WPMA
News and Information for the Petroleum Marketers Industry
weekly update

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REGISTER NOW! NEVADA'S BIG DOGS ARE COMING OUT TO GOLF OCTOBER 2

It's true! The Nevada's Big Dog Howl Golf is happening at Arroyo Golf Club in Las Vegas on October 2, 2020. We are excited to see you all! Every precaution is being taken to protect participants, staff, and volunteers. The golf course has implemented many safety measures to ensure we can put on a great tournament! If you are ready to emerge from the DOG HOUSE . . . Register here.

U.S. DOT ISSUES GUIDANCE ON REVISED DRUG TESTING CUSTODY AND CONTROL FORM

The Department of Transportation (DOT) has issued guidance on the newly revised Federal Drug Testing Custody and Control Form (CCF Form). The CCF Form was revised by the Department of Health and Human Services and is used for the federal employee drug testing program. The DOT is required by law to use the CCF Form for the DOT drug testing program specimen collection. The guidance clarifies that while the HHS added "oral fluid" specimen collection to the revised CCF Form, only urine specimen collection is authorized under the DOT drug and alcohol testing program. The DOT wants users to know that oral specimen drug testing is not authorized under the DOT drug program although it now appears on the revised form. The revised CCF Form can be viewed here.

Click here to view the full article.

SENATE DEMOCRATS BLOCK GOP COVID-19 RELIEF BILL

Yesterday, Senate democrats blocked the GOP's $500 billion COVID-19 relief package that included liability protections for employers, restored expired unemployment benefits, and provided additional funding for small businesses through the Paycheck Protection Program (PPP) among other provisions. Unfortunately, however, the bill did not receive the 60 votes needed to advance the bill. Continual disagreements between Republicans and Democrats over a potential fourth and final COVID-19 relief bill likely means that a relief deal may not be reached before the November elections. More than likely, Congress will resort to approving a Continuing Resolution (CR) to keep the government funded past the November election. Federal government spending authority expires on September 30. Click here to view the story.

Meanwhile, in response to health pandemic's negative effect on transportation projects and funding, a group of 88 trade associations sent a letter to Congressional leadership on Wednesday urging for there to be a one-year extension of current surface transportation law with increased funding levels. The letter also urges Congress to pass legislation that would provide funding for state transportation and public transit agencies, in addition to ensuring solvency of the Highway Trust Fund (HTF). Click here to view the letter.

Congress is ultimately expected to extend surface transportation authorization, which is set to expire on September 30, into next year. Congress is punting on transportation reauthorization because many believe there will be a "blue wave" and Democrats will regain control of the Senate and the White House, therefore allowing them to pass their own bill without having to compromise with Republicans. Further, lawmakers are more focused on COVID-19 related legislation and securing relief funding.

JUDGE STRIKES DOWN CRITICAL PART OF FINAL JOINT EMPLOYER RULE

This week, Judge Gregory Woods of the U.S. District Court for the Southern District of New York held that the Department of Labor (DOL) overstepped its regulatory authority in issuing the new standard for joint employer determination. The Judge's ruling was in response to 17 states and the District of Columbia who filed a lawsuit to overturn the joint employer final rule issued by the DOL effective March 16, 2020 stating that the final rule is "arbitrary and capricious." Judge Woods found that the four-part test to determine if one company is a joint employer of another company is too narrow. The test considers all factors together, whether the potential joint employer hires employees; supervises or controls work schedules; sets pay rates; and maintains employment records. However, the test requires an employer to actually exercise one of the four factors in order to qualify as a joint employer, instead of simply reserving the right to do so, which makes the standard inconsistent with the FLSA, Judge Woods ruled.

DOL's final rule established a "high bar" for joint-employment under the FLSA. Employer groups are pushing back and urging the DOL and the Department of Justice to appeal the decision. PMAA continues to support it to DOL final rule and for a brief refresher, please see below.

- The DOL joint employer final rule went into effect on March 16, 2020 which revised and updated regulations interpreting joint employer status under the FLSA. The final rule provides updated guidance for determining joint employer status when an employee performs work for his or her employer that simultaneously benefits another

individual or entity, including guidance on factors that are not relevant when determining joint employer status. Specifies that when an employee performs work for the employer that simultaneously benefits another person, that person will be considered a joint employer when that person is acting directly or indirectly in the interest of the employer in relation to the employee;
- Provides a four-factor test to determine when a person is acting directly or indirectly in the interest of an employer in relation to the employee, by weighing whether the business, with regard to its franchisee or contractor, maintains the power to hire and fire; to supervise schedules and "conditions of employment;" to set pay; and to keep employment records;
- Clarifies that an employee's "economic dependence" on a potential joint employer does not determine whether it is a joint employer under the FLSA; and specifies that an employer's franchisor, brand and supply, or similar business model and certain contractual agreements or business practices do not make joint employer status under the FLSA more or less likely.

As a result of the Court's decision, there is substantial uncertainty as to how the Joint Employer Rule will be applied in the short and long term. By setting aside the rule, it would appear that the pre-March 2020 Obama-era rule would be reinstated, at least during the pendency of the expected appeal of Judge Woods' ruling. Unlike the final rule discussed above, the Obama-era Joint Employer Rule looked to whether an entity had the "reserved" authority to control pay rates, work schedules, and hiring and firing of employees, irrespective of the authority was ever exercised. It is extremely unlikely at the present time that legislation or further administrative action will resolve the matter short of further litigation in the courts.

REPORT: TRUMP DIRECTS EPA TO DENY REFINERS' BIOFUEL BLENDING EXEMPTION REQUESTS

It was reported this week that President Trump has directed EPA to deny refiners' retroactive biofuel blending exemption requests. Refiners have requested that the EPA grant them biofuel exemptions going back to 2012 which could allow them to circumvent a January decision from U.S. Court of Appeals for the 10th Circuit, which said a refinery can receive new exemptions only if they have received them continuously since the program began. Senator Ernst (R-IA), who is in a tough reelection race, urged President Trump to reject the refiners' request and Iowa is a key swing state for the President to win. Click here to read the story.

SENATORS URGE CONGRESS NOT TO INCREASE LIABILITY INSURANCE MINIMUMS

Sen. Steve Daines (R-MT) led a group of Senators is urging Congress not to include any increases in liability minimums for commercial truck drivers in the next surface transportation reauthorization bill.

The letter asks the Senate Committee on Commerce, Science and Transportation, to not double the current minimum insurance requirement for commercial motor vehicles from $750,000 to $2 million. "The only thing this would do is destroy small trucking businesses," said Lewie Pugh, Executive Vice President of Owner Operator Independent Driver Association (OOIDA), who spent 22 years as an owner-operator. "Trial lawyers are simply trying to increase their payouts at the expense of those deemed essential, including truckers, farmers, and manufacturers." Click here for the story.

TRADES WEIGH-IN ON HOW TO PRIORITIZE VACCINE DISTRIBUTION

Fuel associations including PMAA recently submitted a letter of support for and a request for clarification of the draft National Academy of Sciences' Committee on Equitable Allocation of Vaccine for the Novel Coronavirus report to advise health officials on how to prioritize vaccine distribution. The letter urges the Committee to prioritize vaccine distribution to those serving on the front lines of the fuel and food distribution systems across the country up to and including consumer-facing retail of these critical products. Click here for the letter.

EEOC REASSURES EMPLOYERS REGARDING COVID AND THE ADA

In a recent statement, the EEOC said "The Americans with Disabilities Act (ADA) does not interfere with employers following recommendations by the CDC or other public health authorities regarding whether, when, and for whom testing or other screening is appropriate. Testing administered by employers consistent with current CDC guidance will meet the ADA's 'business necessity' standard."

- Title I of the ADA applies to private employers with 15 or more employees. It also applies to state and local government employers, employment agencies, and labor unions. All nondiscrimination standards under Title I of the ADA also apply to federal agencies under Section 501 of the Rehabilitation Act. Basic background information about the ADA and the Rehabilitation Act is available on EEOC's disability page.
- The EEO laws, including the ADA and Rehabilitation Act, continue to apply during the time of the COVID-19 pandemic, but they do not interfere with or prevent employers from following the guidelines and suggestions made by the CDC or state/local public health authorities about steps employers should take regarding COVID-19. **Employers should remember that guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety.** Many common workplace inquiries about the COVID-19 pandemic are addressed in the CDC publication "General Business Frequently Asked Questions."

FEDERATED INSURANCE EMPLOYMENT PRACTICE NETWORK WEBINAR

Leading Forward - Workplace Controversies: Tuesday, September 18, 2020, 12:00 p.m. CT

In this webinar, we will address key issues such as returning to work after a pandemic-related shutdown or slow down; adjusting to the shift to remote work; workplace violence and weapons issues; and how to avoid unexpected risks of discrimination claims as your organization navigates the impact of social justice issues and the pandemic on its workforce and customers. We will provide practical tips you can use today to lead from the front and reduce risk.

Advanced registration is required for this one-hour webinar.

For additional information or to discuss this in further detail, please contact your Federated regional representative or PMAA's National Account Executive Jon Medo at 800.533.0472.

FEDERATED INSURANCE EMPLOYMENT PRACTICES NETWORK HR QUESTION OF THE MONTH

Provide FFCRA Leave Even in Negative Cases?

Federated Insurance's HR Question of the Month focuses on employment-related practices liability issues. This month's question is: ***Provide FFCRA Leave Even in Negative Cases?*** We have many employees who have figured out that some doctors will write 14-day quarantine notes, even after they test negative for COVID. The employee goes to the provider, tells them they've been exposed to COVID, the doctor tests them, they come back negative, but then the doctor writes a 14-day quarantine order anyway and the employee submits that for FFCRA sick time. I don't see a way around this due to how the law is written, but it is getting very over-abused. Are we correct that we must provide the FFCRA leave whenever a doctor note advises it even in negative cases? Please click here to read the response.

For additional information or to discuss this in further detail, please contact your Federated regional representative or PMAA's National Account Executive Jon Medo at 800.533.0472. **Federated is a PMAA Corporate Platinum Partner.**

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WPMA COVID-19 - CRITICAL REFERENCES FOR MEMBERS

Please visit our web site for up-to-date information related to your business and the COVID-19 pandemic. You will find the link on our home page at www.wpma.com.

MEMBERS AND ASSOCIATES - YOU CAN CONTRIBUTE!

WPMA welcomes industry-related articles for publication in the WPMA News magazine. All members and associate members of WPMA are eligible to submit items for publication. Articles will be included as space allows, and no self-promoting articles or editorials will be accepted. WPMA reserves the right to edit and make adaption of such contributions to accommodate the magazine's space and style. Please submit articles or content to Jan Roothoff, WPMA Administration/IT Director at janr@wpma.com, or mail to Jan Roothoff, Western Petroleum Marketers Association, PO Box 571500, Murray, UT 84157-1500. Submissions for the Winter edition of WPMA News magazine are due before November 1st. Later submissions will be considered for the Spring issue.

WPMA EXPO

February 16-18, 2021. The Mirage Las Vegas, Nevada.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

October 2, 2020 – Nevada NPM&CSA – Big Dogs- Arroyo Golf Club - Las Vegas, NV
November 2, 2020 – Hawaii (HPMA) Golf Tournament – Oahu Country Club – Honolulu, HI

February 16-18, 2021 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

WPMA MEMBER SERVICES

Be sure to subscribe to all of our social channels for great tips, industry trends, and insider information about association activities and upcoming events!

Petro Pete: ***"I'm reading a book about anti-gravity. It's impossible to put down."***

If you do not wish to receive information via fax or e-mail, please contact WPMA at: (801) 263-9762, Fax: (801) 262-9413, or e-mail: janr@wpma.com. Thanks.