SCOTUS Nomination Hearings Begin. The U.S. Senate Committee on the Judiciary held hearings this week on Judge Ketanji Brown Jackson’s nomination to be an associate justice of the Supreme Court of the United States. Republican senators focused on Judge Jackson’s criminal sentencing record and culture war issues, while Democrats spent much of their time bolstering the nominee. The Judiciary Committee will mark up Judge Jackson’s nomination next week and a vote in the committee is expected on April 4, 2022. Democrats hope a floor vote in the U.S. Senate will happen shortly thereafter, as the Senate is scheduled to begin a two-week in-state
work period beginning on April 9, 2022.

As the Buzz previously discussed, Judge Jackson likely has the votes to be confirmed and may even earn some votes from Republicans (some of whom voted to confirm her to the United States Court of Appeals for the District of Columbia Circuit). One factor that could impact the confirmation vote is COVID-19: Senator Bob Casey (D-PA) tested positive for COVID-19 earlier this week, making him the most recent member of the 117th U.S. Congress to test positive. Senator Casey will presumably be available for a vote that first week of April, but his situation is a reminder of the razor-thin majority that the Democrats enjoy in the Senate. If just one Democratic senator (or Vice President Kamala Harris) is unavailable—due to COVID-19 or any other reason—this could delay Judge Jackson’s confirmation vote.

**OSHA Proposes Finalizing COVID-19 Healthcare Standard.** The Occupational Safety and Health Administration (OSHA) this week took steps toward a permanent COVID-19 standard for healthcare employers. On March 23, 2022, OSHA announced that it would be reopening the existing public comment docket for the COVID-19 healthcare emergency temporary standard (ETS) that was issued on June 21, 2021, and expired on December 21, 2021. Any final standard will be based on the now-expired ETS and contemplate a number of changes and additions that OSHA proposed in this week’s announcement. Among other issues, OSHA is considering: (1) realigning the ETS with current U.S. Centers for Disease Control and Prevention (CDC) recommendations, (2) assessing whether control measures are necessary “where healthcare employees are not reasonably expected to encounter people with suspected or confirmed COVID-19,” and (3) tweaking the vaccination leave provision to require up to four hours of paid leave to get vaccinated. Importantly, the notice states that “OSHA is not considering at this time requiring mandatory vaccination for employees covered by [the] standard.” (Emphasis in original.) Stakeholder comments are due by April 22, 2022, and an online public hearing will be held on April 27.

**OFCCP Proposes Changes to Investigation Procedures.** On March 22, 2022, the Office of Federal Contract Compliance Programs (OFCCP) published a noticed of proposed rulemaking on “Pre-Enforcement Notice and Conciliation Procedures.” The proposed rule would rescind portions of OFCCP’s 2020 rule that established guideposts for OFCCP investigations and set consistent criteria for the issuance of predetermination notices or notices of violation. As such, the 2020 rule was intended “to increase clarity and transparency for Federal contractors, establish clear parameters for OFCCP resolution procedures, and enhance the efficient enforcement of equal employment opportunity laws.” With the change in administrations, OFCCP now states that the 2020 rule “unduly constrain[s] the agency’s broad enforcement discretion” and that the proposed changes “would allow OFCCP to tailor the pre-enforcement process to the specific facts and circumstances of each case.” As Scott Kelly and Emily Halliday discuss, the proposal forecasts a return to a “hide-the-ball” enforcement strategy for OFCCP. Comments are due by April 21, 2022.

**CROWN Act Passes House.** Late last week, the U.S. House of Representatives passed the Creating a Respectful and Open World for Natural Hair Act by a vote of 235–189, with 14 Republicans voting for the measure. The bill, also called the
CROWN Act of 2022, would make it unlawful for an employer:

to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against an individual, based on the individual’s hair texture or hairstyle, if that hair texture or that hairstyle is commonly associated with a particular race or national origin (including a hairstyle in which hair is tightly coiled or tightly curled, locs, cornrows, twists, braids, Bantu knots, and Afros).


**NLRB Arbitration Case Advances.** This week was the deadline for stakeholders to submit comments in response to the National Labor Relations Board’s (NLRB) latest case concerning the interplay of the Federal Arbitration Act (FAA) and Section 7 of the National Labor Relations Act (NLRA). Specifically, the Board asks whether provisions in an arbitration agreement that provide for the confidentiality of arbitration proceedings and expressly permit employees to file unfair labor practice charges with the Board violate the NLRA. In a joint brief submitted by the Coalition for a Democratic Workplace, the Restaurant Law Center, the National Association of Manufacturers, the National Retail Federation, and HR Policy Association, the groups wrote that federal law does not “empower the Board to overrule agreements covered by the FAA that set forth the procedures under which legal claims under other statutes will be adjudicated” and that “arbitration does not bar employees from discussing their workplace grievances with co-workers or the public.” Expect a final ruling from the Board in the coming months.

**RIP, Dean of the House.** Republican congressman from Alaska, Don Young, died on March 18, 2022, at the age of 88. Alaska has only one seat in the House of Representatives, and Young held that seat for an incredible 49 years. (He was first elected in March 1973.) As such, Young was the Dean of the House—the informal title bestowed upon the House member with the longest continuous service. The Dean of the House title has evolved over the years from the original “Father of the House,” which was first used in 1825 to refer to Virginia’s Thomas Newton, Jr. In the 1920s and 1930s, the word “Dean” replaced “Father,” perhaps coinciding with the arrival of female representatives in the House. Traditionally, the Dean of the House administers the oath of office to the Speaker of the House. With Young’s passing, the Dean of the House is now Hal Rogers, a Republican who has served Kentucky’s 5th district since 1981.


National Law Review, Volume XII, Number 86