

Beltway Buzz, June 12, 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.



PPP Flexibility Act Clarification. *Buzz* readers likely recall that President Trump signed the [Paycheck Protection Program \(PPP\) Flexibility Act](#) into law last week. One of the prominent features of the legislation lowers from 75 percent to 60 percent the requirement of the amount of the loan that the borrower must spend on payroll costs. On its face, the new legislation does not appear to offer borrowers any loan forgiveness if they do not meet this new 60 percent threshold (even if they spent, say, 59 percent on payroll). However, a [statement](#) issued this week by U.S. Department of the Treasury Secretary Steven T. Mnuchin and U.S. Small Business Administration Administrator Jovita Carranza explains that forthcoming regulations will clarify that *partial* loan forgiveness may still be available even if the 60 percent figure is not satisfied. Stay tuned.

OSHA Guidance on Masks. On June 10, 2020, the Occupational Safety and Health Administration (OSHA) released a series of [frequently asked questions](#) relating to the use of face masks in the workplace. Among other topics, the guidance explains the differences between cloth face masks, surgical masks, and respirators, and makes clear that cloth and surgical masks are not appropriate substitutes in situations that require the use of respirators.

NLRB Declines Jurisdiction Over Certain Religious Institutions. In a decision released on June 10, 2020, the National Labor Relations Board established a new standard for determining whether it will assert jurisdiction over religious institutions of higher education. Under the new standard (based on precedent from the Supreme Court of the United States), the Board will not assert jurisdiction over the institution when it (a) holds itself out to the public as a religious institution, (b) is nonprofit, and (c) is religiously affiliated. In so holding, the Board overruled its 2014 decision in [Pacific Lutheran University](#), which looked beyond the institution itself by inquiring whether faculty members themselves played a specific role in maintaining the religious educational environment.

Well, Well, Well. On June 11, 2020, the Equal Employment Opportunity Commission (EEOC) held a public meeting to approve (by a 2-to-1 vote) a draft notice of proposed rulemaking relating to the application of the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act to employer-sponsored wellness programs. The draft notice will now head to the Office of Information and Regulatory Affairs for review prior to being made available for public comment. The [wellness program](#) legal landscape has been in limbo since August 2017, when a [federal court struck down](#) the EEOC's regulations that set forth the amount and type of incentives that employers could lawfully offer employees to encourage participation in their wellness programs. This state of limbo will likely continue for some time, however, as this action by the Commission represents only a very initial step in the rulemaking process.

EEO-1 Appeal Dismissed. The legal challenge to the Office of Management and Budget's decision to halt the collection of employee wage and hours worked data via changes enacted to the EEO-1 form in 2016 came to an end this week, as the government's appeal was dismissed by the U.S. Court of Appeals for the District of Columbia Circuit. Of course, both the plaintiff groups and the government previously agreed that the challenge was moot because the EEOC this past fall completed the collection of [2017](#) and 2018 data from employers. So what is next for EEO-1? As the [Buzz mentioned](#) several weeks ago, the Commission announced that there would be no information collection in 2020, and it is still waiting for Office of Management and Budget approval of a renewed EEO-1 data collection form (that does not include the [Component 2 wage-and-hour collection provisions](#) that had been added in 2016).

Women's Bureau's Birthday. The Department of Labor's Women's Bureau turned 100 years old on June 5, 2020. According to its [enacting statute](#), the Women's Bureau was established to "formulate standards and policies which shall promote the welfare of wage-earning women, improve their working conditions, increase their efficiency, and advance their opportunities for profitable employment." The first director of the Women's Bureau—former union organizer, Mary Anderson—was also its longest tenured, serving in the

position from 1920 to 1944. The Women's Bureau played a crucial role in advocating for, and later implementing, the Equal Pay Act of 1963, Executive Order 11246 (nondiscrimination and affirmative action for government contractors), as well as the Civil Rights Act of 1964. Today, the Women's Bureau is helmed by [Dr. Laurie Todd-Smith](#), and focuses on paid leave (particularly under the [Families First Coronavirus Response Act](#)), as well as programs relating to employment for military spouses, apprenticeships, and nontraditional careers for women.

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