



What Will A Governor Newsom Mean for California Employers?

Insights

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While much of the attention this midterm election has been focused on Congress and federal issues - the “blue wave” and a “referendum” on the Trump presidency - California employers know all too well that employment and labor policy is largely being driven at the state and local level. The split in Congress between the Republican-led Senate and the Democrat-controlled House means that we can expect continued gridlock and lack of significant federal legislation on employment issues.

Here in California, though, we have a new governor-elect in the form of former Lieutenant Governor and former San Francisco Mayor Gavin Newsom. Continued overwhelming Democrat majorities in both the State Senate and the State Assembly will help ensure that labor and worker advocates will have little trouble getting measures through the legislature and onto the new governor’s desk.

What will this new administration mean for California employers—more of the same, or a fresh voice? It’s pretty clear that labor will continue to have a friendly voice in the governor’s office in Sacramento, so we’re not looking at monumental change on the horizon. But previous [comments and campaign statements](#) by Newsom may shed some light on the course he may forge on labor and employment issues once he officially takes office.

Business Owner Background

Many employers have noted with hope that Newsom comes from a business background, developing a winery business into a growing empire with a number of restaurants, wineries, and other similar establishments. That has led some to speculate that he may intuitively understand some of the issues facing business owners in California, from bureaucratic red tape to a hostile litigation environment.

Like most politicians, Newsom voiced his support on the campaign trail for small businesses. His campaign website stated, *“California’s small businesses provide half of all jobs in the state. Gavin is committed to fostering entrepreneurship, cutting red tape and expanding access to capital, particularly for minority and women-owned enterprises.”*

Whether that translates into a better business environment for small businesses remains to be seen. After all, what politician has not expressed support for small businesses during their campaign? But some employers cling to the hope that, as an entrepreneur himself, Governor Newsom may be more receptive to certain concerns of the employer community.

It's All About *Dynamex*

By far the most significant and pressing concern Governor Newsom will have to deal with is the continued fallout from the blockbuster decision by the California Supreme Court in the *Dynamex* case, where the court adopted an entirely new test for determining whether an individual is an employee or an independent contractor. This new legal standard, known as the "ABC Test," makes it more difficult for businesses to utilize independent contractors and threatens to upend entire industries in our state.

There was an attempt late in the year by the business community to come up with a legislative solution to some of the difficulties created by this new standard, but that effort fizzled when legislative leadership announced there would be no discussion of the issue. But this issue has not gone away.

If anything, in fact, the angst and concern in the employer community has only intensified in recent months. Therefore, it's likely that the number one issue from the business community will be to seek to address the impact of the *Dynamex* decision. There are likely to be numerous bills on the matter – from industry-specific bills to more comprehensive solutions. All of this means Governor Newsom will be forced to deal with *Dynamex* one way or another in 2019, "whether he likes it or not!"

Vetoed Bills and Arbitration Redux

It's also likely that labor and worker advocates will put Newsom right to the test by putting many of the bills vetoed in recent years by Governor Brown right back on his desk. Foremost among these is the controversial ban on mandatory arbitration agreements in employment, which Governor Brown vetoed twice, most recently just a few short weeks ago, despite a strong boost by the #MeToo movement in 2018.

In fact, a good exercise in preparing for what may be coming down the pike is to review the significant employment measures vetoed by Governor Brown in recent years. As a former famous California governor liked to say, "They'll be back!"

#MeToo and Sexual Harassment Legislation

Speaking of the #MeToo movement, while several large pieces of legislation were signed last year, a number of #MeToo priority bills were vetoed in 2018. These bills (and new sexual harassment-related proposals) are likely to be back as well.

Newsom has been a staunch advocate of the #MeToo movement. His website states, "*As Governor, he will institute accountability measures across state government, and support strengthening workplace protections such as creating hotlines for victims, transparent, independent, swift investigations, and real consequences for abusers and harassers.*"

In addition, future First Lady of California Jennifer Siebel Newsom has been an outspoken advocate of the #MeToo movement in her own right. Therefore, California employers can expect the legislative

focus on sexual harassment legislation to continue, and for many of those measure to find a receptive audience in the new governor.

Gender Pay Equality

On a related front, California's focus on addressing the gender pay gap is also likely to continue under the new administration. In recent years, California has enacted some of the strongest laws in the country designed to address gender pay inequality – from strengthening the state's equal pay laws to prohibiting salary history inquiries to mandating female corporate board members.

Newsom has publicly stated that he will work to continue to address this issue, especially the wage gap for women of color. California employers can expect to see more legislative and regulatory efforts to address this issue under the new administration.

Gig Economy and the Future of Work

One of the more fascinating issues to watch will be Governor-elect Newsom's approach to the "gig economy" and the ever-popular topic of the "future of work." Hailing from San Francisco (and its nearby Silicon Valley), Newsom has groomed his image as someone who is hip and appreciates innovation and new technology. That may put him at odds with his friends in labor who are increasingly ramping up efforts to minimize potential job loss and other changes to the workplace.

Newsom had an extended section of his campaign website dedicated to the "future of work" which stated:

"We are living in a hinge moment — with globalization and technology detonating at the same time, displacing workers and entire industries. It's not an easy subject to talk about but we need to have a serious conversation about the future of work because if we don't prepare ourselves, our rising levels of wealth inequality will only widen. There is no silver bullet that will wholly solve the displacement from future technology, but implementing the right solutions can help ease the transition and protect the workers most vulnerable and susceptible to automation.

- **Wage Insurance:** *The federal government offers reemployment insurance to folks who lose their jobs to foreign workers, but no one is offering this critical protection for those who fall victim to automation. If a hard working Californian who did everything right loses a job, takes the time to train for a new one, and then ultimately lands a position that doesn't pay as much, we ought to offer wage insurance to help pay the bills.*
- **Portable Benefits:** *Our benefits system of retirement, vacation and sick leave are designed for a different era. Meanwhile, there are anywhere between one and two million gig workers in California, folks who depend on independent contracting to make ends meet. We like the innovation of the gig economy but that doesn't mean we should reduce our worker standards. As Governor, Gavin is committed to protecting the workers of the contingent economy by establishing a system of portable benefits, so that earned benefits are not tied to one company or industry. California can be a leader in pioneering the benefits of the future.*

- **Expand the Earned Income Tax Credit:** *Finally, we need to expand our statewide Earned Income Tax Credit for low-income earners and for those out of work – a program that rewards work and allows families to keep more of their hard-earned money. An expansion of the Earned Income Tax Credit will support hard-working Californians and alleviate poverty.”*

Issues like “portable benefits” and “wage insurance” are hot buzzwords. Whether they translate into public policy proposals that the new governor actually gets behind and delivers remains to be seen.

Single Payer Health Care

Newsom has also been a vocal supporter of universal or “single payer” health care, which has been a hot topic in the California Legislature in recent years. In fact, Newsom is widely known for being at the forefront of this issue during his tenure as mayor of San Francisco, when the city adopted its own health care policy. While Democrats in the legislature have supported such efforts on a policy level, the real issue has been coming up with ways in which to finance the program (estimated to cost near \$400 billion) – which is why the most recent effort (the “Health California Act”) was parked and did not move forward.

During the campaign, Newsom advocated for single payer and said he supported the Healthy California Act. The lead sponsors of that measure, the California Nurses Association, are likely to put him to the test by pushing a similar effort in 2019. However, as a recent [article](#) suggests, Newsom’s ultimate take on this hot button issue may be more nuanced, leading to an unclear outcome.

Protections for Immigrant Workers

California has led the way in recent years with a number of state laws enacted to protect the rights of immigrant workers. If anything, these efforts have ramped up since the election of President Trump as California has attempted to “resist” his immigration policy – including where it impacts the workplace.

These efforts are likely to continue under the new Governor as well. His campaign website stated:

“By one estimate, undocumented immigrants make up 10% of the state’s workforce, and too often fall victim to wage theft, safety violations, and other predatory abuses. Gavin has consistently supported legislative efforts to stem underground economy abuses such as preventing wage theft, and protecting immigrant workers’ rights, personal privacy and safety. As Governor, he will ensure that the Division of Labor Standards Enforcement, Department of Justice, and other relevant agencies are fully resourced and trained to prioritize our immigrant communities in particular.”

Therefore, it appears Governor-elect Newsom will place an emphasis on investing more resources (such as in the Labor Commissioner’s office) to enforce the law against employers – especially those who employ low-wage and immigrant workers. Employers could face more audits and enforcement activity as a result.

Administrative Appointments

Legislative activity seems to get all of the attention. But California employers would be wise not to overlook the impact that executive agency appointments (especially to employment-related agencies like DLSE, EDD and Cal/OSHA) may have on California employers.

Regulatory changes initiated at the agency level can have just as much (or not more) of an impact on employers as formal legislation. And agency heads often set the tone in terms of enforcement priorities and other policy focus.

Whether you agreed with Governor Brown or not, most of his administrative appointees were individuals who understood the policy area in which they were working. Sadly, this hasn't always been the case, as some prior administrations (I'm not naming names) seemed to hand out appointments as political favors, whether or not the recipient was qualified.

Hopefully that trend (choosing appointees who have subject matter experience) will continue with Governor Newsom, but it's too early to tell. Some administrative appointees may stay and some may go, so we'll have to see what happens in the coming months.

State Budget and Labor Law Enforcement

Similarly, aside from enacting new laws, a new governor can have a dramatic impact on the state's resources that are dedicated to labor law enforcement, largely through the budget process. The last few budget cycles have seen a dramatic increase in the funding for labor law enforcement in California – particularly for DLSE and Cal/OSHA.

It is anticipated that organized labor and other worker advocates will make a strong push for increased enforcement funding as well. And the state's coffers are full, which makes it more likely such budget augmentations will become a reality. This means California employers should anticipate an increased enforcement presence by state administrative agencies.

Will Presidential Ambitions Moderate a Governor Newsom?

Finally, there's lots of speculation that Governor Newsom may have his eyes on a future presidential run, and his governorship is expected to be a potential springboard to give him national recognition. Therefore, there is some sense in the employer community that this may serve to moderate the new governor's position on employment issues.

If so, and Newsom wants to preserve his appeal to future middle-of-the-road or moderate voters, that could bode well for California employers in the near term. Such a dynamic may force the governor to "paddle left, paddle right" on these important issues.

Conclusion

Clearly, it's pretty early to predict what the election of Gavin Newsom means for California employers. The foregoing represents our best predictions based on previous statements made by Newsom and other hints dropped along the way. Politicians say a lot of things, however, so only time will tell.

Some employers fear Newsom will be more liberal than his predecessor, and will enact even more draconian and burdensome policies. Others hold out hope that, based on his entrepreneurial experience and avowed appreciation for innovation, he could represent a fresh voice – especially on issues related to the gig economy and the future of work.

As the governor-elect takes office and begins establishing his own agenda moving forward, we'll keep you posted on any developments that impact California employers. Stay tuned—it's going to be an interesting journey!

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