

EMPLOYMENT LAWSCENE ALERT: WHAT'S A BIDEN PRESIDENCY GOING TO MEAN FOR EMPLOYERS? AN OVERVIEW

The labor and employment law policies and enforcement goals of the federal government rely largely on which party's administration occupies the White House. When inaugurated in January, President Joseph R. Biden made some immediate and significant changes that will affect employers. Also, based on President Biden's statements made during his campaign and the stated goals of others in the Democratic Party, decidedly pro-employee policies, enforcement goals, and legislation are very likely on the way. These changes are all but certain, now, with a Democratically controlled Congress. Over the next five weeks, the OCHDL employment law team will examine five labor and employment areas that employers should know and understand in order to navigate through the new and significant changes that the Biden Administration will likely make in the coming months and years. In the following weeks, we will cover:

- **OSHA:** On January 21, 2021, President Biden signed an Executive Order requiring OSHA to provide guidance to employers on workplace safety during the COVID-19 pandemic. In response, on January 29, 2021, OSHA issued guidance related to COVID-19. This guidance, as well as OSHA's enforcement policies regarding COVID-19, will likely continue to evolve under the new administration.
- **Wage and Hour:** This blog series will also cover potential wage and hour changes such as an updated federal minimum wage and the proposed Paycheck Fairness Act, which would expand the equal pay provisions contained in the FLSA and require that any pay differential between sexes be passed on "a bona fide factor other than sex, such as education, training, or experience."
- **Labor Law:** We'll discuss the future of the NLRB and labor law under a Biden Administration. Significant changes, including the roll back of certain enforcement guidance and the ousting of the General Counsel, have already occurred, and if campaign promises are to be believed, we could have significant additional changes, including the passing of the Protecting the Right to Organize (PRO) Act, which would be a sweeping overhaul of federal labor law including prohibiting the use of class action waivers in arbitration agreements, making it easier for workers to form unions, limiting the impact of right-to-work laws, and codifying an expanded definition of what constitutes a joint employer.
- **Discrimination:** Then, we'll cover the Biden Administration's potential impact on issues of discrimination, including the Bringing an End to Harassment by Enhancing

Accountability and Rejecting Discrimination in the Workplace (BE HEARD) Act, which would require most businesses to provide anti-harassment policies and training and would codify the prohibition of discrimination on the basis of sexual orientation, gender identity, pregnancy, childbirth, a medical condition related to pregnancy or childbirth, and a sex stereotype under Title VII.

- **DOL**: Finally, this blog series will wrap up with potential changes that could come through the Department of Labor, including changes to the independent contractor test, changes to the joint employer test, and expansions of the FMLA.

As always, O'Neil Cannon is here for you. We look forward to expounding on these topics over the next five weeks and providing you with timely and relevant information over the years to come. We encourage you to reach out with any questions, concerns, or legal issues you may have regarding the anticipated labor and employment law changes under the new Biden Administration.