

# Federal Legal and Legislative Update

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# Congress



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# Current Makeup of the 115th Congress

- House of Representatives
  - GOP: 237
  - Dem: 194
  - Vacant: 3
- U.S. Senate
  - GOP: 51
  - Dem: 49

## Vacant Seats

- Pennsylvania 18: Rep. Tim Murphy forced to resign after a report came out that the pro-life leader asked his mistress to have an abortion (Lean R): **FLIPPED D**
- Arizona 8: Rep. Trent Franks forced to resign after it was reported he offered a female staffer \$5 million to carry his child (Solid R)
- Michigan 13: Rep. John Conyers, longest serving member of Congress, forced to resign after disclosure of the settlements of multiple sexual harassment claims (Solid D)
- Ohio 12: Rep. Pat Tiberi resigned to take over as head of Ohio Business Roundtable (Likely R)

# Major Congressional Issues

- Tax Reform
- Immigration Reform: Phase I-DACA
- Immigration Reform: Phase II-Enforcement
- Funding the Government

# Tax Reform

- Tax Reform: H.R. 1 The Tax Cuts and Jobs Acts
  - Individual Tax Reform
  - Corporate Tax Reform
  - First substantial legislative victory for President Trump and Congress

# Tax Reform: Key Provisions for Staffing Industry

- Retention of the Work Opportunity Tax Credit
  - House bill eliminated program
  - Senate bill kept it in place
  - Conference report adopted Senate language.
  - Program in effect until Dec. 31, 2019
  - Easier to renew program than to re-establish a program that has been eliminated

# Tax Reform: Key Provisions for Staffing Industry

- Elimination of the Individual Mandate
  - Effective Jan. 1, 2019
  - Continuing effort to chip away at the ACA
  - Saves over \$330 billion over 10 years
  - Impact on enrollment likely not known for several years
  - Does it make it easier to repeal employer mandate?

# Tax Reform: Key Provisions for Staffing Industry

- Section 199(A): New Pass Through Deduction
  - The new tax reform law provides a 20% tax deduction for income from businesses organized as S corporations, LLCs or sole proprietorships—generally smaller businesses—that are taxed at individual, not corporate, tax rates
  - The ability to take the tax deduction is a major issue for staffing firms that is worth \$millions to them
  - Certain “specified trades or businesses” are excluded—e.g., law, accounting, and consulting firms—and firms whose principal asset is the “reputation or skill” of its owners or employees

# Tax Reform: Key Provisions for Staffing Industry

- At a recent meeting with top Treasury Department officials, ASA urged two main reasons why staffing firm owners should be able take the deduction
  - “staffing” is not on the list of businesses specifically excluded as “specified trades or businesses”
  - clients buy staffing services based on price, availability of talent, and quality of service—not the reputation or skill of individual owners or employees
- Proposed regulations likely will be out late summer or early fall
- ASA will be actively engaged throughout the rulemaking process and will keep members apprised of all developments

# Immigration Reform: Phase II-Enforcement

- 2 main components
  - Border Enforcement
    - Down payment on construction of the Wall
    - More agents
    - End of Chain Migration, Diversity Lottery, etc.
  - Interior Enforcement (i.e. workplace enforcement)
    - Crackdown on illegal workforce
    - Passage of Legal Workforce Act—Mandatory E-Verify
    - Revamping of employment visas
      - Could see significant H-1B Reform
      - Creation of merit-based lottery system

# Funding the Government for FY 18

- Congress was forced to pass several short term continuing resolutions to keep the government open. Next deadline for shutdown is Mar. 23.
- Potential projects in omnibus:
  - Reinstatement of cost sharing payments (ACA)
  - In exchange for this and other market stabilization provisions, it is possible that language dealing with the employer mandate could be included.

# Federal Agencies



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# U.S. Department of Labor

- Secretary Andrew Acosta: Familiar with staffing industry
- Key issues:
  - Overtime
    - Request for Information
    - Timeline for proposed rule: Late 2018: Modest salary threshold inc.
  - Joint employment
    - H.R. 3441: Passed in House 242-181; pending Senate
  - Worker misclassification
  - Apprenticeship

# National Labor Relations Board

- NLRB appointments and political leaning
  - Board currently deadlocked with 2 Republican seats and 2 Democratic seats.
  - Current vacant seat will be filled by a Republican appointee, which will give the board a Republican tilt.
  - GOP will have a board majority for the first time since 2007.
    - GOP had board majority for 6 weeks in the fall; some key decisions were overturned.

# Top State Legislative Issues in 2018

# Top State Legislative Issues

- Predictive scheduling
  - California: AB 5
- Paid sick leave
- Joint Liability with clients regarding wage issues
- Wage issues (notification, salary history requirements)
- Minimum wage
- Sales Tax
- Ban the box

# 2018 Midterm Elections



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# 2018 Elections: House of Representatives

- **GOP (238 seats, 3 vacant)**

- Safe Seats: 166 (202)
- Likely Republican: 29 (12)
- Lean Republican: 20 (11)
- Toss-Up or Worse: 19 (22)
  - Likely Democrat: 1
  - Lean Democrat: 6

- **DEM**

- Safe Seats: 175 (177)
- Likely Democrat: 11 (4)
- Lean Democrat: 5 (3)
- Toss-Up or Worse: 3 (4)

# 2018 Elections: U.S. Senate

- **GOP: 8 Seats up (24)**
  - ❑ Safe Seats: 4
  - ❑ Likely Republican: 1
  - ❑ Toss-Up: 3 (AZ, NV, TN)
- **DEM (26 Seats Up) (10)**
  - ❑ Safe Seats: 13
  - ❑ Likely Democrat: 5
  - ❑ Lean Democrat: 3 (FL, ME, OH)
  - ❑ Toss-Up: 5 (IN, MO, ND, WV, MN)

# 2018 Midterm Elections: Problems for GOP



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“We (The Republican Party) have a problem with emotional issues. We are seen as the leaders on the economy, and defense, and security, but when it comes to issues like immigration, gun control, health care...we are the bad guys. We have a real problem with our message and we need to fix it immediately”

**The Washington Post**

**GOP senator suggests we  
need fewer immigrants  
because robots are coming**

# HuffPost

**GOP Congresswoman Claims  
Many Mass Shooters 'End  
Up Being Democrats'**

# 2018 Elections: Problems for GOP

- Since 1862, the president's party has lost ground in the House in 92 percent of midterm elections. Exceptions:
  - 1934: Dem: Great Depression/New Deal
  - 1998: Dem: Clinton impeachment
  - 2002: GOP: Aftermath of 9/11
- The president's party has lost Senate seats in 19 of 26 midterms
- PA Courts recently ordered a new Congressional map which heavily favors Democrats.

# 2018 Elections: Problems for GOP

- Democrats lead generic Congressional ballot by an average of 7.5%
- Presidents with a sub-50% approval rating lose an average of 40 seats in the midterms
  - Job Approval
    - Over 60%: Average Change +3 seats
    - 50%-60%: Average Change -12 seats
    - Under 50%: Average Change -40 seats
    - President Trump's average approval rating as of Friday Feb. 23: 43%

# 2018 Midterm Elections: Advantages for GOP



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# 2018 Elections: Advantages for GOP

- Money: National Republican Committees raised \$34 million more and had more “cash on hand” than their Democratic counterparts in 2017
  - Total Money Raised
    - **Republicans: \$259,436,377**
    - **Democrats: \$225,813,712**
  - Total Cash on Hand as of 12/31/2017
    - **Republicans: \$97,732,432**
    - **Democrats: \$64,452,513**

# 2018 Elections: Advantages for GOP

- Electoral Map: Republicans have advantage given the current makeup of the House and Senate
  - House: Democrats must win all of their seats, pick up all Lean Democrat seats currently held by Republicans, and win all of the toss up seats to win back the House.
  - Senate: Democrats need to gain two seats to take control of the Senate, but they are defending 26 seats, five of which are considered “Toss-Ups”
    - Trump won 10 of these states in 2016, 5 by double digits
      - Toss-ups: IN (+19%), MO (+19%), ND (+36%) and WV (+42%)

# 2018 Elections: GOP vs. DEM Strategies

## ■ GOP

- Localize the race without needlessly antagonizing President Trump or his supporters
- Make the race about the candidates facing each other, not a referendum on how the country is doing
- Do NOT comment on every little tweet

## ■ DEM

- Nationalize the race, make everything about President Trump
- Make the race about the President

# Questions



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