm and the propensity to be sued. Just six percent of the businesses employing less than 10 people have been sued in the last five years compared to 26 percent of those with 20 or more. It is not clear whether this difference can be attributed to the “deeper pockets” of the larger, small enterprises or their greater output, etc. (providing more opportunities to be sued). Still, larger, small businesses are more likely to experience a suit.

Some small employers have experienced more than one suit in the last five years. While 71 percent have been sued just once in that time frame, 15 percent have been sued twice, 7 percent three times and 6 percent four times or more (Q#4a). About three percent of the total population, therefore, have been sued more than once since 1996. Since so few have been involved in more than one suit, it is not possible to provide any information about these firms or the suits.

### *a. The Suits*

The survey asked respondents for details about the suit. (Those who experienced more than one were asked about the most recent suit.) Over six in ten suits (61 percent) were brought by customers or patients in the case of the medical professions (Q#4b). The second most frequent number were brought by “other” (18 percent). While “other” was not specified, it is likely that a large contingent came from the gen-

eral public. A personal injury suit could be brought by someone walking past the premises; a similar suit could be brought by a motorist injured in an accident involving a business vehicle; etc. The third most likely category of person to bring a suit is employees. About one in ten of the most recent suits were filed by them.

More people (42 percent) brought product or professional liability suits against small businesses than any other type (Q#4c). Personal injury suits, i.e., premise liability, accounted for another 30 percent. Thus, 70 percent of all suits were for one of these two causes. Employee-related liability cases, e.g., inappropriate disclosure of confidential information, constituted another 11 percent. The remainder of the suits were broadly distributed among various other causes.

Since the 1995 survey the distribution of suit types has remained reasonably constant with a single exception. The proportion suing for product or professional liability increased (from 28 percent in 1995). At the same time the number involved in premise liability suits (46 percent in 1995) has declined. There is no evidence that either measuring point is more representative, but the data do suggest change. Perhaps owners are becoming more skilled at dissuading the later type of suits. On the other hand, the rise of product and professional liability suits fits well with anecdotal information and insurance premiums in the medical professions.

Only about eight percent of these cases could be crudely categorized as “class action” suits (Q#4d). The survey asked about a suit brought by several people, technically too broad a description to necessarily be a “class action.” However, the important point is that in more than 90 percent of cases, the small business is sued by just one person or entity.

“Joint and several” liability has long been a bone of contention for defendants, including small-business defendants. The legal doctrine holds that if someone shares any responsibility for damage, even if it be only a fraction of a percent, that person may not only have to pay his share, but possibly the share of others as well. The doctrine results in plaintiff’s attorneys frequently including in the suit anyone



remotely connected with the alleged damage. The survey shows that 26 percent of the cases against small businesses included other business defendants (Q#4e); 74 percent did not. With one in four of the suits involving more than one firm, the data suggest that small-business owner fears that they will be sued for something not of their own doing may be well founded.

Most cases do not go to court. Of the suits (most recent) filed against small business in the last five years, 57 percent were settled out of court, 29 percent are still pending, and nine percent went to trial (Q#4f). Of the cases concluded, i.e., omitting the pending and D/K classifications, 87 percent were settled out of court. Small-business owners who have been involved in a settled case often grumble that they wanted to fight, but their insurer forced them to settle. The survey indicates that about half of those who settled wanted to settle while the other half felt pushed into settlement by the insurance company (Q#4f1).

Seventy-three (73) percent claim they had insurance to help pay for the cost of the suit (Q#4h). That leaves a remarkable 27 percent who either had none or inadequate coverage. These data raise an entire series of questions about liability insurance and its purchase. The limited sample size does not allow more in-depth examination. But the lack of insurance coverage is one possible explanation for the fear many small-business owners have of liability suits. It is also a possible deterrent to being sued, particularly if the business has minimal assets.

The amount of out-of-pocket costs in addition to anything paid by insurance appears relatively small. Forty-six (46) percent say that they had no out-of-pocket expenses; insurance presumably covered everything (Q#4h1). Of the remainder, 22 percent report that their costs were less than \$5,000 though 13 percent report them as \$5,000 or more. Only one respondent claims that his cost was over \$100,000. Nineteen (19) percent do not know. Out-of-pocket costs, however, do not include other costs that may arise and be substantial. Employee wages and/or salaries to collect relevant documents is one example. Further, they do not include the interruption in business activity that may occur under the cloud of a law suit. Lenders may

find it imprudent to loan money to a small business with a pending liability case against them. Management resources may have to be redirected from more productive uses to handle the liability suit. Out-of-pocket costs are therefore just one aspect of the costs that small-business owners encounter when they become defendants in a liability case.

When all is said and done, 44 percent say that they were satisfied with the outcome of the suit; 55 percent say they were not (Q#4g). About the same proportion were “very” satisfied as “not at all” satisfied. There is no basis to determine if this level of satisfaction is favorable or unfavorable, improving or deteriorating. A similar survey question sometime in the future would provide an answer about change. But those participating in the system obviously reach no consensus over the results yielded.

#### *b. Threatened Suits*

Suits can be threatened, but never materialize or threats can be preludes to suits. Threats can be credible or merely venting, though the target of the threat can never be sure at the time. Other than in instances where threats become suits, the importance of threats taken as credible is that they can result in costs to the small-business owner being threatened. The costs may be direct out-of-pocket expenditures or the type of indirect costs outlined above.

Fourteen (14) percent of those who had not experienced a liability suit in the last five years claim to have experienced one or more credible threats of a suit being filed against them (Q#5). Combining that figure with the number actually sued, 24 percent or one in four small employers have either experienced a liability suit or a credible threat of a liability suit within the last five years.

The 14 percent figure is the same percentage as reported threats in the 1995 survey. As with actual suits, a healthy majority (61 percent) experienced just one threat (Q#5a). Twenty-two (22) percent received two threats and nine percent three or more.

The primary source of these threats were customers or patients (64 percent) followed by employees (18 percent) (Q#5b). Almost 80 percent of threats came from one of these two sources. The most common type of threat involved product or professional liability matters (44 percent),

though vehicle liability, premise liability, and employee-related liability issues each were cited about 10 percent of the time (Q#5c). The major difference in the composition of suits and threats is that the “slips and falls” type injury suits are three times as common (as a proportion) in suits as in threats. These data suggest that threats of premise liability are more likely to result in suits than are threats regarding other matters.

Out-of-pocket expenses from threats appear limited, however. Fifty-two (52) percent have spent nothing out-of-pocket on the threat to this point (Q#5d). Three of four of those making expenditures incurred outlays of less than \$5,000. That means the costs generated from threats are either largely absorbed by insurance, minimal, or not out-of-pocket.

### **Small-Business Owners Suing Others**

Liability suits have two sides, either of which may find a small-business owner participating. The owner certainly can be sued, but the owner can also seek redress by suing. As a practical matter, however, small businessmen and women are far more likely to find themselves as defendants than as plaintiffs.

Within the last five years, three percent say that they have brought a liability suit against another party (Q#6). That is a non-statistically significant one percentage point higher than reported such activity in 1995. Because small-business owners sue others in a liability case so infrequently the survey could gather no more information on the suits that they file.

Overall, small employers are about four times more likely to be sued than to sue. Among those firms employing 20 or more people, the ratio rises to about 9 to 1. It is therefore not surprising that this group of people is more concerned with the position of the defendant than of the plaintiff.

### **Time Spent on Liability Matters**

Small-business owners should be concerned about liability issues. However, if their concern becomes excessive, they are unreasonably (and economically inefficiently) diverting time from critical business operations. It is understandable how this might occur if a suit is pending or imminent. When one’s reputation and possibly one’s business

is on the line, a total focus on its defense is natural. Yet, when those not facing an imminent suit also are excessively concerned, the diversion of resource is less understandable. It is not possible to say with precision how much time devoted to liability is too much time, but it seems clear that small-business owners are spending extraordinary amounts on liability matters, at least compared to other important business functions.

Take introducing new technologies or processes into the business. Introducing technology is a very important function in any business, large or small. Innovation is the basis for increasing productivity which is the way new wealth is created. Yet, 23 percent of small-business owners say that they spend more time on liability problems or potential liability problems than on introducing new technologies or processes (Q#3A). Twenty-seven (27) percent suggest that they spend equivalent amounts of time on each, though 47 percent say that they spend less time.

The survey asked respondents to compare the time they spend on liability with four other business activities – evaluating changes in employee wages and benefits, obtaining or repaying business loans, evaluating competitors, and looking for ways to cut costs. In each instance, more than one in five owners spend more time on liability problems or potential liability problems and at least that many spend equivalent time. Twenty-two (22) percent say they spend more time on liability than employee wages and benefits and another 35 percent spend as much (Q#3B). Twenty-one (21) percent also say that they spend more time on liability matters than obtaining or repaying business loans with another 24 percent spending the same amount of time (Q#3C). Twenty (20) percent report the same with evaluating competitors (Q#3D) and 21 percent do with looking for ways to cut costs (Q#3E). Thus, small-business owners devote considerable time and, by extension, attention to liability matters.

Those involved in liability suits in the last five years are more likely to report spending more time on liability problems or potential liability problems than are those who have not been involved. Nonetheless, only 2 percent of small-business owners say that they spend more time on every one of

the five business functions examined than on liability. That implies that there is just not a core of alarmists excessively concerned over the issue and its implications, but a large share of the population exhibiting notable uneasiness.

## Actions to Avoid Suits

Small businessmen and women have taken numerous actions to minimize their risk of being a defendant in a liability suit. The following outlines five potential actions that they have taken in the last five years:

1. Forty-nine (49) percent or almost half of all small employers have sought legal advice on how to protect themselves or their businesses from a liability suit (Q#7A). If one assumes that all those who experienced a suit as well as those against whom a credible threat was levied sought legal advice, one in three not immediately impacted also sought counsel on potential liability problems.

Owners of larger, small firms are more likely to have sought legal counsel than owners of smaller, small firms. Two-thirds (68 percent) of the latter obtained legal advice.

2. Forty-two (42) percent changed operations, products or services to limit their exposure to liability suits. This action can be good or bad for consumers and/or the business depending on the change made. No one can be certain whether liability considerations forced modification of things that were too inherently dangerous to be produced/done or whether it forced unfavorable, unnecessary and costly changes to potentially useful products and services. For current purposes, the point is that liability concerns elicited a response from owners that may not have been positive.

3. A corollary step is to withhold or fail to develop products or services for fear of their liability consequences. As with changing operations, products, or services, this action can yield either positive or negative results. Since the operations, products or services do not make it beyond the drawing boards, no one can know the effect they would have produced.

Nonetheless, the consequences of liability kept 26 percent from releasing new products, services or operations to the market (Q#7E).

4. A common preventive measure is to educate or talk to employees about ways to avoid liability suits. Sixty-eight (68) percent took that action as did over 83 percent of those with the largest small firms (Q#7C). Conferring with employees is important for two reasons. It recognizes that suits often arise due to behavior, and the step is relatively inexpensive. A cheap, effective way to reduce liability exposure benefits everyone.

5. Seventy-seven (77) percent talked to their insurance agent or broker about the adequacy of their liability insurance coverage (Q#7F). While this action may not directly result in lower risk, some portion of insurer representatives will recommend (demand) that steps be taken or practices instituted to limit liability exposure. The action shows that small-business owners are very concerned about their insurance coverage.

An uncomfortably large number of small businesses are “bare.” It is not known whether they do not have liability insurance due to cost, the belief that they will never be sued, or some other reason. They can be under-insured for the same reasons. With insurers such as the St. Paul Companies leaving the medical malpractice insurance market and others increasingly concerned about provision of other types of liability coverage, part of the small-business problem could be availability. Though availability is usually a function of price, the survey showed that 13 percent report that within the last two years an insurance company providing them liability coverage has stopped selling liability insurance (Q#8).

Four percent of all owners took all five of these actions. Another 27 percent took four out of the five. Less than one-half of one percent took none of them. The evidence indicates that most small-business owners took multiple steps over the last five years to minimize the possibility of liability problems.

Small-business owners have obviously not been passive in the face of the liability threat.

The survey also inquired about one action that might increase the number of suits. It found that one in ten (10 percent) had sought legal advice about initiating a liability suit against another party (Q#7D). Since about three percent actually bring suit, the data suggest that most inquiries result in no formal suit. The data do not show if these inquiries are leveraged to obtain favorable outcomes in other ways. Still, the number seeking legal advice for purposes of defending themselves is about five times as great as the number seeking legal advice for purposes of suing someone else.

### **Balance in Liability Law**

Small-business owners continue to believe by substantial margins that liability law favors the plaintiff. When asked whether the law properly balances the interests of those who defend themselves in liability suits and those who prosecute them, just 21 percent think that the law is balanced (Q#2). In contrast, 66 percent think that it is not appropriately balanced. Thirteen (13) percent don't know. Of those who believe the law tilts in one direction or the other, the overwhelming majority say that the law favors plaintiffs to the disadvantage of defendants. Eighty-eight (88) percent assert that the law favors plaintiffs; 77 percent believe that strongly (Q#2a). Just seven percent take the opposite view and believe the law tilts toward defendants, though virtually all feel strongly about it.

These data reflect results from the 1995 survey almost perfectly. There is no practical difference between the numbers collected in 2002 and 1995. Two-thirds feel liability law is not balanced and it favors plaintiffs while just over 20 percent believe it is. A smattering say the law favors the defendant. The remainder are unsure. Thus, concern over being sued has declined without any change in owners' views about the tilt in the basic laws governing liability suits.

### **States with More Positive and States with More Negative Climates**

The U.S. Chamber of Commerce recently rank ordered state liability systems based on interviews conducted among 824 house coun-

sels or senior litigators of large firms (*U.S. Chamber of Commerce State Liability Systems Ranking Study*, January 11, 2002). While the interests of large and small firms do not always coincide, the state rankings and small-business owner experience are in general agreement. The result is additional evidence that small businesses located in some states have a considerably more difficult time with liability than those located elsewhere.

Twenty-seven (27) percent of small-business owners in the 15 lowest ranked states, i.e., the worst, say that they are "very" concerned about liability; 10 percent say the same in the highest ranked states, i.e., the best. Twelve (12) percent in lowest ranked states say they have been sued in the last five years; 9 percent say the same in the highest ranked. Twenty (20) percent of those not sued in the least favorable states report that they received at least one credible threat; the same occurred among 14 percent in the more favorable states. It appears to work the other way as well. Twice as many small-business owners file suit in the lowest ranked states as in the highest, though the numbers are comparatively small in both groups. The atmosphere in the lowest ranking states is simply more litigious than in the highest ranking states. More small-business owners are involved in liability suits, on both sides.

If the intended effect of litigious states is to reduce the introduction of faulty products, services and operations, they have met no more than mixed success. Fifty (50) percent of small-business owners changed operations, products or services to limit exposure to liability suits in the highest ranked states, but only 45 percent did in the lowest ranked. However, 24 percent withheld or failed to develop products in the former states while 34 percent say they did in the latter states. More persuasively, 62 percent discuss liability matters with employees in the highest ranked states compared to 76 percent in the lowest. Evidence appears on both sides of the proposition.

### **Final Comments**

The experience of small businessmen and women with liability problems during the last five years appears little different in frequency from those they experienced in the first half of the decade of the 1990s. Some-

what more than 10 percent are defendants in liability suits and a modestly larger additional amount receive credible threats. They continue to be defendants rather than plaintiffs by wide margins and continue to believe that liability laws are tilted in favor of plaintiffs. Still, small-business owners appear less concerned over liability today than in 1995. Possible reasons for these seemingly contradictory findings are that other concerns, e.g., the economy, are now occupying more of their attention, the effort and time put in to limit exposure to suits may have resulted in greater comfort if not in greater protection, a belief that their insurance coverage is better, or the unresolved problem has been around so long that small-business owners have adapted to it. These reasons are all speculative, though an argument can be made for each.

If nothing of substance has changed, business efforts to alter existing liability laws have essentially proven fruitless. Effective change should be reflected in fewer cases being filed against small-business owners. That obviously has not happened. While there are other potential measures, such as case outcomes, there is no evidence yet to suggest that such measures contrast with the more simple cases filed against. A national number could, however, disguise changes going on in the states. A state's action is particularly important to small business since most operate in a reasonably confined geographic area. Some small businesses could therefore have experienced a positive change in the last few years while others could have suffered the opposite fate. The data suggest clear differences among states in their liability experiences.

One important aspect of the liability problem that could not be more thoroughly examined due to space constraints is insurance. While most small employers carry liability insurance, the number who reported being involved in a suit and not having (adequate) coverage is surprisingly high. The reason for the lack of insurance among this group is not known, though cost is a likely candidate given anecdotal reports. An issue of the *Poll* will address insurance questions later in the year. One aspect of the small business/insurer relationship did become a bit clearer, however. The data show that insurance companies have a strong

influence on small-business defendants in settling cases. Small-business owners are much more willing to fight than are insurers. A likely cause is that it is cheaper to settle a small suit than to fight and win. Since insurers must absorb the cost or most of it, they are more sensitive to immediate outlays. Yet, that attitude provides incentives to file small, merit less suits. Owners are often offended by the charges leveled and want to fight regardless. The conflict is a likely source of tension between small-business owners and insurers, one of many.

# Liability

(Please review notes at the table's end.)

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
<b>I. How concerned are you that in the next few years, your business or you as the responsible person for the business might be sued in a liability case? Are you very concerned, somewhat concerned, not too concerned or not at all concerned?</b>				
1. Very concerned	14.6%	23.0%	23.4%	16.3%
2. Somewhat concerned	29.4	32.2	42.9	31.0
3. Not too concerned	37.3	34.5	24.7	35.8
4. Not at all concerned	18.4	10.3	9.1	16.7
5. (DK/Refuse)	0.3	—	—	0.2
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**Ia. Which BEST describes the reason you are concerned about the possibility of a liability suit? (“Very” or “Somewhat” concerned in Q#1.)**

1. Your industry is particularly vulnerable to suits	36.6%	32.6%	32.7%	35.6%
2. You’ve been sued before	5.2	4.3	1.9	4.7
3. The consequences can be severe	8.0	17.4	15.4	10.1
4. Suits occur frequently	19.2	23.9	23.1	20.3
5. You could be dragged into a suit where others are responsible	22.6	19.6	15.4	21.3
6. (Other)	5.2	—	9.6	5.2
7. (DK/Refuse)	3.1	2.2	1.9	2.9
Total	100.0%	100.0%	100.0%	100.0%
N	146	111	132	389

**Ib. Which BEST describes the reason you are not concerned about the possibility of a liability suit? (“Not too” or “Not at all” concerned in #Q1.)**

1. It’s a remote possibility you will be sued	34.9%	30.0%	19.2%	33.5%
2. The current system protects blameless businesses	1.4	5.0	3.8	1.9
3. There are more important things to be concerned about	9.1	10.0	11.5	9.4
4. There is nothing I can do about it	5.8	10.0	7.7	6.3
5. You have taken steps to minimize a suit	43.8	42.5	50.0	44.0
6. (DK/Refuse)	5.0	2.5	7.7	4.9
Total	100.0%	100.0%	100.0%	100.0%
N	203	90	68	361

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

**2. Do you believe that the liability laws properly balance the interest of those who sue others and those who defend themselves in a liability suit?**

1. Yes	21.4%	19.3%	20.5%	21.1%
2. No	65.6	69.3	69.2	66.3
3. (DK/Refuse)	13.0	11.4	10.3	12.7
Total	100.0%	100.0%	100.0%	100.0%
N	351	201	200	751

**2a. Which side does the law favor? (If “no” in Q#2.) Do you feel that way strongly or not strongly?**

1. Strongly, those who sue others	75.5%	76.7%	88.7%	76.8%
2. Not strongly, those who sue others	11.5	8.3	5.7	10.7
3. Not strongly, those defending themselves	0.5	1.7	—	0.7
4. Strongly, those defending themselves	7.5	5.0	1.9	6.5
5. (DK/Refused)	4.9	8.4	3.8	5.2
Total	100.0%	100.0%	100.0%	100.0%
N	224	137	139	500

**3. Did you spend MORE, LESS, or about the SAME AMOUNT of time last year focused on liability problems or potential liability concerns as you did on:**

**A. Introducing new technologies or processes into your business?**

1. More on liability	22.7%	23.0%	26.0%	23.1%
2. Less on liability	45.2	50.6	53.2	46.5
3. Same amount as on liability	28.0	23.0	20.8	26.7
4. (DK/Refuse)	4.2	3.4	—	3.7
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**B. Evaluating possible changes in employee wages or benefits?**

1. More on liability	21.2%	21.6%	26.9%	21.8%
2. Less on liability	37.5	43.2	43.6	38.7
3. Same amount as on liability	35.8	33.0	28.2	34.8
4. (DK/Refuse)	5.6	2.3	1.3	4.8
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

**C. Obtaining or repaying business loans?**

1. More on liability	20.1%	22.5%	26.9%	21.0%
2. Less on liability	38.7	42.7	41.0	39.3
3. Same amount as on liability	26.4	20.2	24.4	25.5
4. (DK/Refuse)	14.9	14.6	7.6	14.1
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**D. Evaluating competitors?**

1. More on liability	20.9%	15.9%	16.9%	20.0%
2. Less on liability	41.1	46.6	51.9	42.7
3. Same amount as on liability	30.5	30.7	29.9	30.5
4. (DK/Refuse)	7.5	6.8	1.3	6.9
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**E. Looking for ways to cut costs?**

1. More on liability	21.2%	23.6%	20.8%	21.4%
2. Less on liability	50.3	47.2	53.2	50.1
3. Same amount as on liability	25.8	25.8	24.7	25.7
4. (DK/Refuse)	2.7	3.4	1.3	2.7
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**4. Within the last five years, has the business or you as the responsible person for the business been sued in a LIABILITY case?**

1. Yes	9.5%	12.6%	26.0%	11.4%
2. No	90.5	87.4	72.7	88.5
3. (DK/Refuse)	—	—	1.3	0.1
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	752

**4a. How many times in the last five years? (If “yes” in Q#4.)**

1. One			63.2%	70.5%
2. Two			21.1	14.8
3. Three			10.5	6.8
4. Four or more			5.3	5.7
3. (DK/Refuse)			—	2.3
Total	100.0%	100.0%	100.0%	100.0%
N	32	24	52	108



**4b. (“Think of the last time you were sued.”) Who sued you? Was it a:**

1. Customer or Patient			57.1%	61.3%
2. Supplier			—	1.1
3. Employee			14.3	9.7
4. Competitor			4.8	7.5
5. (Other)			23.8	18.3
6. (DK/Refuse)			—	2.2
<hr/>				
Total	100.0%	100.0%	100.0	100.0%
N	32	24	52	108

**4c. What kind of liability suit was it?**

1. Product or professional liability			36.8%	41.6%
2. Vehicle liability			—	3.4
3. Personal injury liability, e.g., slip or fall			36.8	30.3
4. Employee related liability			15.8	11.2
5. Defamation			5.3	3.4
6. (Other)			5.3	8.9
7. (DK/Refuse)			—	1.1
<hr/>				
Total	100.0%	100.0%	100.0%	100.0%
N	32	24	52	108

**4d. Was it a so-called “class action” suit, i.e., a suit brought by several people together against you?**

1. Yes			10.0%	7.5%
2. No			90.0	92.5
3. (DK/Refuse)			—	—
<hr/>				
Total	100.0%	100.0%	100.0%	100.0%
N	32	24	52	108

**4e. Were you the only business sued or were there other businesses also sued in the case?**

1. Only business sued			60.0%	74.2%
2. More than one business sued			40.0	25.8
3. (DK/Refuse)			—	—
<hr/>				
Total	100.0%	100.0%	100.0%	100.0%
N	32	24	52	108

Employee Size of Firm  
 1-9 emp    10-19 emp    20-249 emp    All Firms

**4f. Did the case go to court? Was it settled out of court? Or, is it still pending?**

1. Settled out of court	60.0%	56.5%
2. Went to court	15.0	8.7
3. Still pending	25.0	29.3
4. (DK/Refuse)	—	5.4

Total	100.0%	100.0%	100.0%	100.0%
N	32	24	52	108

**4f1. Did you want to settle or did the insurance company push you into settling? (If went to court in Q#4f.)**

1. Wanted to settle		41.2%
2. Insurance company pushed		39.2
3. (Both)		5.9
4. (DK/Refuse)		13.7

Total	100.0%	100.0%	100.0%	100.0%
N	18	11	30	59

**4g. Were you very satisfied, somewhat satisfied, not too satisfied, or not at all satisfied with the outcome? (If “settled out of court” or “went to court” in Q#4f.)**

1. Very satisfied		27.4%
2. Somewhat satisfied		16.4
3. Not too satisfied		31.5
4. Not at all satisfied		23.3
5. (DK/Refuse)		1.4

Total	100.0%	100.0%	100.0%	100.0%
N	26	17	39	82

**4h. Did you have insurance to help cover the cost of the suit?**

1. Yes	75.0%	73.1%
2. No	25.0	26.9
3. (DK/Refuse)	—	—

Total	100.0%	100.0%	100.0%	100.0%
N	32	24	52	108

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

**4h1. Excluding any amount your insurance paid, what (was/has been) the total cost of the suit to you? (If “yes” in Q#4h.)**

1. None				46.0%
2. <\$5,000				22.2
3. \$5,000 or more				12.7
4. (DK/Refuse)				19.1

Total	100.0%	100.0%	100.0%	100.0%
N	23	19	39	81

**5. Within the last five years, has anyone made a credible threat to bring a LIABILITY suit against the business or you as the person responsible for the business? (If “no,” DK or Refuse in Q#4.)**

1. Yes	13.4%	11.7%	22.8%	14.0%
2. No	86.3	87.0	77.2	85.6
3. (DK/Refuse)	0.3	1.3	—	0.4

Total	100.0%	100.0%	100.0%	100.0%
N	318	177	148	643

**5a. How many times? (If “yes” in Q#5.)**

1. One				61.2%
2. Two				22.4
3. Three				5.1
4. Four or more				7.2
3. (DK/Refuse)				4.0

Total	100.0%	100.0%	100.0%	100.0%
N	41	20	33	94

**5b. (“Think of the last time you were threatened.”) Who threatened you? Was it a:**

1. Customer or Patient				64.0%
2. Supplier				3.0
3. Employee				18.0
4. Competitor				3.0
5. (Other)				12.0
6. (DK/Refuse)				—

Total	100.0%	100.0%	100.0%	100.0%
N	41	20	33	94

**Employee Size of Firm**  
**1-9 emp    10-19 emp    20-249 emp    All Firms**

**5c. What kind of liability suit was threatened?**

1. Product or professional liability	44.3%
2. Vehicle liability	13.4
3. Personal injury liability, e.g., slip or fall	10.3
4. Employee related liability	12.4
5. Defamation	2.1
6. (Other)	13.4
7. (DK/Refuse)	4.2

Total	100.0%	100.0%	100.0%	100.0%
N	41	20	33	94

**5d. How much has the threatened suit cost you out-of-pocket to this point?**

1. Nothing	52.8%
2. <\$5,000	33.4
3. \$5,000 or more	6.9
4. (DK/Refuse)	6.9

Total	100.0%	100.0%	100.0%	100.0%
N	41	20	33	94

**6. Within the last five years, have you as the person responsible for the business or the business filed a LIABILITY suit against another party?**

1. Yes	3.4%	3.4%	2.6%	3.3%
2. No	96.2	96.6	97.4	96.3
3. (DK/Refuse)	0.5	—	—	0.4

Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**7. Within the last five years, have you done the following?**

**A. Sought legal advice on how to protect yourself or your business from a liability suit?**

1. Yes	46.6%	48.9%	67.5%	48.8%
2. No	53.1	51.1	31.2	50.8
3. (DK/Refuse)	0.3	—	1.3	0.4

Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

**B. Changed operations, products, or services to limit your exposure to liability suits?**

1. Yes	40.3%	44.4%	48.7%	41.6%
2. No	59.4	54.5	50.0	57.9
3. (DK/Refuse)	0.3	1.1	1.3	0.4
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**C. Educated or talked to your employees about ways to avoid liability suits?**

1. Yes	64.9%	78.2%	83.1%	68.0%
2. No	34.4	21.8	16.9	31.4
3. (DK/Refuse)	0.8	—	—	0.6
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**D. Sought legal advice on how to bring a liability suit against a party?**

1. Yes	9.4%	10.3%	11.7%	9.7%
2. No	90.6	89.7	88.3	90.3
3. (DK/Refuse)	—	—	—	—
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**E. Withheld or failed to develop or market products or services to limit your exposure to liability suits?**

1. Yes	25.9%	22.7%	33.8%	26.3%
2. No	72.1	75.0	64.9	71.7
3. (DK/Refuse)	2.0	2.3	1.	2.0
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**F. Talked to an insurance agent or broker about the adequacy of your liability coverage?**

1. Yes	74.1%	85.2%	89.6%	76.7%
2. No	25.0	14.8	10.4	22.5
3. (DK/Refuse)	0.9	—	—	0.7
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**Employee Size of Firm**

	1-9 emp	10-19 emp	20-249 emp	All Firms
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**8. Within the last two years, has an insurance company providing you liability coverage of any kind stopped selling liability insurance?**

1. Yes	12.0%	15.9%	14.3%	12.6%
2. No	86.7	80.7	83.1	85.7
3. (DK/Refuse)	1.4	3.4	2.6	1.7
<hr/>				
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

## Demographics

### D1. Is your primary business activity:

1. Construction?	12.6%	12.6%	11.8%	12.5%
2. Manufacturing?	7.2	14.9	14.5	8.7
3. Wholesale?	4.3	5.7	7.9	4.8
4. Retail?	21.7	24.1	19.7	21.7
5. Transportation?	3.2	3.4	3.9	3.3
6. Communication?	7.4	4.6	3.9	6.8
7. Financial Services?	7.5	6.9	5.3	7.2
8. Services?	32.0	25.3	30.3	31.1
A. Non-professional, e.g., lodging, auto repair, garages, recreation	(28.0)	(21.1)	(36.4)	(28.2)
B. Professional, e.g., health, legal, education, engineering	(41.5)	(42.1)	(36.4)	(41.0)
C. Business, e.g., advertising, mail, employment agencies, computer services, security, equipment rental	(10.9)	(10.5)	(9.1)	(10.7)
D. Personal, e.g., laundries, beauty shop, photography, funeral services, child care	(19.2)	(26.3)	(13.6)	(19.2)
E. (Other/D/K)	(0.5)	(—)	(4.5)	(0.8)
9. Agriculture, forestry, fishing?	3.8	1.1	2.6	3.4
10. (Other)	—	—	—	—
11. (DK/Refuse)	0.3	1.4	—	0.4
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

### D2. Over the last two years, have your real volume sales:

1. Increased by 30 percent or more?	13.5%	13.6%	15.6%	13.7%
2. Increased by 20 to 29 percent?	7.7	11.4	14.3	8.7
3. Increased by 10 to 19 percent?	22.9	27.3	27.3	23.7
4. Changed less than 10 percent one way or the other?	26.4	25.0	24.7	26.1
5. Decreased by 10 percent or more?	21.5	15.9	14.3	20.2
6. (DK/Refuse)	8.1	6.8	3.9	7.6
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

**D3. Is this business operated primarily from the home, including any associated structures such as a garage or a barn?**

1. Yes	25.0%	6.8%	3.9%	24.0%
2. No	74.1	92.0	94.8	78.0
3. (DK/Refuse)	0.9	1.1	1.3	0.9
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**D4. How long have you owned or operated this business?**

1. <6 years	25.2%	18.6%	19.7%	24.0%
2. 6-10 years	27.3	16.3	19.7	25.4
3. 11-20 years	24.3	33.7	26.3	25.5
4. 21-30 years	12.7	16.3	17.1	13.5
5. 31 years+	8.6	12.8	14.5	9.6
6. (DK/Refuse)	1.9	2.3	2.6	2.0
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**D5. What is your highest level of formal education?**

1. Did not complete high school	2.0%	2.2%	1.3%	2.0%
2. High school diploma/GED	22.4	22.5	15.4	21.7
3. Some college or an associates degree	22.8	18.0	19.2	22.0
4. Vocational or technical school degree	4.3	3.4	1.3	3.9
5. College diploma	27.6	33.7	42.3	29.6
6. Advanced or professional degree	19.4	18.0	19.2	19.3
7. (DK/Refuse)	1.5	2.2	1.3	1.6
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**D6. Please tell me your age.**

1. <25	2.3%	4.5%	2.6%	2.6%
2. 25-34	7.5	10.2	7.8	7.8
3. 35-44	23.8	21.6	22.1	23.4
4. 45-54	33.3	28.4	36.4	33.1
5. 55-64	21.7	27.3	22.1	22.3
6. 65+	10.9	8.0	9.1	10.4
7. (DK/Refuse)	0.5	—	—	0.4
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751



	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
<b>D7. What is the zip code of your business?</b>				
1. East (zips 010-219)	20.2%	17.0%	15.6%	19.5%
2. South (zips 220-427)	20.6	20.5	22.1	20.7
3. Mid-West (zips 430-567, 600-658)	26.5	27.3	27.3	26.7
4. Central (zips 570-599, 660-898)	18.4	22.7	19.5	19.0
5. West (zips 900-999)	14.3	12.5	15.6	14.2
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**D8. What were your gross receipts in your most recent calendar or fiscal year?**

1. <\$100,000	20.9%	3.4%	2.5%	17.2%
2. \$100,000-\$249,999	20.9	3.4	2.5	17.2
3. \$250,000-\$499,999	14.6	9.0	3.8	12.9
4. \$500,000-\$999,999	13.3	15.7	9.0	13.2
5. \$1 million-\$4.9 million	8.7	41.6	37.2	15.0
6. \$5 million - \$9.9 million	0.9	3.4	9.0	2.0
7. \$10 million or more	0.3	3.4	23.1	2.8
8. (DK/Refuse)	20.4	20.2	12.9	19.6
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**D9. Sex**

Male	85.1%	86.4%	87.2%	85.5%
Female	14.9	13.6	12.8	14.5
Total	100.0%	100.0%	100.0%	100.0%
N	350	201	200	751

**Table Notes**

1. All percentages appearing are based on **weighted** data.
2. All “Ns” appearing are based on **unweighted** data.
3. Data are not presented where there are fewer than 50 unweighted cases.
4. ( )s around an answer indicate a volunteered response.

**WARNING** — When reviewing the table, care should be taken to distinguish between the percentage of the population and the percentage of those asked a particular question. Not every respondent was asked every question. All percentages appearing on the table use the number asked the question as the denominator.

# Data Collection Methods

The data for this survey report were collected for the NFIB Research Foundation by the executive interviewing group of The Gallup Organization. The interviews for this edition of the *Poll* were conducted between March 28 - April 23, 2002 from a sample of small employers. "Small employer" was defined for purposes of this survey as a business owner employing no fewer than one individual in addition to the owner(s) and no more than 249.

The sampling frame used for the survey was drawn at the Foundation's direction from the files of the Dun & Bradstreet Corporation, an imperfect file but the best currently available for public use. A random stratified sample design was employed to compensate for the highly skewed distribution of small-business owners by employee size of firm (Table A1). Almost 60 percent of employers in the United States employ just one to four people meaning that a ran-

dom sample would yield comparatively few larger small employers to interview. Since size within the small-business population is often an important differentiating variable, it is important that an adequate number of interviews be conducted among those employing more than 10 people. The interview quotas established to achieve these added interviews from larger, small-business owners were arbitrary but adequate to allow independent examination of the 10-19 and 20-249 employee size classes as well as the 1-9 employee size group.

This survey included liability and administration of the state sales tax as its topics. Four small states, Delaware, Montana, New Hampshire, and Oregon do not have a sales tax. As a result, the sample did not include small employers from those states or about three percent of the population. Any impact from this exclusion will therefore be negligible.

**Table A1**

## Sample Composition Under Varying Scenarios

Employee Size of Firm	Expected from Random Sample*		Obtained from Stratified Random Sample			
	Interviews Expected	Percent Distribution	Interview Quotas	Percent Distribution	Completed Interviews	Percent Distribution
1-9	593	79	350	47	350	47
10-19	82	11	200	27	201	27
20-249	75	10	200	27	200	27
All Firms	750	100	750	101	751	101

\*Sample universe developed from special runs supplied to the NFIB Research Foundation by the Bureau of the Census (1997 data).

# Previous Publications in This Series

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- Volume 1, Issue 1 *The Changing Search  
for Employees*
- Issue 2 *The Use and Value of Web Sites*
- Issue 3 *The Cash Flow Problem*
- Issue 4 *Adjusting to Cost Increases*
- Issue 5 *Coping with Regulation*
- Issue 6 *Success, Satisfaction and Growth*
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