

A Brand-New Employment Equation?

The Biden Administration 100-Day Report for Employers

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WHY ARE THE FIRST 100 DAYS SO IMPORTANT?



It's often said that a president's first 100 days in office are the most critical in their administration, as that's when they have the most political capital – and therefore can attempt to enact the most ambitious changes.

The first 100 days from a **workplace law** perspective

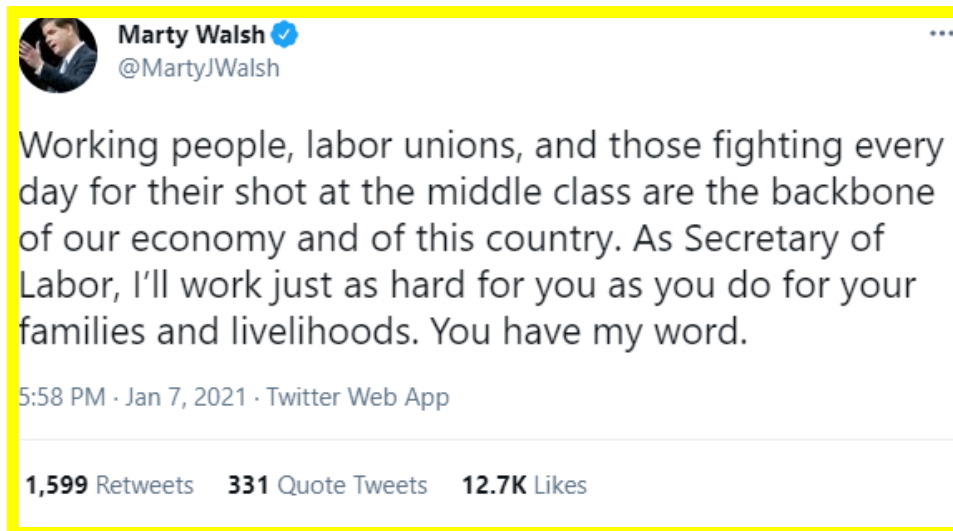
- The first 100 days of the Biden administration have revealed an extraordinarily ambitious plan to remake the nation's workplace laws.
- While some dramatic changes have occurred since January 20, the White House has laid out a blueprint for further change that could reshape the employment equation.

THE TWO
MOST SIGNIFICANT
DEVELOPMENTS
TO DATE...

- Marty Walsh selected to lead the Department of Labor
- Congress passes Biden's American Rescue Plan

Marty Walsh Leads Labor Department

- Labor Secretary Marty Walsh, in a nutshell:
 - Boston mayor from 2014-2021
 - Long and proud history as a union official and “old-guard” labor advocate
 - But both a progressive on social issues and flexible leader working with management
 - Confirmed 68/29 (Cassidy-Yea/Kennedy-Nay)



American Rescue Plan

- Extended tax credits for FFCRA leave and vaccine-related PTO
- Another round of grants to support struggling businesses and additional funding for further Paycheck Protection Program forgivable loans
- Extended unemployment relief through September 6 and \$1,400 stimulus checks for many Americans
 - \$300 week UI benefits-states free to reject the additional funds
 - 20+ states ending extra UI benefits early

DID NOT INCLUDE



\$15 minimum wage



Federal paid leave



Elimination of tip credit

American Rescue Plan

Changes to EPSL

- Expanded list of “qualifying reasons” (including time vaccinating or recovering from vaccine; employer directed leave)
- “Reset” the 10-day/ 80 hour limit for EPSL starting April 1, 2021

Changes to EFMLEA

- Increased covered wages from \$10,000 to \$12,000
- Omitted first 10 days unpaid
- Applies to same expanded list of “qualifying reasons” for EPSL

Employee Leaves

The nation experienced its first (temporary) taste of a federal paid leave program in 2020. Has the genie been let out of the bottle?

What's Happened?

- While the federal paid leave law that was created as part of the FFCRA expired at the end of 2020, Congress originally extended tax credits for voluntary paid leave through March 31.
- Biden's American Rescue Plan again extended tax credits for voluntary paid leave provided through September 30.
- Non-discrimination rules apply



Employee Leaves

What's Next?

- Congress is considering the [FAMILY Act](#), a federal proposal that would offer wage replacement for FMLA-like reasons. It may also create a new federal agency to administer the program.
 - Apply to all employers
 - 60 days of partially paid leave, per year
 - two-thirds of regular pay, capped at \$4,000 a month
 - Funded through a payroll tax of 0.20%
 - Status: Pending in committees since February 2021
 - HR 804 in the Ways and Means Committee
 - SB 240 in the Finance Committee



Employee Leaves, Plus More

- Biden introduced the [American Families Plan](#) in April
- Four additional years of free public education (preschool and community college)
- Extended tax cuts for families with children
- Child care assistance
- EITC enhancements
- Paid leave
 - Partial wage replacement
 - Time to bond with a new child, care for a seriously ill loved one, deal with a loved one's military deployment, find safety from sexual assault, stalking, or domestic violence, heal from own serious illness, or take time to deal with the death of a loved one.
 - Twelve weeks of leave by year 10 of the program
 - Ensure workers get three days of bereavement leave per year starting in year one.
 - Provide workers up to \$4,000 a month, with a minimum of two-thirds of average weekly wages replaced.

Workplace Safety

The Biden administration has signaled that a new day has dawned for workplace safety...but hasn't taken the big plunge (yet).

What's Happened?

- Biden signed executive orders in his first days ramping up OSHA's enforcement efforts.
- Doug Parker, head of Cal/OSHA, was tapped to lead federal OSHA. Once confirmed by the Senate, expect to see a California-like increase in aggressive enforcement tactics and a substantial increase in the number of investigators over the next 18 months.
- The agency adopted a National Emphasis Program on COVID-19 to devote more resources towards virus-related inspections.





























Workplace Safety

What's Next?

- Emergency Temporary Standard for COVID-19 that would require employers to develop a workplace safety plan, potentially subject to government approval, provide PPE, and more.
 - Originally slated to roll out by March 15.
 - DOL head Marty Walsh announced a pause in early April
 - Plan delivered to the OMB April 26.
 - But, then.....

Choosing Safer Activities

Accessible link: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/participate-in-activities.html>

	Unvaccinated People	Examples of Activities	Fully Vaccinated People
		Outdoor	
Safest		Walk, run, wheelchair roll, or bike outdoors with members of your household	
		Attend a small, outdoor gathering with fully vaccinated family and friends	
		Attend a small, outdoor gathering with fully vaccinated and unvaccinated people	
Less Safe		Dine at an outdoor restaurant with friends from multiple households	
Least Safe		Attend a crowded, outdoor event, like a live performance, parade, or sports event	
		Indoor	
Less Safe		Visit a barber or hair salon	
		Go to an uncrowded, indoor shopping center or museum	
		Attend a small, indoor gathering of fully vaccinated and unvaccinated people from multiple households	
Least Safe		Go to an indoor movie theater	
		Attend a full-capacity worship service	
		Sing in an indoor chorus	
		Eat at an indoor restaurant or bar	
		Participate in an indoor, high intensity exercise class	

Get a COVID-19 vaccine



Prevention measures not needed

Take prevention measures

Wear a mask, stay 6 feet apart, and wash your hands.

- Safety levels assume the recommended prevention measures are followed, both by the individual and the venue (if applicable).
- CDC cannot provide the specific risk level for every activity in every community. It is important to consider your own personal situation and the risk to you, your family, and your community before venturing out.



cdc.gov/coronavirus

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Workplace Safety

- What will become of the workplace COVID-19 standards?
- [OSHA](#) says it is ok to follow the [CDC guidance](#) for vaccinated individuals, while it gives further consideration
- Healthcare industry excluded
- General duty clause still applies



Joint Employment

Expect the administration to cement into place a broad standard that captures as wide a swath of workers and business arrangements as possible into the “joint employer” category.

What's Happened?

- Department of Labor will [rescind](#) rule that was more business-friendly when determining who was a joint employer for wage and hour compliance purposes.
- Although the rule had been on ice since September 2020 due to court intervention, there has been ongoing litigation attempting to resurrect it.

Joint Employment

What's Next?

- Expect the DOL to announce that a new rule is necessary to better reflect a broad interpretation of the Fair Labor Standards Act.
- The rule will most likely mirror the Obama-era interpretation that aimed to include as many multi-participant arrangements as possible (outside-party management, joint ventures, staffing services, temporary help, subcontracting, certain kinds of “job sharing,” and dedicated vendors or suppliers) as joint employers.

Worker Classification and Gig Economy

All businesses with a contractor workforce – especially those in the gig economy – face a rocky road in the near future.

What's Happened?

- Department of Labor shelved the pending business-friendly regulation that would have made it easier to classify workers as independent contractors.
- It also withdrew a 2019 Guidance Letter that assured typical gig economy companies that their workforce was properly classified.
- Pending litigation over the withdrawal



Immigration

The Biden administration immediately halted many of the Trump-era immigration actions and has begun to streamline and modernize the system – but much work remains.

What's Happened?

- Biden's team eliminated the wage-based selection process for H-1B visas, offered protection for DACA "dreamers," and loosened entry restrictions for a variety of workers.
- Besides extending the relaxed rules for in-person inspection of I-9 documentation, immigration officials have also unveiled flexible inspection rules for remote workers hired after April 1.



Immigration

What's Next?

- Comprehensive immigration reform has been sought by many prior presidents, and the Biden administration will also take a shot at it.
- The U.S. Citizenship Act, introduced in February, would revolutionize the “green card” process, provide an earned path to citizenship, overhaul the E-Verify system, address the root causes of migration and responsibly manage the southern border, and reform the immigrant visa system, among other things.
- HR 1177- referred to Immigration and Citizenship subcommittee
4/28

Other Developments

Employment Discrimination

- The House passed the Equality Act (HR 5), a landmark bill that aims to amend several federal laws to prohibit discrimination on the bases of sexual orientation and gender identity.
- If passed by the Senate, it would go further than the 2020 Supreme Court decision that ensured these categories are protected by Title VII, adding protections for purposes of accommodations and education.
- Hearing held in Senate Judiciary Committee 3/17



Other Developments

Wage and Hour Law

- The Senate has introduced the Raise the Wage Act, which would increase the minimum wage to \$15/hour by 2025 and then tie future annual adjustments to inflation rates.
- The proposed law would also immediately hike the tipped wage from \$2.13/hour to \$4.95/hour, increase it annually to \$14.95/hour by 2026, and completely eliminate it by 2027.



Other Developments



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- Biden issued an [executive order](#) requiring a \$15 minimum wage for workers on federal contracts.
 - Incorporate into new contracts 3/30/22
 - Eliminate tip credit for federal contractors in 2024
 - \$15 minimum wage for federal workers with disabilities

THE BIGGEST
STORM CLOUD ON
THE HORIZON...

The Protecting the Right to Organize Act of 2021, aka **The PRO Act**

- Key part of Biden's campaign platform
- Passed the House on March 9
- Uncertain future in the Senate
 - Sitting in Committee on Health, Education, Labor, and Pensions

The PRO Act is essentially a wish list for unions that would ***fundamentally alter workplace relations*** for both unionized and non-unionized businesses

Radical Shift Toward Union Organizing

- ▶ Reinstall “quickie” elections
- ▶ Ban on captive audience meetings
- ▶ Expand pool of potential union members
- ▶ Allow use of company email for solicitation
- ▶ Facilitate organizing of “micro-units”

Transfers Power to Organized Labor

- ▶ Permit secondary boycotts
- ▶ Embolden protesting workers by authorizing strikes regardless of duration, scope, frequency, or intermittence
- ▶ Expands available penalties and remedial relief

Constrains Unionized Employers

- ▶ Block permanent replacements
- ▶ Prohibit pre-strike lockouts
- ▶ Force union contracts

Shatters Common Workplace Standards

- ▶ Broaden misclassification by bringing “ABC” test to national stage
- ▶ Expand joint employment definition
- ▶ Prohibit arbitration agreements
- ▶ Expand legal exposure

Other Developments

Agency Developments



- The administration broke protocol by firing the NLRB's chief prosecutor and the EEOC's top lawyer in a bid to wrest as much control as possible as soon as possible. Unless overturned by courts, these moves will result in more ambitious rulemaking and agency decisions on an expedited timeframe.

Questions?