



POLICY MATTERS

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WHD Jumps Into the Joint Employer Arena. Earlier this week, the Department of Labor's Wage & Hour Division announced a [proposed rulemaking](#) on the issue of joint employment under the FLSA. If adopted as proposed, the rule would establish a four-factor balancing test and would set out a number of examples applying the new test's factors. Comments--which are sure to be many--will be due 60 days after the proposal is published in the Federal Register. As of now, the proposal has not yet been published. For more on the joint employer rulemaking, see Seyfarth's [Wage & Hour Litigation blog](#). And stay tuned for more updates on WHD's three regulatory projects--joint employer, regular rate, and salary threshold for white-collar exemptions.

EEO-1 Form: Yesterday, the business community filed an amicus brief prepared by Seyfarth with the U.S. District Court for the District of Columbia describing in detail the impossibility of employers coming into quick compliance with the new EEO-1 form, also known as "Component Two," and requesting at least an 18 month delay. The arguments were essentially that EEOC was not prepared for the filing of Component Two, the business community had relied in good faith on representations by the EEOC that the operative document was the prior EEO-1 form, and that very real practical and operational obstacles made compliance with the new form in the near future virtually impossible. The court had not yet heard from the business community as to the difficulties in compiling the information necessary to meet this new, exponentially increased, data reporting requirement, and hence this amicus brief was particularly important. While the EEOC has now indicated that it could be ready to implement the new form by September 30, 2019, its submission was characterized by many caveats, and we argued that the agency itself admitted it could meet that deadline only through retaining an outside contractor in excess of 3 million dollars, could not guarantee the confidentiality of the data, and other qualifiers. Seyfarth has long been involved in this ongoing battle and has played a critical role in supporting the business community's opposition to the new EEO-1 form and, now, in educating the court as to the immense technological and economic burdens employers would face should the court impose an unrealistic compliance deadline.

Senate Votes to Limit Debate on Most Nominees. Parliamentary procedure and the rules of the U.S. Senate are not typically newsworthy events. In the past day, however, Majority Leader McConnell's decision to invoke the "nuclear option" has garnered a significant amount of attention. Through some parliamentary maneuvering, the Senate rules have been changed--most nominees will now be subject to a maximum of two hours of debate, rather than the previous 30-hour standard. It is expected that the reduction in debate time will allow the Senate to consider nominees in a more expeditious manner, and finally may result in votes for the current nominees to head OSHA, WHD, the Employment & Training Administration, and the EEOC.

Senate Judiciary Considers Arbitration in America. This week, the Senate Judiciary Committee held a [hearing](#) on "Arbitration in America." More than 20 bills addressing arbitration in some form or fashion have been introduced in the current session of Congress, most of which lack, as of now, the support needed to clear both the House and Senate. Senator Lindsey Graham (R-SC), the Chair of the Committee, stated that he "want[s] to look long and hard on how the system works; are there any changes we can make?" Thirteen Senators attended the hearing, including two presidential contenders. Few supported the status quo. Expect more activity on this critical issue.

States Continue Addressing Minimum Wage and Paid Leave Issues. In the absence of federal activity (notwithstanding the introduction of numerous bills without broad bipartisan support) on minimum wage and paid leave, the states have been pursuing their own solutions. The Maryland legislature--overriding the Governor's veto--voted to increase the state's minimum wage from \$10.10 per hour to \$15.00 (more than double that of neighboring Virginia). The increase will be phased in, with the \$15 level arriving in 2025. The state's minimum wage will rise to \$11.00 per hour next year. Meanwhile, Massachusetts published a revised version of its highly anticipated proposed Paid Family and Medical Leave regulations. For more on the proposal, see Seyfarth's [Client Alert](#) on the topic.

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