



Election results are in: What should employers expect next?

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With one of the most contentious election seasons in recent history behind us, President-Elect Donald Trump will take office as the 45th President of the United States on January 20, 2017. Republicans will also have majority control over the Congressional House and Senate. While the impact of the election on labor and employment matters is difficult to predict, there are a number of important issues for employers to watch.

Paid family leave

While some state laws require employers to provide paid family leave or sick leave to employees, federal law does not. For the first time in U.S. presidential election history, both major party candidates set forth plans to change that. President-Elect Trump has stated that he supports six weeks of paid maternity leave for women. The plan represents a break from the Republican majority, which has generally opposed federally mandated paid sick or family leave. However, with surveys signaling voter support for some form of paid family leave, it is possible that a Republican-controlled Congress could back a paid leave proposal.

Court appointments

Nominating a successor to the U. S. Supreme Court for the late Justice Antonin Scalia is undoubtedly one of President-Elect Trump's top priorities. In addition to filling Scalia's vacancy, with three justices approaching or over the age of 80, Trump could have opportunities to make additional appointments to the highest court during his term. Significant labor and employment issues pending before the Court include: the standard for reviewing objections to Equal Employment Opportunity Commission (EEOC) subpoenas, collection of compulsory union fees, and the enforcement of class action waivers in mandatory arbitration provisions. President-Elect Trump has identified 21 potential nominees, all of whom would ensure a conservative bend for the Court.

The DOL and the White Collar Exemption

The Secretary of Labor for the U.S. Department of Labor (DOL) represents another

important appointment opportunity for the president-elect Trump. Trump is likely to appoint a secretary who will decrease the DOL's recent rule-making and regulatory activity. In the meantime, the foremost question for many employers is what impact does the election have on the changes to the DOL's Fair Labor Standards Act (FLSA) white collar exemption rules, which are scheduled to take effect on December 1, 2016. Without a clear indication that the changes will be repealed, the judicious course of action for employers is to continue to work toward developing and implementing a compliance strategy.

The NLRB and The EEOC

The composition of the National Labor Relations Board (NLRB) and the EEOC is also critical to a president's ability to shape employment laws and policies. With a Democratic majority on the NLRB during the Obama administration, the Board issued a string of rulings that favor unions and employees. For example, the NLRB held that class action waivers contained in arbitration agreements violate the National Labor Relations Act (NLRA). In a separate decision, the NLRB broadened the longstanding definition of "joint employer." The decision has significant implications for union bargaining and potential unfair labor practice claims in franchisor-franchisee relationships and for employers working with staffing companies.

Similarly, as part of its five-year strategic enforcement plan, the EEOC also advanced an ambitious agenda during the Obama administration. For example, the commission recently announced that employers subject to Title VII must begin reporting summary pay data beginning in 2018 to help the agency investigate and eliminate pay discrimination. The EEOC has also taken a strong position on sexual orientation and gender identity discrimination, among other issues. Once Republican-appointed commissioners are in place, the EEOC could seek to revise or rescind the pay reporting rules before they go into effect. Additionally, the EEOC's strategic enforcement plan and broader policy initiatives will likely be scaled back with a focus instead on addressing the agency's backlog of charges.

Minimum wage increases

While on the campaign trail, Trump vowed to be the "greatest jobs president that God ever created." Economists disagree over whether increasing the minimum wage would support that goal. At the height of election season, however, President-Elect Trump indicated that he would support an increase of the federal minimum wage from \$7.25 to up to \$10.00. Trump later clarified that he believes that changes to the minimum wage should be state driven. While a federal increase is unlikely, particularly given Vice President Mike Pence's record of objecting to a minimum wage increases while in Congress, employers can anticipate renewed interest and debate over increasing the minimum wage at the state level.

The Affordable Care Act

The future of the Affordable Care Act (ACA), also known as Obamacare, remains uncertain. Republicans voted to repeal the ACA several times. Following the election, Trump signaled for the first time that he will consider keeping some of the more popular provisions of the ACA, such as the prohibition against insurers denying coverage because of patients' pre-existing conditions and a provision that allows parents to provide years of additional coverage for children on their insurance policies. Setting aside ideological or political differences, the ACA has been integrated into our healthcare system and will not be repealed or replaced overnight. Finding agreement around how to unwind it and what to replace it with will take time.

Stay tuned

With the White House and Congress under GOP control next year, employers can expect to see the new administration rescind Executive Orders from the Obama administration and appoint judges and employment agency leaders who support less regulation. At the same time, President-Elect Trump, who appealed to many voters as a non-conformist, has put forward some employment-related policies that diverge from the traditional views of his party. As the details and scope of his policies develop, we will continue to provide updates and assessments of those issues impacting employers.