



Congress May Repeal Some Trump-Era Employment Regulations Before They Take Effect

Insights

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Will the new Democratic majorities in Congress invoke its statutory power to repeal some of the Trump administration's recent regulations and guidance – including those pertaining to labor and employment law? [The Congressional Review Act](#) (CRA) empowers simple majorities in (both) the House and Senate to repeal a new regulation within 60 days of its submission or publication. There stands a good chance we could soon see the new majorities in Congress wield this power to nullify some of the Trump administration's final regulatory actions.

What Does the CRA Do?

The CRA has been used to repeal regulations issued near the end of a presidential administration. Not only does a regulation revoked via the CRA become null and void, the government agency that issued the regulation cannot issue a substantially similar new regulation unless the new regulation has been specifically authorized by a new law. This is, of course, a brief and highly simplified explanation of the CRA, but provides a general overview necessary to understand what we may soon see.

What Workplace Law Regulations Could be on the Chopping Block?

One likely candidate for CRA repeal is the [U.S. Department of Labor's January 7, 2021 regulation](#) making it easier to classify a worker as an independent contractor under the Fair Labor Standards Act, which is slated to take effect March 8. Many Democrats favor a much tougher rule, such as [California's "ABC test,"](#) that would make it very difficult for an individual to qualify as an independent contractor. In fact, this was [one of President Biden's campaign promises](#). By repealing the new regulation, Congress could leave employers at greater risk of FLSA liability for erroneously designating someone an independent contractor.

Other likely targets? [The December 30, 2020 Final Rule on Tip Regulations Under the FLSA](#) and the EEOC's January 15, 2021 updated Compliance Manual guidance on Religious Discrimination could very well face Congressional scrutiny in the coming days and weeks.

What Does This Mean for Employers?

The CRA is just one way the incoming president and Congress may change existing labor and employment conditions, and they have made clear they intend to make many changes through executive orders, new regulations, and new laws. Within hours of his inauguration, in fact, Biden asked the heads of federal agencies to consider postponing rules that have not yet gone into effect. Because “ignorance of the law is no excuse,” employers should pay close attention to maintain compliance with evolving labor and employment laws as the Democrats begin flexing their political muscle.

We will keep a close eye on developments in this area and provide updates as warranted. You should ensure you are subscribed to [Fisher Phillips’ alert system](#) to receive the most up-to-date information. If you have questions about any aspect of this legislative concept and its potential impact on your workplace, [contact the author](#) or your Fisher Phillips attorney.

This Legal Alert provides an overview of a specific federal legislative strategy. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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