

TO: NAW Direct Members

FR: NAW Government Relations Team

***RE: NAW COVID/Government Relations Update Number 2021-4 – February 5 at 4:00 PM***

## **1. Latest on the Next COVID-19 Relief Bill**

After a “vote-a-rama” session, the Senate passed a budget resolution at about 5:35 this morning after a marathon 15-hour session (and after up to 50 hours of debate on the budget earlier in the week). The budget resolution was adopted by a vote of 51-50 with Vice President Kamala Harris casting the deciding vote. Passage of this budget resolution is the first step in the process that will allow Congress to fast-track President Biden's COVID-19 relief bill without Republican support.

During the overnight session, Senators cast more than 40 votes on amendments, the overwhelming majority of them offered by the Republican minority. These are “messaging” amendments, few of which will have the force of law. More than a dozen GOP amendments were defeated on a 50-50 tie vote, indicating there is still a very deep partisan split in the Chamber. Among the amendments defeated were proposals to:

- Prohibit COVID relief payments to prisoners, school districts which have not at least partially re-opened after teachers are vaccinated
- Fund border security and enforce existing immigration laws
- Encourage the use of natural gas
- Make permanent the individual and small business tax cuts enacted in 2017
- Continue oil and gas leasing on public lands
- Prohibit infringement on the free expression of religion

Several non-binding measures of interest to business were agreed to:

- To provide grants to bars and restaurants affected by the pandemic
- Opposing raising taxes on small businesses during the pandemic
- Supporting legislation that would limit the authority of states to tax the income of employees who work in other states.

Of particular note, during the debate, three significant amendments were agreed to with bipartisan support – prohibiting relief checks going to illegal immigrants, supporting fracking, and continuing the Keystone XL pipeline.

At the close of the debate, Majority Leader Schumer offered an amendment that stripped all three of those amendments from the bill, despite their bipartisan support. All 50 Democratic Senators voted for the Schumer amendment – including those who had voted FOR the amendments earlier in the evening – and Vice President Kamala Harris cast the tie-breaking vote needed to pass the amendment.

The fact that no Democratic Senator was willing to oppose their Leadership on this controversial amendment suggests that the Democrats may well succeed in passing the Biden \$1.9 trillion COVID relief package with no GOP support.

The House is expected to pass the Senate-approved version of the budget resolution as early as tonight. The House committees will then begin marking up their sections of the reconciliation package next week. The Democratic timetable calls for the committees to complete their work and send their sections to the Budget Committee by the following week. The Budget committee will then assemble the final version of the reconciliation package. The House floor vote is expected to happen when the chamber comes back in late February. The bill will then head over to the Senate where things really get interesting. The goal is to get a final bill to President Biden's desk before enhanced unemployment benefits expire March 14<sup>th</sup>.

Meanwhile, the Problem Solvers, a 56-member group composed equally of Democrats and Republicans, are calling for a quick vote on a \$160 billion standalone package funding coronavirus vaccines and testing, adding to pressure on Speaker Nancy Pelosi. In the closely divided House, Speaker Pelosi can afford to lose no more than four votes on a party-line vote if all members vote.

## **2. Latest on the Net Operating Loss (NOL) Effort**

On a related CARES Act issue, a challenge is again being made against the NOL provisions contained in the CARES Act enacted last March. In this instance, a significant number of members of the House and Senate have signed a letter calling for the retroactive repeal of the NOL provisions.

NAW signed and circulated for signatures a letter to the Chairman and Ranking Republican on the Senate Finance Committee urging them to oppose any effort to repeal the CARES Act NOL provisions. You can read that letter [HERE](#).

### **3. Letter to EEOC Requesting Guidance for Employers Offering Vaccine Incentives**

Employer-provided incentives can assist governments in quickly and efficiently distributing vaccines. Legal uncertainty about providing such incentives, however, has many employers concerned over liability and has made them hesitant to act.

This week, NAW, along with 42 of our downtown allies, sent a letter to the Equal Employment Opportunity Commission (EEOC) requesting that they quickly issue guidance clarifying the extent to which employers may offer employees incentives to vaccinate without running afoul of the Americans With Disabilities Act and other laws enforced by the EEOC.

To read the letter to the EEOC, click [HERE](#).

### **4. Latest on Business Liability Protections**

Earlier this week, NAW, along with our COVID Liability Coalition, sent a letter to Congress urging members to consider including targeted and temporary liability protections in the next COVID-19 relief package. The letter points out that as the Biden Administration strives to re-open schools, protect our nation's health and strengthen our economy, liability protections will help safeguard educational institutions, healthcare providers, businesses and non-profit organizations from unfair lawsuits.

To read the coalition letter, click [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:

**Webinars from *Blank Rome Law Firm*:**

## **The Big Next: Confronting the Challenges of the 2021 Workplace**

### **Part I: What to Look for from the New Washington**

Wednesday, February 24, 2021 • 1:00 p.m.—1:45 p.m. ET

### **Part II: Q&A with Nationally Recognized Infectious Disease Expert Plus Workplace Survey Analysis**

Wednesday, March 3, 2021 • 1:00 p.m.—1:45 p.m. ET

To register for these webinars, click [HERE](#).

#### **From *McGuireWoods Law Firm*:**

#### **CDC Publishes New COVID-19 Vaccination Guidance for the Workplace**

The Centers for Disease Control and Prevention recently updated its “COVID-19 Vaccine Communication Toolkit for Essential Workers” to include information to educate all employers and employees about COVID-19 vaccines, raise awareness of the benefits of vaccination, and address common questions. Specific guidance for employers can be found in the CDC’s “FAQs about COVID-19 Vaccination in the Workplace: For Employers.” To read more, click [HERE](#).

#### **From *Nixon Peabody*:**

#### **Fed/OSHA issues first wave of new COVID-19 guidance under the Biden Administration**

On January 29, 2020, in response to President Biden’s executive order directing the federal Occupational Safety and Health Administration (“Fed/OSHA”) to revise guidance to employers on workplace safety during the COVID-19 pandemic, Fed/OSHA issued its Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace. To read more, click [HERE](#).

#### **From *McGuireWoods Law Firm*:**

#### **Virginia Adopts Permanent COVID-19 Safety Standards for Employers**

Virginia has adopted permanent COVID-19 safety rules for employers that will remain in effect if the commonwealth remains in a state of emergency. To learn more about this permanent safety standard and how it differs from the emergency standard the commonwealth issued in July 2020, 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](#).

## 6. Latest on the Issues Unrelated to COVID-19

### House Democrats Reintroduce the Protecting the Right to Organize (PRO) Act

Yesterday, House Education and Labor Committee Chairman Bobby Scott (D-VA) along with Senate HELP Committee Chair Patty Murray reintroduced the PRO Act. This radical legislation is a smorgasbord of pro-Union legislation written to increase union membership at any cost, including attempts to implement policies that have been rejected by the judicial system, opposed on a bipartisan basis in Congress, and/or abandoned by the agencies asked to enforce them.

Among other provisions, the PRO Act would:

- Enact Obama-era NLRB decisions such as Joint-Employer, micro-unions, and permitting work email access for union organizing;
- Eliminate Right to Work laws in the 27 states that have already enacted such legislation;
- Institute a new version of “Card Check” eliminating secret ballots in union elections;
- Create penalties that would hold corporate officers and directors personally liable for violating federal labor law;
- Prohibit arbitration in employment contracts; and
- Interfere with attorney-client confidentiality and make it harder for businesses to secure legal advice on complex labor law matters.

NAW is working hard to combat this legislation through the Coalition for a Democratic Workplace (CDW), which we help manage; this year we are chairing the Coalition lobbying committee. CDW is a broad coalition of hundreds of partners throughout the business community that are actively opposing the PRO ACT. Please see below for a statement from NAW’s Seth Waugh, Associate Vice President of Government Relations, and Chair of the CDW Lobbying Committee:

*The PRO Act is radical legislation that would impose union-friendly policies that were rejected by the judicial system, opposed on a bipartisan basis in Congress, and abandoned by the agencies asked to enforce them. Instead of focusing on keeping businesses open and workers employed during this pandemic, Congress is now considering legislation that would be a blatant handout to organized labor by attempting to increase the number of dues-paying union members at the expense of workers, small and local businesses, and entrepreneurs. Unions continue to push this legislation to tip the playing field in their favor and if passed, the idea of fair elections and due process rights for workers and employers alike would be systematically dismantled.*

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

Many thanks—

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