

## Beltway Buzz, May 21, 2021

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**The Biden Administration at 100 Days.** President Joe Biden recently marked his 100th day in office, and labor and employment policy changes have been at the forefront of his administration's agenda. The enactment of the American Rescue Plan Act, passage of the Protecting the Right to Organize (PRO) Act (H.R. 842) in the U.S. House of Representatives, rescission of the independent contractor rule by the U.S. Department of Labor, and the Occupational Safety and Health Administration's (OSHA) development of a COVID-19 emergency temporary standard (currently in flux) are just a few examples of the policy changes that have already occurred or been undertaken. We have some [brief rundowns](#) of the most significant labor and employment actions of the last 100 days, both in Congress and at the federal agencies.

**OSHA, CDC, and Masks.** A top employment law priority for the administration—the promulgation of an emergency temporary standard (ETS) to address COVID-19 workplace safety concerns—continues to be the subject of debate in Washington, D.C. First, in a process that we [discussed last week](#) (see “ETS AWOL?”), officials in the Office of Information and Regulatory Affairs (OIRA) continue to meet with stakeholders on the matter. As of this writing, OIRA has extended the period for those meetings until at least May 24, 2021. Second, last week's announcement from the U.S. Centers for Disease Control and Prevention (CDC) [easing mask-wearing recommendations](#) for vaccinated individuals has many wondering how OSHA will respond, and whether the draft ETS may have to be amended as a result of the CDC's guidance. In the meantime, OSHA is [instructing employers](#) to “refer to the CDC guidance for information on measures appropriate to protect fully vaccinated workers.”

**More Workplace Safety News.** Of course, workplace safety goes beyond COVID-19 protections. In other OSHA news, the workplace safety agency issued a [notice of proposed rulemaking](#) proposing to update the handrail and stair rail provisions of its 2016 final rule on walking-working surfaces and personal protective equipment. The proposed changes are intended to remove confusion (partly due to typos and formatting goofs) as to “when handrails are required on stairs as well as what the height requirements are for handrails on stairs and for stair rail systems, depending on date of installation.” Comments are due by July 19, 2021.

**Senate Rescinds EEOC Conciliation Rule.** On May 19, 2021, the U.S. Senate voted 50–48 to [rescind](#) the U.S. Equal Employment Opportunity Commission's (EEOC) [conciliation rule](#) pursuant to the Congressional Review Act. The rule, which was finalized on January 14, 2021, and went into effect on February 16, 2021, requires the EEOC to provide employers with more information during

the statutorily required conciliation process, such as notifying employers of the legal basis for reasonable cause findings. Having passed the Senate, the resolution of disapproval now heads to the House, where it is expected to pass. President Biden is expected to sign the resolution rescinding the rule.

**Paid Leave Debate Heats Up.** On May 18, 2021, the U.S. Senate Committee on Health, Education, Labor and Pensions held a hearing on paid leave (both family/medical and sick leave). The hearing was not the first, nor will it be the last, on the matter, but it was further indication of the political momentum that continues to build for some form of a national paid leave program. The COVID-19 pandemic and its fallout have brought a renewed focus to the issue of unpaid time off work, and President Biden has called for the creation of a comprehensive paid leave program in his [American Families Plan](#). Additionally, the growing patchwork of state and local paid leave laws has at least some members of the business community itching for a uniform, national framework (depending on the details, of course). In addition to paying close attention to the American Families Plan, the *Buzz* is monitoring the progress of the [Family and Medical Insurance Leave Act](#) (S. 248) (which would provide partial paid leave under the Family and Medical Leave Act funded by employer and employee payroll taxes) and the [Healthy Families Act](#) (S. 1195) (which would require employers to provide employees with up to seven paid sick days per year).

**More States Discontinue Emergency UI Programs.** Alaska, Indiana, New Hampshire, Ohio, Oklahoma, Texas, and West Virginia, have joined 15 other states in withdrawing from participation in federally funded emergency unemployment insurance (UI) programs established by the [CARES Act](#).

**Supremely Disappointing.** President Biden's [Presidential Commission on the Supreme Court of the United States](#) held its first meeting this week. The 36-member commission—composed mostly of legal scholars—is instructed to deliver to the president a report within six months on suggested reforms for the court. The commission is expected to opine on a myriad of issues, including increasing the number of justices to the court and imposing term limits. With regard to the appointment of justices, the U.S. Constitution does not set the amount, but instead empowers Congress to set the number. Over the years, there have been as few as 6 justices and as many as 10, but the number has been set at 9 since 1869. And, chances are that if you are president, you will have the opportunity to nominate someone for the Supreme Court. Only four presidents—William Henry Harrison (who died 31 days after being sworn in), Zachary Taylor (who died after serving a little over one year in office), Andrew Johnson (who signed the Judicial Circuits Act of 1866, which shrank the Court to seven members, limiting his opportunity), and Jimmy Carter—did not appoint a justice to the Supreme Court.

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