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Political Policy Changes Being Watched By In-House Counsel

With each new administration in the United States, policy changes are the norm and the current administration is no different. Regardless of the industry and no matter the size of your business, policy changes can have a profound effect not only on your business, but also your employees. It has become more important than ever for in-house legal departments to stay current with the Trump administration's policy agenda. It is not only the US policy changes that are driving uncertainty in the corporate boardrooms. Britain has been negotiating its withdrawal from the European Union since the voter referendum in 2016, commonly referred to as Brexit.

This article will discuss examples of policy changes that are closely watched by in-house legal departments because of their effect on companies and their employees.

Tax Cuts and Jobs Act of 2017: The current administration's signature legislative policy is the Tax Cuts and Jobs Act of 2017 ("TCGA"). The rationale behind this legislation was that by reducing corporate tax liability, corporations would in return re-invest the tax savings into their employees by increasing wages. The TCGA substantially impacted businesses of all sizes by establishing a flat 21% corporate tax rate, repealing the corporate alternative minimum tax ("AMT"), reducing the corporate dividends deduction, and changing or eliminating deductions for meals, entertainment and travel to name a few.[1] The TCGA also significantly changed individual tax liability with the main difference being that the personal tax provisions expire in 2025.

Trade war with China: A trade war between the world's two largest economies, United States and China, is keeping supply chain professionals and corporate legal departments busy assessing global sourcing, inventory levels, cost increases and more. In an effort to balance the trade deficit with China and to protect intellectual property, the Trump administration has implemented a series of tariffs on Chinese imports. China has reciprocated with its own tariffs on American imports. The level of tariffs and number of products is constantly changing. The impacts to American businesses of all sizes include changing to suppliers outside of China, increasing prices or finding ways to keep prices stable, dealing with the negative impact with long-standing vendors, and finding solutions to keep employees employed.

Immigration: The Trump administration's "America First" policy aims to protect American workers and industries. Corporate legal departments are compelled to review any impact on business continuity that a policy may have. Furthermore, the impact on employees' personal life cannot be underestimated. As in previous administrations, legal departments must review employees' immigration status to determine if they are eligible to work in the US. The

[1] https://www.smith-howard.com/2018-tax-cuts-jobs-act-overview/

difference now is that immigration policies are departing significantly from prior policies and are often uncertain on implementation as the policies are challenged in the courts. For example, a company may have an employee who was protected from deportation under the Deferred Action for Childhood Arrivals (“DACA”). Other examples include the effect of changes in the H-1B visa program, stricter standards for green card applicants and restrictions on travel and work visas from certain countries.

Brexit: It is not only the US policy changes that are driving uncertainty in corporate boardrooms. While Britain negotiates its exit from the European Union (“EU”), companies are in a state of flux on how their products will be traded within Europe post-Brexit. Because of uncertainty on what a final deal will look like and the timing of a deal, companies have resorted to stockpiling inventory, overhauling supply chains, and establishing new EU business units to minimize the impact.

For example, in the EU medical devices are regulated by a uniform set of regulations which are authorized by notified bodies sponsored by a member state within the EU. It is not clear how medical devices approved by a UK based notified body will be traded in Europe. As a result, manufacturers of medical devices who previously relied on UK based notified bodies have transferred their certificates to EU based notified bodies. Furthermore, some manufacturers have been forced to either move their authorized representatives or establish a new authorized representative in the EU27.