

Beltway Buzz, April 26, 2019

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By [James J. Plunkett](#)



The Beltway Buzz is a weekly update summarizing labor and employment news from inside the Beltway and clarifying how what's happening in Washington, D.C. could impact your business.



Congress: Looking Ahead. Congress is wrapping up a two-week recess and will return to Washington, D.C., on April 29, 2019. This will begin a five-week legislative stretch that will keep both chambers in session until Memorial Day. In the U.S. House of Representatives, look for potential movement during this period on bills such as the Paycheck Fairness Act and the Equality Act. In the U.S. Senate, Majority Leader Mitch McConnell (R-KY) will likely continue to focus on confirming federal judges, but he has also set up a floor vote on the nomination of Gordon Hartogensis to be director of the Pension Benefit Guaranty Corporation.

EEO-Go! Employers will have until September 30, 2019, to report wage and hours worked data to the Equal Employment Opportunity Commission (EEOC), according to an April 25, 2019, bench decision by Judge Tanya S. Chutkan of the U.S. District Court for the District of Columbia (Component 1 data is still due by May 31, 2019). [James A. Patton, Jr.](#), [Kiosha H. Dickey](#), and [Hera S. Arsen, Ph.D.](#) have all the [details](#), including how the judge also ordered the EEOC to collect additional years of data from employers. Still, this might not be the end of the EEO-1 saga. First, there is still time for the government to appeal the decision of the district court. Second, with two-hour post-cloture debate times [now a reality in the Senate](#), it is possible that EEOC nominee Janet Dhillon may be confirmed sometime soon. If so, she may have a say in this before it is all said and done.

SCOTUS to Hear Sexual Orientation and Gender Identity Cases. On April 22, 2019, the Supreme Court of the United States announced that it will hear three cases concerning whether sexual orientation

and gender identity are protected under Title VII of the Civil Rights Act of 1964. [Joshua P. Lushnat](#) has all the [details](#). The law on this matter remains unclear, though federal contractors are already [prohibited from discriminating on the basis of sexual orientation and gender identity](#). Besides the obvious historical implications of a Supreme Court decision on this issue, the cases have other interesting employment policy elements:

- What impact will the Supreme Court's decisions have on the Equality Act's chances of passage? Sometimes, a decision from the high court can galvanize support for a legislative correction. However, by the time the Supreme Court issues its decisions in the cases, we may be just several months out from the 2020 election—a period in which we are unlikely to see many votes on major pieces of legislation.
- This issues have split not only the courts, but the executive branch as well. The EEOC's position is that federal law prohibits discrimination on the basis of sexual orientation and gender identity. The S. Department of Justice (DOJ)—in the current administration—does not share that view. However, because the DOJ represents the EEOC at the Supreme Court, chances are slim that the EEOC will have an opportunity to present its views to the justices, even though it is a party to one of the three cases.

The combined cases will be heard during the term beginning in October of this year.

Apprenticeship Regs on the Way? Back in June of 2017, President Trump issued an executive order to streamline and expand the [availability of workplace apprenticeship programs](#). Almost two years have passed, and the regulations implementing the order may soon see the light of day (in proposed form, anyway). Earlier this week, the U.S. Department of Labor transmitted its proposed regulations to the Office of Information and Regulatory Affairs, which means that interested stakeholders should be able to see the proposal—and comment on it—fairly soon.

Crusty Regulations. Last week, the *Buzz* mentioned the administration's goal of cutting regulatory red tape that it believes stunts economic growth. Indeed, while some federal regulations literally save lives, others just leave a sour taste in the mouths of stakeholders. "Lattice" take, for example, the slice of federal regulations establishing the standards for [frozen cherry pie](#):

Not more than 15 percent by count of the cherries in the pie are blemished with scab, hail injury, discoloration, scar tissue, or other abnormality. A cherry showing skin discoloration (other than scald) having an aggregate area exceeding that of a circle nine thirty-seconds of an inch in diameter is considered to be blemished. A cherry showing discoloration of any area but extending into the fruit tissue is also considered to be blemished.

Leave it to federal regulators (and lawyers, no doubt) to make something so delicious sound so boring. [Word broke](#) this week that the Food and Drug Administration (FDA) will soon issue a proposal to rescind this regulation. The *Buzz* independently verified that this proposal is indeed on the [FDA's regulatory agenda](#); it is slated to issue sometime in May of this year. Like any regulation, however, it is likely to take

remains before this regulatory action is fully baked. So if you are of the opinion that frozen cherry pies that contain too many blemished cherries are the pits, you had better start stocking up now.

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May 3 because we will be attending Ogletree Deakins' sold-out 2019 National
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eminar in Las Vegas. We will return on May 10.
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