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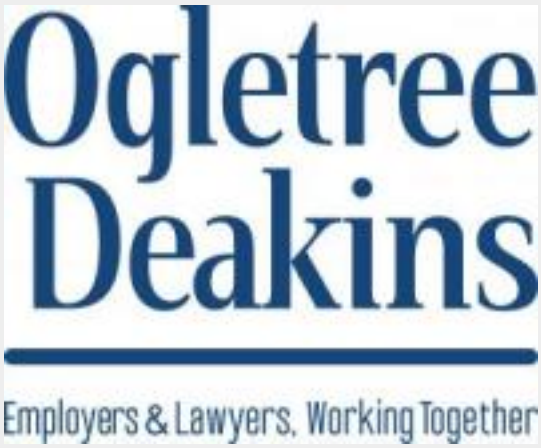
EEO-1 Developments.

Kiosha H. Dickey has the details on some developments regarding litigation over the U.S. Equal Employment Opportunity Commission's (EEOC) EEO-1 form. Even with the recent decision to lift the stay of the EEO-1 wage and hours worked collection component, the Office of Management and Budget's (OMB) approval of the EEO-1 form expires on September 30, 2019. At that point, the EEOC will have to resubmit its EEO-1 form for a new three-year OMB approval. Will a new submission require employers to submit wage and hours worked data? Or will the EEOC simply resubmit the traditional EEO-1 form? It probably depends on the makeup of the Commission at that point (if the Senate confirms Janet Dhillon, the EEOC will have a 2–1 Republican majority). In any case, even if the EEOC or a district court provides some clarity on this matter in the near term, things could be very different by the fall.



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Joint-Employer Rulemaking Scrutinized.

Remember when the *Buzz* predicted that Democrats on the U.S. House of Representatives Committee on Education and Labor would use their newfound oversight authority to scrutinize policymaking at the National Labor Relations Board (NLRB) and other agencies? Well, late last week, Committee Chairman Bobby Scott (D-VA) and Chairwoman Frederica Wilson of the Subcommittee on Health, Employment, Labor, and Pensions sent a letter to the NLRB inquiring about "reports" that the Board "plans to outsource to a private contractor the task of reviewing public comments submitted in response to its rulemaking on the standard for determining joint employer status." The letter asks the Board to turn over to the committee a slew of documents relating to the alleged outsourcing plan. Earlier today, NLRB Chairman John Ring responded to the letter by denying the allegation and stating that the legislators had been "misinformed." Regardless, the letter could potentially slow down the eventual promulgation of a final joint-employer rule while simultaneously raising the specter of a conflict of interest—an allegation that is likely to be included in any legal challenge to an eventual final rule.

Rabbit Season! Duck Season! H-1B Season!

On March 19, 2019, U.S. Citizenship and Immigration Services announced the beginning of the fiscal year (FY) 2020 H-1B cap season, which will begin on April 1. Specifically, it announced changes regarding premium processing, which will first be available for H-1B petitions requesting a change of status before it is made available for all other FY 2020 cap-subject H-1B petitions. Melissa Manna has the details. The announcement also reminds stakeholders that the provisions of its recently finalized H-1B preregistration rule concerning H-1B candidates with advanced degrees from U.S. universities will be in effect this season.

H-1B Notice Guidance.

In other H-1B news, late last week, the Department of Labor's Wage and Hour Division issued a field assistance bulletin (FAB) regarding employers' use of electronic communications to satisfy H-1B notice posting requirements

under the Immigration and Nationality Act. The FAB reiterates that for an electronic posting to be effective and therefore in compliance, affected workers must have knowledge of the notice and have ready access to it. Additionally, notice must be given to "both employees of the H-1B petitioner and employees of another person or entity which owns or operates the place of employment."

Ban on Non-Competes?

The *Buzz* doesn't often dip its toes into Federal Trade Commission (FTC) waters, but this matter caught our attention. On March 20, 2019, a coalition of labor unions, interest groups, and professors filed a rulemaking petition with the FTC asking the agency:

to initiate a rulemaking to prohibit employers from presenting a non-compete clause to a worker (regardless of whether the worker is classified as an "employee" or an "independent contractor"), conditioning employment or the purchase of a worker's labor on the worker's acceptance of a non-compete clause, or enforcing, or threatening to enforce, a non-compete clause against a worker.

Of course, states differ with respect to how they enforce—or don't enforce—non-compete agreements, so a federal regulation that classifies non-competes as *per se* illegal would be a significant development. With the potential appearance of the administration's spring regulatory agenda in the next few months, the *Buzz* will be watching to see if this makes it onto the FTC's regulatory forecast.

C-SPAN Turns 40.

C-SPAN went on the air for the first time 40 years ago on March 19. If I could turn back time . . .

Where's the Beef?

This past Sunday was, of course, Saint Patrick's Day, and the *Buzz* enjoyed celebrating with friends and family. But before cooking our Irish feast, we consulted the U.S. Code and Code of Federal Regulations to ensure that our corned beef and cabbage wasn't going to send us to jail:

9 CFR § 319.101 Corned beef brisket.

In preparing "Corned Beef Brisket," the application of curing solution to the beef brisket shall not result in an increase in the weight of the finished cured product of more than 20 percent over the weight of the fresh uncured brisket. If the product is cooked, the weight of the finished product shall not exceed the weight of the fresh uncured brisket.

Thankfully, to our knowledge, there is no regulation prescribing the proper ratio of cabbage to potatoes in colcannon . . . yet.