

Government Relations Update - October 29, 2021

1. Latest on Federal Contractor Mandate and OSHA Emergency Temporary Standard

Federal Contractor Mandate – We continue to push back with the White House on the Federal Contractor vaccine mandate. As a result of that effort, NAW CEO Eric Hoplin had a productive call this afternoon with White House officials, making the case for modifications of the Executive Order to prevent the harm that it will cause unless it is modified (more on that below).

Last week we shared with you Eric's letter to the President explaining the harm the mandate is certain to cause. Since sending the letter, NAW has done a significant amount of press alerting the public and policy makers to the potential impact of the mandate as written. Eric [appeared on CNN](#) and [on Fox News' Fox and Friends](#) to discuss our letter to the President and how the supply chain could be impacted. There were also several print pieces, including:

- **CNN:** ["Business group warns of mass layoffs and 'catastrophic' supply chain disruptions from Biden's vaccine mandate"](#)
- **The Hill:** ["Industry groups warn vaccine mandate could worsen holiday supply chain issues"](#)
- **Washington Examiner:** ["Vaccine mandate will have 'catastrophic' effect on jobs, business group warns Biden"](#)

Subsequently, White House Coronavirus Response Coordinator Jeff Zients made comments claiming that the Executive Order and Guidance will provide for a "period of education and counseling," not terminations; that "The requirements for federal workers and contractors will not cause disruptions to government services that people depend on;" and that "Agencies have the flexibility necessary to enforce the mandate without impacting critical operations."

You can read a transcript of the full White House press briefing [HERE](#).

[In a subsequent tweet](#), Zients is quoted as reaffirming that contracting agencies have flexibility in enforcing the mandate: "The WH coronavirus coordinator, Jeff Zients, indicated that the Biden administration could be flexible as it enforces the president's executive order requiring federal workers and government contractors to vaccinate their workers"

Mr. Zients' comments are in direct conflict with the with the express language of the Executive Order and Guidance. Because Mr. Zients lacks the authority to interpret or re-interpret the EO, NAW and others have attempted to get clarification from officials in the White House with the authority to actually modify the mandate.

In Eric's call this afternoon, the WH officials acknowledged that they have heard concerns about the unintended consequences of the mandate and are working to update the Guidance. Eric reiterated that we are still requesting a delay in the December 8th deadline and a testing option for those employers who would like to offer it. He further reiterated the importance of official White House confirmation of the agency flexibility that Jeff Zients has claimed.

We will continue to engage on this, and to fight for a remedy that works for NAW members and other employers. For now, we must wait and see what language the White House produces, but we are encouraged that they are aware of the problem and plan to address it. We will of course keep you apprised of developments.

Also today, Senators Mike Braun (R-IN) and Dan Sullivan (R-AK) sent a [LETTER](#) to Mr. Zients asking for “immediate clarification regarding your recent comments on Executive Order 14042.”

Finally, while we still question whether a legal challenge to the federal contractor mandate will succeed, today the Bureau of National Affairs (BNA) reported that 10 states (all with GOP governors) have already sued to block the Executive Order. You can read a *Daily Labor Report* story on the lawsuit [HERE](#).

OSHA ETS – The ETS has still not been released by the Office of Information and Regulatory Affairs (OIRA), and they have continued to schedule meetings on the rule through the end of this week. It is possible the rule could be released later this evening, but it is more likely that we will see it next week.

In the interim, some information on the Rule has begun to be leaked to the media. According to the media reports, employers will be able to require unvaccinated employees to pay for the alternative COVID tests unless the employee has been granted an exemption from the vaccine mandate. You can read a Bloomberg story on the ETS [HERE](#).

NAW will join the Coalition for Workplace Safety in filing comments on the ETS when it is released, and we are joining others in the Coalition in sending a letter to OSHA requesting a 60-day extension of the deadline for filing those comments.

2. Latest on Reconciliation/Build Back Better (BBB) and the Infrastructure Bill (BIF)

In yet another blow to President Biden's agenda, Speaker of the House Nancy Pelosi (once again) was forced to shelve her plans to vote on the Bipartisan Infrastructure Framework (BIF). Her plan to pass it yesterday unraveled because enough members of the Congressional Progressive Caucus (CPC) refused to support it and would have defeated the measure on the floor. Instead, the House voted on and passed yet another short-term extension of the country's transportation funding until December 3rd – the same deadline for Congressional leaders to pass a Continuing Resolution to fund the government and right on top of the need to again raise the debt limit to avoid default.

President Biden delayed his departure for his overseas trip to the G20 to personally go to the Capitol and ask House Democrats for their support on the infrastructure plan and the BBB. It has been reported that President Biden linked the 2022 election to the passage of these bills when he told the Democrat caucus meeting, "The House and Senate majorities and my presidency will be determined by what happens."

Nevertheless, and despite their support for the \$1.75 trillion reconciliation “framework” President Biden announced yesterday, the Progressives continue to refuse to allow the BIF to pass until that reconciliation bill has actually been voted on. Their refusal to allow the BIF to pass is based on their distrust of Senators Manchin and Sinema, neither of whom has committed to vote for the reconciliation bill . . . that and the fact that the BBB hasn't yet been fully written.

It is well known that Speaker Pelosi cannot afford to lose more than three votes from her caucus to pass the BIF, and the CPC claims 90 members. As the vote continues to be delayed, the limited Republican support for the bill has dwindled. While it was originally reported that as many as 30 House Republicans would support the BIF, the President and the Speaker have tied the BIF so closely to the BBB, which no Republican supports, that GOP support is barely into double digits today.

As details of the new \$1.75 trillion BBB were released, the employer community's opposition was not diminished. The proposal is still financed with close to \$2 trillion in new taxes, to be collected mostly from business. The framework calls for "a new 5 percent charge on adjusted gross incomes over \$10 million and another 3 percent surcharge ones topping \$25 million." In addition, it would add a 1 percent tax on stock buybacks, create a 15% minimum tax on corporations' book earnings, and increase the GILTI tax rate to 15%. The framework also extends the "loss limitation" rule, making it harder for pass-through companies to reduce their tax burden.

Significantly, pass-through businesses are the target of several of the key tax increases, not the least of which is the expansion of the Net Investment Income Tax to more S-Corp income. Even worse, the 5 percent surtax applies to AGI of more than \$10 million but will apply to trust income of just \$200,000.

NAW's close ally in these matters, the S Corporation Association, quickly prepared an analysis of the disparate impact of the new BBB on pass-through businesses, which you can read [HERE](#).

While many of the most objectionable tax increases in the original reconciliation plan are not contained in this new version, there is no reason to believe that those additional tax provisions will not come back. The current House bill is not a final document, and as we were told in a lengthy meeting this morning with Senate leadership and Finance Committee staff, the revenue "scores" that the House is using for their \$1.75 trillion bill are mostly smoke and mirrors.

Both Senate and House GOP leaders argue that the amount of revenue claimed in the new House bill will actually not be verified by the Joint Tax Committee when that committee does its analytical assessment of the new BBB. And if the revenue House Democrats claim they are raising falls short, which we firmly believe it will, they will go back to the drawing board, and back to the well, for more revenue. When and if that happens, we can expect to see many of the more onerous provisions of the original BBB back under discussion, including rate increases, death tax changes, taxing of unrealized gains, bank reporting provisions, and more.

Bloomberg Government has released a document that summarizes many of the provisions in the BBB, which can find [HERE](#).

NAW issued a statement yesterday opposing the new BBB: [NAW Statement on BBB Framework - NAW](#)

We will provide additional updates when the House returns next week to resume consideration of these measures.

3. Employer Resources

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: EEOC issues guidance on religious objections to COVID-19 vaccine mandates

- As we discussed here, employers who have implemented mandatory vaccine policies – either by choice or by government mandate – have seen a significant uptick in religious

accommodation requests. As a result, on October 25, 2021, the Equal Employment Opportunity Commission (EEOC) issued guidance regarding employers' obligations under federal anti-discrimination law when an employee objects..... [Continue Reading](#)

From **McGuireWoods Law Firm**: No Magic Words: EEOC Clarifies Guidance on Religious Accommodations to Vaccine Mandates

- On Oct. 25, the Equal Employment Opportunity Commission issued new guidance for resolving religious objections to COVID-19 vaccination mandates. This guidance comes at a time when many employees are submitting requests for religious accommodations to workplace vaccine mandates. To read more, click [HERE](#).

From **PerkinsCole Law Firm**: Federal Contractors Bracing for Implementation of Vaccine Mandate

- Last week, the federal government began enforcing the contractor employee vaccine mandates in Executive Order 14042, "Ensuring Adequate COVID Safety Protocols for Federal Contractors" (COVID EO) and its supporting guidance. The coverage obligations are broad, novel and complex. Coverage determinations will require deep analysis of which employees need to be vaccinated. To comply with the mandate, unvaccinated covered contractor employees will need to start getting vaccinated as early as late October. To read more, click [HERE](#).

From **Nixon Peabody Law Firm**: Next month's deadline for COVID-19 vaccinations for federal contractors: Your questions answered

- We address common questions regarding new Safer Federal Workplace Task Force compliance requirements, including the vaccination mandate for employees of federal contractors and subcontractors ahead of the December 8 vaccination deadline. To read more, click [HERE](#).

Many thanks—

Jade West, Chief Government Relations Officer
Blake Adami, Vice President-Government Relations
Seth Waugh, Associate Vice President-Government Relations

The above information and links to other information has been prepared by NAW for the general information of NAW members. It is not intended to, and does not, provide tax, legal or professional advice concerning any specific matter. You should not act on the information without first obtaining professional advice and counsel.