

How a New Administration May Impact HR

By Tony Lee, Allen Smith, Lisa Nagele-Piazza, Roy Maurer and Stephen Miller

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Four years ago, Donald Trump's election had a significant impact on HR professionals, as it kicked off a process in which many federal regulations implemented by the Obama administration were revised and overturned. Employee handbooks and company policies had to be updated and rewritten on a frequent basis in the years that followed, as the Departments of Labor, Homeland Security, Health and Human Services and many others, as well as a range of federal agencies, shifted priorities and reporting responsibilities for employers.

Given the election results, analysts expect the new Democratic administration will attempt to change many of those regulations, despite the ongoing pandemic. However, change may be difficult given that the Senate may continue to be led by a Republican majority pending run-off elections in Georgia in January. What follows is an overview of the federal programs most likely to be targeted for change by the new administration, and what HR professionals might expect:

Health Care Insurance

President-elect Joseph R. Biden, Jr. favors maintaining and expanding coverage under the Affordable Care Act (ACA). He has said he would keep the employer mandate that requires organizations with 50 or more full-time or equivalent employees to provide ACA-compliant health care to their full-time workers—and to comply with the ACA's employer tracking and reporting requirements.

Biden also has stated that he would allow employees to receive coverage on an ACA exchange even if their employer offers ACA-compliant coverage, although details about eligibility for government subsidies have not been outlined. Currently, if an employer offers health plans that meet the ACA's requirements for affordability (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/irs-raises-2021-affordability-threshold-for-employer-health-plans.aspx) and minimum quality standards, then employees are not eligible for subsidized coverage through an ACA exchange, regardless of their income.

The crux of Biden's health plan, however, is his support for a public insurance option similar to Medicare. According to his campaign website, "Whether you're covered through your employer, buying your insurance on your own, or going without coverage altogether, the Biden plan will give you the choice to purchase a public health insurance option like Medicare." A campaign fact sheet explained further (<https://joebiden.com/fact-sheet-how-joe-biden-would-help-you-get-health-insurance-coverage-during-the-coronavirus-crisis/>): "If you have coverage from your employer but it is inadequate ... Joe would give you the ability to choose a new Medicare-like public option, with the federal government providing enhanced premium subsidies."



President-elect Joseph R. Biden, Jr.

As with Medicare, the public option Biden supports would cover primary care without co-payments. Biden's website says, "It will bring relief to small businesses struggling to afford coverage for their employees," presumably by allowing them to stop offering coverage. And as a government-run health insurance plan available on the ACA's marketplace exchanges, the public option would compete directly with other qualified health plans.

Biden also proposes allowing Americans ages 60 to 64 to enroll in Medicare (<https://www.npr.org/sections/health-shots/2020/04/11/832025550/bidens-health-play-in-a-covid-19-economy-lower-medicares-eligibility-age-to-60>). In April, he wrote, "Under this concept, Americans would have access, if they choose, to Medicare when they turn 60, instead of when they turn 65. ... This would make Medicare available to a set of Americans who work hard and retire before they turn 65, or who would prefer to leave their employer plans, the public option, or other plans they access through the Affordable Care Act before they retire."

Researchers have found that "the strong link between health insurance and employment in the United States may cause workers to delay retirement until they become eligible for Medicare at age 65 (<https://www.nber.org/papers/w17703>)," suggesting that earlier access to Medicare could prompt more employees to retire sooner.

SHRM believes any approach to health care reform in the United States must preserve the option for employer to provide employer-sponsored health insurance. This coverage may be achieved in different ways and at different levels, but any approach to health care reform must offer affordable access to care for all Americans.

[SHRM Statement: SHRM Stands Ready to Partner with Biden Administration to Support Work, Workers and Workplaces (www.shrm.org/about-shrm/press-room/Pages/shrm-ready-to-partner-with-biden-administration.aspx)]

Paid Leave

The Families First Coronavirus Response Act (FFCRA), passed earlier this year in response to the pandemic, became the first federal law to mandate paid leave in the private sector. President-elect Biden has called for 12 weeks of paid family and medical leave, and has supported the FAMILY Act, which would provide workers with up to 12 weeks of partial income funded through a payroll tax when they take time for:

- Their own serious health conditions, pregnancy and recovery from childbirth.
- The serious health condition of a child, parent, spouse or domestic partner.
- The birth or adoption of a child.
- Specific military caregiving and leave purposes.

The FAMILY Act would cover workers in all companies, no matter the company size. Under the proposed act, part-time, lower-wage, contingent and self-employed workers would be eligible for benefits.

SHRM believes employers should voluntarily offer paid leave and flexible work options to their employees. Rather than a one-size-fits-all government mandate, SHRM advocates for a voluntary federal framework, instead of a fragmented patchwork of state and local laws, to accommodate varying work environments, employee representation, industries and organizational size.

Labor Relations

President-elect Biden supports a bill known as the Protecting the Right to Organize (PRO) Act that would significantly change labor relations law (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/house-passes-major-overhaul-of-labor-law.aspx), making it more difficult to classify workers as independent contractors and expanding the definition of "joint employer." In fact,

Biden would go even further by allowing workers to more easily organize unions through the signing of authorization cards and by imposing criminal liability on executives for "interfering with organizing efforts and violating other labor laws," according to Biden campaign materials.

The National Labor Relations Board (NLRB) has used its rulemaking authority during the Trump administration to make substantive and procedural changes, including modifications to union election rules (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/nlrb-rule-more-time-before-union-elections.aspx). Democrats likely will eliminate all pending proposals and look to overturn the current administration's rules.

SHRM supports balanced labor-management relations and recognizes the inherent rights of employees to form, join, assist or refrain from joining a labor organization. When Congress considered the PRO Act earlier this year, SHRM opposed (https://advocacy.shrm.org/wp-content/uploads/2020/11/SHRM-Letter-PRO_Act_HouseVote_02.05.20_FINAL.pdf) the legislation.

Workplace Immigration

Joe Biden's plan calls for reversing what President Trump has enacted regarding immigration since 2017, including halting Trump's executive orders and proclamations restricting travel, limiting green cards and guest worker programs, and eliminating the Deferred Action for Childhood Arrivals (DACA) program, which granted protection to certain undocumented immigrants brought to the country as children.

Biden's platform also outlines larger goals to work on with Congress, such as increasing the number of employment-based visas; providing a path to legalization for the 12 million undocumented immigrants in the country; and creating a new, decentralized immigration stream for foreign workers that is based on local and state needs. It's also likely he will attempt to pass through Congress comprehensive immigration reform. Biden supported the bipartisan comprehensive immigration package that passed the Senate in 2013 (www.shrm.org/resourcesandtools/hr-topics/global-hr/pages/senate-passes-immigration-reform.aspx), but could not get approval from the House of Representatives.

SHRM supports immigration policies that ensure employers have access to visas to recruit, hire, transfer and retain top talent, especially those educated and trained in the U.S. SHRM also advocates for one reliable, entirely electronic employment verification system that integrates the Form I-9, provides users a good-faith defense and is only for new hires.

Retirement Plans

President-elect Biden's tax plan calls for changes to the traditional 401(k), ending upfront tax breaks that grow larger as more money is saved and replacing them with flat-tax credits.

Current tax benefits for retirement savings are based on savers excluding their retirement contributions from tax in traditional 401(k) plans, and then paying taxes when they withdraw money from their account. "This system provides upper-income families with a much stronger tax break for saving and a limited benefit for middle-class and other workers with lower earnings," according to Biden's website. "The Biden plan will equalize benefits across the income scale, so that low- and middle-income workers will also get a tax break when they put money away for retirement."

Roll Call reported that Biden's plan would "equalize" the incentive system by replacing tax-deductible contributions with flat-tax credits for each dollar saved (<https://www.rollcall.com/2020/08/24/biden-retirement-proposal-would-upend-traditional-401k-plans/>). "The campaign isn't saying what that percentage would be, but the Urban-Brookings Tax Policy Center has estimated a 26 percent credit would be roughly revenue-neutral over the first 20 years and beyond, which the Biden campaign is aiming for," *Roll Call* reported. "Under this plan, someone

earning \$600,000 would get the same tax break as someone making \$60,000—an identical \$260 tax credit for their \$1,000 retirement contribution." The credit would also be refundable, so employees earning too little for the credit to offset their income tax liability would still receive the full value.

Minimum Wage

Joe Biden supports raising the federal minimum wage to \$15 an hour by 2026. He also supports ending the tipped minimum wage and the subminimum wage for workers with disabilities (www.shrm.org/hr-today/news/hr-news/pages/minimum-wage-bill-low-ends-pay-workers-disabilities.aspx). The Democratic-controlled House passed a bill last year that would have raised the federal minimum wage to \$15 by 2025, but it was never voted on and it's not known whether Biden would support such a bill if it is reintroduced in the 117th Congress.

Marijuana Legalization

The movement to legalize cannabis consumption continued on Election Day as voters in five states approved new laws allowing medical and recreational marijuana use.

In Arizona (https://ballotpedia.org/Arizona_Proposition_207%2c_Marijuana_Legalization_Initiative_%282020%29), Montana (https://ballotpedia.org/Montana_CI-118%2c_Allow_for_a_Legal_Age_for_Marijuana_Amendment_%282020%29) and New Jersey (https://ballotpedia.org/New_Jersey_Public_Question_1%2c_Marijuana_Legalization_Amendment_%282020%29)—where medicinal use is already permitted—voters approved recreational use. Mississippi (https://ballotpedia.org/Mississippi_Ballot_Measure_1%2c_Initiative_65_and_Alternative_65A%2c_Medical_Marijuana_Amendment_%282020%29) voters decided to legalize medical marijuana in the state, and South Dakota voters agreed to legalize both recreational (https://ballotpedia.org/South_Dakota_Constitutional_Amendment_A%2c_Marijuana_Legalization_Initiative_%282020%29) and medical (https://ballotpedia.org/South_Dakota_Initiated_Measure_26%2c_Medical_Marijuana_Initiative_%282020%29) use.

Although all marijuana use is still illegal under federal law, 35 states now will allow medical use, and 15 of those states and Washington, D.C., also will allow recreational use.

LGBTQ Rights

Both Joe Biden and Kamala Harris have been strong supporters of LGBTQ and transgender rights. Biden stated during the campaign: "My administration will enact the Equality Act to end legal discrimination against LGBTQ+ people, expand economic opportunities for LGBTQ+ people, reform our treatment of transgender and gender non-conforming individuals in our criminal justice system, ensure access to accurate identification documents, and improve government data collection to better track violence against the transgender community."

SHRM is committed to encouraging fair and consistent employment practices and policies and believes that employment decisions should be made on the basis of an individual's qualifications for a job, such as education, experience and demonstrated competencies, not on the basis of non-job-related characteristics, including sexual orientation and gender identity.

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