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Biden Will Need Congressional Approval In Order To Come Through On Most Of His Labor-Related Campaign Promises

Edward Segal Contributor – November 9, 2020



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Whether President-elect Joe Biden delivers on all of the labor-related promises he made on the campaign trail will depend on what he wants to do when he is in the White House, how soon he wants to do it, and if the US Senate stays in Republican hands.

A review of Biden's ambitious plan on his campaign website to strengthen worker organizing, collective bargaining, and unions shows that he will need congressional approval for almost every change he wants to make to existing labor policies. By contrast, there are only a handful of items on his "to do" list he will be able to cross off by himself or by working through his Department of Labor.

With Democrats still in control of the House in the new Congress, Biden's legislative scorecard could depend heavily on the outcome of the January 5 runoff elections for Georgia's two seats in the US Senate. A Republican-controlled Senate will make his labor agenda even more difficult — if not impossible — to achieve. As described on Biden's website, he will have to work with Congress in order to:

- Increase the federal minimum hourly wage to \$15
- Expand protections to victims of any workplace violations of federal, state or local labor laws
- Ban employers from requiring employees to agree to mandatory individual arbitration and relinquishing their right to class action lawsuits or collective litigation
- Establish a federal standard for workers in the "gig economy" as it relates to legal benefits and protections under labor, employment, and tax laws
- Eliminate non-compete clauses and no-poaching agreements that restrict the ability of employees to seek higher wages, better benefits, and working conditions by changing employers "...except [for] the very few [agreements] that are absolutely necessary to protect a narrowly defined category of trade secrets, and outright ban all no-poaching agreements."
- Expand federal protections to farmworkers and domestic workers
- Modify antitrust law to guarantee independent contractors the right to organize and bargain collectively
- Ensure that workers can exercise their right to strike without fear of reprisal. Biden would ban permanent strike replacements and remove the ban on secondary boycotts.
- Restore the broad definition of joint employment to wage and hour laws so workers could bargain with the employer that actually holds the power, including franchisors
- Provide a federal guarantee for public sector employees to bargain for pay, benefits, and working conditions

The Shorter List

When it comes to doing what he can on his own, Biden has a much shorter "to do" list that includes:

- Reinstating and expanding protections for federal employees. According to Biden's website, on his first day in office "he will restore federal employees' rights to organize and bargain collectively, and will direct his agencies to bargain with federal employee unions over non-mandatory subjects of bargaining."

- Directing the US Department of Labor “to engage in meaningful, collaborative enforcement partnerships, including with the National Labor Relations Board (NLRB), the Equal Employment Opportunity Commission, the Internal Revenue Service, the Justice Department, and state tax, unemployment insurance, and labor agencies.

Other Success Factors

In addition to which party controls the Senate, Biden’s legislative success may also depend on how much he is willing to settle for, no matter who wins the runoff elections for Georgia’s two Senate seats. Take the federal minimum wage, for example.

“I believe the question is not will the minimum wage go up under a Biden administration but how much will the minimum rise,” said Jay Zagorsky, senior lecturer of markets, public policy, and law at Boston University’s Questrom School of Business.

Working in Biden’s favor could be the fact that several states have already boosted their minimum wage including Arizona (\$11 per hour), New Mexico (\$9 per hour), California (\$12), and New York (\$14). “It is easy to convince a majority in Congress to go along with a boost when it will have little or no impact on a Congress person’s state,” he said.

Possible Ripple Effects

Keep your eyes on the new make-up of the NLRB under the Biden/Harris administration, advised John Boyd, principal of The Boyd Company, Inc., a corporate site selection firm.

The board’s composition “...will play an increasing role as to where corporations will invest and hire over the next four years as it will be another arrow in the quiver of the Biden/Harris administration for influencing labor-management relations, not to mention overall corporate mobility here in the US,” Boyd said.

Transitions

The period of time between when one president leaves office and a new one takes over is called the transition. But it’s also when the winner transitions from the mindset of campaigning to governing.

Although Biden is no stranger to governing, the realities of governing in this day and age will pose new challenges and difficulties that no one has ever had to deal with before — and determine how much of what he promised voters he will actually be able to deliver in the next four years.

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