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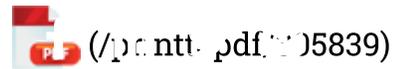
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How the Biden administration could enforce labor laws

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U.S. labor attorneys expect the Biden administration will introduce labor laws and regulations similar to those under President Barack Obama.



(Photo: Ryan Rodrick Beller / shutterstock; Illustration: Rachel Daub)

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REPORT FROM THE U.S.—As President-elect Joe Biden prepares to take office in January, the U.S. hotel industry can prepare for the likely changes to come under his administration.

Hotel News Now reached out to U.S. labor attorneys to get an idea of what hoteliers can expect from the Biden administration over the next four years. While any legislation over the next two years will depend on how the runoff elections in Georgia for two U.S. senate seats turn out, there's still much Biden can do through department and board appointments as well as executive orders.

Joint-employer status

As president, Biden will have the ability in short order to reshape the composition of the five-member National Labor Relations Board, said Travis Gemoets, partner at Jeffer Mangels Butler & Mitchell. There's a vacancy now he will be able to fill with a like-minded candidate, and there will be another in August 2021.

"At that point, he'll have a three-to-two more liberal, progressive composition to the board," he said.

While the NLRB can't completely reverse everything from Donald Trump's administration to revert to the rules during President Barack Obama's tenure, the board will have some chances to make changes. One such change would be to how it interprets joint-employer status among franchisors and franchisees as well as hotel managers and owners.

The hotel employer of record tends to be the hotel manager, which if not the hotel owner can be a brand company or third-party operator, Gemoets said. If joint-employer status is broadened, the new rules could hold a franchisor or ownership liable for violations of labor laws, such as unfair labor practices or wage claims.

Knowing this will likely be the case again, brands and owners should take the approach they took under the 2015 Browning Ferris case, Gemoets said. Delegate all employee-related decisions to the manager to avoid any exposure to joint-employer status, he said.

For companies that sometimes hire temporary extra labor, usually for laundry services, housekeeping or restaurants, they could potentially be found as a joint employer of these temp employees, Gemoets said.

Hotel operators looking to farm out part of the operation to a third party shouldn't have a management-level person overseeing that at all to avoid any potential joint-employer claims, he said. The hotel operator would simply have the right to terminate the contract if the third-party employees aren't doing the job well, but that would be a matter between the operator and the third-party company, not the specific employee.

"If you've got a valet driver who works with this third-party entity who you feel is not doing a good job, you don't even walk up to that valet person and say, 'OK, you're done for the day,'" he said. "That makes you a joint employer. You have to contact the company and say, 'Joe Smith the valet driver just crashed a car, he's drunk. You need to take him off the schedule and pronto.'"

Worker protections

One of the first agencies that will see more activity will be the Occupational Safety and Health Administration, particularly with all of the COVID-19 issues happening now, said Lara Shortz, partner at Michelman & Robinson.

With the large focus on worker safety currently, OSHA's enforcement of safety rules will come sooner than any other kind of enforcement, she said. The U.S. Department of Labor and NLRB will become more active as well, but they will be slower moving.

"I've seen a real backing off in terms of how aggressive governmental agencies are wanting to go after businesses that are struggling right now," she said. "There is not going to be an immediate shift to making that even more painful than it already is now."

Unions

As the Biden administration takes over, it will look to provide some relief to businesses that are struggling, Shortz said. It will also look to provide relief to workers. Biden has made no secret of his support for unions, she added.

"He's going to be a very, very union-friendly president, and I think he's been very vocal about that," she said. "I think the folks he's selecting now to be part of his cabinet and administration are union supporters and have similar philosophies."

The Biden administration will come in with union-friendly policies as seen in the Obama administration as there will likely be an increase in union organizing in service-related industries, such as health care and hospitality, said Andria Ryan, partner and co-chair of the Hospitality Industry Group at Fisher Phillips.

"Because of the pandemic, those two are going to converge at a really bad time for hospitality employers," she said.

During the pandemic, union organizing slowed down because it hasn't been feasible under those conditions, she said. As conditions improve, service-related industries will be vulnerable because of safety and health care issues as well as furlough and layoff issues.

"Unions are going to come in and then try to exploit those," she said.

(i)migration

While many hotel industry employers likely won't be fans of the Biden administration's policies, one silver lining could be its approach to immigration, Ryan said. Applying for H-2B visas for seasonal workers is a cumbersome process right now that involves a lottery system and has caps, she said. The new administration will likely loosen the reins (<https://hotelnewsnow.com/articles/305782/Foreign-labor-visa-process-expected-to-ease-in-2021>) on some of the visa programs.

There are other immigration and foreign travel issues, such as DACA and the ban on flights from Muslim countries that can be taken care of by executive order, but those don't have as much impact on the U.S. hotel industry, she said.

"What's negatively affecting them is the nearly impossible hurdles they have against seasonal workers," she said.

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