

Welcome to **HRLCS 2021!**



HR LEADERS COMPLIANCE SUMMIT

February 9, 2021 | *Day #1*



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COMPLIANCE SUMMIT

We are thrilled to have you attending this year's
HR Leaders Compliance Summit!

HRLCS 2021 is an expanded virtualization of a longstanding on-site gathering of **Acrisure Agency Partner** offices and the transformational **HR professionals** they support.

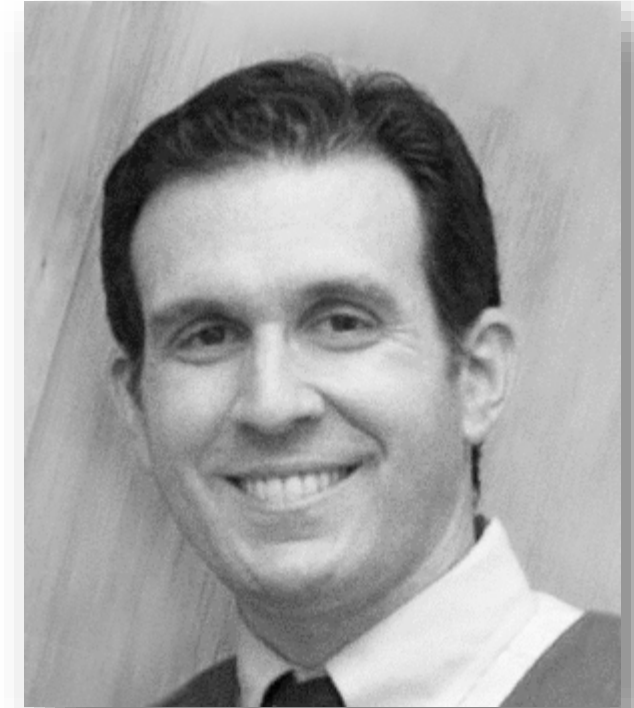
"MC" & Featured Speaker

Jeremy Hertz, JD, SPHR, SHRM-SCP

Acrisure Compliance Solutions

- Sr. Deputy General Counsel
- Director of HR Consulting

Jeremy's main focus is to consult with Acrisure Agency Partners and their clients on employee benefits and Human Resources-related matters including the Affordable Care Act, FMLA and other forms of employee leave, ADA, COBRA, Wage and Hour, and all forms of discrimination, harassment and retaliation issues. He also trains client and industry groups, and actively participates in the marketing and sales process to prospective clients.



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Others You Will Hear From Today



Michelle Montoya

Welcome & Introduction

Acrisure Agency Partner



Deborah Hyde

Featured Speaker

Acrisure Compliance
Solutions



Annie Duke

Keynote Speaker

Decision Strategist &
Bestselling Author



Dawn Alvarez

Keynote Moderator

Acrisure Agency Partner



Brad Urhausen

Event Production

Acrisure Employee Benefits



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**Sophisticated resources for
today's complex environment**



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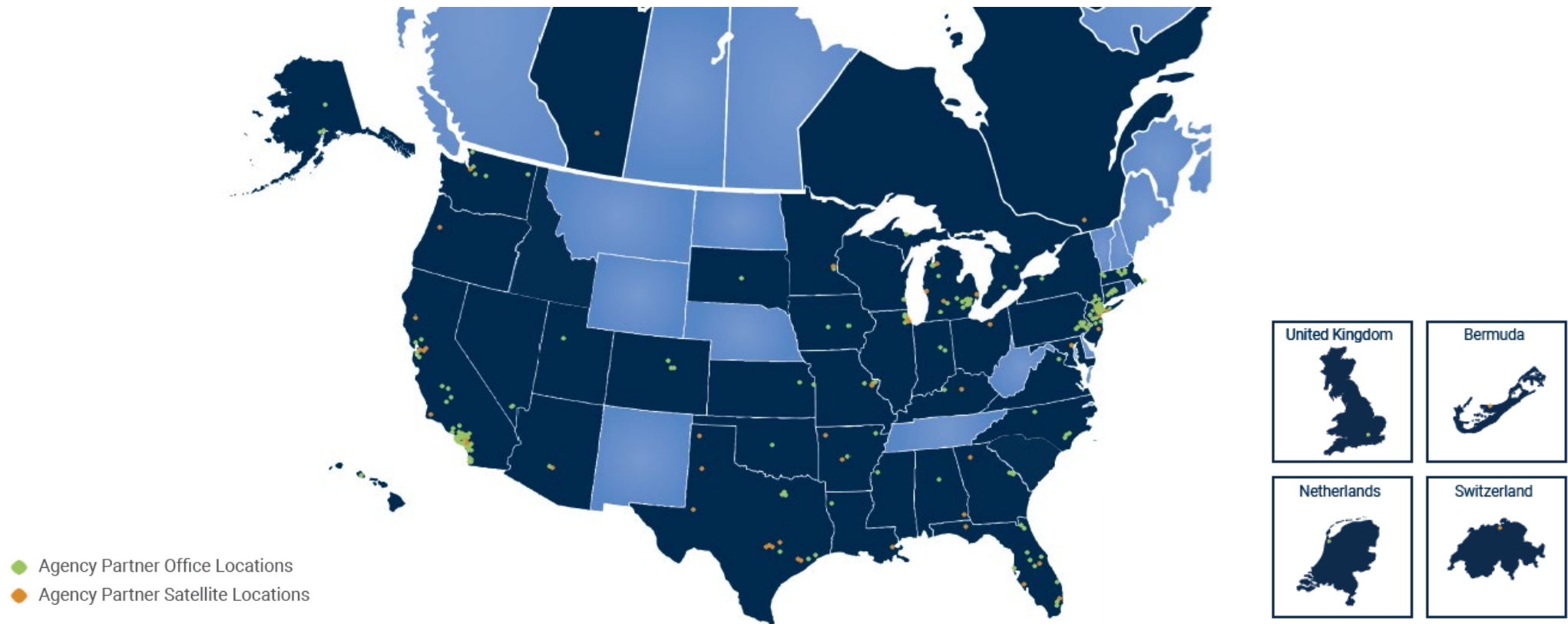
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February 9, 2021

General sessions for all attendees*

(Please note that all times are PST)

7:45am – 8:00am

Virtual Lobby
Sponsor Showcase

8:00am – 9:20am

Welcome &
Introduction

General Session
Compliance Under
the New Presidential
Administration

9:20am – 9:30am

Coffee Break
Sponsor Showcase

9:30am – 10:45am

Keynote Speaker
Annie Duke:
Leading During
Times of Change
And Uncertainty

*Pre-approved by SHRM/HRCI for 2-hours of continuing education credit each day!

General Session

The New Presidential Administration's Goals and Priorities
Related to Issues Impacting Human Resources

Presented by Jeremy Hertz & Deborah Hyde



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February 9, 2021



Disclaimer:

The information in this presentation is intended for informational purposes only and should not be considered legal advice. You are strongly encouraged to consult your own legal counsel to ensure compliance with applicable law in your specific state, municipality or jurisdiction.



Agenda

Political Backdrop

Compensation

Labor / Unions

Workplace Safety

Healthcare and Employee Benefits

Political Backdrop

Biden Administration Objectives

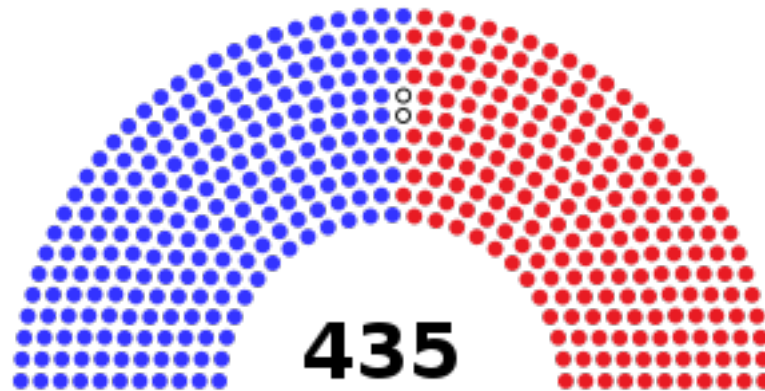
- President Biden's platform ran on three clear objectives:
 - (1) "check the abuse of corporate power over labor" and hold corporate executives "personally accountable for violations of labor laws"; and
 - (2) "encourage and incentivize unionization and collective bargaining"; and
 - (3) ensure that workers "are treated with dignity and receive the pay, benefits, and workplace protections they deserve."
- Several ways to accomplish these goals:
 - Executive Order
 - Regulatory rulemaking
 - Legislation
- Senate runoffs in GA won by Democrats had a significant impact on Biden's ability to push his agenda forward.



Political Backdrop

House of Representatives

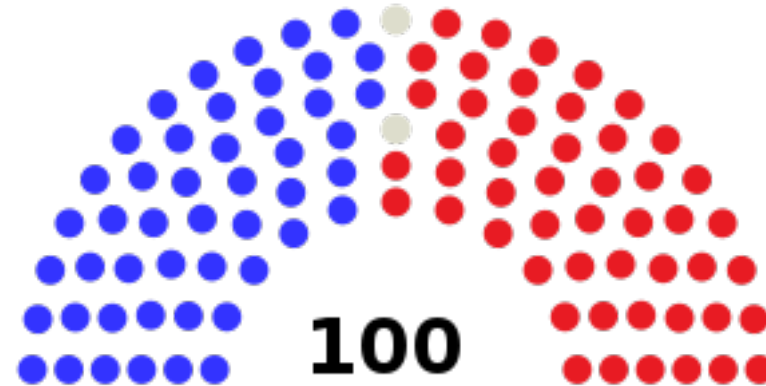
- 435 members of the House of Representatives (new term began on 1/3/21).
- Current makeup is 222 Democrats and 211 Republicans, giving the Democrats a simple majority (LA 5th District Luke Letlow died; NY 22nd District election is disputed).
- To pass legislation in the House only a simple majority is needed.
- Nancy Pelosi is the Majority Leader.



Political Backdrop

The Senate

- 100 members of the Senate.
- Republicans and Democrats each hold 50 seats (2 independents caucus with the Democrats).
- Vice President Kamala Harris is the tiebreaking vote so technically the Democrats control.
- Democrats do not have enough votes to overcome a filibuster (60 vote supermajority) and invoke cloture (force a vote).
- Could allow the Republicans to filibuster allowing time to run on bringing the bill to a vote.



Political Backdrop

The Senate

- Democrats may consider changing the Senate filibuster rules to remove the supermajority rule and change it to a simple majority like the House.
- The Senate supermajority rule is likely the only thing standing between President Biden and passing his entire legislative agenda.
- Senate Majority Leader Chuck Schumer from New York would be the architect of that change.
- He is up for reelection in 2022 so pressure will be significant from Democrats to make the change or face a lack of support during the primaries during his reelection bid.
- There is precedent for supermajority voting changes from both parties when it suits them:
 - a) 2013 Democrats eliminated the filibuster for votes involving presidential nominees other than the Supreme Court*
 - b) 2017 Republicans eliminated the filibuster for votes on nominees to the Supreme Court*
- Joe Manchin III and Kyrsten Sinema have said they won't support to remove filibuster.
- Power-sharing agreement.
- Reconciliation also an option.



Political Backdrop

Equal Employment Opportunity Commission

- The EEOC is an independent agency where the members serve staggered terms (5 years) that may infringe on a new administration's term regardless of political affiliation.
- The EEOC has a full quorum right now with a 3-2 Republican majority until June 2022.
 - a) Jocelyn Samuels (D) (term expires on 7/1/21)
 - b) Janet Dhillon (R) (current chair term expires on 7/1/22)
 - c) Charlotte Burrows (D) (term expires on 7/1/23)
 - d) Keith Sonderling (R) (term expires on 7/1/24)
 - e) Andrea Lucas (R) (term expires on 7/1/25)
- EEOC cannot flip to Democratic control until Dhillon is gone on 7/1/22.
- Further, the EEOC's General Counsel, currently Sharon Fast Gustafson (R), is responsible for managing the EEOC's litigation/enforcement efforts.
- Her term doesn't expire until 2023 – interesting dichotomy when a Democrat takes Dhillon's position as chair in 2022.



Political Backdrop

National Labor Relations Board

- The NLRB is an independent agency where the members serve staggered terms (5 years) that may infringe on a new administration's term regardless of political affiliation.
- The NLRB has one vacancy with a 3-1 Republican majority until September 2021.
 - a) William Emanuel (R) (term expires on 8/27/21)
 - b) John Ring (R) (current chair term expires on 12/16/22)
 - c) Lauren McFerran (D) (term expires on 12/16/24)
 - d) Marvin Kaplan (R) (term expires on 8/27/25)
- Filling the vacant seat would still leave a Republican majority.
- Further, the NLRB's General Counsel, currently Peter Robb (R), is responsible for managing the NLRB's litigation/enforcement efforts.
- His term expires in November 2021.



Political Backdrop

Department of Labor

- The DOL is an executive branch agency led by a Cabinet-level secretary nominated by the President and confirmed by the Senate which does not infringe on a new administration's term.
- Now that the Democrats control the Senate the confirmation should be simple due to the removal of the supermajority requirement in 2013.
- President Biden nominated Marty Walsh to be his Labor Secretary.
- DOL's Wage and Hour Administrator also must be nominated but should face the same smooth path to confirmation and the Office of Federal Contract and Compliance Programs (OFCCP) Director must simply be appointed.



Political Backdrop

Likely Areas of Compliance Impact

- Focus with a Democratic administration is usually much more employee-centric than with a Republican administration.
- Controlling the White House, Senate and House of Representatives will provide the opportunity for significant change.
- Compensation will be front and center (overtime, IC, equal pay, minimum wage, etc.)
- Enforcement for violations will be increased significantly.
- Union support will increase significantly at the federal level (employers with unions need to be prepared for pro-union trends but non-union employers should be vigilant regarding potential organizing).
- Workplace safety will be highlighted in the near term due to COVID-19 with a long-term view that focuses on worker's rights.
- Immigration policies will be loosened to allow for greater utilization of an international skilled workforce in America.
- Healthcare and employee benefits will follow a path similar to President Obama's policies.
- Create internal "czars" within your organization to oversee these areas.



Poll question!

Did your organization have to adjust employee pay to comply with the most recent salary basis changes that became effective on January 1, 2020?



Compensation

- Increase salary basis for white collar exemptions
- Target worker misclassification (overtime and independent contractors)
- Establish a federal \$15 minimum wage
- Paid FMLA and Earned Sick Leave
- Reinstate EEO-1 pay data collection



Compensation

Increase Salary Basis for White Collar Exemptions

- Near the end of President Obama's administration, the DOL issued a rule increasing the salary threshold for most white-collar exemptions from \$23,660 (\$455 per week) to \$47,476 (\$913 per week).
- Effective Jan. 1, 2020, the new salary threshold for white-collar exemptions was increased to \$684 per week, which is the equivalent of \$35,568 per year for a full-time employee.
- Biden Administration may attempt to increase the threshold (\$60k?).

Employer action item: Here we go again...Employers should be prepared for a potential increase to the original number of \$47,476 and as high as \$60k. There will certainly be notice and likely wouldn't happen during COVID-19 because it will financially impact employer's payroll negatively.



Compensation

Target Worker Misclassification (Overtime and Independent Contractors)

- In “[The Biden Plan for Strengthening Worker Organizing, Collective Bargaining, and Unions](#),” President Biden pledged to “enact legislation that makes worker misclassification a substantive violation of law under all federal labor, employment, and tax laws with additional penalties beyond those imposed for other violations.” He also pledged to “fund a dramatic increase in the number of investigators in labor and employment enforcement agencies to facilitate a large anti-misclassification effort”.
- He will likely model his approach after California’s controversial independent contractor statute known as [AB 5](#), which established an onerous “[ABC” test](#) that must be satisfied for workers in most industries to be classified as independent contractors.

Compensation

Target Worker Misclassification (Overtime and Independent Contractors)

- The “ABC” test is as follows:
 - A. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
 - B. The person performs work that is outside the usual course of the hiring entity’s business.
 - C. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.
- Workers will be considered employees unless proven otherwise.
- A regulatory freeze regarding the IC rule that was set to be effectuated on March 8 was already implemented by the Biden administration.

Employer action item: *Employers should be prepared for something similar to AB-5 at some point during the Biden presidency. This will supplement President Biden’s support for unions as ICs are unable to organize because they are not employees. AB-5 has numerous exemptions to specific industry sectors which may provide some relief if a federal standard is similarly modeled. Employers that utilize ICs should proactively assess potential impact of a federal standard modeled after AB-5.*



Compensation

Establish a \$15 Minimum Wage

- The last time the federal minimum wage was increased was more than 11 years ago – in July 2009 – when it was increased from \$6.55 per hour to \$7.25.
- This is the longest Congress has ever gone without increasing the minimum wage.
- With more and more states and local governments increasing their minimum wages to \$15.00 per hour or more, a push to increase the minimum wage seems likely from the new administration at some point in the next four years.
- Not a Democratic consensus because \$15 in New York is not the same as \$15 in Montana; argument for regionalization.

Employer action item: Again, timing of an immediate change that would negatively affect employer payrolls during COVID-19 likely will not occur although it is likely that it will happen during President Biden's first term. As those discussions increase, employers should analyze payroll impact proactively. Increasing the minimum wage also impacts overtime pay so employers should make sure that is factored into the analysis. Also make sure that employees are classified properly because damages will increase.



Compensation

Paid FMLA and Earned Sick Leave

- COVID-19 shone a spotlight on the importance of paid leave for all workers and has allowed the possibility of a paid federal statute to increase dramatically.
- Many states have started to enact Paid Leave statutes already and the FFCRA Emergency FMLA and Paid Sick Leave statute was the first foray into paid leave at the federal level.
- Several Fortune 500 companies voiced strong support for a federal paid leave law through the Business Roundtable and the U.S. Chamber of Commerce.

Employer action item: Paid leave at the federal level is a likelihood, especially with the impact of COVID-19 and the support of prominent members of the business community. The only hold-up may be timing due to economic business conditions created by COVID-19. FFCRA offered tax credits to offset the expenses of paid leave for financially strapped employers; a permanent paid leave statute likely would simply be a cost.

Compensation

Reinstate EEO-1 Pay Data Collection

- On Jan. 29, 2016, Former President Obama announced the EEOC's proposed revision of the EEO-1 Report, which added a component (Component 2) requiring disclosure of W-2 compensation and hours worked data by nine-pay bands in the report's seven race/ethnicity categories and ten job categories.
- Employer concerns centered around the administrative burdens of collecting the data, privacy concerns with disclosure of the data and how the data could be misused.
- After litigation and other hurdles, in July 2020, the [EEOC announced](#) that it intended to fund a study with the National Academies of Sciences, Engineering, and Medicine's Committee on National Statistics (NAS) to conduct an assessment of the "quality and utility" of the Component 2 data.
- Although the agency rejected the recommendations of a previous NAS expert panel on collecting pay data, the recent move to study the usefulness of Component 2 does not signal the end of federal pay reporting.

Compensation

Reinstate EEO-1 Pay Data Collection

- Both President Biden and Vice President Harris identified pay data reporting as integral to closing the gender and race pay gap. More importantly, implementation of a new reporting mechanism does not require Congressional action and there is no shortage of options for collecting pay data.
- In 2014, OFCCP proposed its own tool for collecting compensation data from federal contractors. It was scrapped in favor of Component 2, but there is nothing stopping the new administration from reassessing [OFCCP's proposal](#).
- Vice President Harris outlined the framework for an ["Equal Pay Certification"](#) administered by the EEOC when campaigning to be the Democratic Party's nominee for President.



Compensation

Reinstate EEO-1 Pay Data Collection

- Under Vice President Harris's proposal, if there is a pay disparity between men and women, the burden would be on the employer to prove that the disparity was based on "merit, performance, or seniority."
- Employers would also have to commit that they will not ask for salary history when making hiring decisions and will not mandate arbitration of employment disputes.
- If an employer had a wage gap that could not be explained, the government would fine the company 1 percent of its profits for each 1 percent "adjusted" wage gap.

Employer action item: Be afraid...be very afraid. The intent here is a good one, which is to level the historically unlevel playing field for minorities and women. Administratively, however, all options, will involve significant data collection, publication and liability. It is unclear which method President Biden's Administration may choose to utilize but it is highly likely pay data will be collected in some fashion during his first term.

Poll question!

Do you currently have active unions in your workplace?



Labor / Unions

- Reinstate the Specialty Healthcare case allowing “micro-units”
- Reinstate the Browning-Ferris Industries case joint-employer test
- Revive the Employee Free Choice Act
- Shorten the Election Time Period
- Reinstate the Purple Communications case allowing work email to be used for organizing



Labor / Unions

- Union density currently sits at around 6.2% of the private workforce, down from a high of 35% in the 1950s.
- President Biden plans to convene a cabinet-level working group specifically to increase union density in America.
- Much of these proposed changes were contained in “The Protecting the Right to Organize Act,” (PRO Act), which passed the House of Representatives in February 2020 but died in the Republican-controlled Senate.
- The PRO Act is designed to make it easier for employees to form and join a union, and to limit employers’ ability to ward off unionization.
- Removing the filibuster rules in the Senate would allow President Biden to legislatively cement these rule changes rather than simply relying on NLRB decisions.

Reinstate the Specialty Healthcare Case Allowing “Micro-Units”

- The Trump Administration NLRB overruled Specialty Healthcare in 2017.
- Specialty Healthcare endorsed the concept of “micro-units” when evaluating potential bargaining units.
- Under the “micro-unit” standard the NLRB presumes that a bargaining unit is appropriate when it is composed of employees that perform the same job at the same facility regardless of whether other employees share a community of interest with that unit.
- This allows unions to focus their organizing efforts on a smaller group, allowing the union to gain a “toe-hold” in an employer’s operation from which it can expand representation.

Employer action item: Employers will have to be hyper vigilant regarding watching for union incursion into their workforce as the target becomes much smaller to focus organizational efforts.

Reinstate the Browning-Ferris Industries Joint Employer Test

- In Browning-Ferris Industries, the NLRB expanded the joint-employer standard by holding that an employer's status as a joint-employer hinges in part on indirect control over employees.
- The old standard required direct control which significantly limited who might qualify as a joint-employer.
- The more relaxed standard from Browning-Ferris Industries allows employees to assert their right to bargain with both their direct employer and the company that contracted their services.
- It has the potential to lead to increased bargaining across a variety of industries, particularly those industries that rely on a franchise model.
- Biden has pledged to codify this relaxed standard rather than just have it decided by NLRB decision.

Employer action item: *Employers that franchise must be prepared to have franchisees and franchisors considered to be joint-employers making them both susceptible to union organizing and unfair labor practices.*



Reinstate the Purple Communications Case Allow Work Email to be Used for Organizing

- The Obama Administration NLRB determined that employees had a NLRA-protected right to use their work email accounts for organizing purposes.
- This was acceptable even if the employer prohibited non-work-related use of work email accounts.
- Overturned in 2019 by the Trump Administration NLRB.
- Returning to the Obama Administration standard would significantly increase the ability of organizers to reach voting employees.

Employer action item: Employers would be required to review their handbooks to verify that their email use rules would not infringe on the expanded email usage rights.



Revive the Employee Free Choice Act of 2008

- Biden was a co-sponsor of the original 2008 Employee Free Choice Act (EFCA).
- It allowed workers to choose to form a union if a majority signed union authorization cards, instead of through voting in an NLRB conducted secret ballot election.
- Employee peer pressure to sign a union card is much more effective than a union election campaign encouraging a “Yes” vote for the union in a NLRB secret ballot election; this will lead to more votes for the union.

Employer action item: Like everything else we’ve discussed regarding unions, employers simply need to be prepared for this to become a reality which would again put employers in a position to have more difficulty fighting anti-union campaigns.



Shorten the Election Time Period

- Under President Obama, the NLRB implemented revised union election rules that shortened the time between the filing of a union election petition and the election itself to an average of 21-days, down from a previous average that hovered around 38 days.
- You may know these rules as the “Ambush” election rules.
- These tight election deadlines often left employers scrambling to respond when an election petition was filed, and they were not prepared.
- The Trump NLRB was partially successful in rolling back the shorter timelines, though some of their changes were struck down by a federal court.
- Rather than changing these rules once again through NLRB rulemaking, Biden’s plan includes codifying the shortened election timelines into law.
- Under the shorter election timeframes, the union win rate increased substantially to approximately 72% from 65%.

Employer action item: Employers will need to be much more proactive in mobilizing their anti-union campaigns to combat shortened timeframes for elections. That would include having both internal protocols as well as contacting labor counsel with a pre-determined game plan for how to respond and proceed.



Poll question!

Does your organization have an implemented Workplace Safety and Risk Management program that was closely reviewed during 2020?



Workplace Safety

- Restore the Electronic Reporting rule
- Create an emergency temporary standard for COVID-19
- Finalize a permanent infectious disease standard
- Appoint a permanent head to OSHA
- Enforce the 2016 OSHA anti-retaliation rule
- Foster greater cooperation with state OSHA plans



Restore the Electronic Reporting Rule

- Originally adopted under the Obama administration in 2017.
- OSHA required certain employers to report injury and illness information to OSHA including information found on OSHA 300 logs.
- The intent was to publicly post the information on the OSHA website.
- Generally abandoned during the Trump administration.
- Biden will likely look to resurrect the rule with greater enforcement.

Employer action item: Covered employers should be prepared to ramp up data collection efforts to handle greater enforcement and possible publication of requisite data. An internal stakeholder should be tasked with oversight of this program to ensure proper compliance.



Create an Emergency Temporary Standard for COVID-19

- President Biden urged President Trump to “immediately release and enforce an Emergency Temporary Standard to give employers and frontline employees specific, enforceable guidance on what to do to reduce the spread of COVID.”
- The Trump Administration stated that they would not enact a COVID-19 standard.
- Even though a vaccine exists, President Biden recommended the creation of a Temporary Standard by March 15th in an executive order

Employer action item: *Employers should review their safety policies and procedures to verify compliance with current CDC and local guidance and should be cognizant of potential changes that might ensue should a temporary standard from OSHA be developed.*



Finalize a Permanent Infectious Disease Standard

- After the H1N1 pandemic, the Obama administration prepared a new, permanent infectious disease standard.
- It would have required health facilities and other high exposure workplaces to permanently implement infection control programs to protect their workers.
- President Biden will likely resurrect the proposed infectious disease standard and push for its adoption, even if COVID ends early in his tenure.

Employer action item: At this point there is not much that employers can do regarding the possibility of this standard being finalized. If an employer is a health facility or high exposure workplace it would be prudent to more closely monitor developments in this area as it is likely that finalization of this standard would require clear workplace changes in order to comply.



Workplace Safety

Appoint a Permanent Head to OSHA

- President Biden has already stated that he will ensure that all appointments to political and permanent positions within OSHA will be filled.
- The Trump Administration never finalized a permanent head of OSHA after nominee Scott Mugno withdrew his name from consideration in 2019.
- President Biden will also ensure that OSHA's advisory committees and boards are fully staffed and meet regularly.
- This would include committees on construction safety and health, maritime safety and general industry safety.

Employer action item: Employers need to be prepared for more oversight and rulemaking as a result of expansion within OSHA. Although it is unclear exactly where that oversight may come from, employers in higher risk industries should be closely watching for increased rulemaking and enforcement.



Workplace Safety

Enforce the 2016 OSHA Anti-Retaliation Rule

- In 2016 OSHA published a final rule that added a provision prohibiting employers from retaliating against employees for reporting work-related injuries or illnesses.
- Could apply to workplace safety incentive programs, injury and accident reporting programs and post-incident drug testing policies.
- Under the rule, blanket post-accident drug testing was improper because it may discourage employees from properly reporting injuries.
- The Trump Administration did not heavily enforce the rule.

Employer action item: Employers should review blanket post-accident drug testing policies in expectation of renewed enforcement. The employer should consider the more suspicion-based standard of drug testing when “employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use.”



Workplace Safety

Foster Greater Cooperation with State OSHA Plans

- There has been a more recent disconnect between federal OSHA and the 22 state OSHA plans.
- North Carolina and South Carolina refused to adopt federal OSHA's increased maximum penalties originally adopted under the Obama administration.
- Virginia, Michigan and Oregon adopted their own Emergency Temporary Standards for COVID-19 when the Trump Administration did not do so.
- Federal OSHA will likely attempt to work more closely with state OSHA plans and seek more aggressive enforcement at the state level.

Employer action item: More significant cooperation will likely increase state penalties, stronger enforcement of the federal anti-retaliation rule as well as a requirement to electronically post their OSHA 300 data. This could provide consistency but might result in more stringent penalties at federal and state levels.

Healthcare & Employee Benefits

The Affordable Care Act

California v. Texas

- The pending U.S. Supreme Court decision will determine whether the ACA is struck down in its entirety or remains intact – regardless of the constitutionality of the individual mandate
- A decision will be released in May or June 2021
- The outcome of *California v. Texas* will set the course for the Biden Administration's legislative agenda; will this administration have the opportunity to build upon the ACA as it currently exists, or will it be tasked with creating a replacement?

The Court is widely expected to uphold the ACA, which would provide the new administration with the opportunity to expand the ACA by bolstering the existing framework and addressing perceived shortcomings. To date, Biden's policy initiatives have focused on these expansion efforts.

Healthcare & Employee Benefits

The Affordable Care Act

Premium Tax Credits

- **Currently...**
 - Available to those with a household income of 100%-400% of the federal poverty level (FPL)
 - The amount of the credit is calculated to ensure that no more than 9.86% of income is spent on premiums, which is based on the cost of silver-tier coverage
- **Biden's Proposal...**
 - Eliminate the 400%-of-FPL cap on the income threshold, thereby expanding access to tax credits to households that have thus far been disqualified based on income
 - Lower the percentage of premium to 8.5% and calculate this according to richer gold-tier coverage

Healthcare & Employee Benefits

The Affordable Care Act

Rollback of Trump Administration Policies:

- Increase access to contraception by eliminating the broad exemptions enacted by the Trump administration to the ACA's contraceptive mandate
- Restore the ACA's anti-discrimination provision that prohibits discrimination in healthcare on the basis of sex and gender identity
- Eliminate expanded access to short-term, limited-duration health insurance
- Reinstate a 90-day federal open enrollment period (double the length of the current 45-day period)

Employer Impact: *Thus far, no policy initiatives have been announced with respect to the employer shared responsibility provisions or related reporting requirements, which we can anticipate will remain in place and largely unchanged.*

Healthcare & Employee Benefits

The Affordable Care Act

Executive Order issued January 28:

- The goal of the Order is to “strengthen Americans’ access to quality, affordable health care” by bolstering the ACA and Medicaid
- Specifically, the Order directed HHS to provide a special enrollment period on federal Exchanges from February 15 – May 15, 2021
- The Order also directs federal agencies to re-examine policies that undermine or diminish access to coverage through the Marketplace and Medicaid

Employer Impact: The broad directives to federal agencies will likely result in changes in policies and rules related to the coverage of pre-existing conditions that result from COVID-19 and reproductive health. Any mandated expansions of coverage will affect both insured and self-funded group health plans.

Healthcare & Employee Benefits

Public Health Coverage Option

- Biden proposes the creation of a public health coverage option, which he likens to Medicare
- Though details are thus far scarce, the comparison to Medicare could signal that this is not intended to be a single-payer system
- In conjunction with the creation of the public health coverage option, certain individuals in states that have not expanded Medicaid eligibility would receive premium-free coverage, which would include auto-enrollment in some circumstances

Employer Impact: *The public health coverage option is an additional source of coverage and not a replacement of Exchange-based coverage. Employers in states that have expanded Medicaid eligibility are unlikely to see a major impact on health plan participation levels. Federal benefit laws that govern special enrollment opportunities and mid-year election changes may be amended to accommodate scenarios where employees become eligible for, or seek enrollment in, this public option.*



Healthcare & Employee Benefits

Medicare

- To further expand the coverage options available to Americans, Biden is in favor of lowering the eligibility age for Medicare from 65 to 60
- As a means of controlling prescription drug costs, Biden proposes eliminating the exception that permits drug manufacturers to bypass negotiations with CMS on drug pricing
- Both initiatives are likely to face intense challenges from Republicans, who have historically opposed the expansion of government entitlement programs, and from hospitals, providers, and the pharmaceutical industry, who stand to lose financially

Employer Impact: Employers with a workforce in the 60-64 age range may see pre-age-65 retirements become more common. Additionally, employees in this age range may elect Medicare in lieu of the employer-sponsored group health plan, resulting in cost savings for some health plans. But employers must be mindful of the Medicare Secondary Payer rules, which prohibit most employers from incentivizing employees to enroll in Medicare.



Poll question!

How would the lowering of the Medicare eligibility age impact your company's approach to retiree health coverage?

- A. We currently offer retiree coverage and this would cause us to reconsider
- B. We currently offer retiree coverage and this would not change anything
- C. We do not currently offer retiree coverage but would consider putting something in place in order to encourage or facilitate earlier retirement
- D. We do not offer retiree coverage and don't intend to regardless of any change made to the age of eligibility



Healthcare & Employee Benefits

COVID-19 Vaccinations

The Biden Administration's stated highest priority upon taking office is to provide enhanced COVID-19 relief aimed at both public health and economic recovery.

- Biden first announced the **American Rescue Plan** on January 14, which is the first of two relief packages that his administration intends to put before Congress
- The Plan includes \$20 billion in funding to increase vaccine infrastructure and distribution capabilities
- A five-part vaccination plan: expand eligibility, create more vaccination centers, increase the supply, hire a workforce to administer the vaccine, and launch public education campaigns

Employer Impact: *Employers will need to consider the value in requiring or encouraging vaccinations among employees. Incorporating the vaccination into a wellness program may be an attractive option, though rules related to reward size and alternative standards must be navigated. On-site vaccinations are an unlikely option for most employers in the short-term.*

Poll question!

Has your organization considered taking steps to increase vaccination rates among your workforce?

- A. Yes, we'd like to make it mandatory
- B. Yes, we'd like to encourage vaccinations by offering incentives
- C. Yes, we'd like to make vaccinations available on-site
- D. No, this has not been a priority for our organization



Healthcare & Employee Benefits

Prescription Drugs and Pharmaceutical Reforms

Controlling Price Increases

- Biden proposes two methods of discouraging drug manufacturers from increasing the price of prescription drugs and biotechnology over the general inflation rate:
 - *Imposition of a tax penalty*
 - *Restriction of participation in Medicare (and in the proposed public health coverage program)*
- Controlling the price increases of prescription drugs is a largely bipartisan issue; both Republicans and Democrats have made this a central policy, and Congress has considered the issue in various forms of proposed legislation in prior years

Opening Importation from Outside the U.S.

- To date, drug importation rules, particularly with respect to Canadian drugs, are somewhat grey; individual consumers can import drugs from Canada for personal use in limited circumstances, and the Trump administration took measures to permit states to take similar steps
- Biden proposes permitting consumers to import from other countries (not limited to Canada) drugs deemed safe by the HHS



Healthcare & Employee Benefits

Prescription Drugs and Pharmaceutical Reforms

Improving the Availability of Generic Formulations

- Biden is in favor of promoting policies that accelerate the development of generic prescription drug formulations
- No specific policy initiatives have been outlined, though proposals made by others in Congress have been called out as having the President's support
 - *Challenges to "pay-to-delay" settlements*
 - *Ensuring generic manufacturers have access to brand-name samples*

Employer Impact: Employers would likely see a cost-savings benefit from any of these measures in the form of reduced prescription drug spending and existing programs, particularly those that encourage or incentivize participants to utilize generic formulations, could gain more traction.

Healthcare & Employee Benefits

Fulfilled Policy Initiatives

The Consolidated Appropriations Act of 2021

- Congress passed, and President Trump signed into law, the second COVID-19 relief bill in late December 2020
- In addition to measures aimed specifically at COVID-19 relief, the Act included some major healthcare legislation
 - *Prohibitions on surprise medical billing*
 - *Rules that increase the transparency in health coverage*
 - *Enhanced requirements under the Mental Health Parity and Addiction Equity Act (MHPAEA)*
- These types of policies were included in President Biden's healthcare agenda but were fulfilled in the final month of the Trump Administration



Healthcare & Employee Benefits

Employer Outlook

Based on President Biden's proposed policy initiatives and actions taken in the first month of his term, what is the big-picture outlook for employers?

- In the short-term, the bulk of legislative and regulatory activity will focus primarily on issues related to COVID-19
- Changes to the employer shared responsibility rules of the ACA will not take shape, if at all, until the Supreme Court issues its decision on *California v. Texas* in May or June 2021
- Congressional support for reforms to the pharmaceutical industry mean legislative progress is highly likely and could positively impact employer-sponsored prescription drug programs

Keynote Speaker

Leading During Times of Change and Uncertainty

Featuring Annie Duke (Decision Strategist & National Bestselling Author)

Moderated by Dawn Alvarez (Acrisure Agency Partner)



HR LEADERS
COMPLIANCE SUMMIT

February 9, 2021

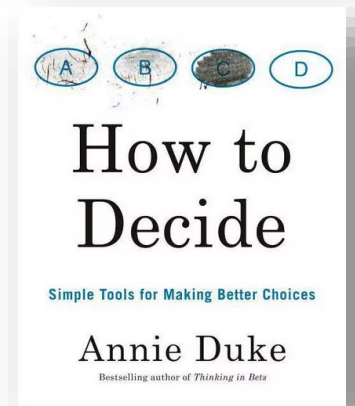
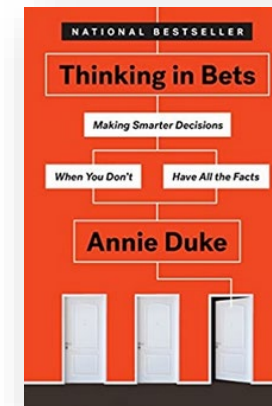
Keynote Speaker

Please welcome Annie Duke!

- Decision Strategist
- National Bestselling Author
- Former Professional Poker Player
- Co-Founder of The Alliance for Decision Education

Annie's writing:

Annie's latest book, How to Decide: Simple Tools for Making Better Choices, was released in the fall of 2020 from Portfolio, a Penguin Random House imprint. Her previous book, Thinking in Bets, is a national bestseller.



This concludes Day #1 of HRLCS 2021.

We look forward to seeing you again tomorrow morning at **7:45 AM PST (10:45 AM EST)!**

Don't forget to...

Please complete the attendee survey now!

The link is posted in your control panel, and you will also be redirected to it immediately upon the conclusion of this call.



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For any questions, please contact
hrlds2021@acrisure.com.