USMCA on the Way? Lawmakers on both sides of the political aisle claimed victory this week over what appears to be a breakthrough in negotiations over the United States–Mexico–Canada Agreement (USMCA) trade agreement. Of particular importance to the Buzz are two significant labor-related changes that appear to be catalysts in breaking the logjam. The first is the lowering of the standard for triggering the labor dispute mechanisms in the pact. The second matter is the creation of a “Facility-Specific, Rapid Response Labor Mechanism” to address allegations of violations of workers’ rights to free association and collective bargaining. Obviously, there is a lot to unpack here, and the Buzz will have more on this issue as it unfolds. But in the meantime, we offer a word of caution: this thing can blow up at any time, so don’t start counting your chickens just yet. Further, the timetable for final ratification of the USMCA by Congress remains uncertain. Senate Majority Leader Mitch McConnell has stated that he does not anticipate the Senate taking up the measure until after the likely impeachment trial in the Senate, which will probably take place in January 2020.

Perks at Work. On December 12, 2019, the U.S. Department of Labor finalized its update to the “regular rate” regulations. The regulation clarifies what types of
compensation must be included in the Fair Labor Standards Act’s (FLSA) “time and one-half” rate for purposes of calculating overtime pay. Examples of some types of payments and benefits that may be excluded pursuant to the rule include particular bonuses; payments for unused paid leave; and costs related to certain parking benefits, wellness programs, or employee discounts on retail goods and services. The rule will go into effect in mid-January 2020.

**USCIS to Commence H-1B Preregistration System.** On December 6, 2019, U.S. Citizenship and Immigration Services (USCIS) announced that it will implement the electronic H-1B preregistration system for the upcoming 2021 fiscal year cap season. The initial registration period runs from March 1 through March 20, 2020, and employers will be required to submit a $10 registration fee for each H-1B petition. Andrea C. Davis and Melissa Manna have the details.

**USCIS Appeals Form Change.** Late last week, USCIS proposed changes to its Form I-290B, which is used to file appeals of administrative decisions under immigration law. There were errors in a similar proposal issued in August of this year, so this notice is a “do over” of sorts and restarts the comment and regulatory processes. USCIS is proposing changes to what evidence must be submitted, what (and when) arguments must be made, and the standard of review at the Administrative Appeals Office. The Buzz is always wary of potential policy changes made in this way (“What’s the big deal? We’re just changing a form”) rather than through the formal rulemaking process, so we will be monitoring this one closely.

**Tip Credit Proposal Update.** Comments on the Wage and Hour Division’s FLSA tip regulation proposal closed on December 11, 2019. Procrastinating commenters received a two-day extension on the deadline because of a computer glitch on the comment portal website.

**Military Spending Bill Addresses Workplace Policies.** On December 11, 2019, the House of Representatives passed the conference report on the National Defense Authorization Act for Fiscal Year 2020. The bill contains two significant amendments that may impact the workplace. First, the bill prohibits the federal government and federal contractors from asking about the criminal history of a job applicant prior to a conditional offer of employment. Second, the bill would guarantee all federal civilian employees 12 weeks of paid parental leave (the language in the relevant section is based largely on the Federal Employee Paid Leave Act). While this language does not impact private sector employers, this represents a significant stepping stone for advocates of a nationwide paid leave program. The bill is likely to be approved by the Senate next week, and the White House is supportive of the measure.

**The Original AOC.** This week, President Trump announced his intent to nominate J. Brett Blanton to be the Architect of the Capitol (AOC). The AOC (the office, not the high-profile member of Congress) “is the builder and steward of the landmark buildings and grounds of Capitol Hill.” The AOC, which refers to both the office and the person running the office, was created in 1791 when President George Washington established a committee to provide accommodations for Congress. The committee selected Dr. William Thornton to design the Capitol, and Thornton is generally credited as being the first Architect of the Capitol. Pursuant to the Legislative Branch Appropriations Act of 1990, the AOC is appointed by the
president, with the advice and consent of the Senate, to a 10-year term. Prior to this legislation, the AOC was appointed by the president to an indefinite term.


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