

## Beltway Buzz, April 13, 2018

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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.

**Ryan Retires.** House Speaker Paul Ryan (R-WI) announced on April 11 that he won't seek reelection in November. While Ryan is much more of a budget wonk than a labor guru, the *Buzz* will be monitoring the impacts of this decision in these coming months for a couple of reasons. First, Ryan's retirement is another political blow to Republicans, who are hoping to retain control of the House in the November midterm elections. Second, Ryan's departure is likely to have trickle-down effects on Republican House leadership, and whoever fills those positions will obviously have opinions on labor and employment issues and where they fit in their list of priorities.

**Joint-Employer Update.** Another week, another update in the joint-employer saga. First, with the 2015 National Labor Relations Board (NLRB) decision in [Browning-Ferris Industries \(BFI\)](#) once again being the law of the land, the U.S. Court of Appeals for the District of Columbia Circuit has breathed new life into the original appeal of that case, but it will hold it in abeyance while the Board deals with the pending motion for reconsideration in [Hy-Brand](#). Presumably, the court is waiting to see if the Board will once again make the appeal of *BFI* moot. Second, late last week General Counsel Peter Robb filed a fiery brief in the aforementioned *Hy-Brand* reconsideration case that criticizes the Board for [vacating Hy-Brand](#). In his brief, the general counsel notes that the Board's apparent decision to cut out Member William Emanuel from the case was "without precedent in the annals of Board law" and "inconsistent with its due-process obligations to the parties before it."

**A Fully Armed and Operational NLRB.** On April 11, management attorney John Ring was confirmed by the U.S. Senate to be a member of the NLRB. Ring was quickly elevated to chairman of the NLRB, replacing Marvin Kaplan. Ring's confirmation means that the Board is now fully staffed, with three Republicans and two Democrats. Normally, this would mean that Republicans would have significant leverage to push out their policy agenda. However, with the increased political scrutiny on the Board resulting from *Hy-Brand*, the *Buzz* wonders if the majority may encounter some bumps along the way in making policy changes in the coming months.

**DOL Deputy Secretary Confirmed.** On April 12, the Senate (finally) confirmed Patrick Pizzella to be deputy secretary of labor at the U.S. Department of Labor (DOL). Pizzella was originally nominated for the position in June 2017 (!). The deputy secretary's duties and authority can differ depending on the administration and who the secretary of labor is, but the position is sometimes described as being akin to a chief operating officer. The *Buzz* will be watching to see how much Pizzella's presence impacts the DOL's policy agenda, in terms of both process and substance.

**EEOC GC Hearing.** On April 10, the Senate Health, Education, Labor and Pensions (HELP) Committee held a confirmation hearing for Sharon Fast Gustafson to be general counsel of the Equal Employment Opportunity Commission (EEOC). Many questions from Democratic senators focused on whether Gustafson would support the Commission's current position that "sex" in Title VII of the Civil Rights Act encompasses both sexual orientation and gender identity. Gustafson stated that there is no clear resolution on this issue (noting a circuit split and current Department of Justice (DOJ) position that does not adhere to this definition) and that she would enforce the law based on the facts of each particular case. Democratic senators also bemoaned the charge backlog at the EEOC (which has decreased significantly under Acting Chair Victoria Lipnic) and how this means long wait times for resolving employee allegations of discrimination. Of course, one vehicle that results in quick resolutions of employment disputes is binding arbitration, a process that is currently under political attack.

**Tip Pool Guidance.** On April 6, the DOL's Wage and Hour Division (WHD) issued a [Field Assistance Bulletin \(FAB\)](#) that provides guidance to enforcement officials regarding the [tip pool amendments to the Fair Labor Standards Act \(FLSA\)](#) that were included in the omnibus funding package that was passed in late March. According to an [accompanying press release](#), "FAB 2018-3 confirms that employers who pay the full federal minimum wage may now allow non-traditionally tipped workers, such as cooks and dishwashers, to participate in tip pools. The FAB also confirms that WHD will immediately begin using its new enforcement tools to protect American workers' tips—including by recovering all tips unlawfully kept by employers, and imposing liquidated damages and civil monetary penalties as appropriate."

**H-1B Cap Met.** As sure as night follows day, late last week United States Citizenship and Immigration Services (USCIS) announced that it reached the 65,000 H-1B visa cap for fiscal year 2019—just days after it began accepting petitions. [Leigh N. Ganchan](#) has the details [here](#).

**PBGC Issues Guidance on Withdrawal Liability.** Last week, the Pension Benefit Guaranty Corporation (PBGC) issued [guidance](#) on factors it "considers in reviewing multiemployer plan proposals for alternative terms and conditions to satisfy withdrawal liability." Not surprisingly, the PBGC will consider whether a plan's proposed alternative payment amounts maximize the collection of withdrawal liability and projected contributions and are not unreasonably risky.

**Equal Pay Day.** April 10 was Equal Pay Day, which, according to the National Committee on Pay Equity, "symbolizes how far into the year women must work to earn what men earned in the previous year." With this

in mind, the *Buzz* thought it appropriate to acknowledge the accomplishments of Winifred Claire Stanley, an attorney and Republican congresswoman from Buffalo, New York. In June 1944, Stanley introduced the first piece of legislation to ensure equal pay for equal work as an amendment to the [National Labor Relations Act \(NRLA\)](#). Although Stanley's bill failed, it paved the way—about 20 years later—for the enactment of the Equal Pay Act of 1963. Though Stanley served only one term as a result of redistricting, she clearly had quite an impact on advancing the goal of pay equity.

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