GROWERTALKS

JZ on D.C.

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Welcome to our new expanded section that will include news, views, commentary and event coverage about the goings-on in our government. Our goal is to keep you informed about the policies and legislation that directly affect our industry. If you have anything you'd like to share, email me at jzurko@ballpublishing.com.

Industry ADVOCATES: AmericanHort

Legal Challenge Tops H-2A News

With growers in many states facing mandated H-2A wage increases of up to nearly 23%, a legal challenge was filed on January 8. The judge in the case denied two motions that week—one, the plaintiffs sought a temporary restraining order to block the increases from taking effect; that was denied. But so was a Justice Department motion to stay the case, which means it moves forward, and [as of press time], there is still the prospect of a preliminary injunction that could yield temporary relief while the case progresses on its merits.

The National Council of Agricultural Employers, in which AmericanHort is an active leader, has been preparing to file suit in U.S. Federal District Court against the U.S. Department of Labor (DOL), challenging that the DOL has failed to justify the recently-published 2019 Adverse Effect Wage Rates for the H-2A program, according to the requirements of statute.

With the states of Colorado, Utah and Nevada facing the largest increases in the nation, AmericanHort coordinated two member greenhouse grower declarations from that region that describe the harm resulting from these unprecedented wage increases. The declarations are intended to help persuade a judge in the case to provide immediate injunctive relief while the merits of the case are considered.

As reported previously, the national average increase in the 2019 H-2A wage is 6.3%, more than double the 3.1% increase in wages and salaries in the general economy according to the Bureau of Labor Statistics.

In other H-2A news, AmericanHort filed official comments generally supporting the DOL's proposal to eliminate the requirement for print advertising as part of the H-2A program's domestic worker recruitment obligations. Print advertising has proven to be expensive and unproductive. We argued that the existing online job postings that are already done by DOL and state workforce agencies should suffice.

—Craig Regelbrugge, VP of Government Relations & Research, AmericanHort

Industry ADVOCATES: Society of American Florists

What the ACA Ruling Means to You

On December 14, the U.S. District Court for the Northern District of Texas ruled the Affordable Care Act (ACA) unconstitutional.

The Supreme Court had previously ruled the ACA constitutional. That decision was based on defining the law's individual mandate as a tax and the high court ruled only Congress has "the power to impose a tax on those without health insurance." But when Congress passed the 2017 Tax Cuts and Jobs Act, it eliminated the tax for non-compliance with the ACA. Essentially, the District Court ruled that when the tax was eliminated, so was the ACA's constitutionality.

This decision has injected uncertainty into the health insurance issue, especially since the deadline for individuals to enroll in a plan was December 15.

For the foreseeable future, the ACA remains in full force and in effect. There is no impact on 2019 coverage and the ruling had no impact on state enrollments through HealthCare.gov for coverage that was effective January 1.

There's no way to determine what the decision will mean for the future of health insurance; no one can predict where the case is headed or how an appeals court or the U.S. Supreme Court will treat it.

In addition, Speaker of the House Nancy Pelosi (D-CA) and Senate Minority Leader Charles Schumer (D-NY) vow to defend the ACA. Some Republicans have expressed a desire to find a bipartisan legislative solution.

We're monitoring this issue and will keep you updated. If you have questions, contact SAF.

—Shawn McBurney, Senior Director—Government Relations, SAF

House Members Seek Trucking Ag Exemption Clarification

Rep. Bob Gibbs (R-OH) and five colleagues sent a letter to the Federal Motor Carrier Safety Administration (FMCSA) at the end of December asking Administrator Ray Martinez for more clarification on the agricultural exemption under Electronic Logging Device (ELD) regulations.

The exemption, which was created in association with the use of ELDs to track Hours of Service (HOS) rules, states that HOS regulations do not apply to the transportation of agricultural commodities operating within a 150 air-mile radius—with work and driving hours not limited and drivers not required to use an ELD. But the definition of "agricultural commodities" remains vague at best.

We've written extensively in the last year about the regulatory conundrum that horticulture is currently in, with greenhouse and nursery crops generally (and properly) recognized as agriculture, yet when plants are loaded onto a truck, their agricultural commodity status is questioned by FMCSA.

Gibbs specifically used nursery and greenhouse production as an example of why more clarification is needed—as they've long been recognized as agriculture while officials at FMCSA still insist they're not included. It should be noted that Gibbs is well-positioned to speak on this issue, as he sits on both the House Committee on Transportation and Infrastructure, as well as the Agriculture Committee.

In addition to Congressman Gibbs, the five other Congressional members also signing the letter were Agriculture Com-mittee Chairman Collin Peterson (D-MN), and Reps. Austin Scott (R-GA), Neal Dunn (R-FL), Jim Costa (D-CA) and Kurt Schrader (D-OR).

We’ll keep you posted on how FMCSA responds to the Congressional inquiry and AmericanHort will continue to press for explicit inclusion in the agricultural exemption. Look for more updates as the 116th Congress gets underway.

—Tal Coley, Director of Government Affairs, AmericanHort