



## How to work around Senate stagnation

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**LIFE IN LIMBO:** The Labor Department was in the spotlight last week after it rolled out the Biden administration's proposed revamp of rules for determining independent contractor status.

It also revived attention on the person who's overseeing the effort: Jessica Looman.

**Looman was the acting administrator of DOL's Wage and Hour Division** at the start of the process, but she had to drop that title when President Joe Biden nominated her to lead the agency on a permanent basis after the Senate shot down his first choice, David Weil.

**The Federal Vacancies Reform Act bars people like Looman** from continuing to serve as a temporary leader while their nomination is pending, but DOL fashioned a workaround that's lasted for several months while the Senate dawdles on Biden's labor nominees.

**DOL has stationed her as the principal deputy administrator** and delegating all allowable authority to that position, a move that complies with the law while encroaching upon the spirit of it.

**"For all intents and purposes,** the person has all the exact same powers they would have had if they were the acting officer, but without the acting title," Thomas Berry, a research fellow at the Cato Institute, told Shift. "Courts are very, very hesitant to find any power exclusive and non-delegable."

**POLITICO spoke to several lawyers and DOL experts**, none of whom thought that Looman's situation jeopardizes the independent contractor standard or other WHD actions given that the authority ultimately lies with Secretary Marty Walsh.

**"I don't think that that's going to create a legal problem,"** Seth Harris, a former acting labor secretary, said in an interview.

**But DOL can't entirely rule out the possibility**, he added, noting that the Biden administration's first attempt to unwind his predecessor's independent contractor rule was upended by a judge in Texas back in March.

**FIRST IN SHIFT:** Paid Leave for All Action and the National Partnership for Women and Families Action Fund will release a scorecard ranking members of Congress on their support of paid leave.

**It's part of a broader effort by advocates** to hold lawmakers accountable on the policy after Democrats failed to enact it as part of their reconciliation package.

**"We've come closer than ever to finally passing paid leave in this country,** and we're thrilled to recognize the leaders in Congress who have fought for it and helped bring us this far — and urge them to finish the job," Dawn Huckelbridge, director of Paid Leave for All Action, told Weekly Shift.

**The groups list 38 senators and 206 representatives who have “consistently voted and cosponsored paid leave legislation,”** according to a press release — Build Back Better, the FAMILY Act and the Job Protection Act. They rank six senators and 62 representatives at the top of the bunch as “paid leave champions.”

**Four in five Americans support paid family and medical leave,** according to a recent poll by Navigator. Another recent poll from Global Strategy Group and PLAA found that more than eight in 10 voters in the battleground states of Arizona, Georgia, North Carolina, Nevada, Pennsylvania, and Wisconsin do as well.

**“Polling confirms ahead of the midterms and the beginning of the next Congress** that voters in all parties support this policy, and the intensity of support and urgency is rising,” Huckelbridge said.

**DEMS POTENTIAL HEADACHE:** Democrats face a real and uncomfortable possibility after the midterms: two more years of a Senate divided 50-50, POLITICO's Marianne LeVine and Holly Otterbein report.

**After slogging through** — and extracting some significant victories from — the longest evenly split Senate in history, Democrats are pushing hard to expand their majority by netting seats in Pennsylvania and Wisconsin.

**But as their list of potential pickups shrinks,** they're staring down a 2023 that may start with another 50-50 chamber:

**SANDERS SOUR ON FED:** Sen. Bernie Sanders (I-Vt.) said Sunday the Federal Reserve is “hurting” the United States' economic situation as the country prepares for a possible recession, our Olivia Olander reports.

**“I think they're hurting the situation.** It is wrong to be saying that the way we're going to deal with inflation is by lowering wages and increasing unemployment,” Sanders said, asked on NBC's “Meet the Press” whether the Federal Reserve's recent actions have helped or hurt the economy. “That's not what we should be doing.”

**EEOC SCRUTINIZES TEMP FIRMS:** The Equal Employment Opportunity Commission filed at least 10 hiring discrimination lawsuits against staffing agencies in the past fiscal year, [Bloomberg Law reports](#).

“The presence of a ‘middleman’ in the form of a staffing agency can make bringing a discriminatory hiring case under state or federal law challenging, in part because workers placed through agencies are often unaccounted for on EEO-1 disclosures and have little visibility into the jobs for which they’ve been considered.”

**KNOWING JENNIFER ABRUZZO:** The Washington Post is out with a [deep dive](#) on National Labor Relations Board General Counsel Jennifer Abruzzo, who has played a large role in the agency’s newly aggressive posture.

“Nearly every colleague interviewed credited her for being a good friend who plans birthday parties and retirements dinners and checks in over email and phone calls, helping all attorneys, regardless of politics, adjust to life in Washington.”

**ADVENTURES IN IP LAW:** Medieval Times sued the union that organized its dinner-theater in New Jersey for co-opting the company’s name as part of the organization’s title, [HuffPost reports](#).

“Medieval Times said the union, the American Guild of Variety Artists, had created ‘consumer confusion’ by allowing workers to use the name ‘Medieval Times Performers United.’”

**The union’s response:** “‘It is a grotesque attempt to retaliate against workers for exercising their legally protected right to form a union and bargain collectively. But it will fail,’ the AGVA said.”

**OKC APPLE STORE UNIONIZES:** An Oklahoma Apple store became the second to organize in recent months, [CNBC reports](#).

“It’s a win for Communications Workers of America, which now represents the workers at an Apple store after separate unionization efforts at stores in Georgia and New York City stalled.”

The vote was 56 to 32.

**COLLISION COURSE:** California’s stringent independent contractor law could run into conflict with the Labor Department’s recently proposed rules on the matter, [the San Francisco Chronicle reports](#).

“While the Labor Department’s announcement did not mention California, the center of the current legal and political battles on the issue, the department’s proposal ‘surely reverses Proposition 22,’ said William Gould, a Stanford labor law professor who was chairman of the National Labor Relations Board under President Bill Clinton from 1994 to 1998.”

**DOWN AT CBP:** Frustration is mounting inside the Biden administration with the head of Customs and Border Protection, [our Daniel Lippman reports](#).

**Five current administration officials who work with CBP Commissioner Chris**

**Magnus** portrayed him as unengaged in his job, saying he often doesn't attend White House meetings on the situation on the border, bad-mouths other agencies to colleagues and superiors, and has not built relationships within CBP and across other agencies to address the influx of migrants at the border.

**They complain he is unfamiliar with some of the operations of CBP** and instead is focused primarily on reforming the culture of the Border Patrol, addressing its long list of allegations of racism and violence.

**More immigration news:** "Transported migrants may be on a path to citizenship because of DeSantis flights," from POLITICO's Jesús A. Rodríguez.