



Webinar 2 - January 22, 2025

Preparing for 2025 - What Employers Need to Know and Expect with a New Administration

WEBINAR OUTLINE

INTRO/SETTING THE STAGE

- Anticipated Changes with a New Administration

WHAT TO EXPECT IN 2025

- Changes to the National Labor Relations Board - New Leadership
- Immigration
- Impact on the EEOC and DEI
- Independent Contractor Classification
- Wage and Hour
- Relaxed Workplace Safety Measures

HRtelligence TIPS

I. INTRO/SETTING THE STAGE

Anticipated Changes with a New Administration

- When a new president is elected, the incoming administration often engages in an intense review of its predecessor's policy actions, particularly when there has been a shift in party control.
- A new presidential administration presents the potential rollback of numerous regulations and policies.

II. WHAT TO EXPECT IN 2025

A. Changes to the National Labor Relations Board – New Leadership

- Immediate changes at the NLRB are expected, including the appointment of a new General Counsel.
- Many current General Counsel memos will likely be rescinded.
- The expected NLRB Republican majority is anticipated to return to standards providing more consistency and predictability for employers.
- Organizing activity is anticipated to continue rising.
- Changes are expected in how unions are recognized, making it harder to unionize without an election.

A Republican NLRB will likely return to employer-friendly policies and decisions, including those related to:

- Ordering union recognition without an election.
- Work rules and handbook policy enforcement standards.
- Independent contractor test.
- “Quickie election” rules and other procedural changes.
- Prohibitions on “captive audience” meetings.
- Stay-on provisions and non-competes.

B. Immigration

Employers should expect and prepare for stricter immigration standards to intersect with their employment practices. Employers will likely see:

- Heightened Immigration Enforcement
- More scrutiny and rigorous processes for H-1B visas - the visa program for international skilled workers.
- I-9 Audits

- Mandatory E-Verify

Most notably for immigration and employment law, President Trump's 2024 campaign promised mass deportations. The effect of this on employers will arise in the form of I-9 audits to ensure employer compliance with immigration laws and possible workplace raids to detain or deport workers.

Notes: Common I-9 violations include failing to complete the form on time, incomplete fields, making errors in fields like citizenship status, accepting unsatisfactory or fraudulent documents, not making copies of documents, not dating and initialing corrections, and employers not listing the date of hire and signing and dating the required sections. Companies should begin conducting internal audits of their I-9 records before the new administration takes office to ensure compliance.

C. Impact on EEOC and DEI

The Impact on The Equal Employment Opportunity Commission

EEOC commissioners are appointed by the president to serve a specific term. The current EEOC Democratic majority will remain in place until 2026. When leadership changes occur we may see the following enforcement priorities:

- **Scaling Back of Diversity, Equity, and Inclusion (DEI) Efforts**

The new administration is likely to adopt a more conservative stance on diversity, equity, and inclusion ("DEI") initiatives, and revise – or outright reverse – Biden-era policies and priorities aimed at strengthening protections for LGBTQ+ and pregnant workers.

- **Pregnant Workers Fairness Act (PWFA) Claims and Abortion Care**

The Trump Administration may also seek to limit the scope of protections afforded to employees under the Pregnant Workers Fairness Act ("PWFA"). The PWFA and its implementing regulations protect employees with "pregnancy-related conditions" from discrimination, and require accommodations to be made for pregnancy-related conditions unless the accommodations pose an "undue hardship." The PWFA defines "pregnancy-related conditions" to include abortion, menopause, fertility, and menstruation issues. We expect to see changes to the definition of "pregnancy-related conditions" with respect to abortion care.

- **Challenges to LGBTQ+ Worker Protections**

During the Biden administration, U.S. Supreme Court issued the *Bostock* decision. The *Bostock* decision concerned the interpretation of the word *sex* under Title VII. By a very slim majority, the court found the definition of *sex* under Title VII included not just an employee's biological or assigned sex at birth, but also the employee's sexual orientation, gender, and gender identity and expression. That allowed employees to file sexual orientation discrimination claims under Title VII.

With the new composition of the U.S. Supreme Court, the definition of *sex* is likely to be re-examined.

- **Challenges to Antidiscrimination/Harassment Training and DEI Training**

There's been a significant push involving employees who challenge or refuse to participate in diversity, equity, and inclusion programming or training. Employees have attempted to characterize the required training as a violation of their religious rights or as harassment. Some employees who have been fired for refusing to participate in their mandatory training consider their terminations to be retaliatory.

Case law, so far, does not seem to support these kinds of claims. However, we are likely to see more of these types of claims and arguments raised by employees in the next four years.

D. Independent Contractor Classification

The next Trump administration will reverse President Biden's efforts that made it harder for businesses to classify workers as independent contractors.

- Just weeks before President Biden took office in 2021, the Trump administration's DOL finalized a new rule that would have made it easier for businesses to characterize some workers as contractors for wage and hour purposes – but then the Biden DOL froze it without it ever taking effect.

Trump's current campaign has not yet provided any specifics for how his administration would approach the issue in 2025, but it is likely the DOL will reverse course once again.

E. Wage and Hour

Under President Biden, the Department of Labor increased the threshold for overtime eligibility from \$35,568 to \$58,656. While a federal district court in Texas recently struck down this expansion of overtime pay eligibility, continuance of this expansion will face further obstacles under this new Trump Administration.

Trump campaign's website supports raising wages but it will likely be a slight increase to the federal minimum wage– but nowhere near Biden's proposed \$15/hour.

Regardless of what happens at the federal level, we can expect to see more states and localities implementing their own minimum wage hikes over the coming years.

F. Relaxed Workplace Safety Measures

Trump will likely reduce government oversight on workplace safety issues. During his first term in office, Trump's administration cut the number of inspectors to the lowest amount in OSHA's history, declined to mandate employers to take any protective measures against COVID-19, and rescinded part of the electronic recordkeeping requirements. Expect more of the same over the next four years.

- Rather than mandating specific standards for different categories of potential workplace danger, you can expect a Trump-led OSHA to enforce safety concerns using the OSH Act's General Duty clause.
- Repeal the "union walkaround rule."
- Scaled back proposed heat safety rule.



- Review your independent contractor classifications to determine whether they will shift under the expected changing federal standards, while evaluating all work arrangements that might fall under an “employee” designation. Prepare for potential shifts in compliance.
- Monitor possible immigration reforms that may impact hiring and employment practices, particularly in industries relying on a foreign workforce. If your business relies on H-1B labor, stay tuned for potential changes to the program that could make things more challenging for you to bring aboard skilled labor from overseas. Start taking measures to tighten up your employment eligibility verification process to ensure that your business is not impacted by mass deportations. This is particularly important for industries that rely heavily on an unskilled labor.
- Monitor your state and local laws in order to keep pace with any minimum wage increase.
- Conduct internal audits of I-9s. Consider hiring independent auditors, who are more apt to identify errors in I-9 forms and weaknesses in recordkeeping practices.