

President Trump's Proposed Budget Signals Big Changes

06.06.2017

President Trump's recently released proposed budget for Fiscal Year 2018 (October 1, 2017 - September 30, 2018), titled "A New Foundation for American Greatness," includes numerous points of interest for employers, including proposals to: cut the Department of Labor's ("DOL") budget; slash the budget and workforce of the National Labor Relations Board ("NLRB"); reduce the budget of the Office of Federal Contractor Compliance Program ("OFCCP") and merge it with the Equal Employment Opportunity Commission ("EEOC"); implement mandatory E-Verify for all employers; and establish a federal paid family leave program.

Although only a "proposed" budget (it must still be approved by Congress and will almost certainly be extensively negotiated and revised along the way), the President's budget signals the position of his administration on multiple issues affecting the workplace. Offered below is a summary of some of the notable provisions and the potential importance for employers.

Funding Reductions

The President's proposed budget reduces federal funding of:

- The DOL by 21% (from \$12.1 billion to \$9.6 billion), with the cuts mostly taking the form of reduction or outright elimination of worker training programs, including the Migrant and Seasonal Farmworker Training and the Senior Community Service Employment Program.

PRACTICE AREAS

Employee Benefits and ERISA
Employment and Labor
Immigration

President Trump's Proposed Budget Signals Big Changes

- The NLRB by 6% (from \$274 million to \$258 million) and reduces the agency's staff by 275 full-time equivalent employees, despite predictions that the agency's caseload will increase during FY 2018.
- The OFCCP by \$17.2 million and reduces the agency's staff by 131 full-time employees.

One possible effect of the reduced budgetary authority of these federal agencies may be that such agencies begin cherry-picking headline-grabbing enforcement actions due to the agencies' decreased inspection and investigatory capacity. Thus, despite these proposed cuts, employers must remain vigilant in ensuring compliance with local, state, and federal workplace laws and regulations in order to catch smaller compliance issues before they grow into worthwhile enforcement targets.

EEOC - OFCCP Merger

In conjunction with the reduction to the OFCCP's funding mentioned above, the President's budget proposes that the OFCCP be "absorbed" by the EEOC with the goal of creating "one agency to combat employment discrimination." The OFCCP enforces Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act, which require that certain employers contracting with the federal government engage in affirmative action and refrain from discrimination based on various protected characteristics (e.g., veteran status, sex, disability, sexual orientation, gender identity). The EEOC enforces various anti-discrimination laws that apply to employers with certain minimum numbers of employees, including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. According to the proposed budget, the two agencies are expected to "work collaboratively" on carrying out the merger, which would take effect at the end of FY 2018.

However, the proposed merger has faced resistance from lawmakers who note that, although President Trump may partly effectuate the merger through executive order (i.e., by amending Executive Order 11246), Congressional action will be required to grant the EEOC the enforcement authority for Section 503 of the Rehabilitation Act and the VEVRAA currently held by the OFCCP. In addition, many employer groups oppose the merger due to the potential for abuse with so much power vested in one agency.

Immigration / E-Verify and Paid Family Leave Mandates

The budget increases funding for immigration enforcement, including hiring 1,000 Immigration and Customs Enforcement agents and 500 Border Patrol agents in 2018, and allocates \$15 million from the Department of Homeland Security budget to be used to implement mandatory E-Verify (the system organizations use to determine the employment eligibility of workers in the United States). It is important to note, however, that mandating E-Verify for all employers would require legislation from Congress.

President Trump's Proposed Budget Signals Big Changes

In keeping with his daughter Ivanka's well-publicized advocacy for paid family leave, President Trump's budget proposes six weeks of paid leave for fathers and mothers, effective in 2020 and funded for 10 years through state unemployment insurance programs. Supporters of the proposal applaud the President's effort to bring the United States in line with most other advanced countries in the world. However, opponents have noted that since the program would be funded through state unemployment insurance programs that may not have recovered from the 2008 recession, employers will likely be faced with additional taxes as states seek to offset funding shortages. In addition, the exact details of the President's paid leave program will have to be worked out with a Republican dominated Congress that has historically been hesitant to impose additional requirements on employers, making imminent action unlikely.

In spite of the lack of momentum at the federal level, in recent years an increasing number of private companies have implemented paid family leave policies on their own initiative, and numerous states and municipalities have passed laws requiring such leave (and many more such bills have been introduced into state legislatures). In fact, although no bill was ultimately passed, Nebraska's unicameral wrestled with the issue in its most recent legislative session. The bill, LB 305, introduced by Bellevue Senator Sue Crawford, was held over and will likely be addressed in some fashion during the 2018 legislative session. In its current form, LB 305 would require businesses to provide Nebraska employees with between 6 and 12 weeks of paid family medical leave to, among other things, care for a new child after birth, adoption, or foster care placement, or to care for a family member with a serious health condition.

What's Next?

Koley Jessen's Employment, Labor and Benefits attorneys will be closely monitoring the impact of the President's proposed budget and will publish updates as needed. In the meantime, please do not hesitate to reach out to any member of our team to discuss these and other issues affecting your business.