



# 2016 POST-ELECTION OVERVIEW

SHRM Government Affairs

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November 15, 2016

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DENNIS VAN TINE/STAR MAX/IPX

“Now it is time for America to bind the wounds of division, have to get together, to all Republicans and Democrats and independents across this nation I say it is time for us to come together as one united people. It’s time. I pledge to every citizen of our land that I will be president for all of Americans, and this is so important to me.”

President-elect Donald J. Trump in the early morning following election night—November 9, 2016

“Our campaign was never about one person, or even one election. It was about the country we love and building an America that is hopeful, inclusive, and big-hearted. We have seen that our nation is more deeply divided than we thought. But I still believe in America, and I always will. And if you do, then we must accept this result and then look to the future. Donald Trump is going to be our president. We owe him an open mind and the chance to lead.”

Secretary Hillary Clinton’s Concession Speech—November 9, 2016



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“Everybody is sad when their side loses an election. But the day after we have to remember we’re actually all on one team. This is an intramural scrimmage. We’re not Republicans first or Democrats first. We’re Americans.”

President Barack Obama—November 9, 2016, about the election results

# Donald J. Trump Defies the Polls & Pundits

- On November 8, America elected Donald J. Trump to be its 45th president. A businessman and real estate developer with no prior political or military experience, President-elect Trump defied the odds and defeated 16 challengers with over 150 years of political experience during the GOP primary. He later defeated his Democratic challenger Hillary Clinton, a former First Lady, U.S. Senator and Secretary of State in the general election, capturing 29 states with 290 Electoral College votes (to date two states remain undecided, while Secretary Clinton is leading in the popular vote).
- Voters continued to express anxiety over the state of the economy, and a “do-nothing” government in Washington that many believed had left them behind, in embracing the candidate who ran on a pledge to “Make America Great Again.” President-elect Trump will have his work cut out for him in mending the great divide that has grown between rural America and the inner cities. Exit polling confirmed that his supporters were driven to the polls over concerns about the state of the economy, displeasure with the political establishment of both parties in Washington and international trade agreements that have resulted in the loss of good-paying American jobs to overseas competitors.
- While the vote counts in some races are still being tabulated as this summary goes to print, Republicans in down ballot races (particularly in battleground states) rode President-elect Trump’s coattails in fighting off a Democratic push to capture a majority in the U.S. Senate where Republicans lost just two seats, with another to be decided later in a Louisiana runoff. However, Senate Democrats still wield the power of the filibuster, requiring 60 votes to end debate on a bill before voting on final passage. As we go to print, Democrats have captured +/-5 seats in the House, but fell far short of the net gain of 30 needed to shift the balance of power in that chamber. Thus, once President-elect Donald J. Trump takes the oath of office on January 20, Republicans will take control of all three branches of government and Democrats will be faced with the fact that in the 2018 mid-year elections, they must defend 23 Senate seats—a daunting task for either party.

## Overview of the 2016 Election

The 2016 presidential election yielded big dividends for Republicans, who captured control of the White House, maintained their majority status in the U.S. Senate by limiting their losses in that body to 2 seats so far (IL and NH), and in the House of Representatives by losing just 5 seats with four others too close to call—far short of the 30 needed by Democrats to capture control of the chamber from the GOP. Republicans also captured a net-gain of at least 3 governorships (but North Carolina remains too close to call at press time) and now control both chambers of the legislatures in the 15 states making up the South. They also captured the Iowa Senate and forced ties in the Connecticut and Delaware senates. Democrats took control of both chambers in Nevada, captured the New Mexico House and await the outcome to determine control of the Senate in New York state.

These gains by the Republicans at both the federal and state levels will likely have a significant impact on the party's ability to offer a conservative agenda on Capitol Hill and in more state legislatures across the country. However, offering and delivering on a conservative agenda are two different things, and the party's ability to deliver on such policies—particularly on the federal level—will be limited due to its lack of a filibuster-proof majority in the U.S. Senate.

When the 115th Congress convenes in January, Republicans will control the Executive, Legislative and Judicial branches of government, and President-elect Trump will be tasked with filling the year-long vacancy on the Supreme Court resulting from the unexpected death earlier this year of Justice Antonin Scalia. In addition, Trump will likely move fast in filling nearly 100 vacancies on the federal bench.

On the state level, Republican legislators will continue to advance a pro-business agenda. The party is now in total control of at least 34 governorships (the race in North Carolina remains too close to call) and 32 state legislatures. Look for these majorities to pursue a host of workplace issues ranging from tax reform, right-to-work legislation, unemployment insurance reform and preserving the rights of employers to conduct drug testing of their employees. Democrats, on the other hand, who control both chambers of their state legislatures in 14 states, will continue to push a progressive agenda including paid leave, ban-the-box and predictive scheduling bills.

The 2016 election results will have a major impact on the shape and direction of HR issues brought before the 115th Congress for consideration. For example, Democratic proposals on compensation equity, paid leave and increase in the federal minimum wage are unlikely to advance. However, Republicans in Congress

have signaled a strong interest in addressing these important workplace issues but will develop alternative approaches to workplace flexibility, compensation equity and others. Most importantly, Republicans are certain to attempt to repeal all or parts of the Affordable Care Act early in 2017. Other issues likely to be considered later next year are comprehensive tax reform, as well as a series of oversight hearings into the country's international trade agreements and regulatory activities carried out during the 8 years of the Obama presidency.



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## 2016 Lame-Duck Session in Congress

When the 114th Congress returns to Washington on November 14 for its “lame-duck” session, nearly 65 of the 535 senators and representatives returning will have either suffered defeat on November 8, or will have already announced their plans to leave Washington at the end of the year.

The outlook for this session is unclear. Scheduled to last into mid-December, this could be an abbreviated session that addresses only “must-pass” legislation that needs to get done before the end of this congressional term, such as a short-term budget agreement that keeps the government funded into early next year and maybe passage of a defense authorization bill. At a minimum, a listing of outstanding issues that could be brought up for consideration during the lame-duck includes:

- Approval of a funding bill for the federal government for 2017. Question is whether it will be a full-year funding bill or a short-term package, either of which is expected to contain funding to address the Flint, Michigan, water crisis. The current funding for the government is set to expire at midnight on December 9.
- Action on renewing dozens of tax breaks and benefits that either have already expired or are set to expire at midnight on December 31. They are known as “tax extenders”; none of the provisions expiring are HR-related. However, whenever Congress opens the “Pandora’s Box” of tax law, anything can happen. So SHRM will be monitoring what provisions are included should an agreement emerge to ensure that changes to workplace benefits are not included. Given President-elect Trump ran on the promise of reducing taxes for all Americans, comprehensive tax reform could be on the agenda early in the 115th Congress.
- Agreement on the foreign and defense policy front by passing the National Defense Authorization Act for 2017.
- Agreement on how to address numerous labor and employment policy riders.

## Outlook for the 115th Congress

Republicans, thanks in large part to the strong pro-Trump turnout particularly in battleground states, fought off a concerted Democratic effort to retake control of the U.S. Senate and, in the end suffered a loss of two seats (Mark Kirk’s seat in Illinois and Kelly Ayotte in New Hampshire) with the open seat in Louisiana to be decided in a run-off election. The GOP also maintained its majority in the House, ensuring its ability to set the political agenda on Capitol Hill for the next two years. However, depending on how the Louisiana Senate race turns out, the GOP could ultimately find itself 8 votes shy of the necessary 60 votes needed in the Senate to beat back certain Democratic-led filibusters against much of their agenda. Without those additional votes, Republicans are likely to continue to encounter the same parliamentary roadblocks Democrats employed during the 114th Congress—thus likely guaranteeing two more years of political gridlock on most of their priorities.

### House of Representatives

When the 115th Congress convenes in January, Paul Ryan has expressed his interest in remaining as Speaker of the House but may face opposition from elements of the conservative House Freedom Caucus in his own party. Ryan, who often clashed with President-elect Trump during primary and general election, is from Wisconsin and has served in the House for 18 years and was just re-elected to his 10th term and has served as Speaker since John Boehner resigned from the post in the fall of 2015. Kevin McCarthy, now a sixth-term veteran of the House from California, and Steve Scalise, a five-term member from Louisiana, are expected to be elected House Majority Leader and Majority Whip, respectively. These and other leadership positions could be in flux, however, and will be decided when the Republicans caucus later this month.

On the Democratic side, it is unclear what will happen to its leadership ranks. At press time, current Minority Leader Nancy Pelosi (D-CA) is expected to again lead her party in the House in 2017. The same may hold true for the current Minority Whip Steny Hoyer (D-MD) and Minority Policy Committee chair James Clyburn

(D-SC), both of whom won re-election on November 8.

In the key workplace committee in the House, Rep. Virginia Foxx (R-NC) is expected to be installed as the new chairwoman of the House Education & the Workforce Committee. The current ranking Democrat on the committee, Rep. Bobby Scott (D-VA), is expected to again serve as the committee's top Democrat, but that selection will be confirmed by the party leadership once that lineup has been elected.



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Among other likely Republican chairs of committees addressing issues of concern

to HR professionals is Kevin Brady (R-TX), expected to remain at the helm of the House Ways and Means Committee, which has jurisdiction over employee benefits, health care reform and tax policy. Robert W. Goodlatte (R-VA), a member of the House for over 22 years and an immigration attorney by profession, is again expected to chair the Judiciary Committee, which has jurisdiction over the federal judiciary and immigration reform legislation. Likely to serve again as the ranking minority member of the committee is John Conyers (D-MI).

Other House members who are expected to play key committee leadership roles during the 115th Congress include:

- Cathy McMorris Rogers (R-WA), expected to be re-elected as House Republican Conference chair and to play a leading role on workplace flexibility issues.
- Joe Barton (R-TX), expected to move up as chair the Energy and Commerce Committee overseeing health care issues.
- Jason Chaffetz (R-UT), expected to remain as chairman of the Oversight and Government Reform Committee.

From left, House Majority Leader Kevin McCarthy, R-Calif., Speaker Paul D. Ryan, R-Wis., and House Majority Whip Steve Scalise, R-La.

## Senate

With the victories over Republican incumbents in Illinois and New Hampshire, Democrats chipped into the GOP's six-seat majority it enjoyed during the 114th Congress. However, with majority status in the Senate during the 115th Congress, Republicans again are positioned well to move their policy agenda—this time with possibly a receptive President-elect Donald J. Trump occupying the White House. Democrats fell 3 seats shy of capturing a majority in the Senate, but are poised to hold a cloture-proof minority of 48 seats thanks in part due to the support of two Independents, Senators Bernie Sanders of Vermont and Angus King of Maine, who caucused with them in the 114th Congress.

The Senate is poised to welcome 7 new members in 2016. Mitch McConnell (R-KY) is expected again to be chosen by his caucus to serve as Majority Leader in 2017, and John Cornyn (R-TX) is expected to be elected Senate Majority Whip. John Barrasso (R-WY) and John Thune (R-SD) will likely again be elected Republican Policy Committee and Conference chairs, respectively. On the Democratic side of the aisle, Charles E. Schumer (D-NY), the current Democratic Policy Committee chair, is expected to be selected to succeed retiring Harry Reid (D-NV) as Minority Leader,



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Senate Majority Leader Mitch McConnell of Ky., second from right, accompanied by, from left, Sen. John Barrasso, R-Wyo., Sen. John Thune, R-S.D., and Senate Majority Whip John Cornyn of Texas, right

with Dick Durbin (D-IL) and Patty Murray (D-WA) vying for the posts of Minority Whip and Democratic Policy Committee chair.

As for the committees with jurisdiction over workplace issues, Lamar Alexander (R-TN), who is serving his second term in the Senate, is expected to return as chairman of the Health, Education, Labor and Pensions (HELP) Committee. Bernie Sanders (I-VT) could move to the ranking Democrat position on the committee as current ranking member Patty Murray (D-WA), is expected to move to the ranking position on the Appropriations Committee. The HELP Committee will again serve as the initial battleground for numerous HR policy proposals likely to surface in the 115th Congress.

Orrin Hatch (R-UT) is expected to again chair the Finance Committee, which has jurisdiction over health care, taxes and pension issues, while Ron Wyden (D-OR) will serve as the ranking Democrat. Charles Grassley (R-IA) will likely again chair the Senate Judiciary Committee, which oversees all judicial matters, including the confirmation of Supreme Court

justices, and also has jurisdiction over immigration reform legislation. The ranking member is expected to again be Patrick Leahy (D-VT).

Other members of the Senate likely to play key roles in addressing major HR initiatives include:

- Jeff Sessions (R-AL) and Robert Menendez (D-NJ), on immigration-related legislation.
- Pat Roberts (R-KS) and Debbie Stabenow (D-MI), on health care matters.
- Mike Crapo (R-ID) and Bob Casey (D-PA), on retirement security and workplace flexibility proposals.

## 2017 Policy Agenda in Washington

### Labor and Employment

When the 115th Congress convenes on January 3, a Republican majority will control both the House and Senate. Without providing specific details, President-elect Donald Trump's labor and employment positions

have broadly focused on reducing regulations impacting employers, canceling overreaching executive orders, and creating millions of new jobs. More specific and relevant to HR professionals, he has proposed providing six weeks of paid leave to new mothers before returning to work and has voiced support of equal pay for equal work.

**FLSA Overtime Rules:** In 2016, the U.S. Department of Labor issued the final rule updating the Fair Labor Standards Act overtime regulations. The rule increases the salary threshold by more than 100 percent and includes automatic salary threshold increases every three years to maintain the salary threshold level at the 40th percentile in the lowest-wage census regions.

Multiple bills were introduced in the 114th Congress to further study the impact of, block, delay or phase in DOL's final overtime rule. Attempts to phase in the salary threshold over a period of years have been gaining some bipartisan traction in the Senate and House in the 114th Congress. The rule goes into effect on December 1, 2016. As chair of the Partnership to Protect Workplace Opportunity (PPWO), an industry coalition representing 100 diverse stakeholders impacted by the overtime rule, SHRM has played a leading role in this debate and numerous members have been invited to testify before Congress and the Department of Labor regarding the rule's potential impact on employers and employees.

**OUTLOOK:** Implementation of the final overtime rule begins on December 1. President-elect Trump has indicated support for a small business exemption from the rule. Congress may attempt to attach a policy rider to a year-end appropriations package to delay or phase in the implementation of the rule, but any such action faces a certain veto from President Obama, who views the rule as a signature component of his domestic policy legacy. However, a variety of factors could impact the fate of the OT legislation particularly if it's a component of a much larger "must pass" agreement on a number of issues awaiting consideration this year.

**SHRM POSITION:** While SHRM supports an update to the salary threshold, an immediate 100 percent increase to the threshold is *too far and too fast*. The

increase presents challenges for certain employers whose salaries tend to be lower, such as small employers, nonprofits, employers in certain industries and employers in lower cost-of-living areas. Of equal concern, SHRM opposes automatic increases to the salary threshold, which have been considered and rejected in the past. Automatic increases ignore economic variations of industry and location and the overall state of the economy. Furthermore, the salary threshold—although slightly less than originally proposed—will mean many employees will lose the professional exempt status that they have worked hard for and the flexibility from rigid schedules that they care deeply about.

**National Labor Relations Board Actions:** The National Labor Relations Board (NLRB) has continued to pursue a highly active agenda with significant implications for employers across most industries and sectors. Over the last two years, DOL and the NLRB promulgated numerous workplace rules and decisions to make organizing easier, including a focus on nonunion workplaces and increased scrutiny of whether employer policies interfere with employees' right to organize under the NLRA. Congressional attempts to block many of these NLRB rulings were generally unsuccessful. Congress passed legislation to block the "ambush" election rule, but it was vetoed by the president. As a result of the *Browning-Ferris* case, legislation was introduced to restore the longstanding definition of joint-employment and turn over the NLRB's new "indirect control" standard for determining whether a joint-employer relationship exists under the NLRA. While the legislation gained some traction, neither congressional chamber had enough votes to override an expected presidential veto. Legislative proposals to reform the NLRB's structure and processes were also introduced, but did not advance in the 114th Congress.

**OUTLOOK:** The 115th Congress should allow for continued oversight over the NLRB and its decisions, but with limited likelihood for legislative victories because of the Democrats' ability to filibuster in the Senate. Congressional Republicans could severely limit funding for the NLRB, lessening the impact of the board's decisions over employers and employees.

President-elect Trump has not offered specifics on NLRB policies and will likely have to wait until late 2017 to make any changes to the Democrat-controlled board. In the meantime, the courts will continue to be used as the primary method for blocking rules that represent imbalanced approaches to labor relations. The new Congress will likely consider legislation to address NLRB rules and decisions that have the most negative impact on the workplace, but will still need to overcome certain Democratic opposition in the Senate.

**SHRM POSITION:** SHRM believes in the fundamental right—guaranteed by the NLRA—of every employee to make a private choice about whether or not to join a union. SHRM believes these recent NLRB and DOL actions are imbalanced approaches to governing union-organizing campaigns.

**Equal Employment Opportunity Commission:**

While Congress recognizes the vital importance of the EEOC to protect employees from workplace discrimination, the agency has come under greater scrutiny for its litigation tactics, some of its rule-making and administrative actions. In the 114th Congress, legislation was introduced to require more transparency around EEOC activities and to direct the agency to improve its engagement with employers to resolve complaints. Legislation was also introduced to block EEOC's final rule on workplace wellness programs and updates to the EEO-1 reporting form, requiring covered employers to report employee data.

**OUTLOOK:** Congressional scrutiny of EEOC activities is expected to continue in the 115th Congress. President-elect Trump will have the opportunity to designate a new EEOC chair, flipping the Commission to a Republican majority in 2017. The EEOC could revisit the Obama administration's pay collection rule, scheduled to take effect in 2018. In the meantime, Congress will continue to consider efforts to block or delay the EEOC's new rules, but would need to overcome certain Democratic opposition in the Senate.

**SHRM POSITION:** SHRM supports public policy efforts to prohibit workplace discrimination and supports legislation to address these EEOC administrative actions and oversight of the agency's litigation efforts.

**Compensation Equity:** The Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 prohibit gender-based wage discrimination in the workplace. Depending on performance and seniority, jobs that have the same functions and similar working conditions and that require substantially the same skills must be compensated equally. While gender-based disparities occur, debate continues on whether those instances are attributable to discrimination or legitimate pay practices or other factors. The growing debate has resulted in the introduction of multiple executive and legislative proposals to address this issue.

One proposal would amend the Fair Labor Standards Act to prohibit employers from retaliating against employees who discuss their compensation, increase the number of employer defenses for legitimate pay differentials, and impose additional civil penalties for violating the law based on the size of the employer. This legislation echoes a part of President Obama's 2014 executive order prohibiting federal contractors from discriminating against employees who disclose compensation information. Legislation was also introduced in the House to prohibit employers from asking prospective employees for their salary history before making a job offer. Finally, a growing number of states such as California and Massachusetts recently passed legislation to address compensation equity.

**OUTLOOK:** While President-elect Trump supports equal pay for equal work, he has offered limited specifics on proposals related to compensation equity. While Senate Democrats are likely to reintroduce the Paycheck Fairness Act, the legislation is very unlikely to move forward. Some Republicans may continue to explore alternative approaches to address compensation equity. Efforts to delay or alter the new EEO-1 reporting requirements are also expected. SHRM will continue to show leadership on this important issue through continued dialogue with bipartisan policymakers about compensation equity.

**SHRM POSITION:** SHRM has a proud record of working to end gender discrimination in the workplace and believes that any intentional misconduct against an employee should be resolved promptly. However, SHRM

has opposed efforts to limit employer flexibility to reward employees using legitimate pay practices. As a result, SHRM opposes the requirements outlined in the PFA because the legislation could limit an employer's ability to consider many legitimate pay factors such as an employee's professional experience and salary history.

### **Sexual Orientation and Gender Identity**

**Nondiscrimination (ENDA):** Federal laws protect employees from discrimination in the workplace on the basis of race, national origin, sex, religion, disability, pregnancy and age, but not on the basis of sexual orientation or gender identity. At the end of 2014, however, the Office of Federal Contract Compliance Programs (OFCCP) issued a rule implementing an executive order prohibiting federal contractors from discriminating on the basis of sexual orientation or gender identity. In addition, the Supreme Court has ruled that federal bans on workplace sexual harassment apply when both parties are of the same gender.

**OUTLOOK:** With President Obama's executive order already extending such protections to federal contractors, supporters of legislative efforts to ban discrimination on the basis of sexual orientation and gender identity have turned to broader legislation that would prohibit discrimination in employment, housing, banking and a number of other areas. This legislation will likely be reintroduced in the 115th Congress and will likely face opposition in the Republican-controlled House of Representatives.

**SHRM POSITION:** SHRM believes that employment decisions should be made on the basis of qualifications for a job, not on nonjob-related characteristics, including sexual orientation and gender identity. SHRM supports public policy efforts to ban workplace discrimination based on sexual orientation and gender identity. SHRM believes any such legislation should be narrowly drafted to avoid unintended consequences for both employees and employers. SHRM also supports the voluntary right of employers to offer domestic partner benefits to their employees.

### **Workplace Flexibility**

Workplace flexibility is a strategic business practice that determines when and how work is to be done. It helps organizations create a modern work environment that is responsive to demographic, economic and technological changes. According to the 2014 National Study of Employers (cosponsored by SHRM), 99 percent of employers with at least 50 employees offer some form of paid leave, with 58 percent of employers offering maternity leave and 14 percent offering spouse or partner leave.

The Executive Branch of government, Congress and state legislatures continue to show interest in proposals to expand workplace flexibility. In June 2014, President Obama hosted a White House Summit on Working Families, providing an opportunity for the administration to elevate workplace flexibility as a key public policy issue for families, employers and employees. In the 114th Congress, both Republicans and Democrats introduced legislative proposals to expand workplace flexibility. In the House, a Working Group on Women in the 21st Century Workforce was created to address barriers women face in the workforce, including the need for more workplace flexibility. SHRM continues to develop a new approach to incentivize the expansion of paid leave and workplace flexibility coverage which will reflect the reality of today's most innovative workplace strategies.

**Family and Medical Leave Act (FMLA):** The FMLA provides eligible employees up to 12 workweeks of unpaid leave in a 12-month period in certain situations such as an employee's serious health condition or for the birth or adoption of a child. The regulations implementing FMLA have resulted in administrative and compliance challenges for HR professionals, particularly when intermittent leave is needed for an episodic medical condition. At the same time, lawmakers have continued to explore proposals to expand the statute by increasing leave eligibility, covering more employers, and requiring some of the leave to be paid.

**OUTLOOK:** While various expansions to FMLA, including paid FMLA, are likely to be reintroduced in the 115th Congress, Republican control of Congress

means FMLA expansion legislation will continue to be stymied in the new Congress. However, congressional leaders could consider other approaches to expanding paid leave this Congress, including voluntary approaches supported by SHRM.

**SHRM POSITION:** SHRM supports the spirit and intent of the FMLA and believes that clarified implementing regulations would help reduce administrative and compliance problems experienced by employers and HR professionals, especially challenges around episodic leave. Given current challenges with the implementing regulations, SHRM opposes expansions of the FMLA at this time.

**Paid Sick Leave:** In recent years, lawmakers at the federal, state and local levels have proposed a range of legislative initiatives that would mandate employers to provide paid sick leave. Seven states—Arizona, California, Connecticut, Massachusetts, Oregon, Vermont and Washington—have adopted statewide paid-sick-leave laws, joining over 20 localities. In 2016, New York became the fourth state with a paid family leave insurance program, joining California, New Jersey and Rhode Island.

**OUTLOOK:** During the 114th Congress, Democrats reintroduced the Healthy Families Act, which would require employers to provide up to seven days of paid sick leave annually, but the bill failed to gain any traction. In the fall of 2015, President Barack Obama issued an executive order that similarly requires that federal contractors offer employees seven days of paid sick leave. In addition, the Family and Medical Insurance Leave Act (FAMILY) was reintroduced in the 114th Congress, which would provide partial wage replacement funded through a payroll tax for eligible leaves under the FMLA.

In the 115th Congress, Republicans could consider a proposal from President-elect Trump to provide six weeks of paid maternity leave paid through unemployment insurance reforms. The proposal, however, will likely face resistance from conservative Republicans from a cost perspective and from Democrats who believe the proposal should be expanded to include other forms of leave as covered

by the FMLA. At the same time, momentum is building around alternative proposals (one advocated by SHRM), to incentivize more employers to voluntarily offer paid leave.

**SHRM POSITION:** SHRM believes that the United States must have a 21st century workplace flexibility policy that meets the needs of both employees and employers. As opposed to a one-size-fits-all government mandate on all employers, SHRM supports a new approach that reflects diverse employee needs and preferences, as well as differences among work environments, representation, industries and organizational size. Such a policy should support employees in meeting their work and life obligations and, at the same time, provide certainty, predictability and stability to employers. SHRM generally opposes government mandates on employee benefits or leave requirements because they hinder flexible, innovative approaches to meeting employees' needs.

**Other Workplace Flexibility Proposals:** The national conversation on work/life issues continues to gain momentum as the workplace continues to evolve. As such, policymakers are likely to explore additional legislative proposals, beyond social insurance and leave mandates, to help employees meet their work/life needs. These proposals focus on allowing for compensatory time off in the private sector, giving workers the "right to request" a flexible work arrangement, and requiring predictable schedules for employees in certain industries.

**OUTLOOK:** In the 114th Congress, legislation was introduced in the Senate and House to allow private sector employers the option of offering compensatory time off (comp time) to nonexempt employees for overtime hours worked, but neither chamber voted on the measure. Comp-time legislation passed in the House in the 113th Congress but stalled in the Senate. In the 115th Congress, comp-time legislation could be considered, potentially in conjunction with a more comprehensive workplace flexibility proposal.

**SHRM POSITION:** SHRM believes that private-sector employees should be afforded the same flexibility that public-sector employees have in choosing between

compensatory time or overtime pay. SHRM strongly supports voluntary comp time proposals to give private employers an additional workplace flexibility option to assist employees in meeting their work and family obligations. SHRM generally opposes “right to request” proposals that limit employer flexibility in establishing flexible work arrangements by prescribing a rigid and cumbersome process for evaluating workplace flexibility requests.

## Retirement Security and Employer-Sponsored Benefits

Employer-sponsored benefits are a key component of a comprehensive benefits package that employers use to attract and retain top talent. Employers carefully construct a benefits package that reflects the needs and demands of their specific workforce. Health care and retirement plans, as well as fringe benefits, such as subsidies for parking and transit, employer-provided educational assistance for undergraduate and graduate degrees, repayment of student loans and wellness incentives are an important part of a thoughtful, comprehensive benefits package.

Specifically, employer-sponsored and individual retirement plans are key components of our nation’s retirement system. These retirement plans have proven to be a tremendously effective and successful way for Americans to plan and save for retirement. According to the SHRM 2016 *Employee Benefits* report, 90 percent of employers provided a defined contribution retirement plan and 25 percent offer a defined benefit pension plan. Employer-sponsored retirement plans are the main conduit for employees to save for a financially sustainable retirement. From 2003 through 2012, private retirement plans in the United States paid out over \$4.70 trillion in benefits and covered 92.5 million participants.

**OUTLOOK:** Many employee benefits enjoy a tax-free status, two of which, employer-provided health care, and employer-provided retirement, account for the largest annual loss in revenue to the federal treasury. Because of loss of revenue to the treasury, it is likely that there will be a close examination of employer-sponsored fringe benefits, including retirement plans, health care benefits and educational assistance

programs, as any part of tax reform efforts. Eliminating tax incentives could dramatically affect an employer’s ability to offer a comprehensive benefits package to its employees. Under Speaker Ryan’s direction in the 114th Congress, House Republicans released a blueprint for tax reform, which included a review of tax incentives related to retirement accounts, as well as recommendation for consolidation of certain retirement-related provisions. This blueprint will likely be the foundation of initial discussions regarding reforms to the international, personal and corporate tax structure, as it mirrors concepts outlined by President-elect Donald Trump.

In addition to tax reform, the 115th Congress is likely to address deficiencies related to multi-employer defined benefit pension plans, including meeting funding and solvency obligations, Pension Benefit Guaranty Corporation premium increases on single-employer pension plans and challenges related to nondiscrimination testing.

**SHRM POSITION:** SHRM supports legislative proposals that facilitate the ability for employers to provide comprehensive, flexible and creative benefits packages for their employees. This includes encouraging and supporting retirement savings for employees through the preservation of the current tax structure and creation of tax incentives. Additionally, SHRM supports any effort to expand employer-provided education assistance to include student loan repayment.

## Immigration Reform

President-elect Donald Trump has vowed to make a number of changes when it comes to immigration policy, including a focus on national security and interior enforcement and possible changes to our legal immigration system. These changes could be put forward possibly in the form of executive action or legislation.

Specifically, President-elect Trump’s immigration proposals include expanding a physical wall on the southern border using above- and below-ground sensors; aerial surveillance and manpower; removal of criminal aliens; canceling executive actions, memoranda and orders issued by President Obama

possibly including the Deferred Action for Childhood Arrivals program; and supporting a nationwide mandatory employment verification (E-Verify) program, among other initiatives.

**OUTLOOK:** The ability of President-elect Trump and Congress to ultimately move legislation forward or to pass comprehensive immigration reform in the 115th Congress is likely to be challenging given the makeup of Congress and the slim majorities the GOP holds in each chamber. If President-elect Trump and Congress pursue a more targeted approach, it may include items such as border security and interior enforcement extending to the implementation of a mandatory, nationwide E-Verify program, which are more likely to garner congressional support.

The federal government already mandates certain federal contractors to use E-Verify. In addition, there are approximately 21 states and a number of localities that require the use of either E-Verify or a specified alternative for some or all employers. Bills in both the House of Representatives and Senate have been introduced in recent years to make E-Verify a mandatory national electronic verification system for all employers. Most recently, Congress reauthorized funding for E-Verify through December 9. Given that Congress has reauthorized the E-Verify program for years and established mandated requirements for the system's use by federal contractors, and the fact that various state and local requirements now compel certain employers to use the system to verify the work eligibility of new hires, it is conceivable that a mandatory E-Verify program will garner support in the next Congress as part of a series of measures on immigration reform.

Given a focus on security and narrow margins in the Congressional majority, Congress may also consider proposals that have gained bipartisan support in the past to enact a Trusted Employer program for low-risk, immigration-compliant employers that saves resources for top government priorities. In addition to any border security and interior enforcement bills, Congress could also consider reform of both the essential worker and high-skilled employment-based immigration systems. These efforts could include possible priorities to hire

American workers before nonimmigrant workers or delaying the issuance of green cards until employers hire first from the domestic pool of unemployed immigrant and native workers, terminating the J-1 visa program, creating an immigration commission that may look to reduce immigration levels, suspending immigration from terror-prone regions where vetting cannot safely occur, implementing a full exit system as well as possibly renegotiating NAFTA or withdrawing from the deal, which ultimately could impact TN admissions and visas for people temporarily coming to the United States from Mexico or Canada.

**SHRM AND CFGI POSITION:** SHRM and its strategic affiliate, the Council for Global Immigration (CGFI), support creating a 21st-century U.S. workforce that can compete in an increasingly complex and interconnected world. To support this goal, the U.S. must fix its outdated immigration system—one that is misaligned with today's business realities.

Specifically, SHRM and CFGI advocate for reforming the immigration system so that it supports American employers in their efforts to recruit, hire, transfer and retain global employees; supports U.S. employees by investing in their education and training; and provides employers with a national improved, reliable and entirely electronic employment verification system that protects all legal workers and compliant employers against identity theft or fraud.

## Health Care Reform

On the campaign trail, President-elect Donald Trump maintained that he will repeal and replace President Obama's signature health care law—the Affordable Care Act (ACA). Although the health law has expanded access to health insurance for an estimated 20 million Americans and the U.S. uninsured health rate is at a historic low of 8.6 percent, it is no secret that increasing health care costs continue to place a growing burden on individuals, U.S. businesses and the entire economy.

According to the Kaiser Health Benefits Survey, the average annual premiums for 2016 for employer-sponsored health insurance are \$6,435 for single coverage and \$18,142 for family coverage. Each rose 3

percent over average 2015 premium levels. In addition, last month the U.S. Department of Health and Human Services announced that health insurance premiums on the ACA's marketplaces (also called exchanges) are expected to increase an average of 25 percent across the 39 states served by the federally run online market and that about 1 in 5 consumers will only be able to choose health care coverage from a single insurer, after major national carriers such as UnitedHealth Group, Humana and Aetna scaled back their participation in the Exchanges.

Despite the rising cost of coverage and the complexity of the ACA, there is little evidence that employers at this time are planning to abandon health care coverage for their employees. As a matter of fact, many organizations are changing health care benefits or turning to other health care design strategies, such as health savings accounts, private exchanges, wellness programs and disease management programs to manage costs and avoid the looming ACA 40 percent excise tax (also known as the "Cadillac tax") on high-cost benefits provided through an employer-sponsored group health plan, which is scheduled to take effect in 2020.

**OUTLOOK:** While the Trump administration and the Republican-controlled Congress will push for a full repeal of the ACA, it is not likely that the effort will garner enough votes for passage. Without a filibuster-proof Republican majority in the Senate, Democrats are sure to make every effort to block any proposal to fully repeal the ACA. Instead, more targeted modifications to the law to address affordability, coverage and quality of care is likely, delivering on one of the Republican Party's key campaign promises. President-elect Trump will push to modify the current law prohibiting the sale of health insurance across state lines, has expressed support to allow payments individuals make toward health care premiums to be tax deductible, allow people to enroll in tax-free health savings accounts to pay for out-of-pocket costs, and require price transparency from all health care providers to enable individuals to shop for the best prices on medical procedures, among other initiatives.

Proposals of relevance to the HR profession that may garner support in the 115th Congress includes modification of the definition of a "full-time" employee for purposes of the health care coverage requirement, the preservation of employer-sponsored wellness programs, and changes to ease the compliance reporting requirements for employers offering health insurance coverage to their employees.

In addition, the ACA 40 percent excise tax on high-value plans will likely receive considerable attention, especially given the current tax treatment of employer-sponsored health care coverage. As such, the tax treatment of employer-sponsored health care benefits could come under scrutiny as lawmakers look to find ways to pay for tax reform and reduce the federal deficit. While President-elect Trump expressed support for a repeal of the 40 percent tax on the campaign trail, other legislative priorities including tax reform and the impact of repeal on the federal deficit could result in further delay, modification or replacement of the excise tax. As a matter of fact, earlier this year (June), proposed changes in the tax treatment of employer-provided health insurance were included in the U.S. House Republican Task Force on Health Care Reform plan.

Lastly, Congress may also consider legislative proposals to address skyrocketing out-of-pocket health costs and reductions in the quality of care for most Americans. Such efforts include medical malpractice reform and proposals aimed at reducing the costs of prescription drugs.

**SHRM POSITION:** SHRM supports reforms that lower health care costs and improve access to high-quality and affordable coverage. The Society believes that congressional reforms should strengthen and improve the employer-based health care system, encourage increased use of prevention and wellness programs, improve quality and transparency to reduce health care costs, ensure that tax policy contributes to lower costs and greater access, and streamline medical liability laws as a component of cost containment. In addition, SHRM supports efforts that ensure that the "full-time" employee coverage requirement definition is consistent with the Fair Labor Standards Act. SHRM

also supports efforts to fully repeal the ACA excise tax on high-value employer-sponsored health plans.

## In the Federal Agencies

While still on the campaign trail, President-elect Trump spoke about the negative impact of regulations on the workplace and the economy. His administration will undoubtedly approach regulations differently than President Obama for a couple of reasons. First, January 2017 will bring in an era of undivided government—for the first time since 2007, the Republican Party will hold the power of the presidency and both houses of Congress (albeit a slim majority in the Senate). This means that the Trump administration is more likely to succeed in making policy changes through the Congress than the Obama administration was during the last six years facing a congress controlled by the Republican Party. This may reduce the need to achieve its public policy goals through executive action. Second, President-elect Trump has vowed to review existing regulations with the aim of repealing those that his administration deems as having a negative effect or as counter-productive.

The Obama administration relied heavily on executive orders to accomplish policy objectives in recent years. President Trump could issue his own executive orders seeking to repeal those on the books, such as the executive orders affecting federal contractors including Fair Pay and Safe Workplaces and the paid sick leave mandate. Repealing regulations created through the traditional notice and comment rulemaking process, however, is more difficult and requires the federal agency to essentially revisit the regulation through a notice and comment period. Another limited approach to repeal a final rule is the Congressional Review Act (CRA), which requires Congressional action within 60 session days from the date a regulation becomes final. The Obama administration, aware of the CRA's potential, was careful to ensure that its priority rulemakings, such as changes to the overtime rules, were finalized with enough time to protect them against repeal by a new Congress and administration under the CRA. Any other attempts to change final regulations

require legislation, new rulemaking, or successful court challenges. However, these actions not only have legal technicalities that must be met, there are also practical considerations. For example, it may be more disruptive to eliminate regulations when organizations have already changed their policies and procedures to come into compliance. In addition, every regulation has its own constituencies that will be mobilized if rules are challenged.

### U.S. Department of Labor (DOL)

President-elect Trump's focus on the workplace during the campaign was principally limited to the impacts that the economy, trade, and immigration have on jobs, rather than a concern over individual labor and employment laws. Trump has expressed support for some relief on the overtime regulations, mentioning delay or exempting small business as two possible options he may consider.

**Changes to the Overtime Regulations:** On December 1, 2016, DOL's final rule raising the salary threshold under which employees qualify for overtime pay go into effect. The final overtime regulation increases the salary threshold to the 40th percentile of average salaries in the lowest-wage census region (estimated at \$47,476 in 2016) and creates an automatic adjustment to the salary threshold every three years beginning January 2020. In addition to Congressional efforts to modify or rescind the OT rule, two key lawsuits challenging the rule are ongoing in court.

Twenty-one states brought suit in the United States District Court for the Eastern District of Texas claiming that the new rule, among other things, will force many state and local governments, along with many businesses, to unfairly increase employment costs and subvert states' ability to structure a pay system for state employees. A second suit filed the same day by a group of trade associations makes similar arguments, including challenging the rule's provision to automatically update the salary threshold every three years without giving the regulated community the opportunity to comment on a proposed increase.

**SHRM POSITION:** Although SHRM supports an update to the salary threshold, the rule sets the threshold too far too fast. SHRM is closely watching progress of the litigation challenging the rule in court and supports efforts to moderate the impacts of the threshold increase by phasing it in as well as efforts to remove the provision to automatically update the level every three years.

### National Labor Relations Board (NLRB)

A full National Labor Relations Board has five members. Early in 2017, President Trump will appoint two new Republican members of the board and a new general counsel, with Senate confirmation. Over the past several years, the NLRB has adopted an aggressive and active stance on many issues including reaching into nonunion workplaces to review employee handbooks and social media policies to broadly protect employee rights to “concerted activity.” With confirmation by a Republican-controlled Senate assured, the newly constituted board will, as cases reach it, revisit and likely reverse some of the more controversial board decisions made over the past several years.

### Equal Employment Opportunity Commission (EEOC)

In October 2016, the EEOC issued its Strategic Enforcement Plan (SEP) outlining priorities for 2017-2021. The plan builds off the commission’s current work but identifies specific new priorities including an emphasis on equal opportunity protections for temporary workers and those in the gig economy as well as scrutiny on independent contractor relationships. The plan also identifies emerging issues involving backlash discrimination against those who are, or are perceived to be, Muslim, Sikh, or of Arab, Middle Eastern, or South Asian descent. The Commission also identified a focus on equal pay, how leave policies affect individuals with disabilities and protections for LGBT employees.

Although this SEP outlines the priorities of this bipartisan commission, the president does exert some control over the actions of the body by appointing new commissioners as their 5-year staggered terms expire and by determining the chair of the commission. The

current EEOC chair’s term expires in July 2017, and President Trump will likely appoint a Republican to serve as her replacement.

### Immigration-Related Regulatory and Executive Action

President-elect Trump has vowed to take a number of actions to protect American employees, secure the border and implement immigration controls. The centerpiece of his immigration plan has been a physical, impenetrable wall on the southern border. Trump also wants to make E-Verify mandatory nationwide.

**Deferred Action for Childhood Arrivals (DACA):** This policy, introduced by President Obama as an executive action in 2012, allows certain immigrants who lack documentation and entered before their 16th birthday and before June 2007 to receive work authorization and a deferral on deportation. A subsequent executive order that would have expanded DACA and introduced deferred action for certain parents of U.S. citizens and legal permanent residents was invalidated by the courts. President-elect Trump vows to rescind the initial executive action, which would once again make DACA recipients subject to deportation and without work authorization.

**H-1B Visas:** The H-1B is a temporary visa available to highly educated foreign professionals who hold at least a bachelor’s degree or its equivalent and who have an offer to work in a specialty occupation. Trump supports a plan to hire American workers first before employers are able to hire H-1B visa holders and plans to increase the prevailing wages that H-1B visa holders must be paid.

### Impact on State Legislatures

The Republican Party’s strong showing on the national front was mirrored in state races—particularly at the gubernatorial level. Leading up to Election Day, 12 governorships were up for grabs, many of them in battleground states where the presidential race was decided by a few percentage points. These states also witnessed losses in the Democratic ranks of state

legislators, some resulting in a shift of control in one or both chambers or their respective legislatures.

For Republicans, their biggest prizes were capturing the Kentucky House, the Iowa Senate and tying the senate in Connecticut. On the flip side, Democrats in 2017 will take control of both chambers of the Nevada legislature, as well as the New Mexico House, while the outcomes in New York remained too close to call at press time.

Looking at the makeup of state legislatures that will be sworn into office early in 2017, Republicans will control both chambers in the 15 states that make up the South, as well as 17 other states to the Democrats' 14. Republicans will also occupy 34 governorships to the Democrats' 14 (with one contest remaining too close to call, while another is occupied by an independent) and now control nearly 4,200 of the nearly 7,400 legislative seats in the country.

## California

Turning to the country's most populous state, the Democrats were successful in regaining a

supermajority in the Assembly; however, they fell short by one seat in the Senate. Recapturing a supermajority in both houses, while also holding the governor's office, would have allowed Democrats to raise taxes and place constitutional amendments on the ballot without needing any support from Republicans. Instead, with the Senate enjoying only a simple majority advantage, they will now need to garner some Republican support should they want to pass any measures that require a two-thirds vote.

With regard to ballot initiatives in the Golden State, voters approved a ballot measure that legalizes the recreational use of marijuana for people ages 21 and over. Understanding that this new law will have many implications on workplace policies, SHRM is preparing to educate our members in the state, along with those headquartered outside of California that employ workers in the state, on the promising practices to implement the new law.

While legislation for the 2017-18 session of the Legislature can't officially be introduced until after the legislators are sworn in on December 1, it is expected



Senator Tom Berryhill (R-08, Modesto), pictured at center with CalSHRM members in the California Senate chamber.

that workplace bills that failed to pass in the last legislative session will be reintroduced early and teed up for action next year. One bill in particular is the SHRM-supported workplace flexibility legislation that would allow private employees and employers to *voluntarily* establish an alternative work schedule. Senator Tom Berryhill (R-08, Modesto, pictured below at center with CalSHRM members) authored the bill last year and has indicated that he will be introducing the bill again this upcoming session. He and his staff have already requested the assistance of SHRM and the CalSHRM State Council to help move the bill forward next year in the legislative process. SHRM will also be working on sponsoring legislation that will allow private employers to establish a *voluntary* preference for the hiring of veterans. Other potential workplace-related bills that SHRM will be tracking and advocating on include a bill to expand parental leave, a bill on predictive scheduling, and other workplace flexibility bills.

Given the strong interest in workplace-related bills by the Democratic majority, it is essential that the voice of HR continue to be heard in California through SHRM's presence in Sacramento and our Advocacy Team members in California. SHRM, in collaboration with the CalSHRM State Council, will continue to advocate on behalf of the HR profession in this bellweather state for workplace policy.

## 2017 Policy Agenda in the States

While President-elect Donald J. Trump's victory on the national level was not foreseen by many, Republican dominance in the states in governorships and legislature seats continued its expansion in this election. The GOP added to its control of governorships and captured some big wins in the South and Midwest. Democrats, on the other hand, made gains in the desert Southwest.

### Paid Leave

Proponents of paid leave legislation had a good election night, with nearly 60 percent of the voters casting ballots in Arizona and the state of Washington in support of a ballot measure mandating that employers in both states provide up to 5 days of paid or unpaid

leave to their employees on July 1. These developments bring the number of states supporting some form of paid sick leave mandate to seven (Connecticut, Massachusetts, California, New York and Rhode Island included). Other Democrat-controlled states in the Northeast and Pacific Coast regions may soon follow suit.

Localities have also been active in advancing paid leave mandates for employees. To date, over a dozen major municipalities have passed such ordinances with San Francisco, Newark, New Jersey, Philadelphia, Seattle, New York and Washington, D.C., leading the way. On the flip side of this debate, nearly a dozen states throughout the South and the Midwest have enacted bills preempting cities and localities in their states from enacting paid leave ordinances.

**OUTLOOK:** While President-elect Trump was silent on the issue of paid sick leave for employees, the likelihood for any comprehensive paid leave legislation making its way through the 115th Congress is remote due to the GOP control of both the Senate and House of Representatives. Thus, look for other states (particularly those in the Northeast and the West) and other major localities to consider this type of legislation. GOP-controlled states are likely to continue to support/advance legislation preempting such actions by local governments.

### Social Media Passwords

A growing trend on the state level is the enactment of legislation prohibiting employers from asking job applicants or current employees for access to their social media passwords. Since Maryland was the first state in 2012 to embrace this prohibition, nearly 20 states have followed suit with California, Louisiana, New Hampshire, Oklahoma, Rhode Island, Tennessee, Wisconsin and Maine (study only) enacting laws this year. In brief, these efforts provide an outright ban on employers from requesting social media passwords, with limited exceptions for cases involving internal workplace investigations of theft and/or alleged instances in an effort to thwart workplace harassment and/or violence.

**OUTLOOK:** This issue is not a partisan workplace issue, given that both GOP- and Democratic-dominated state governments have enacted these laws in the past few years, and SHRM anticipates more of these types of bills to be enacted into law in 2015.

## Background Checks

One of the most ambitious legislative thrusts on the state level since 2010 has been legislation restricting the use of credit checks by employers in the hiring process. Washington state was the first state to enact such legislation in 2007, but since then, 10 other states have followed suit by enacting similar restrictions on the use of credit checks in the hiring process or when considering promotions within an organization.

In brief, the legislation would limit the use of credit checks in the employment process for specific jobs categories, such as senior management, positions working in the banking and financial industries, and federal contractors. Proponents of this legislation contend that due to the economic downturn of 2009, Americans who either experienced job loss and/or had been hurt financially by the downturn in the housing market, suffered greatly, which negatively impacted their credit reports.

In addition, more than 60 municipalities across the country and over two dozen states have enacted legislation restricting employers (both public and in certain instances private employers) from inquiring about past criminal convictions on employment applications (aka “ban-the-box”) or limiting the inquiry to a conditional offer of employment. This effort has been also a priority of the Obama administration through its Fair Chance Pledge initiative, whereby U.S. corporations voluntarily pledge to ban-the-box on their hiring applications and afford job applicants the ability to address past convictions during the interview process by training their HR professionals on how to make fair decisions when considering an applicant’s past criminal record.

**OUTLOOK:** Similar restrictions are expected to be considered on both the state and local levels in 2017. In recent years, SHRM has testified before Congress, at the U.S. Equal Employment Opportunity Commission, the

U.S. Commission on Civil Rights, and in the Maryland State Legislature on this issue, as well as on the use of criminal background checks in the hiring process. SHRM supports preserving employers’ ability to conduct background checks for employment purposes. They serve as an important means to promote a safe and secure work environment for employees and the general public.

## Predictive Scheduling

A new addition to the numerous workplace bills surfacing on the state and local level is a concept known as “predictive scheduling” legislation that, in part, would mandate employers (particularly in the retail and food service industries) to provide their employees with their work schedules weeks in advance and would require those same employers to compensate those employees for lost hours worked if their schedules were negatively adjusted on short notice. Like other major workplace reforms, San Francisco broke new ground on this issue when it passed the “Retail Workers Bill of Rights” ordinance in 2014.

**OUTLOOK:** In 2016, over a dozen states and a number of localities (including the District of Columbia) considered such legislation only to table it for further consideration. Seattle, however, adopted a similar ordinance to San Francisco’s this year, and it is likely that other states and locales will consider this legislation in 2017.

## Results of Ballot Initiatives/Referenda/Questions

Voters in 41 states and the District of Columbia were asked to decide the fate of over 150 ballot measures on November 8. Workplace issues ranging from background checks for firearms purchases, to increasing the minimum wage, to legalizing the private use and medical use of marijuana, to mandating employers to provide paid and unpaid leave to their employees were put before the voters to decide.

Following is a brief summary of how some of the key HR-related initiatives fared on Election Day 2016:

☑ **Increasing the Minimum Wage:** Voters in Arizona, Colorado, Maine and Washington passed ballot initiatives to raise the minimum wage in their respective states, while South Dakotans turned back a measure that would have allowed a reduced minimum wage for child workers.

☑ **Legalizing the Private Use of Marijuana:** Voters in six states were asked whether or not they supported legalizing the recreational use of marijuana in their states. California, Florida, Massachusetts and Nevada overwhelmingly voted in favor of this action, while voters in Arizona turned back the measure and Maine's tally was too close to call at press time. In addition, voters in Arkansas, Florida, Montana and North Dakota supported the legalization of certain types of marijuana use for medical purposes. This trend, particularly how to control the influence of this legal product on employees while at work, is a growing concern for HR professionals.

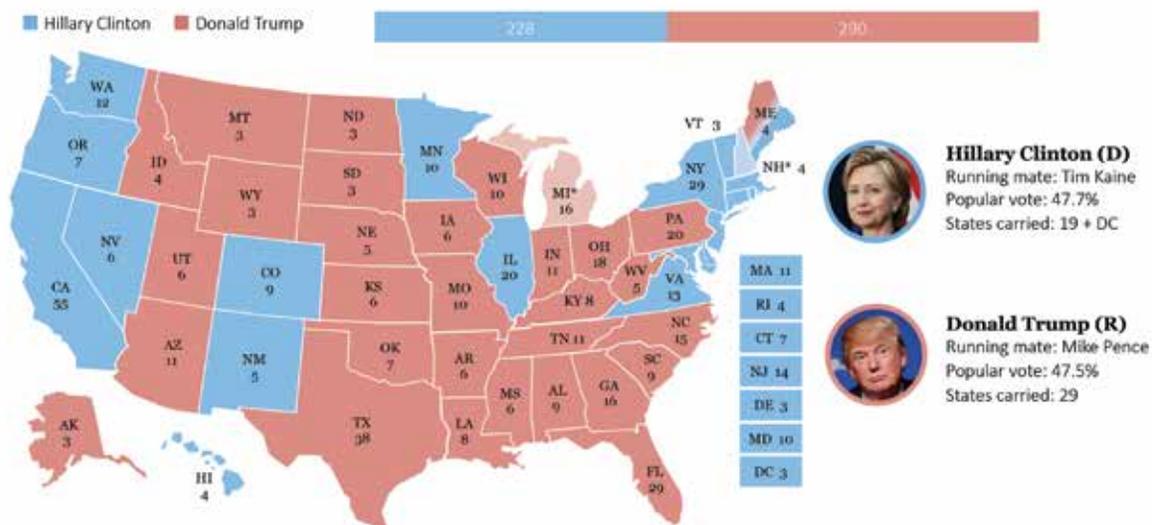
☑ **Single-Payer Health Care:** Voters in Colorado overwhelmingly turned back efforts to be the first state of the union to adopt a universal, single-payer health care program for its residents to be known as "Colorado Care." In brief, the program would have been funded by a payroll tax on all employers and employees, as well as a tax on nonpayroll income to fund the program, scheduled to become effective in 2019.

☑ **Paid/Unpaid Leave:** Nearly 60 percent of the voters casting ballots in Arizona and the state of Washington supported measures requiring employers in their states to provide up to 5 days of paid or unpaid leave to their employees on July 1. This brings to 7 the number of states that have adopted some form of paid leave mandate for public and private employers, along with dozens of local municipalities across the country who have adopted similar ordinances.

☑ **Right-to-Work:** Nearly 70 percent of voters in Alabama overwhelmingly approved a measure to include language in their state's constitution relating to the right to work, while voters in Virginia narrowly turned back a similar measure.

## 2016 Electoral College map

Reported as of Nov. 10 at noon

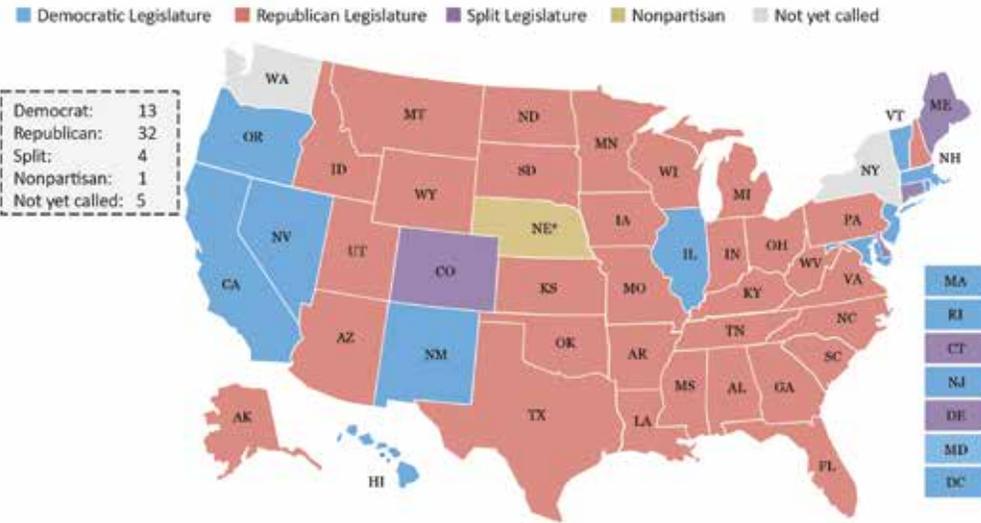


Source: RealClearPolitics, "Electoral College Map," 2016.

\*States not officially called but leaning towards shade indicated on the map

## Map of State Legislature Results, by Party

Results as of Nov. 9 at 6 a.m.

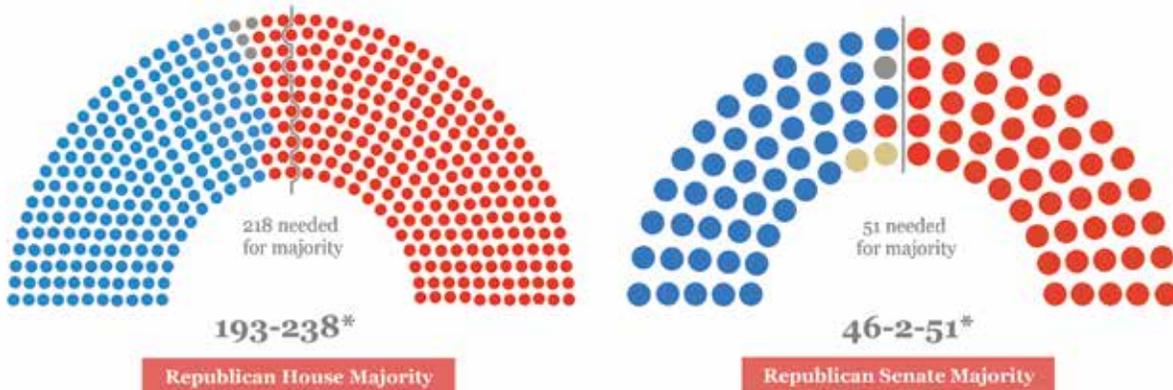


\*Nebraska has a unicameral, nonpartisan legislature

Source: National Journal research, 2016.

## Party Control at Beginning of 115th Congress (2017-19)

Legend: Democrat (blue), Republican (red), Independent (caucusing with Dems) (yellow), Not yet called (grey)



\*As of Nov. 10 at noon, four House races have yet to be called

\*As of Nov. 10 at noon, one Senate race has yet to be called—Louisiana will be going to a run-off

Sources: National Journal Research, 2016.

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