



Celebrating 75 Years In Service

The SESCO Report

Volume MMXXI, Issue 1

Your "Human" Resource Since 1945

January/February 2021

Special Report: What Employers Can Expect Under the Biden/Harris Administration

With the results of the recent presidential and congressional elections, the Biden presidency will bring a dramatic shift to the federal labor and employment policy landscape. The 180 degree turn in regulatory employment policy priorities that will likely result will undoubtedly create uncertainty for employers, which are already challenged in dealing with a pandemic and a questionable economy moving forward.

The following are our predictions based on previous democratic administrations, laws enacted in democratic controlled states such as Virginia, New York, California and others, as well as Biden's recent comments. Also an excellent indicator as to where this administration will move labor and employment regulations is the recent appointment of **Boston Mayor, Marty Walsh**, as Labor Secretary.

Walsh, who served as Boston's Mayor since 2014, has an extensive labor background including leading the Boston Metropolitan District Building Trades Council from 2011-2013. He is also the current Chairman of Climate Mayors, a bi-partisan group of 470 Mayors nationwide committed to fighting climate

change. Biden said in a statement that Walsh, "will help us emerge from the most inequitable economic and jobs crisis in modern history by building an economy where every American is in on the deal. They share my belief that the middle class built this country and that **unions built the middle class.**" Further, **Richard Trumpka, President of the AFL-CO**, said in a statement that Mr. Walsh, "will be an exceptional Labor Secretary for the same reason he was an outstanding Mayor: he carried the tools. As a long time union member, Walsh knows that collective bargaining is essential to building back better by combatting inequality, beating COVID-19 and expanding opportunities for women and people of color." As such, the Biden administration will be pro-union and pro-labor law that makes it much easier for unions to organize.

So, what can employers and SESCO clients expect in the coming months?

I. Executive Action

The newly sworn in President, Joe Biden, will rescind certain Executive Orders issued by the former President Donald Trump and issue his own Executive Orders. This is the quickest and easiest way to enact change. The list will include:

- COVID-19 travel restrictions
- Ban on non-immigrant Visas
- Reinstigate the Deferred Action for Childhood Arrivals (DACA)

- Reinstigate protected status of certain eligible nationals
- **Revoke Trump's Executive Order on combatting race and sex stereotyping**
- Implement requirements on federal contractors to **require diversity and inclusion or implicit bias training and programs**
- Resuscitate a version of former President Barak Obama's **Fair Pay and Safe Workplaces**

II. Congress' Agenda

Within Congress, there will be a number of critical proposals to include:

- **Eliminating the filibuster** which would allow senators to pass legislation with a simple majority vote (51 votes). This will allow the democrats to expand the number of seats on the Supreme Court, pass legislation on voting rights, gun control, climate action, LGBTQ rights and more.

Specific employment-related legislation may include:

- **Pregnancy Accommodation** - This will include the Pregnant Worker's Fairness Act which would require employers to provide reasonable accommodation beyond what is already required.

Inside This Issue

Special Report: What Employers Can Expect Under the Biden/Harris Administration 1

SESCO Management Consultants Exclusive Professional Service Agreement 4

BIDEN/HARRIS ADMINISTRATION

- **Paid Leave** - The political debate over paid family/sick leave has evolved dramatically. Expect the democrats to propose paid family leave as an extension of the Family First Coronavirus Response Act (FF-CRA) as a national requirement.
- **Immigration** - Previously the House passed the Fairness for High-Skilled Immigrants of 2019. Expect the bill to be brought to the Senate which would eliminate per country caps for employment-based immigrant Visas.
- **Department of Labor Staffing**
 - Expect the team overseeing the DOL to include the National Labor Relations Board and the EEOC among other agencies to include many familiar faces from the Obama administration. Expect the Biden administration to be aggressive from the start in terms of both regulatory actions and enforcement proceedings. They will call back many of the initiatives of the DOL of the Trump administration. Beyond that, **expect this DOL to go on the offensive with an agenda that is even more progressive than that of Obama's administration's DOL.**

Employers can expect:

- **Joint employer** - The Biden DOL is expected to "repeal and replace" the rule with a broader and more friendly joint-employer standard which creates significant coverage and liability for arms-length relationships.
- **Overtime - Salary Threshold**
 - In 2016 the federal court blocked the enactment of the Obama administration's overtime rule increasing the guaranteed salary basis threshold to \$47,000 or higher. Look for the Biden administration to propose an increase of the salary

threshold to \$47,000 or higher and also look forward to the administration to make changes in what positions are allowed to be exempt from overtime.

- **Opinion Letters** - Opinion letters offer a very easy way for stakeholders to seek assistance from the Department of Labor when confronted with questions. In 2010, the Obama administration ended the opinion letter process. Under the Trump administration, the opinion letter program was reinstated but again may be jettisoned in a Biden administration.
- **Office of Federal Contract Compliance Program (Affirmative Action Programs)**
 - It is likely that the OFCCP will pursue the following changes:
 - Roll back policies and processes established by Trump's Executive Order on combatting race and sex stereotyping. This, in essence, will require specified diversity and inclusion and/or implicit bias training.
 - Implement affirmative diversity and inclusion obligations pursuant to an Executive Order.
 - Rescind any regulation relating to religious organizations with federal contracts.
 - Restart the 2014 compensation data collection tool proposal. This regulation greatly expands affirmative action plan compliance to include analysis of compensation.

III. National Labor Relations Board

Republicans will maintain a majority at the NLRB into the Summer of 2021. However, expect a complete change of

the Board to democrat members and subsequently, expect a rollback of current Board policies in favor of unions. Expect a very pro-union Board and administration which will include:

- **PRO Act** - The PRO Act would be the most significant change to labor laws since the National Labor Relations Act (NLRA) was passed in 1935. If enacted, **the bill would make at least 50 changes to the NLRA to make it easier for labor to achieve its organizing goals.** The bill would:
 - Give the NLRB the authority to impose civil fines of \$50,000 for labor violations, which could be doubled for a repeat violation.
 - Greatly expand the definition of "employee" and almost expunge the concept of independent contractor.
 - Expand the content of the lists of employee contact information to be provided to unions prior to an election.
 - Prohibit mandatory arbitration.
 - Greatly expand the whistleblower laws administered by the Department of Labor (DOL).
 - Weaken right-to-work laws in 27 states by permitting unions to require workers at unionized companies to pay dues. Currently, employees in right-to-work states may choose not to pay union dues.
 - Prevent employers from permanently replacing striking workers in economic strikes. Employers already are prohibited from permanently replacing striking workers in unfair-labor-practices strikes.

BIDEN/HARRIS ADMINISTRATION

- Allow workers to bring private lawsuits for violation of the NLRA.
 - Codify the DOL's persuader regulation, which narrowed the "advice exception" of the Labor-Management Reporting and Disclosure Act, by requiring law firms to participate in financial disclosures about their relationships with employers.
 - Prohibit mandatory meetings called by employers to present their views on union-organizing efforts.
 - Make it easier to establish that two or more employers are joint employers.
 - Codify many union-friendly NLRB decisions.
- Most importantly, the PRO Act would codify the **"ambush election rule," drastically reducing the amount of time a company has to campaign and speak to its employees about unionization once a union election petition is filed.**

• Decisions That May Be Reversed -

- **Caesars Entertainment.** The Trump Board overturned Purple Communications and held that employees do not

generally have a protected right to use their employers' e-mail systems for purposes of union-organizing activity.

- **The Boeing Company.** The Trump Board issued a new standard for evaluating challenges to employee-handbook provisions and work rules, overturning a previous standard that held neutral rules were unlawful if an employee could reasonably construe them to interfere with protected rights.
- **Johnson Controls.** The Trump Board upheld the employer's right, within 90 days of labor contract expiration, to suspend bargaining and withdraw recognition from the incumbent union based on objective evidence that the union no longer has majority support.

SESCO Recommendations

SESCO's staff recommendations for clients simply include the following:

- Continually monitor our weekly updates, *The SESCO Report* and other staff alerts. As executive actions are imposed and other rules and regulations are passed, SESCO will stay abreast of the latest developments to ensure that our clients are not only

aware of these developments but also receive recommendations for compliance.

- **Clients should plan to conduct either onsite or virtually our labor and employment law audit that they receive under our Professional Service Agreement - if you are not covered under our Professional Service Agreement to receive these audits and other services, please contact sesco@sescomgt.com.**
- Be prepared to proactively communicate with employees as they will have media access to the ongoing developments.
- Train supervisors and managers on compliance requirements.

SESCO Clients Feedback

"Jamie, thank you SO much for providing valuable feedback and information on this project and to help our members stay in compliance. You did a fantastic job of covering everything we needed. I am putting together the production to put in our library. Again, thank you! We are so appreciative of our partnership with SESCO." ~ Sheri Hamilton, AMAM, Executive Director - Midwest Auto Care Alliance

"I am writing this letter to you in appreciation for a job well done. When it was difficult to get the correct information concerning the Coronavirus, your regular report updates became my go-to for the most accurate and complete information concerning these difficult times. Again, thanks for all that you do on a sometimes difficult and stressful HR subject." ~ Rob Snyder, President - Snyder Signs, Inc.

Special Thanks to New SESCO Clients!

Wise County Public Schools
Wise, VA

Southeastern Kentucky Rehabilitation Industries, Inc.
Corbin, KY

Ocean State Innovations (OSI)
Portsmouth, RI

Charles Barker Mercedes-Benz of Virginia Beach and Maserati
Virginia Beach, VA

Propel Insurance (Trulieve)
Knoxville, TN



P.O. Box 1848
Bristol, TN 37621
(423) 764-4127 • FAX (423) 764-5869
www.sescomgt.com
email: sesco@sescomgt.com

RETURN SERVICE REQUESTED

SESCO Management Consultants Exclusive Professional Service Agreement

- Annual labor and employment law audits
- Unlimited telephone, email and research consulting
- Employee handbook review
- Federal and state compliance posters
- SESCO HR forms and compliance publications provided in pdf format
- *The SESCO Report* and weekly email updates
- Discounted project fees

Contact sesco@sescomgt.com for monthly pricing.