

2021 US Labor & Employment Webinar Week
Insights and Compliance Strategies for a New World

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**Post-Election
Perspectives: A State of
the Union From Our
Public Policy Team**

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A nighttime photograph of the White House in Washington, D.C. The building is illuminated from within, and its facade is lit up. The American flag flies on a tall pole in front of the building. The sky is dark, and there are silhouettes of trees in the foreground. A large teal rectangular box is overlaid on the right side of the image, containing the title text.

The Post- Election Political Landscape

The General Election At A Glance

Biden Flips 5 Key States to Win the Presidency – AZ, WI, MI, PA, GA

- First Democratic win in AZ since 1996
- WI, MI, and PA return to the Democrats after 2016 when all three flipped to the GOP
- Biden won GA by 49.51% to Trump's 49.24%, a difference of 12,670 votes

Democrats win Georgia run-off, ushering **Senate Minority Leader Chuck Schumer (D-NY)** into leadership and switching places with **Sen. Mitch McConnell (R-KY)**

- Media predictions of 2-4 seat gain in the Senate did not materialize





Post-Election Senate Overview

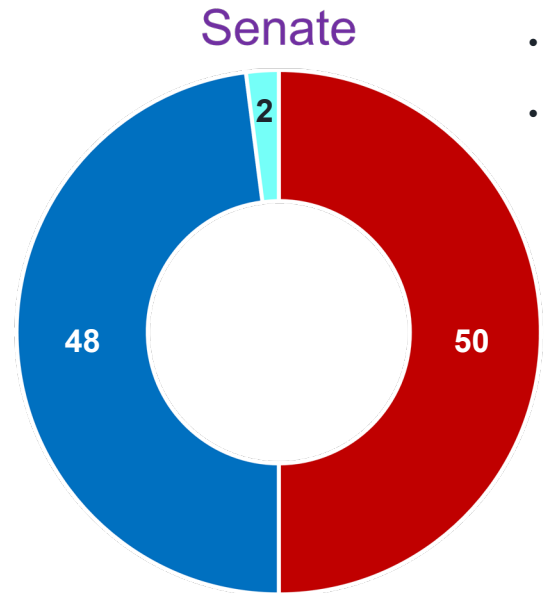
Senate Overview - Post-Election

Senate Splits for First Time Since 2001

- Republicans gained 1 seat, lost 1 seat
- Democrats gained 4 seats, lost 1 seat
- Democrat win in Georgia run-off results in 50-50 Senate with VP Kamala Harris breaking tie in favor of the Democrats

What Does a Split Mean?

- Democrats control Senate Committees with a power-sharing agreement likely
- Bi-partisan support necessary to advance Biden's agenda -- Democrats will need a 60-vote supermajority to pass major legislation



■ Republican ■ Democrat ■ Independent

117th Congress (2021–2023)

- Majority Party: Democrat (48 seats)
- Minority Party: Republican (50 seats)
- Other Parties: 2 Independents (both caucus with the Democrats)

The background of the slide is a waving American flag with its characteristic stars and stripes. A teal-colored rectangular box is overlaid on the right side of the flag.

Post-Election House Overview

House Overview - Post-Election

- Democrats lose 13 seats but hold their majority in the House (D-221 to R-211)
- House Leadership remains unchanged with Speaker Nancy Pelosi (D-CA) retaining the gavel and Rep. Kevin McCarthy (R-CA) leading the Republicans
- More U.S. House races were contested by both major parties since at least 1920, with 95.4% of races (415 of 435) featuring major party competition
 - 12 U.S. House races did not have a Republican candidate, guaranteeing them to Democrats
 - 8 U.S. House races did not have a Democratic candidate, guaranteeing them to Republicans
 - 11 states had one U.S. House race featuring just one major party candidate: [Arkansas](#), [California](#), [Florida](#), [Georgia](#), [Illinois](#), [Mississippi](#), [North Carolina](#), [Rhode Island](#), [South Dakota](#), [Tennessee](#), and [Virginia](#)

Source: Ballotpedia Annual Congressional Competitive Report, 2020





The Issues

Key Issue: Federal Minimum Wage

Trump	Biden
<ul style="list-style-type: none">• Maintain \$7.25/hour, states could go higher• Trump proposed alternatives to raising the minimum wage, such as allowing families to deduct childcare expenses on their income taxes, or expanding the earned income tax credit (EITC) to offset childcare expenses.• Trump's tax alternative likely to be set aside by Biden administration in favor of raising the federal minimum wage.	<ul style="list-style-type: none">• Proposes increase to \$15.00/hour and eliminate the reduced minimum wage for tipped employees.• Proposes indexing the minimum wage to the median hourly wage so that low-wage workers' wages keep up with those of middle income workers. Under this plan, the minimum wage would automatically increase to keep pace with "the typical worker's wage."• Supports increasing the salary threshold for wage-and-hour exemptions under the Fair Labor Standards Act (FLSA).

Key Issue: Mandatory Arbitration

Trump	Biden
<p>Opposed bans on pre-dispute mandatory arbitration agreements and said he would veto the House-passed Forced Arbitration Injustice Repeal (FAIR) Act, which would prohibit mandatory pre-dispute arbitration agreements for consumer, employment, antitrust, and civil rights claims.</p>	<p>Supports legislation to ban employers from requiring their employees to agree to mandatory individual arbitration that includes class- and/or collective-action waivers.</p>

Key Issue: Healthcare

Trump	Biden
<ul style="list-style-type: none">• Trump was opposed to the Affordable Care Act in 2016 but later supported key protections (e.g., pre-existing conditions).• In 2018, Trump signed legislation banning “gag clauses” that prevented pharmacists from telling customers about less-expensive drug options.• In 2020, Trump issued executive order calling for an end to surprise medical billing, increase price transparency, and lower the cost of prescription drugs and insurance premiums.	<ul style="list-style-type: none">• Biden supports the Affordable Care Act and proposes to build on it by creating a public insurance option that would be available to anyone regardless of coverage.• Biden supports a cap on monthly premiums at 8.5% of a family’s income. If a family is covered by their employer but can get a better deal with the 8.5% premium cap, they can switch to a plan on the individual marketplace.• Biden proposes lowering Medicare eligibility to 60 years old and allowing younger individuals to buy in to Medicare. This may reduce employer spending if, for example, fewer retirees remain in employer-sponsored plans under COBRA upon retiring before age 65.• Biden also proposes to end surprise medical billing, require drug companies to negotiate prices, and improve price transparency.

Key Issue: Paid Family Leave

Trump	Biden
<ul style="list-style-type: none">• In 2019, Trump signed a defense bill that guarantees 12 weeks of paid parental leave for federal workers.• In his 2020 State of the Union address, Trump endorsed the bipartisan Advancing Support for Working Families Act, which would extend paid leave to families after the birth or adoption of a young child. This would allow parents to draw on future child tax credits to pay for the leave, and then receive commensurately smaller tax credits later.	<ul style="list-style-type: none">• Biden supports 12 weeks of paid family and medical leave similar to the Democrat-proposed Family and Medical Insurance Leave (FAMILY) Act, which would likely be funded by a payroll tax borne by both employers and employees.• Supports universal paid sick days.

Key Issue: Independent Contractors

Trump	Biden
<ul style="list-style-type: none">• On January 6, 2021, the U.S. Department of Labor issued its final rule on Independent Contractor Status under the Fair Labor Standard Act (FLSA).• The Rule explained the five-factor economic realities test governs whether a worker is classified as an independent contractor.• The test is less restrictive on employers than those used in some states, such as California’s use of the “ABC” test.	<ul style="list-style-type: none">• Biden proposes enacting legislation that makes worker misclassification a substantive violation of law under all federal labor, employment, and tax laws, with additional penalties beyond those imposed for other violations.• Biden favors establishing a federal standard modeled on the ABC test (a test for classifying workers as employees or independent contractors that generally favors classification as employees) for all labor, employment, and tax laws.• Biden proposes to strengthen enforcement by increasing the number of investigators in labor and employment enforcement agencies.

Current Status: On January 20, 2020 Biden issued a “regulatory freeze” memo which paused new regulations from moving forward, including the independent contractor rule.

Key Issue: Federal Contracting

Trump

- Under President Trump, the Department of Labor has strengthened its suspension and debarment program, increasing the number of suspensions and debarments of federal contractors. Between 2016 and 2017, it increased the number of suspensions from zero to eight, and debarments from one to 17. In 2018, it imposed a total of 21 suspensions and 15 debarments.
- The Department of Labor also started a pilot program to make the suspension and debarment process more efficient. In December 2018, the inspector general and the Secretary of Labor signed protocols to enhance information sharing between the IG's office and the agency that handles its discretionary suspensions and debarments.
- Following the implementation of this program, the Department of Labor issued 125 suspensions and 130 debarments in 2019.

Biden

- Biden proposes to institute a multi-year federal debarment for all employers who illegally oppose unions, building on [debarment efforts](#) pursued in the Obama Administration.
- Biden also proposes to restore and build on the [Obama Administration's Fair Pay and Safe Workplaces](#) executive order, which [Trump revoked](#), requiring that employers' compliance with labor and employment laws be taken into account in determining whether they are sufficiently responsible to be entrusted with federal contracts. Biden plans to ensure that every federal investment in infrastructure and transportation projects or service jobs is covered by prevailing wage protections.
- Biden heavily expected to rescind Trump's executive order on sex and race stereotyping in diversity training.

Key Issue: Restrictive Covenants

Trump	Biden
<p>Trump does not appear to have expressed an intent to prohibit or otherwise restrict the use of restrictive covenants in employment agreements.</p>	<p>Biden proposes to work with Congress to eliminate all non-competition agreements, except those that are necessary to protect a narrowly defined category of trade secrets, and to categorically ban no-poaching agreements.</p>

Key Issue: Workplace Safety

Trump	Biden
<ul style="list-style-type: none">• Consistent with Trump’s overall philosophy, Trump appears to support a deregulatory approach to workplace safety.• Under Trump, OSHA has the lowest level of inspections in its 50-year history, while the economy has grown.• The Trump Administration has taken initiatives begun under the Obama Administration for OSHA to develop comprehensive infectious disease standards off the rulemaking agenda and put them on the backburner.• The Trump Department of Labor has stated that “an emergency temporary standard” by OSHA to prevent the spread of COVID-19 in the workplace “is not necessary at this time.”	<ul style="list-style-type: none">• Biden plans to reinstate regulations requiring that companies report workplace injuries so they’re disclosed to the public.• Biden seeks to emphasize the need to have functional safety standards in place, and supports OSHA’s establishing a mandatory emergency standard that would require employers to submit workplace-safety plans to OSHA for review.• Biden plans to direct OSHA to substantially expand its enforcement efforts.• Biden proposes increasing the number of investigators in OSHA and the Mine Safety Health and Administration (MSHA).• Biden also plans to direct OSHA, the U.S. Department of Agriculture, MSHA, and other relevant agencies to develop comprehensive strategies for addressing the most dangerous hazards workers encounter in the modern workplace.

Key Issue: Collective Bargaining

Trump	Biden
<ul style="list-style-type: none">• Encourage cooperation, not conflict, between management and workers. His platform views unions as more of a hindrance on employees than support• Supports the ability of states to enact right-to-work laws.• Does not want to infuse capital into enforcement proceedings or financial penalties• The Trump Administration and NLRB proposed reversing the <i>Browning-Ferris Industries</i> decision that allows unions to collectively bargain with the employer that actually controls their wages, benefits, and working conditions, which is often not the staffing company or franchisee that employs them, but a larger corporation or franchisor.	<ul style="list-style-type: none">• Strongly supports the Protecting the Right to Organize Act's (PRO Act) provisions imposing financial penalties on companies that interfere with workers' organizing efforts• Proposes empowering the NLRB to force any employer found to be bargaining in bad faith back to the negotiating table• Codify into law the Obama era's NLRB rules allowing for shortened timelines of union election campaigns• Supports the "card check" process as an initial option for forming a union (not just when employer has illegally interfered)• In the first 100 days of office, he will create a cabinet-level working group to deliver a plan to increase union density and address economic inequality

Key Issue: Corporate Tax

Trump	Biden
<ul style="list-style-type: none">• Trump strives to level the international playing field by lowering the corporate tax rate to be no higher than the rates of other industrial nations. He supports switching to a territorial system of taxation so that profits earned and taxed abroad may be repatriated for job-creating investment in the U.S.• Trump would like to lower the corporate tax rate from 21% to 20%.	<ul style="list-style-type: none">• Biden plans to reverse some of Trump's tax cuts for corporations and increase the taxes paid by wealthier individuals.• Biden would like to raise the corporate tax rate from 21% to 28%.• Biden proposes offering tax credits to companies that expand and hire more employees in the U.S., while imposing tax penalties on companies that manufacture products in other countries for importation to the U.S.• Biden also proposes creating a workplace childcare facility tax credit of up to 50% of an employer's first \$1 million in costs for qualified onsite childcare.

Questions? Please let us know.



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