



2020 in the Rearview Mirror: Looking Forward to Key Illinois Employment Issues in 2021 and Beyond

Annual Illinois Employer Update Part 2 | February 4, 2021



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Agenda

Compensation and Benefits

- 1 Pandemic-related Updates
- 2 Key Changes Expected under a Biden Administration
- 3 Important Developments Impacting Global Equity Plans

Global Immigration and Mobility

- 4 Pandemic-related Updates
- 5 Key Changes Expected under a Biden Administration
- 6 Post-Brexit UK Immigration Rules

Compensation and Benefits



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Pandemic-related Updates

Pandemic-related Updates

Consolidated Appropriations Act 2021 (CAA)



General

- Enacted on December 27, 2020
- 6,000 pages and inclusive of approximately \$1.4 trillion in appropriations – various COVID-19 relief provisions
- A few key employee benefit plan provisions



Pandemic-related Updates

Consolidated Appropriations Act 2021 (CAA)



Retirement Plans

- *Partial Plan Termination Relief*

- Under previous guidance, a reduction in participant number of 20 percent or more during a plan year generally is considered to be a partial plan termination. The result is full vesting for those employees whose job loss has triggered the partial termination.
- The CAA helps employers avoid this by granting a grace period to March 31, 2021, to reach a participant count of at least 80 percent of the active participants as of March 31, 2020.



Pandemic-related Updates

Consolidated Appropriations Act 2021 (CAA)



Fringe Benefits

- *Flexible Spending Accounts*

- Allows employers that sponsor FSAs to permit the carryover of unused funds from plan year ending in 2020 to plan year ending in 2021, and from plan year ending in 2021 to plan year ending in 2022.
- Also permits employees who terminate mid-year while covered under a health FSA during calendar year 2020 or 2021 to receive reimbursements through end of plan year.



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Key Changes Expected under a Biden Administration

Key Changes Expected under a Biden Administration



Securing a Strong Retirement Act of 2020

- October 27, 2020, the Securing a Strong Retirement Act of 2020 (the “**SECURE ACT 2.0**”) was introduced in the House of Representatives
- Build upon changes under the original SECURE Act
- Will it become law?
 - Appears to be broad support
 - Employers to be aware of potential changes



Key Changes Expected under a Biden Administration



Securing a Strong Retirement Act of 2020

- **Requirement that new plans have automatic enrollment**
 - Most new 401(k) and 403(b) plans to have automatic enrollment provisions requiring contributions of 3-10% of pay
 - Exceptions for small plans
 - Participants could opt out



Key Changes Expected under a Biden Administration



Securing a Strong Retirement Act of 2020

- **Required Minimum Distributions may commence later**
 - Current rules are complicated; potential penalty can be up to 50% of amount not taken
 - SECURE Act changed the age at which benefits must commence from 70 ½ to 72
 - SECURE Act 2.0 would further increase the age at which required distributions must begin to 75 for individuals who were not 72 as of December 31, 2020
 - Exemption from RMD for those with defined contribution plan/IRA balances of \$100,000 or less measured at age 75



Key Changes Expected under a Biden Administration



Securing a Strong Retirement Act of 2020

- **Student loan match**
 - SECURE Act 2.0 enables plans to match qualifying student loan repayments, which was not permitted by prior IRS guidance
 - “Qualified Student Loan Payments” is defined broadly and includes any indebtedness incurred by the employee solely to pay qualified higher education expenses
 - Voluntary change



Key Changes Expected under a Biden Administration



Securing a Strong Retirement Act of 2020

- **Further retirement incentives**

- Increase in catch-up contribution limits

- \$6500 catchup contribution currently available to participants age 50 and older would be increased to \$10,000, indexed for inflation, for participants 60 and older
 - The eligibility service period for long term part-time employees to qualify to contribute to 401(k) and 403(b) plans would be shortened from 3 years to 2 years of service



Key Changes Expected under a Biden Administration

Securing a Strong Retirement Act of 2020

- **Some Fixes for Plan Administration Problems**
 - Missing participants
 - Expanded self-correction of qualification failures
 - New rules for recouping plan overpayments





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Important Developments Impacting Global Equity Plans



Global equity plans

Recent Developments

- **Tax**
 - Belgium
 - Canada
 - Sweden
- **Foreign Exchange Control**
 - Argentina
 - China
- **Data Privacy**
 - Brazil
 - Thailand

Global equity plans



Tax Considerations and Developments

■ Belgium

- Historically, social security contributions on equity award income due only if local employer charged for cost of awards and/or local entity involved in grant/administration of awards (e.g., by making grant recommendations). If due, significant uncapped charges: approx. 13% for employee, 25% for employer.
- Social Security Authorities issued interpretation
- Case law developing, but position depends on grant history, facts and circumstances and risk tolerance

■ Canada

- Beneficial tax treatment currently available for stock options if underlying shares are “prescribed shares”
 - Only 50% of spread at exercise subject to income tax (may differ for Quebec provincial taxes)
- Proposed elimination of beneficial tax treatment to apply to options granted on/after July 1, 2021
 - Beneficial tax treatment for options granted by “large corporations” only available for options up to a CAD 200,000 annual limit (per employee)
 - Annual limit is calculated for each year of vesting, based on FMV of underlying shares at grant
 - One benefit: corporate tax deduction would be available for option gains excluded from beneficial tax treatment under the new law, provided certain conditions are met (e.g., recharge and proper documentation of same)



Global equity plans

Tax Considerations and Developments

■ Sweden

- Technically, withholding from salary required in Sweden. But, many companies have opted to use a share withholding or sell-to-cover withhold method instead, potentially resulting in withholding tax in excess of an employee's monthly salary.
- Due to new PAYE reporting requirements, Swedish Tax Authority (STA) has more visibility into taxes withheld on equity award income
- If tax withheld exceeds employee's monthly gross salary, flags to STA that tax not withheld from salary
- STA auditing companies for non-compliance with withholding obligations

Global equity plans



Foreign Exchange Control Considerations and Developments

■ Argentina

- In the past, currency control restrictions were liberalized and essentially eliminated
 - Individuals/local entities could purchase and remit foreign currency (including for the purchase of shares in foreign company)
- As of September 1, 2019, new restrictions introduced (first on temporary basis, but now open ended). As of October 28, 2019, restrictions further tightened. As of May 29, 2020, new rules added a 90-day delay on accessing foreign exchange market.
 - Individuals may purchase/remit only up to USD 200/month out of Argentina
 - 30% tax applies on transactions involving foreign currency
 - Impact of restrictions on intercompany offsets/transfers uncertain
 - Feasibility of ESPPs uncertain. RSUs/PSUs likely fine. Options generally fine if employee uses cashless exercise method or funds outside of Argentina to pay the exercise price.

Global equity plans



Foreign Exchange Control Considerations and Developments

■ China

- State Administration of Foreign Exchange (SAFE) approval for equity plans is required under Circular 7. Regulated by provincial SAFE bureaus and, by proxy, local banks.
- Central SAFE issued an internal notice making it possible to register pre-IPO plans, provided no shares have been issued
- Shanghai SAFE implemented new policy effective January 7, 2021
 - Historically required annual re-registration (updating employee name lists, requesting new outbound remittance quota, etc.) and amended registration application to report material changes and events
 - Under new policy, annual re-registration no longer required, in the absence of material changes
 - Merely needing to update an employee list is not a material change that warrants an amended registration application
 - Can apply for an estimate quota for up to 3 years, with no expiration date
 - How banks adapt to this change will be monitored

Global equity plans



Data Privacy Considerations and Developments

■ Brazil

- The Brazilian General Data Protection Law became effective August 2020 (with penalty enforcement in late 2021).
 - Personal data will be protected regardless of the method of collection or storage
 - Establishes the National Data Protection Authority to enforce its provisions
- Similar to the EU General Data Protection Regulation and introduces a robust set of rules, including obligations to keep records of data processing activity, determine the legal basis for the processing of data and appoint a data protection officer

■ Thailand

- Effective May 27, 2020, Thailand's Personal Data Protection Act (PDPA) covers the collection, use and transfer of personal data
 - Requires organizations to implement appropriate security measures, provide notice of data breaches, facilitate the exercise of rights of individuals relating to their personal data, and respect heightened requirements for sensitive personal data



Compensation and Benefits

Q&A

Global Immigration and Mobility

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Pandemic-related Updates

Covid-19 Related Travel Restrictions

President Biden Reimposes International Travel Restrictions

- ➡ On January 25, 2021, President Biden reimposed a ban on many non-U.S. citizens attempting to enter the country in an attempt to limit the spread of COVID-19 and contain new variants of the disease that have appeared in several countries around the world.
- ➡ Prohibits travelers entering the US from Brazil, China, Iran, Ireland, South Africa, and the United Kingdom and the 26 countries in the Schengen Area (which allows unrestricted movement) in Europe:
 - Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.



Covid-19 Related Travel Restrictions

President Biden Reimposes International Travel Restrictions

- As of January 26, 2021, the CDC requires all travelers flying to the US from abroad to show proof of a negative coronavirus test before boarding an airplane. The CDC has declined consideration of temporary waivers requested by US airlines that would exempt some travelers coming from countries with limited testing.
- A review of potential federal quarantine requirements and potential additional COVID-19 related requirements for travelers-by-land has been ordered with change, if any, likely to occur in the first two weeks of February.



Covid-19 Related Travel Restrictions

Waivers and exceptions





U.S. Department of State has provided guidance regarding how to apply for a National Interest Exception to the travel restrictions (and visa suspension order).

- Criteria different depending on visa type.
- If approved, a single 30-day window to enter the United States is authorized.
- Requests generally first made through U.S. Consulate; response time varies (1-60 days depending on jurisdiction).
- Certain requests can be made at U.S. Customs and Border Protection.
- Third-country transit through non-restricted country remains secondary option.



Pandemic-related Updates

Additional flexibility afforded by DHS

-  U.S. Citizenship and Immigration Services (“USCIS”) continues to afford an extra 60-days for responses to certain government requests as a result of COVID-19.
-  U.S. Immigration and Customs Enforcement (“ICE”) has provided guidance allowing for the continued “remote” completion of Form I-9.



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Key Changes Expected under a Biden Administration

Key Immigration Changes under a Biden Administration

Other Immediate Changes Affecting Immigration

- By Executive Order, repealed Buy American, Hire American.
- By Executive Order, directed all relevant government agencies to review existing immigration policies and, generally, improve timing and usability of legal immigration system.
- Lots of change expected – likely to be piecemeal and take time.

“I am not making law – I’m eliminating bad policy.”



Key Immigration Changes under a Biden Administration

The Trump Administration's Final Rule to End H-1B Lottery

- ➡ On January 8, 2021, the Department of Homeland Security issued a final rule instituting a major change in the process for filing cap subject H-1B petitions, effectively ending the H-1B lottery.
- ➡ The final rule replaced the random selection process by which USCIS selects H-1B registrations for filing of H-1B Cap-subject petitions with a system that prioritizes the selection of H-1B registrations by first selecting registrations based on the highest Occupational Employment Statistics (OES) prevailing wage level that the proffered wage equals or exceeds for the relevant Standard Occupational Classification (SOC) code and area(s) of intended employment.



Key Immigration Changes under a Biden Administration

The Trump Administration's Final Rule to End H-1B Lottery

- ➡ The new proposed selection process prioritizes registrations based on wage level, thus giving priority to those registrations by employers who are paying the highest prevailing wages.
- ➡ According to DHS, the practical impact of this rule would mean that jobs offering Level IV and III wages would likely be selected; Level I wages almost certainly would not be; Level II wages could be selected.
- ➡ This rule has been frozen for 60 days (until March 21, 2021) or more by the Biden administration's broad-based regulatory freeze pending review. That said, the Biden administration has not yet committed to a stance on this regulation.



Key Immigration Changes under a Biden Administration

The Trump Administration's Final Rule to Raise Required Wages for Foreign Workers on High-skilled Visas

- ➡ On January 14, 2021, the US Department of Labor reissued a final rule to raise the required wages for H-1B, E-3, H-1B1 visa holders and for most applications for permanent residence sponsorship.
- ➡ The final rule came after three federal judges struck down an interim final regulation that raised the required wage employers must pay not just to H-1B visa holders, but also for employment-based immigrants requiring labor certification.
- ➡ It is not yet clear whether this rule will remain, but the Biden administration has signaled that it likely will.



Key Immigration Changes under a Biden Administration

The Trump Administration's Final Rule to Raise Required Wages for Foreign Workers on High-skilled Visas

- ▶ The final rule made only minimal substantive changes to the prior-blocked version of the final rule, and was criticized as still failing to reflect the actual, prevailing wage for workers in that geographical area doing similar work reflecting actual wages paid in the market.
- ▶ This rule is subject to Biden's broad-based regulatory freeze pending review. It is also expected that groups that previously challenged the regulation will continue to litigate the rule.



Key Immigration Changes under a Biden Administration

The Trump Administration's Final Rule to Raise Required Wages for Foreign Workers on High-skilled Visas

Skill Level	Current Percentile	Revised Percentile
Level I	17	35
Level II	34	53
Level III	50	72
Level IV	67	90



Key Immigration Changes under a Biden Administration

Other Immediate Changes Affecting Immigration

- By Executive Order, reversed Trump's travel ban targeting primarily Muslim countries. This order requires all embassies and consulates to resume visa processing, and requires the Secretary of State to provide a report on and procedures to clear up the backlog of waivers and allow reconsideration of certain visa denials.
- It appears likely that the Trump-era visa issuance suspension of H, L, and J visas will be repealed.
- By Executive Order, revoked Executive Order 13768 (Enhancing Public Safety in the Interior of the United States) and directed actions enforcing civil immigration laws in a manner adhering to the due process of law (i.e. ending harsh and extreme immigration enforcement).



Key Immigration Changes under a Biden Administration

Other Immediate Changes Affecting Immigration

- Withdrew pending regulation that would redefine H-1B eligibility criteria to make it more difficult for consulting companies to sponsor H-1B workers.
- Withdrew pending regulation that would revoke work authorization eligibility for certain spouses of H-1B visa holder (H-4 EAD rule).
- By Memorandum, requires Secretary of Homeland Security (in consultation with the Attorney General) to take all "appropriate" actions to preserve / fortify DACA.



Key Immigration Changes under a Biden Administration

What to Expect

- There is an expectation generally that the Biden Administration will work to undo Trump's restrictions on immigration for high-skilled foreign workers, making it easier for multinational companies to secure talent outside of the US.
- Expected measures include:
 - Expansion of the number of high-skilled visas.
 - Eliminating the limits on employment-based visas by country.
 - Increasing the number of visas offered for permanent, work-based immigration based on macroeconomic conditions.



Key Immigration Changes under a Biden Administration

What to Expect

- Treatment of international travel as a “COVID-19” rather than “immigration” issue – meaning likely increase in restrictions.
- Temporary / seasonal worker reform.
- Streamlining both high-skilled and seasonal employment-based visa programs.
- Exemption of STEM graduates from caps on employment-based visas.





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Post-Brexit Immigration Considerations for UK and EU nationals

Post-Brexit Immigration Considerations

Immigration Key Issues

- ➡ EEA nationals (including all EU citizens) and Swiss nationals, who entered the UK before December 31, 2020 have their right to remain protected by the EU Settlement Scheme, which is open for applications until 30 June 2021.
- ➡ EEA nationals, Swiss nationals, and their family members arriving in the UK from January 1, 2021 will still be able to come to the UK for visits in much the same way as they did before but for a maximum period of six months.



Post-Brexit Immigration Considerations

Immigration Key Issues



If EU nationals, EEA nationals or Swiss nationals wish to come to the UK to work or to live long term, they will need to apply under the immigration rules system (primarily the Points-Based System), which has been overhauled with new rules.



Each EU and EEA state (and Switzerland) has its own immigration system and, therefore, UK citizens are now subject to the local requirements.

- UK nationals currently working in the EU, EEA, or Switzerland should benefit from the protection provided under the terms of the Withdrawal Agreement but they will need to follow the local arrangements put in place by the host jurisdiction for transitioning their EU status to status under the domestic rules of their host country.
- Example: UK nationals resident in Germany prior to 31 December 2020 must register with their local immigration office by 30 June 2021. If they complete this registration, they will receive a German residence permit.
- Example: UK citizens retain residence rights (and other rights) which they acquired under the Agreement on Free Movement of Persons (AFMP) as long as they were legally present in Switzerland before December 31, 2020.



Post-Brexit Immigration Considerations

Travel Between the UK and Ireland



Special arrangements exist between the Republic of Ireland and the UK. Irish citizens do not have to apply for any permission to live and work in the UK, as they continue to have the right to enter and live in the UK under the Common Travel Area (“CTA”).

- Under the CTA, Irish and UK citizens can work, study and vote and have access to social welfare benefits and health services in both countries.
- Irish and UK citizens will also be able to continue to travel freely within the CTA without seeking immigration permission from the authorities.



Post-Brexit Immigration Considerations

Key Criteria for Work Permit Eligibility

- In-country corporate sponsor
- Employee with executive / managerial experience or specialized skills
- Employee who meets health and character-related requirements
- Proof that employment of foreign worker will not adversely impact the local labor market





Global Immigration and Mobility

Q&A

Upcoming events!

FutureWorks: Renewal Strategies for a Transformed Workforce





Join Baker McKenzie for a virtual conversation series consisting of six webinars across February and March where, together with leaders from some of the most innovative companies in the world, we analyze how global employers can embrace the large-scale trends changing the nature of work itself amid disruptive global events.

Thank you for joining us!

And, remember we have lots of resources for you 😊

01 December 2020

US 50 State Shelter-in-Place / Reopening Tracker

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Shelter-in-place or stay-at-home orders have been prevalent throughout the United States since March 2020 as states and local governments have sought to protect their citizens from the spread of the COVID-19 virus while at the same time reopen their economies in accordance with phased reopening plans. Keeping abreast of the evolving nature of these orders is critical to the functioning of the business.

Our clients real-time on these most recent orders and their related expiration dates in each of the 50 United States as well as highlights the reopening of bars/restaurants, time requirements or Washington, DC.



Other states include the following: New Jersey, North Carolina and Pennsylvania and/or the duration of the travel quarantine limit. Instead, New York and Pennsylvania in New Jersey.

If you require additional information, please contact:



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Client & Friends Newsletter

December 2020

Compensation

Clients & Friends Quarterly Newsletter

December 2020

Annual Equity Awards Filing Chart - Your go-to guide for annual filing and reporting requirements for global employee share plans

As you consider the steps your company may need to take to start the new year right, please see our **Annual Equity Awards Filing Chart**, which describes key employee share plan filing and reporting requirements.

Vaccinating the Workforce - Challenges for Multinational Employers

The news that a COVID-vaccine is finally becoming a reality presents organizations with the possibility of returning to business as normal. While governments and health organizations are in the throes of planning their vaccination programs and pre-ordering the vaccines, with regulatory approval still pending in most countries, there is uncertainty about the timing, viability and availability of a vaccine. See our alert on how employers can utilize the vaccine to protect their workforces, to promote business continuity, and to mitigate the current health and safety risks of a return to the office.

Using Purchase Price as Retention Article by Tom Asmar and Derek Liu

Buyers in a merger and acquisition transaction often times intend to rely on their target company's management to remain and assist them with running the purchased business. Particularly in industries where human capital is the primary or perhaps only capital, such as technology or services companies, the art of retention – or motivating the existing management to remain with the business – can be the difference between a successful or disappointing acquisition. Many buyers build retention incentives into the purchase price itself to avoid or supplement the necessity of additional retention payments.

This article offers an overview of common strategies for doing so. Accompanying the piece, is a multi-jurisdictional survey of how these strategies would work in other jurisdictions.

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