

Beltway Buzz, November 8, 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.





Fluctuating Workweek Reg Drops. On November 5, 2019, the U.S. Department of Labor’s Wage and Hour Division issued a [notice of proposed rulemaking](#) for computing overtime compensation for salaried nonexempt employees whose hours fluctuate from week to week. Comments are due on or before December 5, 2019. [Vik C. Jaitly](#); [Charles E. McDonald, III](#); and [Alfred B. Robinson, Jr.](#), have the [details](#).

NLRB Reg Landscape. Late last week, the National Labor Relations Board (NLRB) extended the time for the public to submit briefs regarding the circumstances in which profane or racially charged language should or should not be protected under the National Labor Relations Act. The Board has three outstanding solicitations for comments/briefs, and all three have been extended. As a helpful service to *Buzz* readers, here is the current lay of the land on what is due when:

- Offensive conduct standard: briefs are now due by November 12, 2019
- Proposed changes to election procedures: comments are due by December 10, 2019
- Proposed rulemaking on whether students who perform services for their colleges/universities are employees under the Act: comments are due by December 16, 2019

Healthcare Fed Contractors News. On November 6, 2019, the Office of Federal Contract Compliance Programs (OFCCP) issued a [proposed rule](#) that would “provide that OFCCP lacks authority over Federal health care providers who participate in TRICARE.” The proposal notes, however, that healthcare providers participating in TRICARE *do* fall within OFCCP jurisdiction if they hold a separate covered

federal contract or subcontract. As the *Buzz* has discussed, the proposal is intended to provide some clarity—and finality—to an issue that dates back to 2008, when OFCCP engaged in protracted litigation with a hospital over whether it was subject to OFCCP jurisdiction. Comments are due on or before December 6, 2019.

EEO-1 Public Hearing. The Equal Employment Opportunity Commission [announced](#) this week that it will hold a public hearing on November 20, 2019, to examine the [proposed changes to the EEO-1 report](#). According to the announcement, the Commission will hear the views of various invited panel experts. The hearing appears to be similar in nature to the [March 2016 hearing](#) that was part of the process that led to the adoption of Component 2 wage and hour information collection. The deadline to submit written comments is still November 12, 2019.

Daylight Saving Explained. Most of us [turned our clocks back](#) one hour this past Sunday morning and returned to standard time. Like many of life’s annoyances, the “spring forward, fall back” routine can ultimately be blamed on an act of Congress. In 1918, with the country fighting in the First World War, Congress passed the [Standard Time Act](#), which established five time zones across the continental United States (as defined by the U.S. Department of Commerce) as well as standard time and daylight saving time (DST). Proponents of DST believed that the extra natural light would help reduce electricity consumption and allow Americans more time to cultivate their [victory gardens](#). However, the provisions of the law concerning DST were repealed just one year later, after America’s farmers complained that the law interfered with their ability to maximize the workday.

For the next 20 years or so, states and localities were left to choose whether or not to adopt DST. Then, when the United States entered World War II, President Franklin D. Roosevelt signed into law year-round DST. When this automatically expired with the end of the war, chaos ensued. By 1965, 15 states had statewide DST, while 19 states didn’t observe DST at all. The remaining 16 states were a free-for-all, as DST could be adopted or not adopted at the local level. Furthermore, there was no agreed-upon day on which to change the time. Things were so bad that West Virginia Representative Harley Staggers claimed one [“could travel for 35 miles between Steubenville, Ohio and Moundsville, W. Va., and go through seven different time changes.”](#)

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Finally, in 1966, President Lyndon B. Johnson signed the [Uniform Time Act of 1966](#) “[t]o promote the uniform system of time throughout the United States.” This is the basis for the system we use today. The start and end of DST have been changed from time to time, most recently in [November 17, 2022](#).
[DOL Sued Over FOIA Request for Contractors’ EEO-1 Reports](#)

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