



# POLICY MATTERS

PRESENTED BY SEYFARTH'S GOVERNMENT RELATIONS AND POLICY GROUP

September 26, 2019

**Scalia Approved as Secretary of Labor.** Following approval by the Senate Health, Education, Labor and Pensions Committee earlier this week, this afternoon Eugene Scalia was approved by a 53-44 vote of the full Senate.

**PRO Act Advances.** As expected, the House Education and Labor Committee on Wednesday approved a substitute amendment to [H.R. 2474](#), the Protecting the Right to Organize Act of 2019, on the party line vote of 26 to 21. Thirty-one Republican amendments were rejected. As noted in prior newsletters, the bill constitutes a wish list for organized labor (before which other efforts including the Employee Free Choice Act shrink in comparison), with amendments ranging from redefining the employment relationship, to all but prohibiting right-to-work laws, to permitting secondary boycotts, to codifying the Obama "persuader" regulation, to providing a private right of action with punitive and compensatory damages. The final version -- i.e., the "substitute" -- added other provisions which tilted the bill even further. The markup was contentious and the various Republican amendments offered highlighted serious problems with the legislation. While House floor action is expected, with 208 Democratic cosponsors but no Republicans, the bill has no future in the Senate. Nevertheless, it does provide a look at the possible direction of future labor reform efforts, depending on what happens in next year's elections.

**DOL Increases Salary Threshold for White Collar Exemptions.** Earlier this week, the Department of Labor announced its final rule increasing to \$684/week the salary threshold for the white-collar exemption, and increasing the minimum compensation for the highly-compensated employee provision to \$107,432. Both provisions take effect on January 1, 2020. For more information, see [Seyfarth's Wage & Hour Litigation blog](#).

**OFCCP About to Start Collecting Affirmative Action Plans Electronically?** From time-to-time, the Government Accountability Office (GAO) reviews the performance of various government programs. In 2016, GAO issued a [report](#) finding that the OFCCP's oversight was limited by reliance on contractors' voluntary compliance with affirmative action plan (AAP) requirements. In that report, GAO recommended that OFCCP develop a mechanism to monitor AAPs on a regular basis, and suggested that it could electronically collect AAPs and contractor certification of annual updates. Since that time, not much has been heard on the issue . . . until last week, when GAO released a [status update](#) indicating that OFCCP was in the process of obtaining OMB approval for collecting AAPs and planned to launch an AAP portal for public use. The announcement is expected on September 30. Any such information request will be subject to public comment.

**House Subcommittee Holds Hearing on Employee Misclassification.** Finally, as noted last week, today, the Workforce Protections Subcommittee of the House Committee on Education & Labor held a [hearing](#) titled "Misclassification of Employees: Examining the Costs to Workers, Businesses, and the Economy." The focus of the hearing was a proposed bill with the working title of the Payroll Fraud Prevention Act of 2019. In its current form, that bill would require businesses to provide notice to any "individual providing labor or services for remuneration." The notice would include the worker's classification (i.e., employee or non-employee), a link to a proposed DOL website, and the address and phone number to the local Wage & Hour Division office. Failure to provide the notice -- or failure to provide an accurate or timely notice -- would result in a presumption of

employee status, rebuttable only by clear and convincing evidence. The bill would also increase liquidated damages for violations of the FLSA accompanying misclassifications, as well as make civil money penalties (CMP) available for any violation of the FLSA. Repeated or willful violations -- the current standard for assessing CMPs -- would be subject to CMPs up to \$5,000. *Policy Matters's* own Alex Passantino testified at the hearing.

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 Passantino 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](http://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 | September 26, 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.