

Government Matters

Policies, Trends and NCA

Henry Wallmeyer
President & CEO



ADVOCATE FOR CLUBS, ANSWERS FOR CLUB LEADERS



HENRY WALLMEYER

Capitol Hill Background

**NATIONAL
REPUBLICAN**
— — — — —
**CONGRESSIONAL
COMMITTEE**



HENRY WALLMEYER

Association Experience



**CLUB
MANAGERS
ASSOCIATION
OF AMERICA**



**AMERICAN ACADEMY OF
OTOLARYNGOLOGY—
HEAD AND NECK SURGERY**



NATIONAL ASSOCIATION OF
Manufacturers





WHY
ARE
WE
HERE?

“Every man owes a part of his time and money to the business or industry in which he is engaged. No man has a moral right to withhold his support from an organization that is striving to improve conditions within his sphere.”

- President Theodore Roosevelt, 1908



AGENDA

1



2



3



NATIONAL CLUB ASSOCIATION

Who we are

Advocate for Clubs – serves as the only organization that actively lobbies the U.S. Congress on behalf of the private club industry.

Answers for Club Leaders – provides critical solutions to club leaders through educational materials and training.



NATIONAL CLUB ASSOCIATION

Advocacy

- Based in Washington, DC to
 - Be involved in the political world
 - Shape the policies that come from it
- Make sure the private club industry's voice is heard
 - On Capitol Hill
 - In the Agencies
 - In the Statehouses
 - In the Courthouses



NATIONAL CLUB ASSOCIATION

Election Update

- Election impact on clubs
 - The Affordable Care Act, DOL's Overtime Exemption Rule and EPA's WOTUS Rule could be removed
- Presidential results so far – delegates
 - A Republican needs 1,237 to win the nomination
 - Trump 1,068 and Cruz 565
 - Trump is presumptive nominee; possible, but unlikely challenger in general
 - A Democrat needs 2,383 to win the nomination
 - Clinton 2,229 and Sanders 1,453
 - Clinton has huge lead in Superdelegates; however, those Superdelegates could change their minds but it is unlikely



NATIONAL CLUB ASSOCIATION

Congress

■ House of Representatives:

- 246 Republicans – 188 Democrats
 - There is one vacancy – Rep. John Boehner's (R-Ohio) seat will likely stay R
 - 246 seats are the most for Rs since 1947
- The last election gave Republicans a 29 seat majority
- In 2016, it is not likely the House will flip

■ Senate:

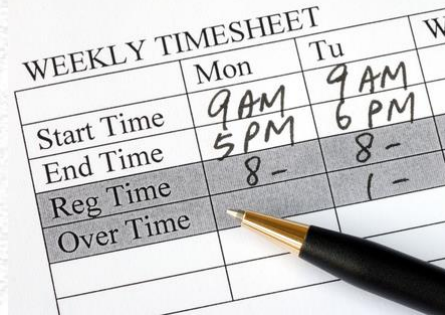
- 54 Republicans – 46 Democrats (with 2 Independents)
- In 2016, Rs will have 24 seats up and Ds will only have 10 seats up
 - Competitive R seat races will be in Fla. (open), Ill., N.H., Ohio, Pa., and Wis.
 - The competitive D seat race will be in Nev. (open)
- Sen. Mitch McConnell (R-Ky.) is Majority Leader
 - This means a more pro-growth, pro-club U.S. Senate
 - However, Ds are still able to filibuster any controversial bill



NATIONAL CLUB ASSOCIATION

Regulatory Issues

- DOL's Overtime Rule
- DOL's New Employee Independent Contractor Guidance
- EPA's Waters of the US (WOTUS) Rule
- DOL's Persuader Rule



DOL'S OVERTIME RULE

Will alter who is exempt from overtime pay

- The rule modifies the minimum weekly salary
 - The current \$455/week (\$23,660/yr.) will increase to between \$903/week (\$46,950/yr.) to \$970/week (\$50,440/yr.) – 40th percentile of earnings for FT salaried employees
 - Any salaried employee making <min amount will be due overtime pay
 - Commissions, nondiscretionary bonuses and incentive pay are not included in “salary,” but DOL is considering it
 - The primary duties test for the exemption will likely change

DOL'S OVERTIME RULE

Timeline and Impact on Clubs

- These salary levels will be indexed to the earnings percentile or CPI-U
- The rule will likely impact staffing levels, worker shifts and compensation packages for employees
- DOL sent the rule to the WH for final review on 3/15 – out any day
- The Protecting Workplace Advancement and Opportunity Act filed



DOL'S INDEPENDENT CONTRACTOR GUIDANCE

“Economic realities”

- New multi-factor “economic realities” test to classify workers
 - The guidance sets out six factors to review:
 - Is the work performed an integral part of the club’s business?
 - Does the worker’s own managerial skills affect his ability to make a profit or loss?
 - What are the relative investments in each business by club and worker?
 - Does the work require some special skill or initiative?
 - How permanent is the relationship between worker and club?
 - How much control does the club have over the worker?

DOL'S INDEPENDENT CONTRACTOR GUIDANCE

Determinative Factors

- No single factor is determinative
 - The key is to look at them all and decide how economically dependent or independent the worker is from the club
 - If it can be shown the worker is in a business for himself, then it's more likely he'll be seen as an Independent Contractor
- DOL stressed the definition of "employee" is to be liberally construed to provide broad coverage for workers
 - The basic intent is to classify most workers as "employees"
- NLRB pursuing misclassification as a violation NLRA
 - Misclassifying them as ICs deprives them the right to unionize

WOTUS

EPA's Waters of the US (WOTUS) Rule

- Redefines the reach of the Clean Water Act, expanding federal control of land and water resources in the U.S.
 - The Clean Water Act previously only covered traditional navigable waters, interstate waters and territorial seas (A.K.A. protected waters)
 - Will trigger additional permitting and regulatory requirements for private clubs with streams, ponds, brooks and even land that could become filled with water.



WOTUS

Revisions to Clean Water Act Definitions

- Now includes upstream waters that impact navigable downstream waters

“Tributaries”

They have a bed, banks, an ordinary high water mark and a **flow that goes, directly or indirectly**, to protected waters (perennial, intermittent and ephemeral streams, too)



“Adjacent Waters”

They border, are **contiguous to or are neighboring** protected waters



- So, for the first time club ponds, creeks, etc. will be under EPA control with new permits needed before using chemicals and fertilizers

WOTUS

Exclusions and Challenges to the Rule

- Exclusions for irrigation and artificial ponds, groundwater, puddles and storm water control features, but “dry land” requirement
- EPA’s partner, the Army Corps of Engineers, called the rule legally indefensible and wanted its name removed from the final document
 - Litigation filed by 31 states - Stay granted by the 6th Circuit Court
 - 1/16 - Jt. Res. of Disapproval passed but vetoed by Pres.
 - 4/16 - 1st defunding measure lost 56-42 in Senate, needed 60

PERSUADER RULE

DOL Rule Effective April 25, 2016

- It will severely impact a club's ability to get legal advice during a union organizing campaign
- When a club hires a lawyer to help defend against a union campaign, it must file complicated disclosure reports with DOL
- When a lawyer accepts the job, he must also file disclosure reports listing the services he will provide and the fees charged
 - Many law firms will pull back from this type of work
 - Without lawyers, most clubs will be unable to effectively give their side of the story
- NCA's coalition has filed a federal suit against the rule in Arkansas



PERSUADER RULE

Labor Unions Pushed for the Rule

- Knowing who the lawyer is and what he charged means they can say the club brought in a “hired gun” to fight the union – so it must have \$\$
- 11% of all workers belong to a union (14.6 million) – lowest since 1983
 - 7% of private workers are union; 36% of government workers are union



NATIONAL CLUB ASSOCIATION

Legislative Issues

- PACE Act
- ACA “Fix-It” Bills
- STARS Act
- SAW Act



30TH HOUR
WORK
WEEK

PACE ACT

- The Protecting Affordable Coverage for Employees Act
 - Major victory for the private club industry
 - First ACA “fix-it” bill to pass and be signed by the Pres. in 4 years
 - On January 1, 2016, clubs with 51-100 employees would have been pulled from the large group insurance market and thrown into the small group market to purchase health insurance
 - Clubs and their employees would have lost their current plans
 - They would have been required to purchase far more expensive plans in the small group market
 - Overwhelming bipartisan support for the PACE Act
 - Passed the House by voice vote
 - Passed the Senate by unanimous consent
 - Template for making additional changes to the ACA



ACA “FIX-IT” BILLS

- Congress passed legislation suspending three ACA taxes
 - The Cadillac tax – won’t go into effect until 2020
 - The 40% excise tax on high cost policies is passed through to clubs
 - Senate voted 90-10 to repeal this tax in the reconciliation bill on 12/3/15
 - \$10,200 threshold for self-only & \$27,500 threshold for family plans
 - The 2.3% medical device tax is suspended for 2016 and 2017
 - The tax is passed through to clubs in the form of higher premiums
 - In 2015, 21 Democratic Senators voted to remove this tax
 - The House passed it with 46 Democrats supporting
 - The tax on all health insurance policies sold is suspended for 2017
 - The so-called Health Insurance Tax (HIT) is also passed through to clubs in the form of a 2%-4% premium hike (\$350-\$500 per policy)
 - Reps. Boustany (R-La.) and Sinema (D-Ariz.) filed a bill to repeal the HIT
 - It has over 218 bipartisan co-sponsors – the magic number
 - A bipartisan Senate bill to repeal it has 35 total co-sponsors

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STARS ACT

- The Simplifying Technical Aspects Regarding Seasonality Act
 - The bipartisan House bill was introduced by Reps. Jim Renacci (R-Ohio) and Kurt Schrader (D-Ore.)
 - The bipartisan Senate version was introduced by Sen. Kelly Ayotte (R-N.H.) and Sen. Angus King (I-Maine)
 - Creates one definition of a “seasonal employee” and one “seasonal employee exemption” for all ACA purposes
 - A seasonal employee is employed in a position that is open for 6 months or less – Period
 - A seasonal employee does not have to be counted when determining whether your club hits the 50 FT/FTE threshold – so no more 4 month worker concerns
 - A seasonal employee is not a full-time employee, regardless of the number of hours he works – so he does not have to be offered insurance
 - IBEW (AFL-CIO) came out specifically against the bill
 - IBEW is going to Ds who have co-sponsored to get them off the bill

SAW ACT

■ The Save American Workers Act

- Bipartisan bill filed in the House and Senate
 - House sponsors: Reps. Todd Young (R-Ind.) and Dan Lipinski (D-Ill.)
 - Senate sponsors: Sens. Susan Collins (R-Maine) and Joe Donnelly (D-Ind.)
- Would change definition of “full-time” from 30 hours/week back to 40 hours/week
- The AFL-CIO, Teamsters and Food Workers’ Union wrote that the current law will “destroy the foundation of the 40 hour work week”
- Passed the House in 2014 by a vote of 248-179 – with 18 Democrats
 - Then-Senate Majority Leader Harry Reid (D-Nev.) wouldn’t allow a vote in Senate
- Passed the House in 2015 by a vote of 252-171 – with 12 Democrats
- Cannot get enough Senate Ds to commit to the bill yet....

NATIONAL CLUB ASSOCIATION

Industry Trends – The Year of Community

- Environment and Sustainability
- Recreation
- Families



ENVIRONMENT AND SUSTAINABILITY

- Water Conservation
 - Drought tolerant turf and plants
 - Partnering with local water agencies
- Food Waste
 - Waste and Loss is 31% of US food supply
 - Cut food waste by 50% by 2030
 - CA law requires recycling of Organic waste

RECREATION

■ Golf

- Golf +
- Games on the range
- Social events

■ Tennis

- 17.9 million players, 1% growth
- Less time-consuming
- More exercise

■ Pickleball

- 2.5 million players, 300% growth
- Low impact
- Attracts older players

FAMILIES

- Swimming facilities
 - Spray areas
 - Zero-entry pools
 - Shade
- Casual dining
 - Relaxed dress codes
 - Fast casual
 - Cyber-cafe
- Babysitting/Tween rooms
 - Activities
 - Childcare

NATIONAL CLUB ASSOCIATION

The Future of NCA

- Growth
- Presence
- Programs
- Advocacy



NCA's FUTURE

Growth

- Membership
- National and Regional Conferences
- NCA Foundation
- Corporate Partners



NCA'S FUTURE

Greater Presence

- Industry
- Capitol Hill
- Washington, D.C.
- Voice of Private Clubs
- Through Members



NCA's FUTURE

Programs

- Surveys, Trends, & Publications
- Certification Program
- Sustainability Program
- Safety Program



NCA's FUTURE

Advocacy

- State
- Build an Army
- Key Contact Program
- ClubPAC



THE END

But Just the Beginning!

