

WHAT WILL A TRUMP PRESIDENCY MEAN FOR EMPLOYERS?

Only time will tell for certain whether President-elect Donald J. Trump will pursue a traditional Republican agenda on employment issues. While Mr. Trump certainly carries a business background, his appeal to blue collar and other middle class workers during the campaign may restrain what might otherwise be a pro-employer legislative agenda in some areas. We do know that the President-elect has vowed to repeal many executive orders.

At least one pending rule is likely in jeopardy. The Department of Labor's ("DOL's") revised Persuader Rule requires employers and their labor relations consultants (including law firms) to file with the DOL detailed reports about activities that have as "an object directly or indirectly to persuade employees concerning their rights to organize and bargain collectively." That rule is currently subject to litigation, and a preliminary injunction, and will likely be dropped.

We do not expect radical changes to the newly revised overtime rules under the Fair Labor Standards Act. Those changes, which take effect December 1, 2016, increase the salary threshold for executive, administrative and professional employees from \$455 per week to \$913 per week. Employers should assume that those changes certainly will remain in place for now. While there has been some indication that a Trump administration will consider a small business exception for some overtime rules, even that remains unclear at this time.

One item of employment legislation that surfaced during the presidential campaign was paid leave. During the campaign, President-elect Trump expressed a willingness to mandate six weeks of paid maternity leave to be funded through a crackdown on unemployment insurance fraud. Since more and more states are adopting paid leave requirements, only time will tell if the Trump administration will press for federal legislation in this area or defer to state action.

Likewise, Mr. Trump has expressed a willingness to increase the minimum wage to \$10.00 per hour. Again, ultimately, the new administration may defer to the states to act on this issue.

President Obama recently announced support for federal (and state) legislation to roll back non-competition agreements. Although it is uncertain, employers should not expect support for that from a Trump administration and probably not from Congress either.

It is probably safe to assume that a Trump administration will bring with it a less aggressive National Labor Relations Board. The Obama Board has been more employee/union-friendly than many previous Boards, and Mr. Trump knows this first hand. By statute, the Board consists of five members appointed by the President with the advice and consent of the Senate. The current Board has three members (two Democrats and one Republican). Thus, there are two vacancies on the Board that Mr. Trump could fill by appointment in the early days of his Presidency. If he appoints two Republicans, as would be expected, it would tip the ideological majority in favor of the Republicans. Being that the Senate also has a Republican majority, it is likely that Mr. Trump's appointments would be confirmed fairly quickly. As for the two Democrats on the current Board, the member with the shortest remaining term is member Gaston Pearce, whose term runs until August 2018. The current General Counsel's term runs until December 2017.

President-elect Trump has not announced his vision for the five-member U.S. Equal Employment Opportunity Commission, but changes there are also likely to take time. All five Commissioners are currently appointees of President Obama. Although each member serves at the pleasure of the President, the Commissioners serve staggered five-year terms. The Commissioner whose term expires soonest, July 2017, is Jenny R. Yang, the current Chair. Although the President has the authority to designate the Chair, employers should expect no immediate changes at the agency. With a Republican majority in the Senate, Mr. Trump will hope for wide latitude in getting his appointments, but that will take time.

Mr. Trump has not made any notable public statements on Executive Order 11246, which governs affirmative action programs for federal contractors. He has made various comments about affirmative action but has not expressed a particular vision for the Office of Federal Contract Compliance Programs. He hasn't communicated his plans for the Occupational Safety and Health Administration ("OSHA"), but budgetary challenges for agencies like OSHA seem likely under a Trump presidency and Republican majorities in Congress.

All in all, a Trump presidency is certain to bring a more pro-employer agenda than we have seen with the current administration. The extent

of that agenda is an open question.

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