



SCWA Legislative Update

October 24, 2022



Midterm Elections

With Election Day less than three weeks away and early voting having already started in a number of states, it's a good time to remind everyone to Go Vote!

As we know, midterms are usually a referendum on the then current President's popularity, which at this point does not bode well for President Biden or his party. On average, in recent decades, the party in power loses an average of twenty-nine seats in the House due to the midterms. This year the Republicans only need to gain six seats to take control of the majority in the House. Unlike the House, over this same period, the party in power has only lost, on average, just one seat in the Senate. Only Franklin D. Roosevelt and George W. Bush saw their parties gain seats in the House during the midterm elections, and each were dealing with extraordinary situations. Additionally, typically Republicans gain three to six points in the polls from Labor Day to Election Day.

An interesting rumor is that Senator Mitt Romney has chosen not to endorse Senator Mike Lee in the hope that the independent Evan McMullin will win allowing the two of them to control the Senate in the same way that Senators Joe Manchin and Kyrsten Sinema have done the last 2 years.

Adding to this mix is that the vote in Pennsylvania will take a long time to be counted so it is unlikely we will know who will replace Senator Toomey on election night. In Georgia if neither candidate gets over 50 percent of the votes on November 8, which is quite possible, there will be a runoff on December 6th between the two top vote-getters - meaning it is conceivable we may not know who controls the Senate until December!



Possible Upcoming Tax Legislation

Depending on the outcome of the election, we can expect to see an end of year tax bill. This bill is likely to include the four year extension of approximately \$45 billion worth of business-related tax breaks. These would include an extension of the research and development deduction, a write off for corporate debt costs and a tax break allowing companies to deduct all of their capital expenditures costs in a single year. In exchange, the Democrats would revive the childcare tax credit

which expired at the end of last year.

A number of Senators would also like to see their bi-partisan retirement plan bill included in this bill. We have discussed this bill in prior Updates. This retirement plan bill offers very little to those stable and profitable privately owned and small businesses that are already sponsoring retirement plans. It does, however, hurt many key small business employees and owners by forcing all extra contributions to 401(k) plans, known as “catch-up” contributions, to be after-tax rather than pre-tax as they can be now. This bill is very likely to actually cause older people who finally have the ability to contribute more for their retirement to decide not to because of the negative tax treatment which is exactly counter to the bill’s stated goal of increasing saving opportunities and incentivizing employees to contribute for their retirement.



American Trucking Associations Victorious in Truck-Only Toll Fight

On September 21, 2022, the United States District Court for the District of Rhode Island ruled that the state of Rhode Island’s truck-only tolling plan was unconstitutional.

The lawsuit came as the result of the American Trucking Associations (ATA) and three motor carriers filing a lawsuit against the state of Rhode Island. The state placed tolls on existing bridges which had been found structurally deficient.

These tolls were intended to raise revenue from trucks operating in interstate commerce as the state found that tractor trailers contributed the majority of the wear and tear on the state’s bridges.

The truck only tolling plan from Rhode Island discriminated against trucks, and if it had won its lawsuit, it would have incentivized other states to follow suit.

You may view the decision by the U.S. District Court by [clicking here](#).



U.S. Supreme Court Will Not Hear Challenge to CMS Vaccine Mandate

The Centers for Medicare & Medicaid Services (CMS) released a rule (“CMS Mandate”) requiring Medicare – and Medicaid – certified healthcare providers and suppliers to have all employees fully vaccinated, unless a medical or religious exemption is granted. This week, the U.S. Supreme Court declined to hear the

latest legal challenge to the CMS Mandate.

While the CMS Mandate is still enforceable, the mandate for federal contractors remains blocked; additionally, OSHA has withdrawn the vaccine mandate for large employers.



NLRB Proposes Rule To Expand Standard For Determining Joint-Employer Status

On September 7, 2022, the National Labor Relations Board (NLRB) proposed a rule expanding the standard for determining joint-employer status under the National Labor Relations Act (NLRA).

This rule rescinds a 2020 final rule that set the definition of joint employer as an employer that exercises substantial direct and immediate control over the essential terms and conditions of employment.

The Board proposes to expand the definition of joint-employer status to include those that have indirect control over workers, and “share or codetermine those matters governing at least one of the employees’ essential terms and conditions of employment.”

The NLRB has identified the following types of small businesses or entities most likely to be impacted by this rule: contractors/subcontractors, temporary help service suppliers and users, franchisees, and labor unions. The NLRB estimates that small entities will spend one hour to read and understand this rule, at a cost of approximately \$150 per entity.

Comments on this proposed rule are due on November 7, 2022.

- Read and submit comments on [proposed rule](#) in the Federal Register.
- Read the [press release](#) from the NLRB.

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