

Beltway Buzz, March 6, 2020

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Congress and the Coronavirus. In the wake of the growing coronavirus threat, federal lawmakers responded this week by doing what they do best: holding hearings. The U.S. Senate Committee on Health, Education, Labor and Pensions held a hearing titled “[An Emerging Disease Threat: How the U.S. Is Responding to COVID-19, the Novel Coronavirus](#),” and the U.S. Senate Committee on Commerce, Science, and Transportation held a hearing titled “[From SARS to Coronavirus: Examining the Role of Global Aviation in Containing the Spread of Infectious Disease](#).” Perhaps more important, President Donald Trump this week approved \$8.3 billion in emergency funding—largely divided between the U.S. Department of Health and Human Services and the U.S. Department of State—to help combat the spread of the virus. The *Buzz* will be monitoring these developments for any policy prescriptions that might impact employers.

EEOC and NLRB Nominees Announced. This week, the White House confirmed the rumor that President Trump will [nominate](#) Marvin Kaplan and Lauren McFerran to serve on the National Labor Relations Board (NLRB), and Andrea R. Lucas and Jocelyn Samuels to serve on the Equal Employment Opportunity Commission (EEOC). Keith E. Sonderling, who is currently the deputy administrator of the U.S. Department of Labor’s (DOL) Wage and Hour Division and who was nominated last year to fill a seat on the Commission, is expected to be renominated. Currently, it is unknown how quickly the U.S. Senate will act upon receipt of the nominations.

FVRA in Play. Back in June 2019, the *Buzz* [noted](#) that the appointment of Kenneth T. Cuccinelli to be acting director of U.S. Citizenship and Immigration Services (USCIS) didn’t appear to meet all the requirements of the Federal Vacancies Reform Act of 1998 (FVRA). This week, a federal judge in Washington, D.C., agreed with the *Buzz* and ruled that Cuccinelli’s appointment was unlawful because Cuccinelli did not satisfy any of the FVRA’s prerequisites: he was not the deputy or first assistant to the office, he did not otherwise serve as a senior employee of the agency, and he was not a Senate-confirmed official. In the immediate case, this finding means that the asylum-related directives at issue were set aside as *ultra vires*. But beyond this specific case, the ruling could result in legal challenges to other policies taken under Cuccinelli’s watch, because actions taken by individuals who are improperly installed as acting officials “[shall have no force or effect](#)” under the FVRA.

OSHA Reports Due. March 2, 2020, was the due date for covered employers to submit their 2019 OSHA Form 300A (Summary of Work-Related Injuries and Illnesses). Covered employers include

those with 250 or more employees that are required to keep injury and illness records, as well as employers with between 20 and 249 employees in [certain industries](#).

H-1B Preregistration Opens. On March 1, 2020, USCIS opened its new electronic preregistration system for Fiscal Year 2021 H-1B cap cases. This initial registration period is scheduled to remain open through noon Eastern Daylight Time on March 20, 2020.

DOL Guidance Database. Last week, the *Buzz* discussed the requirement for federal executive branch agencies to locate all of their policy guidance documents on searchable websites. The DOL complied with this instruction by uploading 7,563 guidance materials [here](#). That's a lot of material for stakeholders to sift through, especially considering that these documents are intended to supplement the scores of federal statutes and regulations administered by the DOL.

USCIS's Birthday. It is perhaps appropriate that USCIS is making news in this week's *Buzz*, as the agency celebrated an important milestone. On March 1, 2020, USCIS—and the U.S. Department of Homeland Security (DHS) in general—turned 17 years old. The [Homeland Security Act of 2002](#) separated the U.S. Immigration and Naturalization Service (INS) into three components within DHS: USCIS (immigration and naturalization services), U.S. Immigration and Customs Enforcement (immigration enforcement), and U.S. Customs and Border Protection (border security). The first director of USCIS was [Eduardo Aguirre](#), who served from August 2003 until 2005. Happy birthday, USCIS!

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