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EPA Issues Truck Engine Rule

A new heavy-duty truck engine rule is getting mixed reactions from truckers with, some contending it will have the opposite of the intended effect of getting older trucks off the road.

The Environmental Protection Agency called the final rule "the strongest-ever national clean air standards to cut smog- and soot-forming emissions from heavy-duty trucks."

beginning with model year (MY) 2027, the new numeric NOx standards are said to be the first update to clean air standards for heavy and medium duty trucks in more than 20 years, according to EPA, also are said to be more than 80% stronger than current standards.

"EPA is taking significant action to protect public health, especially the health of 72 million people living near truck freight routes in America, including our most vulnerable populations in historically overburdened communities," said EPA Administrator Michael S. Regan.

He stressed that this is only the latest step for the agency's Clean Trucks Plan, which is intended to create a zero-emission future. That three-year plan was adopted in 2021 by the EPA to reduce greenhouse gas (GHG) emissions and other harmful air pollutants from heavy-duty trucks through a series of rulemakings.

The plan also calls for setting "Phase 3" GHG standards for heavy-duty vehicles beginning as soon as MY 2030 that are intended to be significantly stronger than the MY 2027 GHG standards. as well as the proposed multipollutant standards for light- and medium-duty vehicles starting in MY 2027.

Some of the legislation passed by Congress after the Clean Trucks Plan was announced will help bolster it, Regan said.

"These rigorous standards, coupled with historic investments from the Inflation Reduction Act and the Bipartisan Infrastructure Law, will accelerate President Biden's ambitious agenda to overhaul the nation's trucking fleet, deliver cleaner air and protect people and the planet," the EPA director declared.

The legislation allows EPA to offer truck owners subsidies that will support deployment of the new technology. It also expandd access to clean school and transit buses, and training workers to install and maintain charging infrastructure.

The Inflation Reduction Act invests $1 billion to replace dirty heavy-duty vehicles with clean, zero-emission vehicles, support zero-emission vehicle infrastructure, and to train and develop workers.

EPA also said it will be distributing this $1 billion in funding for clean heavy-duty vehicles between last year and 2031, of which $400 million will be going to communities in nonattainment areas.

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The Truck and Engine Manufacturers Association (EMA) pledged to work cooperatively with EPA to ensure a smooth transition to the new standards, according to President Jed R. Mandel.

"Our members are fully committed to working with the EPA and other stakeholders for its successful implementation. Ultimately, the success or failure of this rule hinges on the willingness and ability of trucking fleets to invest in the new technology to replace their older, higher-emitting vehicles."

He added, "EMA and its members are committed to achieving a zero-emission future, and we look forward to serving as constructive partners in implementation of EPA's Clean Trucks Plan."

Allen Schaeffer, Executive Director of the Diesel Technology Forum, observed, "The rule establishes many new challenges for manufacturers and suppliers but also ensures diesel's place in the future for trucking."

The current generation new diesel trucks are more fuel-efficient and emit less than 1/60th the emissions of 2000 models, he noted. They're already near zero emission for both oxides of nitrogen (NOx) and particulate matter. Of all trucks in operation, 53% are of this newest generation, a number that has steadily grown since 2010.

Those expected to buy the new engines don't look on the rule quite so favorably, especially because it seems to clash with higher emissions standards set by the California Air Resources Board, something that is predicted to sow confusion.

American Trucking Associations President Chris Spear insisted, that, "ATA remains extremely concerned over the potential growth of state patchworks of NOx emission standards that will create havoc for an industry that operates across local state and international boundaries. We hope EPA and CARB will ultimately agree to a uniform, single standard that best achieves our nation's environmental goals."

Todd Spencer, president the Owner-Operator Independent Drivers Association, pointed out that consumers will pay for the inevitable cost increase. "We've seen since the start of the pandemic the efforts truckers are making on a daily basis to keep the supply chain stable, Higher prices on the small business side are going to get passed down to consumers in the supply chain."

Is the Threat of Recession Real?

It's too soon to say whether the Federal Reserve Board's efforts to reduce inflation will lead to a recession, but continuing interest rate hikes increase the chances, National Retail Federation Chief Economist Jack Kleinhenz said on Jan. 3.

"This year starts with the possibility of easing inflation but also uncertainty,", referring to the interest rate hikes. There is no easy fix for inflation, and the Fed's job of trying to bring down rising prices without damaging the labor market or the rest of the economy is not enviable," he warned.

"It isn't impossible to sidestep a recession, but when the economy slows it becomes very fragile and the risk rises significantly If a recession is in the cards, it will likely be rising interest rates that set it off," in Kleinhenz's view.

Although NRF's final holiday spending data won't be available until Jan. 18, it said November sales as calculated to have increased 5.6%, year over year, putting the holiday season on track to meet NRF's forecast of 6% to 8% growth over 2021.

Following a 2.6% year-over-year increase in the third quarter, Gross Domestic Product was growing at a 2.7% rate in late December, according to the Federal Reserve Bank of Atlanta's GDP Now real-time tracker.

While the Fed's interest rate hikes are intended to slow the economy and bring inflation under control, it can take six months or more for monetary policy to have an impact on GDP and 18 months for inflation, NRF pointed out.

That means policymakers "act knowing they will not see the impact for months and that their action comes at the risk of inducing a recession," said Kleinhenz. "There are downside risks both in doing too much and too little, and the Fed is well aware that the balance is delicate,"

What makes this particularly sobering is that NRF's economic prognostications in recent years have tended to be on the optimistic side. Others believe the opening stages of a recession are already here.

Student Athlete Conflict Grows

The National Labor Relations Board is advancing its campaign to define student athletes as university employees who can be organized by unions.

In mid-December, the NLRB's Los Angeles regional office supported the filing of unfair labor practice charge against the University of Southern California, the NCAA and Pac-12 Conference on behalf of USC football players and the men's and women's basketball teams.

NLRB General Counsel Jennifer Abruzzo, said her support for the ULP by saying it "is based on a determination that USC, the Pac-12 Conference, and the NCAA, as joint employers, have maintained unlawful rules and unlawfully misclassified scholarship basketball and football players as mere 'student-athletes' rather than employees entitled to protections under our law."

The move is the logical follow-up to a memo issued by Abruzzo last year calling for NLRB regional directors to forward these kinds of ULPs to the board, including the one sought by the union trying to organize USC against the same parties If the ULP is granted, this could be the first step in a lengthy legal battle, legal experts predict.

"If this position prevails, institutions of higher education, athletic conferences, and/or the NCAA would be legally obligated to engage in collective bargaining with unions representing college athletes over wages, hours, and other terms and conditions of employment," said Daniel Altchek and Carolyn Pellegrini, attorneys with the Saul Ewing law firm.

While federal labor law applies only to private employers, the general counsel's position that the NCAA, Pac-12, and university are joint employers, if upheld, could encompass athletes at NCAA-affiliated public institutions as well, they note.

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Election Stress Seen at Work

A survey conducted by the Society for Human Resource Management found that more than one in five workers witnessed increased anxiety and stress among their fellow employees leading up to last year's Election Day.

The SHRM Research Institute poll revealed that, just over one in 10 workers (12%) witnessed peer-to-peer animosity among colleagues and 13% said they witnessed an increased number of employee complaints related to political discussions at work prior to the midterms.

"These results affirm that organizations have a lot of work to do when it comes to establishing healthy, supportive workplace cultures," said SHRM President Johnny C. Taylor, Jr. "When employees are anxious or seeing bullying occur due to political differences, the entire enterprise will suffer."

SHRM researchers also found that workers in swing states were more likely to describe their general mood as anxious leading up to the midterm election (37%) compared to post-election (27%).

Workers in non-swing states were more likely to describe their political discussions leading up to the midterms as informative (71%) compared to workers in swing states (61%), SHRM reported.

Workers were more likely to say they engaged in political discussions regarding the outcome of the midterms at work (57%) than engaged in political discussions leading up to the election (48%).

Just over 10% of human resources professionals reported witnessing increased stress (14%) or anxiety (13%) among employees in their organization leading up to the elections.

In addition, 11% of respondents witnessed a decrease in productivity, 11% increases in leave taken and 9% the increased use of sick days.

Law Bans Sex Harass NDAs

A new law called the Speak Out Act prohibits employers from using nondisclosure and nondisparagement agreements to block the victims of sexual harassment and assault from making their stories public

Employers should remain aware that some state or local laws also restricting NDAs, such as those enacted in California, New Jersey and Washington, will remain in force if they a stronger than the federal law.

The issue addressed -- NDAs – has been a major source of anger and concern since the first days of the #MeToo movement, when it became evident these contract terms were used widely to hide the culpability of individuals and employers, covering up the depth and extent of the sexual harassment problem.

The SOA was passed by Congress with overwhelming bipartisan support and went into effect when President Biden signed it on Dec. 7.

The new law applies only to pre-dispute NDAs, such as those included in employment contracts. Employers are still allowed to use these provisions as part of settlement agreements regarding disputes involving sexual harassment

All employers should maintain strong and clearly articulated anti-sexual harassment policies in place, attorneys advise. Those principles should be part of training and regularly reinforced periodically.

Employers should review all pre-hire and standard employment agreements and other document templates to ensure none have these kinds of NDAs.

To the extent that employers may make use of a workforce with independent contractors, they advise checking those agreements to make sure they are compliant as well. Also make sure to adhere to smart harassment complaint handling procedures to address issues quickly and fairly when they arise.

DOL Bolsters Pension ESG

The Department of Labor has chosen to wade into the ESG controversy by stating that pension plan trustees can consider Environmental, Social, and Governance (ESG) criteria when making their investment decisions.

By doing so, DOL has chosen\ to take sides in the political battle over ESG investment standards.

The governors and attorneys general of several Red states, including Texas and Florida, have taken strong public stands against ESG, acting to the extent of withdrawing from investment plans like Black Rock which originally led the way in the private market by requiring companies they invest in to embrace ESG principles.

Critics of ESG have asserted that it is not really in the best interests of their state pension plan beneficiaries to follow ESG priorities that promote "woke" political objectives at the expense of purely fiduciary principles, which are designed to focus exclusively on obtaining the best financial return for their beneficiaries.

This is why several states with Republican leadership are choosing investment opportunities that do not utilize ESG while withdrawing from investor services that do, like Black Rock.

Among the ESG factors that can come into play when plan managers make investment decisions are negative screening, where investments that score poorly based on ESG factors are excluded (such as carbon emissions) or positive screening, where they pick investments that score highly on ESG factors (such as sustainability).

Fund managers also can embrace an "integrated" strategy, blending together selected ESG principles into their overall investment analysis.

Republicans see ESG as an unwarranted intrusion into the free market to impose controversial political stands. Expect this high-profile battle to continue and even intensify over the course of 2023, as both Democrats and Republicans position their parties in preparation for 2024 elections.

IRS & DOL Attack Contractors

The Department of Labor and the Internal Revenue Service updated a Memorandum of Understanding (MOU) for working together to battle employment misclassifications. The agreement follows the pattern of other federal agencies working together to target independent contractor status.

"We are determined to identify and resolve labor violations by employers who benefit by misclassifying employees as independent contractors and deprive them of the protections of the labor standards laws we enforce," said Principal Deputy Wage and Hour Administrator Jessica Looman.

DOL's Wage and Hour Division and the IRS first entered into a similar MOU in 2011. The new one creates a methodology for exchanging investigative leads, complaints and referrals of possible violations. The agencies stressed that the MOU does not allow exchange of federal tax information.

DOL and IRS say they will seek to leverage existing resources and promote employer compliance for properly paying their employees and for paying all applicable employment taxes.

Although concerns over misclassification have been around for decades, the primary target has most often centered around independent contractors, such as truck driver owner-operators.

The focus has expanded in recent years to include free-lancers and gig workers, such as computer programmers. It also has been a long-term issue for labor unions, who are prohibited by law from organizing independent contractors.

The new DOL-IRS agreement states that the "collaboration will enable both agencies to leverage existing resources and promote employer compliance with obligations to properly pay employees and to pay employment taxes. This multi-agency approach presents a united compliance front to employers and their representatives."

Inquiries will be conducted by a team called the Joint Worker Misclassification Initiative. Consisting of employees from the DOL's WHD and the IRS Small Business/Self Employed Specialty Employment Tax unit (SB/SE), the team will plan and manage the process where DOL refers cases to the IRS for action.

Employers should keep in mind that this fresh inter-agency agreement carries with it the added sting of punishments and costs associated with running afoul of the IRS, which is something that no business owner wants to experience if it can possibly be avoided.

Get Your Act Together

"Businesses should take this coordinated focus on worker classification as an opportunity to assess their workers' classifications and mitigate the risk of tax penalties resulting from misclassification," advise attorneys Miguel A. Lopez and William Hays Weissman of the Littler Mendelson law firm.

The IRS will target businesses found to lack what the agency deems to be a good-faith basis for the worker misclassification. In the tax agency's eyes, failure to do so will make them more likely to be on the hook for substantial penalties.

Further criteria used by DOL to decide whether to make a referral to the IRS include whether the business is still operating and if its annual volume of sales exceeds $500,000. The "annual dollar volume of sales" of a business is defined as the gross receipts from all sales of goods or services by the business during a 12-month period.

Relief for employers that had been granted under the IRS safe harbor provisions regarding misclassification may no longer be available, IRS said. Employee status will be determined by a standardized referral form and the DOL/IRS "decision tree" series of question referring to the partnership established by the MOU.

An example of the decision tree of questions is listed in an appendix to the MOU