



The NEA Monthly Lobbyist Report for Members



NEA October Report

Last Updated: November 21, 2022

NEA October Report

What's Happening in Washington

Congress was out of session throughout October as Senators and Representatives focused on campaigning ahead of the competitive November midterm elections. While the results are sorted out and votes are tallied, it appears that Republicans will take a slim majority in the House of Representatives and control of the Senate will remain under Democratic control. Congress was out of session until the week of November 14th, and then will be out for Thanksgiving recess. When they return, the week will be consumed with new member orientation and the initial stages of leadership races and committee reassignments. Some of the topline issues for the Senate includes considering the National Defense Authorization Act (NDAA), nominations, legislation to reform the Electoral Count Act, and codifying same-sex marriage. Both chambers will have to agree to a budget deal to fund the federal government before the December 16th deadline. When activity in Washington picks up post-election, Lobbyit will closely monitor leadership races, hearings, committee assignments, and legislation that will affect you and your organization.

Rail Strikes

In September, President Biden indicated that his administration had brokered a deal to avert a freight-rail strike. "This agreement is a big win for America," he said. "And this is a win for tens of thousands of rail workers and for their dignity and the dignity of their work."

However, by October 10, members of the third-largest rail union, the BMWED, rejected the deal the Biden administration celebrated. They agreed to maintain the status quo until November 19, at which point they would be free to strike. If just one of the twelve unions covered by national bargaining goes on strike, the others would be unlikely to cross a picket line, meaning the entire freight-rail network would shut down nationwide.

DOL IRAP

Back in September, the Department of Labor's (DOL) Employment and Training Administration (ETA) published a final rule to rescind the recognition of Industry-Recognized Apprenticeship Programs (IRAPs). The IRAP was established to expand apprenticeship programs beyond traditional labor professions like construction and into modern industries such as cybersecurity. The program allows authorized third-party employers to approve training programs instead of needing direct approval from the DOL or a state agency.

On October 6th, Senator Richard Burr (R-NC) wrote a letter to Labor Secretary Marty Walsh reading in part:

"It makes no sense for the federal government to impede industry training workers with skills that are actually relevant to industry. Additionally, the complete abandonment of IRAPs in favor of only Registered Apprenticeships is detrimental to workers seeking training. I am disappointed DOL has taken away choices and limited high-quality training opportunities for American workers [...]"

Registered apprenticeships have a long history of success in the construction industry and I'm glad to support them. However, that apprenticeship model alone does not meet the needs of today's dynamic and evolving economy. According to the American Action Forum, registered apprenticeships heavily focus on construction, public administration, manufacturing, transportation and warehousing, and utilities. However, the 10 most rapidly growing occupations are in the health care sector. IRAPs made dramatic inroads into diverse industries that are the future of the American workforce, only to be abruptly halted based on DOL's faulty reasoning."

Department of Labor: Independent Contractor Notice of Proposed Rulemaking On October 11th, the U.S. Department of Labor's (DOL) Wage and Hour Division announced the publication of a highly anticipated notice of proposed rulemaking (NPRM) on worker classification under the Fair Labor Standards Act (FLSA). The proposed rule would establish a framework for applying a redrawn economic reality test to worker classification. In a statement accompanying the release, DOL said that the proposed rule seeks to combat misclassification of independent contractors, an issue that has gained national attention amid the rise of the gig economy.

Economic Reality Test



NEA October Report

Last Updated: November 21, 2022

The Biden Administration's test relies on whether, as a matter of economic reality, a worker is either economically dependent on an employer for work, or is in business for himself as an independent contractor, using a non-exhaustive six-factor totality of the circumstances test, presented below:

1. Opportunity for profit or loss depending on managerial skill
 2. Investments by the worker and the employer
 3. Degree of permanence of the work relationship
 4. Nature and degree of control
 5. Extent to which the work performed is an integral part of the employer's business
 6. Skill and initiative
- Comments on the NPRM are due December 13, 2022.

What's Coming Next

Coming back to the present, Congress will have an incredibly busy lame duck session, and the outcome of the midterm elections will have everything to do with congressional productivity and action for the next two months. Given the current state of affairs we just covered, there is no legislative mandate made clear by the voters. We're expecting to see a few of these priorities come up first:

National Defense Authorization Act

End of Year Tax Bill

Omnibus Spending Package

Employment and Immigration Package

Healthcare Omnibus

Looking Ahead

Moving forward, Lobbyit's focus will shift to the Senate Health, Education, Labor and Pensions Committee for outreach. Our focus will be to facilitate introductions and socialize NEA amongst important stakeholders as we move forward into the 118th Congress. To that end, all meetings previously scheduled for October will be rescheduled now that midterms are (mostly) behind us.

If you have any questions regarding what is included in this report, please reach out to me directly.

Best,

Lindsay Atherton

Director, Government Relations Lobbyit.com

Andrew Schinski

Manager, Government Relations Lobbyit.com

Bills by Issue

National Employers Association (47)