

# Annual Political and Employment Law Update for



presented by

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and

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# Annual Political and Employment Law Update

- 2021-2022 Legislative Session Highlights
- 2022 Elections
- Previewing the years ahead...

# 2021-2022 Legislative Session Highlights

## *Labor and Employment Edition*

- **Pandemic emergency response**
  - Defeated multiple bills to restrict employer health safety policies
  - Led a broad coalition to provide employers temporary, targeted liability protections against frivolous lawsuits. Legislation vetoed.
- **Defeated Overtime Expansion proposal**
- **Unemployment Compensation**
  - Reinstating work search requirement
  - Improved employer guidance (refusing work, UC fraud, etc)
- **Workforce Development**
  - Childcare Tax Credit
  - Automatic Driver's License Suspensions
  - Supporting Youth Employment
  - Background Checks
- **Noncompete Agreements**
- **Independent Contractors**
- **PRO Act: Coordinated PA efforts as part of a national campaign**

# 2022 Elections

- **2022 Election Themes**

- ✓ Historical Trends
- ✓ The Economy and Inflation
- ✓ Redistricting
- ✓ Crowded Primaries
- ✓ Unconventional Candidates
- ✓ Dobbs Decision
- ✓ Trump Factor
- ✓ Vote by Mail



# 2022 Elections

## U.S. Senate

- **John Fetterman**      **2,610,253**      **50.7%**
- **Dr. Mehmet Oz**      **2,049,533**      **46.8%**

### Current US Senate Breakdown

50 GOP; 50 Dem

**Majority: Democrat**

### Post-Election

49 GOP; 48 Dem; 3 TBD (AZ, NV, GA)

## U.S. House Key Races

- CD 1 (Bucks) **Cong. B. Fitzpatrick (R)** v. Ashley Ehasz (D)
- CD 6 (Chester, Berks) **Cong C. Houlihan (D)** v. Guy Ciarrocchi (R)
- CD 7 (Lehigh Valley) **Cong. S. Wild (D)** v. Lisa Scheller (R)
- CD 8 (NEPA) **Cong M. Cartwright (D)** v. Jim Bognet (R)
- CD 17 (SWPA) J. Shaffer (R) v. **Chris. Deluzio (D)**

### Current US House Breakdown

220 Dem; 211 GOP; 4 Vacancies

**Majority: Democrat**

### Post-Election

198 Dem; 211 GOP, 26 Too Close to Call\*

**Majority: Republican?**

\*As of last week

# 2022 State Elections

## Governor

Josh Shapiro 56.1%

Doug Mastriano 42.1%

### State Senate Breakdown

Pre Election: 28 GOP; 21 Dem; 1 Independent;  
**Majority: Republican**

Post Election: 28 GOP; 22 Dem;  
**Majority: Republican**

### State House Breakdown

Pre-Election: 113 GOP; 88 Dem, 2 Vacancies  
Majority: Republican

Post-Election: 100 GOP; 101 Dem  
2 Too Close to Call  
**Majority: Democrats?**

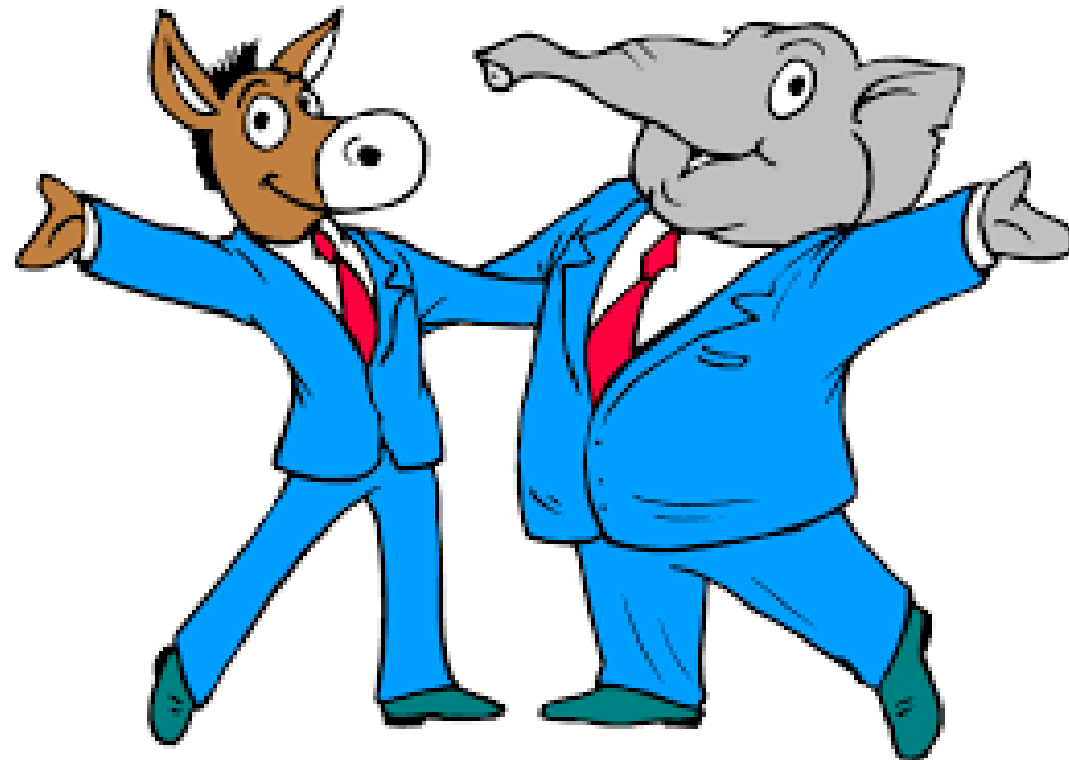
So, what's it all mean?

# *More divided government*



*But also...*

# *Opportunities for compromise!*





# 2022 State Election Quick *Facts*

- **U.S. Senate**
  - Lt. Gov. John Fetterman breaks a 50-year curse in which Lt. Govs have failed to win election to other offices
- **U.S. House**
  - Pennsylvania has lost a congressional seat every decade since the 1930s (36 to 17)
- **Governor**
  - First time in seven decades that one party will have won three consecutive elections for governor.
- **State Senate**
  - Half of the Senate Republican 8-member Leadership team is not returning next year
- **State House**
  - 58 percent of the House has turned over in the last six years

Previewing the years ahead...

## A. Workforce

### 1. Alex

- a. Shorter-term solutions focused on encouraging employment, reemployment and job training
- b. Longer-term solutions emphasizing better alignment between the education/training and business communities

### 2. Jonathan

- a. 3 Diversity Danger Zones relative to hiring and promoting
- b. Impact of likely Affirmative Action decision

## B. Medical and Recreational Marijuana

### 1. Alex

- a. Address employment / workplace safety concerns with medical marijuana program.
- b. Adult-use recreational marijuana coming next?

### 2. Jonathan

- a. Pennsylvania law: “solely” as potential defense
- b. Philadelphia law: limits on pre-employment weed testing
- c. New Jersey law and reasonable suspicion testing

## C. Independent Contractors

### 1. Alex

- a. National campaign to curtail independent contractor status
- b. Effort to establish benefits program for the gig economy

### 2. Jonathan

- a. State law may be stricter than under FLSA
- b. For example, ABC test in CA, MA, NJ, etc.

## D. Unemployment Compensation

### 1. Alex

- a. Improve eligibility requirements and dispute resolution process
- b. Focus program on encouraging reemployment

### 2. Jonathan

- a. Remote workers and unemployment
- b. Other remote worker issues include workers' comp, taxes and licensure

## E. Non-Compete

### 1. Alex

- a. Proposals to restrict non-competes in healthcare, broadcasting and more generally
- b. National campaign highlighted by Biden 2021 Executive Order

### 2. Jonathan

- a. Restrictions in growing number of states, such as Illinois
- b. Courts almost everywhere, to varying degrees, are less likely to narrow overbroad covenants

## F. COVID-19

### 1. Alex

- a. Restrictions on employer health and safety policies
- b. Push for workers' compensation presumption

### 2. Jonathan

- a. EEOC guidance on COVID testing
- b. Religious exemptions to vaccine mandates



## G. Mandatory Arbitration

### 1. Jonathan

- a. Current federal law: cannot mandate arbitration for sexual harassment or sexual assault claims
- b. Potential extension of federal preclusion to other kinds of unlawful harassment as well as to wage and hour claims
- c. California law—only voluntary arbitrations

## H. Abortion

### 1. Alex

- a. Among most prominent election issues according to exit polling
- b. Prospect of legislation unclear

### 2. Jonathan

- a. Travel issue
- b. Navigating civil and criminal liability

# I. Wage and Hour

## 1. Alex (minimum wage)

- a. Minimum wage and overtime back on the agenda
- b. Renewed push for federal-state alignment

## 2. Jonathan

- a. Minimum salary under federal law—nothing, yet
- b. California and meal “break-downs”
- c. Pennsylvania and Amazon decision

## J. Unions

### 1. Alex

- a. USDOL and NLRB activism
- b. How does USDOL and NLRB respond to Congressional shift?

### 2. Jonathan

- a. Increase in union activity
- b. Need rapid response plan
- c. Starts with supervisory education

# Thank You

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