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# A look at the post-election picture for employers

The election results are in and changes lie ahead! You may be wondering what to expect under the new administration. With a new president and other elected officials due to enter office, as well as voter-approved referendums, initiatives and measures triggering actions, employers will need to prepare for a number of changes to laws. Those areas will likely include: the Affordable Care Act (ACA), paid family leave, immigration, the Supreme Court nominees and marijuana legalization.

## Modifications to the ACA

It is unclear whether the ACA will be repealed. Despite President-elect Donald Trump's campaign assertions that he would repeal the ACA, he has already announced that he would like to maintain insurance for all, particularly those with pre-existing conditions and people under age 25 on their parents' plans.

The Department of Health and Human Services also forecasts a 25 percent average increase to all premiums in 2017. Midsize employers (51-100 employees) in particular are looking for ways to deal with increasing coverage costs. Additionally, employers that offered health benefits that were "too generous" do not need to worry about the 40 percent excise tax that was scheduled to take effect in 2018. The idea was that these so-called "rich benefits packages" encouraged excess use of health care services and drove up overall costs. However, the excise tax implementation has been delayed until 2020, and many people predict that it will be repealed altogether.

On the other hand, employers may not receive the same tax benefits for providing health care plans to their employees. Currently, those employers can deduct most of the costs of their health care cov-



## COMPLIANCE CORNER

Andrew Schpak and Nicole Elgin

erage. Concerned over this considerable tax revenue loss, Congress is considering putting a cap on the amount of costs that an employer may deduct from taxes. Employers should stay tuned for possible ACA amendments that may affect the employer mandate.

## Advances in paid family leave

Currently, employees are allowed up to 12 weeks of unpaid leave under the Family and Medical Leave Act. Many newly-elected officials have proposed paid sick time that would allow employees to care for themselves or family members. Conservatives proposed an amendment to the Fair Labor Standards Act (FLSA) that would allow employees to choose between accepting overtime pay or converting it to paid sick time. Oregon implemented 40 hours of paid sick leave earlier this year, and other states are following suit. Because both political parties support a change to the current unpaid family leave rules, employers can anticipate developments in federal sick leave laws.

## Potential immigration reform

Trump's plans for immigration reform may strongly impact the workplace, including potentially requiring employers to e-verify all workers. Employers can also expect increased workplace enforcement actions that may include I-9 audits or Immigration and Customs Enforcement (ICE) raids. Because Trump strongly

supports hiring Americans first, some proposals would require employers to pay a fee to recruit non-American workers. Employers should be aware of potential immigration reform policies that would affect their workers or talent recruitment and hiring programs.

## Supreme Court nominations

With one Supreme Court seat vacant since February 2016, the incoming president will nominate at least one potential replacement. However, because justices Ruth Bader Ginsburg, Anthony Kennedy and Stephen Breyer are ages 83, 80 and 78, respectively, many observers believe Trump could nominate up to four people.

Even one new justice would likely lead to a more conservative bench that could revisit past split decisions. For example, the Supreme Court earlier this year was split 4-4 in *Friedrichs v. California Teachers Association*. That case dealt with the question of nonunion public employees who are compelled to pay union expenses for collective bargaining activities. The court likely will revisit the issue of mandatory union dues once the ninth seat is filled.

Other issues that may return to the Supreme Court are the contraception mandate under the ACA and employees' class action challenges where claims are based on statistical analysis of worker behavior. Employers should prepare for a more conservative bench and developments on these controversial Supreme Court holdings.

## Shifting opinions on marijuana

Currently, marijuana is listed as a Schedule I (the most restricted category) drug under the Controlled Substances Act. Earlier this year, the U.S. Drug Enforcement Agency (DEA) denied multiple petitions to reclassify the drug. However, California, Massachusetts, Nevada and Maine all voted recently to legalize recreational marijuana; in addition, several other states approved medical marijuana initiatives. In a close race, Arizona voted not to legalize recreational marijuana, but maintains medical marijuana programs.

Meanwhile, four other states (Oregon, Washington, Alaska and Colorado) already have recreational laws. There is increasing pressure at the federal level to either reclassify the drug or defer to state law. Some observers anticipate that the legalization of marijuana in an economy as large as California's could spell the end of marijuana restrictions entirely. Employers should stay tuned for any changes that may affect current workplace drug policies, testing procedures, and handbooks.

## Preparing for policy changes

Employers need to educate themselves and their human resource professionals in order to stay current on the latest changes affecting the workplace. Sign up for Barran Liebman's free e-alerts today to stay apprised of any post-election changes that might impact your workplace.

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