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How a Biden presidency could affect your workplace

■ Stricter COVID rules, higher minimum wage & more

No matter the size or type of your business, you're likely to see some changes once president-elect Joe Biden takes office in January.

Biden has many different priorities than President Trump, and experts predict executive orders and updated enforcement of current laws very soon.

Here's what a Biden presidency will mean for employers, according to HR expert and author of the *Evil HR Lady* blog Suzanne Lucas.

Coronavirus response

Biden has been clear that his first priority as president is getting the

coronavirus pandemic under control. Because of this, employers may see stricter safety and sanitation guidelines from OSHA.

The Biden administration also wants to double the number of OSHA investigators, as well as provide "restart packages," which will help companies cover the costs of PPE and other safety precautions.

Retail stores and restaurants will likely be impacted the most, due to tighter restrictions on in-person business. While President Trump's goal was to keep businesses going, Biden's

(Please see Biden ... on Page 2)

FFCRA leave set to expire amid COVID spike

■ Study found law led to a 'significant reduction' in coronavirus cases

As 2020 winds down, so do the protections offered by the Families First Coronavirus Response Act (FFCRA).

The law, which was designed to provide employees with both paid sick leave and emergency family and medical leave, is set to expire on Dec. 31 if the Senate doesn't extend it.

Waiting on the Senate

The expiration of the FFCRA comes on the heels of a significant spike in COVID-19 cases; the U.S. is averaging

over 100,000 new cases and over 1,000 deaths per day.

Besides providing workers with flexibility, the FFCRA was shown to have helped reduce the spread of the virus. According to a study, states in which employees gained this paid leave saw 400 fewer cases of COVID-19 per day. That comes down to about one prevented case among 1,300 workers.

Congress voted to extend the FFCRA's protections through 2021, but the Senate has not yet weighed in.

Click: bit.ly/FFCRA569

Biden ...

(continued from Page 1)

focus will be on containing the virus.

Employers may also see higher penalties for COVID safety violations.

Minimum wage

Biden has made it clear he supports a federal minimum wage of \$15 an hour. While he faces a difficult road to make that happen, several states have plans to gradually increase the minimum wage every year until it reaches \$15.

Florida most recently voted to reach a \$15 minimum wage by 2026. Other states with similar plans include:

- California by 2022/2023
- Connecticut by 2023
- Illinois by 2025
- Maryland by 2025
- Massachusetts by 2023
- New Jersey by 2024, and

- New York (timetables vary by region).

Sexual harassment focus

The Be Heard in the Workplace Act is a proposed law aiming to increase protections against sexual harassment at work. It's likely to change as it makes its way through Congress, but here are some highlights:

- It increases the amount of time an employee has to file a harassment claim from less than six months to more than four years.
- It places restrictions on nondisclosure agreements, and
- It would federally mandate all businesses to hold sexual harassment training sessions.

NLRB changes

The members of the National Labor Relations Board (NLRB) – which the president appoints – serve five-year terms. The changes here will happen more gradually, but one person will be replaced each year by Biden.

Under President Trump, the NLRB made many pro-business decisions, but under the Biden administration, you can expect decisions to switch back to pro-employee and pro-union as more Biden picks are added onto the board.

More equal pay protections

Biden also supports the Paycheck Fairness Act, which would strengthen protections against pay disparities based on gender. Current laws prohibit pay discrepancies based on gender, but allow discrepancies based on any other factor, such as previous salaries.

The Paycheck Fairness Act would tighten up protections and only allow pay differences based on concrete factors, such as education, training or experience.

Info: bit.ly/Biden569

Sharpen your JUDGMENT

This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.

■ ADA violation? Worker didn't get preferred accommodation

"Hi Lynn, got a minute?" Employee Marcus Pennington asked HR Manager Lynn Rondo.

"Sure," Lynn replied. "Take a seat. What's up?"

"So, you might not know this," Marcus started, "but I have severe allergies. Dust or strong smells can make it hard for me to breathe."

"OK," Lynn said with a nod, grabbing a pen to take notes. "Have you been having issues lately?"

"The past few days," Marcus confirmed. "Lisa has been wearing this really strong perfume that sent me into a bad coughing fit. I had to exit the office several times."

Doesn't want remote option

Lynn paused. She could try to ask Lisa to cut back on the perfume, but that could cause more problems.

"If I had my own office with a door, that would solve the issue," Marcus continued.

Lynn frowned. "We don't have the space to do that, Marcus," she said. "Besides, if we gave you an office, everyone else would want one, too."

"But I can let you work remotely," Lynn continued. "That would be more practical."

"I don't want to work from home!" Marcus insisted. "If you can't give me my own office, I'll have to sue for an ADA violation."

When Marcus filed a suit, the company fought to get it dismissed. Did the company win?

■ *Make your decision, then please go to Page 4 for the court's ruling.*

What's Working in HUMAN RESOURCES

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Employee fired for asking out much younger woman could be age bias

■ VP's opinion of appropriate dating lands firm in hot water

An employee was fired after asking out a woman at a neighboring business, but his company ended up in court when the worker claimed his age was the problem, not his behavior.

Here's a breakdown of the case.

Highly inappropriate behavior?

Brett Granet worked at Presidio Inc. in Pennsylvania, and had a history of poor performance and unprofessionalism.

Granet, a 54-year-old man, got into the habit of going to a neighboring business to visit a 21-year-old worker. Eventually, Granet asked her out on a date.

The president of the woman's company called Presidio to complain about this behavior, which he believed

to be highly inappropriate.

The VP of Presidio called Granet into his office and reportedly said, "Why are you asking a woman much younger than yourself out to dinner?" The VP then told Granet he'd probably lose his job.

When Granet was forced to resign two days later, he filed a lawsuit, claiming age discrimination. He pointed to the comments the VP made, claiming the age difference between himself and the woman was the only reason he was fired.

A district court agreed with Granet, saying the VP's comments were direct evidence of discrimination.

This case acts as a reminder for managers to be careful about age-related comments.

Cite: Granet v. Presidio, 10/20/20.

Court: Employer violated FMLA when manager refused to follow new schedule

■ Supervisor continued to give worker too many hours

Once a company officially grants an employee a reasonable accommodation, it's important your managers understand what it entails.

One company recently did that, yet a manager's inability to follow the terms of the accommodation resulted in a lawsuit.

Scheduled too much

Jennifer Hudak worked as a clerk at the St. Joseph County Board of Voter Registration in Indiana.

Hudak was diagnosed with cirrhosis and requested an accommodation. Her employer allowed her to modify her schedule so she worked no more than eight hours a day.

While the company granted this request, though, Hudak's direct manager continued to schedule her for long shifts. Hudak tried to push back, but the manager told her if she didn't work those shifts, she'd receive a negative performance review. Hudak resigned and sued.

The company argued it did nothing wrong because it granted Hudak's accommodation. The court disagreed.

It said the employer's FMLA responsibilities didn't stop at granting the request – it had to ensure no one interfered with Hudak's accommodation. The manager did, so Hudak's case can proceed.

Cite: Hudak v. St. Joseph County Board of Commissioners, 10/27/20.

■ National origin bias costs company \$37K

When one employer fired a worker for not being fluent in English, the EEOC stepped in.

Blackstone Consulting Inc., located in Baltimore, was sued by the EEOC after it terminated an employee from El Salvador.

When the employee was hired, the company knew she only spoke limited English. She was trained in Spanish and was assigned a Spanish-speaking supervisor. However, after two months, a manager said to her, "In this company, you are not allowed to work here if you don't know how to speak English." She was then fired.

Blackstone Consulting will pay \$37,000 to settle the lawsuit and must remove their English proficiency policy requirement.

Info: bit.ly/nation569

■ Biz pays \$175K for firing hard-of-hearing worker

The EEOC has made one thing clear: Employers can't fire a worker just because their disability is inconvenient.

Seattle-based Northwest Wireless Enterprises terminated a hearing-impaired employee solely due to her disability, the EEOC claimed in a recent lawsuit.

The hearing-impaired employee worked as a sales associate for the company. She learned from co-workers that her manager said he was tired of having to repeat himself and wished to fire her. The employee filed a complaint, but was fired soon after.

This is a clear violation of the ADA, the EEOC said. This employee's disability in no way impacted her ability to do her job.

Northwest Wireless will pay \$175,000 to the employee to settle the disability discrimination suit. The company also must revise its policies.

Info: bit.ly/ADA569

ANSWERS TO TOUGH HR QUESTIONS

HR professionals like you face new questions every day on how to deal with workplace conflict and employment law. In this section, experts answer those real-life questions.

Do we have to pay workers for voluntary training?

Q: We're recommending that our employees view on-demand training webinars, but it's completely voluntary. Can we ask them to do this after work hours, or do they need to be paid for this?

A: The DOL recently addressed this in an opinion letter, and even if the training is voluntary, employees still need to be compensated for it.

The DOL said that just because the training *could* be viewed outside of work hours, doesn't mean it shouldn't be paid time. Generally, even if the training is optional, the mere suggestion of completing it counts as a work-related assignment.

Employers can ask employees to not complete the training during regular work hours – as long as they still get paid.

How important is dress code for Zoom interviews?

Q: We recently conducted a virtual interview with a promising

candidate. He had impressive qualifications and interviewed well. However, the candidate was clearly doing the interview from bed, and was dressed very casually. How much should this weigh into my decision?

A: It's important to remember that a lot of people are confused about current COVID/Zoom protocols, says management expert and author of *Ask A Manager* blog Alison Green.

It's possible the candidate would've dressed completely differently if the interview had been in person. As for the bedroom, that might have been the only available workable space for him to do the interview in.

Since the candidate performed well in every other aspect of the interview, I'd move him through to the next step.

However, make sure you explicitly tell him for the next interview, he should dress as if he were attending a formal meeting. If he still doesn't get the hint, then you'll know it's time to pass.

It's also worth checking that he has a designated remote workspace. If the bedroom is his

only available workspace, that could be an issue down the line if he needs to attend important client meetings.

Does this fired employee have COBRA rights?

Q: We recently terminated an employee for theft – is she covered under COBRA to receive continuing healthcare coverage?

A: COBRA provides extended health coverage to employees fired for any reason other than "gross misconduct," says employment law attorney Tzvia Feiertag of the firm Epstein Becker & Green, P.C.

Theft would fall under gross misconduct, meaning this person wouldn't qualify for COBRA.

Keep in mind, though, most terminated employees would qualify. Other qualifying events include hour reductions resulting in loss of coverage, death of a covered employee, divorce, and even sometimes furloughs.

If you have an HR-related question, email it to Rachel Mucha at: rmucha@HRMorning.com

Sharpen your judgment...

THE DECISION

(See case on Page 2)

Yes. The company won when a judge dismissed Marcus's lawsuit.

Marcus's attorney argued that the company didn't engage in the ADA interactive process because it refused to grant Marcus's preferred accommodation.

But a court disagreed. It said the company did engage in the interactive process – Marcus was the one who brought the process to an end by refusing to consider remote work. The court went on to say that Marcus had no good reason as to why working from home wouldn't be feasible for him.

"The plaintiff's unwillingness to explain the rejection was inconsistent with the flexible give-and-take necessary for finding an effective accommodation," the court said.

■ Analysis: Employees don't pick accommodations

This case offers an important reminder that employers don't have to give employees their preferred ADA accommodation. The ADA simply requires an accommodation that is effective for both parties.

Employers have to show a good-faith effort to accommodate the employee, and a good way to do that is to request more info about the worker's condition and consider all accommodation requests seriously.

Cite: *Ali. v Scott Pruitt, U.S. Dist. Ct. DC, No. 17-cv-1899, 10/19/20. Fictionalized for dramatic effect.*

Our personalized coaching helped managers embrace remote work

■ *We supported all of our leaders to get through the pandemic*

When the global pandemic first began and companies everywhere were shutting down, we definitely had our hands full.

Our workforce is massive and spans many different environments: offices, manufacturing plants and people out in the field, just to name a few. There wasn't going to be a one-size-fits-all solution.

So we set up coronavirus committees across the company, each one focused on following safety protocols and making our work environment the safest it could be.

But despite all of our precautions, our employees were understandably hesitant to come into work. That's when we realized our managers would be invaluable to helping our workers get through this difficult time.

Voiced concerns

Whenever there was pushback from an employee about returning to the office, we had our managers begin dialogues to get to the root of the concern. Was the employee at above average risk of contracting the virus? Did they live with someone who was?

We did a couple of things to address these issues. First, our managers emphasized our safety procedures and explained that we had zero coronavirus cases contracted in our workplace.

We then embraced flexibility and remote work. We offered our employees a compromise – if possible, they'd be permitted to work from home two or three days a week, to limit the amount of time they were around others.

While our employees liked this

change, it was going to be a huge adjustment for our managers to manage a combined remote and on-site workforce.

The new normal

As a whole, our company embraced the idea of remote work, but we had a lot of questions from our managers. So we decided to put together coaching and resources to help them navigate the new normal.

First, we went over managers' top concerns, one of which was communication. They knew it would be tougher to stay in contact remotely.

We coached them to adjust their communication style. Since it's harder to gauge an employee's mood through digital tech, we encouraged managers to check in on their team

members personally, making sure to ask how they could support them.

We emphasized shifting mindsets and how to make sure employees stayed engaged during this time.

Overcommunicate, then adjust

We also advised our managers to have regular, weekly meetings, even if it felt like too much. We figured it was better to overcommunicate, then adjust if need be.

Besides meetings, we sent our managers frequent email blasts containing useful tips.

We had very high readership rates on these. Our managers loved that they could reference the helpful info easily at any time. Now, both our managers and employees feel more comfortable with all the changes.

(Tami Wolownik, head of HR, Siemens Mobility, Atlanta)

REAL PROBLEM REAL SOLUTION

■ Probing questions keep devil's advocates at bay

Most companies have at least one person who sees the downside of nearly everything, and they'll voice negative remarks at almost every meeting.

They may see themselves as simply playing devil's advocate, but their constant negativity keeps everyone from moving forward and getting things done.

Not only that, but it can actually discourage others from sharing ideas in the future.

It doesn't matter if they're a front-line staffer or a higher-level manager – it's important to stop these people from seriously affecting morale and progression.

Luckily, we've found a tactic that can smother negative ideas and lack of enthusiasm, no matter what the situation or topic of discussion.

Add something constructive

Now, we ask probing questions that refocus negative employees' thoughts toward something constructive.

Here are some examples:

- If they claim something will cost too much, we ask, "How much is too much?"
- If they say something is a terrible idea, we ask, "What part of it are you most concerned about?"
- If they say something won't work or can't happen, we ask, "What didn't work last time, and why do you think it'll happen again?"

These kinds of questions usually give us one of two results.

They either get our constant critics thinking about real solutions or they get them to stay silent unless they have something constructive to add.

(Pamela Jett, CEO, Jett Communications, Mesa, AZ)

WHAT WOULD YOU DO?

Companies face competing agendas when dealing with their employees. They must find ways to inspire their people to excel, while controlling costs and staying within the law. Here we present a challenging scenario and ask three executives to explain how they'd handle it.

Holiday season has biz stressed: How to handle the workload

The Scenario

It was a chilly winter day, and HR manager Stu Capper went into the breakroom to reheat his coffee.

"Oh, hi, Todd," Stu said when he ran into department manager Todd Davis. "How's it going? Ready for the holidays?"

"Ready as I'll ever be," Todd said with a chuckle. "But I'm a little worried about things around here. The vacation requests have been flooding in."

Busy time of year

"I guess that's to be expected this time of year," Stu commented. But when he looked at Todd, he saw his smile had vanished. "Is everything OK, Todd?"

"We're just going to have a lot of people out through the new year," Todd explained. "I don't know how we're going to get everything done."

"Well, what did you do last year?" Stu asked.

"Last year we had Nina and Larry on board," Todd pointed out. "And fewer people had all this PTO stored up, but thanks to the pandemic, no one really traveled this summer."

"We can't tell people not to take time off, though," Stu pointed out.

"I know," Todd replied. "But my people are already stressing, wondering how they're going to cover for everyone. I'm not sure what to tell them."

If you were Stu, what would you do next?

Reader Responses

1 Carol Brown, HR manager, Seneca Cayuga Nation, Grove, OK

What Carol would do: I'd help Todd explore whether we could get some help from other departments that don't have as many vacation requests right now. While those helper employees couldn't replace the ones on vacation, they could perform small, time-consuming tasks to help take some of the burden off the department as a whole.

Reason: Utilizing employees in other departments is a great way to get help with clerical work while not having to worry about hiring temporary staff. Plus, these workers would be able to easily pick up on these tasks without much training at all. We could also work out an arrangement to offer our assistance to this department at a later time.

2 Joy Conrad, HR director, Projects Unlimited, Dayton, OH

What Joy would do: I'd sit down with the department and explain the importance of everyone being able to recharge with their families over the holidays. I'd ask the employees not taking time off to be patient during these busy end-of-the-year weeks, but let them know they may have to increase their workloads a little bit to allow their colleagues to take their deserved time off.

Reason: I'm a big believer in vacation time – rest and relaxation are so important, and it allows employees to come back with fresh ideas. And with the pandemic this year, time off is more important than ever. I don't think it's unreasonable to ask staff to do a little extra work, since their colleagues will return the favor when it's time for *their* vacation. We all have to take turns helping and supporting each other.

HR OUTLOOK

■ Getting employee pushback? Take a look at your approach

Research shows when employees push back on company policies, just repeating the policies won't get them to buy in.

You need to understand why they feel so strongly and how to adjust your communications approach to reach them.

Here's some expert advice on getting buy-in when employees are resistant to change.

First, listen

Your employees all bring unique perspectives to the workplace. Usually, that's a positive, but it can also lead to friction when a strong opinion or belief conflicts with company policies.

The Behavioral Change Stairway Model (BCSM) – developed by the FBI for crisis negotiation – is one framework to help people understand and embrace policies instead of resisting them.

BCSM's five components are active listening, empathy, rapport, influence and enabling behavioral change.

Start by creating space to listen to and truly understand employees' reasons for objecting to a new policy or program (*active listening*). The goal is to identify the values underlying their disagreement (*empathy*).

Then you can explore how your programs or policies actually align with those values (*rapport*). For example, show how controlling medical costs will allow the company to grow and help them better care for their families. This allows you to guide and change the behavior (*influence*).

If you show you value their opinions as you evolve your new program, they feel like they're part of the process rather than having decisions forced upon them (*enabling behavioral change*).

Info: bit.ly/comm569