After the Election: The Washington Outlook for HR Public Policy

SHRM Webcast
Michael P. Aitken, Vice President
Government Affairs, SHRM
November 15, 2016
Economy Remains Top Problem in U.S. Prior to Election

<table>
<thead>
<tr>
<th>Most Important Problem -- Recent Trend</th>
<th>July 2016</th>
<th>August 2016</th>
<th>September 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economy</td>
<td>12%</td>
<td>17%</td>
<td>14%</td>
</tr>
<tr>
<td>Dissatisfaction with government</td>
<td>16%</td>
<td>13%</td>
<td>11%</td>
</tr>
<tr>
<td>Unemployment/Jobs</td>
<td>7%</td>
<td>8%</td>
<td>11%</td>
</tr>
<tr>
<td>Elections/Election reform</td>
<td>5%</td>
<td>7%</td>
<td>8%</td>
</tr>
<tr>
<td>Race relations/Racism</td>
<td>18%</td>
<td>7%</td>
<td>7%</td>
</tr>
<tr>
<td>Immigration</td>
<td>6%</td>
<td>8%</td>
<td>6%</td>
</tr>
<tr>
<td>Terrorism</td>
<td>5%</td>
<td>9%</td>
<td>5%</td>
</tr>
<tr>
<td>National security</td>
<td>6%</td>
<td>7%</td>
<td>5%</td>
</tr>
<tr>
<td>Ethics/Morals</td>
<td>6%</td>
<td>3%</td>
<td>5%</td>
</tr>
</tbody>
</table>

Shown are problems listed by at least 5% of Americans in September 2016

Source: Gallup, September 16, 2016
November 2016 Elections

Most agree that the government is broken

Government is Broken vs. Working Like it is Supposed To

- Definitely broken
- Somewhat broken
- Not sure
- Somewhat working
- Definitely working

<table>
<thead>
<tr>
<th>Category</th>
<th>Definitely Broken</th>
<th>Somewhat Broken</th>
<th>Not Sure</th>
<th>Somewhat Working</th>
<th>Definitely Working</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall</td>
<td>42%</td>
<td>33%</td>
<td>10%</td>
<td>11%</td>
<td>4%</td>
</tr>
<tr>
<td>Clinton Voters</td>
<td>20%</td>
<td>39%</td>
<td>15%</td>
<td>21%</td>
<td>5%</td>
</tr>
<tr>
<td>Trump Voters</td>
<td>64%</td>
<td>28%</td>
<td>4%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Ind/3rd Party Voters</td>
<td>51%</td>
<td>30%</td>
<td>9%</td>
<td>9%</td>
<td>1%</td>
</tr>
</tbody>
</table>

Source: Heart + Mind Strategies, November 8, 2016
November 2016 Elections

The mood of the country is a blend of conflicting perspectives

**Mood of the Country**
- **Wrong Track**
- **Right Direction**

<table>
<thead>
<tr>
<th>Group</th>
<th>Wrong Track</th>
<th>Right Direction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall</td>
<td>69%</td>
<td>31%</td>
</tr>
<tr>
<td>Clinton Voters</td>
<td>45%</td>
<td>55%</td>
</tr>
<tr>
<td>Trump Voters</td>
<td>93%</td>
<td>7%</td>
</tr>
<tr>
<td>Ind/3rd Party Voters</td>
<td>84%</td>
<td>16%</td>
</tr>
</tbody>
</table>

Source: Heart + Mind Strategies, November 8, 2016
Opinion of Presidential Candidate You Voted For

<table>
<thead>
<tr>
<th></th>
<th>Clinton</th>
<th>Trump</th>
<th>Other/No Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly favor</td>
<td>53%</td>
<td>42%</td>
<td>5%</td>
</tr>
<tr>
<td>Have reservations</td>
<td>48%</td>
<td>49%</td>
<td>3%</td>
</tr>
<tr>
<td>Dislike opponents</td>
<td>39%</td>
<td>51%</td>
<td>10%</td>
</tr>
<tr>
<td>Total respondents</td>
<td>24,537</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Which Candidate Quality Mattered Most

<table>
<thead>
<tr>
<th></th>
<th>Clinton</th>
<th>Trump</th>
<th>Other/No Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cares about me</td>
<td>58%</td>
<td>35%</td>
<td>7%</td>
</tr>
<tr>
<td>Can bring change</td>
<td>14%</td>
<td>83%</td>
<td>3%</td>
</tr>
<tr>
<td>Right experience</td>
<td>90%</td>
<td>8%</td>
<td>2%</td>
</tr>
<tr>
<td>Good judgment</td>
<td>66%</td>
<td>26%</td>
<td>8%</td>
</tr>
<tr>
<td>Total respondents</td>
<td>24,537</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: CNN, November 8, 2016
## President Obama Job Approval

<table>
<thead>
<tr>
<th>Poll</th>
<th>Date</th>
<th>Sample</th>
<th>Approve</th>
<th>Disapprove</th>
<th>Spread</th>
</tr>
</thead>
<tbody>
<tr>
<td>RCP Average</td>
<td>10/28 - 11/7</td>
<td>--</td>
<td>52.4</td>
<td>44.6</td>
<td>+7.8</td>
</tr>
<tr>
<td>Economist/YouGov</td>
<td>11/4 - 11/7</td>
<td>3677 LV</td>
<td>50</td>
<td>49</td>
<td>+1</td>
</tr>
<tr>
<td>Gallup</td>
<td>11/4 - 11/6</td>
<td>1500 A</td>
<td>56</td>
<td>41</td>
<td>+15</td>
</tr>
<tr>
<td>FOX News</td>
<td>11/3 - 11/6</td>
<td>1295 LV</td>
<td>52</td>
<td>47</td>
<td>+5</td>
</tr>
<tr>
<td>NBC News/Wall St. Jrnl</td>
<td>11/3 - 11/5</td>
<td>1282 LV</td>
<td>53</td>
<td>44</td>
<td>+9</td>
</tr>
<tr>
<td>Rasmussen Reports</td>
<td>11/2 - 11/6</td>
<td>1500 LV</td>
<td>52</td>
<td>46</td>
<td>+6</td>
</tr>
<tr>
<td>McClatchy/Marist</td>
<td>11/1 - 11/3</td>
<td>940 LV</td>
<td>51</td>
<td>45</td>
<td>+6</td>
</tr>
<tr>
<td>Reuters/Ipsos</td>
<td>10/29 - 11/2</td>
<td>2708 A</td>
<td>51</td>
<td>45</td>
<td>+6</td>
</tr>
<tr>
<td>CBS News/NY Times</td>
<td>10/28 - 11/1</td>
<td>1561 A</td>
<td>54</td>
<td>40</td>
<td>+14</td>
</tr>
</tbody>
</table>

**All President Obama Job Approval Polling Data**

Source: Real Clear Politics, November 7, 2016
After Two-Term Presidencies; Parties Rarely Maintain Control of White House

<table>
<thead>
<tr>
<th>Year</th>
<th>President</th>
<th>Party</th>
<th>2nd Term Approval</th>
<th>Party Election Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>Eisenhower</td>
<td>Republican</td>
<td>61%</td>
<td>Democrats take White House</td>
</tr>
<tr>
<td>1968</td>
<td>Kennedy/Johnson</td>
<td>Democrat</td>
<td>50%</td>
<td>Republicans take White House</td>
</tr>
<tr>
<td>1976</td>
<td>Nixon/Ford</td>
<td>Republican</td>
<td>53%</td>
<td>Democrats take White House</td>
</tr>
<tr>
<td>1988</td>
<td>Reagan</td>
<td>Republican</td>
<td>55%</td>
<td>Republicans keep White House</td>
</tr>
<tr>
<td>2000</td>
<td>Clinton</td>
<td>Democrat</td>
<td>61%</td>
<td>Republicans take White House (Dems win popular vote)</td>
</tr>
<tr>
<td>2008</td>
<td>G. W. Bush</td>
<td>Republican</td>
<td>37%</td>
<td>Democrats take White House</td>
</tr>
<tr>
<td>2016</td>
<td>Obama</td>
<td>Democrat</td>
<td>50%</td>
<td>Republicans take White House (Dems win popular vote)</td>
</tr>
</tbody>
</table>

Source: Cook Political Report
# General Election: Trump vs. Clinton vs. Johnson vs. Stein

## Polling Data

<table>
<thead>
<tr>
<th>Poll</th>
<th>Date</th>
<th>Sample</th>
<th>MoE</th>
<th>Clinton (D)</th>
<th>Trump (R)</th>
<th>Johnson (L)</th>
<th>Stein (G)</th>
<th>Spread</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Results</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>47.7</td>
<td>47.5</td>
<td>3.3</td>
<td>1.0</td>
<td>Clinton +0.2</td>
</tr>
<tr>
<td>RCP Average</td>
<td>11/2-11/7</td>
<td>--</td>
<td>--</td>
<td>45.5</td>
<td>42.2</td>
<td>4.7</td>
<td>1.9</td>
<td>Clinton +3.3</td>
</tr>
<tr>
<td>Bloomberg</td>
<td>11/4-11/6</td>
<td>799 LV</td>
<td>3.5</td>
<td>44</td>
<td>41</td>
<td>4</td>
<td>2</td>
<td>Clinton +3</td>
</tr>
<tr>
<td>IBD/TIPP Tracking</td>
<td>11/4-11/7</td>
<td>1026 LV</td>
<td>3.1</td>
<td>43</td>
<td>45</td>
<td>8</td>
<td>2</td>
<td>Trump +2</td>
</tr>
<tr>
<td>Economist/YouGov</td>
<td>11/4-11/7</td>
<td>3677 LV</td>
<td>--</td>
<td>45</td>
<td>41</td>
<td>5</td>
<td>2</td>
<td>Clinton +4</td>
</tr>
<tr>
<td>ABC/Wash Post Tracking</td>
<td>11/3-11/6</td>
<td>2220 LV</td>
<td>2.5</td>
<td>47</td>
<td>43</td>
<td>4</td>
<td>1</td>
<td>Clinton +4</td>
</tr>
<tr>
<td>FOX News</td>
<td>11/3-11/6</td>
<td>1295 LV</td>
<td>2.5</td>
<td>48</td>
<td>44</td>
<td>3</td>
<td>2</td>
<td>Clinton +4</td>
</tr>
<tr>
<td>Monmouth</td>
<td>11/3-11/6</td>
<td>748 LV</td>
<td>3.6</td>
<td>50</td>
<td>44</td>
<td>4</td>
<td>1</td>
<td>Clinton +6</td>
</tr>
<tr>
<td>Gravis</td>
<td>11/3-11/6</td>
<td>16639 RV</td>
<td>1.0</td>
<td>47</td>
<td>43</td>
<td>3</td>
<td>2</td>
<td>Clinton +4</td>
</tr>
<tr>
<td>NBC News/Wall St. Jnl</td>
<td>11/3-11/5</td>
<td>1282 LV</td>
<td>2.7</td>
<td>44</td>
<td>40</td>
<td>6</td>
<td>2</td>
<td>Clinton +4</td>
</tr>
<tr>
<td>Reuters/Ipsos</td>
<td>11/2-11/6</td>
<td>2196 LV</td>
<td>2.3</td>
<td>42</td>
<td>39</td>
<td>6</td>
<td>3</td>
<td>Clinton +3</td>
</tr>
<tr>
<td>Rasmussen Reports</td>
<td>11/2-11/6</td>
<td>1500 LV</td>
<td>2.5</td>
<td>45</td>
<td>43</td>
<td>4</td>
<td>2</td>
<td>Clinton +2</td>
</tr>
<tr>
<td>CBS News</td>
<td>11/2-11/6</td>
<td>1426 LV</td>
<td>3.0</td>
<td>45</td>
<td>41</td>
<td>5</td>
<td>2</td>
<td>Clinton +4</td>
</tr>
</tbody>
</table>

All General Election: Trump vs. Clinton vs. Johnson vs. Stein Polling Data

---

Source: Real Clear Politics, November 7, 2016
November 2016 Elections

2016 Electoral College map
Reported as of November 10th at 12:00 pm

Hillary Clinton (D)
Running Mate: Tim Kaine
Popular Vote: 47.7%
States Carried: 19 + DC

Donald Trump (R)
Running Mate: Mike Pence
Popular Vote: 47.5%
States Carried: 31


*States not officially called but leaning towards shade indicated on the map
2016 Presidential Election


- Why control of the White House is important:
  - Sets the agenda for the country;
  - All cabinet level and senior-level appointments;
  - Judicial appointments;
  - Decides the regulatory agenda and;
  - Vetoes legislation.
November 2016 Elections

Race for the House 2016

- There are currently in the 114th Congress, 246 Republicans to 201 Democrats.

- House Republicans will control the 115th Congress with 238 Republicans to 193 Democrats, with four races undecided.

- Why control of the House is important:
  - Oversight hearings;
  - All tax legislation must originate in the House;
  - Party in control of House tightly controls policy and;
  - Need 2/3 of House to override a presidential veto.
November 2016 Elections

U.S. House of Representatives

Republicans retain control of House; limit Democratic gains in 2016 elections

Control of the 114th vs. 115th House

Control of the 114th House (2014-2016)

- 186-246
- Republican House Majority

Control of the 115th House (2016-2018)

- 193-238
- Republican House Majority

*As of 12:00 PM on Nov. 10, four House races have yet to be called

Sources: National Journal research, 2016.
November 2016 Elections

Race for the Senate 2016

- In the 114th Congress, there are currently, 54 Republicans, 44 Democrats, and 2 Independents caucusing with the Democrats.

- Republicans lost 2 seats (Illinois and New Hampshire) but will maintain control in the Senate in the 115th Congress with at least 51 Republicans to 46 Democrats, with 2 Independents with one race pending (Louisiana).

- Why control of the Senate is important:
  - Oversight hearings;
  - Confirms presidential appointments and judges;
  - Approves treaties and;
  - Magic number for control in the Senate is 60, not 51. Need 60 votes to insure agenda moves forward.
November 2016 Elections

U.S. Senate

Republican party wins a majority in the Senate

Control of the 114th vs. 115th Senate

Control of the 114th Senate (2014-2016)

44-2-54

Republican Senate Majority

Control of the 115th Senate (2016-2018)

46-2-51

Republican Senate Majority

*Louisiana Senate race not yet called

Source: National Journal Research, November 11, 2016
Republicans control majority of state legislatures and governorships

Party control of state legislatures and governorships

- Dem legislature, Dem governor
- GOP legislature, GOP governor
- Dem legislature, GOP governor
- GOP legislature, Dem governor
- Split legislature, Dem governor
- Split legislature, GOP governor
- N/A*
- Not yet called

* Nebraska has a unicameral, nonpartisan legislature and a GOP governor, Alaska has an independent governor and a GOP legislature.

President-elect Trump will freeze/review/rescind recent federal agency action.

A few labor and employment policy riders may make it into federal spending bills at the end of this session:
- Joint-employer
- FAR Blacklisting
- OT Regulations
  - Delay/Phase-in
  - Congressional Review Act

Aggressive regulatory and executive action from the Obama Administration:
- Final 541 Overtime Regulation
- Final Persuader Rules
- DOL Interpretive Guidance on Misclassification of Workers
- DOL Interpretive Guidance on Joint Employer
- Executive Order on Fair Pay and Safe Workplaces (a.k.a. “Blacklisting”)
- Executive Order on Paid Leave for Federal Contractors
2016-2017 Public Policy Agenda – Labor and Employment

- Final EEOC Guidance on Sex Discrimination
- Final EEOC Guidance on Leave as an Accommodation
- Final EEOC Changes to Annual EEO-1 Form on Pay Data
- EEOC Best Practices on Harassment

- NLRB Board actions mean increased activity
  - *Browning-Ferris*
  - *Specialty Health Care*
  - *D.R. Horton*
  - NLRB Ambush Rules
2016-2017 Public Policy Agenda – Labor and Employment

- Leave issues continue to be a focus of advocacy groups and state legislatures:
  - Paid sick leave
  - Paid family and medical leave
  - Predictive scheduling

- Several states and localities have enacted paid sick leave requirements:
  - Arizona*
  - California
  - Connecticut
  - Massachusetts
  - Oregon
  - Vermont
  - Washington*

- ....while others have paid family leave insurance programs:
  - California
  - New Jersey
  - New York
  - Rhode Island
  - Washington
  - San Francisco
2017 Public Policy Agenda – Labor and Employment

- Issues on the horizon:
  - Freeze/Review/Rescind recent federal regulations
  - Regulatory Reform
  - Paid leave
  - Compensation equity
  - Restrictions on background checks
  - Gig economy focus
  - Raising the minimum wage???
Want More on FLSA Changes?

Fair Labor Standards Act Compliance and Management

- 2-Week Virtual SHRM Seminar
- November 29-December 8
- 7:00-9:00 p.m., ET  Held on Tuesdays & Thursdays

Register Now - shrm.org/seminars/FLSA
2016-2017 Public Policy Agenda – Health Care Reform

- Repeal of the ACA is one of President-elect Trump’s priorities in the first 100 days of his Administration.....but it will be difficult.

- Increase in ACA premiums by 25 percent in 39 states in the federal exchanges and became part of narrative in closing days of presidential campaign.

- Speaker Paul Ryan’s Bold Way Agenda for a Confident America includes a task force on health care reform. The health care reform task force included recommendations to:
  - Cap on employer-tax exclusion for health care
  - Medical malpractice reform
  - Repeal/Replace of the ACA
  - Support for employer-sponsored wellness programs
2017 Public Policy Agenda – Health Care Reform

Issues on the horizon:
- Repeal/Replace/Phase-in
- Taxation/Cap of employer-sponsored health care coverage
- Exchange marketplace
- Employer wellness programs
- Price Transparency
- HSA Expansion
- Medicare/Medicade Buy-in
- Sale of HC Insurance across state lines
2016-2017 Public Policy Agenda – Immigration Reform

- E-Verify and four other immigration laws extended to December 9, 2016 as part of FY 2016 budget bill but will need to be extended again at the end of this fiscal year.

- Immigration reform was a major issue in 2016 Presidential Campaign and migration issues are also at the forefront of the international community.

- President-elect Trump has promised a focus on border security and interior enforcement, including worksite enforcement.

- New Congress will likely consider immigration enforcement issues and could also include a focus on employment-based visas as well.
Trump Recommits to Hard-Line Immigration Stance

1. Build a wall with surveillance and sensor technology, fortified with manpower.

2. End “catch and release” by detaining anyone who crosses the border until they are deported.

3. Enforce zero tolerance for criminal aliens by removing them all from the U.S. and creating a Deportation Task Force.

4. Block funding for sanctuary cities in an effort to eliminate laws that shield undocumented immigrants.

5. Cancel Obama’s executive orders giving amnesty and fully enforce all immigration laws.

6. Suspend issuing visas to any place we cannot adequately screen including countries with refugees like Syria and Libya.

7. Require other countries to take back their citizens when they are deported. Some countries refuse to accept people back in such circumstance.

8. Complete the biometric entry-exit visa tracking system in an effort to eliminate Visa overstays.

9. Use E-Verify to the fullest extent, expanding its use and prioritizing the deportation of aliens on welfare.

10. Reform legal immigration to keep it legal immigration within historical norms and admit immigrants most likely to be financially self-sufficient.

2017 Public Policy Agenda – Immigration Reform

Issues on the horizon:
- Border security/Interior enforcement
- Increased focus of employment-based visa process
- Stepped-up worksite enforcement
- Incremental reform???
2016-2017 Public Policy Agenda – Budget

- **2017 Federal Budget**
  - Bipartisan Budget Act of 2015 creates a two-year budget agreement that increases spending caps by $80 billion for Fiscal Years 2016 and 2017, equally divided between defense and nondefense spending ($50 billion for FY2016 and $30 billion for FY2017).
  - Deal also suspends federal debt ceiling limit until March 2017, when the limit will be reset to the level of debt on the books at that time.
  - Congress passed a Continuing Resolution (CR) to fund the federal government through December 9. Congress will need to pass another spending bill or bills in December. Fights expected on:
    - Policy Riders
    - Length of spending bill

- **Federal National Debt**
  - Projected deficit of $600 billion in 2016 but current federal debt is over $19 trillion dollars. Deficit projected to hit $1.1 trillion a year by 2025.
The top 10 most expensive tax expenditures will cost the federal government roughly $900B in FY 2013. Both Republicans and Democrats have recently considered eliminating or limiting these tax breaks as a way to generate revenue.
2016-2017 Public Policy Agenda – Tax Reform

- Tax reform will be a focus of the 115th Congress.

- Speaker Paul Ryan’s Better Way to Develop Bold Agenda for a Confident America included a task force on tax reform. Significant changes to employer-sponsored benefits will be part of any tax reform discussion. The tax reform task force included recommendations to:
  - Review current tax incentives for employer-provided retirement and pension plans to determine what incentives will remain.
  - Consolidate many of the higher educational tax credits; including Section 127 employer-provided educational assistance.

- Social Security and Medicare Reform will be part of the overall budget and tax discussion.

- Groups continue to engage in various congressional working groups to discuss impacts of changes to the tax treatment of retirement and benefit plans.
2017 Public Policy Agenda – Budget & Tax Reform

- Issues on the horizon:
  - Corporate vs. individual tax reform
  - Taxation of employer-sponsored benefits
  - Entitlement reform
  - Auto enrollment for pension plans
  - PBGC reform
Creating a 21st Century Workplace

- INNOVATIVE
- FAIR
- COMPETITIVE
The 21st Century Workplace Is:

1) **INNOVATIVE:** The 21st Century Workplace provides employers and employees the flexibility to address how, when and where work is accomplished and allows for the design of employee benefit programs that attract and retain employees, while managing the fiscal realities of modern business.

2) **FAIR:** The 21st Century Workplace provides fair employment practices in hiring, training and compensation, regardless of non-job-related characteristics, and encourages practices that meet the goals of the organization and the needs of its employees.

3) **COMPETITIVE:** The 21st Century Workplace gives employers the ability to attract, recruit, hire and train talent, as needed, to remain competitive in a global economy.

#21CenWork
For more information & registration: https://conferences.shrm.org/legislative-conference
November 2016 Elections

Keep your SHRM membership active to keep your organization compliant:

- Proposed policy changes
- Sample policies
- Sample forms
- News & analysis
- Federal & state updates

Plus ... HR Knowledge Advisors are here to answer your specific questions at shrm.org/hrhelp