

Beltway Buzz, October 19, 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.

Deal on Nominees Excludes Labor and Employment Personnel. The U.S. House and Senate are in recess ([sort of](#)) until after the November 6 elections. Before leaving town, the Senate confirmed a package of 15 federal judges and 21 executive branch nominees. None of the executive branch nominees included anyone from the Department of Labor (DOL), National Labor Relations Board (NLRB), or Equal Employment Opportunity Commission (EEOC). Thus, the next opportunity for candidates like Cheryl Stanton (nominated to be administrator of the DOL's Wage and Hour Division (WHD)), Scott Mugno (nominated to be assistant secretary of labor for the Occupational Safety and Health Administration (OSHA)), Mark Gaston Pearce (nominated to be a member of the NLRB), Sharon Fast Gustafson (nominated to be general counsel of the EEOC), and others to be confirmed will be the congressional "lame duck" session beginning in mid-November. If the nominees are not confirmed before the Senate adjourns [sine die](#), their nominations will have to be resubmitted by the president.

Administration Issues Regulatory Road Map. On October 17, 2018, the administration released its fall [regulatory agenda](#). The agenda, which the administration issues twice each year, provides the regulated community with a forecast of the administration's current regulatory priorities. Importantly, the agenda does not necessarily include subregulatory activities—guidance memos, frequently asked questions (FAQs), opinion letters, etc.—that may impact employers' legal responsibilities in the workplace. Set forth below are just a few of the hot-button regulatory actions and when they are scheduled to appear:

- Joint employment under the Fair Labor Standards Act (FLSA): A notice of proposed rulemaking (NPRM) is scheduled to issue in December 2018.
- Changes to the Part 541 overtime regulations: An NPRM is now scheduled to issue in March 2019.
- A final OSHA injury and illness tracking rule is scheduled to issue in June 2019.
- Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap Subject Aliens: An NPRM is scheduled to issue in October.

- Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization: An NPRM is scheduled to issue in November 2018.

DOL's OT Listening Session. On October 17, 2018, the DOL held its final listening session regarding its pending changes to the overtime regulations. The *Buzz* was able to attend the meeting, and let's just say that they don't call them listening sessions for nothing. The gathering had the feel of a small-town zoning board meeting, except it wasn't nearly as exciting. DOL officials sat onstage and listened to comments made by attendees, who took turns waiting in lines at microphones to air their grievances. By and large, business community representatives agreed that a reasonable increase in the salary basis threshold was warranted, but that any automatic escalators, regional differences, or changes to the duties test would not be welcomed.

OSHA Injury and Illness Tracking Guidance. Late last week, just as the *Buzz* went to press, OSHA issued new policy guidance on workplace safety incentive programs and post-incident drug testing. The guidance is intended to address one of the more vexing issues set forth in the preamble language of OSHA's 2016 injury and illness reporting regulation, but which was not addressed in the current administration's proposed changes to that regulation. [Melissa A. Bailey](#) has the [details](#).

NLRB Suspends Briefing in Construction Case. Several weeks ago, the *Buzz* [commented](#) on the NLRB's solicitation of stakeholder briefs in a case concerning collective bargaining relationships in the construction industry. The Board [announced](#) this week that the union has requested to withdraw the underlying charge and that briefing will be suspended pending the evaluation of the withdrawal request.

Familiar Nominee at FMSHRC. Earlier this week, President Trump nominated William Althen to be a commissioner on the Federal Mine Safety and Health Review Commission (FMSHRC). Althen's term at FMSHRC [recently expired](#), and if he is reconfirmed, the FMSHRC will be at a quorum and able to decide cases. Of course, Althen joins a long line of nominees waiting to be confirmed, including fellow FMSHRC nominee Marco M. Rajkovich, Jr.

Where in the World Is John Boehner? Former Speaker of the U.S. House of Representatives John Boehner is [living his best life](#).

It's Just a Flesh Wound. The 2018 midterm elections are only 18 days away, and the political campaigns are heating up. Indeed, in this current hyper-political climate, some of the tighter races are becoming particularly ugly. For example, the race to replace retiring Arizona Senator Jeff Flake has grown [increasingly heated](#). But while this political coarseness is unwelcome, it is not new. In fact, 106 years ago this past Sunday, while delivering a campaign speech in Milwaukee, Wisconsin, then-presidential candidate Theodore Roosevelt was [shot in the chest](#) by a would-be assassin. The crazy thing is that, even after being shot, Roosevelt kept speaking. For. An. Hour. This makes modern-day political campaign mudslinging look rather tame and politicians of yesteryear look a lot [tougher than their modern counterparts](#).

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