

Beltway Buzz, January 27, 2023

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POTUS Re-ups Labor Nominees. This week, President Biden [renominated](#) Jessica Looman to serve as administrator of the U.S. Department of Labor's (DOL) Wage and Hour Division and José Javier Rodriguez to serve as assistant secretary of labor and head of the Employment and Training Administration (ETA). Both Looman and Rodriguez were previously nominated in the 117th Congress, but they were obviously not confirmed before the congressional session adjourned. Looman has been serving in an acting capacity as the de facto administrator since the beginning of the Biden administration. If confirmed, Looman will play an important role in the DOL's pending changes to the overtime rules and independent contractor test under the Fair Labor Standards Act.

Federal Contractors: Are You on the List?

Late last week, the Office of Federal Contract Compliance Programs released its [Corporate Scheduling Announcement List](#) of federal contractors and subcontractors that are subject to compliance reviews. [According to OFCCP](#), this time around, "OFCCP selected federal contractors and subcontractors that are required to maintain an Affirmative Action Program (AAP) but did not complete their [mandatory annual certification in the OFCCP Contractor Portal](#) as of December 1, 2022." [Cameron W. Ellis](#) and [Lauren B. Hicks](#) have all the details.

EEOC Updates Resource on Accommodating Individuals With Hearing Disabilities.

On January 24, 2023, the U.S. Equal Employment Opportunity Commission (EEOC) [announced](#) updates to its resource document, "Hearing Disabilities in the Workplace and the Americans with Disabilities Act [ADA]." According to a press release from the Commission, "The document outlines how certain pre- and post-job offer disability-related questions can violate the ADA, describes easy-to-access technologies that can make providing a reasonable accommodation for a hearing disability-free or low-cost, addresses employer concerns about safety, and shares realistic scenarios of potential discrimination."

FTC Mission Creep?

The Federal Trade Commission's [\(FTC\) proposal to ban noncompete agreements](#) continues to be a major topic of debate in Washington, D.C. In fact, one of the arguments that the business community

is making against the proposal—that allowing the FTC to regulate in this area would open the floodgates to allow the Commission to intervene in countless commercial issues—is already beginning to materialize. Recently, fifty Democratic senators and representatives sent a [letter](#) to President Biden asking the administration to take action to address “soaring rent prices.” The letter urges the president to direct “the Federal Trade Commission to issue new regulation defining excessive rent increases as a practice that unfairly affects commerce and enforce action against unfair rent gouging practices.” Of course, the FTC has taken no action on this issue, but the letter is indicative of legislators’ views on the role of the agency. Comments on the FTC’s proposed non-compete ban are due on March 20, 2023.

PBGC Finalizes Withdrawal Liability Rule Relating to SFA Recipients.

On January 26, 2023, the Pension Benefit Guaranty Corporation (PBGC) published a [final rule](#), effective immediately, relating to withdrawal liability from multiemployer pension plans that receive special financial assistance (SFA) pursuant to the American Rescue Plan Act of 2021. The rule addresses an outstanding issue that PBGC left open for comment following [finalization of the underlying SFA rule in July 2022](#). The rule creates a process by which “a plan sponsor may request an exception from the withdrawal liability conditions by demonstrating to the satisfaction of PBGC that the exception lessens the risk of loss to plan participants and beneficiaries and does not increase expected employer withdrawals.”

GAO Details Pandemic UI Fraud.

Recent [report](#) from the Government Accountability Office (GAO) finds that from March 2020 through March 2022 the DOL potentially paid out “over \$60 billion in fraudulent UI [unemployment insurance] payments.” The report echoes a September 2022 report from the [DOL’s Office of Inspector General that detailed the ETA’s](#) payment of more than \$45 billion in pandemic-related unemployment insurance payments. The report concludes, “Without an antifraud strategy, DOL is not able to ensure that it is addressing the most significant fraud risks facing the UI system.” As part of its recommendations, the GAO encourages the DOL “to design and implement an antifraud strategy for UI based on a fraud risk profile.”

A Spirited Anniversary.

This week in 1963, Representative John C. Watts of Kentucky introduced a resolution declaring bourbon a “distinctive product” of the United States. This action got the barrel rolling on a process to protect American bourbon distillers from foreign competitors. Eventually, one year later, the Senate and House agreed to a [concurrent resolution](#) that stated the following:

That it is the sense of Congress that the recognition of Bourbon whiskey as a distinctive product of the United States be brought to the attention of the appropriate agencies of the United States Government toward the end that such agencies will take appropriate action to prohibit the importation into the United States of whisky designated as “Bourbon whiskey.”

While the designation is similar to the protection France gives to sparkling wines made under certain conditions in Champagne, neither the resolution above nor the U.S. Department of the Treasury’s Alcohol and Tobacco Tax and Trade Bureau’s [definition](#) requires that bourbon be made in Kentucky.

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