

US Federal Labor Viewpoints – Week of January 3, 2022

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This is a weekly post spotlighting labor topics in focus by the US legislative and executive branches during the previous week.

In this issue, we cover:

- December Jobs Report
- Federal Vaccine Mandate Legal Challenges Update
- COVID-19 Updates
- Notable Labor Department Developments

The second session of the 117th U.S. Congress reconvened earlier this week. Senator Joe Manchin (D-West Virginia) told reporters on Tuesday that there have been no negotiations related to the *Build Back Better Act* (BBBA), President Joe Biden's social spending and climate bill, since talks ended abruptly before the holidays. Senate Majority Leader Chuck Schumer (D-New York) has reiterated his intention to hold a vote in the Senate on the BBBA. White House Press Secretary Jen Psaki [said on Tuesday](#) that the President "absolutely wants to get Build Back Better done," saying that President Biden and senior White House officials would keep talking with Senators "in the weeks ahead."

Democratic lawmakers are focused in the near-term on election reform, following the anniversary of the January 6 breach of the U.S. Capitol. Senate Majority Leader Schumer said that he plans to schedule debate on changing the Senate's filibuster rules by Martin Luther King Jr. Day (January 17), if Republicans continue to block voting rights legislation. The U.S. House of Representatives had a District Work Period this week.

December Jobs Report.

On Friday, the U.S. Department of Labor released its [December Jobs Report](#), which reflected the economy added 199,000 jobs, far short of the anticipated 422,000 jobs. The unemployment rate in

December was down to 3.9 percent from 4.2 percent in November. Meanwhile, on Tuesday, the Labor Department's Job Openings and Labor Turnover Survey reflected 4.5 million Americans quit their jobs in November. With the Omicron COVID-19 variant surging, labor market experts anticipate more volatility this month, as the variant effects school re-openings, corporate return-to-office plans, large events and other benchmarks of economic normalcy.

Federal Vaccine Mandate Legal Challenges Update.

On Friday, the U.S. Supreme Court heard arguments on the Sixth Circuit Court's decision to lift the Fifth Circuit's stay of the Occupational Safety and Health Administration's (OSHA) vaccine or test Emergency Temporary Standard (ETS). The Court also heard oral arguments on a stay of the Centers for Medicare and Medicaid Services' (CMS) Vaccine Mandate for health care workers that participate in the Medicare and Medicaid government programs. Early [media coverage](#) of the arguments against the OSHA ETS before the Supreme Court reflected they ranged from Federal overreach to not every workplace being high risk for COVID-19 exposures and therefore should not be subject to a regularly testing or vaccine mandate.

A Federal Judge [issued a preliminary injunction](#) on Monday that effectively granted more than 30 Navy special operators the first religious exemptions for the COVID-19 vaccine. U.S. District Judge Reed O'Connor found that, "the COVID-19 pandemic provides the government no license to abrogate" the freedom to refuse the vaccine on religious grounds. Despite having received 2,877 requests from active-duty sailors to be exempt from the vaccine mandate on religious grounds, as of Tuesday, the Navy had yet to approve any religious exemptions for the COVID-19 vaccine. Judge O'Connor rebuked the service, noting:

"The Navy has not granted a religious exemption to any vaccine in recent memory. It merely rubber stamps each denial. The Navy service members in this case seek to vindicate the very freedoms they have sacrificed so much to protect."

COVID-19 Updates.

President Biden remains focused on COVID-19, particularly as the Omicron variant now dominates most infections in America. On January 3, the United States topped one million in new coronavirus cases, averaging about 550,000 newly reported infections per day over last week. The U.S. Centers for Disease Control and Prevention (CDC) reported that same day that the Omicron COVID-19 variant now represents nearly every cases sequenced in the United States. The once-dominant Delta variant is now only 4.6 percent of sequenced cases.

On January 4, President Biden [provided an update](#) on Federal efforts to address the surge of Omicron cases, acknowledging the lingering challenges associated with COVID-19 testing capabilities. He urged schools to stay open, as they returned to session after the holiday break. Pfizer Inc. [shared](#) that same day that the U.S. Government had agreed to buy an additional 10 million doses of its antiviral pill, Paxlovid, doubling the original order of 10 million doses to 20 million doses.

Due to Chicago Teachers Union (CTU) concerns over COVID-19 safety protocols, Chicago schools have yet to return to session in Illinois. The CTU voted Tuesday to conduct remote instruction until extra COVID-19 safety measures are in place, striking against in-person teaching. However, Chicago Mayor Lori Lightfoot locked instructors out of remote-learning, which led to the school district canceling classes for a third day in a row on Friday. The CTU argues that members have a right to refuse "hazardous work assignments;" it is seeking a requirement that all students present a

negative COVID test before returning to in-person learning. Regarding the strike in Chicago, White House Press Secretary Jen Psaki [affirmed on Wednesday](#) that the President wants schools open, reminding of the negative effect on children's mental health and learning gaps that can result.

On January 3, the U.S. Food & Drug Administration (FDA) [amended](#) the emergency use authorization (EUA) for the Pfizer/BioNTech COVID-19 vaccine to:

- Expand the use of a single booster dose to include use in children 12 through 15 years of age;
- Shorten the time between the completion of primary vaccination of the Pfizer-BioNTech COVID-19 Vaccine and a booster dose to at least five months; and
- Allow for a third primary series dose for certain immunocompromised children 5 through 11 years of age.

On January 5, the CDC endorsed COVID-19 booster shots for children 12 to 15 years old. That same day, the CDC [updated](#) its COVID-19 vaccine guidance, saying it recommends,

"[P]eople remain up to date with their vaccines, which includes additional doses for individuals who are immunocompromised or booster doses at regular time points."

While completing a primary series of a particular vaccine means most individuals are deemed "fully vaccinated," the CDC change means individuals are "up to date" only if they have received their booster(s) doses.

On December 31, U.S.-based Novavax [submitted](#) its final clinical data packages with the FDA to satisfy the requirements for seeking EUA for its COVID-19 vaccine. The FDA's EUA process typically takes a month.

Next week, the Senate Health, Education, Labor, and Pensions (HELP) Committee is [set to hold a hearing](#) titled, "Addressing New Variants: A Federal Perspective on the COVID-19 Response." CDC Director Rochelle Walensky and Dr. Anthony Fauci, Director of National Institute of Allergy and Infectious and White House Chief Medical Advisor, are among those scheduled to testify before the panel on January 11.

On January 3, Senators Richard Burr (R-North Carolina), Ranking Member of the Senate HELP Committee, and Roy Blunt (R-Missouri), Ranking Member of the Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies, [sent a letter](#) urging Health and Human Services Secretary Xavier Becerra to detail the Biden Administration's strategy for solving the nation's shortage of COVID-19 tests amid the Omicron surge. The Senators noted the nation is facing a shortage of COVID-19 tests despite Congress having provided more than \$80 billion over the last two years for the Administration to improve and expand testing related capabilities.

Notable Labor Department Developments.

This week, OSHA and the Consulate General of Mexico in Kansas City [renewed an alliance](#) – first signed in 2013 – to continue their collaborative relationship to promote workplace safety and health

with the consulate and Mexican nationals working in Kansas and Missouri. On January 4, the Labor Department [granted \\$14 million](#) in cooperative agreements to support a broad set of actions by two projects intended to combat child labor, forced labor and human trafficking.

On January 6, the Department of Labor and the National Labor Relations Board (NLRB) announced that the Wage and Hour Division (WHD) and the NLRB signed a [Memorandum of Understanding](#) (MOU) strengthening their partnership and outlining procedures on information-sharing, joint investigations and enforcement activity, as well as training, education and community outreach. Regarding the new MOU, House Education & Labor Committee Ranking Member Virginia Foxx (R-North Carolina) issued the following [statement](#):

“Allowing the WHD and the NLRB to join forces will create a perfect storm for businesses still struggling to recover from this pandemic. ... This agreement is part of the Biden administration’s unionization push. Once again, this administration is proving that it will always put Big Labor and union bosses above workers and American business owners.”

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