

# MONSTER

## 2017 Staffing: Will Law and Regulation Bring Boon or Bust?



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With a Republican-dominated government taking office in January 2017, the stage is set for significant legal and regulatory changes that could affect the staffing industry for years to come. The fate of the 2016 [overtime rule](#), regulation regarding immigrant workers and the [Affordable Care Act](#) and are the top issues that staffing firms should monitor.

### **The overtime rule -- or its death -- will affect staffing strategies.**

Just before Thanksgiving a Federal judge in Texas issued an [injunction](#) barring implementation of a [Fair Labor Standards Act rule](#) that was slated to double the salary floor for overtime-exempt employees. This ruling, though preliminary, casts further doubt on a major overtime provision that created a strategy and compliance scramble in 2016 for staffing firms and their clients.

Given the ruling and the pro-business stance of the incoming GOP government, "I think the overtime rule change is dead," says Todd Wulffson, a management attorney and partner at [Carothers DiSante & Freudenberger](#).

But since the rule had been expected to take effect Dec. 1st, "in the short term, anyone who has made changes to comply with the new overtime rule is likely to stick with those changes," says Judy Conti, federal advocacy coordinator at the [National Employment Law Project](#). "It would be such poor HR practice to undo."

Still, a mere 10 days before the rule was to take effect, "a fairly hefty percentage of smaller employers were not prepared to implement the overtime rule changes," says Nancy Hammer, senior government affairs policy counsel at the [Society for Human Resource Management](#).

"With employers that have already put things like reclassification or salary increases into place, it's harder to say. Reclassification is something sizable employers do year-round, so it may not be too burdensome to redo this."

But some compliance actions will be hard to reverse, in terms of [employee morale](#). "Maybe the employer bumped up some salaries to the new floor -- how do you go and take that back?" says Julie Kinkopf, a partner with [Weber Gallagher Simpson Stapleton Fires & Newby](#). "I think the chances that this injunction will become permanent are pretty good."



The bottom line for staffing firms and their clients? If it is eventually implemented, "the new overtime rule would be good for staffing, not so good for employers that can't afford to pay higher wages to affected employees," says Jennifer Chee, senior director of talent acquisition specializing in healthcare IT for search firm [The Tolan Group](#).

If the rule is permanently barred or reversed by the courts, Congress or the administration, staffing firms will need to rethink their strategy.

**Changes to the Affordable Care Act should concern all employers.** Given Trump's likely nomination of a staunchly anti-ACA Secretary of Health and Human Services, the healthcare law will almost certainly be repealed or substantially revised in 2017. During the Obama administration, the Republicans in Congress voted dozens of times to repeal the massive healthcare law.

"I think there's going to be cherry-picking with the Affordable Care Act," says Wulffson. "The employer mandate will be abolished or reduced, and the individual mandate will be reduced."

Changes to key ACA provisions, such as the mandate that most employers insure all workers who work 30 or more hours per week, could affect staffing clients' workforce strategies.

"The 30-hour work week really impacts mainly the food industry and retailers," says Chatrane Birbal, senior advisor on government relations at SHRM. "Some retailers unfortunately have cut back some employees to 29 hours so they don't have to provide health insurance. I could see some employers bumping such workers back up to 40."

Any substantial change will create work for HR departments and staffing firms. "If the employer mandate goes away, it's going to be hard to put the toothpaste back in the tube, with changes to the law's complex reporting and other administrative requirements," says Birbal. If the ACA is repealed, she says, there's likely to be a two-year delay to allow employers to make the proper adjustments.

Chee says that without the [ACA's 30-hour rule](#), "more people would be likely to change jobs." Staffing firms might be freed to give their associates 40 hours of work per week without having to provide health insurance, though many workers are likely to balk at such a change.

**Expect greater scrutiny of workers' immigration status.** With immigration one of the hottest issues of 2016 election campaigns, it's no surprise that 2017 is likely to bring change to the employment laws and regulations that pertain to workers who are not U.S. citizens.

"[E-Verify](#) probably will be legislatively mandated, to try to completely bar people from getting jobs without immigration status," says Wulffson. Such a change would likely require staffing firms, as employer of record, to run checks and create and file related reports.

Concerns persist about the efficacy of such a system, especially for staffing firms with their many associates. "If the government makes I-9s nationwide and mandatory as Republicans have talked about, we want to make sure those rules work," says Hammer. "Due to problems like identity theft, just using E-Verify doesn't necessarily mean you're hiring somebody who has legal status."

There's no consensus on another immigrant-worker issue likely to come under government review in 2017. "I suspect they will raise H-1B visa caps," to enable American businesses to access hard-to-find technical talent, says Wulffson.

However, "the president-elect has talked about encouraging greater hiring within this country," says Hammer. "We are concerned that the administration may try to limit H-1B caps."