

## Adam Sencenbaugh in Law360 Employment Authority: 'Labor and Employment Policy to Watch in 2021's Second Half'

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**PRACTICES** Labor and Employment, Litigation, Wage and Hour Litigation, Environmental Litigation

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Haynes Boone Partner [Adam Sencenbaugh](#) talked with *Law360* Employment Authority about proposed rules and bills in the second half of 2021 that would expand worker civil rights and labor protections.

Below are excerpts from the article:

### **Protecting Older Workers Against Discrimination Act**

The bill, known by the acronym POWADA, would lower the causation standards that plaintiffs need to meet to press age bias claims.

Additionally, the bill would soften the causation standard for plaintiffs to bring valid retaliation claims under Title VII of the Civil Rights Act or disability bias claims under the Americans with Disabilities Act by adopting a mixed-motive standard for those as well.

"If the evidentiary standards [are] lower and the burden is lower on the plaintiff, that makes the claims more difficult to defend and sometimes more difficult to resolve [because] they have a greater chance of surviving summary judgment and greater chance of [getting] to trial," said Adam Sencenbaugh, a partner at Haynes Boone. He added that it "obviously creates more risk [for] the employer of an unfavorable verdict.

### **OFCCP's Religious Contractor Rule**

When it first proposed the rule in 2019, the OFCCP said it intended to clarify the scope of a religious exemption included in Executive Order 11246, which imposes affirmative action mandates on contractors and bars them from discriminating based on sex, religion, sexual orientation, gender identity and other characteristics.

Sencenbaugh noted that the Biden administration has been "skeptical" of the defense the rule lays out for religious contractors and looks to roll the rule back. He added that the OFCCP under Biden is likely to promote additional rules pertaining to affirmative action and diversity and inclusion initiatives.

"Certainly, in this administration you'll see less emphasis on proactive steps to protect religious organizations from equal [employment] opportunity laws," Sencenbaugh said. "That doesn't appear to be a priority for the administration. I think they want these rules to apply more universally."

### **DOL's Overtime Rule**

That rule was one of the big-ticket items on the Trump administration's employment law to-do list after a controversial push by the Obama administration to set a higher salary threshold at around \$47,000. But the Obama DOL's version of the rule ended up being stymied in federal court.

The Trump DOL also eschewed a controversial mechanism from the Obama administration's rule that would have automatically increased the salary threshold every three years.

"I think you'll probably see more emphasis for the overtime rule. That was one of [President Barack Obama's] big regulatory achievements that was blocked by a federal court in 2016," Sencenbaugh said, adding that Walsh's recent comments about the overtime rule could foreshadow an effort to lift the current salary threshold.

To read the full article, click [here](#).