

Employers Exploring What Changes a Biden Administration Will Bring

By Tammy Binford | Nov 9, 2020 | HR Daily Advisor

Now that the presidential race has been called for Joe Biden, employers are studying the impact a new administration will have on policies affecting the workplace. The COVID-19 response, the economy, health care, a change in direction at federal agencies—those issues and so much more are on employers' radar.



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Also, employers need to look to more than just the presidential race, since the makeup of Congress is all-important, too, Burton J. Fishman, an attorney with Fortney & Scott, LLC in Washington, D.C., says. With Republicans seeing gains in the House and a strong chance to retain the Senate, “the Democratic platform hangs in the balance,” he says.

As far as the immediate impact of the new administration, Mark Adams, an attorney with Jones Walker LLP in New Orleans, Louisiana, says Biden has made it clear that his top priorities will be developing a national strategy to control the coronavirus and address the economic crisis as well as racial equality and climate change.

“So, with the president-to-be having set that ambitious agenda and given the likely composition of Congress, we may not see much impact on traditional labor and employment issues, at least in the early going,” Adams says.

Although some have suggested President Donald Trump’s executive order targeting diversity training by federal agencies and contractors might be immediately rescinded when the new administration takes over, “the courts may take care of that issue before then,” Adams says, since that order, which seeks to ban training that includes what the administration calls “divisive concepts,” is being challenged as an unconstitutional infringement of free speech.

Addressing COVID-19

“As getting control of COVID will be the No. 1 priority of the Biden administration, this is the area where employers are most likely to be impacted,” Adams says. “I would expect an initiative to extend the COVID-related leave protections, which, without an extension, will expire at the end of this year. I also would expect to see some efforts to provide relief to unemployed workers. Of course, either of these efforts could come during the lame-duck session of Congress before the new president is inaugurated.”

Kevin C. McCormick, an attorney with Whiteford, Taylor & Preston, L.L.P. in Baltimore, Maryland, says he expects Biden to continue many Trump administration policies concerning the coronavirus, “possibly enhancing an employee’s right to refuse to work in any environment deemed unsafe and providing a more generous stimulus package for employees/employers impacted by the pandemic.”

Health Care

Many employers are anxious to know what the future holds on the healthcare front, but Adams says that question will have to wait for the U.S. Supreme Court’s decision on the attempt to abolish the Obama-era Affordable Care Act, which is currently before the Court.

Patrick W. McGovern and Gina M. Schneider, attorneys at Genova Burns LLC in Newark, New Jersey, say they expect the Biden administration to propose expanding and fine-tuning the ACA, including enhancing premium subsidies, expanding eligibility for Medicare, and allowing consumers to choose between an employer plan and a public option.

Regulatory Climate

Employers can expect a change in direction from various federal agencies and a return to the regulatory climate of the Obama-Biden administration, McCormick says. “I believe that many employers may have forgotten how difficult it was under the Obama-Biden administration to run a business,” he says. “In a host of important areas of employment, I expect that the Biden administration will try to return to those earlier times by reinstating many of those earlier burdens on employers.”

McCormick mentions that Biden has supported raising the minimum wage and mandatory paid time off. “Biden also has been critical of how workers in the so-called ‘gig economy’ have been treated,” he says, adding that he expects the Biden administration to roll back Trump administration developments from the U.S. Department of Labor (DOL) and the National Labor Relations Board (NLRB) concerning when workers can be classified as independent contractors.

“I also expect that the Biden administration will make it easier for labor unions to organize employers,” McCormick says. “Biden has campaigned frequently that he is a ‘union man,’ so changes in the NLRB’s policies concerning union elections may change significantly.”

Fishman points out the new administration will bring new leadership to cabinet departments and executive agencies that can act without congressional approval. “Probusiness/antiunion interpretations and opinion letters will be reviewed, and many will be halted, rescinded, or modified in every cabinet department and every regulatory agency,” he says.

Fishman says to look for new policies and positions on joint employers, independent contractors, visas for foreign workers, safety mandates, exempt-employee status, and the status of religious rights as they relate to employers. He also expects climate change and environmental policy to have an impact on future employment, with climate change remaining “a fixture of Democratic policy.”

Immigration and Foreign Workers

Immigration policy and the status of foreign worker visas also are expected to change under the Biden administration. Fishman says Biden can rescind Trump administration Executive Orders on immigration and the Deferred Action for Childhood Arrivals (DACA) Program.

McGovern doesn't expect the new administration to undo the Trump administration's immigration restrictions, at least in the first year. He points out making more visas available to foreign workers may be "a hard sell" since the argument will be that jobs should go to U.S. workers out of work because of the pandemic.

Election's Aftermath

The long, divisive campaign saw tensions rise among employees in many workplaces, and those tensions may linger after the election.

"It is important to remind all employees that they need to focus on the work at hand and not get distracted by external issues over which they have no control," McCormick says. "Now, employees should be advised to 'get back to work' and leave the political discussions at the door."