



## SCWA Legislative Update October 5, 2020



### **Senate Passes One-Year Extension of Highway Bill**

On September 30, the U.S. Senate passed a continuing resolution (CR) funding the federal government through December 11, 2020 with a bipartisan 84 to 10 vote.

The CR included a one-year extension of the current surface transportation authorization with flat funding.

The House passed the continuing resolution prior to Senate consideration allowing the bill to head to the President for his signature and averting a government shutdown.

The continuing resolution authorizes the transfer of \$10.4 billion to the Highway Trust Fund (HTF) from the general fund for highways and another \$3.2 billion for transit to keep the HTF solvent.



### **President Trump Issues Health Care Executive Order**

On September 24, 2020, President Trump issued an executive order titled "An America First Healthcare Plan."

The order directs federal agencies to continue implementing many existing Trump Administration priorities and projects.

These include: (1) ensuring healthcare access, (2) increasing price transparency, and (3) providing protections for people with preexisting conditions.

The order also articulates several other health care goals.

These include:

- **Expanding Access to Affordable Prescription Drugs.**

The Administration plans to accelerate new generic and biosimilar drug approvals and facilitate the safe importation of affordable prescription drugs from abroad.

- **Surprise Medical Billing.**

The order directs the Department of Health and Human Services (HHS) to work with Congress to pass a law to protect American consumers from surprise medical bills by December 31, 2020. Failing that, the President asks HHS to address this issue through regulatory action.

- **Medicare.gov Website.**

Finally, the order requires HHS to update the Medicare.gov Hospital Compare website within 180 days. The update must inform beneficiaries of hospital billing quality matters. The website will have to note if a hospital complies with price transparency rules and if a hospital provides patients with a receipt that includes a list of itemized services received during a hospital stay. It will also indicate how often a hospital pursues legal action against patients.

It is important to note that NONE of the changes contemplated by this Executive Order are immediately effective.

Instead, the Executive Order can be looked at as more of a roadmap of the health care policy changes the President will work to implement through the remainder of 2020 and if he secures a second term.



## **DOL Proposes Rule To Clarify Employee And Independent Contractor Status Under The Fair Labor Standards Act**

On September 25, 2020, the Department of Labor issued a proposed rule that would clarify whether workers are employees or are independent contractors under the Fair Labor Standards Act (FLSA). Independent contractors are not entitled to the federal minimum wage and overtime pay that covered employees receive under the FLSA.

The rule adopts an “economic reality test” to determine a worker’s status: the test considers whether a worker is in business for himself or herself (independent contractor) or is economically dependent on a putative employer for work (employee).

The rule identifies and explains two “core factors” that determine whether someone is in business for himself or herself: specifically the nature and degree of the worker’s control over the work, and the worker’s opportunity for profit or loss based on initiative and/or investment. The rule identifies three other factors that may serve as guideposts in the analysis: the amount of skill required for the work, the degree of permanence of the working relationship between the worker and the potential employer, and whether the work is part of an integrated unit of production.

Comments on this rule are due on October 26, 2020.

Read the rule and submit comments to DOL:

<https://www.federalregister.gov/documents/2020/09/25/2020-21018/independent-contractor-status-under-the-fair-labor-standards-act>



## **Small Businesses Improve, Owners Struggle to Find Qualified Labor**

The small business labor market continues to make improvements in September despite continued state and federal employment regulations related to COVID-19. According to **NFIB’s monthly jobs report**, 10% of owners reported increasing employment an average of 3.2 workers per firm and 16% reported reducing employment an average of 2.0 workers per firm (seasonally adjusted).

“Small employers are taking every step they can to keep their businesses open and employees on staff,” said **NIFB Chief Economist Bill Dunkelberg**. “COVID-19 restrictions and regulations put on small businesses vary by state, but we are starting to see a jobs recovery as small businesses continue to increase business operations.”

A net 23% (seasonally adjusted) of owners plan to create new jobs in the next three months, up 2 points from the August report and 22 points above April’s report. However, 36% (seasonally adjusted) of all owners reported job opening that they could not fill in the current period, up 3 points.

Thirty-two percent of owners have openings for skilled workers and 16% have openings for unskilled labor, both historically high readings.

While many Americans are receiving unemployment benefits, small businesses are having

trouble matching workers with available jobs. Thirty percent of owners reported few qualified applicants for their open positions and 20% reported none.

Fifty-six percent of owners reported hiring or trying to hire in September, up four points from the previous month. Of those trying to hire, 89% reported few or no “qualified” applicants for the positions they were trying to fill. Sixty percent of construction firms reported few or no qualified applicants and 30% cited the shortage of qualified labor as their top business problem.

A net 23% reported raising compensation, up 5 points from August. A net 16% plan to raise compensation in the coming months, up 2 points. Nine percent of owners cited labor costs as their top business problem.

## **Stimulus Package Update**

The chances of reaching an agreement on a new coronavirus stimulus package look more promising than they have in months. Meanwhile, the president's hospitalization with COVID-19 brings renewed urgency to the deal.

With Election Day now 29 days away, negotiations between Democrats and White House officials are already under pressure to reach a deal on a new stimulus package before many Americans cast their ballot. But now President Donald Trump's hospitalization with COVID-19 and the Senate pausing floor action until Oct. 19 create further obstacles that House Speaker Nancy Pelosi and Treasury Secretary Steven Mnuchin need to overcome if they intend to reach an agreement on the next wave of coronavirus relief and get the new bill passed.

Over the weekend, Trump urged negotiators to reach a deal. "Our great USA wants & needs stimulus," the president's account tweeted Saturday. "Work together and get it done. Thank you!"

To lay the groundwork for a deal in the Senate, Mnuchin told Republicans to prepare for a new stimulus package as soon as midweek, The Washington Post reported. But Pelosi, speaking on Face the Nation Sunday, was guarded about the prospect of reaching an agreement this week: "It just depends on if they understand what we have to do to crush the virus."

After three Republican senators tested positive for COVID-19, Senate Majority Leader

Mitch McConnell suspended his chamber until Oct. 19. Because Senate floor votes are held in person, McConnell said he would recall Senators to vote on a stimulus package if need be, giving them 24 hours to return to the Capitol.