

Change in President Likely to Bring Changes in Labor Law, Workplace Risks

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A new president in the White House is likely to affect workplace risks for employers and their insurance providers. EPLI carriers and brokers have worked to develop risk management strategies to address workplace law claims, and potential changes they need to keep an eye out for include ones at the National Labor Relations Board (NLRB) and the Department of Labor (DOL).

Joint Employment

In 2015, the NLRB [modified](#) its position on joint-employer status and made liability more likely for franchisors and other entities that did not directly employ the worker. A great deal of litigation and argument on expansion of liability beyond the immediate employer trailed that ruling. In 2020, the DOL in a [final rule](#) sought to follow the NLRB by changing the way joint employment is assessed under the Fair Labor Standards Act. However, in September, two months before the election, a federal judge struck down the DOL regulation, invalidating expansion of the scope of “employers” under the FLSA.

Whether the DOL and NLRB will continue to seek to expand the range of liability is uncertain, and this issue may be teed up for 2021. Meanwhile, franchisors and other entities that do not directly employ workers should explore protections beyond simply arguing, “we are not the employer.”

Head of NLRB

Unlike regulatory and statutory changes that take time to implement, the new administration can make swift moves to change the composition of the NLRB and, thus, potentially change key rulings. Turnover of the NLRB’s Republican majority is not likely until August 2021, when a Democratic majority of NLRB members is installed. Possible outcomes include: (1) the Republican NLRB will undertake rulemaking to achieve their agenda before August 2021; or (2) the eventual Democratic Chair of the NLRB will try to slow down the Republican rulemaking process.

Employers and their insurance providers should expect to see both immediate and long-term actions taken by the new administration, as well as many legislative initiatives from the House of Representatives. For more on changes that may come with the new president, see our article, [The Future of Workplace Law Under President-Elect Joe Biden](#)

Please contact a Jackson Lewis attorney with any questions.

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