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The Washington Wire – NAED Advocates for You on Key Issues

Regulations are taking center stage with the new “Overtime Rule” and the elimination of non-compete agreements causing concern amongst business owners.

NAED is continuing to move forward with our efforts to fix implementation of the 25C tax credit to eliminate “enabling properties” from novel PIN requirements. NAED along with our industry partners NECA and NEMA will meet with the Treasury Department in May to work towards resolving this issue.

The Senate remains in limbo over the House passed tax bill which includes important provisions for NAED members like restoring bonus depreciation.

A new study shows the cost of moving heavy-duty trucks to all electric and the price tag exceeds \$1 trillion. We also include in this issue reminders to talk with tax professionals about pending and implemented federal regulations that could affect electrical distributors.

Here are a few of the issues we are tracking in D.C. this month:

Final Overtime Rule Released, NAED Commits to Pushing Back

Electrical distributors have, from time to time, faced action from the DOL Wage and Hour Division (WHD) based on complaints from disgruntled/former employees claiming the company denied them overtime payments or their incentive comp programs were out of compliance with these rules. This month DOL finalized its latest iteration of the "Overtime [Rule](#)", which NAED is dedicated to pushing back against with our coalition partners. The Partnership to Protect Workplace Opportunity (PPWO) had previously filed comments against the rule and released a statement available [here](#).

The new overtime rule utilizes a two-tiered system for the minimum salary threshold and highly compensated employees (HCE) which also includes automatic updates for both thresholds every 3 years. Specifically, under

the rule, the minimum salary threshold is increased to \$43,888 on July 1, 2024 and to \$58,656 on January 1, 2025 (a 60% increase versus the current \$35,568 threshold). The HCE threshold is raised to \$132,964 on July 1, 2024 and then to \$151,164 on January 1, 2025 (a 41% increase from the current threshold of \$107,432). Both of the 2025 thresholds will be calculated using the new methodology which sets the minimum salary threshold to the 35th percentile of full-time workers in the lowest wage Census region and sets HCE at the 85th percentile of full-time workers nationally.

In response to the final rule, NAED Senior Vice President Ed Orlet said: "The overtime rule is the latest in a barrage of regulations from DOL that could negatively affect NAED member businesses. Under this new standard, many workers may have to be reclassified and may lose opportunities to advance in the workplace. Small businesses will face the challenge of navigating the new rules under the threat of being flagged for non-compliance. NAED is committed to digging in and fighting against this new rule on behalf of our members who are already facing regulatory compliance challenges on multiple fronts."

NAED will continue to keep you updated on the latest regulatory developments and litigation surrounding new DOL rules and regulations.

FTC Effectively Bans Non-Compete Agreements

You have probably seen the [headlines](#) about non-compete agreements being outlawed – so what are the details of this new policy? The new FTC ruling does indeed effectively ban current and new non-compete agreements and also requires businesses to notify employees with non-compete agreements in place of this change. Senior executives are the lone exception according to the language which grandfathers in non-compete agreements for executives that 1) earn more than \$152,000 (rounded) annually and 2) retain a position that includes policy making for the organization.

Pending legal challenges from organizations like the US Chamber of Commerce, this rule is scheduled to go into effect sometime this fall. If your company has non-compete agreements in place, be sure to review the details and terms of the agreements to determine if you may need to issue notice to affected employees/executives.

NAED will keep you updated on all legal challenges to this law as the FTC proposed changes remain pending.

NAED Locks Arms with NEMA and NECA on 25C Implementation

As we reported in the [last Washington Wire](#), one of the greatest supply chain challenges distributors face is access to accurate and timely product information from manufacturers. NAED estimates more than \$60 billion annually is lost due to inefficient exchange of product information between trading partners. The implementation of the 25C tax credit has the potential to cause supply chain headaches and even more loss of information between trading partners. In order to track products eligible for the tax credit, regulators have proposed a novel PIN system which is completely out of sync with how the industry currently tracks equipment. Even tracking “enabling properties” which consist of products like panelboards, sub-panelboards, branch circuits, and feeders would require the new PIN system. NAED, NEMA, and NECA are requesting that “enabling properties” be exempt from these PIN requirements and that the industry be allowed to track equipment under current systems, utilizing proven tracking methods like SKUs.

NAED and our industry partners have now taken the next step towards fixing these implementing regulations by securing a meeting with the US Treasury Department in May. We will keep you updated on our efforts to make sure these credits are implemented in the spirit of Congress's intent to help small businesses.

NAED Supports Start Applying Labor Transparency (SALT) Act

NAED joined with coalition partners in support of the Start Applying Labor Transparency (SALT) Act. The support letter reads in part: "this bill would amend the Labor-Management Reporting and Disclosure Act (LMRDA) to require labor organizations to register 'salts' with the Department of Labor (DOL). Unions pay salts to seek employment at a non-unionized workplace with the intention of persuading the employees at that workplace to organize. They use their positions within the company to sow discord and obtain information for the union about their coworkers and the employer. Salting is inherently coercive, but, currently, neither unions nor their salts are required to disclose their actions, in sharp contrast to the reports employers must file under the LMRDA. CDW urges Congress to support the SALT Act, which would require salts and the unions who engage them to file reports with the DOL, ensuring employees and employers have access to critical information."

Read the full support letter [here](#).

New Study Details Huge Price Tag of Trucking Electrification

Does your company maintain its own fleet of trucks? If so, you might have read about the push to transition heavy trucks to all-electric fleets starting in model year 2027. [A new study](#) funded by the Clean Freight Coalition was just released detailing the potential economic impact of such a move. The study shows that it will cost nearly \$1 trillion to adapt to these changes – fleets and charger operators will need to spend \$620 billion; utilities and the government will need to spend at least \$370 billion to upgrade grid equipment. These calculations do not include the costs of upgrading vehicles, with electric heavy trucks costing 2 to 3 times more than diesel counterparts. NAED has been largely supportive of the push for electrification with the caveat that these policy changes must include realistic plans for massive upgrades to the electrical grid which is currently insufficient to handle the ambitious goals set by various agencies and the Biden administration. The unrealistic push towards all-electric trucking fleets within a short window of time is one example of these policies going too far too quickly.

Make sure to review the new regulations to determine the impact on your business. You can read the EPA final rule [here](#).

Senate Tax Bill Update

NAED continues to push the Senate to pass a House-approved bill which would retroactively restore important tax provisions for NAED members. The bill includes addressing bonus depreciation (Section 168(k) which phased down from 100% to 80% in 2023. Beginning on January 1 of this year, the provision has phased down to 60% and is scheduled to phase out completely by 2027. In exchange for renewing provisions like bonus depreciation, the small business interest expense (Section 163(j)), and the Research and Development tax credit (Section 174), Democrats have proposed a refundable Child Tax Credit which has become a major sticking point in negotiations.

Our allies at the Family Business Coalition recently [chimed in](#), urging the Senate to take up the bill in a Townhall article.

An even larger tax threat looms next year in 2025 as many of the Tax Cuts and Jobs Act tax provisions including the estate tax changes, 20% small business deduction, marginal tax rates, and more expensing rules expire. NAED is urging Congress to make the TCJA small business tax changes permanent. Our multi-generational family businesses that keep NAED strong are worth protecting.

Reminder: Corporate Transparency Act Set to Take Effect

NAED is doing our part to oppose new reporting requirements as a result of the Corporate Transparency Act (CTA). The House Small Business Committee will hold a hearing [this week](#) on CTA implementation. There are currently two major legislative efforts on this front that NAED is supporting. The first is an effort to delay the CTA enactment at least one year to give small businesses the chance to adjust to these new requirements. That effort is being led by Senators Brown and Tim Scott in the Senate. Read the support letter which NAED joined [here](#). The second is an effort to completely repeal the CTA via legislation to be introduced by Senator Tuberville and Congressman Warren Davidson this week, coinciding with the House Small Business Committee CTA hearing. Read the letter of support [here](#). In addition, there are currently at least three separate legal challenges pending to CTA.

As we have reported, more than 32 million small businesses are now required to provide information on “beneficial ownership” to FinCen, Financial Crimes Enforcement Network. Our friends at the S-Corp Association hosted a helpful webinar for small business owners on CTA at the end of last year. We highly recommend you and your tax professionals review the webinar which takes a deep dive into compliance [here](#). NAED urges members to discuss CTA compliance requirements with your tax professionals.

Reminder: New DOL Walkaround Rule Takes Effect May 31

Last month, the Department of Labor finalized its “Walkaround Rule” which is scheduled to go into effect this month on May 31st. The rule allows third parties to accompany OSHA inspectors in the event they are deemed reasonably necessary which leaves business owners open to frivolous lawsuits and allows those potentially looking to do harm to the business on the premises. Our partners at the Center for a Democratic Workplace (CDW) issued a statement condemning the rule [here](#). The statement reads in part: “The rule provides no clarity for how OSHA safety and health officers are supposed to determine if a chosen representative should be allowed to participate in the inspection. Moreover, there’s no limit to the number of representatives that can participate, meaning multiple unions trying to organize a workplace could be permitted access. OSHA inspectors will be forced into a position to police these representatives’ behavior, which could include intentionally disrupting the workplace and instigating dysfunction.” The rule is likely to face legal challenges.

The exact language in the final rule is below:

§ 1903.8 Representatives of employers and employees.

(c) The representative(s) authorized by employees may be an employee of the employer or a third party. When the representative(s) authorized by employees is not an employee of the employer, they may accompany the Compliance Safety and Health Officer during the inspection if, in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace

(including but not limited to because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills).

We will continue to keep you updated about litigation and Congressional action surrounding the Walkaround Rule.

Reminder: New Independent Contractor Standards in Place Now!

Last month, the Department of Labor issued its final rule, “Employee or Independent Contractor Classification Under the Fair Labor Standards Act,” which is now currently the law of the land. If your distribution business employs independent contractors, be sure to talk to your tax professionals about more stringent requirements. The new rule returns the non-exhaustive six factor test to determine whether a worker should be classified as an employee (and therefore eligible for overtime and additional benefits) or an independent contractor. The six factors are:

- 1) Opportunity for Profit or Loss Depending on Managerial Skill**
- 2) Investments by the Worker and the Potential Employer**
- 3) The Degree of Permanence of the Work Relationship**
- 4) The Nature and Degree of Control**
- 5) The Extent to Which the Work Performed is an Integral Part of the Potential Employer’s Business**
- 6) Skill and Initiative**

Determining Independent Contractor classification was already a challenge for employers before the issuance of this rule which serves to make things even murkier for business owners. NAED has joined a coalition urging Congress to fight back. You can read the NAED-supported coalition response upholding Congressional efforts to nullify the rule [here](#).

Please stay tuned for more policy updates from our team and as always feel free to reach out to Ed Orlet with any questions or comments at: EOrlet@naed.org.