

# BV SHRM Legislative Update – Q4 2020

*Quarterly legislative updates are provided to alert members to new and emerging developments in the law with the understanding that they are not legal opinion or professional advice on specific facts or matters. For answers to your specific questions, please consult with counsel.*

## 2020 Elections

Americans came out in record numbers to vote in the 2020 presidential election, congressional races in the U.S. House of Representatives and Senate, and various state and local-level elections. Despite voter turnout concerns due to the ongoing COVID-19 pandemic, the 2020 election had the highest voter turnout in 120 years with 66.9%. According to the U.S. Election Project, the previous record was 73.7% in 1900.

## The Presidency

While recounts are ongoing and several lawsuits pending, former Vice President Joseph R. Biden and Sen. Kamala D. Harris, D-Calif., secured 290 electoral votes, according to AP data as of November 12. The Center for Presidential Transition indicates there are several important dates to note before Inauguration Day on January 20, 2021. First, state electors will meet on December 14 to formalize the election results. The new Congress will be seated on January 3, 2021. On January 6, a joint session of Congress will count the electoral votes.



## Congress

According to AP data as of November 12, and pending the outcome of remaining races, Democrats are poised to maintain their majority in the House, but by a slimmer margin after losing several seats. In the Senate, Republicans hold 50 seats while Democrats hold 48, with two races in Georgia heading to a runoff in January. Democratic wins in both Georgia races could give Democrats the majority with the vice president serving as the tiebreaker.

SHRM notes that the 117th Congress is expected to be the most diverse in history, with a record number of women, winners under the age of 45, members of the LGBTQ community and racial minorities in office. Results of note include New Mexico becoming the first state whose delegation to the House is all women of

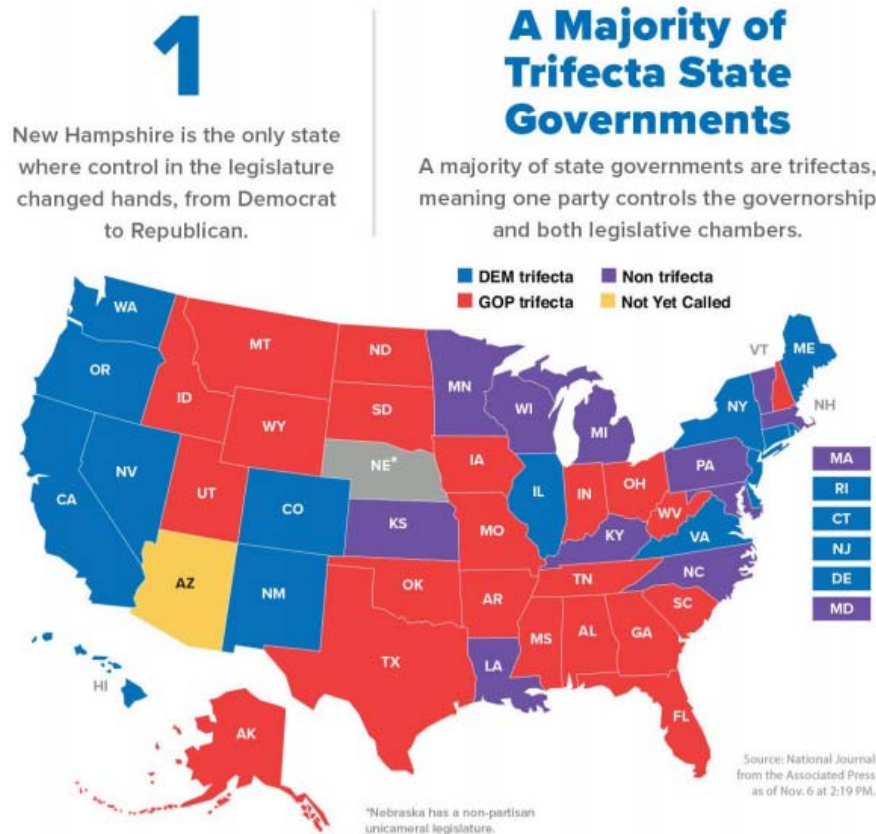
*SHRM believes in the power of policy, not politics, to support policy solutions that benefit workers and workplaces regardless of party affiliation. As the Voice of All Things Work, SHRM pursues nonpartisan public policy efforts.*

## BV SHRM Legislative Update – Q4 2020

color, the GOP nearly doubled the number of women in Congress, a record number of black women are slated to take office in the House, and the number of LGBTQ members is expected to grow to 11 across both chambers.

### State Governments

There were nearly 6,000 state legislative races in 44 states this year. According to the National Journal of the Associated Press, a majority of state governments are trifectas, meaning one party controls the governorship and both legislative chambers. The number of trifecta state governments is increasing, with a trend of state legislatures leaning left. Trifecta governments can influence workplace policy to the left or right depending on the party in control.



### State Ballot Measures

Eighty-five [state ballot initiatives](#) were approved by voters in this election. The majority of the measures covered marijuana usage, health care, elections, redistricting laws, taxes, and civil and criminal justice. Arizona, Montana, New Jersey and South Dakota passed measures legalizing [recreational marijuana use](#). South Dakota and Mississippi approved medical marijuana use. Oregon approved measures decriminalizing small amounts of controlled substances.

### How the New Administration May Impact HR

Given the election results, [analysts expect the new Democratic administration will:](#)

- Embrace upskilling/reskilling policies, as well as policies that increase access to education and training for under-employed talent, such as older workers, veterans and the formerly incarcerated

*SHRM believes in the power of policy, not politics, to support policy solutions that benefit workers and workplaces regardless of party affiliation. As the Voice of All Things Work, SHRM pursues nonpartisan public policy efforts.*

## BV SHRM Legislative Update – Q4 2020

- Support [pro-union proposals such as the PRO-Act](#)
- Revisit previous regulatory actions on joint employer, overtime, independent contractor legislation
- Focus on workplace equity issues that advanced in the House during this Congress such as the [Paycheck Fairness Act](#), Equality Act, and [Pregnant Workers Fairness Act](#)
- Call for an emergency paid leave program, which includes the Healthy Families Act and 14 days of paid leave for those who are sick, exposed or subject to quarantines
- Support 12 weeks of paid family and medical leave as outlined in the [FAMILY Act](#)
- [Rescind prior administration executive actions](#) and proclamations relating to immigration and focus on employment-based issues such as H-1B visas and worker green cards
- [Maintain and expand Affordable Care Act \(ACA\) coverage](#), leave in place the ACA's employer mandate and tracking and reporting requirements, and support subsidized coverage on an ACA exchange, even if their employer offers ACA-compliant coverage

### [National SHRM Legislative Update](#)

The DOL has published several Requests for Information (RFI) to seek feedback on FMLA, paid leave, independent contractor rules, and Executive Order 13950 on D&I training.

- [Wage and Hour RFI on FMLA](#) – SHRM offered recommendations on FMLA implementation including definitions of serious health condition, intermittent leave, and medical certification.
- [Women's Bureau RFI on Paid Leave](#) – SHRM outlined the costs and benefits of offering paid family and medical leave and shared HR's experiences working with state leave programs.
- [Wage and Hour Worker Independent Contractor Rule](#) – SHRM submitted comments in support of this rule, which, if promulgated, will set forth clear standards/factors for classifying workers as independent contractors under FLSA.
- OFCCP RFI on EO 13950 – The DOL is seeking information from federal contractors, subcontractors, and their employees regarding D&I training, workshops, or similar programming provided to employees. [SHRM continues to work with the administration](#) to seek clarity and ensure that all employers can provide D&I trainings without fear of unfair penalties.

In EEOC news, three new commissioners were confirmed (Sonderling – R, Lucas – R, and Samuels – D) and the agency is now operating with a quorum. On October 9, 2020, the [Federal Register published a Notice of Proposed Rulemaking \(NPRM\)](#) from the EEOC that proposes to amend procedural rules in order to enhance the effectiveness and accountability of the conciliation process.

### [Texas SHRM Legislative Update](#)

Over 550 bills were filed by the Texas Legislature on the first day possible (the first Monday after an election). Topics included paid sick leave, predictive scheduling (restaurants and retail), minimum wage, wage inquiries, and more. Click [here](#) to view a full list of bills that may be of interest to HR professionals.

### [COVID-19 Compliance News](#)

- [Revised FFCRA Regulations May Prompt Policy Updates](#): DOL revised FFCRA regulations impacting documentation and intermittent leave policies.
- [DOL Provides Clarity on Coronavirus-Related Child Care Leave](#): DOL explains in what situations employees are eligible for child-care-related leave or unemployment benefits.

*SHRM believes in the power of policy, not politics, to support policy solutions that benefit workers and workplaces regardless of party affiliation. As the Voice of All Things Work, SHRM pursues nonpartisan public policy efforts.*

## BV SHRM Legislative Update – Q4 2020

- [\*\*Guidance Issued on Payroll Tax Deferral\*\*](#): Employers are permitted to suspend withholding and paying IRS eligible employees' Social Security payroll taxes. Employers should evaluate carefully.
- [\*\*EEOC Updates Guidance on COVID-19 Testing\*\*](#): When can employers screen workers for COVID-19 without violating the Americans with Disabilities Act?
- [\*\*OSHA's COVID-19 Reporting Obligations Clarified\*\*](#): Employers may rarely have to report COVID-19-related hospitalizations due to the virus's lengthy incubation period.

### Other Compliance News

- [\*\*House Approves Pregnant Workers Fairness Act\*\*](#): If passed by the Senate, will require employers to reasonably accommodate pregnant workers and employees with related conditions.
- [\*\*Federal Judge Strikes Down Major Parts of DOL's Joint-Employer Rule\*\*](#): When issued earlier this year, the rule narrowed the definition of "joint employer" under the FLSA.
- [\*\*EEOC to Update Guidance on Combating Religious Bias at Work\*\*](#): Guidance will be updated for the first time in 12 years and will soon be shared for public comment.
- [\*\*Higher Standards for H1-B Visas Announced\*\*](#): Long awaited reforms will raise the bar to qualify for the popular visas.
- [\*\*Businesses Nationwide Face New Privacy Rules After California Vote\*\*](#): Measure will soon expand the most stringent data privacy law—and it will impact employers across the country.
- [\*\*NLRB General Counsel: Some Neutrality Agreement Provisions Are Invalid\*\*](#): General counsel calls for closer scrutiny of neutrality agreements between unions and employers.
- [\*\*IRS Guidance Clarifies Employers' SECURE Act Obligations\*\*](#): Guidance answers questions about implementing the SECURE Act, aimed at expanding retirement plan coverage for U.S. workers.
- [\*\*DOL Clarifies When Continuing Education and Travel Time Are Compensable\*\*](#): Two recent opinion letters provide clarification under the FLSA.
- [\*\*DOL Gives Employers Options for Reimbursing Delivery Drivers\*\*](#): IRS business standard mileage rate is optional, not required by the FLSA.
- [\*\*DOL Final Rule Paves the Way for 2021 Launch of Pooled 401\(k\) Plans\*\*](#): Benefits managers may find they're being pitched to jettison 401(k) plans in favor of a pooled employer plans (PEPs).

### Court Report

- [\*\*3 Supreme Court Cases Employers Should Watch This Term\*\*](#): What employers and HR pros need to know about the upcoming term following the death of Justice Ruth Bader Ginsburg.
- [\*\*Supreme Court Addresses Religious and LGBTQ Rights\*\*](#): Although not an employment dispute, businesses are stakeholders in the outcome of litigation, according to a variety of companies.
- [\*\*Justices Seem Unlikely to Strike Down Entire Affordable Care Act\*\*](#): Entire strike down unlikely based on questions posed during oral argument challenging the act's constitutionality.
- [\*\*Employee Who Called Ethics Hotline Loses Retaliation Claim\*\*](#): 5th Circuit Court of Appeals ruled that employee could not show retaliation when fired for confronting suspected shoplifter.
- [\*\*Perceived Disability Claim Fails\*\*](#): 5th Circuit Court of Appeals found that plaintiff could not be regarded as having an ADA covered impairment when a perceived disability relating to a medical procedure was transient.

*SHRM believes in the power of policy, not politics, to support policy solutions that benefit workers and workplaces regardless of party affiliation. As the Voice of All Things Work, SHRM pursues nonpartisan public policy efforts.*

# BV SHRM Legislative Update – Q4 2020

## In Case You Missed It

- **Medicare Part D Annual Notice Due**: Plan sponsors that offer prescription drug coverage must provide notices to Medicare-eligible individuals **before October 15**.
- **Form I-9 Flexibility Due to EAD Production Delays**: **Until December 1**, employers may accept Form I-797, Notice of Action (dated on or after Dec. 1, 2019, through and including Aug. 20, 2020) as a Form I-9, Employment Eligibility Verification, List C #7 document.
- **Immigration Fee Increases Put on Hold**: Immigration filing fee hikes **set to take effect October 2** for employers of foreign national workers were temporarily halted by a U.S. federal judge.

## Trending Topics

- **Pandemic Prompts Employers to Review Their Year-End Vacation Policies**: Employers review how to handle employees' unused vacation balances and competing year end time-off requests.
- **Employers Find Ways to Celebrate Holidays, Employees During Pandemic**: High-end gifts could cost less than company parties.
- **'Vishing' Attacks on Remote Employees Are on the Rise**: The FBI and CISA warned employers about an ongoing voice-phishing campaign targeting remote workers.
- **Unemployment Fraud Is on the Rise**: Respond quickly to phony unemployment claims and assist employees whose personal information has been stolen.
- **Guns in the Workplace**: Surging gun sales caused by the pandemic, recession, and various protests could become a workplace concern.
- **How to Support Employees After the Election**: Be objective while also authentic, prevent explosive interactions, and de-escalate disputes.
- **How HR Should Prepare as More States Legalize Marijuana Use**: Review policies and practices to ensure compliance with new laws.
- **In honor of Veterans Day, Become a Military Ready Employer**: Review SHRMs toolkit that guides HR pros in how to effectively source and support veteran hiring in the workplace.
- **19th Amendment Centennial**: SHRM partnered with the National Foundation for Women Legislators (NFWL) to share the power and importance of the 19th Amendment.

## Plan Ahead

<b>DEC 31</b>	<b><u>ICE Extends Virtual I-9 Inspection Rules</u></b> : Employers with entirely remote workforces as a result of COVID-19 have until the end of the year to take advantage of relaxed document-inspection requirements for the Form I-9.
<b>JAN 1</b>	<b><u>2021 Wage Cap Rises Modestly for Social Security Payroll Taxes</u></b> : Maximum earnings subject to Social Security payroll tax will rise by \$5,100 to \$142,800. Employers should adjust their payroll systems to account for the higher taxable wage base.
<b>JAN 1</b>	<b><u>2021 IRS Retirement Plan Limits</u></b> : Employee 401(k) contributions for plan year 2021 will top off at \$19,500 with an additional \$6,500 catch-up contribution allowed for those turning age 50 or older. Maximum contributions from all sources will rise by \$1,000.
<b>JAN 1</b>	<b><u>New HSA Limits Effective</u></b> : Contribution limits for 2021 are going up \$50 for self-only coverage and \$100 for family coverage.

*SHRM believes in the power of policy, not politics, to support policy solutions that benefit workers and workplaces regardless of party affiliation. As the Voice of All Things Work, SHRM pursues nonpartisan public policy efforts.*

## BV SHRM Legislative Update – Q4 2020

<b>JAN 1</b>	<b><a href="#">2021 FSA Contribution Cap Stays at \$2,750, Other Limits Tick Up:</a></b> Employees in 2021 can put up to \$2,750 into their health care FSAs pretax. Benefit limits for adoption assistance, transit benefits and qualified small-employer HRAs were also released.
<b>JAN 1</b>	<b><a href="#">Government Contractor Minimum Wage Increase Effective:</a></b> Applicable minimum wage rate for workers performing work on or in connection with federal contracts covered by Executive Order 13658 goes into effect Jan. 1.
<b>MAR 2</b>	<b><a href="#">IRS Extends Form 1095 Distribution Deadline to March 2:</a></b> Deadline to provide employees with 1095-C or 1095-B reporting form has been extended to March 2, 2021. The IRS said this would be the last year to extend "good-faith effort" transition relief.

### Other Helpful Resources

- For the latest news and advice on handling COVID-19 in the workplace, visit SHRM's [Coronavirus and COVID-19](#) site.
- SHRM is navigating what's ahead with the latest research, insights, and tools focused on 5 building blocks for the future of work. Visit [Navigating COVID-19: A Toolbox to Build a New World of Work](#) for more information.
- Prepare your employees for open enrollment with this [2021 Benefit Plan Limits & Thresholds Chart](#).
- Checkout SHRM's new [State Legislative Tracker](#) to receive real-time information about legislation affecting the world of work in your state.
- The 2020 elections will shape the future of workplace policy. Stay informed by visiting SHRM's [2020 Election Resource Center](#).
- SHRM's new advocacy website is centered on five key policy areas and features A-team news, letter writing campaigns, and resources for engaging government leaders all the way to the local level. Visit [advocacy.shrm.org](http://advocacy.shrm.org) for more information and to sign-up for the A-team.
- For a full list of state law reminders and developments, click [here](#).