

The Potential Impact Of a Trump Presidency on Employers

November 10, 2016



Based on promises made during the campaign, it appears employers may expect changes in the government's approach to workplace regulation. Although we certainly do not have a crystal ball, President-elect Trump campaigned on a platform of reversing or ratcheting back many aggressive Obama administration initiatives. Whether those changes will come swiftly or face hurdles, will depend on the specific agenda item. Here is a look at some Obama administration efforts affecting employers that may be subject to change under the Trump administration:

- **Executive Orders.** President Obama issued numerous executive orders affecting federal contractors. These Executive Orders have addressed a variety of workplace issues such as wages, wage reporting, sexual orientation and gender identity, workplace safety, and mandatory sick pay. Employers could see immediate revision to these Orders because the new President does not need Congressional authority to make changes.

- **Department of Labor Regulations.** Perhaps the most significant DOL regulatory effort is its new “white collar” overtime exemption rule, which takes effect **December 1, 2016**. Under this rule, the minimum salary threshold required to qualify for the Fair Labor Standard Act’s “white collar” exemptions is \$47,476 per year (or \$913 per week). Although both the House and Senate introduced resolutions (H.J. Res. 95 and S.J. Res. 34 respectively) under the Congressional Review Act to disapprove the regulations, neither resolution has passed the respective houses, and the final regulations were published well within the current legislative session to avoid carryover into the Trump presidency. Nor is it clear whether the President-elect favors a complete repudiation of the regulations, or merely a carve-out for small businesses.

Even if Congress acts on the current resolutions, President Obama has promised a veto. Therefore, outside of current and future legal challenges over the DOL’s authority to implement the current regulations in the courts, a Trump Administration desire to overturn or scale back the rules will require resort to the time-consuming regulatory process to reverse the final regulations. Therefore, the effective date of the revised overtime exemption regulations remains imminent.

- **National Labor Relations Board Policies and Decisions.** Under the Obama administration, the NLRB has significantly broadened its reach over employers. Perhaps the most significant ruling affecting employers was the NLRB’s controversial decision to expand the definition of “joint employer” and the resulting challenge to the franchisor/franchisee business model. In addition, the NLRB has been scrutinizing employer’s social media policies with far reaching impact on all employers that meet the jurisdictional requirements of the National Labor Relations Act (not just unionized workplaces). Although Trump NLRB appointments could certainly curtail the NLRB’s current ambitions, much of the Board’s expansion has been through NLRB decisions that will require future litigation to reverse. Therefore, while we can expect a shift in policy going forward, immediate reversal of NLRB precedent will take more time to implement.
- **The Affordable Care Act.** The employer mandate under the Affordable Care Act (ACA) requires companies with 50 or more full-time employees (defined as those who work 30 hours per week) to offer health care or face penalties. President-elect Trump has made ACA repeal a pillar of his platform. With a Republican controlled Congress he certainly has the support to execute his policy. Yet legislative amendments or repeal will still take time to implement, and the new administration will have to deal with the 20 million people insured under the Act. We therefore do not expect the Act to be automatically or speedily dismantled.

- **LGBT Discrimination.** Driven by Obama administration policies, the Equal Employment Opportunity Commission has aggressively expanded the definition of “sex discrimination” under Title VII of the Civil Rights Act to encompass sexual orientation and gender identity. Courts are beginning to support the EEOC’s position as well. While a Trump administration could set a new course as a matter of policy, we do not expect significant erosion in current policy in the near term.

Indeed, the U.S. Supreme Court has agreed to consider whether the U.S. Department of Education’s interpretation of the word “sex” also covers gender identity under Title IX’s prohibition of sex discrimination.

Time will sort out these issues.

- **Immigration.** There is little doubt that President-elect Trump has also taken a strong stance on immigration reform, which could potentially affect employers. One potential outcome may be increased scrutiny on employers in terms of I-9 compliance and documenting workers.

Not all of Trump’s campaign platforms are anti-employee. For example, he campaigned for an increase in the federal minimum wage to \$10 per hour and seeks to provide six weeks of paid leave to new mothers. We are closely monitoring all of these issues and will be reporting as significant developments occur. Please contact us with any questions you may have.

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