



American Staffing Association

ASA Texas Staffing and Recruiting Conference

Legal and Legislative Update



Congress



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Current Makeup of the 115th Congress

- House of Representatives
 - **GOP: 238**
 - **Dem: 193**
 - Vacant: 4 (**2-R** and **2-D**)
- U.S. Senate
 - **GOP: 51**
 - **Dem: 49**

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 I-DACA

- Deferred Action for Childhood Arrivals (DACA)
 - Senate failed to reach agreement on legislative solution
 - 4 legislative proposals all failed
 - White House endorsed version received least votes
 - Bipartisan moderate compromise received most-6 votes shy
 - House up next, version likely to be more conservative
 - Funding for wall
 - Funding for border security
 - End to chain migration
 - End to diversity lottery

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. Passed omnibus bill to fund the government for remainder of the year in late March.
- Missed opportunities 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, 2 vacant)**
 - ❑ Safe Seats: 162 (202)
 - ❑ Likely Republican: 26 (12)
 - ❑ Lean Republican: 23 (11)
 - ❑ Toss-Up or Worse: 29 (22)
 - Likely Democrat: 2
 - Lean Democrat: 6
- **DEM (193 seats, 2 vacant)**
 - ❑ Safe Seats: 179 (177)
 - ❑ Likely Democrat: 11 (4)
 - ❑ Lean Democrat: 5 (3)
 - ❑ Toss-Up or Worse: 3 (4)

2018 Elections: U.S. Senate

- **GOP: 9 Seats up (24)**
 - ❑ Safe Seats: 3
 - ❑ Likely Republican: 3
 - ❑ Toss-Up: 3 (AZ, NV, TN)
- **DEM (26 Seats Up) (10)**
 - ❑ Safe Seats: 14
 - ❑ Likely Democrat: 5
 - ❑ Lean Democrat: 1 (OH)
 - ❑ Toss-Up: 6 (FL, IN, MO, ND, WV, MN)

2018 Elections: Texas Delegation

- Texas House: 36 Seats (GOP: 25 Dem: 11)
 - 25 Republican Seats (6 open seats)
 - Safe: 21
 - Likely: 1 (TX-21)
 - Lean: 2: (TX-23 and TX-32)
 - Tossup: 1 (TX-07)
 - 11 Democratic Seats (2 open seats)
 - Safe: 11
- Texas Senate: 2 seats (GOP: 2)
 - Sen. Cruz up for re-election in 2018: Likely Republican

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 from Mar. 22-Apr 5: 41.5%

2018 Midterm Elections: Problems for Democrats



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2018 Elections: Problems for Democrats

- 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: Problems for Democrat

- 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, six 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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Texas Legislative Update
by Pam Bratton, Chair
Texas – ASA PAC
April 11, 2018

Texas 85th Legislative Session Actions

- **6,631 bills filed/10,672** including resolutions
- **1,245 new laws** effective January 1, 2018
- 62 employment related bills passed into law
- Our team took action on 16 bills



Temporary Staffing Related Bills

- Tax Code Temporary Staffing Exclusion to Exemption **PASSED**
- Ban the Box/Fair Chance Hiring **PASSED SENATE/DIED ON HOUSE FLOOR**
- Background checks (5 bills) **DIED**
- Temporary Common Worker/Repeal of Chapter 92 of Labor Code **DIED**
- Worker Compensation **DIED**
- Bathroom Bill **Died in special session**



Texas Tax Code Amendment

- Sales tax for temporary staffing
 - 2017 Legislation to close the loophole
 - Amended Texas Tax Code
 - **“The services provided under this agreement are exempt from state sales tax pursuant to Texas Tax Code §151.057(2)”**
 - 2018 Clean up language



Ban the Box/Fair Chance Hiring

- Passed in Austin in 2016 as an ordinance
- 2017 Legislative Session
 - Representative Workman's bill to prevent municipalities from ordinances that interfere with business operations
 - Bill heard in committee
 - Died when out-ranked by the Bathroom Bill
- 2018 Hearings
 - Business & Industry (House) No public testimony
 - Business & commerce (Senate) Hearing April 26th



More History or Hysteria Making in Austin

- City of Austin passed the South's first Paid Sick Leave Ordinance
 - Effective 10/1/2018
- Coming to a city near you soon!
- **Texas Public Policy Foundation's Lawsuit – ASA Texas Regional Council as co-plaintiffs**
- 2019 Legislature will see multiple bills
 - Representative Paul Workman
 - Senators Kelly Hancock and Donna Campbell



Just a Few Issues for Texas in 2019

- Minimum wage
- Paid sick leave – statewide
- Ban the Box/Fair Chance Hiring – statewide
- Predictive Scheduling
- School funding
- Taxes
- Bathrooms?????





Why Texas – ASA PAC

- We support state wide candidates in Texas that are supportive of our industry regarding Texas legislation
- Texas-ASA PAC makes direct political contributions to candidates that support staffing industry initiatives
- Texas-ASA PAC Admin Fund
 - Manages the PAC – Postage, Printing, Supplies & Staff.
 - Sponsors Legislative Events

Advocacy Efforts

Texas-ASA PAC is the voice of the staffing industry in Texas

- Texas-ASA PAC Advisory Committee is elected by the Regional Council to serve staggered 2 and 3 year terms

Pam Bratton

Cindy Jennings

John Romanow

Russell Potocki

Chanel Daehn

James Bowmer

Mark Turpin

David Anderson



- Governed by ASA approved bylaws and the Texas Ethics Commission

Historical Data

- 2014 Election Year - \$7,500
- 2016 Election Year - \$11,000
- 2018 Election Year – TBD by Your contributions



How do I Join?

- Anyone can join
- Need not be a ASA member
- Personal Funds
 - Direct Contributions to Candidates
- Company / Corporate Donations
 - Administrative Fund



What are the benefits of being a Texas – ASA PAC member

- A Texas perspective on Texas legislative matters
- A Texas business voice at the Legislature
- Texas updates on the State Legislature
- Opportunity to have a voice in the Texas legislative process
- Opportunity to support business-friendly candidates in Texas



Information you need

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