

TO: NAW Direct Members

FR: NAW Government Relations Team

***RE: NAW Government Relations Update Number 2021-20 – August 26 at 10:30 AM***

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**1. Latest on the \$3.5 Trillion Social Spending Bill & the Senate-Passed Infrastructure Package**

In a rare move, Speaker of the House Nancy Pelosi interrupted the normally sacrosanct August recess to bring the House of Representatives back to Washington to vote on the highly partisan Democratic budget resolution, setting the stage for enactment of President Biden's \$3.5 trillion social spending and tax hike agenda. But a group of 10 moderate Democrats threw a wrench in Speaker Pelosi's carefully laid plans. This group of moderates, led by Josh Gottheimer (D-NJ), told the Speaker that their support for the budget resolution was contingent on the House also voting on the Bipartisan Infrastructure Framework (BIF) just passed by the Senate.

During this short-lived moderate uprising, Speaker Pelosi told her leadership team that it was "no time for amateur hour" – and for at least a few days, the House of Representatives actually fit that description. But as Congress-watchers know, it is usually a mistake to underestimate Nancy Pelosi.

The Speaker, known to be both a master House strategist and a ruthless negotiator, immediately tasked her political allies to begin to twist the arms of moderate holdouts. It was reported that the Democratic campaign arm warned the group members that they may withhold financial support during the midterm elections. Former President Bill Clinton personally phoned Congressman Gottheimer. And one Member's wife had her job in the Biden White House threatened.

Eventually the pressure campaign worked, and all the moderates conceded to their Leadership – Speaker Pelosi won the battle by passing the \$3.5 trillion budget resolution with not a single Democratic defection (nor a single GOP vote). But winning a battle isn't winning a war, and the moderates did not go away empty-handed. In return for their

votes on the budget, the Speaker promised them a vote on the BIF no later than September 27<sup>th</sup>.

But the Speaker has repeatedly said she would not allow the House to vote on the BIF until the Senate has passed the reconciliation bill that would turn the budget resolution's top-line numbers into spending and tax hike legislation. To accomplish that, Congressional Democratic leaders have set a September 15<sup>th</sup> deadline for the enactment of that massive tax-and-spend bill, a tremendously ambitious timeline.

This tight timeline sets up a repeat scenario for the Speaker next month. She is likely to face an uprising from the Progressive wing of her caucus, already angry that she agreed to a vote on the BIF without conditioning it on Senate passage of reconciliation. Representative Ilhan Omar, the Progressive Caucus whip, stated that she doesn't "believe that's actually going to happen," and that "If we are able to finish our work by the 27th by all means, let's have the vote. If we are not, we're going to wait until that work gets done."

But – the Progressives' game plan notwithstanding – there is no certainty that the Senate can pass the reconciliation bill at all, much less by mid-September. The massive tax increases on businesses and households earning more than \$400,000 have caused consternation with moderates on both sides of the Capitol, but most notably in the evenly divided Senate where just one Democratic "no" vote would defeat the legislation. Senator Kyrsten Sinema (D-AZ) has flatly stated – more than once – that she won't support a bill that spends \$3.5 trillion, and Senator Joe Manchin (D-WV) said that he has "serious concerns" about a bill of that magnitude. This obviously poses a serious obstacle to the Speaker being able to keep her conflicting commitments to the moderates to vote on the BIF and to the Progressives NOT to do so until a Senate-passed reconciliation bill reaches the House.

Further complicating things next month is that the Federal Fiscal Year ends on September 30<sup>th</sup>, so Congress must pass appropriations legislation to avoid a government shutdown. Congress will also have to address a measure to increase (or suspend) the current government debt limit, which was reinstated on August 1<sup>st</sup>. The U.S. Treasury has said they can use "extraordinary measures" to continue paying the nation's debt obligations only until the early fall. Congress is likely to try to address both the debt limit and funding issue in a short-term "continuing resolution" that will extend funding at Fiscal Year 2021 levels, which has the added sting for the Democrats that those funding levels were originally set under the Trump Administration.

For those who think that August has been a soap opera, in the words of Bachman Turner Overdrive – “You Ain’t seen Nothing Yet.”

## **2. America’s Job Creators for a Strong Recovery Launches Ad in Arizona**

As we reported to you previously, this summer NAW joined with four allied trade associations to form a new coalition to oppose the Biden Administration’s massive tax hikes. This new Coalition, America’s Job Creators for a Strong Recovery, now has almost 40 association members, and is moving forward with our media plan.

You should have received an email message/letter yesterday from John Peter, NAW’s Chief Corporate Relations Officer, with information on AJCSR’s ad launch, but in case you missed it ...

NAW sponsored the first ad in the Coalition’s media campaign, which is now running in Arizona encouraging Democratic Senator Mark Kelly to oppose the job-killing tax increases. We will be launching additional ads in targeted States and House Districts as funds for the campaign become available.

If you did miss it, you can read John Peter’s letter [HERE](#).

And you can watch our Arizona ad [HERE](#).

## **3. Latest on Nomination of David Weil to be Administrator of the Wage and Hour Division**

NAW has partnered with the International Franchise Association and the Taxpayers Protection Alliance to place billboards in Arizona, hoping to persuade Senators Mark Kelly and/or Kyrsten Sinema to oppose the nomination of David Weil as Administrator of the Department of Labor’s Wage and Hour Division. You can see the placement of the three billboards [HERE](#), [HERE](#), and [HERE](#).

If confirmed, Weil would take the same position he held in the Obama Labor Department. As you will remember, in 2015 the Obama Administration proposed radical changes to the Fair Labor Standards Act’s (FLSA) “white collar exemption” from the required payment of overtime, including a more-than-doubling of the threshold salary from \$23,600 to more than \$47,000 (among many controversial provisions). We heard from *many* NAW members about how negatively they would be impacted by that rule;

NAW joined association allies as a plaintiff in a lawsuit challenging the rule, and a Federal Court overturned it. The Trump Administration subsequently proposed a more reasonable rule, which is in effect today.

The Weil nomination has been very controversial for several reasons, including his having been the architect of the Obama-era FLSA rule, and NAW joined colleagues in the business community in signing a letter to the Senate Health, Education, Labor and Pensions (HELP) Committee opposing his nomination. You can read that letter [HERE](#).

As of now, the HELP Committee has been unable to report the Weil nomination. The Committee has an equal number of Republicans and Democrats – tied like the Senate – and the Democrats have been unable to get a Republican Senator to support the nomination. While the rules of the 50-50 Senate would allow the Democrats to discharge the nomination from the HELP Committee, they would have to get at least one Republican to vote for the nominee on the Senate floor to secure his confirmation or have the Vice President presiding over the Senate to break a tie vote. But that assumes that all 50 Democratic Senators support the nomination, and due to the controversy surrounding the nominee, that is not a certain outcome today.

Given the possibility of even one Democratic Senator being unwilling to vote for Mr. Weil, there is a chance that the nomination will be defeated or withdrawn.

You can see the Taxpayers Protection Alliance press release with good quality rendering of the billboards [HERE](#).

#### **4. Tax Podcast**

ICYMI, earlier this month NAW Chief Government Relations Officer Jade West did a podcast on the state of play in Congress on reconciliation and tax hikes. You can listen to it [HERE](#).

#### **5. Latest on the Economic Recovery and Re-Opening the Workplace**

As the Coronavirus Pandemic continues to impact the United States economy and businesses across the nation, it can be hard to decipher how new regulations and laws may impact your business. To help you manage these issues NAW is providing information about reports, webinars, and seminars that you may find useful:

**From *Little Law Firm*:**

### **Mandatory Employee Vaccines – Coming to A State Near You?**

In recent weeks, several states and municipalities have announced that, in essence, they are requiring certain categories of workers to be vaccinated. Generally, under these types of mandates, workers who decline vaccination must comply with measures that do not apply to their vaccinated counterparts, such as weekly COVID-19 testing and/or mask wearing. Depending on the jurisdiction and the sector involved, however, unvaccinated workers might not have such alternatives. To read more, click [HERE](#).

**From *Little Law Firm*:**

### **OSHA Publishes Updated COVID-19 Guidance in Light of Rising Delta Variant Cases**

On August 13, 2021, OSHA issued updated guidance to better align with the Centers for Disease Control and Prevention's July 27, 2021, recommendations, given the rising cases of the COVID-19 Delta variant. The guidance's purpose is to summarize the CDC's "substantial or high transmission" guidance and assist employers in recognizing and abating COVID-19 hazards in the workplace. To read more, click [HERE](#).

**From *Reed Smith Law Firm*:**

### **To mandate or not? FAQs on Mandatory Vaccine Programs for Employers**

Late last year, the U.S. Food and Drug Administration (FDA) issued the first approvals for a COVID-19 vaccine. Shortly thereafter, the U.S. Equal Employment Opportunity Commission (EEOC) issued guidance on the interplay between federal anti-discrimination law and vaccine-related issues, including the permissibility of mandatory employer vaccination policies. The below FAQs address some of..... [Continue Reading](#)

**Webinar from *Little Law Firm*:**

### **The Biden Labor Agenda: What Lies Ahead**

September 16, 2021 | 2:00 p.m. ET

Eight months into the Biden Administration, a series of executive orders, rulemaking activity, and legislative efforts have signaled an intent to dramatically shift labor and employment policies in ways that are concerning for businesses still reeling from the pandemic. More change is coming in the fall, as recent pro-labor appointees take control of the federal agencies regulating the workplace.

In this presentation, we will examine the workplace policy agenda that the Biden Administration has begun to pursue, identifying a variety of topics that may affect employers in the months and years to come. These include anticipated changes at the U.S. Department of Labor, NLRB, and EEOC, impacting such issues as joint employment, independent contractors, employee handbooks, union organizing, minimum wage, workplace safety, affirmative action, and government contracts. The latest developments regarding the PRO Act, COVID, and other pending legislation will also be discussed.

To register, click [HERE](#).

**From *Reed Smith Law Firm*:**

**As of August 2021, 19 states enact COVID-19 related liability shields**

On July 15, 2021, we released an article discussing the Texas liability shield for businesses against COVID-19 related claims. Texas, however, is not the only state to enact such a shield. We have drafted a summary of the 19 states that have enacted COVID-19 liability shields to date. For simplicity, we have summarized the..... [Continue Reading](#)

**Survey From *Littler Law Firm*:**

**Employers Increasingly Consider Vaccine Mandates as COVID-19 Delta Variant Spreads**

Littler, the world's largest employment and labor law practice representing management, has released the results of its COVID-19 Vaccine Employer Survey Report: Delta Variant Update, completed by 1,630 in-house lawyers, C-suite executives, and human resources professionals across the United States. While most employers surveyed are still encouraging, rather than requiring, vaccinations, the data shows an increasing openness to such mandates amid rising infection and transmission rates. To read more, click [HERE](#).

[Click here](#) for links to **UPDATES** sent previously.

Many thanks—

*Jade West, Chief Government Relations Officer*  
*Blake Adami, Vice President-Government Relations*

Seth Waugh, Associate Vice President-Government Relations  
National Association of Wholesaler-Distributors

## **Adding Value in a Post-Pandemic World: New Leadership Strategies for Distributors**

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**RE: NAW Government Relations Update Number 2021-19 – July 28 at 5:45 PM**

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## **6. Latest on the Bipartisan Infrastructure Framework**

The Senate Bipartisan Infrastructure Framework (BIF) seems to have gotten over a significant sticking point and may potentially have enough momentum to pass the Senate. Late last night the Senate Group of 22 (G22) announced that they have agreed to the \$579 billion infrastructure plan. Even though the negotiation missed several deadlines, the G22 continued to work forward. Majority Leader Chuck Schumer (D-NY) has said that he will bring the BIF up for a procedural vote as early as tonight (Wednesday, July 28<sup>th</sup>). If this procedural vote can muster the required 60-vote threshold then it would open the bill up for debate in the full Senate and increases its chance of passage. As many as 12 Republicans at one point or another have been involved in negotiations of the BIF. To meet the 60-vote threshold Majority Leader Schumer (D-NY)

will need to count on all their support to counteract any defections from Democrats in his party.

On the other side of the Capitol, things are even less certain. Currently, Speaker of the House Nancy Pelosi (D-CA) only has a four-vote majority and the Chairman of the House Transportation and Infrastructure Committee Peter Defazio (D-OR) has demanded that the House amend the BIF to include climate provisions and earmarked projects that were in the more partisan House infrastructure bill. Further, progressives in the House have threatened to vote against the BIF unless Pelosi links the BIF and the larger \$3.5 trillion reconciliation package that would include many of President Biden's other priorities. While on the Republican side of the House, many in the Republican conference are expected to vote against any bill that would give President Biden and House Democrats a victory before the midterm election.

So, while this agreement is a significant first step, there are still many stars that must align for this, or any infrastructure package, to be signed into law. NAW will continue to work with members of the Senate and House of Representatives to urge the passage of an infrastructure package. Additionally, please see the statement NAW put out in support of the BIF [HERE](#).

## **7. Latest on Overtime Issue, Revisited:**

When the Obama Administration proposed its rule modifying the Fair Labor Standards Act's "white collar exemption" from the required payment of overtime, NAW and our allies in the business community vigorously opposed the new rule. That rule, which would have raised the minimum salary for exempt status from \$23,600 to more than \$47,000 (among many other controversial provisions), was challenged in court in a case in which NAW was a plaintiff. After the court overturned the Obama rule, the Trump Wage and Hour Division promulgated a new rule, which raised the threshold salary to about \$35,000 and made other reasonable changes to the rule. The Trump Administration's rule is in effect today.

However, that could well change, soon. The Administrator of the Wage and Hour Division in the Obama Labor Department, David Weil, has been nominated by President Biden to assume that position again. His nomination has been very controversial for several reasons, including his having been the architect of the Obama-era FLSA rule, and NAW joined colleagues in the business community in signing a letter to the Senate Health, Education, Labor and Pensions Committee opposing his nomination. You can read that letter [HERE](#).

Mr. Weil, who has mentioned revisiting the overtime rule as one of his priorities, is likely to be confirmed by the Senate despite opposition from most Republican Senators as well as the business community.

If the new Wage and Hour Division does in fact propose a new overtime rule, we will again reach out to NAW members seeking your feedback on how the new rule would impact your businesses and help organize opposition to the rule if warranted.

## **8. Latest on Proposal to Require Banks to Report Account Holders' Financial Transactions to the IRS:**

As we have reported before, one of the provisions in President Biden's tax proposals would require banks to report to the IRS all the transactions of their account holders of more than \$600. This very controversial proposal was initially included in the Bipartisan Infrastructure Framework, but opposition to it was so strong and vocal that it was subsequently deleted from that proposal.

However, several senators, reportedly including Mark Warner of Virginia, continue to support that banking reporting requirement in some form, and we are told they plan to include it in an upcoming reconciliation/"human infrastructure" bill.

The banking community is, unsurprisingly, concerned about this reporting requirement. Working with our allies in that community, we circulated for signature a letter to Congress to be signed by trade associations opposing the IRS reporting requirement. We will continue to monitor this and keep you informed as the issue develops. You can read our letter opposing the provision [HERE](#).

## **9. Latest on NAW's Effort to Defeat Amazon's Monopoly Power**

Last week, we sent a letter to Lina Khan, Chair of the Federal Trade Commission (FTC), to urge scrutiny and action addressing Amazon Business' mistreatment of third-party sellers. The Commission's investigation of Amazon's conduct addresses several areas, including the Business to Consumer (B2C) market. Paramount to NAW and its members is Amazon's exploitative conduct in Business-to-Business (B2B) commerce. Amazon Business' anticompetitive tactics replicate those it pursues to dominate the B2C market. Like its B2C business, Amazon plays "both sides" of B2B by selling its own products in direct competition against third-party sellers who use Amazon's B2B marketplace.

To read NAW's letter to Chair Khan, click [HERE](#).

Also last week, we sent a letter to GSA Administrator Robin Carnahan to ask that she review GSA's implementation of Section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year 2018, the e-commerce marketplace platform program. Section 846 of the 2018 NDAA requires GSA to establish and manage a pilot program using e-commerce marketplace platforms to enable Federal agencies to purchase commercial off-the-shelf (COTS) products. Congress directed GSA to include multiple commercial e-commerce portal providers in pilot tests to validate their appropriateness as procurement vehicles, not to focus only on a single marketplace model or a single provider.

Although GSA identified three credible e-commerce purchasing channels, its June 2020 award tests only one model, the Amazon e-marketplace platform. GSA should not designate Amazon as the gatekeeper and by doing so reduce competition for the federal customer and foreclose access to the federal market. GSA should change course so alternative e-commerce models have meaningful opportunity to compete.

To read NAW's letter to Administrator Carnahan, click [HERE](#).

## **10. Latest on the Economic Recovery and Re-Opening the Workplace**

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### **Webinar from *Little Law Firm*:**

#### **COVID-19 in the Workplace: Recent Developments and Compliance Challenges - Session 17**

Friday, August 6, 2021 | 8:30 am-9:30 am PDT

It has become apparent that COVID-19 is going to dominate employment and labor law issues for the foreseeable future. In response to the many questions that business leaders, human resources professionals, and in-house counsel have about facing these new legal challenges, Littler created the "First Friday" webinar series. Every month since April 2020, on the first Friday of every month, we gather (1,500 attendees tuned in last month) to talk about what has happened in COVID employment law in the last 30 days.

To register, click [HERE](#).

**Stateside Associates** publishes a daily report about State and Local Government responses to the evolving situation. To read their latest report, click [HERE](#).

We are also providing a link to a spreadsheet that includes state and local COVID-19 response information provided by **MultiState Associates**. To view their spreadsheet, click [HERE](#).

[Click here](#) for links to **UPDATES** sent previously.

Many thanks—

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