



# POLICY MATTERS

PRESENTED BY SEYFARTH'S GOVERNMENT RELATIONS AND POLICY GROUP

October 18, 2018

## The Reg Agenda Edition

With the House and Senate gone until after the midterm elections, all is quiet on the legislative front. The Trump Administration just released its [Fall 2018 Regulatory Agenda](#), however, so we focus this issue of Policy Matters on the upcoming work of the Executive Branch.

**Joint Employment Everywhere.** For several years now, there have been efforts in Congress to rein in the expansive view of joint employment espoused by the Obama Administration labor agencies. For example, the [Save Local Business Act](#) would have amended the NLRA and FLSA to specifically codify a more constrained definition of joint employment under those acts. Although the House passed the bill, the Senate has not yet taken it up. Not surprisingly, then, the Trump NLRB and DOL have both begun initiatives to revisit the definition. The NLRB [proposed a rule](#) in September that would find joint employment only where the joint employer possesses and exercises substantial, direct, and immediate control over the essential terms and conditions of employment and has done so in a manner that is not limited and routine. Similarly, DOL's Wage & Hour Division has [announced](#) an effort to "clarify the contours of the joint employment relationship to assist the regulated community in complying with the [FLSA]." DOL's proposed regulation is anticipated in December.

**Salary Level Regulations Kicked a Little Bit Farther Down the Road.** The seemingly never-ending saga of DOL's efforts to increase the minimum salary threshold required for the executive, administrative, and professional exemptions is going to be prolonged yet again -- but only by a bit. On the same day it completed the last of its [listening sessions](#), DOL announced that its expected timeline for proposing a salary level had slipped from January 2019 to March 2019.

**Immigration Booming at ETA.** DOL's Employment & Training Administration is in the thick of the Administration's regulatory efforts on immigration with anticipated [proposals](#) under the [H-2A](#) and [H-2B](#) programs and a [final rule](#) for the CW-1 visa program for workers from the Northern Mariana Islands.

**Administration Keeps Focus on Apprenticeship.** Keeping with the Administration's desire to improve and increase apprenticeship programs, both ETA and WHD will be tackling aspects of apprenticeship. WHD has already proposed a rule to consider whether it should amend Hazardous Occupations Order No. 7 (occupations involved in the operation of power-driven hoisting apparatus) to reflect current economic and work environments and allow for safe and meaningful employment (and apprenticeship) opportunities for youth in healthcare. In December, ETA expects to issue a proposal to establish guidelines for third parties to accredit high-quality, industry-recognized apprenticeship programs.

**EEOC Hopes to Be Doing Well(ness).** In addition to a number of procedural and technical proposals, as well as a few related to government employees, the EEOC continues to list on its agenda amendments to the [ADA](#) and [GINA](#) regulations related to incentives and employer-sponsored wellness plans. In August 2017, the EEOC was ordered--in litigation that is still pending--to reconsider its previous iteration of the regulations. The target date for a new proposal is June 2019, but that date presumes a sufficient number of Commissioners to establish a quorum, which would not be the case absent some confirmations by the Senate, a fact that the Judge has acknowledged in allowing the original January 2019 deadline to be extended.

**OLMS Gets Down to Business.** When the political party in the White House changes, so, too, do many of the previous Administration's interpretations. Two examples that demonstrate the principle that "elections have consequences" can be found on the agenda of DOL's Office of Labor-Management Standards. One is an [interpretation](#) that intermediate bodies that are subordinate to a national or international labor organization are themselves covered by the LMRDA. The second would [re-establish Form T-1](#) to capture financial information pertinent to trusts in which a labor organization is "interested." Both proposals would reverse Obama Administration efforts, which themselves reversed Bush Administration policies.

**OSHA Staying Busy.** By far the largest labor agency agenda (at least in terms of number of anticipated regulatory and deregulatory activities) can be found in OSHA. From a [final rule](#) (expected June 2019) removing a requirement to electronically submit to OSHA information from the OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) to a [Request for Information](#) related to computer-based controls and OSHA's lock-out/tag-out standard to regulatory efforts related to [tree care](#), [workplace violence](#), [mechanical power presses](#), [silica exposure](#), and more, OSHA plans to address a wide variety of issues in the next twelve months.

**OFCCP to Address Religious Exemptions.** As early as December, the OFCCP [plans](#) to propose updates to its regulations related to the exemptions and other protections provided to religion-exercising organizations (who are federal contractors) in their defense of discrimination complaints. The OFCCP will also address making the stay of enforcement for Tricare providers permanent.

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Seyfarth Shaw LLP | Policy Matters | October 18, 2018

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