



POLICY MATTERS

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Omnibus Bill Released and Passed by the House. Following weeks of negotiations, Congressional leaders [released the \\$1.3 trillion spending bill](#) Wednesday night. The House of Representatives quickly passed the bill earlier today on a [vote of 256 - 167](#). Now it's the Senate's turn to pass the omnibus by the end of Friday to avoid a government shutdown.

The final legislation includes provisions that will increase funding for the military, strengthen background checks for gun purchases, fund a school safety measure grant, and increase funding to combat the opioid epidemic. [Among the provisions that didn't make it into the final bill](#) are: Obamacare stabilization funds, full funding for the President's proposed border wall, a deal to extend the DACA program, and language to define joint employment under various labor laws.

DOL Dodges Funding Cuts for FY2019. The much anticipated budget appropriations for the Department of Labor and its divisions were included within the omnibus. The DOL essentially maintained its current [funding levels for FY19](#), receiving a 1% increase to \$12.2B. The Trump Administration previously proposed a 10% budget cut for the Department.

Among DOL's divisions and related independent agencies, the following budgets were allocated: Wage and Hour: \$227M (requested \$230M); OSHA: \$553M (requested \$549M); OFCCP: \$103M (requested \$91M); MSHA: \$374M (requested \$376M); OLMS: \$38M (requested \$46.6M); NLRB \$274M (requested \$249M); and EEOC: \$380M (requested \$363.8M). The budget also rejects the proposed merger of the OFCCP into the EEOC.

The proposed reorganization of the NLRB field offices by General Counsel Peter Robb was predicated on the administration's proposed budget cut. The Board has stated that the reorganization would be [subject to public comment](#). With the restoration of the proposed NLRB budget cuts, it is unknown now whether the reorganization plans will move ahead.

DHS Receives Funding Increase. The Department of Homeland Security received an increase of 13% in the omnibus, bringing its overall budget to \$55.6B. President Trump had initially requested \$47.5B in funding. Additionally, U.S. Customs and Border Protection will receive a 15% increase to \$14.0B, including \$1.57B earmarked specifically for ["physical barriers and associated technology along the Southwest border."](#) Lastly, U.S. Immigration and Customs Enforcement will receive a 10% increase to \$7.1B to "ensure ICE has the tools needed to enforce both criminal and immigration laws."

Expansion of H-2B Visa Cap. The number of H-2B guest workers available to U.S. businesses could approximately double with language that was included in the omnibus bill. [The visa program](#) offers 66,000 visas annually to businesses that seek foreign workers in seasonal, non-agricultural roles. The provision in the omnibus authorizes the DHS secretary to increase the total number of H-2B visas by "the highest number" of returning guest workers who were exempt from the annual cap in any previous fiscal year. To put it more simply, the DHS secretary could increase the number of H-2B visas issued in 2018, from 66,000 to roughly 120,000. The DHS secretary would have to confirm worker shortages with the Department of Labor before authorizing any increase H-2B visas.

Tip Pooling Provision in Omnibus. Senator Patty Murray (D-WA) and Labor Secretary Alex Acosta [negotiated a compromise](#) aimed at limiting employers' use of employee tips under DOL's [proposed tip-pooling rule](#). The provision would amend the FLSA to allow workers (and the DOL) to sue employers for keeping a portion of their tips, even when the employer does not use the tip credit to satisfy its minimum wage obligations. The omnibus language related to the tip pooling provision can be found [here](#).

Sharon Fast Gustafson Nominated for EEOC General Counsel. President Trump intends to [nominate Sharon Fast Gustafson](#) to become general counsel of the Equal Employment Opportunity Commission for a four-year term. Fast Gustafson has been a solo practitioner since 1996, according to the announcement. She represented Peggy Young in Young v. UPS, a pregnancy discrimination case decided by the U.S. Supreme Court in 2015. The plaintiff prevailed in her claim that UPS should have provided an accommodation when her physician limited her to light duty work during her pregnancy.

Fiduciary Rule Vacated. Late last week, the [Fifth Circuit Court of Appeals vacated](#) DOL's "fiduciary rule," which was an attempt to impose new regulations on financial advisors. The regulation took partial effect last June, but DOL later delayed key parts of the rule until July 1, 2019. The split 2-1 decision vacates the rule in its entirety following Circuit Judge Edith Jones majority opinion. Judge Jones stated that "[although] DOL is empowered to enact regulations enforcing the fiduciary provisions of ERISA Title I, including the definition of "fiduciary" in Titles I and II, the Rule fails to pass the tests of reasonableness or the APA."

As California Goes, So Goes the Nation. California legislators stormed into the second half of the 2017-18 legislative session, introducing over 2,000 bills by the February 16 bill introduction deadline. For more information on the employment-related legislation that was introduced, see [Seyfarth's California Peculiarities Employment Law Blog](#).

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