

TO: NAW Direct Members

FR: NAW Government Relations Team

**RE: NAW COVID/Government Relations Update Number 2021-16 – June 10 at 4:00 PM**

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## **1. Latest on the EEOC's Guidance for Employers Offering Vaccine Incentives**

In our previous update, we reported that the U.S. Equal Employment Opportunity Commission (EEOC) finally published requested guidance for employers on offering vaccine incentives. Specifically, they have provided “new information about how the Americans With Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) apply when an employer offers incentives for employees to provide documentation or other confirmation of vaccination when an employee gets a vaccine in the community or from the employer or its agent.”

You can access the EEOC's announcement of their new guidance [HERE](#) with links to their additional documents.

In addition, *McGuireWoods law firm* has released their own “EEOC Issues New COVID-19 Vaccine Guidance for Employers” analysis on this topic that you might find useful. You can access the *McGuireWoods* piece [HERE](#).

As you may remember, NAW joined a group of more than 40 allied trade associations in sending a letter to the EEOC requesting guidance on the offering of incentives to employees to encourage them to get vaccinated. We specifically asked the commission for guidance on “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.”

You can read our letter to the EEOC [HERE](#). The letter was sent on **February 1<sup>st</sup>**.

## **2. Latest on OSHA's COVID-related "Emergency Temporary" Safety Rule**

As discussed above, last month the Centers for Disease Control (CDC) issued new guidance for fully vaccinated people. Although it was a welcomed relief for many, it also created as much confusion for businesses as it clarified. In response, the Occupational Safety and Health Agency (OSHA) posted an update to their webpage stating that they were reviewing the CDC guidance. The OSHA guidance was further complicated by the fact that the Biden Administration had issued an executive order directing OSHA to investigate the need for an Emergency Temporary Standard (ETS) regarding COVID-19, which OSHA submitted to the White House Office of Information and Regulatory Affairs (OIRA).

During a congressional hearing yesterday, Labor Secretary Marty Walsh testified that the OSHA ETS is focused only on healthcare settings. OSHA just released the new Healthcare ETS this afternoon. OSHA has also updated their guidance for all industries.

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

You can view the new OSHA Healthcare ETS [HERE](#).

You can read OSHA's FAQs [HERE](#).

## **3. Latest on Infrastructure, Social Spending, Tax Increases, and "Reconciliation"**

There have been a lot of press reports on the Biden/Congressional Democratic majority plans to pass two more significant spending and tax measures, in addition to the already-enacted \$1.9 trillion American Rescue Plan. Much of that discussion has focused on when and whether the Democratic-controlled Senate will try to pass one or both additional bills through a "reconciliation" process.

Reconciliation is a Congressional procedure that limits debate on legislation in the Senate so that it cannot be filibustered and can therefore pass with just 51 votes instead of the 60 needed to "invoke cloture" – cut off debate – on regular bills. And it is critically important because reconciliation allows the Senate majority – of either Party and even in a tied 50-50 Senate like we have today – to completely bypass the minority members and pass legislation with just the Majority's votes.

Reconciliation "instructions" are part of the Congressional budget so must be passed by both houses of Congress as part of their Budget Resolution. Reconciliation can only be

used to pass legislation dealing with money – taxes, spending, and the debt limit. It cannot be used to enact legislation unrelated to taxes and spending. And it has been used infrequently in the past.

But reconciliation is being considered in a whole new dimension today, with Senate Majority Leader Chuck Schumer (D-NY) talking about passing a massive infrastructure bill, and possibly an equally large social policy bill, using reconciliation to short-circuit GOP opposition.

*We have written a white paper on the reconciliation process and how Senator Schumer planned to use it this year, which you can read [HERE](#).*

#### **4. Latest on President Biden’s Executive Action on Labor Issues**

On the campaign trail, President Biden vowed to be the “strongest labor president you have ever had” and has echoed that statement multiple times thus far during his presidency. But despite the President’s vow and the recent wave of anti-business activists who have won elected office, according to the Bureau of Labor Statistics only 6.3% of private sector workers are union members, down significantly from the unionization high water mark of 35.7% in 1953. In fact, the recent overwhelming rejection of unionization at the Amazon warehouse in Alabama (not exactly a highly regarded company at the moment) seems to show that today unions have less appeal among private sector workers than at any other time in American history.

But President Biden is finding that even with control of the White House and Democratic majorities in the House and Senate, pushing his controversial pro-labor agenda across the finish line is proving to be a harder task than expected. Perhaps in anticipation of the challenges of enacting some of the more egregious pro-labor items via legislation, the White House embraced the Obama method of a “phone and a pen” to also focus on executive actions.

On April 26<sup>th</sup> President Biden signed an executive order creating a “Task Force on Worker Organizing and Empowerment” which will be wrapping up the first round of listening sessions with labor unions on June 11<sup>th</sup>. This task force is chaired by the Vice President and is charged with identifying policies and programs to promote worker organizing and collective bargaining. White House labor policy staffers who are assisting with this task force have specifically asked labor unions to only bring forward proposals that can be accomplished through executive action and not through legislation. This will likely mean that the Biden Labor Department will start to systematically roll back many of

the regulations or deregulatory activities that occurred during the Trump administration. With the task force including 13 cabinet officials and multiple agency heads, the White House is taking an all-of-government approach to issuing new union friendly regulations and policies across as wide a spectrum as possible.

NAW will continue to monitor any recommendations from this White House task force as well as any legislative proposals and keep you apprised of the situation.

## 5. Latest on Other Issues Impacting NAW Members

### House Democrats Eye Public Health Insurance Option:

On May 26th, House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) and Senate Health, Education, Labor and Pensions (HELP) Committee Chairwoman Patty Murray (D-WA) announced their plans to develop legislation to establish a public option for health coverage. A public health insurance option was a major staple of President Biden's health agenda during the campaign. However, President Biden recently has focused on infrastructure and taxes, not health care. And, with razor-thin majorities in both the House and Senate, Democrats would have a difficult time passing legislation to enact a public option this year, which Republicans oppose.

The Chairs issued a Request for Information (RFI) to the general public, which is very unusual. Their letter asks for input on who should be eligible to join a government-run plan, how to structure its benefits, and how to maintain a network of doctors. The July 31<sup>st</sup> deadline they set for input just before Congress' August recess leaves little time to make actual progress this year. You can read the RFI [HERE](#). The [Partnership for Employer-Sponsored Coverage \(P4ESC\)](#), which NAW helps manage, is currently drafting comments to the RFI which we will share with you in a future update.

NAW is adamantly opposed to a public option. Some public option proposals would allow employees to opt out of their employer's plan in favor of the public option plan. Absent a firewall, the cost of the employer's plan could spiral as healthier employees migrate out of the plan, severely impacting a plan's health risk adjustment and threatening plan availability and affordability for other employees and their families.

## 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 *Reed Smith Law Firm*: Is that a smile that I see?  
Pennsylvania businesses adjust reopening plans as the statewide mask mandate is scheduled to be lifted**

On May 27, 2021, Pennsylvania Acting Health Secretary Alison Beam announced at a press conference that Pennsylvania's statewide masking order is slated to be lifted in its entirety effective June 28, 2021. This announcement comes on the heels of the Wolf Administration's May 4, 2021 announcement that all COVID mitigation orders in Pennsylvania would be..... [Continue Reading](#)

**Webinar from *Nixon Peabody*:  
Impactful Solutions: Understanding new COVID-19 guidance and rulemaking impacting workplace safety**

Wednesday, June 16 | 10:30 a.m., Pacific

Public health guidance and state rulemaking have been changing rapidly. This webinar will help employers navigate safety compliance and prepare for re-openings.

Join us as we discuss the following topics that impact your business:

- New developments and amendments to state OSHA regulations including Cal/OSHA's COVID-19 ETS
- Federal ETS guidelines
- Updated CDC guidance
- Continued COVID-19 considerations

To register, click [HERE](#).

**From *Reed Smith Law Firm*:  
New Jersey expands COVID changes to include employers not open to the public**

New Jersey Governor Phil Murphy announced the lifting of COVID-19 mask requirements for certain employers, while continuing to require masks for others. In a point of frustration for many New Jersey employers, the requirements seemed to require masking and social distancing in an inconsistent manner, and imposed greater..... [Continue Reading](#)

**From Reed Smith Law Firm:  
Virginia adopts new laws effective July 1 that continue to transform the employment landscape**

Following last year's wave of new employment laws (previously covered as follows: Part 1, Part 2, and Part 3), Virginia has adopted a variety of new laws that will take effect July 1 and continue to transform the Commonwealth's employment law landscape. Virginia employers should carefully review these new laws to ensure compliance in this..... [Continue Reading](#)

**From Reed Smith Law Firm:  
New York State Department of Labor confirms that New York State paid sick leave applies to COVID-19 vaccine recovery time**

As we previously reported, over the past year, New York State has adopted a statewide sick leave law, paid leave for COVID-19 vaccination, and paid quarantine leave. Last week, the New York State Department of Labor (NYSDOL) issued guidance on the use of New York State Sick Leave (NYSSL) as it pertains to employees receiving..... [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](#).

***Click here for links to UPDATES sent previously.***

<https://www.naw.org/wp-content/uploads/2021/05/Critical-Updates-ALL-3.pdf>

Many thanks—

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