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News & Insights

Trump's First 100 Days: Labor, Immigration, Employment & Employee Benefits

Analysis of New Administration
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President-elect Trump is expected to put forth his own nominee for Chair of the National Labor Relations Board (NLRB), swiftly replace General Counsel Jennifer Abruzzo and take aim at many Biden-era labor decisions. This will all take time. More immediately, the labor market will see the effects of Trump's hardline immigration policy.

AT A GLANCE

- The decisions in *Cemex*, *Stericycle* and *McLaren Macomb* will likely be reexamined or reinterpreted. The NLRB under Trump may also target the shortened timeline of "quickie elections" and reinstate the 2020 joint employer rule.
- Employers should prepare for a return to 2016-2020 immigration policies, including an increase in I-9 compliance audits and worksite enforcement actions. Industries that employ migrant workers will feel the impact immediately, while the ramifications may take longer to reach H-1B visa recipients and other highly-skilled foreign workers.
- Tax reform, particularly the extension of the Tax Cut and Jobs Act, may change which expenses employers and employees can deduct as part of their benefits.

LABOR

While changes to labor laws are somewhat unpredictable, President-elect Trump's stated priorities suggest a few likely events within the first 100 days.

- Change in NLRB Chairman. If the current nominee for the next NLRB chairman is not confirmed by President-elect Trump's inauguration, we expect the new administration to put forth a new nominee for confirmation within the first 100 days.

- Reversal of NLRB General Counsel Decisions. We expect President-elect Trump to remove NLRB General Counsel Jennifer Abruzzo and appoint a new general counsel for the Senate to confirm. A Trump administration-appointed general counsel will likely take aim at several, if not most, of the changes that occurred under Abruzzo's term, including the *Cemex*, *Stericycle* and *McLaren Macomb* decisions, as well as rules regarding a "quickie election" and joint employers.
  - *Cemex*. The *Cemex* decision makes it easier for the NLRB to require employers to recognize and bargain with a union without affording its employees an opportunity to participate in a secret-ballot election.
  - *Stericycle*. The *Stericycle* decision placed a heavier burden on employers when communicating and implementing work rules or regulating workplace conduct.
  - *McLaren Macomb*. The NLRB's 2023 *McLaren Macomb* decision reversed a ruling from Trump's first term in office that granted broad flexibility to employers in severance agreements. This decision took aim at confidentiality and non-disparagement provisions in severance agreements, making it unlawful to include language that is overbroad and could be interpreted by employees to restrict their rights under the National Labor Relations Act.
  - The "Quickie Election". Under the "quickie election" rules, a union election can be as short as 21 days. Under the previous election rules, an election was typically 42 days from the petition being filed to the date of the election.
  - Joint Employer. With the potential for newly-appointed members, the NLRB may reinstitute the 2020 joint employer rule (which made it more difficult to find that two entities were joint employers).
- Focus on Government Inefficiencies. The new administration is also expected to cut down on government inefficiencies and cost-expensive departments, including within the NLRB, which will limit the amount or type of cases it will prosecute.

IMMIGRATION

The Trump administration is expected to undertake a hardline approach to immigration, reintroducing key immigration policies that were hallmarks of the first Trump term. Employers should prepare for significant regulatory, executive order and enforcement changes in the first 100 days.

- Increased I-9 Enforcement and Immigration Compliance. Employers should anticipate an increase in I-9 audits and possible worksite raids, particularly in targeted industries such as food processing, hospitality, construction and agricultural production. Businesses employing foreign national employees should anticipate an increased likelihood of site visits and immigration compliance investigations.

- **Stricter Adjudication and Longer Processing Times for Immigration Benefit Requests.** In line with past Trump-era trends, immigration benefit requests are expected to receive a higher level of scrutiny, making it harder for employers to hire and retain foreign national employees. Employers should anticipate longer processing times, increases in requests for evidence, and higher chances of denials for immigration benefits requests.
- **Rescission of USCIS Policy of Deference to Prior Adjudications.** The new administration is expected to end the U.S. Citizenship and Immigration Services (USCIS) policy of deference to prior agency approvals. Ending the deference policy means that extension requests for current employees will receive the same level of scrutiny as initial requests, even where the employees' role and circumstances remain unchanged.
- **Restrictions to the H-1B Specialty Occupation Worker Program.** The new administration is expected to re-implement the "Buy American and Hire American" executive order. Employers requesting extensions for current H-1B employees should anticipate higher scrutiny for H-1B extensions, making outcomes and costs less predictable for employers.
- **Elimination of Immigration Programs.** The Trump administration is expected to decline to extend certain immigration programs, specifically Deferred Action for Childhood Arrivals, Temporary Protected Status and humanitarian parole programs. Foreign national beneficiaries of these programs would lose their immigration status and employment authorization, which could result in abrupt workforce changes and staffing levels for companies currently employing these individuals.
- **State and Local Legislation Impacting Immigration Enforcement.** We expect state and/or local governments to pass legislation impacting immigration enforcement that closely align with the federal priorities of stricter immigration enforcement. We also anticipate increased collaboration between law enforcement and U.S. Immigration and Customs Enforcement targeting undocumented individuals. Additionally, more and more states are passing laws requiring E-Verify enrollment for employers.

EMPLOYMENT

- We expect renewed attention on corporate diversity, equity and inclusion (DEI) initiatives. President-elect Trump has always been vocal in his skepticism of DEI efforts. Moreover, several former Trump administration officials are already involved in litigation challenging these programs. Nationwide, over 50 such cases are pending. Activists have also written dozens of letters to the U.S. Equal Employment Opportunity Commission (EEOC), requesting it investigate many major companies who allegedly discriminate against straight, White men through diversity programs. Many of the pending lawsuits rely on federal statutes like Title VI, Title VII, and 42 U.S.C. § 1981. A Trump Department of Justice — and, to a lesser extent, EEOC — could easily decide to investigate, bring and intervene in these and related cases.

- **Workplace Safety.** In his first term, Trump reduced the size of Occupational Safety and Health Administration (OSHA), chose not to mandate COVID-19 protective measures and rolled back various electronic recordkeeping requirements. The new administration is expected to continue this trend of reduced workplace safety oversight. This may include rescinding the union "Walkaround Rule," which allows union representatives to join OSHA inspectors on safety inspections and was implemented in March 2024, and modifying the proposed heat safety rule.
- **No Tax on Tips Act.** For the No Tax on Tips Act to pass, it would need Senate and House approval, which could prove contentious, but expect it will be introduced in the first 100 days to satisfy a campaign promise. According to estimates from the Committee for a Responsible Federal Budget, exempting tips could reduce federal revenue by $150 billion to $250 billion over the next decade.
- **Overtime Pay.** The Biden administration raised the salary threshold for overtime exemptions to $44,888 on July 1, 2024, with a further increase to $58,656 scheduled for January 1, 2025. That rule was vacated by a Texas court in November 2024. Although this rule would support his promise to help working class voters, we do not anticipate Trump will take action to revive the rule within his first 100 days.

EMPLOYEE BENEFITS

- **Tax Reform.** With the expiration of the 2017 Tax Cuts and Jobs Act, tax reform is expected to be a priority for the Trump administration. Certain tax exclusions and deductions related to employee benefit plans may be limited as Congress looks for revenue-raisers to implement tax reform. We expect the new administration to either cap the employee tax exclusion for employer-provided health care or limit the employer deduction for health care expenses. We also expect retirement plans to come under scrutiny as a potential revenue source.
- **Health and Welfare.** We may see more developments and expansions of account-based plans, such as Health Savings Accounts or individual coverage health reimbursement arrangements. Transparency and competition have generally been bipartisan issues and may be re-addressed and expanded. Anticipated impact during the first 100 days:
  - Guidance from the Biden administration regarding prescription drug benefits is still pending. If the current administration issues proposed regulations, then we expect the Trump administration to place them on hold, though it remains unclear how such regulations would be finalized under the new administration.
  - We do not expect the Trump administration to delay the Mental Health Parity and Addiction Equity Act requirements, some of which go into effect in 2025.
- **Retirement Plans.** We expect the Biden administration's fiduciary rule to be effectively abandoned and left undefended by the new administration. We also anticipate that the Trump administration will re-write the Biden administration's rule on environmental, social and governance (ESG) investing in

retirement plans to limit or eliminate ESG factors when considering a plan's investment lineup. The Trump administration may also shift retirement plan investment guidance to allow for greater private equity and cryptocurrency use. We do not expect SECURE 3.0 to be a priority at any point next year.

This article is part of a broader analysis examining the anticipated challenges and opportunities created by an administration change. Attorneys from several different practice areas contributed to this series of articles across multiple legal areas.

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