

Blog Post

# What Employers Can Expect From a Biden Presidency: Part III, the Winds of Change are Upon Us

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By [Amy Moor Gaylord](#)

With the certification of the Electoral College votes complete, Joe Biden will become President on January 20, and no doubt usher in sweeping changes. If you want to know what to expect, join us for a [webinar](#) on Tuesday, January 19 at noon Eastern. In the meantime, here's a sneak preview:

With the chaos of last week, one event of significant importance to employers may have gone unnoticed. Giving a hint of what's in store for at least the next four years, Biden nominated Boston Mayor Marty Walsh to be his Labor Secretary. A close friend of Biden's, Walsh has long and deep ties to organized labor, having served as the president of the Laborer's Union and head of the Boston Building and Construction Trades Council until being elected the mayor of Boston in 2013. If confirmed by the Senate, Walsh would take control of a Labor Department that Biden has pledged to reorient toward workers.

Given his longstanding commitment to furthering worker protections, we anticipate that one of Walsh's top priorities will be OSHA, specifically implementing a COVID-19 Emergency Temporary Standard, something Trump's OSHA has repeatedly been criticized for failing to do. In fact, the AFL-CIO, the largest federation of unions in the United States, filed suit against OSHA last spring in an attempt to

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have a court order the agency to promulgate an ETS. It is worth noting that the AFL-CIO's two largest affiliates, the American Federation of Teachers (AFT) and the American Federation of State, County, and Municipal Employees (AFSCME), strongly endorsed Walsh for Labor Secretary, with AFSCME President Lee Saunders stating, "Marty is a star, and he could hit the ground running as far as dealing with the issues and impact on working families."

As we mentioned in our previous [blog post](#), we expect another top DOL priority to be increasing the federal minimum wage from \$7.25 to \$15 an hour, however, a number of other wage and hour changes are likely to take place as well. The DOL's "joint employer" rule, which was largely struck down by a New York federal judge back in September in a case brought by 18 state attorneys general, is likely to be revisited under Walsh. The Trump DOL rule, which we discussed in depth [here](#), allowed employers to use a four-factor balancing test in determining joint employment status under the Fair Labor Standards Act and marked a material change to the trend set in motion by the Obama administration to broaden the joint employer doctrine. The rule has been roundly criticized by labor unions and worker advocates who claim that it makes it harder to hold companies liable for violations of minimum wage and overtime laws by franchisees and contractors. Walsh will likely ask the Second Circuit to pause the case to allow the DOL to rework the rule into a more employee-friendly version.

Another Trump DOL rule is also likely on the chopping block. The independent contractor rule, issued by the DOL just last week, is scheduled to go into effect on March 8, 2021. It likewise uses a multifactor test to determine whether a worker is economically dependent on another business and should be classified as an employee or whether they are more akin to a small operator in business for themselves and properly classified as an independent contractor. Independent contractors are generally not entitled to the same benefits and

protections as employees, such as overtime, minimum wage, and unemployment compensation. We anticipate that the Walsh-led DOL will postpone the rule indefinitely and ultimately rescind it. Employers should also expect to see a common thread running through all of these prospective changes under Walsh and Biden – increased enforcement, including an increase in investigations and penalties – by the DOL.

No word yet on whether Biden intends to replace NLRB General Counsel Peter Robb with a more union-friendly GC but we expect to hear the news on that and other developments shortly. We hope you will join us on January 19 at noon Eastern for more details. Click [here](#) to register.

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