



5 Employer Takeaways – and Predictions – From Biden's 2023 State of the Union

Insights

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“For too long, workers have been getting stiffed. But not anymore. We’re beginning to restore the dignity of work.” With these words, spoken by President Biden midway through his State of the Union address Tuesday night, workplace law was placed at center stage in the national conversation. The President, in fact, touched on at least five labor and employment topics during his 72-minute speech. But given the fractured nature of Congress and the ambitious scope of his agenda, how realistic are his proposals and what are the chances of them ever getting off the ground? This Insight will review the five main talking points that employers should be paying attention to, along with our predictions for what will become of them.

Ban on Non-Compete Agreements

First up for Biden was the [pending proposal by the FTC to ban non-compete agreements](#). “30 million workers had to sign non-compete agreements when they took a job. So a cashier at a burger place can’t cross the street to take the same job at another burger place to make a couple bucks more,” he said. “Not anymore. We’re banning those agreements so companies have to compete for workers and pay them what they’re worth.”

Prediction: Not so fast. The President spoke as if it were a foregone conclusion that the rule will take effect as written. While we expect the rule to pass in some form or another, we think it possible that the FTC will scale back the overly broad nature of the proposal before it is finalized. And after it is finalized, we expect it to face litigation from business advocacy groups that could stall or kill it altogether. You can read all about what we expect in [our Frequently Asked Questions Insight](#).

Expanded Paid and Medical Leave

President Biden next generally advocated for expanded leave benefits for workers. “Let’s also make sure working parents can afford to raise a family with sick days, paid family and medical leave, and affordable childcare that will enable millions more people to go to work,” he said. He didn’t mention any specific legislation pending before Congress or even proposed by the administration. But Democratic lawmakers marked the 30th anniversary of FMLA taking effect earlier this week by introducing a comprehensive federal bill to provide a wide array of benefits – and the President would certainly back this kind of law.

Prediction: This bill stands little to no chance of passing the House or the Senate. While some Republican lawmakers have expressed support for some version of a paid leave program, these proposals have been limited in scope – and in some instances called for the payments to be funded by a worker’s own social security savings. Instead, look for continued activity regarding leave benefits to take root at the state and local level.

Minimum Wage Boost

“Let’s guarantee all workers have a living wage,” said the President, echoing the same sentiment he noted in last year’s SOTU. Yet he also talked up the rising worker pay that we’ve seen over the past year, noting that “inflation has fallen every month for the last six months while take-home pay has gone up.” While he didn’t mention the magic \$15 number that he has explicitly advocated for in the past, there’s no doubt he supports an ambitious national minimum wage hike to that level. He has previously stumped for a boost the federal minimum wage from \$7.25 to \$15 per hour in the next several years while also gradually eliminating the tip credit.

Prediction: This one is also quite unlikely to pass the current iteration of Congress. And again, we expect to see more activity in this area at the state and local level – which can be tracked using [our Wage and Hour Maps](#). Instead, we expect the DOL to soon take up the “overtime” regulations and try to increase the salary threshold for exempt employees from the current rate of \$684 a week to somewhere around \$900-\$1,000 a week. [You can read more about how to prepare for this impending change here.](#)

Immigration Reform

“Let’s also come together on immigration and make it a bipartisan issue like it was before,” the president said, speaking largely to the Republican contingent of Congress. But recognizing that this was highly unlikely given the vast philosophical differences between the parties on this issue, he quickly followed up saying, “if we don’t pass my comprehensive immigration reform, at least pass my plan” that includes “a pathway to citizenship for Dreamers, those on temporary status, farm workers, essential workers.” There are approximately 600,000 undocumented immigrants who currently participate in the Deferred Action for Childhood Arrivals (DACA) program, and the White House proposed a plan to boost that number to about 2 million last year.

Prediction: You might be sensing a theme here – there is virtually no chance that any sort of immigration reform takes hold in Congress over the next two years. There is no will among lawmakers for a unified reform package that will result in comprehensive change. In fact, we predict that an uptick in demand for foreign workers in blue collar occupations coupled with inflation and recession concerns will result in companies looking abroad to find talent in the technology sector. Many companies adopted new technology during the COVID-19 pandemic and moved to remote and hybrid work arrangements – which will make it easier to look for overseas solutions. Additionally, the current strength of the U.S. dollar may increase employers’ interest in expatriation jobs.

in exporting jobs.

Labor Relations, Revisited

For the second straight year, President Biden called on Congress to pass the [Protecting the Right to Organize \(PRO\) Act](#) – which is essentially a wish list for labor advocates. “I’m so sick and tired of companies breaking the law by preventing workers from organizing,” he said. “Pass the PRO Act because workers have a right to form a union.”

If signed into law, the PRO Act would potentially bring about the greatest shift of balance on the labor relations front since the Taft-Hartley Act of 1947. Among its many components are provisions that would institute costly financial (and even criminal) penalties for labor law violations, replace secret ballot representation elections with the concept of “card check,” and impose collective bargaining agreements on employers in the absence of mutual agreement.

Predictions: And for these reasons, there is zero chance that the PRO Act will pass the GOP-controlled House or gather 60 votes in the Senate to survive a filibuster. Instead, the White House will continue to push the NLRB to take up the administration’s efforts at the regulatory level. Expect to see some major policy shifts at the agency level as the Board reexamines workplace civility rules, prohibits mandatory employee education meetings during union organizing drives, expands the definition of ‘employee’ to capture more workers currently classified as independent contractors, and allows union organizers to access/use an employer’s email system.

Conclusion

We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips’ Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Employee Defection and Trade Secrets Practice Group](#), [Employee Leaves and Accommodations Practice Group](#), [Wage and Hour Practice Group](#), [Immigration Practice Group](#), or our [Labor Relations Practice Group](#).

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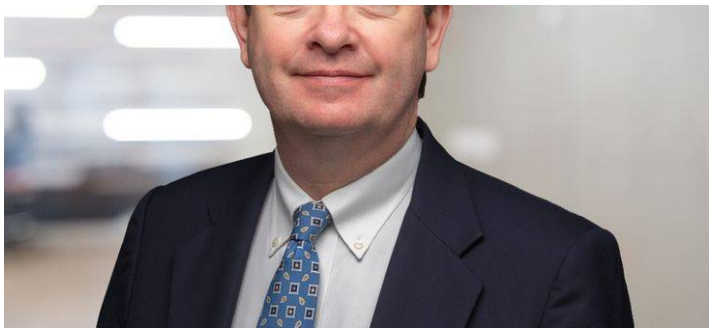


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