

POLICY MATTERS

PRESENTED BY SEYFARTH'S GOVERNMENT RELATIONS AND POLICY GROUP

April 18, 2019

The House and Senate are adjourned this week and next for their State/District work periods.

EEOC Releases Enforcement and Litigation Stats. Last week, the EEOC released its comprehensive enforcement and litigation statistics for Fiscal Year 2018. There was a dip in the number of total charges filed, but a substantial increase in the EEOC's monetary recoveries. Retaliation and sex discrimination charges were the most frequently alleged. See Seyfarth's [Workplace Class Action blog](#) for more details.

The EEO-1 Saga Rolls On. On Tuesday, the U.S. District Court for D.C. held a status hearing in the ongoing litigation over the EEO-1. The most recent hearing focused on a key question: when can the EEOC realistically be up and running to collect and process the new EEO-1 form, Component Two. The Court closely questioned the EEOC's data collection expert on the EEOC's preparation for the collection of Component Two, as well as the roadblocks that might be in the way of moving the agency to where it could begin collecting that data. EEOC's expert conceded that a September 30 deadline was feasible, but meeting that date would mean the data collection process would not be up to industry standards. There was also discussion of what should happen when the OMB 3 year approval of Component Two expires on September 30, e.g. could that deadline be "tolled" under the Court's authority. The Court offered the parties an opportunity to file written summations with a proposed order targeted for April 22. As noted last week, Seyfarth filed an extensive amicus brief with the Court detailing the real practical and technological obstacles facing employers in complying with an unrealistic deadline, and will continue to closely follow developments. We expect the Court to issue a firm deadline very soon.

New OMB Circular on Rulemaking. On April 11, the White House's Office of Management and Budget (OMB) issued a new guidance memorandum relating to rulemaking. The [memorandum](#), which is directed to the heads of Executive Branch Departments and Agencies, uses the Congressional Review Act (CRA) as a hook to reassert the power of the Office of Information and Regulatory Affairs (OIRA) within OMB to review "rules" – as broadly construed under the Administrative Procedure Act – issued by agencies. The CRA distinguishes between major and minor rules with regard to effective dates, and the memorandum emphasizes this fact to make clear that OMB has the ultimate authority to determine what is major and what is minor. OMB also reminds the agencies (and the public) that there are several criteria for determining whether a particular rule is major; there is more to the assessment than whether the rule will have an annual effect on the economy of \$100 million or more. The clear signal being sent is that OMB will rigorously assert its oversight authority during rulemaking. Whether this is helpful will depend on the underlying rule in question and the underlying circumstances, but it is important to be aware of this latest wrinkle by the Administration in the rulemaking area.

“Medical Marijuana User” Now a Protected Class in New Mexico. As state legislatures have legalized marijuana around the country, employers have struggled to determine the extent of their ability to take employment action against employees for using marijuana. New Mexico recently resolved some – but not all – of that struggle. New Mexico employers are prohibited from taking any “adverse employment action against an applicant or an employee based on conduct allowed under” the law, including declining to hire, terminating, or taking any other adverse action against an individual because he or she is using medical marijuana or received a recommendation for such use by a provider. See Seyfarth’s [The Blunt Truth blog](#) for more.

By: [Randy Johnson](#) and [Alex Passantino](#)

Randy Johnson is a Partner in Seyfarth Shaw’s Washington, DC office and chairs the firm’s [Government Relations and Policy Practice Group](#) (GRPG). Alex is a Partner in Seyfarth Shaw’s Washington, DC office and Co-Chair of the firm’s Wage and Hour Litigation Practice Group.

www.seyfarth.com



Attorney Advertising. This is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP | Policy Matters | April 18, 2019

©2019 Seyfarth Shaw LLP. All rights reserved. “Seyfarth Shaw” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.