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What will a President Trump mean to the employment world?

Trying to predict the future is a foolhardy enterprise. Ask any weatherman or stock broker. However, sometimes we want to know what kinds of changes are likely to occur when there is a major shakeup, like the election that we have all recently witnessed. While the employment landscape was not a topic that received a lot of air time in the debates, or even in the media in general over the last several months, we certainly can get a flavor of some of the changes coming by reviewing the President-Elect's "Contract with the American Voter," better known as his 100-day plan.

Change in Guard at the National Labor Relations Board

No doubt, one of the most political administrative agencies in government is the National Labor Relations Board ("NLRB"). President Obama certainly built and encouraged an aggressive NLRB, instituting such things as "speedy elections" and new franchise rules making it easier for fast food employees to organize. Keep in mind that there are currently two vacancies on the 5-person board, and Trump will likely fill them with employer-friendly Republicans. That new board is likely to revisit these changes and alter the future course of the NLRB.

Child Care

President Trump has offered a few ideas of programs he believes will assist with childcare. Those that affect the workplace are that he wants to build incentives for employers to provide childcare in the workplace. Perhaps of bigger concern to employers is the promise of six weeks of paid leave for new mothers before returning to work. There was no indication of how this program would be funded. Further, this last concept does not provide any such benefit for fathers.

Immigration

Perhaps no other topic received as much attention in the months leading up to the election as immigration. A President Trump will almost certainly have a significant impact on those employing foreign nationals in the workplace.

Mr. Trump has indicated that he will press for all employers to use E Verify, a system that checks on the legal employment status of applicants. This system has been voluntary up to this point and only required for government contractors. There is no current charge for using the system, and employers may welcome this as a replacement to I-9s.

Further, Mr. Trump called for increased scrutiny on immigrants coming from "regions that export terrorism." This may impact employment immigration by restricting the countries from which employers can seek applicants.

Mr. Trump has also called for a tripling of ICE agents (Immigration and Customs Enforcement), which will almost certainly mean greater scrutiny of foreign national workers.

Finally, Mr. Trump has called for vetting foreign nationals to ensure that they support American values. It is difficult to know what this will look like, but it will most assuredly affect employment immigration for those employers who utilize this as a recruitment tool.

Equal Employment Opportunity Commission

A President Trump will be naming replacements for the top positions in the Equal Employment Opportunity Commission ("EEOC"). This will likely change the attitude of the EEOC, especially given the emphasis of the last few years on sexual orientation and gender identity issues in the workplace. Further, Donald Trump promised in his 100-day plan to drastically cut the size of the federal government, and the EEOC will likely be one of his targets.

Supreme Court

There is perhaps no other single aspect of a Trump presidency that will have as much impact and long term change as his appointment of at least one Supreme Court Justice. This was one of the key issues in the election, and many voters stated that the number one reason that they voted for Donald Trump was to secure a conservative nominee to file the vacancy left by the passing of Justice Scalia. This could likely have significant impact in the employment world, though what impact only time will tell.

Affordable Care Act

The President-Elect's mantra was to repeal and replace the Affordable Care Act ("ACA"), otherwise known as Obamacare, as quickly as possible. However, since the election, Mr. Trump has already begun to talk about the aspects of the ACA that he wants to keep. His challenge will be that it will not be easy to dismantle this complex piece of legislation and keep only part of it. All of the parts are interdependent, and he may find a huge game of Jenga on his hands. It is doubtful that there will be any significant change in the next two years.

Changes to OSHA

Imagine if you were a businessman who had built countless buildings and projects around the United States, and you were now given the reins to the Occupational Safety and Health Administration ("OSHA"). Imagine how many times he has paid fines and dealt with the challenges all employers face in dealing with government regulation. It is almost a surety that OSHA will be forced to scale back enforcement and, like the EEOC, will likely face significant downsizing. That being said, no one wants to see us return to unsafe workplaces. We will see what balance will be struck.

Wage and Hour

Trump has commented that we need to see minimum wages rise. The question is whether or not he believes that should be done on a federal level or a state level. In his campaign, he discussed that states such as New York and California need to have a higher minimum wage than say a Midwestern state. However, whatever the modality, it appears he wants to see wages going up. Another major question that remains to be seen is whether or not he will revisit the recent overtime laws — specifically, the change to the salary basis which was to take affect December 1, 2016, but has been temporarily placed on hold via a federal judge in Texas. Stay tuned.

Summary

This is a summary, and not a conclusion, because we really have no idea what is coming down the pike. However, the above at least provides a glimpse of what has been discussed on significant issues to employers across the country. Whether the above is accurate or not, we are clearly in for significant changes in the next few years. This is a time to stay tuned to the news and your employment lawyers, because odds are that changes will be coming fast and furious.

Please feel free to contact us with your employment questions.



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