

# Adjusting to a New Normal Under a New Administration

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## Key Areas to Monitor

January 2021

# Today's Agenda

We'll examine potential changes under the new Biden administration, including:

- Workplace Health and Safety
- Anti-Discrimination Laws
- FLSA Time and Pay Legislation
- Affordable Care Act
- Employee Benefits
- Immigrant Work Visas

# RENEWED FOCUS ON WORKPLACE SAFETY & HEALTH

# Response to COVID-19

- Since the start of the pandemic through Dec. 24, 2020, there have been 294 citations arising from inspections for violations relating to coronavirus
- This has resulted in proposed penalties totaling nearly \$3,849,222
- These numbers are expected to increase dramatically under the Biden administration
- It's possible President Biden may urge OSHA to release a mandatory emergency standard when it comes to COVID-19
- The Biden administration may even require employers to develop and submit a workplace safety plan

# COVID-19 Compliance

During a pandemic, ADA-covered employers have the right to:

- Ask an employee who calls in sick if he/she is experiencing symptoms of the virus
- Ask employees who have been absent if they were out due to medical reasons
- Require sick employees returning to work after having COVID-19 to produce a doctor's authorization stating they can return
- Take employee temperatures prior to work

# Increased Inspections & Fines

- President Biden is committed to increasing the number of OSHA safety inspectors to oversee the increased health and safety inspections
- He is also likely to reinstate the Obama-era workplace safety reporting rule
- This rule would require certain employers to report detailed injury and illness information to OSHA so the agency can post the information online

# RAMPED-UP EFFORTS REGARDING FEDERAL ANTI- DISCRIMINATION

# Diversity Training

- In September 2020, President Trump issued an order against certain diversity training methods
- Trump said the training equated to divisive and harmful sex- and race-based ideologies
- The order applied broadly to federal agencies and the military as well as government contractors and recipients of federal grants, including universities and nonprofits



# Diversity Training (cont.)

- The departments of State, Justice and Veterans Affairs have suspended all diversity and inclusion training programs while they review their content
- Many companies and universities have also suspended training
- President Biden hasn't stated if he will rescind the order, but experts believe he will because he is strongly committed to promoting diversity, equity and inclusion programs
- On Dec. 22, 2020, the U.S. District Court for the Northern District of California issued a nationwide preliminary injunction banning enforcement of the legislation

# Equality Act

- During the campaign, President Biden promised to make passing the Equality Act a top priority
- The Equality Act would protect U.S. citizens from discrimination based on sexual identity and gender identity by amending the Civil Rights Act of 1964
- The House of Representatives passed the Equality Act in 2019, but the legislation stalled in the Senate
- If passed, this will be a landmark civil rights law

# TIGHTER FLSA REGULATIONS

# Federal Minimum Wage

- A push for a \$15 minimum wage on the national level is expected – an increase from \$7.25 per hour
- President Biden promised during the campaign that he would call for the increase by 2026
- He also supports eliminating the system allowing "tipped" workers to earn less than the minimum wage level
- If this initiative gets held up, state and local governments are likely to continue implementing their own minimum wage rates

# Pay Equity

- Under the President Biden administration, pay equity legislation could be passed at the federal level
- The House of Representatives passed the Paycheck Fairness Act in 2019 but it stalled in the Senate
- The bill's purpose is to address wage discrimination based on sex and reduce the gender pay gap
- Another likely change is that President Biden will reinstitute the federal EEO-1 "Component 2" reports requiring employers to collect, and share, pay data and hours worked information to the government

# Exempt Salary Threshold

- Under President Biden, employers may see efforts to increase the exempt salary threshold
- However, the proposal is expected to be lower than what was introduced under the Obama administration
- Effective Jan. 1, 2020, the Trump administration increased the threshold to \$35,568 from \$23,660
- The Obama administration's rule would have made the cutoff \$47,476

# Independent Contractor Rule

- President Biden has stated that he will take measures to stop employers from intentionally misclassifying employees as independent contractors
- Many states have already passed laws (e.g., California's ABC test) making it more difficult – and more costly – for employers to misclassify workers
- It's possible the new administration may try to pass similar legislation making it more difficult for businesses to classify certain workers as independent contractors

# OTHER POSSIBLE CHANGES



# Affordable Care Act (ACA)

- The new administration is expected to maintain and even expand the ACA, giving individuals more choice and reducing costs
- President Biden has pledged to keep the preexisting condition guarantees and hold on to the ACA's Employer Mandate
- He may roll back or withdraw from Association Health Plans

# Employee Benefits

- President Biden supports a paid leave program that would provide 12 weeks of paid leave for all workers for their own or a family member's serious health condition
- Businesses of all sizes would be required to provide this paid leave
- He is also likely to sign the Pregnant Workers Fairness Act
- This federal law would guarantee all pregnant workers the right to a reasonable accommodation so they can continue working without jeopardizing their pregnancy

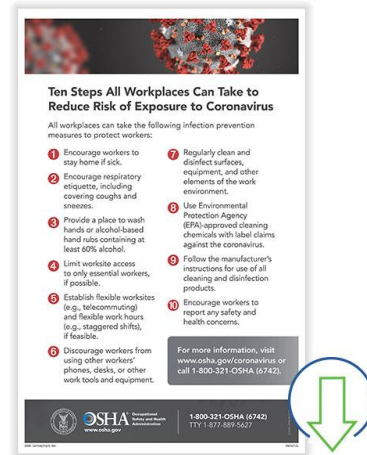
# Immigrant Work Visas

- President Biden plans to reverse the Trump administration policies that have reduced the flow of immigrants to the United States
- Will likely increase the number of work-based immigration visas and reform the high-skilled work visas to help ensure less abuse of workers and the system
- He also plans to expand paths to citizenship for long-term agricultural workers
- His policies will allow cities to petition the federal government for higher levels of immigration to support growth

# Solutions to Protect Your Business



- Diversity & Inclusion at Work: Unconscious Bias Training for Employees



- OSHA Safety Poster and COVID-19 Safety Products



- Poster Guard® Compliance Protection Service

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