



Networking Lunch

**Employment Law and Local
Legislative Update**

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The ASA Staffing Connect logo is located in the bottom left corner of the slide. The slide has a white background with a decorative header bar at the top, split into orange and blue sections with grid patterns.

**Ping Pong Politics
AKA
86th Texas Legislature
2019**

Pam Bratton

The slide features a teal background on the left with white text. On the right, there is a photograph of two people playing ping pong on a red table. Below the photo is a logo consisting of a stylized blue and red figure. The slide has a white border.

Lawsuit
against
City of Austin

Texas Public Policy
Foundation
Attorney General of Texas
Staffing Firms
School
Associations:
American Staffing
Association
Texas Association of
Business
Society for Human
Resource Management
Texas SHRM
Austin SHRM
National Federation of
Independent Businesses

November 16, 2018, the Third Court of Appeals in Austin, Texas, entered a temporary injunction blocking the implementation of the [paid sick leave ordinance that the Austin City Council passed in February 2018](#).

The court of appeals ruled that the ordinance violated the Texas Constitution because it is preempted by the Texas Minimum Wage Act (TMWA).

7,075
bills filed
64 Tracked for
Texas by ASA


- Preemption
- Minimum wage
- Non-discrimination
 - Paid leave
- Predictive scheduling
- Wage and criminal history prohibition

133 Wage bills

- HB 393 – Prohibiting wage questions in application process
- 133 wage increase bills
 - \$15
 - \$15 + automatic increases
 - Tied to federal minimum wage


102
Discrimination
Bills

- Sexual orientation/Gender identity
- Perceived gender identity
- Age
- Employment
- Housing
- Reproductive decision
- Religion
- Staffing firms




257 Criminal
History Bills

- Criminal History bills
- Prohibiting inquiring
 - Licensure
 - Regulating
 - Preemption



Privacy Bills

- HB 4390 Relating to the privacy of personal identifying information
- HB 4518 Relating to the privacy of a consumer's personal information collected by certain businesses



Preemption

- HB 1654 – Preemption of employment regulations
- SB 15 – Preemption of employment regulations
- SB 762 Preempt paid leave
- SB 2485 – Preempt benefit regulation
- SB 2486 – Preempt predictive scheduling
- SB 2487 – Preempt paid leave
- SB 2488 – Preempt criminal history regulation

Member Advocacy

- Delivered Texas StaffingPAC contributions
- Called/emailed legislators on specific bills
- Met with legislators
- Provided testimony at hearings
- Ask for sponsorship of bills
- Notified members of ASA and the Texas StaffingPAC of legislative activities
- Tracked relative bills

“All politics is local!”

*former Speaker of the House,
Tip O'Neill*


- Develop relationships with elected officials
- Support the Texas StaffingPAC
- Make calls/emails
- Build strategic alliances
- **TELL YOUR STORY**

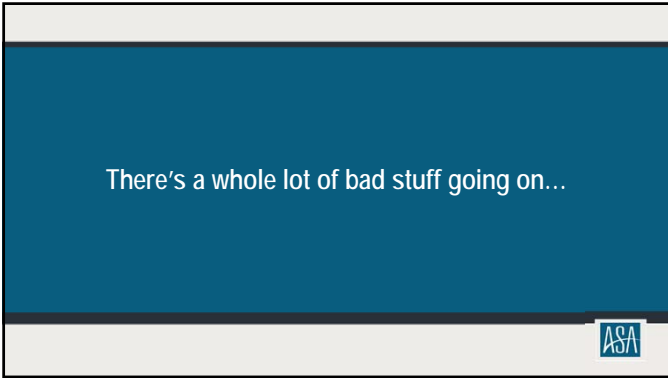




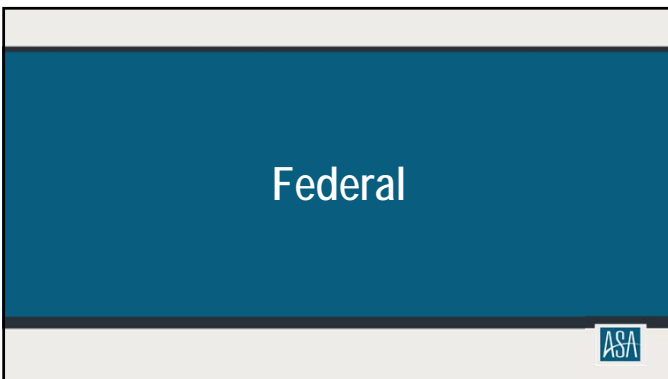
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ASA Advocacy Pays Off: Staffing Services Eligible for Passthrough Tax Deduction



Final Rules: Section 199(a)

- Final rules issued Jan. 17 by the U.S. Internal Revenue Service confirm ASA position that staffing firms are eligible for the new tax deduction for “passthrough” businesses, effective calendar year 2018
- Deduction applies to businesses, such as sole proprietorships, partnerships, and S corporations, in which the owners are taxed as individuals
- Individuals can deduct up to 20% for their qualified business income subject to certain limitations (e.g., if their W-2 wages are below a specified amount)



Final Rules: Section 199(a)

- Exceptions: businesses in fields such as health, law, accounting, and consulting—or where principal asset is reputation or skill of employees or owners (exceptions don’t apply to individuals making less than \$157,500—\$315,000 for married couples filing jointly)
- Rules adopt ASA position that staffing services are eligible for deduction even if temporary employees or clients perform excepted services—e.g., providing temporary nurses to a hospital



Final Rules: Section 199(a)

- Reputation and skill exception applies only if individuals receive income from endorsements, for licensing their image or identity, or for making appearances
- Rules are complex: consult tax advisers to determine how the rules apply—including any limits on the deduction and application to different lines of business



Agencies



Key Federal Agencies

- U.S. Department of Labor
 - Proposed Overtime Rule
 - **Salary threshold**—raises the threshold to \$35,308/year (\$679/week)
 - **Future salary updates**—does **not** implement automatic updates
 - **Duties test**—makes no changes to the duties tests
 - **Highly compensated employees**—increases the total annual compensation requirement from \$100,000, to \$147,414, per year—which is higher than the threshold of \$134,004 in the Obama DOL regulations
 - **Salary test**—would allow nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary test requirement



Key Federal Agencies

- DOL (cont.)
 - Apprenticeship program
 - New proposed drug testing regulations for unemployment insurance
 - Joint employer rule
- U.S. National Labor Relations Board
 - Joint employer rule
- U.S. Citizenship and Immigration Services
 - H-1B preregistration rule



Key Federal Agencies

- U.S. Equal Employment Opportunity Commission
 - Pay data rule reinstated by federal courts
- U.S. Occupational Safety and Health Administration
 - OSHA-ASA alliance
- IRS
 - ACA reporting forms
 - ACA assessment letters

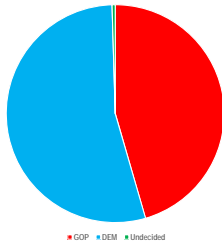


Congress



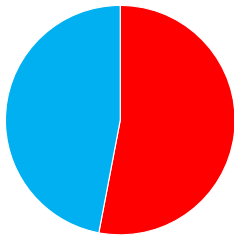
Current U.S. House of Representatives

- Democrats
– 235 seats
- Republicans
– 198 seats
- Vacant or no certification
– Two seats



Current U.S. Senate

- Republicans
– 53 seats
- Democrats
– 47 seats



House Legislation That Has Been Introduced

- HR 1: Election ethics
- HR 2:
- HR 3:
- HR 4:
- HR 5: Equality Act
- HR 6: DREAM Act
- HR 7: Paycheck fairness
- HR 8: Background checks
- HR 9:
- HR 10:



Potential House Legislation

- HR 1: Election ethics
- HR 2: Arbitration agreements
- HR 3: Data privacy
- HR 4: Paid leave
- HR 5: Equality Act
- HR 6: DREAM Act
- HR 7: Paycheck fairness
- HR 8: Background checks
- HR 9: Corporate governance
- HR 10: #MeToo



Key Labor Initiatives: House

- Increase minimum wage to \$15 an hour
 - HR 582: would phase in a \$15/hour minimum wage over five years and index it to inflation thereafter
 - The Congressional Budget Office reported that HR 582 would cost private businesses \$48 billion a year; state and local governments would have to pay an additional \$3 billion to workers each year
 - The analysis does not address the question of job losses, saying only that higher wages “could include reducing hiring, among other responses”



Key Labor Initiatives: House (cont.)

- Paid sick and family leave
- Tie overtime salary level to inflation or automatic adjuster
- Eliminate use of mandatory arbitration agreements
- Universal basic income
- Government as employer of last resort
- Portable benefits



Other Legislative Issues

- Raising the debt ceiling
- Sequestration
- Fiscal year 2020 appropriations
- ACA reform
- Tax reform 2.0 (Democrats 2.0 vs. Republicans 2.0)
- Tax extenders
 - Work Opportunity Tax Credit



What Will Senate Republicans Do?

- Not much of what the House Democrats do
 - Possible areas of compromise
 - Minimum wage
 - Paid leave
 - Immigration reform
- Confirmation hearings
 - “We are now in the personnel business”
- Look for other areas of compromise with House
- *Not* impeach the president



Q: Debt ceiling + Sequestration +
FY 20 funding =

- a. Compromise
- b. Shut _ _ _ _



Nov 2020 is Just Around the Corner



Top State Legislative Issues in 2019



Top State Legislative Issues in 2019

1. Predictive scheduling
2. Paid sick leave
3. Joint liability and wage theft
4. Hiring issues (salary history inquiries; 'ban the box'; credit checks)
5. Harassment (#MeToo)
6. Right to know
7. Data privacy



