



# HR for the Small Business Community

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## The Impact of the 2016 Elections

The 2016 election for President included the majority election of Republican representatives in the House and the Senate. Democrats were able to retain the power to filibuster with their 60 votes in the Senate. The 2018 elections for Senate seats may change that. How does that impact the check and balances that our system depends upon for operation? Let's take a look at what the Republican Government is projected to change.

According to a SHRM publication, *2016 Post-Election Overview* November 15, 2016, high on the Republican agenda is Tax reform, Right To Work legislation, Unemployment reform and the drug testing rights of employers. The projected agenda of the Democrats is Ban the Box, paid leaves, and predictive scheduling. Both sides are discussing Compensation Equity. It will be interesting to compare the structure for each of them.

**Right To Work** is Union busting as it removes the requirement to belong to the union and to make any dues payment to the union, but still requires the union to represent employees in grievances. Audits show that wages overall are less in Right To Work States.

**Ban the Box** is removal of the check box for prior convictions on employment applications. Idea is to make a level playing field to eliminate possible rejections when the crime is old or does not impact the job duties.

**Paid leaves** are required for government employees

and government contracts. Democrats would like for all employees and Republicans would like for the 6 week maternity for only the mother. Many States have already voted paid leaves for all employees in their state and some cities have their own rulings for paid leaves.

**Predictive scheduling** is a set schedule months out for restaurant employees with fines for the company for changes and cancellations.

The Republicans are looking at compensatory time for all employees including non exempt (hourly) employees in place of overtime. This would require tracking and conversion as a comp hour is really time and half so if I have 3 hours of overtime, I have 4.5 hours of comp time. Few salaried (exempt) employees actually get any flexibility or so-called compensatory time.



## Fair Labor Standards Act

**FLSA** (Fair Labor Standards Act): Amended to double the salary of some workers and to change the status of many workers from exempt to non exempt and was to go into effect December 1, 2016. This has been delayed on the grounds that the FLSA was based on job duties and the changes required would be based on wages.

The amendment did not change the job duties required to be exempt from overtime. ([https://www.dol.gov/whd/overtime/fls17a\\_overview.htm](https://www.dol.gov/whd/overtime/fls17a_overview.htm)) Technically one can classify anyone as salary, but only specific persons are exempt from overtime. So a non exempt employee would still have their time tracked to assure that overtime was paid when earned. The provisions for automatic increases could be removed or adjusted, especially spreading the increase out over three or more years. Flex and compensatory time might be part of those adjustments. Expect the Paycheck Fairness Act to be left on the shelf.

**Workplace Flexibility/ Compensatory Time:** More and more companies and organizations are looking at flex time and some are mixing compensatory or comp time into the conversation. Flex time is: I am scheduled to work an 8 hour day, but I can come in early or stay late as long as the total for the week is my budgeted hours. So I can come in at 7 A and stay until 7 P on Tuesday so that I can leave after 3 hours of work on Friday. Flex time can also include a set time that one must be at work such as 10-3 and the employee can come in before 10 or stay after 3 to make up the budgeted hours for the day/week. Comp time is NOT flex time. Comp time is given when an employee works MORE than 40 hours for the week and instead of paying the employee overtime, the time is set aside to be used at a future date. Comp time is not legal under FLSA for private industry, as overtime is based on a 40 hour work week and any hours in addition to that 40

hours must be paid at time and one half when earned. Government employees may use comp time but then the time must be based on the overtime rate, meaning if I work 1 hour of overtime than I am entitled to 1 1/2 hours of comp time. Tracking the earning and using of comp time and avoiding accumulation of comp time can be very complicated.

Salaried employees whose job duties qualify for overtime exemption should not be offered comp time as their salary is based on completion of their job, not necessarily on hours. Certainly if one is putting in mega hours to complete a deadline, then needs to take care of a personal issue, there should be time granted without any particular math or hours calculation. Unfortunately, salaried personnel are often expected to be at work every day at certain times as well as working whatever is necessary to complete a project. Too often the salaried employee is earning less than their staff that has a set hourly wage.

When developing a Policy or Procedure, be sure that there is not another law or Act that impacts what you are trying to accomplish. Pay outs for unused sick leave can result in the employee receiving a zero check under IRS "Bonus" rules.

## STATES ARE ENDORSING SICK LEAVE

**Paid Sick Time:** This began as a government mandate for government employees and has now been initiated by 4 States statewide, 6 additional states have partial paid sick time and some cities have enacted some paid sick time. [http://www.paid sick days.org/research-resources/current-sick-days-laws.html?referrer=https://www.google.com/#:WEGjA\\_krKyl](http://www.paid sick days.org/research-resources/current-sick-days-laws.html?referrer=https://www.google.com/#:WEGjA_krKyl) Most employers understand and even

support a few paid sick days to keep sick employees from coming to work while not losing their income. The problem is that employees may decide they are entitled to the time and use the time for other things. This has been one of the major problems with FMLA intermittent leave. Being able to call and say, 'I am sick and not coming in', is too easy a temptation when one is going to be paid or there are no

consequences for attendance. What happens then when the employee is truly sick and has no time? They come to work sick or take off. Either way the employer is left with more absenteeism and more cost and less safety from sick employees coming to work. Remedies? Doctor notes? Usually not for one day. Pay out at the end of the quarter or year? CONT. PG 2 MINIMUM WAGE

## Minimum Wage

Cont from pg 2. States...

The pay becomes a bonus under IRS rules and can be used for garnishments and child support without any limitations, plus incurs a higher tax withholding. Low paid workers may not be able to recoup the higher tax percentage at filing time, so often opt to use it in place of an actual work day.

**Minimum Wage:** The present Federal minimum wage is \$7.25/ hour, but Ohio's minimum wage is \$8.10 for employers grossing more than \$283,000/yr. Less than \$283,000 reverts back to the Federal minimum. Even the District of Columbia has a higher minimum of \$11.50 with an annual increase beginning January 1, 2017.

The minimum of \$7.25 has been in effect since 2009 but only covers workers covered under the FLSA  
There are many exceptions..

<https://www.thebalance.com/2017-federal-state-minimum-wage-rates-2061043>

## DISCRIMINATION on many levels

**NLRB** (National Labor Relations Board) has been very active and punitive to employers concerning the right of employees to discuss their wages, hours and working conditions. Handbooks have come under scrutiny for wording that might give an employee the impression that they cannot discuss these three basic concepts. Expect the administration to curtail the power of this department either by appointment changes and/or legislation.

**EEOC** (Equal Employment Opportunity Commission) has a scheduled chair appointment set for July of 2017 as well as two (2)

new members due to be appointed to the Board of five (5) members. Workplace Wellness and EEO-1 reporting will be their main topics. This along with the upcoming Supreme Court appointees and discrimination/equality may take on a new tone of enforcement. In 2014 a ruling was issued (ENDA/ Employment Non-Discrimination Act)) to protect employees of Federal Contractors from being discriminated based on their sexual orientation and gender identity. Future steps were planned to implement this ruling across the employment field, but may now face opposition.

*Side Note:* So many laws have been enacted and more are being proposed to protect the rights of certain groups to have the same opportunities for housing, loans, employment, wages, promotions, etc. Instead of laws and amendments that clutter and have the implication of government interference- why not concentrate on

### QUALIFICATIONS

as being the only criteria that one can use as a charge or a defense? No more 'I was refused because I am a (woman, black, handicapped, etc)'. No more investigations that focus on the discrimination and make the qualifications a second thought or a defense?

## WORK VISAS

**H-1B Visa** is a claim that a company cannot find a US worker to fit the job need and requests approval to higher from outside the country. Expect that the US worker will have to be given first opportunity to fill the position and the pay guidelines for requests will increase.

**According to the Executive Director of The Council for Global Immigration:**

“Absent other indicators, it is fair to assume that hiring and employment practices involving foreign nationals will be scrutinized more closely in the near future. Now is a good time for employers to audit their I-9 records and LCA public access files. Remember that any member of the public can request access to LCA files and in the past we have seen reporters and disgruntled

workers spend significant time going through employer files. One thing to consider is what procedures your organization has in place in the event that someone walks in and asks to see your files.”

<https://www.cfgi.org/our-network/about-cfgi/cfgi-in-the-news/Pages/FTED-The-Way-Forward-on-Migration-11302016.aspx>

# ACA or OBAMA CARE

Modification of the definition of Full Time back to the FLSA definition of 40hours. Ease the Compliance Reporting that companies are required to complete. Lower the costs of prescription drugs by forming contracts especially for Medicare part D drugs. Permit Health Savings Accounts to cover the deductions and co pays. Limit those who qualify for coverage.

*Side Note:* Everyone agrees that there should be some amendments to the ACA, but what and how many and who gets the major impact? The ACA (Affordable care Act) has been around too long to simply wipe it out and start all over again. The concept of healthcare for all regardless of ability to pay is important, but somebody has to pay.

When one looks at their insurance company statement and sees that the insurance company can pay pennies on the hundreds of dollars, but an individual would have to pay the full cost, there is something wrong with the concept of insurance. If I can afford insurance then I can avoid paying what the poor are required to pay. The insurance companies are leaving the program stating that there are too many ill people using the insurance. Let's look at the insurance companies and their rate of payment and profit before we take back from the poor the ability to have proper health care. In the end, having a segment of society that is poor and ill is a burden on all of us including the government.

**Taxes:** Expect a revamp of the tax program. May include taxing health care benefits.



[https://video.twimg.com/amplify\\_video/800848389684494336/vid/640x360/1iC-4aUWuwHbI9.mp4](https://video.twimg.com/amplify_video/800848389684494336/vid/640x360/1iC-4aUWuwHbI9.mp4)

**UPDATE ON THE CHANGES—  
WATCH THE VIDEO**

## IMMIGRATION

### Immigration:

Mandate that all employers use the E-Verify program for clarifying that an applicant is qualified to work in the US. This electronic program is required for federal employers and should be required for all employers. Increase security measures on all fronts. Since 2012 there has been an act called DACA (Deferred Action for Childhood Arrivals) that states if a person entered the country prior to their 16<sup>th</sup> birthday and before 2007 that they are authorized to work and cannot be deported as an illegal immigrant. Expectation is that this may be voided and that this group may face unemployment and deportation.

According to SHRM's Immigration News:

“Senate Democratic Whip Dick Durbin (Ill.) and Sen. Lindsey Graham (R-S.C.) ...are crafting a bill to shield children living in the country illegally from being deported if they grew up in the United States and have stayed out of trouble.

“The bill is likely to have the support of another Republican on the committee, Sen. Jeff Flake (Ariz.).

“...Trump has vowed to repeal Obama's executive orders that halted deportations for people who came to the country illegally at a young age, as well as deportations of the parents of citizens and lawful permanent residents.

“Lawmakers are worried that rescinding those orders would pull the rug out from hundreds of thousands of young people whose parents immigrated to the country illegally. Many of them may have to drop out of school, lose their jobs or face deportation.

“Durbin and Graham say they are especially vulnerable because they applied to the government for protection under Obama's executive order, known as Deferred Action for Childhood Arrivals (DACA).

<https://www.cfgi.org/us-immigration/news-and-alerts/Pages/Senators-crafting-bill-limit-deportations-under-Trump-12022016.aspx>

## NEW I-9 REQUIRED USE BEGINS JANUARY 22, 2017

The Form has just been released and here are some preliminary sites that you can refer to for the form and information.

Points of Interest:

- 1) use of Adobe to fill out the form with drop down boxes
- 2) Still need to print form after completion in order to sign the form and check the box noting whether a translator was used or needed.
- 3) Do not have to print all of the pages.
- 4) Form is available in English and Spanish BUT the Spanish form can only be used in Puerto Rico
- 5) They have made changes in the list of abbreviations and their
- 6) <https://www.uscis.gov/i-9-central>
- 7) You may only use the old form until 1-22-17. After that date you MUST use the new form.
- 8) Access the form at <https://www.uscis.gov/i-9-central>

Source: [www.lawlogix.com/employer-alert-new-form-i-9-clears-omb-review-process](http://www.lawlogix.com/employer-alert-new-form-i-9-clears-omb-review-process)

(Written prior to release of form)

**It is illegal to TELL a person which documents to submit for an I-9 verification.**

[\(PDF\) lists of acceptable documents](#)

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