

## Government Relations Update – February 10, 2022

### **1. Latest on Vaccine Mandates: OSHA Emergency Temporary Standard and Federal Contractor Mandate**

**OSHA ETS:** As we have previously reported, in early January the Supreme Court held oral arguments on our petition for an emergency stay of the OSHA ETS, and on January 13<sup>th</sup> the Court granted our petition and stayed the mandate.

On January 25<sup>th</sup>, OSHA withdrew the ETS, while making it clear they could continue to pursue a regular rulemaking on the mandate. After OSHA withdrew the rule, the government filed a motion to dismiss all the petitions in the case because the Supreme Court injunction made those petitions moot.

Our attorneys, and other petitioners in the case, filed a response to the government motion to dismiss, acquiescing to the motion, *provided however*, that the sixth circuit also vacate its opinion on the fifth circuit's stay. You can read our attorney's response to the motion to dismiss [HERE](#).

Our attorneys were confident the sixth circuit would grant the motion to dismiss, but less confident that the court would also vacate their opinion on the stay. As of this date we are not aware of any decision by the sixth circuit.

We will keep you apprised of any developments in the case and of any action by OSHA on a vaccine rulemaking.

**Federal Contractor Mandate:** As has been widely reported, in December a federal judge in Georgia granted a nationwide injunction of the federal contractor mandate. The government appealed that decision to the 11th circuit court of appeals and asked that the circuit court stay the injunction issued by the Georgia court.

On December 13<sup>th</sup> the eleventh circuit denied the government's request for a stay of the injunction and set a briefing schedule to hear arguments on the appeal. The final reply briefs in the case were to be filed by January 24<sup>th</sup>.

We obviously do not know the final outcome in this case and may in fact not know the final determination of the contractor mandate until sometime early

next month. As with the ETS, we will keep you apprised as we learn new developments.

## 2. Latest on Labor Issues

We have been reporting for almost a year that the Biden Administration's Department of Labor and National Labor Relations Board are moving aggressively to reverse the decisions of the Trump appointed board and agency.

We will be sending to you shortly a more comprehensive report on the actions taken by the labor agencies in the last year and what you can expect from them in the year ahead.

In the interim:

- *Specialty Healthcare*: NAW has just joined colleagues in filing an amicus brief with the NLRB opposing their plan to restore the Obama Board's *Specialty Healthcare* decision. In that case, the Board created an almost-impossible-to-meet "overwhelming community of interest" standard for determining "an appropriate bargaining unit." The *Specialty* standard facilitated the creation of "micro bargaining units" allowing unions to organize a small fraction of the workers in a single company. You can read a copy of the NAW amicus brief [HERE](#).
- *Independent contractor (IC)*: NAW is joining another amicus brief that will be filed this week in opposition to the NLRB's initiative to redefine how independent contractors are determined. This is a high priority for organized labor since independent contractors are not subject to the National Labor Relations Act. The Board is expected to take aggressive action to make it more difficult for employers to use independent contractors or for workers to choose that status.
- *"Card check" legislation*: In the House of Representatives, Democratic leaders offered a late managers amendment to the America COMPETES Act which would include "card check" and mandatory arbitration of collective bargaining agreement terms. Both of these provisions were part of the Employee Free Choice Act, which Congress rejected years ago. NAW is actively working with members of the Senate

Republican leadership team to strip these poison pill provisions out of the legislation in conference.

### **3. Latest on Government Funding and Build Back Better Efforts**

This week, the House voted to pass another short-term government funding bill ahead of its February 18<sup>th</sup> deadline. The Senate plans to vote next week on the bill, which would keep the government open through March 11<sup>th</sup> and provide Democrats and Republicans time to settle on a longer-term funding deal. However, this short-term funding bill only further kicks the can down the road on implementing parts of the bipartisan infrastructure law passed last year. According to the Congressional Budget Office, \$197 billion from that \$500 billion law cannot be released for use unless annual appropriations bills are enacted.

A day after the House passed their short-term funding bill, Congressional appropriators announced that they've struck a preliminary appropriations deal for Fiscal Year 2022. However, the lack of details on an overall cost could signal problems in the parties' ongoing negotiations.

This spending deal is separate from efforts to revive President Biden's \$2 trillion Build Back Better (BBB) plan. According to reports, zero progress was made this week on Biden's new plan to break up the BBB into smaller "chunks" and pass them individually. Last week, Sen. Joe Manchin told reporters that the Build Back Better plan is "dead." He added that talks have been frozen since December and "there's no organized conversations going on." Also, the absence of Democratic Sen. Ben Ray Lujan (D-NM) for at least the next few weeks as he recovers from a stroke means that any action on the BBB, in whatever form, is off the table for now.

### **4. 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:

Webinar from **Little Law Firm**: A Wage and Hour Annual Report: DOL Developments in 2021 and Looking Forward to 2022

February 15, 2022 | 1:00 p.m. ET

The Department of Labor (DOL) recently released its enforcement statistics for last year, while the Senate HELP committee sent President Biden's Wage and Hour Administrator nominee to the full Senate, setting up a confirmation vote. Tammy McCutchen, Strategic Advisor of ComplianceHR and former DOL Wage and Hour Administrator, will reflect on the DOL developments from 2021 and discuss what changes employers should expect in 2022. To register, click [HERE](#).

Webinar from **Little Law Firm**: Insights on What 2022 has in Store for Your Workplace

February 23, 2022 | 1:00 p.m. ET

The lawyers of Littler's Washington, D.C. and Tysons Corner, VA offices are ready to answer your labor and employment law questions. Want to know the latest on what to expect in your workplace in 2022? Need guidance on pandemic-related challenges? Our attorneys will discuss your most urgent labor and employment law questions and more! Please submit your questions upon registering or bring your questions with you to the webinar. To register, click [HERE](#)

From **Reed Smith Law Firm**: Pennsylvania businesses with COVID-19 vaccine requirements may have to provide new exemption for employees

Pennsylvania House of Representatives members have proposed House Bill 2318, which proposes that employers must provide a "natural immunity" exemption to employees under any employer COVID-19 vaccine mandate policy. The bill defines "natural immunity" as possessing immunity to the COVID-19 virus as a result of previous infection caused by the virus. Thus, if the proposed.....

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Many thanks—

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