

Beltway Buzz, April 17, 2020

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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.



COVID-19 Congressional Update. This week, leaders in both the U.S. Senate and U.S. House of Representatives announced that neither chamber would return to Washington, D.C., until May 4, 2020, (the Senate was previously scheduled to return on April 20, 2020). This obviously makes a “Phase 4” coronavirus response less likely, at least for the immediate future. Both chambers *can* agree to legislation via unanimous consent without having to convene their members in D.C., but this means that just one out of 535 elected representatives could derail any proposal.

In the meantime:

- *PPP Funds Run Out.* On April 15, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act's "Paycheck Protection Program" officially ran out of money. This means that the program is not accepting any new loan applications. Legislators and the administration continue to negotiate on this matter, with Republicans wanting to limit any subsequent action to funding the program, while Democrats want to expand funding to provide assistance to states and hospitals.
- *Essential Workers Bill of Rights.* This week, Senator Elizabeth Warren (D-MA) and Representative Ro Khanna (D-CA) released a proposal to codify what they refer to as an "Essential Workers Bill of Rights." The proposal is short on specifics, but it would provide for a premium to be paid to essential workers, require the U.S. Occupational Safety and Health Administration (OSHA) to issue an emergency temporary standard, provide employees with permanent paid sick leave and family and medical leave, require companies receiving economic assistance from the government to enter into neutrality agreements, and "crack down on worker misclassification," among other ideas. The *Buzz* will be monitoring to see if any of these concepts are included in future coronavirus-related legislation.

COVID-19 Policy Update. Set forth below are recent COVID-19-related policy developments.

- *OSHA Recording Guidance.* On April 10, 2020, OSHA released interim guidance stating that it will not require employers (as long as they are not in the healthcare industry, emergency response, or correctional institutions) to determine whether a confirmed case of COVID-19 is a direct result of exposure in the workplace, unless there is objective evidence that it was work-related. Melissa A. Bailey, Davis Jenkins, John F. Martin, and Arthur G. Sapper have the details.
- *OSHA Enforcement Memo.* On Monday, April 13, 2020, OSHA announced its interim enforcement plan outlining "procedures for addressing reports of workplace hazards related to the coronavirus" to deal with the COVID-19 healthcare crisis. Pursuant to the guidance, OSHA will prioritize instances of fatalities, imminent danger situations, and healthcare settings for inspections.
- *DOL Sued Over Leave Regulation.* On April 14, 2020, the State of New York filed a legal challenge to the U.S. Department of Labor (DOL) regulation that implements the Families First Coronavirus Response Act. The lawsuit challenges: (1) the regulation's definition of "health care provider" as overly broad; (2) the provisions that restrict the leave requirements only to situations in which work is available; (3) the provisions that limit the use of intermittent sick leave in certain situations; and (4) the documentation requirements.
- *SCOTUS Goes Remote.* On April 13, 2020, the Supreme Court of the United States announced that it would be holding its oral arguments scheduled for May 2020 via teleconference. This is the first time the Court has conducted arguments in this fashion. A live audio feed of the arguments will be made available to the news media. Thank goodness for "listen only mode."
- *SBA PPP Approvals.* With the aforementioned Small Business Administration (SBA) Paycheck Protection Program (PPP) depleting its funds this week, SBA released statistics through April 13, 2020, on its PPP

loan approvals.

Wage and Hour Regulation Advances. The DOL's [fluctuating workweek rule](#) landed this week at the Office of Information and Regulatory Affairs (OIRA) for one last review prior to finalization. When might we see a final rule? The potential impact of the current healthcare crisis makes forecasting difficult, but if past timelines serve as any guide, both the DOL's 2019 overtime rule and 2020 joint-employer rule spent approximately six weeks at OIRA prior to being finalized.

“I Saw a Tiger (On Capitol Hill).” Hey all you cool cats and kittens, if you're one of the [tens of millions](#) of people who watched “Tiger King” while social distancing, you might be interested to know that Big Cat Rescue is currently in the process of [scheduling video conferences](#) with federal legislators in support of the [Big Cat Public Safety Act](#) (BCPSA). The act would make it unlawful “for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce, or in a manner substantially affecting interstate or foreign commerce, or to breed or possess, any prohibited wildlife species.” The BCPSA is no paper tiger, either: it enjoys the bipartisan support of 227 cosponsors in the House of Representatives (more than enough to pass) and 17 cosponsors in the Senate.

AUTHOR



James J. Plunkett

Shareholder, [Washington](#)

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