

New Year, New Administration: Benefits, Labor and Employment Law Changes to Expect in 2021

Presented by:

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The firm has more than 900 attorneys located in 53 offices across the United States and in Europe, Canada, and Mexico.

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Our Agenda

- Legal Updates on Vaccinations
- New Year, New Administration:
 - Benefits in 2021
 - Labor Law Outlook
 - Employment Law Issues on the Horizon
- Q&A

A stylized world map in light blue and beige tones serves as the background for the slide.

Legal Updates on Vaccination

Vaccinations: Employment Law Issues

- Mandatory v. Voluntary
- EEOC Guidance Issued December 16, 2020
 - Vaccinations are not a medical examination
 - Other inquiries may be a medical examination
 - Confidentiality requirements
 - Proof of Vaccination
 - Reasonable Accommodations
 - Not prohibited by GINA

Vaccinations: Benefits Law Impact

- COVID-19 Testing and Vaccination – CARES Act bars cost-sharing
- What about offering incentives?
 - HIPAA nondiscrimination – Limits incentive to 30% of individual premium
 - Tax considerations
 - ADA “voluntary” standard for wellness programs
- New proposed ADA guidance on wellness:
 - “Health-contingent” program that satisfies HIPAA – 30% incentive would be “voluntary”
 - Incentives that do not satisfy HIPAA standards – only “de minimis” allowed (water bottle anyone?)

Vaccinations: Labor Law Considerations

- OSHA
- NLRA
- Collective bargaining obligations

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New Year, New Administration: **Benefits**

Timothy J. Stanton

Benefits: What to Expect in 2021



Consolidated Appropriations Act, 2021

- Partial plan termination relief
 - Important for companies hit by pandemic
 - Timing was not helpful
- Limited retirement plan disaster relief
- CARES Act employee retention credit extended in 2021, expanded
- Health, dependent care FSAs – Very helpful flexibility
 - Options include carryforward of unused balance, mid-year election changes
 - Timing was not helpful

Consolidated Appropriations Act (cont'd)

- No Surprises Act – Surprise medical billing (effective 2022)
 - Protection for emergency out-of-network services, air ambulances and out of network providers at network facilities
 - Participants protected from balance billing
 - Providers and plans – negotiate payment, then binding arbitration
- Other important health benefit changes:
 - Gag clauses on quality and pricing prohibited in provider agreements
 - Mental health parity – Requirement that employers analyze and document compliance
 - Drug price reporting starting in 2021

Potential Key Issues in 117th Congress

- COVID-19 Issues
 - Testing coverage
 - Vaccine coverage
 - Treatment coverage?
- Potential COBRA subsidies
- Pension funding relief
- LGBTQ protections

Regulatory Agenda in 2021

- Congressional Review Act (back to June 2020)
 - DOL Rules on fiduciary standards in investment decisions (eliminating environmental, social and corporate governance sections)
- Proposed ADA wellness rules
- ACA
 - General strengthening
 - Section 1557 Nondiscrimination

Benefits Litigation – 2021 Outlook



Benefits Litigation – Areas to Watch

- COBRA Notice Class Actions
- ERISA Arbitration
- Confidential Information as a Plan Asset
- Cross-Plan Offsetting
- Mental Health Claims



New Year, New Administration: **Labor**

Norma Manjarrez

“

I made it clear with the corporate leaders. I said, I want you to know I'm a union guy, unions are going to have increased power. They just nodded, they understand. It's not anti-business. It's about economic growth, creating good paying jobs.

— **JOE BIDEN**

President-Elect of the United States



AFL-CIO

JOE BIDEN + UNIONS

"This country was built by the **middle class**.
And how do you think we built the great
American middle class? **Unions.**"

April 5, 2019 IBEW Construction Conference

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THE BIDEN PLAN FOR STRENGTHENING WORKER ORGANIZING, COLLECTIVE BARGAINING, AND UNIONS

- “Check the abuse of corporate power over labor and hold corporate executives personally accountable for violations of labor laws;
- Encourage and incentivize unionization and collective bargaining; and
- Ensure that workers are treated with dignity and receive the pay, benefits, and workplace protections they deserve.”

National Labor Relations Board



- **Five-member Board**
 - Chair John Ring (R, December 16, 2022)
 - William Emanuel (R, August 27, 2021)
 - Lauren McFerran (D, December 16, 2024)
 - Marvin Kaplan (R, August 27, 2025)
 - Vacant seat
- **General Counsel**
 - Peter Robb (R, November 2021)

NLRB: Democratic Majority Priorities

- Expect reversals of:
 - Joint employer rule (April 27, 2020 Rule)
 - Election procedures (April 1, 2020 Finalized Rules)
 - Employer property rights (*Caesars Entertainment*)
 - Handbooks/policies (*The Boeing Company*)
 - Fractured bargaining units (*Specialty Healthcare*)

Protecting the Right to Organize Act of 2019, H.R. 2474

- The PRO Act would make the following changes to federal law:
 - Enact Obama-appointed NLRB decisions
 - Codify ABC Test for independent contractors
 - Codify the “Ambush” Election Rules
 - Codify the 2016 “Persuader” regulation
 - Ban Right-to-Work laws
 - Card check recognition

Protecting the Right to Organize Act of 2019, H.R. 2474

- The PRO Act would make the following changes to federal law (cont.):

- Private right of action and attorneys' fees
- Require notice posting
- Expand civil penalties
- First contract binding arbitration
- Ban class action waivers
- Ban permanent replacements
- Allow secondary boycotts

Department of Labor



- Nomination of Boston Mayor Martin Walsh
- Final Rule published on January 7, 2021
- Effective on March 8, 2021
- Economic dependence test
- Two core factors
 1. “the nature and degree” of control over the work; and
 2. “the worker’s opportunity for profit or loss”



New Year, New Administration: **Employment**

Timothy A. Wolfe

EEOC Agenda



- Republican majority through at least July 2020
- Systemic Litigation not in the 2020 priority list
- Litigation decisions moved to the commissioners
- More transparency in the conciliation process

Arbitration and Class Action Waivers



Biden Administration Legislative Agenda

- Increasing the federal minimum wage to \$15 per hour.
- Paid family and medical leave
- Earned paid sick leave
- Broad definition of joint employment
- Pay Equity
- Pregnancy Accommodation

Possible Developments in Springfield



Possible Developments in Springfield

- Employee Background Fairness Act
- Expansion of the Equal Pay Act
- Providing EEO-I data to the State of Illinois
- Expansion of the Employee Sick Leave Act
- Limits on Non-Competition Agreements

Legal Battles to Watch



Legal Battles to Watch

- No Employment law blockbusters at the Supreme Court this term
- Religious Accommodation
- Computer Fraud And Abuse Act Test

Panelists



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Thank you!



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