

Compliance Bulletin



What Employers May Expect From a Second Trump Term



On Nov. 5, 2024, Donald Trump won the presidential election. Employers can expect a number of changes to employment law policy under the Trump administration. Although these specific policy objectives remain to be seen, employers may look to the campaign policies on which President-elect Trump ran, as well as the initiatives that Trump took during his first term in office, as an indication of what is to come.

Among the key employment law issues to watch are the following:

- Department of Labor (DOL) overtime and independent contractor rules;
- Federal minimum wage and income tax;
- Workplace safety and health regulation;
- Equal Employment Opportunity Commission (EEOC) initiatives and pay data collection;
- National Labor Relations Board (NLRB) decisions and labor relations;
- Diversity, equity and inclusion (DEI) measures;
- Federal regulation of restrictive covenants;
- Regulation of artificial intelligence (AI); and
- Immigration reform.

Action Steps

While employers should continue to comply with the various employment laws and rules currently in effect or established during the Biden administration, they should also anticipate significant changes under the Trump administration beginning in 2025. This Compliance Bulletin sets forth a number of issues that may be a focus or may undergo significant changes during the next Trump term.

Potential Employment Law Initiatives

Although the president is charged with enforcing laws passed by Congress, President-elect Trump will still have a significant influence on the future of employment law policy. Most significantly, the Trump administration will be able to appoint leaders of various federal agencies that are responsible for administering federal law, including the DOL and the EEOC. While employers will have to wait and see what changes will take place under Trump's presidency, Trump has indicated potential policy positions throughout his campaign. Further, employers may look to the positions the Trump administration pursued during its prior term for signs of what to expect in the coming years. Some of the key employment law changes or initiatives employers may see are discussed below.

DOL

Employers may get a sense of some of the changes they may expect with respect to the DOL and the laws that it enforces, including the Fair Labor Standards Act (FLSA), by looking at DOL initiatives taken during Trump's first term and comments made on the campaign trail.

DOL Overtime Rule

Under the Biden administration, the DOL issued a new overtime rule amending the requirements employers in white-collar occupations must satisfy to qualify for an overtime exemption under the FLSA. To qualify for most white-collar exemptions, employees must meet the specified salary threshold, among other criteria. On July 1, 2024, the DOL's final rule increased the salary level from \$35,568 to \$43,888 per year for most exemptions and from \$107,432 to \$132,964 for highly compensated employees. On Jan. 1, 2025, such levels were scheduled to increase to \$58,656 per year and \$151,164 per year, respectively. However, on November 15, 2024, the U.S. District Court for the Eastern District of Texas vacated the DOL's overtime rule for all employers nationwide. Therefore, the overtime exemption salary level thresholds are back to their pre-July 2024 levels of \$35,568 per year for most exemptions and \$107,432 per year for highly compensated employees.

During the first Trump presidency, the DOL rejected a more expansive 2016 overtime rule proposed under former President Barack Obama that would have significantly increased the salary level thresholds for such overtime exemptions and instead enacted more modest increases under a 2019 rule. Based on this precedent, it is likely that the Trump administration will choose to let the court's decision stand rather than file an appeal or dismiss any appeals filed prior to the start of his term.

Taxation of Overtime Wages and Earned Tips

On the campaign trail, Trump proposed exempting both overtime wages (i.e., wages paid at a rate of 1.5 times the regular rate of pay for all hours worked in excess of 40 in a given workweek) and tipped wages from federal income tax. In support of his proposal to eliminate income taxes on overtime wages, Trump argues that it will incentivize overtime work by employees and help with recruitment by companies that offer significant overtime opportunities. The Trump campaign has also pointed to the financial benefits for service workers if earned tips were no longer taxed. However, these policies would need to pass through the legislature and could face resistance for a variety of reasons, including the loss of federal tax revenue that would occur as a result of these policies.

Minimum Wage

Minimum wage increases have been popular at the state and local levels in recent years. However, under the FLSA, the current federal minimum wage has remained at \$7.25 per hour since 2009. While Trump has historically opposed an increase in the federal minimum wage, including during his 2020 campaign, his 2024 platform showed potential support for an increase in wages. Therefore, while it is possible that the Trump administration will pursue an increase in the minimum wage, it is unlikely to be a significant increase.

Independent Contractors

The DOL is tasked with establishing the standard for determining whether a worker should be classified as an employee or as an independent contractor for purposes of the FLSA. Worker classification directly affects employee eligibility for benefits, legal protections (such as minimum wage and overtime rights) and taxation. In early 2021, the DOL under Trump finalized a new [rule](#) that would have made it easier for employers to classify workers as independent contractors. The 2021 rule focused on two core factors: the nature and degree of the worker's control over the work and the worker's opportunity for profit and loss based on initiative and/or investment.

This rule was blocked by the DOL under the Biden administration in early 2021 and never went into effect. In addition, the Biden administration passed a new [rule](#) that makes it more difficult for employers to classify workers as independent contractors in early 2024, which took effect on March 11, 2024. The Trump campaign did not address this specific issue in the run-up to the 2024 election; however, it's possible that there will be a return to the less stringent standards of the 2021 rule or some other loosening of the test. Moreover, multiple legal challenges seeking to rescind the DOL's 2024 independent contractor rule are still pending. To the extent any of those legal challenges are successful, the Trump administration could choose to let the court's decision stand rather than file an appeal or dismiss any appeals filed prior to the start of his term.

OSHA

OSHA is a regulatory agency of the DOL responsible for regulating safety and health conditions in most private industries. During the Biden administration, OSHA took steps to heighten workplace regulations. Such efforts are likely to be repealed or modified significantly under the Trump administration, which has generally pushed for deregulation. Such Biden-era OSHA efforts that are likely to be rejected include:

- [Worker Walkaround Representative Designation Process Final Rule](#), which provided that employees could designate a nonemployee third party as their representative during an OSHA inspection; and
- [Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings Notice of Proposed Rulemaking](#), which, if finalized, would provide required safeguards from heat injury and illness that employers in certain industries would be required to implement.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The EEOC is the federal agency tasked with enforcing various equal employment opportunity laws that are generally aimed at combating workplace discrimination. The EEOC was very active during the Biden administration and focused on the importance of accommodating pregnancy, childbirth and related conditions; preventing workplace harassment; fostering inclusivity; and advancing the rights of underserved and vulnerable workers. For example, in recent years, the EEOC has published new workforce harassment guidance and issued a final rule implementing the Pregnant Workers Fairness Act.

It is unclear what changes will be made under the Trump administration. However, it is possible that enforcement will either decrease or such efforts will be redirected to other EEOC issues and away from those that were the focus of the Biden-era EEOC (including antidiscrimination efforts related to sexual orientation and gender identity). Nonetheless, the EEOC will retain its Democratic majority until 2026, so Republican priorities will likely remain uncertain until then. Further, the EEOC requested a budget increase of \$33 million for fiscal year 2025, which is likely to be denied or rescinded by the Trump administration, which could further hinder enforcement efforts.

Pay Data Collection

In general, private employers with at least 100 employees and federal contractors with at least 50 employees are required to submit employee demographic data, including gender and race/ethnicity, to the EEOC annually through an EEO-1 report. The EEOC recently indicated efforts to reinstate an Obama-era rule that would require employers to include pay data and the number of hours worked in the EEO-1 report under Component 2. The Trump administration blocked the Component 2 requirement during his first term, and therefore, even if the EEOC issues a rule reinstating Component 2 pay data collection, the Trump administration is likely to block it before it takes effect.

NLRB

The NLRB is an independent federal agency that enforces the National Labor Relations Act (NLRA), which grants most private-sector workers the right to organize and collectively bargain and gives workers the right to engage in protected concerted activity. While employers can expect changes under a Trump NLRB, they will likely not be immediate, as the NLRB currently has a Democratic majority and will retain that majority until 2026.

During his first term, Trump adopted employer-friendly policies and focused on limiting the influence of unions. Therefore, employers may expect to see a return to some of the NLRB positions in place during his first term and a reversal of Biden-era NLRB decisions. Some of the decisions that a Trump-era NLRB may seek to overturn include:

- [Cemex](#), which held that when a union requests recognition on the basis that a majority of employees support such union, the employer must either recognize the union or promptly file for an election;
- [Stericycle Inc.](#), which adopted a new standard for evaluating employer work rules challenged as facially unlawful under the NLRA, making it harder for employers to defend such rules;
- [McLaren Macomb](#), which reversed a Trump-era decision and held that employers may not offer employees severance agreements that require employers to waive their rights under the NLRA; and
- [Fresh & Easy](#), which increased the circumstances in which an employee acting alone is considered to be engaging in protected concerted activity.

DEI

The Biden administration generally promoted DEI initiatives, including through [Executive Order \(EO\) 13985](#), which established a policy of pursuing a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized and adversely affected by persistent poverty and inequality. This contrasts with the approach to DEI taken during Trump's first term and the approach to DEI efforts taken by other Republicans. For example, during his first term, the Trump administration issued [EO 13950](#), which prohibited federal contractors and subcontractors from providing certain workplace diversity training and programs and discussing divisive topics in workplace training. Additionally, in 2023, a group of 13 Republican attorneys general issued a [letter](#) to Fortune 100 companies threatening legal action for continuing DEI measures. In light of this continued tension regarding DEI initiatives, the Trump administration is likely to revoke Biden's EO and reinstate Trump's EO 13950.

RESTRICTIVE COVENANTS

During the Biden administration, the Democrat-led Federal Trade Commission (FTC) published a [final rule](#) prohibiting employers from entering into or enforcing noncompete clauses with most employees. The noncompete ban has faced numerous legal challenges and was ultimately blocked by a federal district court in Texas before taking effect. The FTC appealed that ruling in October 2024.

It is unclear what the future of the noncompete ban is under the courts. However, Republicans have generally expressed opposition to regulations that may be considered anti-business, including federal restrictions on noncompete and other restrictive covenants. Therefore, a Republican-led FTC would very likely rescind or abandon any efforts to regulate noncompete clauses at the federal level, regardless of the outcome of the case.

AI

Employers may also expect to see reduced federal regulation of AI under the Trump administration and a rollback of certain Biden-era policies. For example, in 2023, Biden issued [EO 14110](#), which established new standards for AI safety and security, including those that would reduce bias and discrimination with respect to employment decision-making. In response to Biden's EO, the DOL published a [Field Assistance Bulletin](#) in which it identified recommended best practices in using AI to perform various wage and hour tasks (such as generating timecards, setting schedules, monitoring performance, tracking employee hours and processing payroll), including exercising proper human oversight, to help ensure that the AI systems and tools do not violate the FLSA.

On the campaign trail, Trump stated that he would repeal Biden's EO 14110 and would seek to eliminate restrictions on AI, which would likely include those that aim to reduce discrimination and bias in decision-making.

IMMIGRATION

Immigration reform was a key component of the Trump campaign. If enacted, such immigration reform could affect employers as well. For example, the Trump administration may place limits on the use of highly skilled foreign workers, such as those hired through the H-1B visa program. Moreover, the Trump campaign stated that it would seek to carry out mass deportation efforts and end certain immigration programs such as the Deferred Action for Childhood Arrivals and Temporary Protected Status for various countries. If Trump succeeds in these efforts, employers may see a substantial decrease in the available workforce.

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