

TO: NAW Direct Members

FROM: NAW Government Relations Team

RE: NAW Critical Update Number 85 – August 5 at 2:00 PM

1. Latest on the Paycheck Protection Program

As you know, the CARES Act provided that the proceeds from PPP loans were not to be taxable, but the IRS issued a ruling that otherwise-deductible expenses that are paid for with a forgiven PPP loan would not be deductible – effectively reversing the Congressional intent that PPP loans would not be subject to tax. The House-passed HEROES Act contains a provision reversing this unfortunate IRS ruling, and Senator Cornyn (R-TX) has introduced legislation in the Senate to accomplish the same mission. We were very optimistic that Senator Cornyn’s language would be included in the Senate introduced HEALS Act, but unfortunately Treasury Secretary Mnuchin supported the IRS and opposed the inclusion of the language in the bill.

NAW, along with our downtown partners, helped obtain signatures on a letter that we sent to House and Senate Leaders yesterday urging that language reversing the IRS rule be included in the next round of COVID-19 relief. There were over 180 signatures on the letter – including many NAW member associations – which you can read [HERE](#).

The small business title of the Senate’s proposed HEALS Act would provide that PPP borrowers would be eligible for a “second draw” loan, but only if the business had suffered a revenue loss of at least 50 percent. NAW helped gather signatures on a letter to Senate leaders and the bill’s authors arguing that a revenue loss of well under 50 percent could be crippling for a business and urging that the revenue-loss eligibility for second PPP loans be lowered. Late yesterday Senators Marco Rubio (R-FL) and Susan Collins (R-ME) introduced an amendment to their legislation lowering the revenue loss eligibility from 50 to 35 percent. You can read our letter [HERE](#).

Yesterday the Small Business Administration released a new Frequently Asked Questions (FAQ) document on PPP loan forgiveness. This document addresses a few general questions on loan forgiveness, but predominately deals with very specific questions related to the calculation of both payroll and non-payroll-costs for PPP forgiveness. The SBA says that: *“Borrowers and lenders may rely on the guidance provided in this document as SBA’s interpretation, in consultation with the Department of*

the Treasury, of the CARES Act, the Flexibility Act, and the Paycheck Protection Program Interim Final Rules ('PPP Interim Final Rules')."

You can access a link to the FAQ on the SBA website [HERE](#).

2. Latest on the HEALS Act (Health; Economic Assistance; Liability Protection; and Schools Act)

After negotiations on another Coronavirus stimulus package stalled over the weekend, both sides have recently stated that they are making some progress and are pushing to have a deal by the end of the week. However, there are still major differences in priorities which has many on Capitol Hill skeptical that an agreement can be found by the weekend. The major sticking points for the package are the size and length of unemployment payments, state and local aid, liability protections for businesses, and the final price tag for the legislation.

Senate Majority Leader Mitch McConnell has signaled his support for a new relief package even if the package has "some problems with certain parts" because "the American people in the end, need help." One faction of McConnell's majority is resistant to another costly large-scale stimulus package while the other faction (especially those who are facing tough re-election fights) are pushing for a deal to help boost the economy. This has weakened the Majority Leader's negotiating hand and he has acknowledged that "if you look for total consensus among Senate Republicans, you're not going to find it" and that the final result is going to be a "negotiated settlement."

Meanwhile, House Speaker Nancy Pelosi and Senate Democratic Leader Chuck Schumer believe that with the Senate Republicans divided they can get a better deal by negotiating directly with the White House. Nevertheless, the Democratic Leaders have been unwilling to make significant concessions in their negotiations with Treasury Secretary Mnuchin and White House Chief of Staff Mark Meadows. They dismissed a suggestion to break up the large stimulus package into several smaller scale proposals and rejected McConnell's \$1 trillion negotiated package. Additionally, Pelosi has refused to back down on her idea of a \$3.4 trillion dollar price tag, stating this week that "at some point you just have to freeze the design."

Although both sides are publicly stating that progress is being made and they hope to reach an agreement by this weekend, many within the Capitol are significantly more pessimistic behind the scenes, with some worried that the talks could go on for several more weeks.

3. Latest on the Main Street Lending Program

This Friday, Boston Fed President Eric Rosengren will appear at the first public hearing of the congressional panel set up by the CARES Act to focus on Fed and Treasury Department's efforts to stabilize the economy through the Main Street Lending Program. To watch the hearing beginning at 10:00 a.m. click [HERE](#).

4. Latest on DOL's Extended Pandemic Paid Leave

This week a federal judge in New York struck down several provisions of the Department of Labor's (DOL) rule implementing paid family and paid sick leave legislation that was included in the Families First Coronavirus Response Act. The ruling comes after the State of New York filed suit in April following the release of the DOL's final rule on paid sick and paid family leave. As you may remember, the final rule required certain employers to give workers who are quarantined or otherwise showing COVID-19 symptoms two weeks paid sick leave, as well as an additional 10 weeks leave for parents or guardians who are caring for sick children at home.

In the court ruling on Monday several provisions of the rule were vacated by the judge. Some of the vacated provisions include the following:

- The provision that allowed employers to withhold the paid leave if they had no work for the employee to perform.
- The provision requiring employees to seek permission from their employer to take intermittent leave.
- The provision requiring employees to submit documentation requesting pandemic leave prior to taking the time off.

It is expected that the DOL will appeal the court's decision. Additionally, you can read the ruling (*State of New York v. U.S. Department of Labor, et al., NO. 20-CV-3020 (S.D.N.Y. Aug. 3, 2020)*) [HERE](#).

5. Latest on 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**:

[Everything you need to know about New York's forthcoming statewide paid sick leave law](#)

The enactment of paid sick leave laws began as a state and local employment law trend roughly a decade ago, gaining substantial momentum in the mid-2010's. Amidst this wave, New York City adopted a paid sick leave law in April 2014. The City Council later amended the law – in May 2018 – to provide..... [Continue Reading](#)

From **Littler Law Firm**:

[Facing Your Face Mask Duties – A List of Statewide Orders, as of August 4, 2020](#)

As businesses reopen, face coverings are likely to remain popular as a preventative measure. This post identifies the jurisdictions where face coverings are recommended or required. To read more, 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](#).

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

Many thanks—

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