

# POLICY MATTERS

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**"New" DOL Program for Wage Violations.** On Tuesday, Labor Secretary Alex Acosta announced that DOL would once again be supervising employer efforts to come into compliance after finding a wage-and-hour error or a questionable practice. Similar to Wage & Hour Division policy in the Bush Administration, the new pilot program will permit an employer to resolve FLSA issues after conducting a self-audit of its payroll and/or timekeeping practices. The [Payroll Audit Independent Determination](#) (PAID) program will provide employers the opportunity to make good on back pay and avoid litigation. Secretary Acosta stated the program "will help ensure employees receive back wages they are owed, faster."

See Seyfarth's [Wage & Hour Litigation Blog](#) for more information on the PAID Program.

**House Labor HHS Subcommittee Hearing on DOL Budget.** Also on Tuesday, Secretary Acosta [appeared before](#) the Labor-HHS Committee to answer questions on DOL's budget proposal for FY2019. The proposed budget would cut DOL's funding by 9%, a much smaller figure than last year's request for a 21% decrease. However, [Senate Democrats still questioned the budget](#)—its largest proposed cuts would target grant and training programs in the Employment & Training Administration, while the Office of Labor-Management Standards (which oversees union disclosure requirements) would receive a significant increase in funding.

**Acosta Addresses Proposed Tip-Pooling Rule.** While [testifying before the Labor HHS Subcommittee](#) on Tuesday, much of the Secretary's time was spent answering questions on the Department's [proposed tip-pooling rule](#). Acosta defended the rule, stating that the Department had no plans to withdraw the NPRM, despite claims that the rule would open the door for management to transfer tips from employees to employers. Acosta's remarks came on the heels of the DOL Office of Inspector General's [formal announcement](#) that they would be reviewing the agency's rulemaking process with regard to the proposed tip-pooling rule.

At the hearing, Acosta made it clear that this is a question of statutory authority: Congress has "not authorized the department to fully regulate in this space." Further, Acosta stated that the Appropriations Committee could simply legislate DOL's authority to prohibit tip stealing and that he'd "fully support a provision that says establishments should not be permitted to keep any portion of a tip." There likely will be competing visions of such a provision, however; indeed, one proposal appears to go well beyond the targeted fix contemplated by Secretary Acosta and would ban mandatory tip pools in their entirety. As a result, it is unclear where—or whether—consensus might be reached on a legislative solution.

**Update on Senate HELP Ring NLRB Update.** NLRB Nominee John Ring has had his confirmation vote before the Senate HELP Committee delayed yet again. The Committee is tentatively scheduled to take up the vote on [Monday, March 12](#). The fact that a set time and location have been announced is somewhat promising news. On Tuesday, Ring disclosed to the Committee a list of clients that he has represented since 2016. Ring also provided a separate list of his firm's clients that have been involved in NLRB cases. [Ring agreed to recuse himself](#) from participating in any case in which a former client of his or his former firm was involved. This has become a point of contention after the Board recently vacated its *Hy-Brand* ruling (on joint employment) [due to Member Emanuel's previous employer's participation in the Browning-Ferris case](#).

As previously noted, Ring's appointment to the NLRB would reestablish the Board's 3 - 2 Republican majority. Stay tuned for the results of the Committee vote and the scheduling of a confirmation vote before the full Senate.

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**Administration Delays Rescission of Employment Authorization for H-4 Dependent Spouses.** Late last week, the [Administration delayed a proposal](#) that would have halted H-4 visas, which are work permits for spouses of H-1B visa holders. In a court filing, the Department of Homeland Security stated that United States Citizenship and Immigration Services (USCIS) had determined that “significant revisions to the draft proposal were necessary” and also that the proposed rule would require a new economic analysis. The Department has stated that it anticipates moving forward with the proposed rule in June following completion of the new economic analysis.

**Possible Delays for H-1B Premium Processing Ahead?** According to several sources, there could [potentially be a delay in premium processing for H-1B applications](#) again this year. The “fast-track” service enables H-1B petitions for high-skilled workers to be considered within 15 calendar days when sponsors agree to pay a fee of \$1,225. Otherwise, typical H-1B processing times can take several months. This potential delay would apply to FY2019 petitions subject to the annual visa cap. The agency [previously halted premium processing last April and incrementally reinstated the service](#) leading up to a full reinstatement on September 18, 2017.

“The growth in cap-season filings has continued to strain USCIS resources. The agency has previously said that any suspension this year will be brief, however, it’s not clear what changes have been implemented to ensure a shorter suspension than those in recent years,” said [Seyfarth partner, Leon Rodriguez](#), who served as USCIS director from 2014 until last January. “If anything, stricter requirements such as those on signature standards and documentation for off-site placements would seem to promise further workload for immigration adjudicators.” We’ll keep you updated on further developments.

**NEXT WEEK:** Meeting of the Apprenticeship Task Force. On Thursday, the President’s Task Force on Apprenticeship Expansion will convene for its [third public meeting](#). The task force—comprised of companies, trade associations, educational institutions, and labor unions—is charged with addressing the nation’s skills gap through formulating legislative proposals and effective strategies to promote apprenticeship programs. The task force will hold two additional meetings before making formal recommendations to President Trump later this year.

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