

# POLICY MATTERS

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**Paycheck Fairness Act Clears Committee.** On February 26, the House Committee on Education and Labor reported out H.R. 7, the Paycheck Fairness Act, which would radically revise the Equal Pay Act. House leadership is promising swift floor action, with the bill possibly being brought up within the next two to three weeks, with passage all but assured. Importantly, however, there were no defections at the Committee level on the Republican side, a fact that was **not** a given going into this debate considering the sensitivities of the issues. You may recall that Seyfarth partner Camille Olson was the sole witness invited to [testify](#) on problems with the legislation; the other six witnesses were wholly supportive. Her testimony helped lay the groundwork for a number of amendments, including one striking new provisions that would quite literally make it impossible for an employer to demonstrate that a factor other than sex explained the pay differential at issue. Unfortunately, the Committee rejected the amendments, and cleared the way for the plaintiffs' bar to rack up easy wins, with unlimited punitive and compensatory damages and expanded class actions.

Previously, House-passed versions of this overreaching legislation have died in the Senate but, given the heightened focus on these sensitive issues and the fact three Republican women are up for reelection next year, we are taking nothing for granted and will remain engaged as the debate moves to the Senate.

**Senate Committee Moves Labor Nominees (Again).** In a party line vote, on February 27, the Senate HELP Committee once again approved the nominations of a number of key labor nominees, including the heads of OSHA, ETA, and the Wage & Hour Division, and the chair of the EEOC. Their nominations now proceed to the full Senate, where the if and when of their confirmations remain unclear.

**Legislators Introduce Bill Aimed at Ending Mandatory Arbitration.** Sen. Blumenthal (D-CT), and Reps. Johnson (D-GA) and Nadler (D-NY) today [announced](#) their introduction of the Forced Arbitration Injustice Repeal (FAIR) Act. Not to be confused with the Federal Adjustment of Income Rates (FAIR) Act of 2019, also introduced in this Congress, the arbitration-focused bill would reportedly invalidate predispute agreements to arbitrate employment, consumer, antitrust, and civil rights matters. Text of the bill is not yet available.

**Bipartisan Bill to Ease Standards for ADEA Claims.** Reps. Bobby Scott (D-VA) and Jim Sensenbrenner (R-WI) and Sens. Bob Casey (D-PA) and Chuck Grassley (R-IA) introduced H.R. 1230/S. 485, the "Protecting Older Workers Against Discrimination Act." Another oldie which has been introduced in past Congresses, the bill would overrule the Supreme Court's 2009 decision in *Gross v. FBL Financial Services, Inc.*, which requires plaintiffs in age discrimination cases to prove "but for" causation. According to the sponsors, the bill would ease the standard of proof for ADEA cases and bring it in line with Title VII requirements. Text of the bill is not yet available, however. Notwithstanding its bipartisan introduction, the bill faces an uncertain future. We have been involved in past negotiations over prior versions of this legislation and anticipate will be again.

**New Hampshire Senate Passes Non-Compete Ban.** The state legislatures remain active on a wide variety of labor and employment issues, but there has been a recent uptick in efforts to ban (in some form or fashion) the use of non-compete agreements. New Hampshire is the latest state to enter the fray, with the state Senate passing--by voice vote and without debate--a bill prohibiting employers from using non-compete agreements for low-wage workers. The bill is expected to move on to the state House this spring. See Seyfarth's Trading Secrets [blog](#) for more.

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