



JANUARY 2011

UNITED STATES

THE 2010 LAME DUCK SESSION OF CONGRESS

It is official. Like it or not, this lame-duck session was the most productive in years. More pieces of major legislation passed in the month of December than since March. The five key pieces of legislation passed were:

1. The tax cut compromise extending the Bush tax cuts, creating new Obama tax cuts and extending unemployment insurance (12/15)
2. The repeal of the "Don't Ask, Don't Tell" policy (12/18)
3. The food safety bill (12/19)
4. The 9/11 First Responders Bill (12/22)
5. New START ratification (12/22)

Two other pieces of legislation, Immigration Reform, which is called the Dream Act, and the Omnibus bill both failed in the 2010 lame duck session of Congress.

HEALTHCARE REFORM UPDATE

While debate continues on whether to repeal or revamp the landmark health reform bill, the New Year brings new changes to the healthcare system. Below is a list of the changes that went into effect Jan. 1:

- **Medical-loss ratio requirements** – Healthcare plans must provide rebates to customers if they spend less than 80 percent of premiums on health care (85 percent for the large-group market). However, a number of plans are exempt from the requirements.
- **Closing the donut hole** – The new reform law progressively closes the gap in the so-called donut hole, first with \$250 rebate checks starting in 2010 and then with a 50 percent discount on brand-name drugs starting next year. By 2020, beneficiaries will get a 75 percent discount, thus completely closing the donut hole.
- **Primary care bonus** – Doctors will get a 10 percent Medicare bonus for primary care services, while general surgeons in health professional shortage areas will also get a 10 percent bump. The temporary bump lasts through Dec. 31, 2015.
- **Medicare prevention benefits** – Cost-sharing for Medicare-covered preventive services earning an "A" or "B" grade from the U.S. Preventive Services Task Force will be eliminated. Medicare deductibles for colorectal cancer screening tests will also be waived, and Medicare coverage will be authorized for a personalized prevention plan.
- **CLASS Act** – A national, voluntary program will allow employees to purchase long-term care insurance. Enrollees who become disabled will be able to get payments to help them in their daily lives after they pay into the program for five years.
- **Premium threshold freeze** – The income threshold for income-related Part B premiums will be frozen at 2010 levels for 2011 through 2019. The Part D premium subsidy will be reduced for individuals earning more than \$85,000 and couples earning above \$170,000.
- **Medicare Advantage changes** – Payment rates to private Medicare Advantage plans will be gradually reduced in comparison to Medicare fee-for-service (FFS) rates. Payments will be frozen at 2010 levels, and plans cannot impose higher cost-sharing requirements for some benefits than required under the FFS program.
- **Health home payments** – States can allow Medicaid enrollees to designate a home healthcare service as their provider, and states can receive 90 percent federal matching payments for two years for home health-related care.
- **Chronic disease prevention** – States can receive three-year grants to develop comprehensive health lifestyle programs for Medicaid enrollees.
- **Tax-free spending accounts** – Costs for over-the-counter drugs not prescribed by a doctor will not be reimbursed through a health reimbursement account or flexible spending account. They also may not be reimbursed on a tax-free basis through a health savings account or Archer medical savings account.

- **Quality strategy** – The Department of Health and Human Services must report to Congress a strategy to improve healthcare service delivery, patient health outcomes and population health. The plan must be updated each year.

NLRB PROPOSED RULE REQUIRES NOTICE POSTING BY ALL EMPLOYERS UNDER THE BOARD'S JURISDICTION

Every employer subject to the National Labor Relations Act (NLRA) would be required to post a notice informing employees of their NLRA rights under a National Labor Relations Board proposed rule published in the Dec. 22, *Federal Register*.

The board proposed a rule that would require every employer to post an 11x17 inch poster and to distribute the notice electronically if the employer customarily communicates with employees by such means.

Additionally, the board proposes to sanction employers that fail to post the required notice by treating the failure as an unfair labor practice under Section 8(a) (1) of the NLRA.

THE BILL TO PROVIDE FUNDING FOR 9/11 RESPONDERS' HEALTH CARE

President Obama signed legislation Jan. 2 that would fund medical monitoring and treatment for emergency workers who responded to the World Trade Center site after the Sept. 11, terrorist attacks and for workers involved in the demolition and cleanup.

Those eligible for compensation under the bill also include first responders who performed cleanup after the attacks on the Pentagon and the plane crash in Shanksville, PA.

The Senate passed the bill Dec. 22, after which the House also passed the Senate version of the 9/11 Health and Compensation Act. The House passed its own version of the bill (H.R. 847) in September.

OSHA AGENDA INCLUDES FINAL RULES ON SEVERAL ISSUES INCLUDING HAZARD COMMUNICATION AND CONFINED SPACE

The Occupational Safety and Health Administration plans to publish final rules revising its hazard communication standard, addressing confined spaces in construction, amending recordkeeping requirements, and making work sites that enter into cooperative agreements subject to inspections.

OSHA will publish a final rule to align its hazard communication standard with the United Nations Globally Harmonized System for Classification and Labeling of Chemicals.

The hazard communication rule will change the agency's criteria for classifying physical and health hazards, adopt standardized labeling requirements, and require a standardized order of information on safety data sheets.

A final rule on confined spaces in construction that would seek to require contractors to classify spaces into four categories by the type of hazard they represent. It would also require the controlling employers on construction sites to coordinate confined space entry operations and to exchange information with other employers on the site.

The proposed rule also included specific requirements for confined space training, hazard analysis, classification, entry, work, exiting, and rescue for the four hazard levels.

OSHA said it plans to issue a final rule in February, on its proposal to require employers to record musculoskeletal disorders in the 300 log and will propose a rule to control exposure to silica dust.

THE MISCLASSIFICATION OF EMPLOYEES

The Department of Labor is adopting an aggressive approach to the enforcement of wage and hour laws at the same time that a "perfect storm" has arisen over misclassification of employees as independent contractors.

Misclassification of employees as independent contractors is now seen as a widespread phenomenon in the United States, and the White House, the Labor Department, the Internal Revenue Service, state governments, and labor unions have all turned their attention to the employers responsible for improper classification of employees as independent contractors.

Congress is well aware of the misclassification issue and the money at stake for employers, employees, and state governments when misclassification occurs.

National FCA supports the proposed Fair Playing Field Act (S. 3786) and the Employee Misclassification Prevention Act (EMPA) (S. 3254). The EMPA is significant in that it would create a presumption that a worker is an employee rather than an independent contractor, would mandate a notice to a new hire about the worker's status, and would make misclassification of an employee a violation of the FLSA.

CANADA

TAX BREAKS PUT MONEY INTO PEOPLE'S POCKETS

The government enhanced existing or introduced new tax credits in 2010 that make it a little easier for hardworking Ontario families to manage their household costs, including:

- The Children's Activity Tax Credit helps parents with the cost of enrolling their children in extra-curricular activities by allowing them to claim up to \$500, in eligible expenses for a refundable credit of up to \$50, per child or up to \$100, per child with a disability. Parents may begin claiming this permanent credit for activities they paid for in 2010.
- Ontarians can ring in the New Year knowing that the Ontario Clean Energy Benefit will give them 10 percent discount on their monthly electricity bills for the next five years.
- The enhanced Ontario Energy and Property Tax Credit provides increased tax relief of up to \$1,025, for over 740,000 seniors.
- The Ontario Senior Homeowners' Property Tax Grant offsets property taxes for low-to-middle income senior homeowners with up to \$500 per year.
- The Northern Ontario Energy Credit provides individuals with up to \$130, per year and families, including single parents, with up to \$200. More than half of all northerners are eligible for assistance, making it a little easier during the harsh winter months. They must apply by Jun. 30, 2011, for the 2010 credit.
- The Ontario Sales Tax Credit provides low- to middle-income individuals and families with relief of up to \$260 each year per person through quarterly payments.
- The Ontario Child Benefit provides up to \$1,100, annually per child, in tax-free financial support for low-income families with children under the age of 18. The government has committed to increase the maximum benefit to \$1,310, annually per child by December 2013.
- The property tax classification of farm bunkhouses will change from residential to farm beginning Jan. 1, 2011. Farmers with residences that house temporary workers will pay the farm property tax rate, which is 75 percent lower than the residential rate.
- All retirement homes, as defined in the *Retirement Homes Act, 2010*, will be included in the residential property class as of Jan. 1, 2011. Retirement homes will be taxed at the residential property tax rate, which is lower than the multi-residential rate in most municipalities.

In 2011, Ontarians will also continue to save from the permanent personal income tax cut that began in 2010 and saved Ontario income tax payers who benefited from it an average of \$200.

ONTARIO PASSES PENSION LEGISLATION

The Ontario government Dec. 7 passed into law legislative amendments to modernize and strengthen the province's Pension Benefits Act. The Securing Pension Benefits Now and for the Future Act, meets the government's commitment in its 2010 budget. The government is continuing to take steps to ensure Ontario's retirement income system is more stable and sustainable to benefit Ontario families.

The Act strengthens funding rules, provides more flexible funding rules for certain multiemployer pension plans and jointly sponsored plans; clarifies pension surplus rules; establishes a dispute resolution process to permit members, retirees, and plan sponsors to reach surplus-sharing agreements when a plan is wound up; improves sustainability of the province's Pension Benefits Guarantee Fund; and further strengthens regulatory oversight and improve plan administration, the statement said.

The amendments to the Pension Benefits Act represent the second stage of the provincial government's reform of the pension system.

MORE ACCESS TO HEALTH CARE FOR ONTARIANS

In 2010, the province expanded access to health care services for Ontarians, including:

- Awarding 30 new Family Health Teams, bringing the total number of teams to 200. These teams are providing care to over 2.6 million Ontarians and serving over 450,000 previously-unattached patients.
- Creating 14 new Nurse Practitioner-Led Clinics (NPLCs), bringing the total number of clinics to 25, with these clinics expected to serve over 40,000 previously-unattached patients.
- Announcing 36 Diabetes Education Teams, this will improve diabetes care for about 36,000 Ontarians.
- Approving funding for 17 new drugs and increasing access to 37 others.
- Reducing generic drug prices for all Ontarians while continuing to increase annual funding to the drug system.
- Announcing eight new MRI machines.

Ontario is also improving the value of its health care system by focusing on evidence, quality and efficiency. These changes will further improve access and ultimately lead to better health care and outcomes for all Ontarians.

Providing families greater access to the health care services that matter to them, while improving quality and accountability for patients, is a key part of the government's Open Ontario Plan.

ALBERTA LABOUR BOARD'S RULING REORGANIZES PROVINCIAL CONSTRUCTION BARGAINING SYSTEM

On Dec. 10, the Alberta Labour Relations Board issued a consolidation order that reorganizes the way the province's construction unions and employer associations are grouped for the province-wide 2010-2011 collective bargaining round.

The parties to the agreement universally agree that the updated groupings, together with a new framework bargaining agreement, will provide a much more cooperative collective bargaining environment than in the past.

The Framework Bargaining Committee, established under the new bargaining system, concluded its proceedings Dec. 10, as scheduled, having resolved a range of issues that have plagued the industry's collective bargaining for the past decade including hours, overtime, work cycles, travel, transportation, and accommodation, collective agreement references to a model alcohol and drug policy, and special project agreements.

The new collective bargaining framework represents a major step forward for the Alberta construction industry. The bargaining now focuses on trade-specific bargaining tables.

The framework agreement has put the province's construction unions well on the path to reaching agreements without the acrimony that has characterized previous bargaining rounds.

Alberta labor law requires the negotiation of construction collective agreements for an even number of years in odd-numbered years.

For government relations information, please contact National FCA
Regional Vice President, Bob Weaver bweaver@finishingcontractors.org.

Published by the National Finishing Contractors Association as a benefit to its members.
8120 Woodmont Avenue | Suite 520 | Bethesda, MD 20814 | Phone (301) 215.7026 | Fax (301) 215.7027
www.finishingcontractors.org

Copyright 2011© | All rights reserved.