



SSDA News

Service Station Dealers of America and Allied Trades

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Save the Dates! Lobby Day Announced

By Roy Littlefield



There will be no registration fee for either event.

More details are RSVP instructions to follow.

But for now, mark your calendar!

SSDA-AT would like you to save the date for our 2020 lobby day and international environmental summit.

The lobby day will take place on May 6th with the international environmental summit to take place the following day on May 7th.

Both events will take place in Washington, D.C.



The Online Edge – What Your Business Needs to Thrive

By: *Net Driven*



Does your business have an online presence? If so, are you doing all you can to ensure its virtual success? If not, what are you waiting for? Let's take a sneak peek at some statistical findings from the Pew Research Center. According to their most recent studies on the use of internet and technology it was found that:

- Roughly three-quarters of Americans, or 77%, now own a smartphone, which nearly doubles the former findings since the Center began its research in 2011.
- As of November 2016, nearly three-quarters, or 73% of Americans indicate that they have broadband service at home.
- Nearly seven-in-ten Americans now use social media. When the Center started tracking social media adoption in 2005, just 5% of Americans said they used these platforms. Today, 69% of U.S. adults are social media users.
- Half the public now owns a tablet computer. When the Center first began tracking tablet ownership in 2010, just 3% of Americans owned a tablet of some kind.

As you can see, now more than ever before, an online presence for your business is significant. And not just any online presence, but a quality one that provides a sense of credibility and legitimacy, turning its visitors into leads and sales, and contributing to the success of your business.

First impressions matter. If your business has a website, rest assured that internet users are navi-

gating to it to formulate their opinion, to see what other people have to say about you, and to “screen” shop your services and products, which is much like window shopping, but with the ease of never having to actually visit your business’s location.

Your business can now be accessible to the masses thanks to technology. Therefore, it’s vital to have a way for potential clients to find you with the swipe of their fingertip and also to ensure you have a website that makes a good impression.

So, how do you go about trying to meet your customers’ needs online?

Let’s Talk Internet Marketing Best Practices

There are several factors that play into the creation of a well-made website that will help your business’s online presence generate traffic and rank effectively:

Design & Layout

Visual presentation plays an important role in the functionality of a website. A high-performing website will provide a positive user experience. It helps to have a responsive web design. What makes a website responsive? Responsive design helps to generate leads and sales without any limitations based on user devices. So, customers can find your automotive service site on their tablet, smartphone, smart watch, etc., viewing your website efficiently from any screen size.

Content

Content is the reason why visitors come to a site. They are seeking information about your business and its services. The key is to provide relevant content that is easy for visitors to digest. Too much or too little and your visitors might go elsewhere to find what they’re looking for. Check out what Moz has to say about content regarding search engine ranking. By providing unique content that moves beyond self-promotion and is easily digestible to the user, your website offers valuable information.

Calls to Action

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NET DRIVEN

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Calls to action within a site's content and design come in the form of clickable links or custom buttons. It entices a visitor to take action beyond the page they are on, an action like submitting a form, requesting a quote, purchasing a product, or even just clicking a link that leads to another page with relevant information. Through a CTA, a user moves to take a specific action that will benefit your business. And action is what it's all about.

Credibility

A business with an online footprint is a business that can be found, recognized, and confided in. From building a solid and consistent brand across all channels, to maintaining an active social media presence, gaining positive reviews, managing your online reputation with products like Net Driven's Reputation Management.

Mobile Viewability

More and more people are looking at your site from a mobile phone or web enabled device. It seems like anything with a screen and a microchip in it is capable of getting on the internet these days. Make sure your site is viewable on a mobile internet enabled device.

Search Engine Optimization

At Net Driven, we drive the traffic that drives your business! It begins with a website that keeps local search in mind. A strong SEO foundation puts proven strategies to work and improves your ability to get found.

From understanding searcher behavior to using tested best practices, the SEO team at Net Driven works hard to ensure that your site has all of the key ingredients for SEO success. Look to us for:

- Keyword research performed for your business and target geographic
- Optimized meta tags for click through success
- Relevant industry content
- Local directory management

- SEO-friendly site architecture
- and more!

Don't have a website yet? What are you waiting for?! Talk to a representative from Net Driven today and ask about how we can help you create a website that not only generates traffic, but turns your traffic into leads and sales! Net Driven should be your choice for all your automotive internet marketing needs. [Contact us today!](#)

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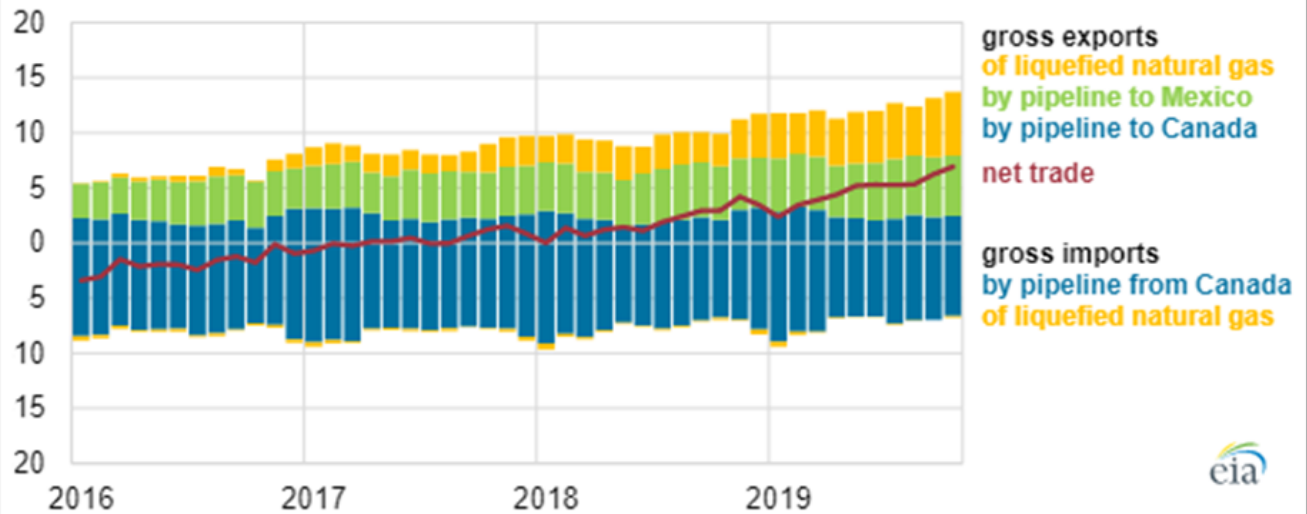
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Statistical Update

Monthly U.S. natural gas trade (Jan 2016-Oct 2019)
billion cubic feet per day



API Applauds USMCA Signing

The American Petroleum Institute President and CEO Mike Sommers welcomed the signing by President Donald Trump of the United States-Mexico-Canada Agreement, saying it's "a win-win for American workers and energy consumers." The deal "will ensure the U.S. can continue its role as the world's energy leader while delivering affordable and reliable energy to Americans and enabling environmental progress," Sommers added.



Pennsylvania House opts for study, drops vehicle emissions I/M language



ASA Washington, D.C. representative Bob Redding applauded the Pennsylvania House of Representatives for “taking a more reasonable approach” while addressing potential changes to the state’s vehicle emissions inspection and maintenance (I/M) program.

Rather than proceed with legislation (SB 742) that would have exempted vehicles eight years and newer from the emissions I/M program, lawmakers decided to commission a study.

“The Senate-passed bill would have eviscerated the state I/M program impacting Pennsylvania’s air quality and small businesses,” Redding said. “ASA Pennsylvania members contacted their legislators and asked that they stop SB 742 from moving forward. This study allows policymakers and regulators to review these programs with input from consumers and small businesses.”

“We think a study is important to ensure that the emissions program enables us to meet air quality standards,” said Ron Turner, ASA Pennsylvania’s Mechanical Division director.

The Pennsylvania House unanimously passed the revised SB 742. The original bill was introduced in June 2019, along with a package of other similar bills aimed at altering Pennsylvania’s emissions I/M program. SB 742 is the only one of these emissions bills that survived the state House.

The original version of SB 742 included language exempting vehicles eight years and newer from the emissions I/M program. While the amended House version of SB 742 does not eliminate the emissions inspection program, it provides for a study reviewing whether the direct impact of different model year vehicles will be beneficial to ensuring that the program is protecting clean air and public health.



Outlook For 2020 SSDA-AT WOTC Campaign



SSDA-AT continues to fight on the federal level to preserve WOTC, a tax credit that so many businesses in our industry are using. The Work Opportunity Tax Credit (WOTC) is a Federal tax credit available to employers for hiring individuals from certain target groups who have consistently faced significant barriers to employment.

Renewing WOTC will be hyper-challenging this election year, not only because we'll be lobbying candidates face-to-face at every opportunity (congresspersons and senators are more accessible during an election campaign), but also because we'll have to confront the issue of the Federal government's running trillion dollar annual deficits now.

The deficit will be the major factor in every bill that costs money, which means encountering more arguments to retrench, and more questions about the \$19 billion ten-year cost of WOTC.

The candidate that holds the power to wreck our plans is the nation's deficit

-cutter-in-chief, President Trump, and more specifically the president's men on the hill, Treasury Secretary Steven Mnuchin and White House Legislative Director Eric Ueland. The more tight-fisted they are, the tougher our job.

In a few days, the President will issue his budget for FY 2021. It'll be a balanced budget based on around 3 percent economic growth, continued improvement in the workforce participation rate, and deep funding cuts for civilian agencies and social programs—a similar package as earlier years.

The President will also propose a trillion dollar infrastructure program and a tax cut for the middle class, with costs covered in part by revenue attributable to the tax cut, plus private sector participation in infrastructure development.

Hardly any tax extenders have been included in a Trump budget—not funding them is the same as calling for their cancellation. Certain conservative organizations—Heritage Foundation, AEI, Committee for a Responsible Federal Budget, the Koch organization, and others—are supporting this policy. We're always alert to counter their statements.

The fact that the President's budget will be dead-on-arrival on Capitol

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Outlook For 2020 SSSA-AT WOTC Campaign

Continued from page 6

Hill doesn't help us because, when House and Senate negotiate on any bill, the White House is a party to the talks since the President has the veto—Secretary Mnuchin or Mr. Ueland show up on the Hill with facts and figures crunched by OMB to make their case.

A month ago, we prevailed over Mnuchin/Ueland through good work mobilizing bi-partisan support in both houses, especially in the tax-writing committees. But the White House has staying power, and with trillion dollar deficits we'll have to keep our support in Congress from eroding.

Our goals remain the same—make WOTC permanent or enact a six-year extension, with specific improvements. We'll pick up where we left the talks last year, urging Ways and Means Chairman Neal and Finance Committee Chairman Grassley to agree on a tax measure making some extenders permanent, while compromising on Democrats' repeated demands for expansion of the Earned Income Tax Credit and Child Tax Credit.

Should the infrastructure bill falter and no stand-alone tax bill emerge, we'll work to pass a long-term extenders bill on one of the FY 2021 appropriations measures due by September 30th.

September 30 may stretch to December 20th if the Appropriations Committees fall behind writing their bills, as in past years. But if the Senate can finalize impeachment this week, appropriators will have a huge head start because, due to partisan differences, a joint (House and Senate) congressional budget is impracticable, thus each house will write its own budget. Budget committees can start now because the top-line spending ceilings for FY 2021 have already been agreed—they were specified in law last summer.

By launching our campaign when the impeachment distraction ends, we may be looking at the prospect of permanent WOTC, Empowerment Zones, and Indian Employment Credit, or a long-term extension of these, as early as September 30 if the tax committees cooperate and the White House doesn't threaten a veto.

Preserving WOTC will remain a priority for SSSA-AT.



Hire
Veterans



SECURE Act SSSA-AT Update

The SECURE Act, enacted into law on December 20, 2019, changed a number of retirement plan provisions, but will also have a significant impact on estate planning for those who have saved meaningful amounts for their retirement. Included will be ideas on how to make up for the reduction in value of retirement benefits for children/grandchildren caused by the elimination of the stretch IRA.

Major Retirement Plan Changes

Even though the law has been heralded as a major retirement plan law, almost all of the retirement related changes are fairly minor.

The one provision that could prove to be important is the open multiple employer plan, better known as a "MEP."

The concept of a MEP is that a group of plans will band together and by doing so will enjoy lower plan administration costs, lower investment fees in mutual funds investments, reduced fiduciary responsibility and will no longer be burdened with filing annual IRS forms.

The SECURE Act removed two major roadblocks which in the past kept small businesses away from joining MEPs. Plan administrators have cast doubts on the ability of a MEP to reduce administrative fees, but it appears the other advantages will prove to be significant. What is not clear is how much flexibility with respect to investments and plan design an employer will have to give up to join a MEP. Some contend that while MEPs may not attract significant numbers of new plans, they are likely to attract a number of existing retirement plans from companies eager to reduce fees, fiduciary liability and some administrative burdens.

It is clear that many insurance companies, brokerage houses and associations will set up MEPs.

Other changes include:

- With respect to individuals who attain age 70 ½ after December 31, 2019, the required beginning age for required minimum distributions (RMDs) from retirement plans and IRAs has been moved back from age 70 ½ to age 72. **This means that people who did not attain age 70 ½ before December 31, 2019, will be able to postpone taking out RMDs for a year and a half.** Congress recognized that life expectancy has increased over the last 60 years, but of course life expectancy has increased more than 1 ½ years during those years! While this is a welcome change, moving back the required beginning date for taking out distributions from an IRA or a retirement plan by only a year and six months is not all that exciting. Starting this year, **plan participants can take a penalty-free distribution from a defined contribution plan account (such as a profit sharing plan or a 401(k) plan) of**

up to \$5,000 within one year after birth or legal adoption of a child, with an option to repay under certain circumstances. It is not clear whether this is a mandatory provision which a plan must adopt or whether it is up to the employer to decide to allow this type of withdrawal. This new provision takes away the ten percent early withdrawal penalty for this type of withdrawal, but the distribution will still be taxable.

- For plan years beginning after December 31, 2019, **the annual safe harbor notice for the 401(k) non elective safe harbor (this is the 401(k) safe harbor that requires a 3% employer contribution) is eliminated.** By making a 3% non elective 401(k) safe harbor contribution, the IRS 401(k) discrimination rules are not applicable to the plan. The notice is still required for a safe harbor matching contribution.

- Before the SECURE Act there were stricter rules as to when a plan had to adopt a 401(k) safe harbor (as a general rule, notice that the plan was or might be safe harbored had to be given before the beginning of the plan year). For plan years beginning after December 31, 2019, **the SECURE Act allows the employer to safe harbor a 401(k) plan before the 30th day before the close of the plan year.** This new provision will allow an employer to determine that if the plan was going to fail the 401(k) testing, then up to 30 days before the end of the plan year it could adopt the 3% non elective safe harbor and retroactively have the safe harbor rules apply to the beginning of the year. This would allow highly compensated employees to make the maximum 401(k) contributions in that year regardless of the contributions made by the non-highly compensated employees. Employers could monitor the employee contributions going in to the 401(k) during the year and adopt the safe harbor provision if needed to allow the highly compensated employees to keep their contributions. **Even up until the end of the following plan year, the company can retroactively adopt the safe harbor provisions - but the 3% safe harbor contribution must be increased to 4%.**

- For plan years beginning after December 31, 2020, **the SECURE Act will allow part-time employees who have worked 500 hours over a consecutive three year period to make 401(k) contributions. No employer contributions would be required to be made for these individuals and they could be excluded from IRS discrimination tests.** Plans could still require part-time employees to attain age 21. Years starting January 1, 2021 will be used to determine if an employee has worked 500 hours per year over the three consecutive year period. This means that **the first time part-time employees must be allowed to contribute to a 401(k) plan under this provision is the 2024 plan**

SECURE Act SSSA-AT Update

Continued from page 8

year. Plan administrators are going to need a lot of guidance from IRS to figure out how to make this provision work - for instance, what happens when employees go back and forth between full and part-time status?

The SECURE Act **allows a business to adopt a retirement plan up until the due date (including extensions) of the tax return for the taxable year and treat the plan as if it had been adopted on the last day of the taxable year.** As long as a retirement plan is adopted on the last day of a taxable year, it can have an effective date retroactive to the beginning of that year. This provision is effective for tax years beginning after December 31, 2019. Prior to this new provision, a retirement plan had to be adopted by the last day of the taxable year - thus, this provision will give companies more time to decide to adopt a plan. **This provision is likely to be used by a smaller company which ends up with more profit than expected in a taxable year, particularly if the profit is determined after the close of the tax year.**

Other provisions include:

- **An increase in the automatic 401(k) contributions limit from 10% to 15%.** Companies are already requesting transition relief and additional guidance from IRS with respect to this provision due to its effective date of plan years beginning after December 31, 2019.

- **Defined contribution plans (profit sharing plans, 401(k) plans) will be required to give participants an annual estimate of the monthly income their account balance would purchase if the participant selected an annuity - even if the plan does not provide for an annuity option.** Both a joint and survivor annuity (an annuity which will pay out during the lifetime of the participant and then to surviving spouse) and a single life annuity for only the participant must be illustrated. **The Department of Labor has to issue a model disclosure and the assumptions that the plans must use to come up with the annuity values within a year of enactment.** This provision is effective 12 months after the release of the DOL guidance. If a plan provides the DOL model disclosure and stays within the assumptions DOL requires and the guidance it has provided, then there will be no liability under ERISA. The SECURE Act does not provide a minimum account balance for which the disclosure is not required. **The purpose of this provision is to encourage plan participants to consider purchasing an annuity with their account balances.** This will add an administrative burden to plan administrators.

- The credit for a small employer plan startup costs is increased beginning after December 31, 2019. **There is also a new small credit of up to \$500 per year for up to three years for new 401(k) and SIMPLE IRA plans that have**

automatic enrollment (or existing plans that add the auto enrollment feature). This credit is in addition to the credit for plan start-up expenses.

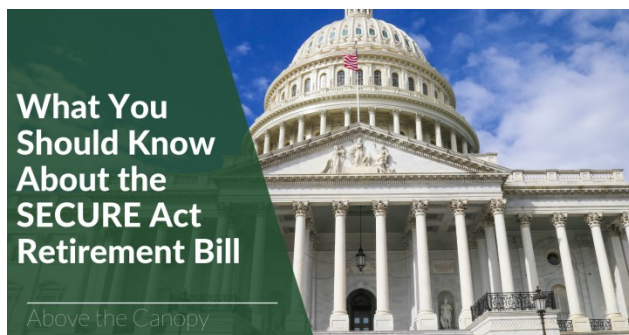
- Effective immediately, **there is a new safe harbor intended to provide relief from the fiduciary liability involved in the selection of an annuity provider for participants who elect an annuity payout option.** At least from the viewpoint of trial attorneys this safe harbor may not prove as difficult to get around as Congress would have hoped. On the other hand, it is certainly better than nothing. Many plans will want to wait for guidance from IRS before trying to fit within the safe harbor. If a company's retirement plan does not provide for an annuity option for payment of retirement benefits, then this provision is not relevant.

- **Section 529 qualified tuition program is expanded to cover costs associated with registered apprenticeships and qualified education loan repayments.** This is an important provision for many SSSA-AT members and one which they supported while the legislation was developed. This may prove to be one of the more important sections of the SECURE Act.

- In-service distributions from defined benefit plans can be made for participants at age 59 ½ while they are still working (reduced from age 62). This is effective for plan years beginning after December 31, 2019. This does not appear to be a mandatory provision but guidance is required from IRS.

- **Significant increases are made to penalties for failing to file Form 5500 and other notices.** Because these penalties have increased so dramatically, it will be more important for companies to ensure that the required IRS forms are filed on time.

The Act provides that if a plan is in operational compliance it does not have to be amended for the SECURE provisions until the last day of the 2022 plan year or a later date if Treasury so provides.



**What You
Should Know
About the
SECURE Act
Retirement Bill**

Above the Canopy

Exxon at a 10-Year Low Shows Challenges for Oil's Biggest Major

It's almost as if the last decade never happened for investors of Exxon Mobil Corp. shares.

Once the gold-standard of Big Oil, the stock closed Monday at its lowest since October 2010, amid a slump in oil prices due to concerns about weak demand coupled with a glut. The S&P 500 also posted its worst one-day decline since October.

But for Exxon, which dropped out of the index's top 10 largest companies by market value for the first time last year, the malaise runs deeper than the state of the crude market.

Chief Executive Officer Darren Woods is running a counter-cyclical strategy by investing heavily in new oil and gas assets, at a time when many investors are demanding energy companies improve returns for shareholders. Some shareholders are even demanding a plan to move away from fossil fuels altogether.

Exxon is betting on a "windfall of cash" to arrive from its investments sometime in the mid to late 2020s, said Noah Barrett, a Denver-based energy analyst at Janus Henderson, which manages \$356 billion. "Right now there's higher value placed on generating cash flow today."

Exxon is ramping up capital spending to more than \$30 billion a year, without a hard ceiling, as it develops offshore oil in Guyana, liquefied natural gas in Mozambique, chemical facilities in China and the U.S. Gulf Coast, as well as a series of refinery upgrades. Woods is convinced the world will need oil and gas for the foreseeable future and sees an opportunity for expansion while competitors shy away from such long-term investments.

The short-term cost of those investments is that Exxon can't fund dividend payouts with cash generated from operations, instead resorting to asset sales and borrowing, according to Jennifer Rowland, an analyst at Edward Jones & Co. Exxon is the "clear outlier" among Big Oil companies on that front, she said. Exxon declined to comment.

Exxon's current challenges stem in large part from flag-planting deals made when commodity prices peaked during the past decade. It spent \$35 billion on U.S. shale gas producer XTO Energy Inc. in 2010 when shale oil promised outsize returns. It has invested \$16 billion in Canadian oil sands since 2009, only to remove much of those reserves from its books. Former CEO Rex Tillerson's 2013 exploration pact signed with Russia was caught behind a wall of sanctions and later abandoned.



House Democrats Unveil \$760B Infrastructure Plan

House Democrats unveiled a \$760 billion framework to fund infrastructure investments over five years in an effort to take their first steps on a top campaign priority.

The framework, which is not a formal bill at this stage, does not yet spell out proposals for how to pay for the investments in infrastructure like highways, rail, airports and expanding broadband access.

Democrats last year attempted to work with President Trump on a \$2 trillion infrastructure plan, but the efforts collapsed due to a failure to agree on how to pay for it and the president's frustration with lawmakers investigating him.

But Democrats are trying to set a marker for a top legislative priority for the 2020 campaign and move on from impeachment, which has now moved to the Senate for a trial.

The House Ways and Means Committee is set to hold a hearing later on how to pay for infrastructure investments.

The Democrats' framework proposes \$329 billion for roads and bridges, \$55 billion for passenger rail, \$30 billion for airport investments, \$50.5 billion for wastewater infrastructure, \$86 billion for expanding broadband access for rural areas, and \$12 billion for a "next-generation" 911 system for emergency calls, according to a summary.

The framework also seeks to address climate change, a top Democratic priority. It incorporates ways to combat climate change with proposals like increasing the availability of charging stations and other fueling options for electric and zero-emissions vehicles, making roads safer for pedestrians and bicyclists and investing in zero-emission buses for public transit to reduce traffic congestion.

"There are so many ways we can deal with the climate crisis by solving our congestion and infrastructure crisis," said House Transportation and Infrastructure Committee Chairman Peter DeFazio (D-Ore.), who took the lead on the framework.

But the issue of how to pay for the infrastructure investments will fall primarily to the House Ways and Means Committee and Democratic leaders.

House Ways and Means Committee Chairman Richard Neal (D-Mass.) said that Democrats will only be offering proposals for how to pay for infrastructure investments if there's buy-in from the GOP and Trump.

Democratic leaders first unveiled the details to their members in a caucus meeting ahead of a press conference with committee chairmen and several vulnerable freshman lawmakers who serve on the Transportation Committee.

Democratic leaders repeatedly made a point of gesturing to the freshmen standing behind them at the press conference, underscoring how the party wants to move on from impeachment and focus on their policy agenda as they prepare to campaign for reelection this year.

Republicans declined to endorse the principles outlined in Democrats' framework, but expressed openness to working with Democrats on infrastructure.

Republicans on the committee outlined their own set of priorities ahead of the release of Democrats' framework, including addressing the long-term sustainability of the Highway Trust Fund, addressing infrastructure for rural communities and ensuring state flexibility for infrastructure needs.

Democrats similarly urged Trump to propose ways to pay for infrastructure during their short-lived talks last year, but neither side ultimately offered proposals to the public.

Trump has indicated an openness in the past to raising the gas tax, but the idea is anathema to members of both parties. The federal excise tax on gasoline has not been raised since 1993.

Senate Minority Leader Charles Schumer (D-N.Y.) indicated last year that he would only back raising the gas tax if Republicans agreed to roll back some of the tax cuts in the 2017 tax overhaul — a non-starter for the GOP and Trump.

Even if lawmakers don't agree to an ambitious infrastructure investment package, they will face a deadline at the end of September to renew expiring surface transportation programs. Congress previously passed a five-year transportation package in 2015, which then-President Obama signed into law.

Massachusetts Right to Repair Hearing Profiles Major Issues

With a crowded auditorium of aftermarket and automaker representatives, the Massachusetts Joint Committee on Consumer Protection & Professional Licensure held a hearing discussing Right to Repair legislation being considered in the Massachusetts Legislature. What got us here?

The 1990 Clean Air Act Amendments (CAAA) provided an opportunity for independent repairers' concerns about being "locked out" of the service information necessary to repair vehicles. With the more sophisticated vehicle technologies assured with the enactment of the 1990 CAAA, independents sought legislative language mandating that automakers give independent repairers the same service information provided franchised new car dealers. This language applied to emissions service information only.

After several attempts at regulations to assure this service information transfer, the U.S. Environmental Protection Agency (EPA) got it right. The latest and current regulations required this be done on automaker websites which we still have today. What was obviously missing was non-emissions information which was to come later. First, Right to Repair bills were introduced in the states and in the U.S. Congress. The Automotive Service Association signed an agreement with the automakers assuring independents both non-emissions and emissions service information, tool information, and training in 2002. Later, aftermarket organizations signed a Memorandum of Understanding (MOU) with automakers in Massachusetts on access to information.

The hearing highlighted that this process has worked to date. So, what's the problem? Mr. Kevin DiVito, President of Mobile Auto Solutions, noted in his testimony: "Many leading industry businesses across the U.S. are based on repair data being widely available. You must be willing to invest the time in yourself and your business in order to keep up with rapidly changing automotive technology. We are able to service current model year vehicles with identical equipment to the dealer. We are able to program new vehicle modules and keys, view dealer level service

information, and calibrate semi-autonomous vehicles with OE tools and procedures."

Mr. DiVito did mention that Tesla "does not currently offer a way for the aftermarket to scan and program their vehicles." Automotive Service Association (ASA) President Ray Fisher also stated in his testimony that "the information is available and our members can fix their customer's cars."

Important for independent repairers was Mr. Fisher's additional comments which noted repairers' concerns for new vehicle technologies in the future. Mr. Fisher stated: "...I am here because of our concern about vehicle data access and the path forward with rapidly changing vehicle technologies. Both the Obama and Trump Administrations have opted to issue guidelines relative to many new vehicle technologies, defining state and federal regulatory responsibilities, but as of yet, they have not addressed vehicle data access concerns. The 115th Congress passed autonomous vehicle (AV) legislation overwhelmingly in the U.S. House of Representatives, but AV legislation never made it to the U.S. Senate floor. This is regrettable because the vehicle data access and cybersecurity stakeholder provisions passed by the U.S. Senate Commerce Committee did not become law. This was an opportunity to bring all interests together and work with federal regulators on a data access and cybersecurity solution. It is important that the industry — or federal policymakers, if the industry fails - determine a vehicle data access and cybersecurity path forward."

The 116th Congress has had numerous hearings on new vehicle technologies, privacy and data, but has yet to offer a formal solution for vehicle data access. With 2020 being an election year, there is much clock pressure for the legislative calendar. If an industry solution is not meant to be, there will be even more hearings in Washington, D.C. and in state capitals across the country like the industry witnessed on a rainy day in Boston, Massachusetts. The opportunity for resolution is now.

Department of Labor Updates

New Salary Threshold and Bonus Opportunities under the Fluctuating Workweek

In 2019, companies were fined in excess of \$333,000,000 which far surpasses any other previous year. This trend will continue and, in fact, SESCO expects more and more employers to be investigated for FLSA compliance.

A common misconception is that Wage and Hour disputes fall under the umbrella of Employment Practices Liability Insurance (EPLI). Although some Wage and Hour coverage may be found under EPLI, it is very unlikely and also depends how much you may be paying for coverage and the carrier's willingness to offer the coverage. As such, your organization should be very proactive in conducting labor and employment law audits to include compliance to the Fair Labor Standards Act so as to avoid significant violations due to noncompliance.

Although not an all-inclusive list, the most common Wage and Hour violations that we find in FLSA cases and in our auditing practice include:

- Working off the clock or improper deductions – Pre-work, break times (less than 30 minutes), being interrupted while on lunch or working before or after clocking in or out are common violations.
- Paying nonexempt positions on an exempt salaried basis – A prime violation is paying managers and administrative staff on an exempt guaranteed salary basis when, in fact, these positions are typically nonexempt and thus due overtime for hours worked in excess of 40 hours per week (federal).
- Not Paying overtime on bonuses and incentives – Employers must compute overtime on non-discretionary bonus and incentive payments such as commissions for sales, attendance and safety bonuses, incentive payments for a job well done, etc.

The new guaranteed salary threshold (minimum) will become \$35,568 annually or \$684 per week on January 1, 2020. This new salary threshold replaces what currently is \$23,660 annually or

\$455 per week. Additionally, the new revision also allows for up to a 10% non-discretionary bonus and incentive payment against the guaranteed salary requirement (\$3,556). Therefore, members can apply this bonus and incentive payment against the base salary minimum.

Note: Because an employee is being paid on a guaranteed salary basis as noted above does not exempt the position from overtime. To be exempt from overtime, the position must meet a white-collar classification (normally the Executive/management classification) and receive the guaranteed salary amount. As noted above in the typical violations, co-managers, assistant managers and the like are typically nonexempt and thus due overtime regardless of how much the salary may be.

The Fluctuating Workweek or variable method of pay which is a nonexempt pay plan allowing employers to pay nonexempt staff such as assistant or co-managers on a guaranteed salaried basis with one-half ($\frac{1}{2}$) time over 40 hours versus time and one-half (1.5) is a common and viable program. There is no minimum salary requirement as with the exemption salary standard as noted above. The guaranteed salary simply needs to yield minimum wage for all hours worked. Under a new proposed rule, the U.S. Department of Labor has published that the Fluctuating Workweek or variable method of pay can include supplemental incentive pay and bonuses.



Trump Shuns Democrats as He Signs Bipartisan USMCA

President Donald Trump signed his signature trade deal with Mexico and Canada into law, sealing a big bipartisan win for him during his heavily partisan impeachment trial.

But the celebration was far from bipartisan, as Trump excluded Democrats from the ceremony despite their key role in securing the final version of the deal that passed with overwhelming majorities in both the House and Senate.

Instead, Trump used the signing of the U.S.-Mexico-Canada Agreement as a chance to keep ownership of his deal in a White House ceremony with hundreds of Republican lawmakers, Mexican and Canadian leaders, local officials, and business, industry and union leaders present.

"We have replaced a disastrous trade deal," Trump said in the ceremony on the White House South Lawn. "This is something we really put our heart into. It's probably the No. 1 reason that I decided to lead this crazy life that I'm leading right now as opposed to that beautiful simple life of luxury that I left before this happened. But I love doing it."

Signing the USMCA into law is a rare legislative achievement for the president going into his reelection campaign. But Trump will not be able to say he fully delivered on his 2016 campaign promise to replace NAFTA until Canada ratifies the deal and all three countries meet many of their obligations — and that could take months.

Still, Trump will take his USMCA victory lap to Michigan, where he will host an event at an auto parts supplier to tout the benefits of the pact.

Meanwhile, Democrats and many labor unions have also been largely supportive of the deal after they secured changes that make the USMCA one of the most progressive trade agreements ever negotiated by either party.

The pact was the product of months of negotiations between U.S. Trade Representative Robert Lighthizer and a group of nine Democrats tapped by House Speaker Nancy Pelosi to make changes to the original version of the USMCA that Trump signed in 2018. Democrats had been concerned over the pact's enforcement, labor, environmental and drug-pricing provisions.

"It puts a smile on my face that he's really signing a bill that includes Democratic priorities that we've been fighting for for decades," said Rep. Jimmy Gomez (D-Calif.), one of the Democrats closely involved in landing the final deal.

"It says a lot that this event is without Democrats because he always wanted it for political purposes. I personally don't think he ever cared about the policy," Gomez added.

Pelosi and House Ways and Means Chairman Richard Neal, who led negotiations with Lighthizer, both emphasized that while they were not invited to the ceremony, Democrats played an integral role in getting USMCA done.

"The only reason the president is signing this today is because of what we did as House Democrats," Neal (D-Mass.) said standing beside Pelosi at a press conference on infrastructure.

Pelosi added the deal in its final form is "quite different from what the president sent us."

"I hope he understands what he's signing today," she said.

Democrats were clear that they will not take Trump's snub personally, and instead, are focused on replicating the success they had in securing changes to the USMCA and translating those priorities into new deals. Some of Trump's priorities include deals with the European Union and United Kingdom. Those would require congressional approval if they are comprehensive and done under the trade promotion authority legislation. However, Trump opted in his China and Japan negotiations to do mini-deals that did not require Congress to weigh in.

While Trump made no mention of Democrats' role in USMCA, Lighthizer did make passing reference in thanking them for helping make it a "bipartisan success." He added that he knew "listing members in an audience like this makes more enemies than friends."

However, privately, Lighthizer called Democrats ahead of the ceremony to express how he would have wanted them to be present at the signing, according to people

Trump Shuns Democrats as He Signs Bipartisan USMCA

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close to those conversations. One Democrat said Lighthizer's call showed he's a "class act."

Democrats worked into the deal stronger labor enforcement provisions that will help ensure companies operating in Mexico boost workers' rights and give the U.S. the power to punish them if they violate labor rights.

They also got the Trump administration to drop a provision establishing a 10-year protection period for biologic drugs, which opponents say would have allowed drug companies to keep prices high. That change left some Republicans and business groups disappointed but not enough to withdraw their support.

One of the biggest changes from NAFTA to USMCA is tighter rules on how North American autos and auto parts qualify for reduced tariffs — a change that Trump has long believed will help bring back American jobs from abroad.

Those changes, which aim to increase car production within the region, will require that companies make significant and costly changes to how they make their cars. Auto manufacturers are being given three to seven years, depending on the type of car, to fully comply with the complicated new requirements.

But none of those changes will be felt for months.

Canada must still ratify the pact, and is expected to do so by April. Canada's House of Commons began its ratification process this week, but opposition parties have already said they want to closely examine and debate the deal before voting for it. Passage of USMCA in Canada does not trigger any sort of clock for the deal to go into effect.

After ratification by Canada, the three countries must work to check off all the obligations outlined in the deal that must be met before the deal can take effect. Once they have completed all required procedures, the countries will notify each other in an exchange of letters. Then, it will enter into force about 60 days later.

There will be lots of behind-the-scenes talks within and between each country to ensure the U.S., Mexico and Canada are living up to their commitments. That could take months, especially when it comes to challenging issues such as ensuring that Mexico complies with its

major labor commitments and that all three countries have the new auto rules ready to go when the deal takes effect.

Even once the USMCA takes effect, it is not expected to significantly increase trade in the region, given that the original NAFTA already eliminated most tariffs between the U.S., Mexico and Canada.

The USMCA would raise U.S. GDP by \$68.2 billion, or 0.35 percent, by the sixth year after it enters into force, according to the independent U.S. International Trade Commission. It would also create 176,000 U.S. jobs, increasing employment 0.12 percent by the sixth year, the ITC found.

But above all, lawmakers, economists and trade experts widely agree that the new deal offers some much-needed certainty for companies and workers in all three countries. Trump had long threatened to withdraw from the original NAFTA, a move that would have devastated the economies of all three countries.

Plus, his ongoing trade war with China has also been particularly damaging for farmers and small businesses.

Trump signed a preliminary trade deal with China earlier last month, but it remains unclear if China will be able to fulfill all its commitments to purchase some \$200 billion more in U.S. goods over the next two years.

"For much of industry — from manufacturing to ag and services — the USMCA is going to bring a sense of relief that the terms of trade are firmly established," said John Murphy, senior vice president for international policy at the U.S. Chamber of Commerce.

"The hope for North American trade is that entry into force will instill certainty about the future," Murphy said.



Trump: Deregulation Has Made US a Leader in Oil, Natural Gas

The Trump administration's "bold regulatory reduction campaign" has made the US a global leader for oil and natural gas production while also protecting the environment, said President Donald Trump during his State of the Union address. "America is now energy independent, and energy jobs, like so many elements of our country, are at a record high," he said.



Companies Try to Make Fracking More Environmentally Friendly

Evolution Well Services and BJ Services are leading the switch away from diesel-powered hydraulic fracturing pumps to the more sustainable natural gas-powered or electric fracking. In addition to reduced emissions, BJ Services' 5,000-horsepower natural gas turbine, dubbed Titan, provides more horsepower than diesel pumps, is easier to deploy and requires fewer workers on site - about eight, compared with 18 or 20 for conventional pumps, CEO Warren Zemplak says in meeting the criteria for receiving the lump-sum bonus because missing any week (no matter whether overtime is worked in that week) disqualifies the employee from receiving the lump-sum bonus. The employer then must calculate the additional overtime pay due in those workweeks of the 10-week training period in which the employee worked more than 40 hours.





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