

# POLICY MATTERS

PRESENTED BY SEYFARTH'S GOVERNMENT RELATIONS AND POLICY GROUP

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**Is That the Nomination Train Starting Up?** As we reported previously, the U.S. Senate recently changed its rules to limit debate on most nominees. The practical effect of the change is to speed up the confirmation process. This week, we have seen the first labor agency beneficiary of the new rules: Cheryl Stanton, whose nomination had been languishing for the last year-and-a-half, was confirmed on Wednesday by a [53-45](#) margin. We still await action for the heads of OSHA and the Employment & Training Administration, as well as an EEOC Commissioner and General Counsel (although the latter is still pending before the Senate HELP Committee).

**Hearing Held on Equality Act.** On Tuesday, April 9, the House Education and Labor Committee's Subcommittee on Workforce Protections held a [hearing on the Equality Act \(H.R. 5\)](#). Several witnesses testified at the hearing, including Seyfarth's Senior Counsel Larry Lorber. The Equality Act, with 240 cosponsors, would broadly modify existing civil rights laws to extend antidiscrimination protections to LGBTQ Americans in access to employment, education, credit, jury service, federal funding, housing, and public accommodations. Mr. Lorber [focused](#) on the employment provisions of the bill, which would directly amend Title VII. His testimony noted how certain issues in the bill (e.g., disparate impact, the collection of statistics, the building of additional faculties, preferential treatment, and dress and grooming standards) had been more clearly and directly addressed under the Employment Nondiscrimination Act (ENDA), which has been introduced in several previous sessions of Congress. Although the Education & Labor Committee took the first bite at the Equality Act apple, due to the many non-employment issues in the bill, the House Judiciary Committee has primary jurisdiction over the Act and will likely take the lead going forward (including future hearing and any mark-ups). House passage is expected, but the future of the bill--if not amended--in the Senate Judiciary Committee appears dim.

**One Bill to Rule Them All.** Throughout this session of Congress, we have seen a wide variety of bills addressing issues such as minimum wage, sexual harassment, and arbitration. Multiple alternatives have been introduced, with different ways of approaching the issues. This week, Senator Murray (D-WA), the Ranking Member of the Senate HELP Committee, introduced one alternative that addresses multiple issues. Although the text of the bill is not yet available, according to Sen. Murray's [press release](#), the Be HEARD Act ([S. 1082](#)) would (1) end mandatory arbitration and pre-employment non-disclosure agreements; (2) extend civil rights protections for discrimination based on sexual orientation and gender identity, as well as for independent contractors and interns; (3) lengthen statutes of limitations and increase available damages; and (4) eliminate the tip credit under the FLSA.

**NYC Close to Banning the (Bong) Box.** On Tuesday, the New York City Council overwhelmingly (41-4) passed a bill that would make it unlawful to require a job applicant to submit to a marijuana test as a condition of employment. The bill would exempt a number of positions from its scope, including law enforcement, construction, commercial drivers, and positions requiring supervision or care of vulnerable populations. For more information, hit Seyfarth's blog for all things marijuana, [The Blunt Truth](#).

**WHD Joint Employment Proposal Published.** As expected, the Wage & Hour Division this week published its [proposed rule](#) on joint employment under the FLSA. With a June 10 deadline for submitting comments, joint employment joins the [proposed white collar salary threshold increase](#) (May 21 deadline) and the [proposed revisions to the regular rate calculations](#) (May 28 deadline) on a busy Spring agenda for WHD. Join Seyfarth's Wage & Hour Litigation Practice Group at a [webinar](#) next Wednesday, April 17, at 1:00 pm ET for a discussion of all three proposals.

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