



Navigating Expected Employment Law Changes Under Trump

January 30, 2025

Agenda

1 Executive Orders
and Litigation

2 DEI and EEO
Changes

3 Administrative
Leadership

4 Unpredictability

A look back at the Biden Administration

Significant Efforts to Protect Employees

- **Stericycle:** NLRB Decision strengthening protections against employment policies that could interfere with an employee's right to engage in collective action.
- **Employee / Contractor Test:** Department of Labor issued stricter rule intended to require employers to treat more individuals as employees, rather than contractors.
- **Non-Compete Ban:** The FTC issued a rule to ban non-competes. The new rule has been enjoined by federal district courts.
- **Increase in the Exempt Employee Salary Thresholds:** The Department of Labor issued a rule significantly raising the minimum salary employees could receive and still be considered exempt. The rule was vacated by a federal district court.



What is likely to change and what will stay the same?

Likely to change

- The new administration is likely to roll back employee protections
 - The employee / contractor test will return to a formulation less likely to find an individual to be an employee.
 - The non-compete ban and increase to the exempt employee salary thresholds are likely dead.
- Leadership at the EEOC, FTC, DOL, and NLRB will change and be less likely to take actions to protect employees.

Likely to stay the same

- There will be lots of litigation
 - Cases will be brought in California, Massachusetts, and Washington, instead of Texas.
 - Trump's Executive Order on Birthright Citizenship was stayed by a federal judge in Seattle. An attempt to freeze federal grants was stayed by a federal judge in Washington, D.C.

Trump Administration executive orders

President Trump has issued dozens of executive orders addressing issues such as:

- Energy production
- Ending government diversity, equity, and inclusion programs
- Defining sex and gender
- Immigration
- Health and medical research
- Birthright citizenship
- Changing geographic names

*List and description of Executive Orders from NPR

What does increased immigration enforcement mean for employers?

- Employers should make sure that they are collecting and keeping properly completed I-9 forms.
 - ◆ Employers need a completed I-9 form for each current employee.
 - ◆ When an employee leaves, organizations must keep their I-9 for three years after the date of hire, or one year after the date the employment ends, whichever is later.

- Employers should consider creating a plan for how to respond if Immigration and Customs Enforcement (ICE) officers come to your workplace.
 - ◆ Work with an attorney, business association, or community group to understand your rights.
 - ◆ Determine who will be the point of contact for your organization.
 - ◆ Consider training your employees on how to respond if ICE officers enter your workplace.

What can the President *actually* do?

They **can't**:

- Create, amend, or repeal federal law*
- Change the Constitution
- Impose new requirements on private employers without authorization from Congress
- Direct the operations of independent federal agencies

They **can**:

- Change how executive agencies enforce federal law
- Argue for new interpretations of the Constitution in court
- Impose requirements on private employers based on new interpretations of existing law
- Make appointments to fill vacancies in independent agencies

POTUS, DEI, and EEO

- “Ending Radical And Wasteful Government DEI Programs And Preferencing” (January 20, 2025)
- “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (January 21, 2025)
- Two broad directives for the federal government:
 - Stop all activities that promote the use of “illegal DEI” in federal contracting and hiring; and
 - Find ways to “encourage the private sector to end illegal discrimination and preferences, including DEI”



POTUS, DEI, and EEO: The **federal** side

- Revokes existing orders requiring the use of DEI principles in federal hiring and contracting; and
- Requires new provision in federal contracts and grants that requires recipients to:
 - Certify that they don't "operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws"; and
 - Agree that their contract or grant can be terminated if they engage in "illegal DEI"



POTUS, DEI, and EEO: The **private** side

- Requires government to identify:
 - the “most egregious” practitioners of “illegal DEI;”
 - 9 potential targets for “civil compliance investigations”;
 - Potential regulatory actions and guidance;
 - Other strategies to “encourage the private sector to end illegal DEI discrimination and preferences”;
- Focused on publicly traded businesses and large nonprofits



What is “illegal DEI?”

- Federal law prohibits businesses from making hiring decisions based on protected characteristics (e.g., race & gender)
 - Businesses that consider those characteristics in hiring and promotion decisions to promote a diverse workforce can violate that restriction in certain circumstances
- Scope of that idea is unclear in employment law, but it could be similar to how SCOTUS handled affirmative action in *Students for Fair Admissions v. Harvard* (2023)
 - That case prohibits the consideration of an applicant’s race, in and of itself, from being given weight in college admissions decisions
- We will learn more about what “illegal DEI” is as enforcement around these EOs begins

What should employers do?

- Evaluate internal policies and procedures to find places where protected characteristics are considered in employment decisions
 - Policies can still promote a diverse workforce, but avoid using protected characteristics as a measure of diversity
 - Revise existing DEI policies to de-emphasize reliance on protected characteristics
- Monitor the news for developments in what is and is not considered “illegal” DEI



Department of Labor terminations

Secretary of Labor

Julie Sue

- Acting Labor Secretary: Mar. 11th, 2023–Jan. 20th, 2025
- Known for pro-worker leanings and work as a labor attorney representing disadvantaged workers.
- Helped pass rule increasing wage thresholds for MW and OT exemptions.
- Assisted proposal of rule disallowing payment of less than MW to disabled workers.



Department of Labor Replacements:

Secretary of Labor

Vince Micone

- Interim Labor Secretary
- Resigned as board member of D.C.'s Capital Pride Alliance
- Recently has ordered DOL to take steps to “close all agency DEIA offices and end all DEIA-related contracts.”



Lori Chavez-DeRemer

- Current Labor Secretary nominee
- Has shown support for pro-union/worker initiatives, like the Protecting the Right To Organize (PRO) Act and Public Service Freedom to Negotiate Act.



Implications

Immediate changes:

- Cancellation of DEI programs
- Closure of DEI offices

Expected direction:

- Death of sub-minimum wage rule
- Possible revival of exemption wage thresholds, though doubtful
- General union/collective bargaining protections, if Chavez-DeRemer is confirmed

EEOC removals

Commissioners

Charlotte Burrows

- Commissioner since 2015. Reconfirmed until 2028
- Chair from Jan. 20th, 2021–Jan. 19th, 2025
- Launched EEOC Initiative on Artificial Intelligence (AI) and Algorithmic Fairness
- Started The Hiring Initiative to Reimagine Equity



Jocelyn Samuels

- Commissioner since 2020. Reconfirmed until 2026
- Vice Chair from 1.20.21–1.20.25
- Prior to joining the EEOC, she worked at the DOJ and National Women's Law Center advocating for civil rights and gender equality



EEOC removals

General Counsel

Karla Gilbride

- General Counsel since Oct. 17th, 2023
- Term set to end in 2027
- Prior to joining the EEOC, she litigated wage theft and employment discrimination at a private firm
- She also served as co-director of the Access to Justice Project, which seeks to make it less difficult for people to seek justice through the judicial process



EEOC replacement

Commissioner (no others yet)

Andrea Lucas

- Commissioner since 2020
- Appointed to Acting Chair after Burrows' termination
- Before joining the EEOC, she advised employers and boards of directors on various sensitive workplace issues like discrimination and sexual harassment
- Opponent to affirmative action: "I am committed to ensuring equal justice under the law and to focusing on equal opportunity, merit, and colorblind equality."



Implications

Immediate changes:

- Without a quorum, the commission cannot make final decisions
- Commissioners intend to challenge dismissal, further delaying finality
- Swift removal of DEI enforcement in the agency and with contractors

Expected direction:

- If Lucas retains the Chair position, she has stated she intends to enforce evenhanded civil rights laws by “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; protecting workers from religious bias and harassment; and remedying other areas that have been historically under-enforced by the agency
- Likely to see rulemaking efforts affecting affirmative action and protected classes

FTC removals

Commissioners

Lina Khan

- Chair from June 20th, 2021–Jan. 20th, 2025
- Will resign from Commission
- Pushed strong workers' rights protections while at FTC
- Proponent for Rule banning non-competes in US
- Finalized “click-to-cancel” rule allowing consumers to cancel memberships as easily as registering
- Helped pass final Junk Fees Rule prohibiting bait and switch pricing and other hidden fee tactics
- Helped block business consolidations that the FTC alleged would raise prices, close stores, and reduce wages



FTC replacements:

Commissioners

Andrew Ferguson

- Acting Chair: Jan. 20th, 2025
- Previous VA solicitor general & Chief Counsel to Mitch McConnell
- Taken numerous steps to end DEI at the FTC (closed DEI office, terminated Diversity Counsel, etc.)
- Seeks to “end Big Tech’s vendetta against competition and free speech”



Mark Meador

- Nomination to fill vacant seat
- Previously worked for FTC, DOJ, and Senator Mike Lee in antitrust matters
- Appears to take a more populist approach in antitrust matters,
- Drafted legislation that would force a breakup of Google ad tech business



Implications

Immediate changes:

- Focus on removal of DEI programs
- Death of non-compete ban

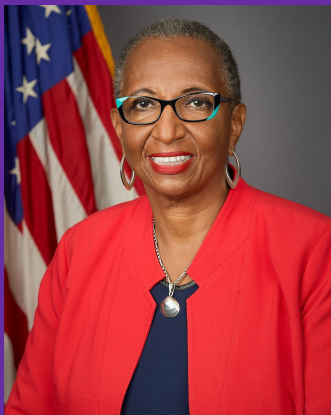
Expected direction:

- Continued efforts to reduce monopolization
- Enforcement actions in support of the Robinson-Patman Act, which makes it illegal “to discriminate in price between different purchasers of commodities of like grade and quality.”
- Reduced rule-making efforts (Ferguson appears to view the FTC’s authority as more limited)

NLRB terminations

Gwynne Wilcox

- Confirmed for term as Board member until 2028
- Acting Board Chair, fired on Jan. 27th, 2025
- Intends to pursue legal challenge to dismissal
- Prior to NLRB service, she served as a partner at a private firm specializing in union representation before the NLRB
- Served as a committee board member of the Workers Defense League



Jennifer Abruzzo

- General Counsel from July 22nd, 2021—Jan. 27th, 2025
- Abruzzo has been strongly in favor of workers' rights.
- Issued numerous GC memos supporting workers' rights in various areas:
 - Non-compete agreements
 - Stay-or-pay provisions
 - Greater employee recovery



NLRB Replacements

Marvin Kaplan

- Board member since June 2017
- Current Chair: Jan. 20th, 2025
- Previously worked as Chief Counsel to the Chairman of the Occupational Safety and Health Review Commission
- Notable dissents from union-friendly decisions (*Stericycle*)



Jessica Rutter

- Appointed to Acting General Counsel by Abruzzo on Jan. 26th, 2025
- While working in the NLRB's Division of Advice, she served on committees related to protection of immigrant workers
- She also has worked in different capacities for unions and workers' rights organizations



Implications

Immediate changes:

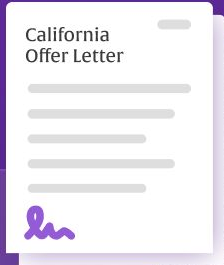
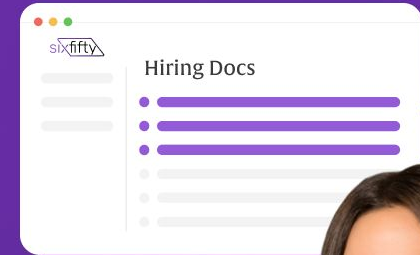
- **Stalled Board decisions.** With Wilcox' termination, 3 board seats are open. Without a third board member, there is no quorum and the Board's decisions are invalid until ratified by a full Board.
- Cases currently before the board are likely going to be delayed.
- Expect legal battles regarding presidential power to remove board members. If Wilcox' termination is upheld, there are likely to be more firings, as it indicates greater presidential power over agency personnel.

Expected direction:

- It's likely a new GC will be appointed by the president (rather than the departing GC) who is likely to withdraw numerous GC memoranda.
- Board is likely to reconsider a number of significant legal issues like
 - joint employer relationships,
 - employee classifications,
 - standards for evaluating work rules (*Stericycle*),
 - non-compete agreements,
 - non-disparagement agreements


Facing the unexpected: Be prepared

- Create your update process to stay adaptable as the law changes
- Have important questions already settled
 - Who is involved in updates?
 - How frequently do you review?
 - When do you get new acknowledgments?
- Source reliable, up-to-date, and understandable legal updates



Best practices

- Review your policies and documents on a regular basis
 - Consider any new laws, states, and employee counts
 - Frequency depends on your company complexity
 - A little time throughout the year saves you a lot of time down the road
- We recommend reviewing for legal changes monthly

 **Research** Beta

Ask SixFifty AI Instead

Employment Privacy Clause Library

Jurisdiction	Topic	Subtopic	Notice Date	Effective Date
Missouri	Wage and Hour	Minimum Wage	1/6/25	1/6/25
On December 6, 2024, the Missouri Restaurant Association, the Missouri Chamber of Commerce...				
Idaho	Required Disclosures and Policies	Poster Requirements	1/6/25	1/6/25
Idaho's Department of Labor published new versions of its Discrimination in Employment, Unem...				
Massachusetts	Recruitment	Pay Transparency	1/6/25	2/1/25
Under the state's Act Relative to Salary Range Transparency, employers with at least 100 employ...				
Missouri	Leave	Sick Leave	1/6/25	2/21/25
On December 6, 2024, the Missouri Restaurant Association, the Missouri Chamber of Commerce...				
Michigan	Leave	Sick Leave	1/6/25	2/21/25
Voter-backed expansion of paid sick leave takes effect on February 21st. The changes include rem...				
Federal	Financial Regulation	Financial Reporting	1/6/25	1/6/25
There has been an active back-and-forth of litigation over the Corporate Transparency Act's filing...				
Michigan	Wage and Hour	Minimum Wage	1/6/25	2/1/25
Thanks to a Michigan Supreme Court decision, Michigan's minimum wage is set to increase to \$1...				

Signatures and acknowledgments

- When do you need to send your employee handbook for acknowledgement? Employment Agreements? What about other docs?
- What type of document is it?
 - An Employee Handbook is not a contract
- Different Approaches:
 - Acknowledgements every time there is a significant change
 - Acknowledgments once a year but notify employees of changes
 - Acknowledgments when employees start but notify employees of changes
- Procedural changes could need training

Staying up-to-date on legal changes

Do it yourself

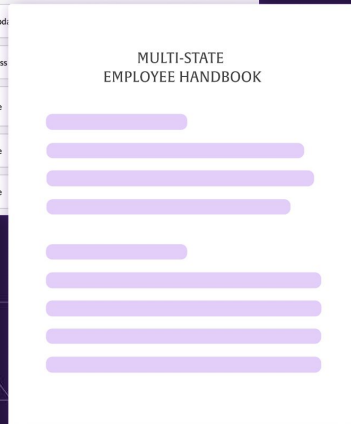
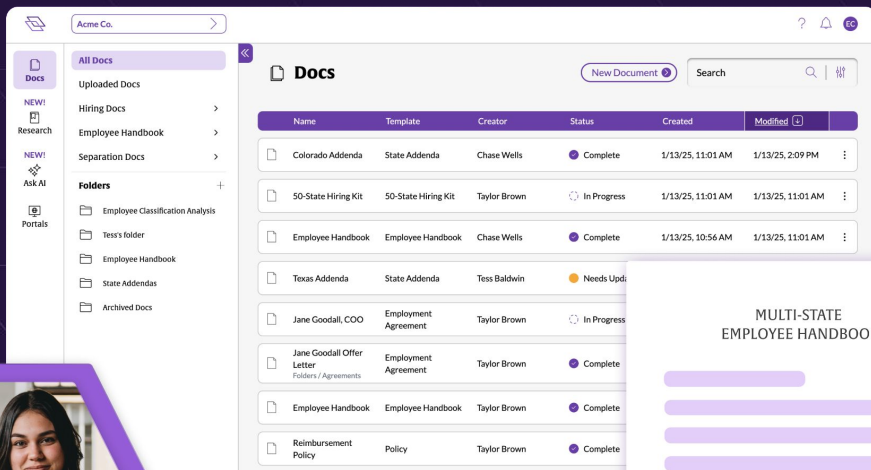
- Some companies assign members of their HR or Legal teams to monitor the law in the states where they have employees and update their employee handbooks.

Law firms

- Some companies rely on their outside counsel to alert them when the law changes.
- Some law firms send out emails or have web pages where they summarize changes to the law.

Third-Party Services

- Third-party services can help you stay current on changes to state and federal laws.
- At SixFifty, we send our customers a monthly update of legal changes, we update our document creation engines, and we use AI to merge updates into existing policies.



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Report: The State of Employment Law Compliance in 2025

Get our free report and benchmark your compliance investment, practices, and challenges against your HR peers



Webinar: Feb. 6th

Get best practices and insights based on current trends in employment law



WEBINAR | FEB 6 @ 10 AM PT / 1 PM ET

The State of Compliance: Best Practices and Strategies for HR Teams

FEATURING GUEST SPEAKERS



Saná Walker
President & Founder,
HR Girlfriends



Priscilla McMahon
President & Principal Consultant,
The Work-Life Group