

Navigating the New Normal: Labor and Employment Law in the Trump Era



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What's on Tap

- Nominations to key DOL positions
- Updates on regulatory shifts at agencies
- Analysis of executive orders and regulatory “freezes”
- Significant court rules on labor, employment, and workplace safety topics.
- Practical strategies for employers





Nominations to key positions within DOL and staffing updates

New Secretary of Labor

Lori Chavez-DeRemer

- Confirmed by Senate on 3/10/2025 (67-32 vote)
- More than a dozen Democrats supported nomination
- Only 3 GOP Senators voted against (Rand Paul, Mitch McConnell, and Ted Budd)



New Deputy Secretary of Labor



Keith Sonderling

- Former EEOC Commissioner
- Confirmed by Senate on 3/12/2025 (53-46 party line vote)

OSHA Nominee



David Keeling

- Former UPS and Amazon safety executive
- Trump's nominee for OSHA in his first term (Scott Mugno) was never confirmed
- Also nominated Wayne Palmer to head MSHA

Nominees Still Awaiting Confirmation

- Daniel Aronowitz, Head of Employee Benefits Security Administration (EBSA)
- Wayne Palmer, Head of Mine Safety and Health Administration (MSHA)
- Jonathan Berry (Solicitor)
- Andrew Rogers (Wage and Hour)
- Henry Mack, Head of Employment and Training Administration (ETA)
- Jonathan Snare (OSHA Review Commission)

Newly Announced DOL Appointees

- Jihun Han, Chief of Staff
- Rebecca Wright, Deputy Chief of Staff
- Joe McFarlane, DOL Office of Congressional Affairs
- Peyton Smith, Director of Scheduling
- Aaron Britt, DOL Press Office
- Amy Simon, Principal Deputy Assistant Secretary, Employment and Training Administration (ETA)
- Amanda Wood Laihow, Deputy Assistant Secretary, Occupational Safety and Health Administration (OSHA)
- Michael Asplen, Senior Policy Advisor, OSHA



National Labor Relations Board Updates

NLRB Update – Board Members (serve five-year terms)

- Former Chair Lauren McFerran was not reconfirmed in December (despite Senate Dem efforts). Term expired 12/16/2024.
- Trump named Marvin Kaplan (current Republican appointee) as Chair on 1/20/2025.
- David Prouty (Democrat) remains a Board Member. His term will expire on 8/27/2026.
- **In an unprecedented move, Trump fired Board Member Gwynne Wilcox on 1/27/2025.**
 - **Wilcox was reinstated by court on 3/6/2025.**
 - **SCOTUS issued temporary stay on 4/9/2025, blocking her reinstatement while it considers the legality of her removal.**

NLRB General Counsel Update

- **Jennifer Abruzzo** (appointed under Biden) was terminated as General Counsel on 1/27/2025.
- **Jessica Rutter** briefly served as Acting General Counsel but was also terminated by President Trump on 2/1/2025.
- **William B. Cowen** was appointed as Acting General Counsel on 2/3/2025.
- **Crystal Carey** has been nominated by President Trump to serve as the next General Counsel, pending Senate confirmation



NLRB Update: Acting GC's Actions to Date:

- Acting GC Cowen (almost immediately on appointment) advised staff to pull arguments addressing constitutionality of the NLRB's structure and expanded remedies allegedly in violation of the Seventh Amendment right to a jury trial in *Space Exploration Technologies Corp. v. NLRB*, No. 24-40315 (5th Cir. Feb. 3, 2025) (Space X is seeking review of the decision to apply such expanded remedies).
- Cowan then issued [General Counsel Memorandum 25-05](#), Recission of Certain General Counsel Memoranda, essentially reversing the expansive positions taken by Abruzzo during her time in the role.

NLRB Update: GC's Withdrawal of Memos and Other Actions

- Other now- withdrawn GC Memos provided directives on how to interpret and comply with the Board's [Cemex Constr. Materials Pac., LLC](#), 372 NLRB No. 130 (Aug. 25, 2023) and [McClaren Macomb](#), 372 NLRB No. 58 (Feb. 21, 2023) decisions.
- Status of *Cemex and McClaren Macomb*:
 - Expect Board to move away from *Cemex* decision.
 - GC expected to ask Board to overturn *McClaren Macomb*

Addition Rescinded GC Memos

- Impacts 31 previous GC memos issued between 2021 and 2025
- High profile memos no longer in effect:
 - **Non-competes**
 - **“Stay or pay” provisions**
 - **Student athletes as employees**
- Signals a shift toward more employer-friendly enforcement priorities

Impact on NLRB, and employers should do next:

NLRA remains in full effect and employers are still responsible for compliance with all existing laws and standards. Other impacts:

- **Representation Petitions and Union Elections:** Even without a quorum at the top, the regional office will still process petitions and oversee a union election.
- **Regional Director Decisions in Representation Cases:** Regional Directors can still process representation petitions, conduct elections, and certify results without a Board quorum. While the Board typically reviews contested cases, Regional Directors' decisions stand in uncontested cases, even without a Board quorum.
- **Unfair Labor Practice (ULP) Charges:** When an employer, union, or worker files a ULP charge alleging some violation of the NLRA, it's the Board's Regional offices that handle the matter. These will continue to be investigated and processed as usual, up to and including a hearing and decision from an ALJ.
- **Certain Labor Injunctions:** When a union boycotts or strikes in an attempt to force an employer to recognize them and ultimately bargain with them for a contract, the Board has the right to file a Section 10(l) petition in court to try to block the action from continuing. However, a quorum is not needed for such an action.

NLRB Actions Stalled Until Quorum Is Present:

- **Appeals:** A two-member Board cannot issue appeals decisions, leaving all existing and future appeals in limbo for the foreseeable future.
- **Certain Injunctions in Significant Matters:** In certain ULP matters considered to be especially significant, the NLRB can go straight to a federal court seeking an order to have the action halted. The NLRA lists 15 types of situations where these requests for Section 10(j) injunctions are allowed, including cases where employers are alleged to have unlawfully terminated employees involved in union organizing efforts, threatened employees with adverse consequences for supporting a union, or refused to bargain in good faith with duly recognized unions.
- **Issuing Regulations:** In recent years, the Biden Board issued new rules changing the state of the law related to joint employer status, union elections, and other matters. However, without a quorum, the Board cannot wipe these regulations off the books or start the ball rolling on new rules.
- **Reviewing Contested Representation Elections:** While regional offices are still permitted to run union representation elections, any disputes arising from these elections that require Board review can't be resolved without a quorum.
- **Enforcing Subpoenas:** The Board has no authority to enforce or challenge subpoenas in court without a quorum, potentially derailing investigations and ULP prosecutions.
- **Requests for Review:** Parties can also go straight to the Board to submit requests for review in certain cases. The Board usually disposes of these requests in short opinions that resolve the matter. But without a quorum, it cannot do so.

What Comes Next for NLRB?

- 1) Expect a narrower interpretation of who qualifies as an “employee” under the NLRB, likely excluding gig workers and independent contractors from NLRB protections.
- 2) View of what constitutes “protected concerted activity” will be more limited, making it harder for individual employee actions to be protected unless clearly tied to collective workplace concerns.
- 3) The Board will move away from broad remedies for ULPs and give regions more flexibility to settle cases without requiring “full remedies.”
- 4) Guidance that aggressively challenged non-competes has been rescinded, giving employers more leeway in structuring non-competes and other employment agreements.
- 5) Employers will likely have greater flexibility to implement workplace policies and rules, including confidentiality and civility rules, as long as they are consistently enforced and justified by legitimate business interests.
- 6) Rollback of expanded definition of “joint employer” is likely.



EEOC Updates

EEOC Personnel Shifts and Expected Impact

- President Trump appointed Republican Andrea Lucas as Acting Chair and removed two Democratic Commissioners, Jocelyn Samuels and Charlotte Burrows, disrupting the EEOC's quorum and limiting its ability to issue new guidance or rulings.
- Legal scholars are viewing these changes, in parallel with firings at NLRB, as indicator of potential elimination of other forms of affirmative action.
- The removal of Samuels and Burrows leaves Acting Chair Lucas with a path to pursue the Trump Administration's enforcement priorities, including what Lucas describes as "rooting out unlawful DEI-motivated race and sex discrimination," which aligns with Trump's Executive Orders targeting DEI.

EEOC Enforcement Priorities per Acting Chair Lucas:

Lucas has outlined several key [priorities](#) for her tenure, including, in her words:

- “rooting out unlawful DEI motivated race and sex discrimination;
- protecting American workers from anti-American national origin discrimination;
- defending the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces at work;
- protecting workers from religious bias and harassment, including antisemitism; and
- remedying other areas of recent under-enforcement.”

New Joint EEOC and DOJ Guidance on DEI (released March 19, 2025)

Clarifies that Title VII prohibits disparate treatment in the terms, conditions, and privileges of employment include:

- Hiring
- Promotion
- Compensation
- Exclusion from training
- Exclusions from fellowships
- Firing
- Demotion
- Fringe benefits
- Exclusion from mentoring or sponsorship programs
- Selection for interviews, including placement on candidate slates

What is next from the EEOC?

- President Trump nominated Andrew Rogers as acting EEOC GC in February 2025, but Rogers has now been nominated to lead the DOL's Wage & Hour Division. As of early May 2025, no permanent EEOC GC nomination has been confirmed.
- Expect the EEOC GC, when in place, to be a staunch foe of DEI and affirmative action plans.
- There is one remaining Democrat – Kotagal, whose term expires in July 2027. There are three open seats that the Trump Administration will need to fill resulting from:
 - Seats vacated by Samuels and Burrows; and
 - Seat left open by Keith Sonderling, who President Trump recently named Deputy Labor Secretary.
- President Trump will likely seek to fill the empty seats with candidates who will press his enforcement priorities.
- Meanwhile, Samuels and Burrows are expected to challenge their removal in court, arguing that there is no provision in Title VII giving the President authority to remove an EEOC Commissioner.
- For now, there have been no changes to the EEOC's guidance, and existing litigations and investigations will continue and new charges can be processed. Employers should stay informed about potential shifts in EEOC policy and work with counsel to ensure they remain compliant with federal guidelines.



OTHER NOTEWORTHY ACTIONS

Independent Contractor Rule

- The DOL hit pause on enforcement of Biden-Era Independent Contractor Rule, suggesting new or changed rule forthcoming.
- The Trump DOL announced via a [*Field Assistance Bulletin*](#) on May 1 that it will no longer enforce a 2024 Biden-era independent contractor rule under the Fair Labor Standards Act (FLSA). While this announcement does not formally rescind the Biden-era rule, the DOL explained that it will be reconsidering the rule, and it is virtually certain that the DOL will dramatically change or replace the rule when its review is completed.
- While the DOL's review and reconsideration of the rule continues, the Field Assistance Bulletin notes that, effective May 1, 2025, the DOL will enforce the FLSA in accordance with [*Fact Sheet #13*](#) (from July 2008, not March 2024) and as further informed by the reinstated Opinion Letter [*FLSA2019-6*](#), which addresses classification in the context of virtual marketplace platforms.

“Restoring Equality of Opportunity and Meritocracy”

- On 4/23/2025, the Trump Administration presented an Executive Order called “Restoring Equality of Opportunity and Meritocracy,” found here: <https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/>
- The stated purpose is to “to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, federal civil rights laws, and basic American ideals.”
- What Does This Mean for Employers?
 - This EO will initially impact federal agencies, including actions that they have taken against employers. Accordingly, employers that are facing actions by these agencies premised upon a disparate impact theory may be able to use this EO to limit or stop the agency from continuing their enforcement efforts against them. Additionally, if an employer is presently subject to an injunction or consent decree with a federal agency intended to address disparate impact, it may be able to reference the EO in an effort to change or limit those obligations.
 - The impact of this EO on actions by private litigants is uncertain. Without action by Congress or the Supreme Court, it is unlikely that disparate impact liability will become obsolete, particularly in light of its status as a long-standing theory of liability frequently recognized by the Court—which has also recently affirmed disparate impact claims. Given this, as well as its extensive role in state and local law, employers should continue to evaluate their practices for adverse impacts on protected groups.



Updates on Personnel Changes at FLRA and MSPB

FLRA and MSPB

Federal Labor Relations Authority (FLRA)

FLRA Chair Susan Grundman terminated by Trump but ordered reinstated by court on 3/15

Merit Systems Protection Board (MSPB)

MSPB Chair Cathy Harris terminated by Trump on 2/10; federal judge ordered her reinstated temporarily on 2/18; on 3/28, three-judge panel of D.C. Circuit stayed the reinstatement; and on 4/7 the D.C. Circuit (*en banc*) vacated the panel's stay, and reinstated Harris, restoring a quorum at the MSPB.



Significant Court Rulings of Note Impacting Decisions in 2025

Looming Supreme Court Showdown Re: Independent Agencies

- ***Humphrey's Executor*** - 1935 SCOTUS case involving the Federal Trade Commission
- Court focused on the quasi-legislative and quasi-judicial nature of the FTC
- Several current SCOTUS Justices have signaled willingness to overturn *Humphrey's Executor* in favor of a “unitive executive theory”



Labor and Wage Law

E.M.D. Sales, Inc. v. Carrera (January 15, 2025)

The Supreme Court unanimously ruled that employers must prove FLSA exemptions (such as for outside sales employees) by a "preponderance of the evidence," rejecting a higher "clear and convincing evidence" standard used by some circuits. This decision standardizes the evidentiary burden across jurisdictions and benefits employers defending against misclassification claims in overtime pay lawsuits.

Workplace Safety

***Loper Bright Enterprises v. Raimondo* (June 2024 ruling with ongoing impact)**

The Court struck down the long-standing Chevron deference, limiting federal agencies' authority to interpret ambiguous statutes. It clarified that courts, not agencies like OSHA, have the final say on statutory interpretation, which restricts OSHA's regulatory reach. The Court also ruled that OSHA's authority is limited to workplace safety standards, not broader public health measures like COVID-19 emergency rules. This decision has major implications for OSHA and other safety agencies' ability to regulate workplace hazards



REGULATORY FREEZES AND EXECUTIVE ORDERS

Regulatory Freeze Pending Review:

- Directs all executive departments and agencies to:
 1. Halt the proposal or issuance of any new rules until they can be reviewed and approved by a department or agency head appointed by the President
 2. Immediately withdraw any rules sent to Office of the Federal Register but not yet published, so they can be reviewed and approved; and
 3. Consider a 60-day postponement of the effective date for any rules published in the FR or that have been issued but are not yet in effect.
- If appropriate, the 60-day period could include an opening of the comment period on those rules published but not yet in effect to allow additional comments.

Impact of Executive Orders

- EO 14192 - Eliminating 10 Regulations for Each New Regulation (Jan. 31, 2025):
- Requires that whenever an agency promulgates a new rule, regulation, or guidance, it must identify at least 10 existing rules, regulations, or guidance documents to be repealed.
- Requires total incremental cost of all new regs including repealed regs to be significantly less than zero.
 - OMB will be tracking this.
- Under the prior Trump administration, it was a 2:1 (two out for every 1 in).
 - Targeting significant regulatory actions.
 - Per the White House, the administration eliminated 5.5 regulations for every new one issued.



OSHA UPDATE AND RULEMAKING

Status of Recent Proposed OSHA Rules

- Occupational Exposure to COVID-19 in Health Care Settings
 - Withdrawn January 14, 2025
 - Justification given was to focus instead on an infectious disease standard for healthcare workers rather than “a disease-specific standard.”
 - The agency explained that completing an infectious disease rulemaking was a better use of the agency’s time and resources.
- Pending Infectious Diseases Standard
 - OIRA concluded its review of the rule on January 14, 2025, but OIRA’s website shows this has also been withdrawn.

OSHA Proposed Emergency Response Standard

- Published 2/4/24 and comment period closed July 2024
 - Public hearings held in Sept. 2024.
 - Post hearing comments were due Jan. 17, 2025.
- Unclear whether this will be reopened for further comments.
- July 2024 hearing held by the Subcommittee on Workforce Protections:
 - Testimony that some of the small departments would be unable to afford the associated costs because they were infeasible, causing many to shut down.
- Only 4,200 comments were received
 - Proposed Rule may be a candidate for further review to fully study the impacts and feasibility of the proposed rule.

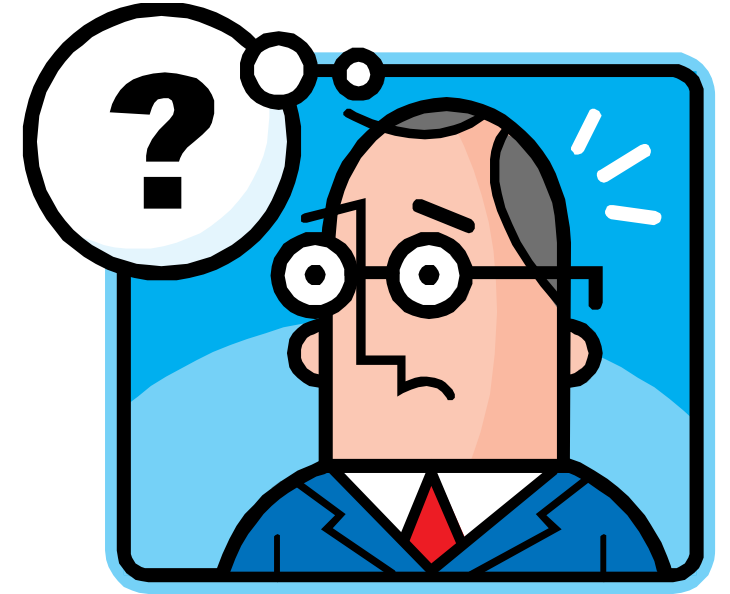
Rulemaking Background:

<https://www.osha.gov/heat-exposure/rulemaking>

- Rulemaking docket: <https://www.regulations.gov/document/OSHA-2021-0009-0001>.
- Advance notice of proposed rulemaking (ANPRM) issued in 10/27/2021. Comments closed 1/26/2022.
- OSHA established a Heat Injury and Illness Prevention Work Group of the National Advisory Committee on Occupational Health and Safety (NACOSH). Work Group concluded on 5/31/2023.
- The Small Business Regulatory Enforcement Fairness Act (SBREFA) process began 8/25/2023.
- Proposed
- Heat National Emphasis Program has already been in place under the general duty clause and remains in effect until April 2025.
- OSHA published proposed rule in *Federal Register* on August 30, 2024. Comment period closed Jan. 14, 2025. See [Federal Register Notice](#).

Top concerns and unanswered questions regarding proposed OSHA heat standard

- HIIPPs will be required when temperatures reach 80 degrees, even in workplaces where there have been no heat incidents, and where the job hazard analysis does not call out a heat concern.
- Employee consultation is mandated in the rule. This, in conjunction with the walkaround rule, is a ripe area for involvement with labor interests. Even an employee-side attorney quoted in *Bloomberg Law* noted how little guidance the rule provides on how employers can satisfy the employee consultation prong of the proposed standard.
- The requirement in the rule for “heat safety coordinators” is likely to place significant burden on employers, especially smaller companies. The rule does not provide context on whether the “heat safety coordinators” can be doing other jobs, or other guidelines. Employers will likely have to hire more people to comply with the rule as written.





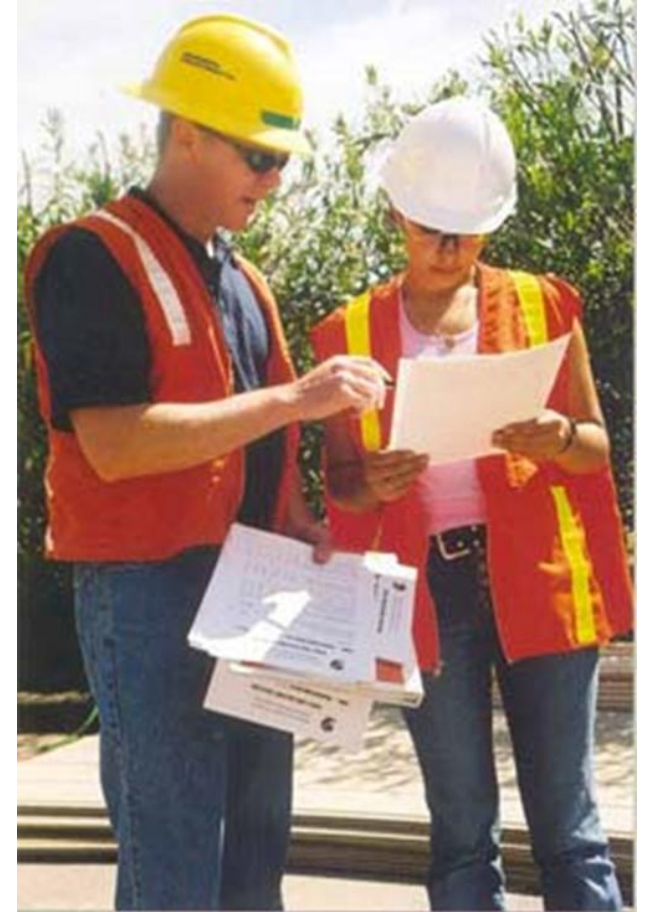
Current state without proposed rule: Heat National Emphasis Program

Heat NEP

- **Heat NEP** issued April 8, 2022 ([CPL 03-00-024](#))
 - Use of enforcement, outreach to employers, and compliance assistance
- Protects employees in high-hazard industries from both **indoor** and **outdoor** heat-related hazards
- Field offices to coordinate referrals with DOL **Wage and Hour Division (WHD)**, e.g., migrant workers harvesting

What is next?

- Official publication in the *Federal Register* occurred on August 30, 2024.
 - The 120-day public comment period was extended to January 14, 2025.
 - 24,000 comments posted to the docket
 - To view comments and status, visit www.regulations.gov, Docket No. [OSHA-2021-0009](https://www.regulations.gov/docket/OSHA-2021-0009)
- Informal public hearing presided by ALJ (virtual)
 - June 16, 2025, with additional days as needed.
 - Testimony if more than 10 minutes + documents referenced are due by May 23rd.
 - Post-hearing written comments
 - Post-hearing legal briefs
- Lookback mechanism in Congressional Review Act impact?



States with Heat Plans

State	Indoor	Outdoor	Temperature	HIPP	Additional
CA (1995)		X	80° F Ambient) 95° F (Ambient)	X	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.
CA (2024)	X		82° F (Ambient) 87° F (Ambient) – high heat	X	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.
OR (2022)		X	80° F (Heat Index)	X	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.
CO (AG) (2022)		X	80° F (Ambient) 90° F (Increased risk conditions)		Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water, observation. N/A if no more than 15 minutes work.
MN (1997)	X		86° F (WBGT), light; 80 ° F, Moderate work; 77° F, Heavy work		2-hour time-weighted average PEL training
WA (2023)			80° F (Ambient), all other clothing; 52° F, non-breathable clothing 90° F – high heat (Ambient)	Accident preven-tion	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.
MD (2024)	X	X	80° F	X	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.
NV (2024)		X		X	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.

QUESTIONS?

