National Legislative Update

No Senate Activity on Two Major Labor Bills:
Concerns among employer groups that Senate Majority Leader Harry Reid (D-NV) would schedule floor time for consideration of two major organized labor initiatives in September turned out to be unfounded. The two bills that were thought to be candidates for potential floor votes were S 3453 a bill that would raise the federal minimum wage to $9.80 an hour and a proposal (S 3220) entitled the *Paycheck Fairness Act*. It would seem highly unlikely that the Senate would take up these measures during the lame duck session in November.

Federal Court Dismisses NLRB Challenge to Arizona Secret Ballot Constitutional Amendment:
A U.S. District Court Judge has issued an order granting summary judgment to the State of Arizona in the National Labor Relations Board's (NLRB) lawsuit challenging an amendment to the state's constitution, which guarantees a secret ballot election in situations when the voluntary recognition option is not selected.

Judge Frederick J. Martone granted the state's motion to dismiss the case, but the decision left room for future action. The NLRB filed its lawsuit against Arizona in May 2011, seeking a Declaratory Judgment proclaiming that the state's amendment to the Constitution is pre-empted by the National Labor Relations Act.

Judge Martone wrote in his decision, "It is possible that state litigation invoking [the amendment] may impermissibly clash with the NLRB's jurisdiction to resolve disputes over employee recognition, conduct secret ballot elections, and address unfair labor practices." However, due to the fact that the amendment has not yet been applied, Judge Martone stated he could not assume that it would conflict with the NLRA.

The court's decision underscored the fact that federal labor law provides for two ways for employees to choose a union: "A bargaining representative may be voluntarily recognized by an employer if there is convincing evidence of majority support. Alternatively, the NLRB may certify a union as a bargaining representative after it conducts a secret ballot election."

<u>From FMI GR Meetings:</u>

Health Care – Coalition Submits Comments Regarding "Look Back" and "Safe Harbor" Guidance:
The Employers for Flexibility in Health Care (E-Flex), including FMI and several other organizations representing employers with fluctuating workforces, submitted comments to the Obama Administration regarding recent guidance for determining which employees are considered full-time and are required to be offered health coverage under the *Affordable Care Act* (ACA), as well as guidance regarding a "safe harbor" for demonstrating a plan's "affordability" and how the ACA's 90-day wait period limitation may be applied. The letter essentially recognizes the Administration's guidance as positive steps but points out the need

for continued discussion regarding further details and emphasizes the need for at least an 18-month transition period after all of the ACA's employer-coverage rules are finalized and published.

As an Executive Committee member, FMI helped draft the coalition's comments and is continuing to meet with the Administration and Congress regarding FMI members' outstanding concerns. In addition, the E-Flex coalition is considering ways to address concerns with the law itself, such as ACA's defining full-time employees as those who work 30-hours/week. Please see the updated FMI health care paper and provide us with your top priorities to address with the ACA. To view FMI's press statement when the Notices were released, please see the link.

House, Senate Menu Labeling Bills Continue Building Momentum:
Both HR 6174 and S 3574, the *Common Sense Nutrition Disclosure Act*, continue to gain support. Co-sponsors continue to be added informally until Congress returns after the November elections. Earlier this week, FMI sent a joint industry letter including 180+ organizations in support of S. 3574 to all Senate offices. In addition, the American Action Forum and CATO published an article regarding regulatory review of burdens on small businesses and ranked the menu labeling regulation as the 2nd most costly to small businesses. Once again, the National Restaurant Association, McDonald's, Darden, Dunkin Brands, Burger King, Brinker and Aunt Annie's sent a letter opposing S. 3574, saying that grocery stores, "compete directly with their local restaurant community." Please consider contacting your Member of Congress about co-sponsoring H.R. 6174 or S. 3574, which would exclude grocery stores from the restaurant menu labeling law unless the majority of their operations are devoted to "restaurant-type" food.

Draft COOL Reform Proposals:
On June 29, the WTO Appellate Body ruled that USDA's mandatory country of origin labeling program is an illegal trade barrier. FMI has been engaged in a dialogue with the agency and they have indicated that they plan on making changes to the COOL regulations in an attempt to address the Appellate Body ruling. While we believe an act of Congress will ultimately be needed to put the program in compliance with the Technical Barriers to Trade Agreement, we are encouraged that the agency is currently exploring options at the regulatory level.

Ohio SNAP Expansion
The Ohio Grocers Association reports that the Ohio Director of Job and Family Services (ODJFS) has agreed to spread the distribution of SNAP benefits across a 20-day period. ODJFS will begin meeting in late-October to finalize a timeline for implementation. New SNAP recipients will be assigned a date likely based on their case number or another randomized approach. This will be a slow, gradual process. For more information on SNAP distribution expansion in the states