“No man's life, liberty, or property are safe while the legislature is in session.”

~ Mark Twain

Who needs a lobbyist?

- Axiomatic in Washington

"If you're not at the table, you're on the menu."

Despite "inactive" Congress, much is getting done.

Anyone in regulated business, or involved in government programs, needs to be at the table.

Awareness and Advocacy.

Areas of Importance to Business Owners – Legislative and Regulatory

- Food- and Nutrition-specific:
  - School lunches
  - Child and adult care feeding programs
  - Food labeling
  - Nutritional standards, etc.
- General Business Concerns:
  - Labor regulation
  - Tax and wage laws
  - OSHA and EEOC

REAUTHORIZATION OF CHILD NUTRITION PROGRAMS

Senate -- "Improving Child Nutrition Integrity and Access Act of 2016" (no number)

- Passed out of the Senate Agriculture Committee in January.
- Allows school meal providers until 2019 to meet new, lower sodium levels (Target 2) and flexibility on serving whole grain foods (80%).
- Provides significant new funding for a variety of nutrition programs.

House -- H.R. 5003, "Improving Child Nutrition and Education Act of 2016" introduced April 20.

- Raises community eligibility requirements from 40% to 60%, and tightens verification processes.
- Extends sodium reduction Target 1 for an additional three years.

FOOD LABELING - GMOs

HR. 1599 "Safe and Accurate Food Labeling Act of 2015"

- Passed House July 2015. Would pre-empt state laws on GMO labeling requirements.
- Voluntary national labeling standard set by FDA.
- Avoids patchwork of state requirements.

- S. 2609, the Senate version.
- Failed key procedural vote the spring.
- Senate negotiators attempting to craft compromise.

FOOD LABELING (CONT.)

HR. 4061 "Food Labeling Modernization Act of 2015" (Pallone)

S. 2301, same title (Blumenthal)

- Creates additional front-of-packaging labeling requirements for processed foods;
- Restricts usage of terms such as "natural" and "healthy"
- Requires additional disclosure of ingredients.

FOOD LABELING (ETC. & AD NAUSEUM)

S. 821 "BPA in Food Packaging Right to Know Act" (Feinstein)

Requires HHS to:

- Issue a revised safety assessment for food containers containing bisphenol A (BPA),
- Determine whether harm will result from aggregate exposure to BPA through food containers.
- Prohibits the sale of a food if its container includes BPA unless the label states: "This food packaging contains BPA, an endocrine-disrupting chemical, according to the National Institutes of Health."

FOOD LABELING (FINALLY)

- Just yesterday, House and Senate Democrats announced intent to introduce legislation that would regulate the type of food labeling the industry uses to determine when things are no longer edible.
- the bill would require only the use of “best if used by” on certain products and “expires on” for others, replacing the variety of labels used now, such as “sell by” and “use by.”
- The list of what foods would be classified under what category is still being determined, but “expires on” labels would typically include deli meats and prepared items — things people don't generally cook. Most other foods would fall under the “best if used by” category.

Additional Food Safety Legislation

S. 287 "Safe Food Act of 2015" (Durbin) and HR 609 (Delauro)

- Establishes Food Safety Administration (FSA), an independent agency to administer and enforce food safety laws.
- Little apparent appetite for a new, independent regulatory body.
- Could easily change depending on results of the election.

FOOD-RELATED REGULATORY ACTIVITY

- Last week, the comment period closed on the FDA's request for comment on the labeling of foods as "natural".
- Comment period began in December 2015, and was extended due to volume and complexity.
- FDA's traditional definition of "natural" meant nothing artificial or synthetic (including all color additives) had been added that would not normally be expected to be in that food.
- This policy didn't address food production methods, the use of pesticides, food processing or manufacturing methods (such as thermal technologies, pasteurization, or irradiation).
- Nor did FDA consider whether the term "natural" should describe any nutritional or other health benefit.
- All of these are now presumably on the table, with the FDA considering approaches that would reach much further back in the food production process.

Food Safety Modernization Act (FSMA)

- First major overhaul of our nation's food safety practices since 1938.
- Includes new regulations for produce farms and for facilities that process food.
- Focus on prevention.
- 6 final rules released.
- FSMA made FDA responsible for some 50 specific deliverables in the form of rules, guidance for industry, new programs, and reports to Congress.
- Within this process, Congress is concerned about cost/benefit analyses used by FDA

Regulations on Business – General Concern

EEOC Payment Reporting Rule:

- In late January of 2016, the Equal Employment Opportunity Commission (EEOC) proposed a new rule requiring all employers of over 100 people to report all pay data, broken down by sex, race, and ethnicity by job category to collect data about employees' pay.
- The pay data ostensibly would help the EEOC and the Office of Federal Contract Compliance Programs (OFCCP) at DOL enforce federal pay discrimination laws and “support employers' voluntary compliance with those laws.”
- This rule is a huge invitation to mischief by federal regulators at the DOL and EEOC. The data will not account for individual attributes as to wages, will be a huge reporting burden, and sets the table for expensive and pointless litigation.
- This doesn’t contemplate clever plaintiff’s attorneys who can potentially FOIA such results and use them as an entire new cottage industry to sue private companies.

Overtime Rule

- Just yesterday, the Obama Administration announced its new overtime pay rule.
- The rule, which will take effect Dec. 1, raises to $47,476 the salary threshold under which virtually all workers qualify for overtime pay.
- That's more than double the current salary threshold ($23,660).
- Every three years, this will be indexed to inflation.
- As one might expect, Republicans in the House and Senate have introduced legislation blocking the rule.

DOL Persuader Rule

- Overturning more than a half-century of legal interpretation under the Labor-Management Reporting and Disclosure Act of 1959, the new NLRB rule will require companies to make public the names of the outside attorneys and consultants that give them advice on unionization.
- These attorneys and consultants, in turn, would have to make public all the other clients they help with union matters, and how much they charged these clients.
- The rule would deter many if not most outside attorneys and consultants from offering their services to companies facing a unionization drive.
- The rule does not apply to consultants offering advice to unions.

Ambush Rule

- On December 12, 2014, the Board issued its final rule making dramatic changes to the NLRB's longstanding union representation election procedures (i.e. elections held to determine whether or not employees want to be represented by a union).

- The rule, which went into effect on April 14, 2015, shortens the time between the union filing a petition for election and the NLRB holding of that election from the previous median time of 38 days to as few as 14 days.

- This effectively limits employers' ability to communicate with employees prior to a representation election and encourages "back door" organizing.

Ambush Rule (cont.)

- All pre-election hearings be set to begin within eight days after a hearing notice is issued;
  - All issues not raised in that time are waived.
- Employers must file a “statement of position” by noon on the day before the hearing begins, which must include a list of prospective voters with their names, job classifications, work shifts and work locations;
- Employer to provide, within two business days of the election agreement or decision directing an election, employee personal contact information without consent from the employee.
- Under this rule, employees will not have the opportunity to hear both sides before voting on union representation, and employers are effectively denied free speech and due process rights.

Joint Employer Rule

- Disrupting decades of established law, the NLRB has expanded the definition of a "joint employer," used to determine when a business should be considered responsible for the labor practices of another.
- The changes threaten to and undermine the relationships between a brand company and local franchise business owners; contractors and subcontractors; and businesses and their suppliers and vendors.
- Under this prior standard, the Board considered an entity to be a joint employer if it exercised *direct and immediate control* over another business's employees, including having the ability to hire, fire, discipline, supervise or direct an individual.
- On August 27, 2015, however, the Board issued its decision in *Browning Ferris Industries* expanding the standard to include *indirect* or even *unexercised potential control* over the terms and conditions of employment.

Joint Employer (cont.)

- Joint employers both have a duty to bargain with any union representing the jointly employed workers and share liability for violations of the NLRA as it pertains to these workers or any union representing them.
- Unprecedented new joint-bargaining obligations that most do not even know they have;
- Potential liability for unfair labor practices and breaches of collective bargaining agreements by distant entities.

Micro Union Rule

- In Specialty Healthcare, the NLRB announced a new standard for determining composition of bargaining units, allowing organized labor to gerrymander units.

- This new standard makes it easier for unions to divide the workplace into multiple-siloed bargaining units. i.e. a union may organize a small group of employees working on one machine or one product rather than all machinists in a manufacturing facility, if the majority of machinists do not want union representation.

- Likewise, a union may now organize only the greeters at a retail store, if cashiers and floor associates don't want to unionize.

Micro Union Rule (cont.)

- In a recent case, the NLRB ruled that full and part-time employees in the fragrance and cosmetics department of a single Macy's store constituted an appropriate bargaining unit.
  - This ruling came approximately a year and a half after the petitioning union had lost an election involving a proposed unit that included all store sales employees.

Conclusion

- Hill Day July 14
- Your voice matters – Congress needs to hear about the real-world impacts of their actions.
- Only real stories can beat ideology.
- Thoughts on the election.