

Beltway Buzz, June 7, 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.



Who's Running USCIS? The *Buzz* was away last week, so we didn't get a chance to comment on the departure of L. Francis Cissna from U.S. Citizenship and Immigration Services (USCIS). It has been [reported](#) that former Virginia attorney general Ken Cuccinelli would assume Cissna's former role, but to date, no official nomination has been announced. Perhaps Cuccinelli's name was floated out there as a trial balloon to see how his nomination might be received in the U.S. Senate. After all, Cuccinelli has been publicly critical of Republican leadership, so he might not even enjoy the backing of his own party. In the meantime, Mark Koumans is serving as the acting director of USCIS. Suffice it to say that this game of musical chairs can only create uncertainty for employers that rely on foreign workers to meet their workforce demands.

Meet the MEPS. On June 3, 2019, the Employee Benefits Security Administration's (EBSA) association retirement plan rule was received by the [Office of Information and Regulatory Affairs](#). This is the last stop before the rule goes final, which could happen at any time now. The rule will implement President Trump's

2018 [executive order](#) intended to strengthen retirement security “by clarifying the circumstances under which an employer group or association or a professional employer organization (PEO) may sponsor a workplace retirement plan.” If finalized as proposed, the rule would allow certain employer groups and PEOs to be considered “employers” for purposes of establishing multiple-employer defined-contribution retirement plans (MEPs) under the Employee Retirement Income Security Act. Conceptually, the rule is similar to EBSA’s association health plan (AHP) rule, which was [struck down by a federal district court](#) and is now on appeal at the U.S. Court of Appeals for the District of Columbia Circuit. Only time will tell whether the AHP litigation foreshadows the fate of any final MEP rule.

House Passes DACA/TPS Bill. On June 4, 2019, the U.S. House of Representatives passed the [American Dream and Promise Act](#). The bill would provide permanent legal status to undocumented immigrants who came to the United States as children (Dreamers), as well as immigrants who are covered by temporary protected status (TPS) and deferred enforced departure (DED) programs. Seven Republicans voted in favor of the bill, while zero Democrats voted against it (though nine Democrats did not vote). While passage in the House is significant, the bill faces long odds in the Senate because it does not contain the increased immigration security and enforcement measures that Republicans would likely want to pair with Deferred Action for Childhood Arrivals (DACA)/TPS relief.

SCOTUS Exhaustion. On June 3, 2019, the Supreme Court of the United States ruled in *Fort Bend County, Texas v. Davis* that while Title VII of the Civil Rights Act of 1964 requires employees to exhaust their administrative remedies, failure to satisfy this requirement does not forbid courts from hearing employment discrimination cases. Rather, such requirements are mere claim-processing rules, and an objection to a violation of such rules “may be forfeited ‘if the party asserting the rule waits too long to raise the point.’” [Hera S. Arsen](#) has the [details](#).

19th’s Anniversary. June 4, 2019, was a big day in the Senate, as it marked the 100th anniversary of the chamber’s passage of the 19th Amendment, which gave women the right to vote. In fact, the Senate actually agreed on something and passed a [resolution](#) to mark the occasion. Of course, passage by the Senate didn’t enshrine the amendment in the U.S. Constitution, but it was the final step prior to the states’ ratification (the House had already passed it on May 21, 1919). Illinois, Wisconsin, and Michigan all ratified the amendment on June 10, 1919. On August 18, 1920, Tennessee became the 36th state to ratify the amendment, and it officially became part of the Constitution on August 26, 1920. (Mississippi debated the matter for 64 years and in 1984 became the [last state](#) to ratify the 19th Amendment.) By the way, check out this [interesting video](#) to learn the difference between suffragists and suffragettes.



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