

POLICY MATTERS

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Paid Family Leave? This year's State of the Union was short on employment issues, with one notable exception. You probably noticed that the President referenced paid family leave: "I am also proud to be the first President to include in my budget a plan for nationwide paid family leave--so that every new parent has the chance to bond with their newborn child." His 2019 budget included a proposal to establish a paid parental leave benefit within the unemployment insurance (UI) program to provide six weeks of paid family leave to new mothers and fathers, including mandatory funding for the states' startup costs. This type of approach has often been called "Baby UI." A different proposal floated by Representative Ann Wagner (R-MO) and Sen. Rubio (R-FL)--apparently with Ivanka Trump's approval--would allow parents to fund a current leave by borrowing money against future Social Security benefits. Neither of these proposals, however, go far enough for many lawmakers, but the President's focus in the State of the Union tells us that this is a sensitive issue in the ether and on Capitol Hill. Look for the House to move broader paid leave legislation and put pressure on the Senate to take up some form of legislation. And the President's upcoming budget may provide further details on his proposal, so stay tuned.

Labor Nominees Postponed Again. Last week, we reported that some long-pending nominees to senior positions at the Labor Department were scheduled for a committee vote this week. That hearing was postponed without explanation and without a rescheduled date. In related news, Mark Pearce joined Chai Feldblum on the list of Democratic nominees who have decided to no longer seek confirmation (to the NLRB and EEOC, respectively), and Sen. Patty Murray (D-WA) has stated that she will continue to block the Labor Department nominees until the Pearce and Feldblum replacements (who have not yet been identified) are confirmed as well, presumably as part of a package deal. Barring changes to Senate procedure (which have been proposed), the Labor Department nominees are likely to be in for a still longer wait, and ETA, WHD, and OSHA will remain without confirmed leadership in this Administration.

Minimum Wage Increase Debated. The House Education and Labor Committee today held a hearing on raising the minimum wage to \$15. Two panels of economists, business owners, workers, and professors discussed the potential impact of a minimum wage increase. The Raise the Wage Act would increase the current minimum wage of \$7.25 to \$15.00 over five years, with increases of approximately \$1.30 each year. The minimum wage would then be automatically increased annually thereafter. The bill would also eliminate the tipped employee wage, the youth/new hire wage, and the section 14(c) wage for certain individuals with disabilities. The Raise the Wage Act likely will pass the House, but faces an uncertain future in the Senate absent significant pro-employer concessions (e.g., a lower final wage, continued use of the tip credit, other exemption-type issues).

Paycheck Fairness Act Back on the Agenda. On February 13, the House Subcommittees on Civil Rights and Workforce Protections plan to hold a hearing titled "Paycheck Fairness Act (H.R. 7): Equal Pay for Equal Work." This "oldie but goodie" would massively expand the Equal Pay Act based on the incorrect premise that general statistical differences between male and female salaries are due to employer discrimination. The Act effectively would make it impossible to defend differences in such salaries in the same job, add unlimited punitive and compensatory damages even though the EPA does not require proof of intent, restrict employers' ability to inquire about prior salaries, and make numerous other changes. Seyfarth will be testifying at the hearing, enumerating the many problems with the bill and suggesting some improvements. This legislation has died each time it has been introduced in the past, but will undoubtedly pass the House by a strong margin. The last time that happened, it failed to advance in the Senate, but the shifting political sands mean that a Senate backstop is not a done deal this time around. We will need to follow its progress closely and consider alternatives.

EEOC Issues Guidelines on Impact of the Lapse in Appropriations. This week, the EEOC issued guidelines for the manner in which EEOC timelines would be impacted as a result of the 35-day lapse in appropriations. Mediations will be rescheduled, and some deadlines have been extended, for example information due between December 22 and January 28 is now due on February 12. Check EEOC's guidance for more details.

Fun Fact: Since January 2001, seven people have been nominated to serve as the Administrator of the Wage & Hour Division. The Senate has confirmed two of them. As a result, in the past three Presidential Administrations, WHD has had Senate-confirmed leadership for less than 30% of the time.

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