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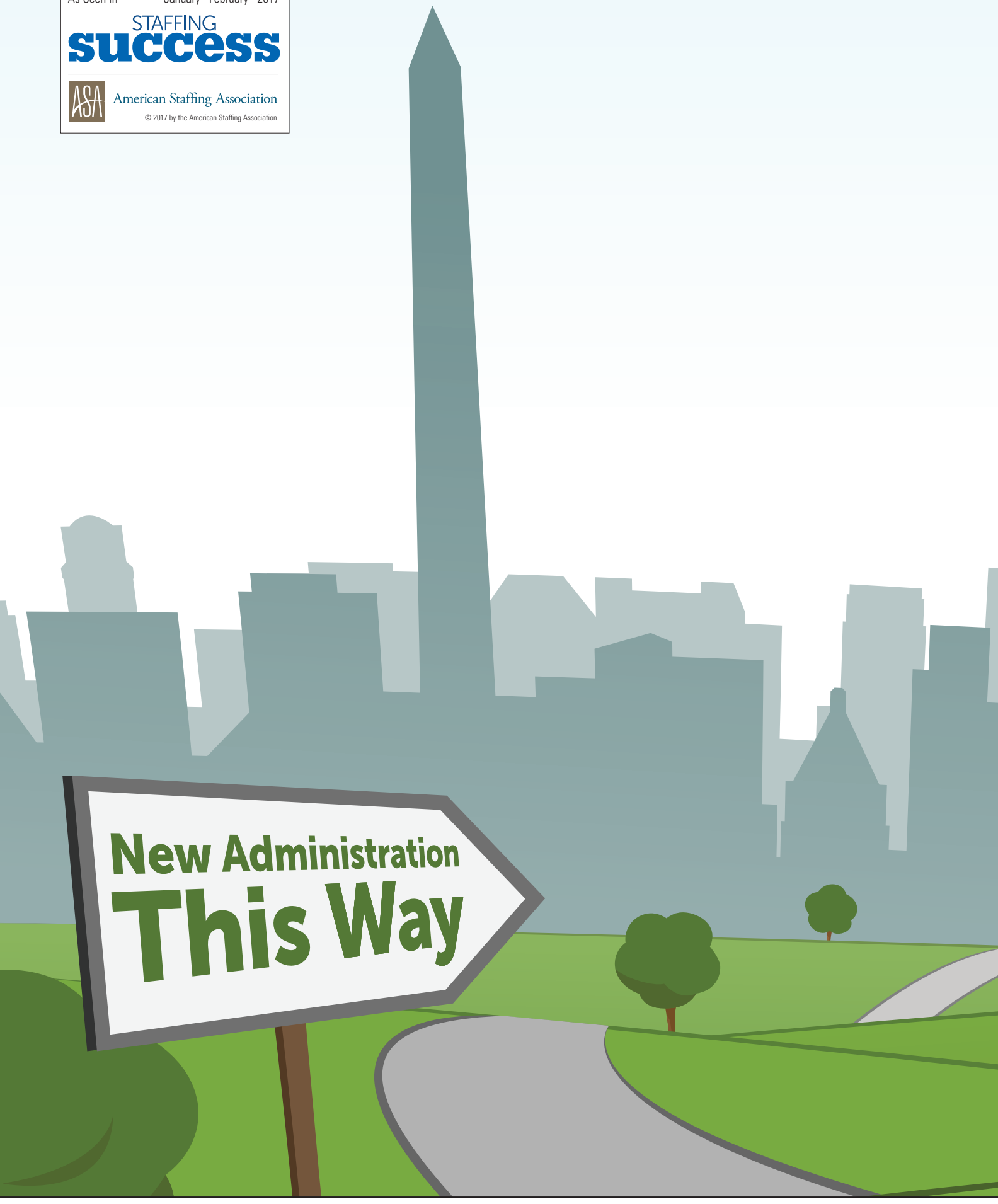
American Staffing Association

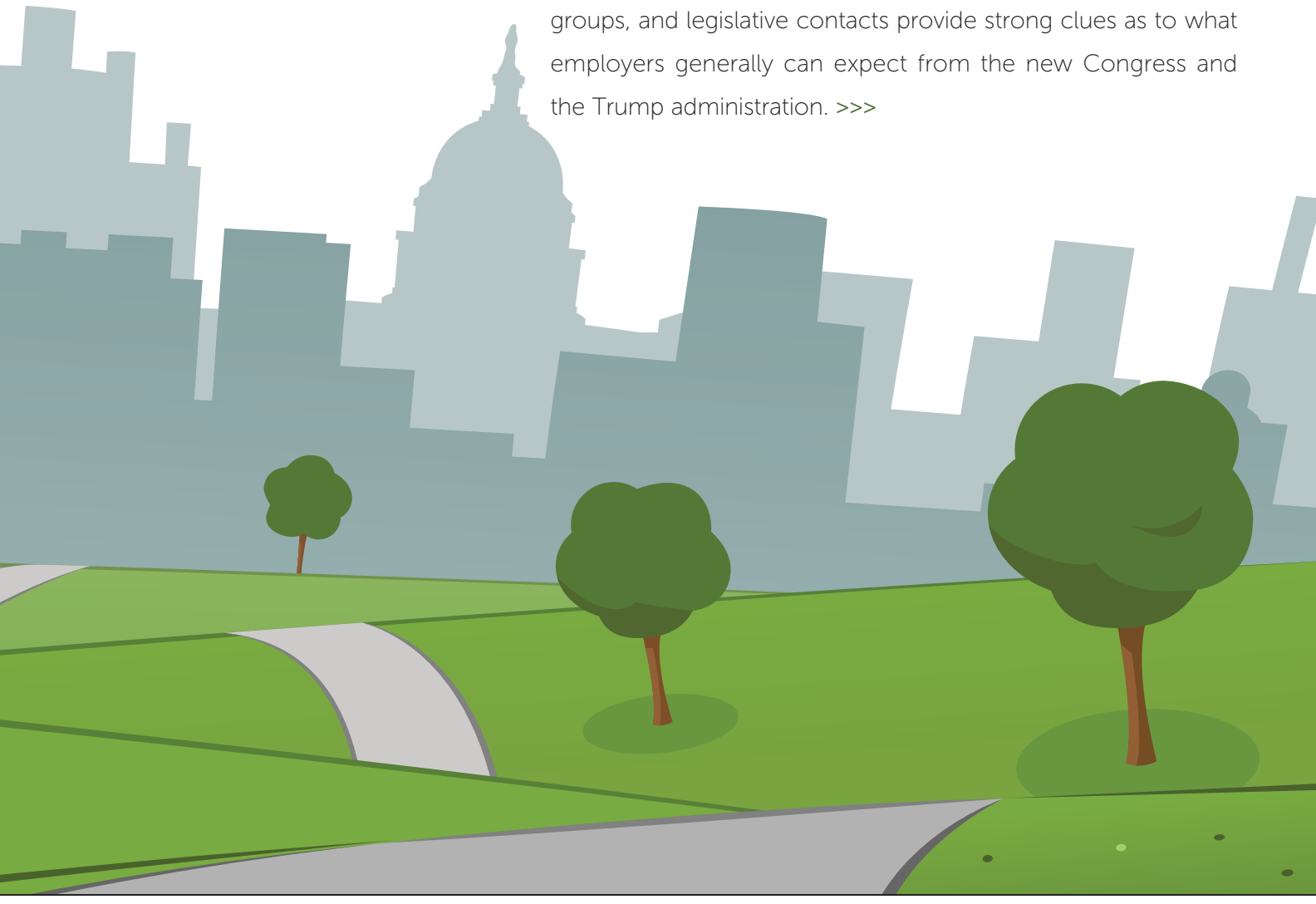


NEW POLITICAL LANDSCAPE:

WHAT'S AHEAD FOR THE STAFFING INDUSTRY

By Edward A. Lenz, Esq.

THE EXTRAORDINARY, AND UNEXPECTED, ELECTION OF DONALD TRUMP, and the retention by Republicans of their majorities in both houses of Congress, has transformed the political landscape at the national level, and could bring big changes to U.S. businesses. While it may be too early to forecast specific changes, Trump's executive branch appointments to date and ASA meetings with consultants, other business groups, and legislative contacts provide strong clues as to what employers generally can expect from the new Congress and the Trump administration. >>>



This report and analysis previews the likely changes in policy direction, specifically at the federal departments and agencies whose missions have the greatest regulatory impact on staffing companies. It also examines Congress's role in advancing its own and the new administration's goals, including repeal and replacement of the Affordable Care Act; and the potential impact on employers resulting from Trump's appointments to the judiciary, including the replacement of Justice Antonin Scalia.

This analysis also addresses political changes that have occurred at the state level, and the areas where ASA expects to see the most regulatory activity.

Labor Department: Issues to Watch and Potential Changes

Among the federal agencies with the greatest impact on staffing is the U.S. Department of Labor, whose mission is to "foster, promote, and develop the welfare of the wage earners, job seekers, and retirees" in the U.S. and "improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights." Every U.S. secretary of Labor, regardless of party, is bound by this explicit worker-centric mission. However, expect secretary-designate Andrew Puzder to give more consideration than his predecessor to the impact labor and employment regulations have on employers.

Puzder is the former chief executive officer of CKE, a national restaurant chain that includes Hardee's and Carl's Jr. He has been a vocal critic of the ACA, arguing in congressional testimony, op-ed pieces, and blogs that the law, especially the definition of full time as 30 hours per week, hurts workers by creating incentives for businesses to reduce employee hours to avoid the law's regulatory burdens. He's also been critical of the current department's new overtime rules, its push for minimum wage increases, and expansion of the definition of joint employment.

Puzder had a lead role at the National Restaurant Association and the International Franchise Association, both members of the E-Flex coalition—which ASA helped found to advocate for changes to the ACA on behalf of employers of part-time, temporary, and seasonal workers. In 2015, Puzder testified in support of legislation to increase the definition of full time under the ACA to 40 hours per week, a bill supported by the restaurant association, E-Flex, and others. Puzder's experience and public statements reflect a commitment to balancing the needs and interests of both employers and workers. (More about the potential future of the ACA follows.)

Overtime and joint employment. On Nov. 22, 2016, a federal district court in Texas issued a nationwide injunction blocking the Labor Department's new overtime rules, which were scheduled to go into effect on Dec. 1. Although the Obama administration appealed, most legal experts believe the injunction will be upheld, which would leave the lower court ruling in place. DOL watchers think new overtime rules will be issued at some point to increase the annual salary level, perhaps to the $35,000 range. But that would require the Trump administration to publish new regulations for public comment.

As to the joint employment issue, the new secretary of Labor could reverse the current DOL "guidance" that expanded the joint employment definition to make it easier to hold clients liable for wage and hour and other violations committed by their contractors. Although staffing firm clients have long been viewed as joint employers under the prior definition, clients have expressed concern regarding their potential liability under the expanded definition. Expansion of joint employment has been of special concern to businesses operating under a franchise model because it exposed franchisors, for the first time, to potential liability for the conduct of their franchisees.

Congress also may address both the overtime and joint employment issues. Rep. Virginia Foxx (R-NC), the new chair of the House Committee on Education and the Workforce, has publicly stated that overturning those rules will be a top priority. There remains a possibility, depending on the congressional calendar, that the House and Senate could overturn the rules under the Congressional Review Act—which gives Congress the power to overturn final regulations provided it acts within a specified period. On the joint employer issue, legislation has been proposed that would reinstate the definition of joint employment in effect before the National Labor Relations Board's ruling in the *Browning-Ferris* case—although the strategy for moving the bill and the prospects for enactment are uncertain at this writing. For further discussion of the joint employer issue, see the NLRB discussion that follows.

The gig economy. No future of work topic has generated more commentary than the so-called gig economy. Myriad news stories, business articles, reports, and studies have examined the phenomenon, albeit with little consensus about how to define it, how big it is, or what to do about it. Much of the discussion has focused on online platforms, often via mobile apps, that match sellers and buyers. Uber, Lyft, and other car- and ride-sharing services are prime

examples. In the staffing industry, online services that match workers with jobs, such as Upwork, Catalant, Shiftgig, and Twago, are growing.

The advent of these services has spurred debate, and lawsuits, as to whether the workers providing the services are employees or independent contractors. Although the great majority of temporary workers assigned by staffing companies have traditionally been treated as W-2 employees, many workers assigned through online platforms are classified as independent contractors. Proper classification has been problematic for decades because the legal test for distinguishing between employees and independent contractors is fact-based and involves multiple factors centered around nuanced, often subjective, issues like "independent judgment" and "control." The growth of online service platforms has cast this age-old conundrum in a new light.

The Labor Department under President Obama acknowledged the importance of these new work arrangements and professed a desire not to stifle their growth. But concern for workers' welfare has prompted some academics and others to propose a new, third, category of "independent worker" who would enjoy some, but not all, of the protections generally associated with employee status. Independent workers might, for example, have the right to organize and collectively bargain; they would be protected against workplace discrimination, be covered under workers' compensation insurance, and pay Social Security taxes. But they might not get benefits based on hours of service—such as unemployment insurance, minimum wage, and overtime—because of the practical difficulty of measuring their hours. From a different angle, President Trump has proposed slashing the income tax rate for independent contractors to 15%—which would benefit them economically and encourage more workers to pursue freelance work.

The Obama Labor Department was assessing the implications of the gig economy for workers and society—and considering what regulatory steps might need to be taken. For its part, ASA has and will continue to be actively engaged in discussions regarding the future of work and any regulatory implications. At press time, it remained unclear what Secretary Puzder's view will be on the need for new rules. Based on his past policy positions, it's likely that he'll continue to enforce existing laws and view new regulatory proposals with skepticism—which would allow entrepreneurs, including those in the gig economy, freedom to innovate and create work arrangements that best suit the needs of workers and consumers.

A Look at Other Federal Agencies

Other federal agencies also significantly affect employers. Here's a look at the key agencies whose decisions and policies have historically had a major impact on staffing firms.

U.S. Occupational Safety and Health Administration. OSHA was created by the Occupational Safety and Health Act of 1970 as part of the Labor Department to assure safe and healthful working conditions for workers. OSHA sets and enforces standards and provides training, outreach, and education. The administrator of OSHA is an assistant secretary of Labor appointed by and responsible to the Labor secretary. The OSH Act covers most private-sector employers and their workers, in addition to some public-sector employers and workers in the 50 states and certain territories and jurisdictions under federal authority.

Worker health and safety is a top ASA priority. The association worked closely with OSHA leadership throughout the Obama administration, including personally with the administrator, to address issues of concern. ASA signed a formal alliance with the agency in 2014 and launched a new safety certification program with the National Safety Council in 2016. ASA recently signed a five-year extension of its alliance with OSHA, and will continue to work closely with the agency under the Trump administration.

The new OSHA administrator had not been named as of this writing, and it remains to be seen to what extent the agency will continue the temporary worker initiative started under the Obama administration. ASA supported the initiative, which featured stepped-up enforcement and education, including a series of safety bulletins specific to the staffing industry (see *osha.gov/temp_workers*). Staffing companies have used the bulletins to help educate their internal employees and clients regarding workplace safety.

On the enforcement side, ASA continues to hear member complaints of sometimes heavy-handed or overzealous enforcement activities by local OSHA officials. To address this, ASA will continue efforts to educate agency officials at every level—including the new administrator—regarding the practical and operational realities that limit staffing firms' ability to monitor and control conditions at the work site.

National Labor Relations Board. Established in 1933 under the National Labor Relations Act, the NLRB's mission is to safeguard employees' right to organize and determine whether unions can represent them in collective bargaining. The agency also has authority to prevent and remedy unfair labor practices committed by private-sector employers

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ASA continues to hear member complaints of sometimes **heavy-handed or overzealous enforcement activities by local OSHA officials.** To address this, ASA will continue efforts to educate agency officials at every level—including the new administrator—regarding the **practical and operational realities that limit staffing firms' ability to monitor and control conditions** at the work site.

and unions. An independent agency, the board consists of five members, appointed by the president, with the advice and consent of the Senate. Board members are appointed to five-year terms, except that individuals chosen to fill a vacancy are appointed only for the unexpired term of the previous member. By tradition, the board is made up of two Democrats, two Republicans, and a fifth member who belongs to the president's party.

The board has quasi-judicial functions but, unlike the courts, often has little regard for precedent with board rulings being made and unmade based on which party is in the White House. A prime example is the board's 2000 ruling in the *M.B. Sturgis* case, handed down in the waning days of the Clinton administration, that allowed temporary workers to be included in clients' bargaining units without the staffing firm's or client's consent. The decision was reversed during the administration of George W. Bush, only to be reinstated by the board under President Obama in the recent *Miller & Anderson* case. If an appropriate case presents itself, the board under President Trump could change course again—although it must be said that the *Sturgis* and *Miller & Anderson* cases have had no discernible impact on the staffing industry given the small percentage of temporary employees assigned to clients with collective bargaining arrangements, the ongoing decline of private-sector union membership (currently about 6.7%), and the generally low interest of temporary workers in joining unions.

Far more consequential was the board's 2015 decision in the *Browning-Ferris* case that expanded the definition of joint employment. For over 30 years, the board had held that joint employer status could be found only when each employer directly affected matters relating to the employment relationship, such as hiring, firing, discipline, supervision, and direction. But in *Browning-Ferris,* the board ruled that clients could be held jointly liable even if their control over such matters was only indirect.

The proposed Protecting Local Business Opportunity Act would effectively reverse the *Browning-Ferris* decision by amending the National Labor Relations Act to provide that joint employment can exist only if the employers' control over essential terms and conditions of employment is "actual, direct, and immediate." Enactment of this legislation, which may be reintroduced this year, would provide immediate relief to employers exposed to liability under the *Browning-Ferris* standard—which otherwise would remain the law until new board members are confirmed and an appropriate case comes up that provides an opportunity to reverse the decision. Enactment is, of course, not certain because of procedural obstacles; and Republicans' narrow majority in the Senate (52-48) means any legislation would need substantial Democratic support to overcome a filibuster.

At press time, President Trump had not yet announced his nominees to the NLRB, which will give Republicans a 3-2 majority (ASA recently joined other businesses and trade associations in urging him to make his appointments as quickly as possible). In addition to possibly reversing *Browning-Ferris* (unless Congress acts first) and *Miller & Anderson,* the new board is unlikely to pursue the aggressive pro-union agenda of its predecessor. After Congress failed in 2010 to pass the so-called Employee Free Choice Act, the board moved aggressively to try to implement key features of the legislation through regulations and board decisions. The goal of the EFCA was to grant unions more power to organize workers—by requiring employers to post notices advising employees of their right to organize, for example, and by speeding up the union election process to prevent employers from mounting an effective challenge (the so-called "ambush election" rules). President Obama's Department of Labor aided the effort to strengthen unions by issuing so-called "persuader" rules—designed to impede employers' ability to seek the advice of counsel during union election campaigns.

Many of the NLRB's initiatives were so clearly beyond the scope of its authority that the courts have had little difficulty striking them down. The board under President Trump is unlikely to pursue such a course and is more likely to approve employers' use of employee arbitration agreements, which could substantially mitigate the cost of resolving labor disputes.

U.S. Equal Employment Opportunity Commission. The EEOC, like the NLRB, is an independent federal agency made up of five members appointed by the president with the advice and consent of the Senate. Created by the Civil Rights Act of 1964, the commission was established to enforce Title VII of the Act. Today its mission includes enforcement of federal laws prohibiting discrimination in employment based on race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information.

In carrying out its responsibilities, the EEOC has been criticized for treating employers in an unfair and high-handed manner. The U.S. Chamber of Commerce, in a 2012 memo entitled "Egregious Enforcement Actions: The Final Frontier," described "out-of-control" regulatory agencies whose officers

engaged in abusive and unprofessional behavior, made burdensome demands for information, deliberately delayed the resolution of issues, and made frivolous allegations. The EEOC has unfortunately been among those agencies, and the courts have frequently criticized and even levied fines against the agency for misconduct.

As far as the agency's potential effect on the staffing industry, a 2017–2021 enforcement plan published by the EEOC focuses on "complex employment relationships and structures in the 21st century workplace"…[including] "temporary workers, staffing agencies, independent contractor relationships, and the on-demand economy." Those relationships were a top priority of the Obama administration, exemplified by the Labor Department's targeting of so-called "fissured" work arrangements. Those issues may not, however, be a top priority of the new EEOC.

A hopeful sign for employers is that Victoria Lipnic, a Republican member of the commission, is reportedly being considered as the new chair. Lipnic, who has spoken at the ASA Staffing Law Conference, is a management-side lawyer with private-sector experience who could be expected to bring a more sensible and balanced perspective to the enforcement of the EEO laws and regulations. For example, she has been highly critical of overly-aggressive enforcement tactics employed by the agency's regional offices. She voted against the proposal to require employer pay data to be reported on the EEO-1 form, saying that the proposal "should be relegated to the heap of bad policy ideas once and for all." That viewpoint could auger well for how the new EEOC will conduct its business. One potential change could be to relax the agency's guidance on the use of criminal background checks in the hiring process.

What's Next for the ACA

Almost seven years after Congress passed the ACA, and after an unprecedented effort by ASA to help staffing companies navigate the law's complexities and mitigate its burdens, we are at the threshold of a new and uncertain phase in the decades-long debate over the future of the nation's health care system and the government's role in it.

President Trump vowed to repeal and replace the ACA in the first 100 days of his administration. But that timetable seems doubtful. House and Senate Republicans also have made repeal and replace a top priority in the new Congress. But the first step is expected to be the repeal of major budgetary provisions of the law, including the employer mandate, using reconciliation procedures that require only 51 votes to pass in the Senate. The period between repeal and replacement was never precisely specified but most assumed that a reasonable transition period, perhaps through 2018, would be needed to come up with a viable alternative and to avoid hurting people currently covered under ACA plans, especially those getting subsidies—and to give insurance companies time to adjust for the changes. As we went to press, President Trump, along with some Senate Republicans, were calling for a much shorter period between repeal and replacement to reassure insurance markets and the public that Republicans have a credible alternative. Here are some of the proposals that are likely to be on the table for discussion and debate.

Slated for repeal. Congress likely will use as a starting point last year's reconciliation package, which passed the House and Senate but was vetoed by President Obama. Among other things, it eliminated the penalties under the individual mandate and employer mandate (it's possible that the individual mandate may not be repealed in this year's reconciliation bill because of concerns that it would cause ACA enrollment to decline, resulting in further insurance company losses). Last year's bill also repealed the tax on medical devices, as well as the so-called Cadillac tax on high-cost employer health plans—although this time repeal of the latter may be deferred to a later stage in the process. It provided for a shutdown of the Obamacare exchanges and an end to the current ACA tax subsidies by 2018; it also stopped the collection of user fees that helped defray health carriers' underwriting losses and repealed the health insurance tax. Additional provisions could be added (for example, repeal of the ACA's benefits mandates). It is uncertain when a vote will be held on a reconciliation bill, but current speculation is that this will occur before the end of the first quarter.

Replacement proposals. Major replacement proposals include eliminating the ACA's age rating, benefits mandates, and actuarial value limitations—which many argue have driven up health insurance costs and deprived individuals of the right to choose a health plan that best meets their needs. Other proposals include expanding so-called consumer-directed health care options such as health savings accounts; expanding opportunities for individuals and associations to form insurance pools; supporting insurance portability through advanceable, refundable tax credits to allow individuals and families to buy coverage regardless of employment status; allowing purchase of coverage across state lines; and establishing high-risk insurance pools to protect

individuals without coverage from catastrophic health costs. Past efforts to establish high-risk pools at the state level have been largely unsuccessful due to inadequate funding. There will be much debate regarding which of these ideas should be adopted and when they should be made effective.

Insurance reforms likely to survive. There appears to be consensus that individuals with pre-existing conditions should continue to be protected, but with rules to reduce gaming the system (e.g., by requiring individuals to maintain coverage). Such a requirement existed before the ACA became law. The Health Insurance Portability and Accountability Act protected individuals with pre-existing conditions, but they had to maintain their coverage to be fully protected. Another popular insurance reform provision—allowing children up to age 26 to remain on their parents' health plan—also is likely to survive.

The timing of the changes is crucial for the insurance industry: 2017 health plans are already set, and the 2017 annual enrollment period is under way as the new Congress and administration take office. At the same time, insurers will be preparing their 2018 plan offerings, which must be finalized by May 2017. America's Health Insurance Plans, the insurance industry trade group, says it doesn't plan to fight repeal efforts. But because many insurers have either gone out of business or have exited the Obamacare exchanges due to steep revenue losses, the industry may demand a commitment from lawmakers to continue subsidizing some of the costs of insuring low-income people. AHIP says the industry needs a transition period of at least three years to allow carriers to prepare for the changes.

Enforcement of employer mandate and reporting requirements. While the repeal and replace process unfolds, the legal status of the existing ACA regulations remains something of a mystery. If Congress eliminates the employer penalties, for example, it would effectively negate the government's ability to enforce the ACA's employer shared responsibility (i.e., "play or pay") provisions. Some have speculated that, even if the employer penalties are eliminated, full-time employees might be able to bring a private right of legal action against their employer to compel an offer of coverage. That seems unlikely, however, since the ACA technically does not require employers to offer coverage, giving them the option to pay penalties instead. More important, the ACA's employer responsibility provisions are part of the U.S. tax code, which does not provide for private rights of action. Such a right could have been conferred under the Employer Retirement Income Security Act, but the ACA's employer provisions were never incorporated into Erisa. Zeroing out the employer penalties thus would appear to provide no way for either the government or individuals to compel employers to offer coverage or pay damages for failing to do so.

The employer reporting requirement is another matter, however. The budget reconciliation bill passed by Congress last year did not repeal the reporting requirement, presumably because tax subsidies are expected to continue during any transition period and the U.S. Internal Revenue Service will need employer health insurance information reports (Forms 1095-C and 1094-C) to verify whether employees are eligible for subsidies. Under current law, employees are not eligible for subsidies if the employee is enrolled in an employer-sponsored minimum essential coverage (MEC) plan—or is offered a MEC plan that is both affordable and provides minimum actuarial value. If employers are required to continue filing annual reports during any congressionally prescribed transition period, filing-related penalties also may continue to be assessed—although the new administration could elect not to enforce the penalties. In any case, it appears that Congress will, at some point, be required to come up with a substitute reporting system to help verify eligibility for whatever new tax credits may be enacted to replace the current subsidies.

Court Appointment and Decisions

A president has sweeping executive powers. Other than sending armies into battle, perhaps none has greater potential to affect people's lives than the power to appoint federal judges, including justices of the U.S. Supreme Court.

As of Nov. 1, 2016, 329 federal judges nominated by President Obama had been confirmed by the Senate. Included were two Supreme Court justices (Sonia Sotomayor and Elena Kagan), 55 judges of the U.S. Court of Appeals, and 268 U.S. district court judges—more than a third of the entire federal judiciary. Among the more significant appointments were the four judges appointed to the U.S. Court of Appeals for the District of Columbia Circuit, which shifted the ideological balance of the court from three Democrats and six Republicans, to seven Democrats and four Republicans. This has major implications because the D.C. Circuit handles the most important cases involving the authority of government agencies to issue rules interpreting federal statutes, generally giving great deference to those interpretations. Because federal judges have life tenure, their influence can survive long after the president that appointed them has left office.

President Trump will have more than 100 federal

judicial vacancies to fill, almost twice as many as President Obama had when he came into office. In addition to filling the late Justice Antonin Scalia's seat, Trump could have an opportunity to appoint as many as two or three Supreme Court justices during his first term. Depending on which seats become vacant, this could shift the balance in favor of conservative justices who might be more inclined to issue pro-business rulings. That could affect the outcome in at least two major cases that could come before the court, with significant implications for labor unions and employers.

Public-sector unions and mandatory union fees. Following Justice Scalia's death, the Supreme Court divided 4-4 in a lawsuit brought by California school employees challenging the right of the teacher's union to charge "agency fees" from employees who don't join the union. The employees argued that compelling such fees violated their First Amendment right to free speech. The effect of the tie vote was to leave in place a 1977 Supreme Court decision upholding the right of unions to charge such fees to cover the costs of collective bargaining provided they are not used to support union political activities. Many court observers predict that the Supreme Court will take up the issue again under President Trump and will overrule that earlier decision—which could result in a significant decrease in public union membership and a decline in the unions' political influence.

Arbitration agreements and class action waivers. An issue that will be decided by the high court is whether arbitration agreements requiring employees to waive their ability to pursue class actions violate the National Labor Relations Act. The NLRB has struck down such agreements, arguing that they infringe workers' right to engage in concerted activities. Federal appeals courts were split on the issue, and the Supreme Court recently agreed to take it up. ASA and other business groups will file briefs urging the court to uphold the waivers—and most observers believe that, with Justice Scalia's successor in place, the court is likely to do so.

State Level: Issues, Potential Changes

Given the resounding Republican wins at the national level, to promote their agenda organized labor and its political allies almost certainly will concentrate even more of their resources at the state and local government level. But those opportunities, too, have narrowed.

Republicans have been gaining ground at the state level in every election since President Obama took office in 2009. The 2016 elections continued the trend. The nonpartisan National Conference of State Legislatures reports that Republicans added five state House chambers and two state Senate chambers and now will control a record 67 (or about 68%) of the 98 bicameral state legislatures (Nebraska has a nonpartisan unicameral legislature)—more than twice the number of legislatures (31) with Democratic majorities. Republicans will control both legislative chambers in 32 states, an all-time high, while Democrats will control both chambers in just 13 (the other states have split control). Republicans will now control both legislative chambers and the state house—a political trifecta—in 24 states compared to just six for the Democrats. And Republican governors now outnumber Democrats by 33 to 16 (Alaska's governor is an independent) compared to 28 Democrats and 22 Republicans when President Obama took office.

Why Democrats have sustained these reversals is the subject of much debate. However, few would dispute that Democratic policymakers, often with the best of intentions, have consistently promoted increases in employer regulations that have made it harder to do business. And because those regulations often impose unique operating burdens on staffing firms, to mitigate the impact ASA has had to devote a significantly larger share of its advocacy resources in states controlled by Democrats.

Here is a summary of the states where the ASA legal team has seen the greatest regulatory activity, the key issues the industry faces in those jurisdictions, and the steps ASA is taking to address them.

Key regulatory states. As part of a multiyear strategic planning initiative, ASA has created a special public advocacy taskforce. A major goal is to increase the effectiveness of the association's state and local lobbying activities. The initial focus of the taskforce is to develop special "rapid response" teams in jurisdictions that historically have accounted for a disproportionate amount of regulatory activity aimed at employers, often specifically at staffing companies.

There will be teams in several cities in California as well as statewide teams in Illinois, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington. The teams will provide ASA with an early warning capability, allowing the association to respond to regulatory proposals before they are formally introduced. Team members also will be encouraged to develop grassroots relationships with key policy makers in their states and districts and lobby them as necessary to advocate the industry's position on issues. Special teams may be established in other states as warranted. >>>

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In addition to these rapid response teams in selected states, ASA will continue to work with its regional councils and affiliated chapters throughout the country to address issues wherever they may arise. To the same end, ASA is expanding its outreach to local business coalitions, chambers of commerce, state think tanks, and other organizations with which the association has common interests—including many of the same players it worked with so effectively on ACA issues, such as the restaurant, retail, and franchise associations. And because many of the state issues of concern are now being proposed at the municipal level, ASA is investing in a new monitoring system that will allow it to track regulatory proposals in major cities throughout the country.

Key state issues. The staffing industry faces myriad regulatory issues at the state and local levels that pose unique compliance challenges for staffing companies. Some of the most common include mandated employee benefits, including paid sick and parental leave; so-called right-to-know rules requiring notice of pay rates and other job information at the time of hire and, in some cases, each time the job duties change; "predictive scheduling" rules requiring employees to be notified, sometimes weeks in advance, of changes in their hours; "right of first refusal" laws requiring employers to give existing employees the option to work extra hours before bringing in temporary help; rules barring employers from asking about prior salary history; and "ban-the-box" laws barring employers from asking candidates criminal background questions until a job offer is made.

Other issues uniquely affecting the staffing industry include sales taxes on staffing services, and efforts to repeal state rules requiring employees whose assignments end to call in for new assignments as a condition of unemployment insurance eligibility.

Given the roadblocks pro-labor advocates will face in getting their agenda through at the national level, the ASA legal team expects they will redouble their efforts to promote the kinds of regulations described above at the state and local levels. This makes it more critical than ever for ASA members to be alert to those issues in their states and cities, to promptly advise ASA when they arise, and to help the association engage on those issues on behalf of the staffing industry. ■

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