

LEGISLATIVE UPDATE

March 2017

TRUMPDATE: What can employers expect from the new administration?

Only 47 days into his term, President Trump and his administration have been making headlines, but have not given employers much of an indication of how Trump's policies will impact employers. Below is a roundup of some of the key issues impacting (or potentially impacting) employers.

Department of Labor

The Secretary of Labor is a cabinet level position within the Executive Branch. The Secretary is responsible for overseeing the activities and policy direction of all agencies and board under the DOL, including OSHA, the Office of Workers' Compensation Programs, the Employee Benefits Security Administration, and the Wage and Hour Division. Early on, the President tapped Carl's Jr. CEO Andrew Pudzer as his nominee for Secretary of Labor. However, due to a tumultuous vetting process, Pudzer withdrew from consideration. Trump most recently named Alexander Acosta as his new nominee. Acosta has previously held various government positions including Assistant Attorney General of the Civil Rights Division under George W. Bush, and briefly as a member of the NLRB. A date for Acosta's confirmation hearing has not yet been announced.

National Labor Relations Board

The NLRB is comprised of 5 quasi-judicial members. Each member is appointed by the President for a 5 year term. The terms are staggered so that one appointment expires each

year. Despite the intentional staggered expiration of NLRB appointments, at the time Trump came into office, there were two vacancies on the Board to fill. The Board is currently comprised of two Democratic appointees and one Republican appointee. When the Board was last fully staffed, it had 3 Democratic appointees and 2 Republican appointees. With at least two Board positions to be filled, Trump has the potential to flip the composition of the Board in very short order. To

date, the White House has not yet named any nominees for these positions.

EEOC

The EEOC, which was very active during the prior administration, has been relatively quiet since January. One of the largest issues looming with the EEOC is what position the government will take with respect to still-pending litigation over the new overtime exemption salary standards. While the new regulations are currently stayed pending further action by the courts, the case remains open. Most pressing is the EEOC's appeal of the District Court's ruling granting the stay. The EEOC originally agreed to an expedited briefing schedule, but since Trump's inauguration, has requested extensions of its briefing deadlines. Without otherwise indicating whether the government still plans to defend the regulations, the EEOC requested another extension of its deadline to file a brief through May 1, 2017, to allow sufficient time for a new Secretary of Labor to be confirmed and to get up to speed on the matter.



(cont. on reverse)

TRUMPDATE (cont. from front)

Family Leave and Child Care

Family leave is one of the few employment issues Trump has stated as a priority during his campaign. And while he has not yet released any specifics of his plan, he again mentioned family leave as an issue in his recent address to Congress. Meanwhile, Trump's daughter, Ivanka, has been actively discussing her thoughts on both paid maternity leave and a child care tax credit with members of the House and Senate. In statements made by Ivanka, it appears she is pushing for 6 weeks of paid maternity leave for mothers, which she proposes could be paid through states' unemployment systems. Ivanka is also asking lawmakers for tax deductions for child care expenses available to individuals who earn less than \$250,000, or \$500,000 for married couples; and a tax credit for lower income families.

Health Care

The first week of his presidency, Trump signed an executive order directing that the Affordable Care Act be repealed, and that federal agencies minimize the financial responsibilities of the government under the ACA by waiving, deferring, exempting, or delaying implementation of any provision of the ACA that would "impose a fiscal burden" on the government, individuals, insurers, or health care providers. As a properly enacted statute, the president cannot unilaterally overturn the ACA by executive order. However, he can impact how to carry out the statute, and direct federal agencies in their rule making capacity. There is no word yet on how the

impact of this executive order might be interpreted to impact employer obligations under the ACA. Until such time as employers are given specific instructions about a change in their obligations to meet the requirements of the ACA, employers should continue to operate under the Act's guidelines.

LGBT Issues

During his presidency, Obama directed the creation of a task force within the EEOC to focus issues impacting LGBT individuals. As an outgrowth of this task force, the EEOC brought several lawsuits seeking to advance the protections of LGBT employees from discrimination. Under Trump, there has not yet been an official announcement of either the continuation or the disbanding of the task force. However, there are indications the EEOC will be less aggressive in this area. Recently, the administration reversed directives within the Department of Education requiring schools to allow transgender students to use the restrooms that correspond to their gender identity. As a result of the change in DOE policy, a case pending before the U.S. Supreme Court brought by a transgender student's attempt to enforce access to bathroom facilities, was remanded to the lower court without any discussion of the underlying claims. The reversal of the Obama-era rule doesn't provide any specific guidance for employers, but provides insight into the administration's policy goals.

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