

Beltway Buzz, December 1, 2023

Article By:

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Congress Returns and Faces Year-End Push. The U.S. Congress returned this week from its Thanksgiving break and is currently scheduled for a three-week legislative session leading up to the end of the calendar year. While the latest government shutdown crisis has been temporarily averted—again—Congress has a lot on its plate and a short amount of time with which to work. Addressing aid for Israel and Ukraine, passage of the fiscal year 2024 National Defense Authorization Act, reauthorization of the Federal Aviation Administration, and military promotions are all items included on the to-do list. Legislators likely want to make progress on those appropriations bills, as well, because those pushed-back funding “double deadlines” of January 19, 2024, and February 2, 2024 (agencies such as the U.S. Department of Labor (DOL), National Labor Relations Board (NLRB), U.S. Equal Employment Opportunity Commission (EEOC), and U.S. Department of Homeland Security (DHS) will be funded through the latter date) will arrive very quickly when the calendar flips to 2024.

House Committee Challenges Overtime Proposal. On November 29, 2023, the U.S. House Subcommittee on Workforce Protections held a hearing entitled, “Bad for Business: DOL’s Proposed Overtime Rule.” As the title implies, the purpose of the hearing was to examine the proposed overtime rule and ramp up political pressure against its finalization. One witness, an independent hotelier, noted that the rule would likely force employers to reclassify employees as nonexempt. She predicted that this would lead to a decline in employee morale as workplace status is diminished and certain benefits, such as flexible scheduling, remote work, and work-related travel, would no longer be available to nonexempt employees. Also in the crosshairs was the proposal’s provision that would automatically adjust the salary basis level, regardless of exigent economic circumstances. In his opening statement, Subcommittee Chair Kevin Kiley (R-CA) stated, “The most concerning part about this rule is that it puts the policy on autopilot. Future changes should be subject to the regular policy review, including consulting with stakeholders, rather than a one size fits all formula. Automatic increases are bad policy and bad government practice.” A final rule is expected in the spring or summer of 2024.

House Committee Examines Right to Work. On November 30, 2023, the House Subcommittee on Health, Employment, Labor, and Pensions held a hearing entitled, “Safeguarding Workers’ Rights and Liberties.” The hearing focused on the National Right to Work Act, a bill that would remove language from federal law that allows for contracts requiring employees to join or pay fees to a union as a condition of employment. The bill has 116 cosponsors in the U.S. House of Representatives and

thirty cosponsors in the U.S. Senate—all Republican. The bill is unlikely to get much traction in the Democratic-controlled Senate.

DOL Adjusts Child Labor Penalties. The DOL's [Wage and Hour Division \(WHD\) continues](#) to take steps to address and prevent child labor violations. On November 28, 2023, WHD issued [Field Assistance Bulletin \(FAB\) No. 2023-4](#), on "Child Labor Civil Money Penalty Assessments for Nonserious Injury and Noninjury Violations." The purpose of the FAB "is to ensure that WHD's Child Labor Civil Money Penalty (CL CMP) assessments are based on the agency's statutory enforcement authority and that the agency is appropriately and consistently utilizing its full authority in every child labor enforcement action." The FAB goes on to describe the new process for assessing civil money penalties in child labor cases that involve nonserious injury and noninjury violations:

In order to fully utilize its statutory and regulatory authority, when assessing CL CMPs in nonserious injury and noninjury cases, the agency will no longer determine CL CMP assessments on a per child basis. Instead, the agency will assess CL CMPs per violation as authorized in the statute. For instance, if there are three separate violations relative to a child's employment (such as two hazardous occupations orders violations and one recordkeeping violation), the employer will be assessed three separate CMP penalties, each of which can reach the statutory maximum.

The statutory maximum is \$15,138 per violation. The FAB goes on to instruct regional administrators and district directors on how to adjust the penalties depending on the gravity of the offense and the size of the employer. The FAB is effective immediately.

Senate Rejects ETA Nominee. President Biden's nominee to run the DOL's Employment and Training Administration (ETA), José Javier Rodríguez, did not advance past a crucial procedural vote this week on the floor of the U.S. Senate. Senators Joe Manchin (D-WV) and Bob Menendez (D-NJ) voted with Republicans against Rodríguez, effectively scuttling the nomination. The ETA, which oversees federal apprenticeship programs, the federal component of the unemployment insurance program, and the Office of Foreign Labor Certification, has not had a confirmed assistant secretary during the Biden administration.

Senators Save Lives! Lawmakers will often brag that a certain piece of legislation will save lives. While that is certainly true, this week a senator played a more direct and immediate role in saving a life. During a Republican senators' lunch this week, Senator Joni Ernst (R-IA) began to choke when Senator Rand Paul (R-KY) came to the rescue and performed the Heimlich maneuver on her. Senator Ernst appears to be doing fine, later joking that the incident resulted from hard-to-swallow Democratic policies. This wasn't the first time one senator saved another senator's life. In 1964, a small plane carrying then Senators Birch Bayh (D-IN) and Edward Kennedy (D-MA) crashed in western Massachusetts while on the way to a political event. The pilot and an aide to Kennedy died in the crash, but after crawling with his wife to safety, Bayh returned to the plane and dragged Kennedy out through a window. Kennedy credited Bayh with saving his life.

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