

WHAT SMALL BUSINESS OWNERS CAN EXPECT IN OBAMA'S SECOND TERM

Publication
Dec 20, 2012

After a long, grueling, and (especially for us residents of the mother of all battle ground states) inescapable presidential campaign, many of us undoubtedly looked forward to taking at least a small respite from spectator politics. But while the conclusion of election season has obviously alleviated some degree of uncertainty for small business owners regarding who will occupy the White House for the next four years, many of them are now wondering just what a second term for President Obama has in store for their businesses. So let's take a closer look at what impact this year's election results will have on them.

Healthcare

One subject most likely on their minds is how the Patient Protection and Affordable Care Act will affect their businesses, including their bottom lines. However, many small businesses, specifically those with less than 50 full-time employees, will not be subject to the potentially costly "pay or play" provision of healthcare reform, which requires employers to either offer health insurance coverage or pay a penalty. Yet, even though healthcare seems like the only impact, there are other changes on the horizon.

Increased Regulation

Instead, the largest change that small businesses are likely to experience is increased regulatory activity and enforcement initiatives of Federal agencies such as the Equal Employment Opportunity Commission (EEOC). The EEOC and many other agencies have increased budgets for the 2013 fiscal year, which means more investigators and almost certainly more investigations. Trends that began in

President Obama's last term, such as increased on-site inspections and longer and more thorough investigations, should continue and will likely accelerate.

Policies and Hiring Practices Examined

Along with more aggressive investigations, the EEOC's current trend of searching for systemic instances of discrimination should also continue to gain steam. The EEOC is now, and will be undoubtedly throughout the next four years, making systemic discrimination its major focus. The EEOC targets facially neutral employer policies such as absence/leave policies, language proficiency rules, and criminal background checks that it believes are discriminatory in their effects, if not their application.

Small businesses should especially take a look at their hiring criteria, as the EEOC will take an increasingly long look at "barriers" to hiring such as: credit checks, educational standards, physical tests, and English-only policies. Small businesses will want to evaluate their hiring standards and make sure their standards are necessary for their business needs because the time and expense of systemic investigations will far outweigh those of individual charges of discrimination, which they may have experienced in the past.

Social Media Policies Evaluated

Another place where small businesses will likely see increased government agency activity is relative to their social media policies. Discipline of employees regarding their posts on social media sites is one area the National Labor Relations Board (NLRB) is focusing on with union and non-union employers alike. The NLRB has issued several decisions recently that protect employees from discipline and/or termination in instances where they have posted unflattering comments regarding their employers. The next four years should see the NLRB more definitively establishing the borders of what it considers protected conduct for employees on social media sites.

Overall, small businesses should expect to see an increase in not only enforcement activity of federal agencies including the EEOC and Department of Labor, but these agencies will also continue the trend of stretching their investigations into areas that are not explicitly within their purview, such as gay, lesbian and transgender equality in the workplace. Essentially, small business owners will see what they began to see in the last four years, simply more of it.

This article appeared on December 20, 2012 in [*Crain's Cleveland Business*](#).