

Labor and Employment Law Under the Trump Administration: A Brief Overview for Colorado Employers

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With the election of Donald Trump as U.S. president last month, many are wondering what impact the new Trump administration will have on employers. President-elect Trump has given few details regarding his plans for labor and employment policy, but the following is a summary of how different areas of labor and employment could be affected by the incoming administration.

Wage and Hour

1. Colorado's minimum wage will rise to \$9.30 per hour in 2017. It is uncertain whether the federal minimum wage, which has remained at \$7.25 per hour since 2009, will rise in the next four years.
2. A top concern of 2017 will be the shakeout following a federal judge's preliminary injunction suspending implementation of the U.S. Department of Labor's (DOL) overtime rule, which had proposed revising the Fair Labor Standards Act (FLSA) to raise the minimum salary that an employee must make to be exempt from overtime from \$455 per week (which annualizes to \$23,660 per year) to \$913 per week (which annualizes to \$47,476 per year). The overtime rule could still be implemented down the road, but the continuing appeal of this judge's ruling will fall to the new Trump administration, which may not be as motivated to enforce these Obama administration regulations.
3. During the presidential campaign, President-elect Trump and his daughter, Ivanka Trump, unveiled policy proposals aimed at providing paid maternity leave. Further details concerning the program have yet to emerge.

Employee Benefits

During his campaign, President-elect Trump indicated that one of his administration's highest priorities would be to repeal the Patient Protection and Affordable Care Act of 2010 (the ACA or, popularly, Obamacare) and replace it with an alternative program. Congress has spent much of the past six years unsuccessfully attempting to repeal the ACA, and the prevailing opinion is that with Trump in the White House, these efforts will bear fruit within the opening days of the Trump administration. However, both the President-elect and Congress are now grappling with many of the same complexities that have bedeviled healthcare reform efforts for over 20 years, and it is unclear which of the many competing proposals will actually gain traction in the new Congress or find favor with the White House or the affected constituencies.

In the face of these uncertainties, employers should prepare for changes but expect that their details will be unknown for some time, potentially several years. In the meantime, unless and until the ACA is modified or repealed, it remains the law of the land, and employers should continue to comply with its requirements as applicable.

Immigration

Several immigration-related issues and reforms will be on the new administration's agenda:

1. a revocation of the prosecutorial discretion memorandum coupled with an increase in enforcement assets for the U.S. Department of Homeland Security;
2. a possible reversal of the Obama administration's Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) programs and a more aggressive approach with undocumented immigrants and visa overstay;
3. an increase in workplace immigration compliance enforcement by U.S. Immigration and Customs Enforcement;
4. potential gaps in free-trade visas (such as the TN visa) during the renegotiation of free trade agreements such as the North American Free Trade Agreement (NAFTA); and
5. increased scrutiny by the DOL of PERM recruitment efforts and labor condition application abuse.

Workplace Safety and Health

Depending on who is selected to be the assistant secretary for occupational safety and health, employers should expect some bold new direction from the Occupational Safety and Health Administration. Likely new trends include the following:

1. stepped-up efforts to curtail the impact of recent regulations, including the controversial standard regarding silica exposure;

2. a more collaborative approach with respect to compliance, including renewed emphasis on the agency's Voluntary Protection Program (VPP);
3. Fewer citations and more communications about how employers can take steps to comply with standards;
4. reduced reliance on extreme enforcement measures such as the Severe Violator Enforcement Program (SVEP);
5. less scrutiny of the mechanics of injury and illness recordkeeping and less focus by the agency on audits and employer underreporting; and
6. a retreat from the frequent use of inflammatory press releases accompanying enforcement actions.

Colorado Developments

The Colorado General Assembly amended C.R.S. § 8-70-115 to permit the Colorado Department of Labor and Employment to develop guidance for employers on various issues related to independent contractors including the proper classification of workers.

Conclusion

While the items discussed above are not guaranteed, there will likely be many changes in the regulatory, legislative, and enforcement environment under the Trump administration. Employers should keep in mind that many changes will take time. Labor and employment attorneys, as well as employers, will be watching closely over the next few months to see how these issues—from workplace safety to the Affordable Care Act to the now-halted FLSA overtime exemption rule change—take shape.

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