

Labor Secretary Will Face These Challenges

Boston Mayor Marty Walsh could take on gig workers' rights, unemployment insurance and more emergency leave

By Allen Smith, J.D.

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If past is prologue, Marty Walsh, the mayor of Boston and President-elect Joe Biden's nominee to be the next secretary of the Labor Department, will "usher in a new era of worker power," according to the Biden-Harris transition team.

If Walsh is confirmed, he will face a wide range of issues. His track record in public office and as a labor leader can provide insight on actions he might take at the Department of Labor.

Creative Approach

While mayor, Walsh has created tools for low-income workers, including a "learn and earn" job apprenticeship program and the Office of Financial Empowerment. He is the founding vice chair of the Cities of Opportunity Task Force at the United States Conference of Mayors and has elevated the national conversation on income inequality.

Walsh also served in the Massachusetts House of Representatives before becoming mayor. As a state representative, he was a leader on job creation and worker protections, preventing substance abuse, and defending mental health and civil rights. He played a key role defending Massachusetts' pioneering stand on marriage equality.

As head of the Building and Construction Trades Council from 2011 to 2013, he created a program called Building Pathways that has become a model for increasing diversity in the workplace and providing career opportunities for women and people of color.

Issues He May Tackle

In a comment retweeted by the Gig Workers Collective, Fordham University law professor Zephyr Teachout called for Walsh to create rules as labor secretary that require employers to treat gig workers more like employees. "Marty Walsh should immediately announce that he will pursue rulemaking that would make drivers eligible for minimum wages, overtime and workplace expense payments," she asserted.

Michael Lotito, an attorney with Littler in San Francisco, predicted that Walsh will tackle other issues that include:

- The unemployment insurance crisis in state systems.
- New stimulus suggestions, including renewing paid leave (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/coronavirus-dol-guidance-expiration-ffcra.aspx).
- The possibility of an emergency temporary Occupational Health and Safety Administration standard on COVID-19 (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/coronavirus-osh-may-issue-covid-19-standards.aspx).
- Decisions about whether to keep various rules issued by the Trump administration.

Some recent final rules, like the one clarifying the definition of an independent contractor (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/dol-final-rule-independent-contractor.aspx), might be put on hold, said Christopher Foster, an attorney with McDermott Will & Emery in San Francisco.

Lotito remarked that if confirmed by the Senate, Walsh should focus on making sure people who are unemployed get help. "Unemployment insurance is not enough," he said, adding that lifelong learning is needed in light of the transformation happening in the workforce due to robotics and artificial intelligence.

Robert Duston, an attorney with Saul Ewing Arnstein & Lehr in Washington, D.C., noted, "It is likely that Congress will step in and extend the deadlines for both the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act. The pandemic is raging, and employees who are sick or exposed need to stay out of work. The new administration is going to be strongly supportive of this type of leave, and there has been no significant opposition from the business community."

Influence on PRO Act

Lawrence Lorber, an attorney with Seyfarth in Washington, D.C., said enacting the Protecting the Right to Organize (PRO) Act (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/nlrb-may-overturn-employer-friendly-decisions.aspx) "appears quite doubtful in its current form."

The labor secretary can, however, suggest executive orders containing elements of the PRO Act for federal contractors.

AFL-CIO President Richard Trumka reacted to the announcement of Walsh's nomination by stating, "With Joe Biden and Marty Walsh, we are setting our sights high, starting with passage of the PRO Act, so the tens of millions of workers who want to form a union can do so freely and fairly."

Having a former union leader as head of the department could result in a pipeline of union lawyers and leaders in key staff and enforcement positions, noted Ron Holland, an attorney with McDermott Will & Emery in San Francisco.

Lotito said Walsh "is a consensus builder. Now is the time to build consensus to bring us together in a nonpartisan way."

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