



What Should Employers and Professionals Expect for Compliance Initiatives in 2021

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While the nation waits for the New Administration to start making changes in focus for the workplace, it is imperative to understand what the forecast tells us and how Employers and Professionals can prepare. The new agenda for the workplace by the President and Vice-President elect, will shift some of the regulations from the previous administration but, we have received information on what changes are expected for 2021.

Employers should review the proposed changes and see how it impact their industry, Federal state and local regulations. They will need to make the changes in their policies and Employee Handbook. Employees need for Employers to prepare and communicate any changes effectively. The changes will impact the budget and compliance efforts may need to be adjusted. Training will be a huge factor to communicate any changes in the focus for Employers.

Regulatory Agencies are preparing for what they consider changes in regulations and focus on a change in compliance efforts. Violations of regulation will take center stage and there will be a scramble to make announcements of the changes. The list of agenda items from this training will provide Employers with what and how the changes will impact them.

The New Administration Focus by *Fisher Phillips Employment Law Firm

Workplace Safety

"I'm sure it comes as no surprise that workplace safety issues related to the ongoing pandemic will be at the top of Biden's agenda when he assumes office," says Todd Logsdon, co-chair of Fisher Phillips' Workplace Safety and Catastrophe

Practice Group. Biden has been extremely critical of the Trump administration's reliance on existing statutory and regulatory tools, such as the Occupational Safety and Health Administration's (OSHA's) general duty clause, to maintain safe workplaces. "Biden will most likely push OSHA for a mandatory emergency standard, which would require employers to develop and submit a workplace safety plan – and may even require government approval."

Wage and Hour Law

"Wage and hour issues under President Biden will be marked by a progressive agenda focused on middle- and working-class issues," First on the agenda? "We can expect to see a push for a \$15 minimum wage on the national level – an increase from \$7.25 per hour," she says. One of Biden's campaign promises called for an increase to \$15 by the year 2026, so we can expect to see him push for Congressional efforts to move in that direction. But if this initiative gets hung up in political wrangling or moves too slow for worker advocates, Caminiti says you can expect to see states and local governments to continue to implement their own measures expanding the minimum wage in their own areas. Employers should brace themselves for enhanced penalties and enforcement actions targeted at employers who do not comply with the wage hour laws under the Biden administration, says Caminiti. His agenda might also include increased federal regulation designed to protect workers such a national wage theft protection act – which could include both notice and recordkeeping requirements

Pay Equity

Pay Equity is the new tsunami for Employers. "It means we're much more likely to see pay equity legislation passed at the federal level. U.S. House passed the Paycheck Fairness Act in 2019 but the Senate took no action on the bill."

If passed, it would amend the Fair Labor Standards Act to (1) restrict the use of the "bona fide factor" defense to wage discrimination claims, (2) enhance nonretaliation prohibitions, (3) make it unlawful to require an employee to sign a contract or waiver prohibiting the employee from disclosing information about the employee's wages, and (4) increase civil penalties for violations of equal pay provisions. Biden supports passage of the Paycheck Fairness Act and has vowed to sign it into law if it comes before his desk once he becomes President. And if the federal bill doesn't pass? "Expect to see an increasing number of states pass their own pay equity statutes, increasing the compliance challenges for multistate employers."

Labor Relations

The Biden presidency will likely bring about a return to the pro-labor agenda that was a hallmark of the National Labor Relations Board (NLRB) under the Obama

administration, and a corresponding reversal of pro-employer initiatives implemented by the agency over the past four years. "It's safe to assume that his victory will bring about a sea change in the federal framework regulating the labor relations arena, with the objective of resurrecting an organized labor movement that has seen its share of setbacks in recent years." The new president can be expected to return the Board to a Democratic majority by next summer. At that point, the agency is likely to set its sights on overturning a slew of decisions and regulations that have swung back and forth like a pendulum dating back to the Clinton administration. Among those issues for priority review are the recent rollback of: (1) accelerated "quickie election" procedures and timetables that had made it easier for unions to organize; (2) rigid standards regulating handbook rules governing social media, electronic communication systems and workplace conduct; and (3) agency doctrine invalidating class waivers within binding arbitration agreements

Employee Benefits

Biden promises a rigorous defense and expansion of the Affordable Care Act once he sits in the Oval Office. Although the U.S. Supreme Court will hear oral arguments in an ACA case on November 10 and a decision on the statute's fate is expected by the spring of 2021, Biden has repeatedly pledged to preserve pre-existing condition guarantees regardless of the Court's ruling.

Employee Leaves

As for employee leave, Biden has a history of supporting family and medical leaves for employees, according to Megan Winter and Myra Creighton, co-chairs of the firm's Employee Leaves Practice Group. But he may not be willing to go as far as some progressive activists and lawmakers would like him to go. The paid leave program supported by Biden during the campaign calls for legislation that would provide 12 weeks of paid leave for all workers for their own or a family member's serious health condition. However, Biden has thus far stopped short of fully endorsing a Democratic-sponsored proposal – the FAMILY Act – that would require paid leave for a broader list of situations.

Employee Privacy and Data Security

"I would expect the next four years to see Biden and congressional Democrats push for federal privacy legislation favoring consumer rights, borrowing to some extent from California's CCPA. At a minimum, any federal law would establish new transparency and data access requirements, forcing many businesses to change their approach to handling personal data. In fact, Senate Democrats have already introduced their own privacy legislation in 2020 that would head down this road. While similar in some respects to Republican proposals, there are also notable

differences because it would create a private right of action (favored by Democrats) but would not include a pre-emption feature to block conflicting state laws (favored by Republicans).

Global Immigration

Immigration was no doubt the single highest-profile issue on the docket when Trump was elected in 2016, but things will be different in the Biden administration. The pandemic, social unrest, and the economic downturn have nudged immigration out of the spotlight as the hottest-button topic, says Davis Bae, co-chair of the firm's Global Immigration Practice Group. Still, he believes immigration will be a major issue in Biden's presidency, and Bae expects to see an immediate and dramatic reversal of Trump-era hardline immigration restrictions. Biden's proposed immigration policies were defined in detail on his campaign website – and they largely seek to reverse most, if not all, of Trump's immigration policies. According to Bae, this includes reversing the "Muslim Ban" policy, ending "wall" funding and replacing it with technology-based border security, ceasing controversial border policies such as family separation, and reinstating protections for "Dreamers" and those with Temporary Protected Status.

We can also expect the Biden administration to review enforcement priorities and actions by federal immigration agencies, create employment options for seasonal and high skilled workers, address gaps in immigrant visa backlogs, and provide microeconomic immigration support for municipalities. "We can also expect the Biden administration to work with the new Congress to seek long awaited comprehensive immigration reform.

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*Excerpts from Fisher Phillips Employment Law Firm



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