

Predictions on What Employers Should Expect under the Trump Administration

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Preview of Our Predictions

- Paid Maternity Leave Benefits
- Changes to DOL's Overtime Rule
- Rollback of Recent NLRB and DOL Rules and Guidance
- Mandatory Use of E-Verify by More Employers
- "Repeal" of the Affordable Care Act

Remember, We Can't Bank on Predictions

Donald Trump's election signals that change is coming in several key areas affecting employers. It is still far too early to predict with accuracy what changes he will prioritize, and what the final form of these initiatives might take.

Nevertheless, there is value in trying to prepare as best we can in advance of any changes to the laws that affect employers. Our predictions today are based on remarks President-elect Trump made during the campaign and positions he and his advisors have posted online during the election campaign, and in recent days.

Paid Maternity Leave Benefits

Paid Maternity Leave Benefits

During the campaign, President-elect Trump indicated his support for paid maternity leave benefits. His statements suggest the following:

- this would apparently be a new benefit, and not part of the FMLA
- it would provide up to six weeks of paid maternity leave to eligible employees
- average benefit of \$300 per week, paid for through collection of unemployment insurance taxes
- unclear whether it applies only to absences after the birth of a child
- unclear whether fathers will receive any benefits

Paid Maternity Leave Benefits – Questions

- How exactly is this going to be funded?
- Will it cover absences from complications during pregnancy?
- Will it cover absences following the adoption of a child, or the placement of foster children in an employee's home?
- What about dads?

Changes to DOL's Overtime Rule

The new overtime rule is scheduled to take effect on December 1, 2016. Its most significant change will be requiring employers to pay overtime to employees who make less than \$47,476 per year.

(The current rule is that salaried, exempt employees must be paid at least \$23,660 per year.)

Many Republicans have opposed this new rule, and several states and business groups have filed lawsuits seeking to enjoin its implementation.

So, what will President Trump do?

What Will President Trump Do with the Overtime Rule?

- It's difficult to say.
- There's tension between populist and conservative impulses on this issue.
- The business community generally opposes the rule, overtime because it will require employers to choose between raising salaries, paying overtime, or reducing work hours for some employees who are currently classified as salaried exempt.
- But many employees who earn between \$23,660 and \$47,476 **LOVE** the new rule. And presumably, many of them are part of constituencies President Trump will want to keep happy.
- One clue about the timing for any repeal or reversal of the overtime rule: House Speaker Paul Ryan's online "A Better Way" materials do not emphasize this issue or suggest it would be part of the focus of the first 100 days of the new Congress.

What Will President Trump Do with the Overtime Rule?

So what do we recommend?

- You should plan for implementation of the new rule on December 1
- This includes having an effective communication plan for advising affected employees of how the rule impacts them
- Be ready to *consider* reversing course if the rule changes (but think about how awkward it could be for certain employees in certain circumstances)
- If this issue is of critical importance to your company, consider whether you want to join the host of companies who are lobbying Congress to scrap the rule

Rollback of Recent NLRB and DOL Rules and Guidance

NLRB rules and guidance that will be likely targets for rollback:

- Interpretation and challenges to social media policies and employee handbook provisions
- Challenges to allegedly unlawful confidentiality rules
- Rules limiting unauthorized employee use of company logos and trademarks
- Rules on employee conduct toward their employer, supervisors, and co-workers
- The “Quickie Election” rule
- The new joint employer standard announced by the NLRB in its *Browning-Ferris* decision

Rollback of Recent NLRB and DOL Rules and Guidance

The DOL's "persuader rule," which is currently stayed, will likely be permanently eliminated

- Among other things, the "persuader rule" required employers, including in non-union settings, to disclose how much they pay their labor lawyers and labor relations consultants.
- The "persuader rule" was challenged as unconstitutional, and in June 2016, a Texas federal district court granted a nationwide preliminary injunction on the rule.
- We expect the rule will be eliminated by the Trump Administration.

Rollback of Recent NLRB and DOL Rules and Guidance

Timing and practicality issues

Mandatory Use of E-Verify by All Employers

Current law:

E-Verify is only required for certain federal contractors and for non-contractor private employers in a handful of states that mandate its use. For everyone else, use of E-Verify is currently voluntary.

Note: **Beginning January 1, 2017, Tennessee will become one of the few states that mandate the use of E-Verify for certain employers.** The new law requires all Tennessee employers with 50 or more employees to use E-Verify.

What we expect from President Trump:

During the campaign, President-elect Trump stated that he supports requiring employers to use the E-Verify system. It's unclear whether this would apply only to employers with a certain minimum number of employees.

“Repeal” of the Affordable Care Act

Throughout the campaign, President-elect Trump joined many Republicans in pledging to “repeal” the Affordable Care Act (“ACA”).

However, as early as February 2016, candidate Trump expressed support for keeping the ACA provisions requiring that health insurance be offered to people with preexisting health conditions and to employees’ children up to age 26.

There is also strong support for these and other ACA provisions among members of Congress and various stakeholders, including health care companies.

Based on all this, it appears unlikely that the ACA will be “repealed” in its entirety.

“Repeal” of the Affordable Care Act

Pressure points:

- Under any replacement to the ACA, will employer-paid health insurance benefits be taxable? (Speaker Ryan’s proposal from June 2016 would tax these benefits, but candidate Trump indicated that such benefits would be fully tax deductible).
- What will happen to the roughly 20 million Americans who received health insurance coverage under the ACA for the first time?

“Repeal” of the Affordable Care Act

Practical issues affecting HR professionals and executives:

- The ACA requires that “applicable large employers” must file an annual information return with the IRS. Will this requirement, as well as the need for employers to count full-time and full-time equivalent employees to determine if they are “applicable large employers,” be eliminated? If so, when?

Miscellaneous Discussion Points
