

POLICY MATTERS

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Speaker Ryan to Retire at End of Term. In a somewhat surprising [announcement yesterday](#), House Speaker Paul Ryan declared that he would not seek re-election to Congress. Speaker Ryan explained that his decision was one that was the best for his family, having nothing to do with the ["headwinds" facing Republicans](#) in November. However, Democrats are characterizing Ryan's retirement as more evidence that the GOP is [preparing for a tough midterm cycle](#). The [two likeliest successors](#) to Speaker Ryan are seen as Majority Leader Kevin McCarthy (R-CA) and Majority Whip Steve Scalise (R-LA), but neither has announced plans to run yet.

Pizzella and Ring Confirmed by the Senate. Earlier today, Patrick Pizzella was confirmed as Deputy Secretary for the Department of Labor on a [party line vote of 50-48](#). Pizzella, nominated by President Trump on June 20 of last year, will provide valuable backup for Secretary Acosta as the Department's head of operations. He previously served at DOL during the George W. Bush administration.

The [Senate also approved John Ring](#) for a seat on the National Labor Relations Board yesterday, reestablishing the Board's 3 - 2 Republican majority. Confirmed in a [50-48 vote](#) along party lines, Ring has [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 firm's participation in the Browning-Ferris case](#).

Confirmation Hearing for Gustafson. On Tuesday, the Senate HELP Committee [held a hearing](#) to consider the nomination of Sharon Fast Gustafson to become general counsel of the Equal Employment Opportunity Commission (EEOC). Gustafson, a solo practitioner, represented Peggy Young in [Young v. UPS](#), a pregnancy discrimination case decided by the U.S. Supreme Court in 2015. The plaintiff prevailed in her claim that UPS should have provided an accommodation when her physician limited her to light duty work during her pregnancy.

Trump administration nominees Janet Dhillon and Daniel Gade are still currently awaiting confirmation votes from the Senate to fill the two remaining seats on the EEOC. A date for said votes has not yet been announced.

9th Circuit Ruling on Past Pay and Gender Pay Gap. On Monday, the [9th Circuit ruled in Rizo v. Yovino](#) that an employees' past pay does not justify maintaining a gender-based wage gap. The suit was brought by a California math consultant against the Fresno County Superintendent of Schools. The decision overturned the 9th Circuit's 1982 ruling in [Kouba v. Allstate Insurance Co.](#) that said past salary is a 'factor other than sex' that employers can use to justify pay gaps between men and women under the federal Equal Pay Act. The opinion, written by the late Judge Stephen Reinhardt (he passed away last month), stated: "[t]he question before us is also simple: can an employer justify a wage differential between male and female employees by relying on prior salary? Based on the text, history, and purpose of the Equal Pay Act, the answer is clear: No." The attorney representing Fresno County said an appeal to the Supreme Court is likely.

DOL Issues New Wage Opinion Letters. Earlier today, DOL's Wage & Hour Division (WHD) [issued three new opinion letters](#), including two under the Fair Labor Standards Act (FLSA) and one under Title III of the Consumer Credit Protection Act (CCPA). The letters confront specific questions of concern for many employers, including:

- what counts as [work time under the FLSA when employees travel for work](#);
- whether [hourly rest breaks required by an employee's serious health condition must be paid](#); and
- whether [certain lump-sum payments to employees are considered "earnings"](#) for garnishment purposes under Title III of the CCPA.

Beyond the helpful guidance the letters provide or confirm, they also represent the first penned by WHD leadership (excluding letters it recently reinstated from 2009) since the DOL announced the return of its opinion letter practice in June 2017.

Multiemployer Pension Plan Overview Hearing Next Week. The Joint Select Committee on the Solvency of Multiemployer Pension Plans will convene a hearing next Wednesday, April 18, to provide an overview of the multiemployer pension system. Establishing the joint select committee was agreed to during Senate budget negotiations [in order to address the impending pension crisis](#). The bipartisan committee is tasked with producing a bill to shore up multiemployer plans that are at great risk of insolvency. Wednesday's [hearing](#) will take place at 2:00 p.m ET.

Survival and Success in Legislative Testimony: Lessons from the Facebook Hearings. Earlier this week, Facebook founder and CEO Mark Zuckerberg [testified before committees in both the House and the Senate](#). Seyfarth's [Leon Rodriguez](#), former Director of U.S. Citizenship and Immigration Services in the Obama administration, [offers up some helpful tips](#) for those who have the good fortune of being called to testify before Congress.

NEXT WEEK: Seyfarth Webinar on DOL's New PAID Program. Join us on April 19 for a presentation on DOL's Payroll Audit Independent Determination (PAID) initiative, which was formally launched on April 3. This program will allow employers, under certain circumstances, to conduct self-audits, bring their findings to WHD, and obtain releases of employee's private rights of action. Since the program's announcement earlier this year, we've learned more about the specifics of PAID, the benefits of using the program, and the risks of opening your wage-and-hour heart to WHD, including the following:

- What is the PAID program . . . and how did it get here?
- What are the requirements for participation?
- How do we go about conducting an audit?
- What is the potential downside associated with participating in PAID?

Seyfarth's wage & hour audit and assessment team, including the former head of WHD, will discuss these issues and more in this interactive webinar.

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