

POLICY MATTERS

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On BLS Releases New Gig Economy Worker Data. Earlier today, the Department of Labor's Bureau of Labor Statistics (BLS) issued its much anticipated [report](#) on the gig economy. The report, which was the first government study on the subject since 2005, found that the number of temporary workers decreased over the past 12 years, going from 10.7% of the nation's workforce to 10.1%. Additionally, a survey question within the study found that 79% of independent contractors overwhelmingly preferred their work arrangement to traditional jobs ([Table 11](#)), a finding which runs counter to a popular narrative that gig workers would prefer traditional employment.

Seyfarth's [Camille Olson](#), who [testified](#) before the Senate Health, Education, Labor, and Pensions Committee on the gig economy in February, was [quoted](#) as saying "[t]his report offers new, hard data on workers in contingent and alternative employment arrangements which will help guide the broader debate on the pros and cons of the so-called 'gig economy.'" The BLS plans to release additional findings specific to workers who find gigs through an app or website in September.

Joint Employer Rule Coming This Summer; NLRB Rejects Motion to Reconsider *Hy-Brand*. On Tuesday, NLRB Chairman John Ring [replied](#) to an [earlier letter](#) from Senators Elizabeth Warren (D-MA), Bernie Sanders (I-VT), and Kirsten Gillibrand (D-NY) which raised concerns over the Board's [announcement](#) to address the current joint-employer standard by way of rulemaking. Defending the Board's decision to proceed with a rulemaking, Chairman Ring stated that a "[r]ulemaking is appropriate for the joint-employer subject because it will permit the Board to consider and address the issues in a comprehensive manner and to provide the greatest guidance." Chairman Ring further reiterated that the Board is "working toward issuance of a Notice of Proposed Rulemaking (NPRM) as soon as possible, but certainly by this summer."

The day after Ring's response, the NLRB [rejected a motion to reconsider *Hy-Brand's*](#) joint employer case after the Board vacated its previous December decision in February. The Board ruled *4 - 0 to deny the request for consideration on the grounds that it "[failed to identify any material error](#)" in the Board's decision or "otherwise demonstrate extraordinary circumstances warranting reconsideration." (*Member Bill Emanuel did not participate in the case due to the same perceived conflict of interest concerns which caused the Board to vacate the original Hy-brand decision.)

EEOC Nominees Held Up in the Senate. As [reported by Bloomberg](#), the Trump Administration's attempt to reinstate a Republican majority (the first in 9 years) at the Equal Employment Opportunity Commission (EEOC) is currently being blocked by four Republican Senators. The four GOP Senators—Mike Lee (R-UT), Marco Rubio (R-FL), James Lankford (R-OK), and Steve Daines (R-MT)—are holding up President Trump's reconfirmation of Democrat Chai Feldblum, seemingly due to disagreements over her social policies. However, due to a busy legislative calendar in the Senate, Feldblum's reconfirmation is being "packaged" with President Trump's Republican nominees, Janet Dhillon and Daniel Gade, meaning all of the nominees would have to pass the Senate together. The confirmation of all three would give the Republicans a 3 - 2 majority on the Commission, but due to the hold placed on Feldblum by the four Senators, the Commission remains at a 2 - 1 Democratic majority. Stakeholders have been pressuring Senator Lee on his position from all sides and there have been no signs that he will change his stance.

House Republicans Work Towards DACA Fix; Discharge Petition Looms. House Republicans held a closed-door meeting this morning to see if members of the party could come to a consensus on the future of DACA. Reports on the meeting varied, with Politico pessimistically reporting that DACA talks “[went off the rails](#)” and CNN optimistically stating that Republicans were “[on the verge of an immigration breakthrough](#).” (Both articles were published within 6 minutes of each other.) The pressure to find a solution continues to build as moderate members of the party work to earn more support for their discharge petition which would force votes on a series of DACA related immigration bills. In order for the [discharge petition](#) to be executed, it must be signed by a majority of House members—at least 218 members, to be exact. As of this afternoon, the petition has 215 signatures, 23 of which are Republicans.

As a refresher, the discharge petition would force a vote on [H. Res. 774](#), a bill which would lead to the consideration of four different DACA related proposals in the House. A simple majority is needed for a proposal to pass and the measure which receives the most votes would then be adopted and sent to the Senate.

Senate Hearing on National Security with Regard to Chinese Students. The Subcommittee on Border Security and Immigration of the Senate Committee on the Judiciary [held a hearing](#) on Wednesday on the adequacy of safeguards to prevent possible espionage and technology theft by foreign students on behalf of their governments, in particular the government of China. Seyfarth’s [Leon Rodriguez](#), former Director of U.S. Citizenship and Immigration Services, [testified](#) at the hearing. The essence of Rodriguez’s [testimony](#) was that adequate security checks already exist for these students prior to their admission and that authorities possess adequate existing tools to remove students engaged in illicit conduct and to disrupt that conduct upon detection. Mr. Rodriguez also underscored the importance of addressing such concerns in an individualized manner, rather than impugning all visitors of any nationality. This issue is relevant to the employer community as they face a shortage of qualified, high-skilled workers, and visiting students, including students from China, represent an important source of high-skilled talent for key sectors in the U.S. economy.

DHS to Hold Second Seasonal Worker Lottery for H-2B Visas. On June 6, U.S. Citizenship and Immigration Services announced that it would [hold a lottery](#) for 15,000 H-2B visas from petitions that were received between May 31 and June 6. The additional 15,000 H-2B visas were [first announced on May 25](#), and will be available for the remainder of Fiscal Year 2018 (i.e., through September 2018). The first lottery for 33,000 H-2B visas was held in March. However, earlier today, a bipartisan group of senators [sent a letter](#) to Secretaries Nielsen and Acosta, [questioning the need for an additionally lottery](#), claiming wage stagnation for U.S. workers and abuses upon of H-2B workers as reasons against it. DHS and DOL did not have an immediate response to the letter.

McConnell to Shorten August Recess. On Tuesday, Senate Majority Leader Mitch McConnell [canceled most of the Senate’s August recess](#), saying the chamber would remain in session to work on spending bills and confirming nominees. Senators are now expected to go to their home states for the first week of August before returning to Washington for the rest of the month. Some see the [decision as purely political](#) to keep senators in DC and not campaigning for reelection back home. Senate Democrats are defending 26 seats in the upcoming election (10 of which are in states President Trump won in 2016), compared to only 9 seats for Republicans. The House of Representatives still plans to be out of session for August.

Notable Outcomes from the “Super Tuesday” Primaries:

- [Montana state Auditor Matthew Rosendale](#) won the Republican nomination for U.S. Senate in the race to challenge Democratic incumbent Jon Tester in November. It’s looking to be one of the year’s top Senate races as President Trump won Montana by 20 points and has [vowed to unseat Tester](#) for bringing down his nominee to be Secretary of Veterans Affairs. There has been limited polling of the race, but Senator Tester enters the fall with a substantial fundraising advantage: he has \$6.3 million to Rosendale’s \$400,000.
- [Former Celgene executive Bob Hugin](#) easily won the Republican Senate primary in New Jersey. He will face off against scandal-plagued Democratic incumbent Robert Menendez, whose margin of victory in his primary against Lisa McCormick, a political unknown who reported spending no money at all, was far smaller than expected. McCormick received almost 40 percent of the vote.

- [Senator Roger Wicker of Mississippi](#) easily won his Republican primary, having gained the full support of President Trump. Two Democratic candidates will move to a runoff in their bid to challenge Wicker for the seat, though no Democrat has won in Mississippi since the 1980s.

Next Week: Multiemployer Pension Plan Hearing on Employer Perspectives. The Joint Select Committee on the Solvency of Multiemployer Pension Plans will convene a [hearing](#) next Wednesday, June 13, to hear employer perspectives on the multiemployer pension system. Establishing the joint select committee was agreed to during Senate budget negotiations [in order to address the impending pension crisis](#). The bipartisan committee is tasked with producing a bill to shore up multiemployer plans that are at great risk of insolvency. Wednesday's hearing will take place at 2:00 p.m ET.

By: [Randy Johnson](#) and [Walt Mullan](#)

Randy Johnson is a Partner in Seyfarth Shaw's Washington, DC office and chairs the firm's [Government Relations and Policy Practice Group](#) (GRPG). Walt Mullan is the Senior Manager of Government Affairs and Policy for the GRPG.

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