

Vital Briefing

Labor and employment picture anticipated to be significantly redrawn

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Secured in part based on pledges to improve the perceived economic fortunes of U.S. workers, the election of Donald Trump as the 47th President promises to unsettle substantive federal labor and employment laws and regulations, on one hand, and to challenge the agencies charged with enforcing them, on another. In addition to foreseeable high-level agency personnel changes and possible efforts to reduce the size of the federal civil service in general, changes could be expected in federal wage and hour law, EEO enforcement, federal safety regulations, labor law, noncompetition law, immigration, and the federal government's approach to the regulation of artificial intelligence (AI) in the workplace. While some of these policies seem likely to be met with some resistance from impacted parties such as labor unions, others could lead to unintended consequences vis-à-vis the demand for certain goods and services, labor market supply, and the bargaining power of certain workers.

Agency Personnel and Civil Service

General Counsel of the NLRB

Although the new Administration will likely move quickly to remove and replace all Biden's appointed federal agency heads, either with confirmable nominees or acting agency heads, its first L&E-related actions will likely include the firing and replacement of Jennifer Abruzzo, the NLRB's General Counsel, who was appointed by President Biden following his—lawful, [according to the Ninth Circuit](#)—firing of Trump-appointee Peter Robb. Abruzzo, who has advocated for the robust enforcement of Section 7

rights in favor of employees and unions, has issued several prosecutorial policy memoranda during her tenure, including memos on [AI](#) and [“stay-or-pay” provisions](#) in employment agreements, which will also likely be quickly rescinded.

Federal Civil Service

“Trump has suggested that he will attempt to revive Schedule F...”

Taking aim at the federal civil service in general, Trump has suggested that he will attempt to revive [Schedule F](#), an effort begun but never implemented at the end of his first term that would have removed civil service protections from as many as 50,000 federal agency employees deemed to be in “confidential” or “policy”-related positions. The new Administration's ability to remove civil servants who can establish property interests in their positions under the Civil Service Reform Act, however, may be limited, as suggested by a [May 2024 decision](#) of the D.C. Circuit. Unions that represent federal employees can also be expected to challenge any changes that impact existing bargaining units.

Wage and Hour

Minimum Wage

Although the [2024 GOP Platform](#) supports “raising Wages for American Workers,” Trump has previously criticized a possible raise in the federal minimum wage as harmful

to small business, and it is unlikely that any conceivable federal minimum wage increase under his second Administration would approach the \$15 hourly rate sought by many unions and activists. Instead, it is likely that more substantial minimum wage advances will continue to play out at a state and local level.

Overtime

Under a new DOL [overtime rule](#) that went into effect on July 1, 2024, most salaried workers who earn less than \$844 per week became eligible for overtime pay under the FLSA. Pursuant to the same rule, on January 1, 2025—prior to the inauguration—most salaried workers who make less than \$1,128 per week are slated to become overtime-eligible. Though it is unlikely that the new Administration could effectively reverse these changes after the fact, it is possible that a court will stay the January changes prior to their implementation, permitting the Trump Administration to redraw the rule.

Employee Classification

The Trump Administration is likely to reverse the Biden Administration's efforts that made it more difficult for businesses, including those in the so-called “gig economy,” to treat workers as independent contractors rather than employees covered by the FLSA's minimum wage and overtime protections. This could include revisiting [DOL's January 2024 final rule](#), effective March 11, which returned to the six-factor “economic reality” test for contractor status and rescinded an eleventh-hour final rule of the first Trump Administration on the same topic.

EEOC

The EEOC, under a second Trump term, is unlikely to continue with its plan, as [announced in the spring](#) of 2024, to pursue a January 2025 rulemaking regarding the collection of pay data or related information as part of employers' annual EEO-1 reporting of workforce demographic data, including data by job category, sex, and race or ethnicity.

Safety

Union Walkaround Rule

The new Administration could be expected to rescind OSHA's Worker Walkaround Representative Designation Process [final rule](#), published April 1, 2024, and effective May 31, which permits union or other third-party representatives to accompany OSHA compliance officers on workplace safety inspections.

Heat Rule

OSHA's August 30, 2024 [proposed rule](#) on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, which would require employers to create a heat illness and injury prevention plan to evaluate and control heat hazards in the workplace, is also likely to be rescinded or substantially revised.

Labor Law

Board Composition

Currently, the NLRB has a 3-1 majority of Democratic appointees. In May 2024, President Biden [nominated both](#) current Chair Lauren McFerran—whose term expires December 16—for a third term, and Joshua Ditelberg to fill the Board's vacant Republican seat. The Senate has yet to confirm either nominee, and either or both could be scuttled if not confirmed prior to the inauguration, thereby possibly opening a return of the Board to Republican control earlier.

Union Recognition

One target of a Trump-appointed General Counsel and eventual Republican majority

on the NLRB will likely be the Biden Board's landmark [Cemex decision](#), which announced a new and more union-friendly framework for determining when employers are required to bargain with unions without a representation election.

Work Rules

A Trump Board could also be expected to return to the [Boeing standard](#) for assessing the lawfulness of facially neutral employer work rules, enunciated in a 2017 decision that was overruled by [Stericycle](#) in August 2023 and that had given greater weight to employer business justifications for such rules.

Additional Issues

In addition to these areas, a Trump NLRB could be expected to revisit Biden-era decisions, rules, and policies regarding

- [Decertification](#) of unions
- [Confidentiality and non-disparagement provisions](#)
- [Politics at work](#)
- [Student athletes](#)
- Union [representation case procedures](#)

Bargaining Power

Although the policy changes of a Trump NLRB could be expected to decrease the bargaining power of most labor unions representing U.S. workers overall, macroeconomic policies Trump has signaled his second Administration might pursue, such as the implementation of heightened tariffs, could increase the demand for—and the attendant bargaining power and wage expectations of—certain workers in impacted sectors such as steel production and other manufacturing.

Noncompete Agreements

Although Trump has not explicitly spoken to the SEC's attempt to ban noncompete agreements, it is unlikely that the agency's effort, under the [leadership of Lina Khan](#), will be revived by the new Administration following challenges brought by the U.S.

Chamber of Commerce, among others, and an order [setting aside the rule](#) issued by a federal district court in Texas in August. The issue will more likely continue to play out at the state level.

Immigration

U.S. immigration policy, one of Trump's key campaign issues in 2024 and previously, could be substantially tightened under the new Administration, leading to a potential curtailment of [H-1B visas](#) for workers in specialty occupations, the end of the Deferred Action for Childhood Arrivals program, the end of Temporary Protected Status for several countries, and even possible largescale deportations of individuals found to be unlawfully present in the United States. Like Trump's proposed tariffs, such policy shifts could, if implemented on large scales, increase demand for, and the concomitant bargaining power of, other U.S. workers in sectors such as food services, construction, and agriculture.

Artificial Intelligence

Finally, based on the strong 2024 campaign support Trump enjoyed from leaders in new technology sectors, along with Trump's approach to AI during his [first Administration](#), the new Administration could be expected to rescind the Biden Administration's more precautionary approach to AI, as enunciated in Biden's 2023 [AI Executive Order](#).

Conclusion

Based on the record of Trump's first Administration, his 2024 campaign promises, and intervening policy reversals during the Biden years, the incoming Administration looks poised to introduce multiple changes that will unsettle substantive federal labor and employment laws and regulations, on one hand, and impose new challenges for the federal workforce charged with enforcing them, on another.