



POLICY MATTERS

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Scalia to Replace Acosta as Secretary of Labor. Last week, President Trump [tweeted](#) his intent to nominate Eugene Scalia as Secretary of Labor. Scalia served as Solicitor of Labor in the George W. Bush administration and has been in private law practice, focusing on labor, employment, and administrative law, since leaving the administration in 2003. With a crowded Senate calendar, a long August recess, and the fact that he has not yet actually been nominated, we expect September will be the earliest we see Scalia confirmed to the Cabinet.

House Subcommittee Holds Hearing on “Modernizing America’s Labor Laws.” The House Health, Employment, Labor, and Pensions Subcommittee held a [hearing](#) titled “Protecting the Right to Organize Act: Modernizing America’s Labor Laws.” The focus of the hearing was [H.R. 2474](#), marking the second time the bill has had a [hearing](#) in this subcommittee in the past three months. As we have discussed in prior issues, the scope of the bill is incredibly broad: among other things, it would codify an expansive joint employment standard; eliminate the ability of employers to hire replacement workers during an economic strike; reverse the Supreme Court’s recent Epic decision on class action arbitrations; create a new private right of action for workers when the Board does not take up a case; establish expanded damages and civil penalties; effectively repeal state right-to-work laws by permitting “fair share” fees; expand the definitions of “supervisor” and “employee”; impose first contract interest arbitration; broadly repeal existing protections against secondary boycott actions, and allow card check recognition where a “violation” has occurred. Although the second hearing sheds some light on the priority this bill may have in the House, it will not be taken up by the Senate.

House Passes Multiemployer Funding Legislation. Last night, July 24, the House passed the Rehabilitation for Multiemployer Pension Act (H.R. 397), often referred to as the Butch Lewis Act, by the vote of 264-169, with 29 Republicans in support. The bill is aimed at providing relief for underfunded plans through 30 year loans, to be administered by a new Pension Rehabilitation Administration. While there is bipartisan consensus that the multiemployer system faces a severe underfunding crisis, this bill was moved to the Floor without hearings or even an Education and Labor markup which allowed amendments. It was generally criticized by the Republicans as a bailout without meaningful reforms to reign in future spending. (A bipartisan working group from the 115th Congress which had been reportedly near a deal was not reconstituted this Congress). Nevertheless, the 29 Republicans voting in support signal the political sensitivities of the issue as Congress moves in to an election-year. While the problem is pressing, it is clear that the Senate will not take up this version of multiemployer reform, but may nevertheless act. Stay tuned for further action as elections near.

Final EB-5 Regulation Issued. After flurries or rumors that the regulation had been killed, the regulation was indeed [published on July 24, 2019](#), taking effect November 21. The rule makes very significant changes to the program, including marked increases in the investment thresholds, conferral of exclusive authority to USCIS as to designation of targeted employment areas (eliminating the state roles) and retention of priority dates for petitioners. No one in the business community appears happy with the regulation and there is some talk of again going to Congress to cut a compromise deal which would trump the regulation. Past efforts at reform of course eventually died in the Congress and the path forward is far from clear, particularly given new leadership in the House Judiciary Committee. Will keep you informed as to future developments.

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