

Beltway Buzz, September 27, 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.



Meet the New Boss. The U.S. Senate confirmed Eugene Scalia as the new secretary of labor on September 26, 2019. Scalia, who served as solicitor of labor in the George W. Bush administration, is expected to continue apace with the U.S. Department of Labor's (DOL) current policy agenda.

Overtime Reg Arrives. On September 27, 2019, the DOL published a final overtime rule. The new rule sets the salary threshold for administrative, executive, and professional employees at \$35,568 per year (\$684 per week). This number is roughly in between the current threshold of \$23,660 (set in 2004) and the [\\$47,476 threshold set by the previous administration in 2016](#) (which was subsequently [enjoined by a federal court](#) and never went into effect). The rule also increases the highly compensated employee threshold from \$100,000

to \$107,432 annually. Importantly, the new final rule makes no changes to the duties test, nor does it contain any automatic update mechanism. [Alfred B. Robinson, Jr.](#), has the [details](#). The rule will become effective January 1, 2020.

House Examines Worker Classification. On September 26, 2019, the U.S. House Subcommittee on Workforce Protections held a hearing titled “Misclassification of Employees: Examining the Costs to Workers, Businesses, and the Economy.” The hearing addressed potential legislation called the Payroll Fraud Prevention Act of 2019, which would require employers to provide written notice to all workers with whom they engage of each worker’s status as either an employee or nonemployee. Yes, this would include everybody from the accountant who prepares tax filings to the caterer who provides food for the annual company picnic. Ogletree Deakins’ [Alexander M. Chemers](#) provided [outstanding testimony](#) at the hearing and detailed the potential impact of the bill on stakeholders. A recording of the hearing can be watched [here](#).

Tip Reg to Issue Soon. Speaking of wage and hour issues, on September 19, 2019, the Office of Information and Regulatory Affairs completed its review of the DOL’s Wage and Hour Division’s proposed rule “Tip Regulations Under the Fair Labor Standards Act.” The final regulations are expected to implement recent legislative changes to the Fair Labor Standards Act regarding the tip credit and employee tip pools. It is also expected to address the “[dual jobs](#)” doctrine, “regarding an employer’s ability to take a tip credit to satisfy minimum wage obligations for time spent by a tipped employee performing duties that are related to the employee’s tipped occupation.”

Union Bill Advances. The Protecting the Right to Organize Act of 2019 (PRO Act) passed out of the House Committee on Education and Labor this week after a seven-hour markup. *Buzz* readers are aware of the [dramatic reforms](#) that the PRO Act would make to federal labor law. Suffice it to say that ranking member Virginia Foxx (R-NC) is [not a fan](#). The full House is expected to vote on the bill in the next few weeks.

House Bans Arbitration Agreements. Late last week, the House passed the Forced Arbitration Injustice Repeal Act (FAIR Act) by a vote of 225 to 186. Two Republicans voted yes (Matt Gaetz (FL) and Chris Smith (NJ)), while two Democrats voted no (Henry Cuellar (FL) and Collin Peterson (MN)). The bill prohibits predispute arbitration agreements in employment, consumer, antitrust, and civil rights disputes. Business groups [adamantly oppose](#) the bill, as does the current [administration](#). While it is likely the bill will go nowhere in the Senate, it represents quite a stake in the ground on the matter of arbitration agreements.

N.F.L.: Nice First Line (of Work). It is football season, of course, and Washington, D.C., and the National Football League (NFL) have quite a connection. Several of our elected leaders found the gridiron to be the perfect training ground for the rough-and-tumble world of D.C. politics. For example, Jon Runyan and Heath Shuler played in the NFL before being elected to Congress as representatives from New Jersey and North Carolina, respectively. Of course, Jack Kemp is perhaps the most famous person to trade in the pigskin for the pork barrel, as he won two championships in the American Football League before serving nine terms in the House, including four years as House secretary in the George H.W. Bush administration (and was

presidential nominee Bob Dole's running mate in the 1996 election). Finally, NFL Commissioner Roger Goodell is the son of Charles Ellsworth Goodell Jr., who was a U.S. representative when, in 1968, he was appointed by New York governor Nelson Rockefeller to the U.S. Senate to fill the vacancy created by the assassination of Robert F. Kennedy. What with Congress' deep ties to the NFL, one would think that it should be able to do something about that hapless team that plays out in Landover, Maryland. Like impeach its owner, perhaps?

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