

TO: NAW Direct Members

FR: NAW Government Relations Team

RE: NAW COVID/Government Relations Update Number 2021-3 – February 2 at 1:00 PM

1. Latest on the Next COVID-19 Relief Bill

Despite efforts for a bi-partisan COVID-19 relief bill, it looks as though President Biden and congressional Democrats will move forward with their \$1.9 trillion relief bill, potentially without Republican support.

Yesterday, 10 Republican Senators met with President Biden to advocate for a much smaller alternative to his massive relief bill to address the pandemic. Both sides described the meeting as “productive,” however in a statement, White House Press Secretary Jen Psaki said President Biden had emphasized that Congress had to act urgently and “boldly” and had pointed out many areas of disagreement with the Republicans.

The [Republican proposal](#) included \$160 billion for vaccine distribution and development, coronavirus testing and the production of personal protective equipment; \$20 billion toward helping schools re-open; more relief for small businesses; and additional aid to individuals. The package would also extend enhanced unemployment benefits of \$300 a week — currently slated to lapse in March — until June 30th.

Yesterday, Senate Majority Leader Schumer and House Speaker Pelosi introduced a fiscal 2021 budget resolution, which is the first step toward producing a reconciliation bill embodying President Biden’s relief plan. The first move for House Democratic leaders will be wrangling the votes for a budget measure this week — a critical step that unlocks the ability to pass bills with a simple majority in the Senate. But it will also require a near-perfect vote-counting operation, as Speaker Pelosi cannot afford more than four Democratic defectors on the floor if all Republicans oppose. Senate Leader Schumer is turning his attention to Senators Kyrsten Sinema and Joe Manchin, two moderate Democrats who have not yet said how they will vote on the budget resolution. If either Senators Manchin or Sinema opposes the budget maneuver, it could force the Democratic leadership to ditch the reconciliation process altogether.

Currently, neither President Biden's plan nor the Republican proposal includes liability protections for businesses. Senate Minority Leader McConnell made it clear in December, just before Congress passed a \$900 billion relief plan without liability protection, that any new relief bill this year must include protections for businesses, universities, and health care providers. NAW is currently working with our Liability Coalition to ensure that any relief bill this year includes liability protections.

2. Latest on PPP and Employee Retention Tax Credit

The IRS has issued new guidance for companies which had PPP loans that were NOT forgiven, allowing them to take the ERTC for the 4th quarter.

You can access the IRS guidance [HERE](#) and a story on the available credit from *Accounting Today* [HERE](#).

3. Latest on COVID-19 OSHA Guidance for Employers

Late last week, the U.S. Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) released updated and stronger guidance for employers and employees on identifying coronavirus exposure risks. DOL has stated that the recommendations are "advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace".

You can view the updated OSHA guidance [HERE](#).

However, President Biden's Executive Order of January 21st also instructed OSHA to determine whether a new, temporary, mandatory COVID-related health standard is necessary, and if so, to implement that standard by March 15th.

4. Latest on Enhanced Unemployment Benefits

Last week, President Biden issued an Executive Order (EO) instructing the U.S. Department of Labor to issue new instructions to state unemployment agencies that will allow individuals to claim unemployment benefits even if they quit their jobs because they felt unsafe working during the pandemic. To date, the DOL has not issued new guidance.

According to the [White House fact sheet](#), the executive order states:

... President Biden believes that workers should have the right to safe work environments and that no one should have to choose between their livelihoods and their own or their families' health. ... [T]he President is asking the Department of Labor to consider clarifying that workers have a federally guaranteed right to refuse employment that will jeopardize their health and if they do so, they will still qualify for unemployment insurance.

The relief package passed by lawmakers in December provided \$300 per week in enhanced unemployment benefits that will be available until the end of March. However, President Biden is seeking to extend the termination date from March until at least September as part of his anticipated stimulus bill.

5. Latest on Paid Leave Benefits

Last March, the Families First Act mandated that workers be eligible for up to 2 weeks of fully paid sick leave for those sick, quarantining, or taking preventive measures regarding the coronavirus, and 12 weeks of childcare leave to care for children whose school or day care closed, or family leave to care for a family member suffering from COVID-19. The federal government would provide tax credits to cover the cost to employers. Businesses with more than 500 employees were exempt from the mandate; businesses with less than 50 employees were exempt from the mandate but could receive the tax credits if they chose to offer such leave.

The COVID-19 relief bill passed in December extended those tax credits through March, without the requirement to provide such leave. President Biden's relief plan would reinstate the mandate through September. It would also extend coverage by eliminating the exemptions for employers with more than 500 or less than 50 employees. Employers with less than 500 employees would be fully reimbursed for the cost of providing this benefit.

6. 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 the *Centers of Disease Control*:

COVID-19 vaccines are an important tool to help end this pandemic.

Check out CDC's new [COVID-19 Vaccination Communication Toolkit for Essential Workers](#) to help build confidence in COVID-19 vaccines. Use these resources to educate your employees about COVID-19 vaccines, raise awareness about the benefits of vaccination, and address common questions and concerns. It will take all our tools to protect our essential workers against COVID-19.

Webinar from *Little Law Firm*:

COVID-19 in the Workplace: Recent Developments and Compliance Challenges - Session Eleven

Friday, February 5, 2021 | 8:30 am-9:30 am PST

It has become apparent that COVID-19 is going to dominate employment and labor law issues for the foreseeable future. The American workplace has become the first frontier as the pandemic creates new legal issues – seemingly every day.

In response to the many questions that business leaders, human resources professionals, and in-house counsel have about facing these new legal challenges, Littler's Sacramento office created the "First Friday" webinar series. We invite a special guest to do a deep dive into a topic of particular interest and do our very best to leave a full 20 minutes at the end for an "open mic" question and answer session.

To register, click [HERE](#).

Webinar from *Nixon Peabody Law Firm*:

Vaccinating the Nation: What You Need to Know

Wednesday, February 17 | 4:00–5:00pm ET

Widespread vaccination offers a light at the end of the pandemic tunnel. However, it also creates some legal questions and challenges, including:

- Encouraging and/or mandating vaccination for employees
- Requiring proof of vaccination for admission to premises or venues, or for participating in certain activities
- The interplay of masks and social distancing requirements with vaccination
- Managing risks in interactions with guests, visitors, and customers

Every organization and business will need to confront these issues, which are further complicated by a slow and uneven rollout of vaccinations across the country.

Join Nixon Peabody for an informational webinar on February 17, as our cross-office, multi-practice team helps you navigate through the incredible opportunities and complexities as America ramps up its vaccination program. To register, click [HERE](#).

From Reed Smith Law Firm:

[New York employers may be “exposed” to COVID-19 workers’ compensation claims](#)

In September 2020, the New York Workers’ Compensation Board (WCB) issued guidance related to COVID-19 claims and their compensability under the State’s workers’ compensation laws. This guidance is especially noteworthy because workers’ compensation claims are expected to increase substantially because of COVID-19. By way of background, New York is one of the few... [Continue Reading](#)

From Littler Law Firm:

[10 Months After Enacting the COVID-19 Paid Sick Leave Law, New York Issues Guidance Impacting a Majority of its Employers](#)

The NY DOL has issued new guidance that seeks to clarify the benefits available to all employees (except those in the healthcare industry) under the NY COVID-19 Paid Sick Leave Law. To read more, click [HERE](#).

From Reed Smith Law Firm:

[Virginia enacts first in nation permanent COVID-19 workplace safety standard](#)

Virginia is the first state in the nation to enact a permanent workplace safety standard for COVID-19. This permanent COVID-19 standard became effective Wednesday, January 27, 2021 upon publication after review and approval earlier in January by Governor Ralph Northam and the Virginia Department of Labor and Industry’s (DOLI) Safety and Health Codes Board. While ... [Continue Reading](#)

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](#).

7. Latest on the Issues Unrelated to COVID-19

Department of Labor Ends Payroll Self-Reporting Program:

The DOL ended the Wage and Hour Division's Payroll Audit Independent Determination (PAID) program that was launched in 2018. The program was created to allow employers to self-report federal minimum wage and overtime violation.

By self-reporting these violations some employers may have been able to avoid litigation and penalties; affected employees were prevented from initiating private actions against the employers and self-reported violations. Wage and Hour Division officials stated that one reason for the program's ending was that the "program deprived workers of their rights." NAW will continue to update you on changes to the Department of Labor's employment policies.

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

Many thanks—

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