

EMPLOYERS AND LAWYERS,
WORKING TOGETHER

Ogletree
Deakins

Best Lawyers
LAW FIRM
OF THE YEAR

USNews

Labor Law Department

Labor & Employment Initiatives in the First 60 Days
of the Biden-Harris Administration

Acc Association of
Corporate Counsel

Gregg M. Lemley
James M. Paul

Roadmap for Today

•The White House

•Congress

•The Administration (Agencies)

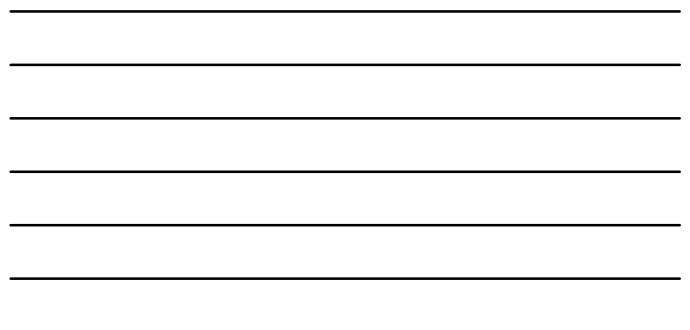


Ogletree
Deakins

White House 2021



Ogletree
Deakins



President Biden’s Cabinet appointments (cont’d)

- Merrick Garland: Attorney General - confirmed
- Deb Haaland: Secretary of the Interior - confirmed
- Gina Raimondo: Secretary of Commerce - confirmed
- Miguel Cardona: Secretary of Education - confirmed
- Marty Walsh: Secretary of Labor – confirmed
- Xavier Becerra: Secretary of Health & Human Services - confirmed
- Marcia Fudge: Secretary of Housing & Urban Development - confirmed

Ogletree
Deakins

“Four overlapping and compounding crises”

- COVID-19 crisis;
- the resulting economic crisis;
- the climate crisis; and
- a racial equity crisis



Ogletree
Deakins

Impeachment Trial

- Former President Trump acquitted for second time
- House of Representatives voted to impeach
- Senate voted to acquit

Ogletree
Deakins

“Day One” Actions

- “EO establishing White House and federal government structure for COVID response”
- “Mask Mandate EO” (on federal property and interstate travel)
- “Whole of Gov’t Racial Equity effort announcement and EO”
- “Federal Workforce Diversity, Equity, and Inclusion EO”
- “Send immigration bill to Congress”
- “Protect Dreamers PM”
- “Muslim Ban EO”
- “Extend student loan forbearance”
- “Regulatory Freeze WH Chief of Staff Memo”
- “Rescind Ban on Transgender Military Service”

Ogletree
Deakins

President Biden’s Immigration Plan Hits Congress

- Congressional Democrats introduced the U.S. Citizenship Act of 2021
- President Biden calls it a chance “to restore humanity and American values to our immigration system”
- Immediate efforts to unwind a number of former President Trump’s executive actions
- “Alien” to “Noncitizen”
- Employment visas, path to citizenship, visa caps, work authorizations
- Chance of passage remains low

Ogletree
Deakins

“American Rescue Plan” – Passed on March 10th

- \$1400 stimulus checks
- Unemployment Insurance
 - Extended through September 6, 2021
- Multiemployer Pension Plan Fix
- COBRA Coverage Premium Assistance
- Affordable Care Act Subsidies
- Extend and expand FFCRA leave provisions through September
- DOL Worker Safety Activities
- Moratoriums
- Increased Food AID (SNAP)
- Money for vaccines, schools, local gov’ts



Ogletree
Deakins

Executive Actions

- Workplace safety
- Immigration
- Fed Contractor Min Wage?
- Fed Contractor Affirmative D&I?
- Fair Pay, Safe Workplaces?
- High Road Contracting?



Ogletree
Deakins

Congress 2021



Ogletree
Deakins

House Composition, 2021

211




222





Ogletree
Deakins

Senate Composition, 2021


50







50



Ogletree
Deakins

Roll Call

CONGRESS

Joe Manchin kills dreams of
expanding Supreme Court,
eliminating the filibuster



Ogletree
Deakins

Congress in 2021

- *Protecting the Right to Organize Act*
 - Codify *Browning-Ferris Industries* (joint employer)
 - Codify *Specialty Healthcare* (gerrymandered units)
 - Codify *Purple Communications* (email access)
 - Codify the 2014 “ambush” election rules
 - Codify the 2016 “persuader regulation”
 - Prohibit right-to-work laws
- PRO Act passes House on March 9th (225-206)

Ogletree
Deakins

Congress in 2021

- *Protecting the Right to Organize Act (cont'd)*
 - Provide for “stealth” card check
 - Codify California’s controversial **AB 5 on independent contractors** into the National Labor Relations Act (NLRA)
 - Provide a *private cause of action* for unfair labor practices (ULPs)
 - Restore and codify the Board’s failed “notice posting” requirement

Ogletree
Deakins

Congress in 2021

- *Protecting the Right to Organize Act (cont'd)*
 - Allow for new civil penalties, including liquidated damages
 - Require binding arbitration for first contracts
 - Overturn the Supreme Court’s decision in *Epic Systems*, effectively prohibiting employment arbitration agreements
 - Prohibit employers from permanently replacing strikers
 - Allow for secondary boycotts

Ogletree
Deakins

Congress in 2021

- *Worker Flexibility Act and Small Business Protection Act*
 - Codify California’s “ABC test” in most federal labor and employment laws
 - Expand **joint-employer tests and extend liability** to certain owners, officers, and shareholders
 - Create a “**standalone violation**” for incorrectly classifying a worker as an independent contractor
 - Set unique wage and hour standards for certain “**transportation and network dispatching workers**”

Ogletree
Deakins

Congress in 2021

- *Worker Flexibility Act and Small Business Protection Act (cont'd)*
 - Require temporary employees to be paid the same as “direct” employees and require that temporary employees be converted to “direct” employees after one year of service
 - Amend the FLSA to include a “private attorneys general” (PAGA) provision

Ogletree
Deakins

Congress in 2021

- *Worker Flexibility Act and Small Business Protection Act (cont'd)*
 - Require an employer with 100 or more employees to file with the DOL a “supply chain responsibility plan” describing its processes for ensuring that its suppliers and vendors do not violate labor and employment laws in the United States and abroad
 - Require an employer to publicly post on its website and main entryways its labor and employment law compliance record and “rating” over the last three years, including through the use of emojis



Ogletree
Deakins

Pay Equity Legislation Returns

- Paycheck Fairness Act (PFA), bill that previously stalled in 2019 Senate, reintroduced
- Amend the Equal Pay Act of 1963
- Uncapped compensatory and punitive damages
- EEOC and OFCCP to collect compensation data
- Prohibit past pay inquiries
- Expand size of collection actions

Ogletree
Deakins

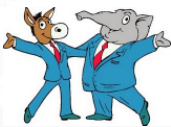
Equality Act Reintroduced to Congress

- Bill would amend federal law to prohibit discrimination on the basis of sexual orientation and gender identity
- US House passed nearly identical bill in 2019, but the bill failed to gain traction in the Senate
- Act has strong backing from business community, including US Chamber of Commerce, but will be hard-pressed to garner support of at least 10 Republican Senators needed
- On February 25th, the House approved the Equality Act with a 224-206 vote, after a tense and emotional hearing in which many Republicans insisted that religious freedom will take a hit if the sweeping LGBTQ rights measure becomes law

Ogletree
Deakins

Congress 2021

- Pension reform?
- Pregnancy Accommodation
 - Reintroduced
- Per Country Bill? DREAMers?
 - House passed immigration bill with path to citizenship for DREAMers and farmworkers
 - American Dream and Promise Act & Farm Workforce Modernization Act
- Paid leave?



Ogletree
Deakins

Congress 2021- Paid Leave

- FFCRA momentum
- Fed employee momentum
- Impact of patchwork paid sick leave, paid family leave
- Democrats reintroduce national paid leave proposal



Ogletree
Deakins

Department of Labor in 2021



Ogletree
Deakins

DOL 2021 – Secretary of Labor



Ogletree
Deakins

Department of Labor – OSHA

- A new Assistant Secretary of Labor for OSHA
- *Workplace safety – OSHA ETS*
- Enforcement
- Regulation by Shaming



Ogletree
Deakins

Department of Labor – Wage and Hour

- “Repeal and Replace” – joint employer, overtime, independent contractor
- Enforcement
- Compliance –PAID Program suspended
- March 11 – DOL issued Notices of Proposed Rulemaking to withdraw the Joint Employer and Independent Contractor Final Rules published during the Trump Administration

Ogletree
Deakins

Independent Contractor

- The DOL has already moved to withdraw/revise this Trump-era regulation, which Biden believed undermined worker protections
- The Trump administration’s final rule (issued Jan. 6th 2021) would have made it easier for businesses to classify workers as independent contractors, rather than employees who must earn minimum wages and overtime
- New interpretation of “employee status” under the FLSA unknown

Ogletree
Deakins

Joint Employer

- The DOL has already moved to withdraw/revise this Trump-era regulation, which Biden believed undermined worker protections
- The 2020 rule was largely set aside by a federal judge
- The DOL proposed rescinding this rule on March 11, also without offering a replacement stance
 - Economic Realities test?

Ogletree
Deakins

Office of Federal Contract Compliance Programs?



- “Triple Down” on Obama/Trump enforcement efforts
- Yang sees Pay Equity as a top federal contracting priority

Ogletree
Deakins

National Labor Relations Board



Lauren McFerran (D)
(December 16, 2024)



Chair John Ring (R)
December 16, 2022



Marvin Kaplan (R)
August 27, 2025



William Emanuel (R)
August 27, 2021



Peter Robb, General Counsel (R)
November 2021

Ogletree
Deakins

NLRB – Fall of 2021???



???



CHAIR Lauren McFerran
(D)
(December 16, 2024)



???



John Ring (R)
December 16, 2022



Marvin Kaplan (R)
August 27, 2025

Ogletree
Deakins

EEOC

- What happens to the EEOC GC?
 - White House **fires** Trump Administration EEOC official
 - Gwendolyn Young Reams acting now the acting GC
- Conciliation
- Delegation of Authority



Ogletree
Deakins

EEOC Priorities

- EEO-1/pay report
- Conciliation
- Delegation of authority
- Wellness
- COVID-19
 - National origin discrimination
 - Employee testing/screening
 - Accommodating employees with high-risk family members
 - Safeguarding against harassment
 - Remote work and the ADA



Ogletree
Deakins



Ogletree
Deakins
