

EEOC & NLRB Update

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The First 200 Days

- Topics
 - DEI
 - AI
 - Administrative Agency Actions



Day 1 – Executive Orders

- What is an Executive Order?
 - Article II of the Constitution vests the president with executive power over the government, including the obligation to “take care that the laws be faithfully executed.”
 - An executive order is a written directive, signed by the president, that orders the government to take specific actions to ensure “the laws be faithfully executed.”
 - It might mean telling the Department of Education to implement a certain rule or declaring a new policy priority.
 - Executive orders, however, cannot override federal laws and statutes.



Day 1 – Executive Orders

- Diversity, Equity and Inclusion Rollback
 - Removed federal DEI programs
 - Rescinded affirmative action mandates
 - Ended affirmative action requirements for federal contractors
 - Binary sex definitions in federal employment policy
- *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023)
 - The Supreme Court struck down affirmative action in college admissions.



Day 1 – Administrative Agency Shake-Up

- Equal Employment Opportunity Commission (EEOC)
 - Acting Chair: Andrea Lucas.
 - Lucas' term as acting chair began on January 20, 2025.
 - The Senate confirmed Lucas for a renewed term as commissioner at the EEOC on July 31, 2025.
- National Labor Relations Board (NLRB)
 - Chairman: Marvin Kaplan.
 - Kaplan was named Chairman on January 20, 2025, and previously served as chairman from December 21, 2017, to April 15, 2018.
 - Kaplan's term on the board extends to August 27, 2025.



Day 1 – Administrative Agency Shake-Up

- Recent Supreme Court decision in *Loper Bright* case may reign in federal agencies
 - Courts often defer to the administrative agency in interpreting their rules as subject matter experts (the *Chevron* doctrine)
- The *Loper Bright* case overruled the deference given in *Chevron*
 - Courts will still consider an administrative agency's interpretation of rules, but it is significantly weakened.
 - Employers will have a better chance of challenging some of the more extreme decisions
- Why does this matter?
 - We may see a slowing of the political rollercoaster typically seen every 4 years



Day 3 – Artificial Intelligence

- Executive Order 14179 – Removing Barriers to American Leadership in Artificial Intelligence



Day 16 – The Attorney General and DEI

- Attorney General Pam Bondi issued a Memorandum on February 5, 2025.
 - Directs DOJ's Civil Rights Division to investigate, eliminate, and penalize illegal DEI programs that receive federal funds.
 - Instructs the Civil Rights Division and Office of Legal Policy to jointly submit a report containing recommendations for ending illegal DEI.
 - Orders the DOJ to work with the Department of Education to end affirmative action in college admissions.



Day 51 – Pregnant Workers Fairness Act

- What is the Pregnant Workers Fairness Act?
 - The PWFA requires a covered employer to provide a “reasonable accommodation” to a qualified employee’s or applicant’s known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”
 - The EEOC issued its final regulation on April 15, 2024. Regulation went into effect on June 18, 2024.
 - The regulations broadly define what constitutes “limitations related to, affected by, or arising out of pregnancy, childbirth or related medical conditions,” including within its examples, lactation, miscarriage, stillbirth, and “having or choosing not to have an abortion.” 29 C.F.R. Part 1636 & app. A.

Day 51 – Pregnant Workers Fairness Act

- Less than one week after the Final Rule took effect, 17 State Attorneys General challenged the Final Rule on behalf of State employers arguing the EEOC exceeded its authority under the PWFA when it included abortions within the scope of pregnancy “related medical conditions.”
- The EEOC argued lack of standing and the federal court for the Eastern District of Arkansas agreed.
- No redressable injury-in-fact.
- On appeal, the Eighth Circuit of Appeals reversed, concluding that “[t]he imposition of a regulatory burden itself causes injury.” *State of Tennessee et al v. EEOC*, No. 24-2249 (8th Cir. 2025).
- The case now returns to the district court to hear arguments on the merits.
- **EEOC has indicated that they will reexamine portions of the Final Rule that are “unsupported by the law” once a quorum is re-established.**

Day 59 – DEI and the EEOC

- On March 19, 2025, the EEOC and DOJ released guidance on “Unlawful DEI”
 - Guidance reminds employers that Title VII prohibits employment discrimination based on protected characteristics.
 - “[t]he widespread adoption of DEI, however, does not change longstanding legal prohibitions against the use of race, sex, and other protected characteristics in employment.”
 - “Under Title VII, DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated-in whole or in part-by an employee’s race, sex, or another protected characteristic.”

Day 59 – DEI and the EEOC

- According to the EEOC, DEI practices that could be considered to violate Title VII include:
 - Using quotas or balancing a workforce based on protected characteristics.
 - Limiting membership in workplace groups to certain protected groups.
 - Providing DEI training if a reasonable person would consider it intimidating, hostile, or abusive.
 - Separating employees into groups based on race, sex, or another protected characteristic when administering training even if the separate groups receive the same programming content.
 - Opposition to DEI training may be a protected activity if the employee believes that the training violates Title VII.

Day 59 – DEI and the EEOC

- The federal government is currently enjoined from taking any enforcement action against companies in relation to Executive Order 14173.
 - However, employers should act now to conduct an audit of all DEI-related programs.
 - Gather all policies and protocols that relate to DEI and review to ensure compliance with existing laws.
 - Ensure there are no existing hiring quotas that prefer individuals of certain protected characteristics over others.
 - Review for any policy that could arguably “discriminate, exclude, or divide individuals based on race or sex.”

Day 59 – DEI and the EEOC

- Cases alleging gender identity discrimination have been dropped, and workplace harassment rules are expected to narrow, potentially redefining protections related to misgendering or restroom access

Day 59 – DEI and the EEOC

- MLB has removed references to diversity from its careers webpage.
- Warner Bros. Discovery stated it remains committed to being an “inclusive team” but would rename its DEI programs to “inclusion”, cease participating in external diversity surveys, and implement a “uniform and consistent application process” across all of its development programs.
- Paramount will no longer use diversity targets tied to race or gender in hiring.

Day 59 – DEI and the EEOC

- Bank of America will end targets for diversity hiring and replaced the word “diversity” with “talent” and “opportunity” in a recent annual report.
- Pepsi will no longer use representation goals in hiring and will transition its Chief DEI Officer position to focus more on employee development.
- Google rescinded a goal it set in 2020 to increase representation of underrepresented groups among leadership 30%.



Day 93 – A.I. Executive Orders

- Executive Order 14277 – Advancing Artificial Intelligence Education for American Youth
 - Task force
 - To provide resources for K-12 AI education, agencies represented on the Task Force shall seek to establish public-private partnerships with leading AI industry organizations, academic institutions, nonprofit entities, and other organizations
- Executive Order 14278 – Preparing Americans for High Paying Skilled Trade Jobs of the Future



Day 93 – A.I. Executive Orders

- Executive Order 14278 – Preparing Americans for High Paying Skilled Trade Jobs of the Future
 - Create a report on opportunities to integrate systems and realign resources to address critical workforce needs and in-demand skills of emerging industries and companies investing in the United States as determined, to the extent permissible by law, by prospective employers.



Day 190 – The DOL's P.A.I.D. Program

- The PAID program encourages employers to proactively identify and resolve potential violations of federal wage and hour laws (FLSA) and FMLA.
 - entirely voluntary for employers.
 - conduct a self-audit to identify potential violations related to minimum wage, overtime, and FMLA leave.
 - If violations are found, employers work with the DOL to correct them, potentially including payment of back wages and other remedies.



Day 190 – The DOL's P.A.I.D Program

- Employee Rights:
 - Employees can choose whether to accept the settlement offered, and if they decline, they retain the right to pursue legal action.
- The program focuses on resolving federal FLSA and FMLA violations within specific timeframes. State and local laws may have different requirements, and the PAID program's release may not cover those claims.



Day 196 – Bureau of Labor Statistics

- Trump terminates Commissioner of Labor Statistics, Erika McEntarfer
 - Biden appointee
 - Typically, a non-partisan position
- Why now?
 - Disappointing job numbers from July and downward revisions to May/June numbers
 - Numbers showed slower growth than originally anticipated
- Importance
 - Interest rates, social security, home values



Prop A – Bonus Information

- Prop A repeal effective August 28, 2025
- Constitutional Amendment paperwork filed on May 15, 2025
 - What does this mean for the future of paid sick leave for Missouri employers?



PRO Act Reintroduced to Congress

- A proposed law that would amend labor laws such as the NLRA.
 - Favors Unions and workers.
 - Employers would be prevented from holding mandatory meetings for the purpose of counteracting labor organization.
 - Unions would be permitted to encourage secondary strikes.
 - “Right-to-work” laws would be weakened.
 - Will likely have support from all Senate Democrats plus some Republicans.



PRO Act Reintroduced to Congress

- About that Republican support...
 - Senator Josh Hawley has introduced related, narrower proposals indicating emerging pro-labor Republican interest in select reforms
 - Labor Secretary Lori Chavez-DeRemer walked back earlier support for the PRO Act, aligning with right-to-work and state autonomy views, signaling limited executive enthusiasm.
 - The Trump administration has favored loosening rules around independent contractor classification, a core target of the PRO Act



Questions?

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