

# Questions. Lots of Questions ... And a Few Answers

By: Lee Geiger on November 13, 2020 on [graydon.law](https://graydon.law)

Although they are still counting votes in some states and legal challenges loom, it appears that Joe Biden will be the next President of the United States. Regardless of your politics, all Americans are asking the same question: “What does this mean for me?”. If you work in Human Resources, it is fair to expect that there will be changes, but how many and in what areas? At the risk of sounding like a lawyer, the answer is “It depends.” On what? The Senate. Unless the Republicans lose their majority in the Senate, it will be difficult for a Biden presidency to make sweeping changes similar to the Affordable Care Act, which passed in the early days of the Obama administration.

Regardless of how things shake out in the Senate, employers can expect many “behind the scenes” changes. What? How does that work? The President has the power to appoint the people who run “alphabet agencies” within the federal government – DOL, EEOC, NLRB, OSHA, etc. Those who run administrative agencies do not make the laws, but they have the power to interpret the laws (i.e., they decide whether you win or lose your EEOC or NLRB case). While there’s more to the appointment process than waving a magic wand (including needing Senate approval for many positions), we can expect a swing to the left at those agencies. How drastic of a swing? It’s too early to know.

Until 2008, administrative agencies swung a little to the left or a little to the right, depending upon who the president was. Administrative rulings were relatively predictable and employers could count on agencies to follow precedent from prior cases. It was much easier for employers to know which rules to follow. That changed during the Obama administration. Agencies like the EEOC and NLRB swung far to the left with pro-employee policies, bucking precedent along the way. Decades-old cases were overturned in the process. When President Trump took office, the pendulum swung so quickly 180 degrees in the opposite direction that employees at those agencies likely suffered from whiplash!

Although many people cheered the policies of President Obama or President Trump, many employers simply wanted to know which rules to follow. (Can I have a confidentiality policy in my handbook or not? Can unions use the company’s email system? How quickly will that union election be held?) It’s too early to tell how far the pendulum will swing under a Biden administration. Early signs indicate that he is appointing former Obama officials to his

transition team for the EEOC, DOL and NLRB. Time will tell if that will result in another dramatic swing or if the pendulum will move closer to the middle. One thing is certain: expect change toward more employee-friendly interpretations of the law from the DOL, EEOC and NLRB.

On a different note ... last Friday was National “Love Your Lawyer Day”! Thanks to everyone who showered me with well-wishes and gifts. I know you really meant it when you said that you bought me a cruise to Europe, but ... COVID. Drat! To the person who offered to administer a free COVID test ... Thanks, but No Thanks. It is unclear whether you wanted to help or just wanted to stick something really far up your lawyer’s nose! On a serious note ... I am fortunate to work with the best clients and colleagues anyone could ask for. So many people have started as clients and morphed into friends. Thank you so much for that.