



“TRUMP CARDS” THAT MAY AFFECT HR

By Steve Watring, Dunlevey Mahan & Furry

A certified employment law specialist offers his thoughts on what employers and HR professionals should be watching for from President-elect Trump's new administration:

Eight years under President Obama brought about numerous changes in the laws affecting human resources. If you compare these changes to the “expert” predictions that were made at the beginning of the Obama administration, you would find that some changes were made as predicted, some changes that were predicted were never made, and some changes were made that nobody predicted. With that in mind, what can we expect from President Trump?

Expect the unexpected. President-elect Trump seems to like to be unpredictable, and if anyone claims they can accurately predict him, they probably are wrong. President-elect Trump likely is going to continue to play some cards that nobody expects.

The economy likely will trump social issues. Given his background, President-elect Trump may view most HR issues similar to how many business owners view them—as often taking a backseat to other issues. Furthermore, with a few exceptions, it is unlikely that employment issues will be at the top of the Trump administration’s agenda unless they also touch on other issues, such as the economy or national security. Some may find support for this in the relatively low priority that President-elect Trump seemed to give to his pick for Secretary of Labor. As with the Obama administration, employment issues may end up being addressed more by the new administration’s regulatory agents.

Less may be viewed as more. Many expect President-elect Trump to make an effort at scaling down regulations as part of his economic agenda. This will be easier said than done. But it could be easy to scale down enforcement, even if the regulations are on the books. Less than a month before the election, a high ranking official in the Obama administration’s Department of Labor said, “Our mission is to champion the rights of workers.” Many would say that statement is not an accurate description of the DOL’s mission, and that it is reflective of a more aggressive interpretation and

enforcement of employment laws under the Obama administration. Under the Trump administration, we may see the DOL and other agencies touting that job creation efforts trump regulatory enforcement.

The baby likely won't be thrown out with the bathwater. President-elect Trump has taken the position that President Obama has issued "illegal" executive orders. It remains to be seen exactly which executive orders he will act upon. While we should expect some of the executive orders to be rescinded immediately, other anticipated changes likely will take weeks, months, or years. Some may never come to pass. A card player, President-elect Trump is likely to try to keep what he likes and discard the rest.

The Democrats likely aren't ready to fold. Some declared the Republican Party dead after Watergate. Some thought the Democratic Party was on life support under President Reagan,. In 2012, a prominent Democrat boldly proclaimed that a Republican would never be elected president again. While they may be a little short of aces right now, the Democrats are not without power and their eyes are already set on 2020. Some Congressional Democrats now are calling on President-elect Trump to live up to his campaign promises and align with them on traditional Democratic issues, such as paid maternity leave.

Republicans may not follow suit. The peace that seems to have been made between President-elect Trump and the "never-Trump" faction of the Republican Party is uneasy at best. For now, it seems to be somewhat of an arranged marriage, and it's hard to say how long the honeymoon will last.

HR issues to watch under the Trump administration:

- **New white-collar salary test.** While the new wage-hour white collar exemption regulations temporarily have been blocked by a court injunction, the Trump administration is going to have to deal with the issue sooner or later. This may be the first real indication of what to expect from President Trump on employment issues. While he will be under pressure by small business to discard the new regulations, he won't want to be perceived as anti-worker. The best guess is that he probably will delay implementation in some manner, but don't count on returning to the old salary test.
- **Paid sick leave.** The new "paid sick leave" regulations applicable to federal government contractors and subcontractors are scheduled to take effect January 1. This has some of the same tensions as the wage-hour regulations, but also will have a downstream impact of increasing the cost of government construction

projects. This one probably won't survive long-term, but may not be on the radar screen for a while.

- **Paid maternity leave.** Look for some activity here. President Trump very well may let Congressional Republicans block it as a strategic political move. It's a question of whether it is something he really wants to do. In any event, if anything is passed it may be quite watered down and likely will not be applicable to smaller employers.
- **The ACA may be going away.** It may not happen overnight, but it likely may happen within the next four years. Some of the popular changes under the ACA, such as dependent insurance through age 26, may survive. Unfortunately for many employers, this may not have much effect on spiraling group health premiums. Medical care is unlikely to get cheaper under any Party, and employers, workers, and taxpayers all may find themselves continuing to have to ante up, in one way or another. However, in the event that President Trump finds some success in creating jobs, many think that getting more people into the workforce could be a way to help spread the cost.
- **A return to sanity at the National Labor Relations Board?** Some pronouncements by the National Labor Relations Board during the Obama administration have sent shockwaves through non-unionized businesses, and have dramatically altered the way non-union employers have to approach everything from employment policies to disciplinary action, especially as it relates to social media. While we may never swing totally back in the opposite direction, we likely can expect these positions to moderate so that employers may again be safe to implement policies and take actions even though they theoretically might possibly discourage activity protected under the National Labor Relations Act. Again, the trick for President Trump is going to be how to change the current course of the NLRB, assuming that is his intent, without being portrayed as anti-union and anti-employee.
- **Immigration matters.** This is one area where employers may see more aggressive enforcement. When in doubt, HR professionals may do their business a service by performing a self-audit to make sure that there is an I-9 on file for every worker, and that there are no immigrant workers whose right to work has lapsed based upon the face of the I-9 or supporting documentation on file. Also, employers should be sure to use the new I-9 form, which includes a

recertification section. Often the burden of correcting this problem seems to be strapped on the backs of employers, and Trump probably will expect employers to at least share that burden. Down the road, e-verify may become the law of the land.

- **LGBTQ issues.** There is a question on how President Trump will approach LGBTQ issues. To somewhat surprising cheers from Republican convention attendees, Trump stated in his nomination acceptance that he intended to make the Republican “tent” big enough to welcome the LGBTQ community. At the same time, President Trump ultimately may label some LGBTQ issues as states’ rights issues, and leave it to the states and the courts to sort it out for a while. Even so, Republicans may strategically attempt to keep bills addressing such hot button social issues from reaching President Trump’s desk.
- **The Supreme Court.** While the composition of the Supreme Court may end up having more long-term significance than anything else mentioned above, it likely will be a slow change as it relates to employment/HR matters. With the Court’s current composition, the appointment of 1 or even 2 conservative justices may not be a big game changer on employment issues. But look for the line to be held on such things as extending current federal employment discrimination laws at least to the LGB community.

If you disagree... If you would like the last word, just save this article to send it back to me in 4 years, or 8 years, and you will be able to show me how wrong I was. Being wrong in this area is the safest prediction of all.

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