

# Midterms to affect employment law landscape

Two years of Republican control of Washington ended Nov. 6 with Democrats seizing control of the House of Representatives. That gives Democrats some say on setting the legislative agenda, including employment law issues. While a divided Congress should reduce the chances for big legislative action, it's sure to mean one important thing for HR: more regulatory activity.

"Look for new—and potentially more aggressive—actions by the Trump administration on workplace issues like immigration, health care reform and harassment," said attorney Joseph Beachboard, managing director of Ogletree Deakins and the moderator of the HR Specialist's 2019 Labor & Employment Law Advanced Practices Symposium. "We could also see changes in several wage-and-hour and leave arenas. Plus, you can expect state legislatures to get more active on all these issues and more if gridlock continues in Congress."

After the midterms, here are some of the key employment law issues to watch:

**No immigration reform, more audits.** A Democratic House will likely try to pass some form of comprehensive immigration reform, probably including provisions to shield the U.S.-born children of undocumented immigrants from deportation. But that will make it difficult to reach the 60-vote threshold to move such legislation forward in the Republican-controlled Senate.

Meanwhile, expect the Trump administration to double down on efforts to make employers less of a "magnet" for undocumented workers. In fact, U.S. Immigration and Customs Enforcement has already conducted nearly five times as many workplace audits in 2018 as it did last year.

**Will new overtime rules really happen?** President Obama's proposal to double the salary threshold for paying overtime to white-collar workers was shot down in court two years ago. Now the Trump administration says it plans to issue a more modest proposal to raise the threshold (up from its current \$23,660) in March.

Democrats' new power in the House won't help them stop these proposed regulations. However, as the Obama administration learned in 2016, the rulemaking process is long and winding. If the Department of Labor can't finalize overtime rules by the end of President Trump's term, expect Democrats to make raising the OT threshold a 2020 campaign issue.

**A new venue for paid-leave legislation?** A divided Congress means the chances for federal legislation on paid leave and workplace flexibility are reduced. But the issue isn't dead. Trump may use his executive order powers in this area.

Plus this is an issue on which the federal government doesn't pull all the levers. More than 10 states and dozens of municipalities already have paid-sick-leave laws. Expect more state and local legislative action on that front in 2019 and 2020.