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Congressional Overview – Looking Ahead When Congress Resumes Session

For the past 18 months, polling has consistently shown that 70% of the voters believe that the country is headed in the wrong direction. The combination of COVID, soaring inflation, and a lack of faith in our political leaders has clearly taken its toll on the public's confidence, but there are signs that the mood has begun to brighten with a strong labor market, rising wages, easing inflation and the stock market is at its highest level since the beginning of last year. These trends are reflected in the July consumer confidence numbers, now at nearly a two-year high.

Currently, there are 39 states where one party controls the governorship and the state legislature. Forty states have voted for the same party in the last four presidential elections. We are at the point where there are at most eight competitive states left in the country. As we get closer to the election, it is only the polling in these states, not at the national level, that will paint the most accurate picture of the state of the race. In the recently released Cook Political Report, the Democrats are projected to start the campaign leading with 247 electoral votes, while the Republicans are favored to win 235 electoral votes. Only four states: Arizona, Georgia, Pennsylvania, and Wisconsin, are rated toss-ups.

The Democrats hold a two-seat majority in the Senate and are defending a very difficult map in 2024. They hold all the eight seats considered competitive and Trump carried three of the competitive states: Montana, Ohio, and West Virginia, by overwhelming margins in 2020, while President Biden narrowly carried the remaining five: Arizona, Michigan, Nevada, Pennsylvania and Wisconsin.

In the House, the GOP took a narrow five-seat majority after picking up nine seats in 2022. They are defending 18 districts carried by President Biden in 2020 (compared to only five Democratically held seats carried by Trump). In the most recent Cook Political report, Republicans are defending 21 of the most competitive districts compared to 24 held by Democrats. Ten of these Republican-held seats are in California and New York, while there are 10 Democratic seats at risk in North Carolina, Ohio and Pennsylvania.

With Congress in recess until after Labor Day, September promises to be tumultuous, with a possible government shutdown. Complicating matters further, several additional must-pass pieces of legislation have Sept. 30 deadlines, including the reauthorization of the Federal Aviation Administration and the extension of the Farm Bill. There are also several defense-related fights that do not appear anywhere near resolution, including passage of the National Defense Authorization Authority (NDAA) and additional funding for Ukraine. The differences between the Republicans in the House and Senate are primarily around spending and putting "anti-woke" policy riders on spending bills.

The recently passed bipartisan debt-limit bill suspends the debt ceiling for two years and caps the amount of money that the government is allowed to borrow during that period while establishing spending targets. A significant number of Republicans in the House view this agreement as a ceiling not a floor and want to go back to 2022 spending levels, with cuts totaling \$115 billion dollars. The narrowly controlled Republican House has only approved one of the 12 government-funding bills for Military Construction and Veterans affairs, but it will almost certainly be blocked in the Senate. While the Senate

has passed all 12 appropriations bills in committee with near unanimous bipartisan support, none of these bills has passed the full Senate.

If there is no deal on funding for next year, the government could shut down for the first time since 2018.

OSHA Heat Stress Rule Update

Since 2021, OSHA has been working on a heat stress rule, following a decade's worth of advocacy groups and members of Congress calling for action. Supporters of the rule cite a changing climate and worker heat-related deaths as drivers of their concern. Outside of the rulemaking, the agency has been conducting an annual heat awareness campaign since 2012 and enacted a heat enforcement program in 2022. The challenge for OSHA is that the rule's requirements will have to be precise and per OSHA, the agency must go through 46 steps to enact a rule, 39 of which are dictated by laws passed by Congress or White House executive orders. The rule is currently at step 20, conducting a small business review, which is a requirement set by law that all significant OSHA rules must fulfill.

Additionally, working conditions for indoor and outdoor workers vary considerably, but OSHA is attempting to regulate both at same time rather than first issuing either an outdoor or indoor rule. OSHA's refrain of "water, rest, shade" fits for outdoor workplaces such as construction sites and farms, but it does not necessarily translate well for workers inside warehouses and industrial buildings with no air conditioning. The expansive scope of OSHA's proposed rule means conducting scientific and economic analyses for a wide range of industries and then writing a common set of requirements for protecting workers. It's not a simple undertaking.

For regulators, a confounding part of the heat stress regulation is deciding which temperatures trigger requirements for employers. For outdoors, states with heat rules have generally set 80 degrees or an 80-degree heat index as the trigger temperature. OSHA could mandate that employers have a written heat stress prevention program, per its 2021 rule proposal. Any contractors who need a heat stress program [can leverage FCA's program](#), which is included in their FCA membership.

Studies of OSHA heat enforcement cases found most cited employers did not have a hot weather plan or train workers about heat stress. Under a plan for indoor work, employers could alleviate heat concerns by improving ventilation, increasing air conditioning, and insulating heat sources. For outdoor work, workers would need regular access to shade, time to rest, and cool water.

A key component may be allowing workers to acclimate or become accustomed to laboring in hot weather. Studies mentioned in OSHA's rule proposal suggested a worker needs at least five days to adjust to hot temperatures and that laborers starting acclimatization should not work a full shift in hot conditions. Employers have countered that acclimatization shift restrictions could lead to temporary workers not being hired. Another concern is that phasing in workers is not practical for worksites where workers cannot be rotated between hot and cooler daily assignments.

Finally, regulators will have to consider that heat affects everyone differently. In past enforcement actions, OSHA has suggested employers be aware if workers have medical conditions that make them more susceptible to heat stress, but some employers see the issue as raising medical privacy concerns and opening the door to disability and age discrimination allegations.

OSHA Field Staff Switching to Helmets

This fall, OSHA will start issuing inspectors and other field staff safety helmets instead of traditional hard hats. The decision came following a pilot program involving more than 100 employees. Several large commercial contractors have already transitioned to helmet and in some cases, contractors with on-site safety mandates to wear helmets required OSHA inspectors to don them, instead of their OSHA-issued hard hats.

The primary difference between a helmet and a hard hat is that a helmet has a chin strap that prevents it from being knocked off during a fall while a hard hat typically does not. That means a helmet can offer improved protection from falls. Helmets are also intended to absorb side impacts, while a hard hat offers protection primarily from objects dropping from above.

Per the Center for Construction Research and Training review of fatality data from the US Bureau of Labor Statistic, an average of 376 construction workers died annually from falls, slips, or trips between 2018 and 2020. Head trauma was the most common fatal injury from falls, with 341 deaths in 2020 involving head injuries.