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LABOR RELATIONS

Hearing a new buzz about labor relations? Over what may or may not have been a “recess,” the President made several recess appointments. I do not plan to parse the term, but the relevant point is that the recess appointments to the National Labor Relations Board (NLRB) puts the NLRB back in the regulation promulgating business again – at least for the moment. I had previously reported on the scaled back changes adopted by the NLRB just before the NLRB’s operating majority vanished, regarding union representation election procedures. It now appears the new NLRB majority may try to resurrect the more ambitious package that had originally been promoted by the Chairman of the NLRB. The buzz was created by an interview that the Chairman gave to a wire service about reviving the effort. The term being used in the business community for the changes made and those possibly revived, is “ambush elections,” because the net effect of the rule changes is to expedite the recognition election process.

All of this will result in new attention to the legislation passed by the House last year. The business community will make a

push to find a way for consideration in the Senate. It most likely will come in the form of an amendment to other legislation.

The House-passed bill is the Workforce Democracy and Fairness Act, H.R.3094. The bill provides employers with at least 14 days to prepare their case to present before a NLRB election officer and an opportunity to raise additional concerns throughout the pre-election hearing; ensures no union election will be held in less than 35 days; reinstates the “traditional” standard for determining which employees will vote in the union election; and, establishes that workers would be able to choose the type of personal contact information that is provided to the union, rather than directed by NLRB regulations. This latter provision is in response to a requirement in the NLRB Chairman’s original rules changes’ package that would require the employer to provide employees’ phone numbers and email addresses (when available) to the organizers.

WHERE ARE ALL THE SMALL BUSINESSES?

Wondering how many small business neighbors you have? The Office of Advocacy for Small

Business publishes a handy guide entitled, “2011 Small Business Profiles for the States and Territories.” In it, you will find information on the demographics of business ownership, employment, industry composition, and small business income, for each of the 50 states and the District of Columbia. You can find it at <http://www.sba.gov/advocacy/848/41391>

CLASS ACT REPEAL

This week the House will vote on legislation to repeal what is called the CLASS Act (Community Living Assistance Services and Supports Act.) This is not an item on the small business agenda but since it is about health care reform and all these things tend to run together, here’s my explanation of the law, the repeal and the background.

The CLASS Act was included as one of the titles of the health care reform law, the Patient Protection and Affordable Care Act. It was to be a voluntary, self-funded long-term care insurance program for the purchase of community living assistance services such as home health care, adult day care and respite care. It would have offset some institutional living costs but was not meant to be a substitute for

the “typical” long term care insurance coverage. The Department of Health and Human Services (HHS) was to be responsible for administration. The theory was a “working adult” would be able to join through an employer or otherwise, and would pay a premium. Benefits would not be available until a participant had been enrolled for five years.

Astute readers will note the verbs are in the past tense. The CLASS Act established solvency and self-funding requirements. By law, no taxpayer funds may be used to pay benefits and the program must be structured to remain solvent over a 75-year period. At the same time, the CLASS Act program features were to include an offer of lifetime benefits, a prohibition on underwriting, and the availability of a cash benefit. HHS did its homework and late last year concluded that “there is substantial uncertainty about what would follow if solvency or legal problems prevented the CLASS program, once operational, from continuing to implement the plan.” HHS announced it would not pursue implementation.

Fast forward and as you might imagine, you will find primarily Republicans saying, “Well, if it is not financially viable, let’s repeal it” (and make sure some future HHS Secretary does not try to revive it) and Democrats saying, “Why bother since it has been abandoned.” The CLASS Act is not integral piece of the health care reform law. The House will vote to repeal it. I expect the Senate Democrats will block consideration primarily because it would not look good for the President to have a piece of the health care reform law repealed even if it is one that was considered a long shot for implementation at the time of passage.