



MINTZ

Legal Shifts from the White House - What Employers Need to Know

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Housekeeping Notes for Audience

- The webinar will be recorded
- Attendees will be muted throughout
- Questions will be answered after the presentation
 - Use the Q&A application to submit a question
- CLE code will be read during the presentation

Agenda

- Impact of a Second Trump Era on Employers
- Wage & Hour, Workplace Safety, Etc.
- DOL
- EEOC and DEI
- NLRB and Unions
- Employer preparations for immigration changes
- Potential travel delays and travel bans
- Trump Era Judiciary and the Federal Regulatory Landscape

The Second Trump Era & The Employment Landscape

General Considerations - Employment

- Changes at the DOL, EEOC, and NLRB
- Trump executive branch priorities/policies are expected to favor business/industry over employee protections
- Republican Senate and House majorities could mean more significant federal legislative efforts, including on hot-button workplace issues
- Increased state/local activity in progressive states
- Reduction of federal workforce could mean less enforcement/more delays
- Some changes will be immediate (e.g., executive orders); others may take time (e.g., agency rulemaking)

The Second Trump Era & The Immigration Landscape

General Considerations - Immigration

- International travel difficulties
- Increase in workplace raids
- Delays in adjudications for employment visas and green cards
- Potential termination of temporary parole and status programs

What Does the Second Trump Era Mean for Employers?

- **Wage and Hour:**
 - Taxation of tips/overtime pay
 - Minimum wage (and state/local activity)
- **Workplace Safety:**
 - Anti-regulatory approach
 - OSHA enforcement decline
 - Penalty scheme changes
- **Non-Compete Landscape**

What Does the Second Trump Era Mean for Employers?

- **Artificial Intelligence in the Workplace**
 - Trump AI Order issued on January 23, 2025
 - Revocation of Biden's Executive Order on the Safe, Secure and Trustworthy Development and Use of Artificial Intelligence
 - Impact of Trump order on employment laws
 - Impact of Trump order on your workforce

Department of Labor (DOL) Landscape

Rollback of Biden Era employee-friendly rules

- Independent Contractor Classifications
- Tightening of the definition of “joint employer”
 - Including potential impacts to H-1B eligibility
- FLSA overtime pay eligibility

Ongoing DOL PERM Processing Delays

- PERM processing currently takes over 20 months
- DOL funding has already been reduced
- Employers should plan ahead

EEOC and Anti-Discrimination Landscape

Commission Administration & Priorities

- Rightward shift
- General downturn in enforcement activity
- Acting Chair Andrea Lucas has opposed Biden-era updates to EEOC policy positions
 - Harassment Guidance (LGBTQ)
 - Pregnant Workers Fairness Act Final Rule
- Prioritizing religious protections
- Less emphasis/scaling back of LGBTQ protections
 - “Gender Ideology” Executive Order
- “Reverse” discrimination focus

EEOC and Anti-Discrimination Landscape

The Path Forward for DEI Programs

- End of Executive Order 11246 (Federal Contractor Affirmative Action)
- State/local laws and litigation challenges with workplace DEI programs
- Federal contractor/grant landscape (Certifications & FCA)
- EEO-1 Reporting
- Employer considerations:
 - Ensure affinity groups and other initiatives are inclusive (not exclusive)
 - Ensure trainings and recruitment efforts are compliant and balanced
 - Understand risk tolerance, target consumer, and corporate culture
 - Be prepared to stand by your corporate values

Union Organizing and NLRB Landscape

Expect significant reversals of pro-union and pro-employee standards

- Review of Biden Era NLRB Positions
- Changes at the NLRB
 - Rescission of GC memoranda/opinions
 - Unfair labor practices
 - Non-competition/restrictive covenants
- Changes to workplace rule legality assessment standards
- Changes to union election and recognition standards
- Questions as to the constitutionality of the NLRB

International Travel

Travel Bans

- The prior Trump administration implemented three travel bans for mostly Muslim-majority countries
 - All were challenged in Federal court
 - Later bans provided a probationary period before implementation
- Foreign nationals from these countries should remain travel ready when abroad

Visa Processing delays

- Visa processing at the U.S. Embassies and Consulates slowed under the prior administration
- Reduction in visa interview waiver eligibility
- Potential increase in Administrative Processing delays

ICE Workplace Raids and I-9 Audits

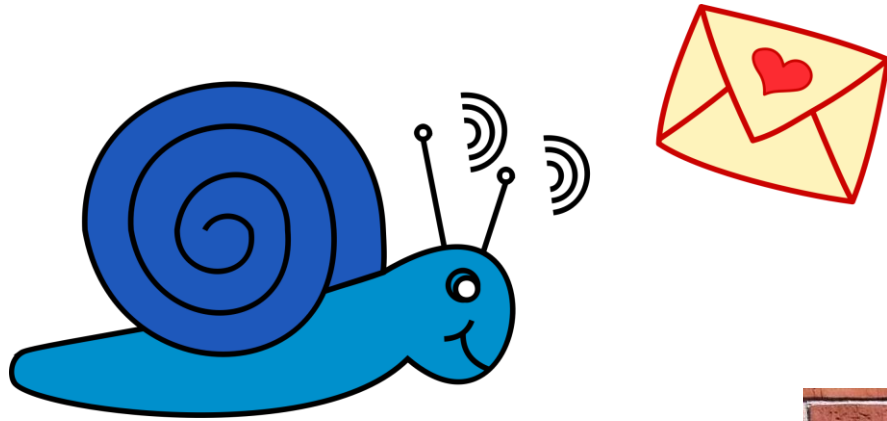
Workplace Raids

- Given rhetoric from the Trump campaign, ICE / HSI workplace raids will likely increase
 - Have a plan in place
 - Ensure that front office personnel are aware
 - Consider options for protecting employees

ICE I-9 Audits

- I-9 Audits have been less frequent
- This may be used as a tool to identify employees without lawful status
- Preparation is key

USCIS Delays, Denials and Obstructions



DENIED



USCIS Delays, Denials and Obstructions

Delay

- DHS will likely shift funding and staffing priorities to ICE
- Under the prior Trump administration, processing times slowed significantly
 - EAD renewal / automatic extension rule codified in December 2024

Denial

- USCIS denied cases that were clearly approvable under law and regulation
 - Denial rates increased, although not dramatically
 - Judicial challenges reversed bad denials and created legal precedent

Obstruction

- “Deference memo” codified, but already being ignored by USCIS
- Additional burdens for permanent residence applicants

USCIS Delays, Denials and Obstructions

Advance Planning is Critical

- Advance planning and early filing can cure many ills
- Prior success in overcoming hurdles will likely work again

Termination / Expiration of Benefit Programs



Termination / Expiration of Benefit Programs

DACA – Deferred Action for Childhood Arrivals

- Enacted in 2022
- Approximately 578,000 individuals have DACA status / work authorization
- Currently being challenged in federal court

Temporary Protected Status (TPS)

- Enacted by Congress on a country-by-country basis
 - Provides lawful status and temporary work authorization
- 16 nationalities are currently designated for TPS
- Congress won't likely terminate existing TPS, but TPS for many countries may lapse
- Venezuelan TPS will terminate on April 4.

Termination / Expiration of Benefit Programs

Humanitarian Parole

- Current Humanitarian Parole programs in place for
 - Afghanistan
 - Ukraine
 - Cubans, Haitians, Nicaraguans, and Venezuelans
- Provides lawful entry, status, and ability to apply for work authorization to qualifying individuals
- Granted by the Executive office and USCIS and will likely be terminated
 - CHNV parole may be terminated soon
 - Pending applications will likely be denied

Trump Era Judiciary & the Federal Regulatory Landscape

- With *Loper Bright*, we have the end of *Chevron* deference to federal regulatory agency interpretations
 - Courts nonetheless are likely to rely, at least in part, on agency interpretations when ruling on technical or complex legal issues, though the degree of judicial deference given to agency interpretations may vary
- Second wave of Trump judicial appointments (with Senate confirmation available) will mean a remaking of the federal judiciary
 - Examples: FTC Non-Compete Ban & OSHA Vaccination Mandate
- Anti-regulatory approach will mean fewer regulations and rules from federal agencies

The background consists of a repeating pattern of large, interlocking triangles in various shades of teal and blue-green. The colors range from a very light, almost white teal to a dark, muted blue-green. The triangles are arranged in a way that creates a sense of depth and movement across the entire frame.

Questions?

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475197



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