



American Staffing Association

## Legal & Legislative Update

# ASA Indiana Staffing Symposium

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# Congress



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# Major Congressional Issues

- Tax Reform
- Immigration Reform – maybe?

# 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

- Important Provisions for the 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

- Important Provisions for the 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?
    - March: 18 states filed case in District Court in Texas

# Tax Reform

- Important Provisions for the Staffing Industry
  - Section 199(A): New Pass Through Deduction
    - New code section provides for a 20% tax deduction of an individual's domestic qualified business income from a partnership, S corporation, LLC or sole proprietorship
    - Income derived from a “specified service” business, which is defined as, “any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees or owners.”

# Tax Reform

- Important Provisions for the Staffing Industry
  - Section 199(A): New Pass Through Deduction
    - ASA met with staff members of the two Congressional tax writing committees to discuss this issue.
    - ASA has retained the services of Miller & Chevalier, one of DC's top tax firms, to represent the industry in meetings with Treasury Department and IRS officials.
    - We are looking to work with Treasury as they develop administrative guidance ~ late summer/early fall.



# Immigration Reform

- 2 Bills Being Considered in June, both address DACA
  - Conservatives' Bill, sponsor: Sen. Goodlatte (VA, retiring)
    - Appealing to rank & file
    - Adds visas to appeal to employer groups (i.e., nurses)
    - Mandatory E-verify
    - Border security, wall funding
  - Compromise Bill, pulled together by Speaker Ryan
    - Amendments between conservatives and moderates
    - Eventual path for DACA (Deferred Action for Childhood Arrivals)
    - Border security, wall funding
    - Revamp of current employment visa system

# Immigration Reform, continued

- What next?
  - IF something passes the House, the Senate will substantially amend it.

# 2018 Midterm Elections



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# 2018 Elections: House of Representatives

- **GOP (238 seats, 2 vacant)**

- Safe Seats: 157
- Likely Republican: 54
- Toss-Up or Worse: 29
  - Likely Democrat: 1
  - Lean Democrat: 6

- **DEM**

- Safe Seats: 180
- Likely Democrat: 12
- Toss-Up or Worse: 3

# 2018 Elections: U.S. Senate

- **GOP (9 Seats Up)**
  - ❑ Safe Seats: 3
  - ❑ Likely Republican: 3
  - ❑ Toss-Up: 3 (AZ, NV, TN)
- **DEM (26 Seats Up)**
  - ❑ Safe Seats: 14
  - ❑ Likely Democrat: 5
  - ❑ Lean Democrat: 2 (MN, OH)
  - ❑ Toss-Up: 5 (FL, IN, MO, ND, WV)

# Federal Agencies



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# U.S. Department of Labor

- Secretary Andrew Acosta: Familiar with staffing industry
- Key issues:
  - Overtime (2016 Rule is officially dead)
    - New Request for Information
    - Timeline for proposed rule: Late 2018- likely a modest increase in salary threshold
  - Worker misclassification
  - Apprenticeship



# National Labor Relations Board

- NLRB appointments and political leaning
  - Board currently has 3 Republican seats and 2 Democratic seats
  - GOP has a board majority for the first time since 2007
  - Chairman John Ring: officially going forward with rulemaking to address agency's standard for evaluating joint-employment

# U.S. Equal Employment Opportunity Commission (EEOC)

- In late 2016, EEOC announced it would require employers to include compensation data on annual EEO-1 reports, goal was to identify companies for pay discrimination investigations and to help close “pay gap” (state privacy laws implicated)
- Janet Dhillon, GC from Burlington Shoes, named new Chair of EEOC in end of 2017
- EEOC then announced pay data collection was too burdensome and will be **suspended indefinitely**

# Occupational Safety & Health Administration (OSHA)

- Scott Mugno - Trump's nominee to lead OSHA as assistant secretary of labor...still waiting for vote in full Senate
- OSHA's temporary worker safety initiative (TWI) to protect rights, safety, and well-being of temporary workers employed and assigned by staffing firms to clients- likely to continue
- ASA and OSHA have a formal alliance to:
  - Develop information to clarify the respective safety responsibilities of staffing firms and clients and their roles in improving the safety of temporary workers
  - Communicate such information to staffing firms, clients, and temporary workers
  - Share information among OSHA personnel and industry safety and health professionals regarding temporary worker safety best practices

# Top State Legislative Issues in 2018

## But First, 2017 Takeaways

- For federal contractors, not much has changed
- The #MeToo movement is here to stay
- At Department of Labor, no radical policy changes
- There was no major decline in federal government enforcement across all sectors/agencies
- On medical marijuana, in certain states, employers' ability to act appears more limited (except, perhaps, in safety-sensitive positions)

# Top State Legislative Issues 2018

- Predictive scheduling
  - California: AB 5
- Paid sick leave/family & medical leave
- Joint Liability with clients regarding wage issues
- Wage issues (notification, salary history requirements)
- Non-Compete Agreements

# Top State Legislative Issues 2018, continued

- Sales Tax
- Ban-the-Box
- Harassment (#MeToo movement)
- Minimum wage
- Pregnancy Accommodations
- Medical marijuana

## Highlighting: Paid Leave

- Many states and localities are enacting laws requiring employers provide workers with paid “Sick & Safe leave”
  - Maryland
  - Washington, DC
  - Prince George’s County, MD
  - New York, NY
  - New York (state)
  - Arizona
  - Tacoma, WA
  - Seattle, WA



## Highlighting: Paid Leave, continued

- What do Paid Sick/Family leave laws typically require?
  - Paid, job-protected leave of absence
  - Laws detail what triggers policies (i.e., bonding with new child, care for family member with serious medical condition, assist with family obligations when family member called to active military service)
  - Wage replacement benefits (often funded through payroll deduction)
- What's an employer to do? Find the most favorable and build your leave policies around it.

## 2018 Issues to Monitor

- Federal sexual harassment laws will not change but states/localities are responding to #MeToo
- State and local legislation- keeping us all busy
- On immigration, expect increased H1B scrutiny and heightened enforcement to impact labor force
- Federal court treatment of sexual orientation/gender identity discrimination will remain in flux

# Legal & Legislative Resources for ASA Members

- Issue papers
  - Recently updated our Background Check issue paper & added issue paper re: Salary History Bans/Pay Equity
- ASA Legal & Legislative Team
- *Staffing Today* daily e-newsletter
- Weekly legislative updates
- Webinars & monthly “Legal Line” videos
- Staffing World: October 16-18, 2018, Metro DC

# Questions



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