

# POLICY MATTERS

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Welcome back!! Congress has returned to D.C. and the policy world has been busy, both here and across the country.

**Scalia Hearing Scheduled.** The nominee for Secretary of Labor, Eugene Scalia, now has a Senate HELP Committee hearing date -- September 19, 2019. Following his [hearing](#), the committee will vote on his nomination, followed (presumably) by the full Senate.

**FAIR Act Passes House Judiciary.** As we [reported](#) previously, earlier this year, a subcommittee of the House Judiciary Committee held a hearing on predispute arbitration agreements. At the time, the focus was on the [Restoring Justice for Workers Act](#), which had just been introduced and which would end the use of arbitration in employment disputes. It appears that the committee's focus was not broad enough. This week, the House Judiciary Committee passed the Forced Arbitration Injustice Repeal (FAIR) Act ([H.R. 1423](#)) along a largely party-line vote. The FAIR Act would prohibit a pre-dispute arbitration agreement if it requires arbitration of an employment, consumer, antitrust, or civil rights dispute. The Act now heads to the House floor.

**EEO-1 Revisited.** Today, EEOC [published a notice](#) in the Federal Register announcing that it was reconsidering the so-called Component 2 of the recently revised EEO-1 form, as to both its utility and burden, and noting that at this juncture: "The EEOC does not intend to submit to OMB a request to renew Component 2 under OMB control number 3046 – 0007." (p. 48138) (now due to expire September 30.) Comments are requested. The announcement is worth a close read as it is a great review of the issues in this tortured history and the past errors of the agency in evaluating the evidence. Nevertheless, the September 30 deadline imposed by the US District Court in DC should be considered still in effect, albeit on appeal but not stayed, before the DC Circuit. Seyfarth has long been involved in this issue going back several years and this announcement, encouragingly, clearly opens the door for a blanket reconsideration of Component 2. Stay tuned for further developments.

**Wage-and-Hour Regulations Moving Towards Completion.** While Congress was in recess, Acting Secretary of Labor Pizzella and Wage and Hour Administrator Stanton moved a number of key initiatives closer to completion. In the past 60 days or so, the Department has sent the following regulatory packages to the White House Office of Information and Regulatory Affairs (OIRA) for final review: the final rule increasing the salary threshold for exempt status under the FLSA, the final rule clarifying and changing rules related to the regular rate of pay, a proposed rule implementing statutory changes related to tipped employees, and a proposed rule related to the use of fluctuating workweek method of payment. Generally, regulations spend 60-90 days at OIRA, so we expect to see publication of these rules in the Federal Register in the near future.

**California Is California-ing Again.** Earlier this week, the California Senate passed the much-discussed-and-debated AB 5, which would apply the "ABC" independent contractor test to all Labor Code, Unemployment Insurance Code, and Wage Order claims in California. The bill, which is expected to be passed by the California Assembly and signed by the Governor, contains a number of statutory exemptions, many of which were the result of the heavy lobbying efforts. For more information on the bill, see Seyfarth's [Client Alert](#).

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