

Something New or Déjà Vu: Labor and Employment Matters Under the Biden Administration

Matthew DeLange

Attorney in Reinhart's Labor & Employment Practice
mdelange@reinhartlaw.com

Laura Ferrari

Attorney in Reinhart's Labor & Employment Practice
lferrari@reinhartlaw.com

Something New or Déjà Vu: Labor and Employment Matters Under the Biden Administration

- Wage and hour changes, including employee classification
- Protecting the Right to Organize (PRO) Act and government contractors
- New faces in the Administration
- Other potential employment related changes

Changes Under President Biden: Wage and Hour

- Build on Obama Administration
 - Aggressive enforcement
 - Increased funding and investigators
 - OSHA

Changes Under President Biden: Wage and Hour cont.

- Fair Labor Standards Act Change
 - Minimum Wage
 - Tip Pooling Rule
 - Exempt Employees
 - Salary increases
 - Enforcement

Changes Under President Biden: Employee Classification

- Trump Administration's Independent Contractor Rule
- Biden Administration "freezes" rule
- Potential new rule
- Julie Su

Protecting the Right to Organize (PRO) Act

- Originally introduced in 2019
 - Passed the House in February 2020
- Reintroduced in the House and Senate in February 2021
- Proposes a number of significant changes to labor law and employment law

PRO Act Changes

- Card check could be used to certify a bargaining representative
 - Employer violation or interference with an election would not necessarily result in a re-run election
- Captive audience meetings would, in effect, be prohibited
 - Requiring employees to attend a meeting unrelated to their job duties would be an unfair labor practice
- The concept set forth in the “Persuader Rule” would see a comeback
 - Hiring legal counsel to assist in preparing materials or providing advice for the purpose of persuading employees would trigger reporting requirements

PRO Act Changes cont.

- The timeline for agreeing to terms for an initial agreement would be shortened
 - Negotiations may end up in mediation and, ultimately, binding arbitration
- The NLRB would return to the use of a broader joint employer standard
 - Indirect control and the authority to exercise control would be relevant
- Increase in the variety and severity of consequences for NLRA violations
 - Penalties, liquidated damages, and punitive damages
 - Potential for officer and director liability
 - Civil action

Government Contractors

- Fair Pay and Safe Workplaces
 - Past violations of labor and employment laws would be taken into account when awarding federal contracts
- Additional requirements that employers may need to meet in order to be considered for federal contracts
 - Neutrality agreements
 - \$15 per hour minimum wage
- Increased enforcement of prevailing wage laws

Key Federal Positions

- Marty Walsh
 - Nominee, Labor Secretary
- Peter Sung Ohr
 - Acting General Counsel, NLRB
- Jenny Yang
 - Director, OFCCP
- Jennifer Abruzzo
 - Nominee, General Counsel, NLRB
- Charlotte Burrows
 - Chair, EEOC
- Jim Frederick
 - Acting Principal Deputy Assistant Secretary of Labor, OSHA
- Notable vacant positions
 - Board member, NLRB
 - Administrator, Wage & Hour Division

Changes Under President Biden: Other Employment Changes

- No-poaching and non-compete agreements
- Occupational licensing
- Immigration
- Paycheck Fairness Act
 - Salary history ban

Changes Under President Biden: Other Employment Changes cont.

- Class Action waivers
- Arbitration
 - Mandatory arbitration
 - FAIR Act

Takeaways and Best Practices

- Back to the Obama Era
- New initiatives under the Biden Administration
- Keep up to date on the latest developments
- Talk to your Reinhart attorney about any questions you have or help you may need regarding the changing legal landscape

Questions?

Thank You!

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