

Biden's Win Means Big Business For BigLaw

By **Aebra Coe**

Law360 (November 7, 2020, 4:44 PM EST) -- BigLaw is likely to see a boom in business under Joe Biden's presidency, with attorneys and law firm leaders anticipating a bevy of new federal regulation and enforcement actions that will have clients calling for advice.

With the race called for Biden based on apparent wins in Pennsylvania and Nevada on Saturday, the legal industry can anticipate a shift in new work. After extensive deregulation under the Trump administration, President-elect Biden is expected to reverse course and move toward a more tightly regulated business environment, particularly in areas like the environment and consumer protection, and will also be more likely to beef up enforcement of existing laws.

Biden's election sets the course for thousands of regulatory and legislative decisions that shape marketplace conditions for every business and citizen, according to Kevin O'Neill, chair of Arnold & Porter's legislative practice group.

"There's no doubt that an administration that views regulatory action as a policy essential puts more lawyers to work each day than an administration looking to cut two regulations for everyone it approves," O'Neill said.

The uptick in legal work will extend to a number of practice areas and industry groups, according to Rich Gold, the leader of Holland & Knight LLP's public policy and regulation group.

"I think you'll see a significant uptick in a Biden administration in regulatory and legislative practices," Gold said. "I think you'll see an uptick in litigation related to federal enforcement activity and federal administrative rulemakings as well as civil rights and antitrust enforcement."

Reforms the Biden campaign focused on include tighter environmental regulation to reduce greenhouse gas emissions, new legislation to supplement the Affordable Care Act, changes to reverse tax cuts ushered in under Trump and a shift in immigration policy.

Energy and the environment are likely to be sources of considerable business for corporate law firms going forward.

Gary Guzy, co-chair of Covington & Burling LLP's energy industry group, said his team expects the Biden administration to take "immediate and sweeping" steps to address climate change and will make the transition to cleaner energy a big part of its economic recovery plans.

"This will present extensive new investment, innovation, and project development opportunities for many companies on the forefront of this change, as well as opportunities to provide input to help shape, as well as respond to, an expected ambitious regulatory program addressing greenhouse gas emissions," Guzy said.

Based on Biden's campaign promises, major infrastructure reform is likely to play a part in these efforts, according to Crowell & Moring LLP's government affairs group chair Jim Flood.

"[Biden] will be looking for an economic stimulus package next year," said Flood.

Infrastructure reform — which according to Flood has been "long delayed" — would keep attorneys in the government contracts, construction and corporate finance areas busy putting together contracts and public-sector funding to match the public spend.

Of course, any movement depends on Democrats' ability to get compromise legislation through a Senate that still hangs in the balance. If Democrats win both Georgia seats in expected runoffs, the best they can hope for is a 50-50 split with Vice President-elect Kamala Harris breaking ties and effectively securing the majority.

Biden has also promised to ask Congress for major health care legislation to "fix gaps" in the ACA, Flood pointed out. Tax law will be another massive area of change.

"[Biden] will want to generate government revenue to pay for his plans. He has already promised to increase the corporate tax rate, and he will likely try to undo the Trump tax bill, which will create a lot of work for tax lawyers," Flood said.

More active enforcement is also expected in the financial services and securities sectors.

"The Consumer Financial Protection Bureau has been relatively dormant in the Trump era, and I expect that a new director will really increase activity, as will the other financial industry regulators," said Kirkland & Ellis LLP partner Neil Eggleston.

Pryor Cashman LLP managing partner Ronald Shechtman said his law firm's banking and financial regulation group saw a slowdown under the Trump presidency — something he expects to reverse under a Biden administration.

"There's an argument to be made that there has been a less aggressive enforcement perspective under the Trump administration than under previous administrations, Republican and Democrat. We would anticipate that would change," Shechtman said.

He expects that to extend to white collar crime enforcement, which has seen a recent uptick but has generally been sluggish during the Trump administration.

"Under the Trump administration there has either been a significant decrease in white collar crime or a decrease in aggressive enforcement," Shechtman said. "I believe the white collar community of lawyers, defense lawyers, have seen a diminution in demand and work there."

Immigration is a major area of departure between Trump and Biden, and changes to federal policy made by the Biden administration will inevitably lead to work for law firms, according to Charles Kuck, managing partner of Kuck Baxter Immigration.

"In the immigration area of law, the Trump administration has made, on average, one regulatory or policy change each day since Jan. 20, 2017," Kuck said. "[Biden] will spend the next four years reversing virtually all of these administrative changes, and hopefully seeking a complete restructure of our immigration laws."

After four years of unprecedented amounts of work in his field, Kuck looks forward to something of a reset.

"Virtually all immigration lawyers are busier than they have ever been. But we have been busy holding back the floodwaters in the dike, like the little Dutch boy," he said. "A President Biden will bring sanity back to our system, and a restorative effort to allow us to affirmatively assist our clients."

--Editing by Jill Coffey and Pamela Wilkinson.