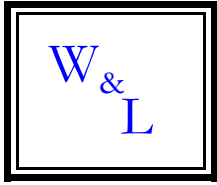


EMPLOYMENT LAW BULLETIN

A Monthly Report On Labor Law Issues



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PRESIDENT TRUMP ADDRESSES IMMIGRATION ISSUES ON HIS DAY OF INAUGURATION

As this publication is going to press, on Inauguration Day, President Trump reportedly will issue some 100 executive orders on his very first day in office. Among those are a number of immigration-related orders. Trump officials indicate that the executive orders will be followed within days by a series of immigration enforcement raids targeting criminals and national security risks, although others could be apprehended too. The President said in his inaugural address that he was declaring a national emergency at the U.S. Southern border, which would trigger deploying additional Pentagon resources, including armed forces, to finish the border wall and for Southern border security. The President said he was also designating drug cartels as foreign terrorist organizations, and that gang members would be removed. He also confirmed he was reinstating his signature border policy known as “Remain in Mexico,” requiring migrants to stay in Mexico while they go through immigration proceedings in the U.S. He is expected to suspend refugee admissions into the U.S. for at least three months. He is also asking agencies to issue suggestions for further restrictions on immigration from countries of “particular concern.” He has ended the program that allowed migrants from Cuba, Haiti, Nicaragua and Venezuela to apply to the U.S. if they have American sponsors. His most controversial plan is to attempt to deny birthright citizenship to the children of immigrants who are in the U.S. illegally, but this measure may run afoul of the U.S. Constitution.

President Trump’s order ending asylum also opens the door for authorities to arrest and possibly deport millions of foreigners who have been allowed to live in the U.S. while a court decides the outcome. Other executive orders signed on Inauguration Day, call for the elimination of government diversity, equity, and inclusion policies, and directed civil rights agencies to recognize only two sexes, male and female, in enforcing anti-discrimination law. Surprisingly, however, President Trump did not terminate on Inauguration Day the General Counsels of the NLRB and the EEOC, a step taken by his predecessor, President Biden. The executive order halting all pending federal regulations is more of a standard move for the transfer of presidential power dating back to at least Jimmy Carter. Additional Alerts will be issued on these subjects and on the new executive orders on DEI, immigration, and changes at the Equal Employment Opportunity Commission (EEOC) and the National Labor Relations Board (NLRB).

In related news, the U.S. Senate on Monday passed a bill that would require federal authorities to detain migrants accused of theft and violent crimes, and 12 Democratic senators joined the Republicans voting in favor 64-35. The law is called the Laken Riley, named after a Georgia nursing student murdered by an immigrant, and the vote shows the sentiment in Congress has shifted on border security and immigration issues.

EMPLOYERS' HEALTHCARE PREMIUMS SKYROCKET

Premiums for employees' family health insurance increased at more than double the U.S. inflation rate to over \$25,000 in 2024, according to researcher KFF. This was an approximate 7% increase from the prior year. The increase comes partially from the new weight-loss drugs, although currently only about one in five employers cover such drugs. Those drugs cost approximately \$1,000 a month.

Workers contribute an average of a little over \$6,000 a year for family coverage, so this doesn't cover annual premiums. Some employers are trying to reduce the burden of rising healthcare costs by offering limited plans with more affordable coverage or reducing lower-wage workers' premiums.

Overall inflation may be slowing, but it takes time for those trends to show up in health insurance premiums, according to surveys.

DANGERS OF ADDITIONAL SURCHARGES TO EMPLOYEES WITH BAD HEALTH HABITS

The Employee Retirement Income Security Act (ERISA), has anti-discrimination provisions which require healthcare plans with surcharges for poor health practices to provide a reasonable alternative standard to such surcharges. Lately there has been a slew of litigation pertaining to tobacco surcharges by health plans, more than a dozen recent lawsuits. A recent lawsuit at Bass Pro Group alleged the company's health plan violated this law which requires plans with tobacco surcharges to provide a reasonable alternative standard like participation in a smoking cessation program, in lieu of surcharges. Plaintiffs contended the tobacco cessation program used by the employer went too far because workers could not avoid the penalty by completing the program, but instead had to remain tobacco-free for a period of time. The employer settled the class action with tobacco-using workers for approximately \$5 million.

THE EFFECT OF THE ELECTION ON JUDICIAL APPOINTMENTS

In his first term as President, Trump gained confirmation for 234 federal judges, and President Biden gained confirmation of 235 judges. Currently, some 47 federal judicial seats are vacant, and 20 more are occupied by judges who have announced plans to assume senior status, where another judge can be appointed in their place. However, there are only two vacancies on the important circuit courts of appeals, as opposed to the federal district courts. Federal judges serve for life and their influence can be felt for decades.

President Trump during his first Administration appointed highly qualified candidates recommended by the Federalist Society, a conservative legal group. Appointments tended to be conservative and relatively young. In his first term, his appointees were 76% male and 84% White. President Biden reportedly did more to advance diversity on the federal bench than any President in history. Over 60% of Biden's 233 appointments were people of color, and 60% were women. Biden's appointees came from areas such as public defenders, civil rights attorneys, and union labor lawyers.

Many believe that Trump's judicial appointments were the highlight and most successful part of his first term, including his appointment of three Supreme Court justices.

Republican control of the Senate will work in the President's favor, as the upper chamber must approve appointments. The ability to affect the federal judiciary will depend on how many judges decide to retire. In the Supreme Court, the older judges are Republican-appointments, with Justice Thomas at 76, and Justice Alito at 74. On the other hand, Justice Sotomayor is younger but reportedly in questionable health. There was some effort on the part of Democrats to get her to retire during the Biden Administration, but she did not do so.

In his first term, Trump shifted the balance of three circuit courts from Democratic to Republican, one of which switched back under Biden. Currently, Trump may be able to shift the Fourth Circuit in Richmond, Virginia, and the Tenth Circuit in Denver, Colorado, if Democratic-appointed judges decide to retire or take senior status.

There are many current controversial legal issues pending in the federal courts, some dealing with the power of federal agencies over government policy, and whether the court should overturn those policies. However, it is now the Democrats who will likely be making such challenges to federal agencies operating under Trump-appointed leadership, while during the Biden Administration the opposite was true.

THE SUPREME COURT MAKES IT EASIER FOR EMPLOYERS TO DEFEND OVERTIME CLAIMS

The Fair Labor Standards Act has multiple exemptions for employers' obligation to pay overtime for hours worked over 40. In a Supreme Court ruling issued on January 15, 2025, the Supreme Court reversed a court of appeals ruling requiring "clear and convincing evidence" that an overtime exemption applied. *E.M.D. Sales Inc. v. Carrera*, No. 23-217. The Court found that employers may show an exemption by the "preponderance of the evidence" standard, the standard in most civil litigation. The Court found the standard does not change just because important public interests are involved, as the same applies to a number of laws.

Editor's Note: In spite of this ruling, employers should review their payroll practices to insure that exemptions actually apply. Currently, collective action lawsuits under the wage-hour laws are quite costly, and plaintiffs have reasons to pursue such actions because of the potential for liquidated damages and the award of attorney's fees and costs.

PRO-LABOR SECRETARY OF LABOR WILL ADVANCE MODERATE AGENDA

Some were surprised when President Trump nominated Rep. Lori Chavez-DeRemar, R. Ore., as his nominee to be Secretary of Labor. The daughter of a Teamster, she has considered herself a supporter of unions and labor rights, and one of only three Republican representatives to vote for the Pro Act.

However, following meetings with various Republican leaders in Congress, no serious opposition followed from the business community. Further, the AFL-CIO listed her Congressional track records as only 10% in voting "with working people," just slightly better than House Republicans' 6% average.

It should be noted that the Republican Party has increasingly become the party of working people, with Trump winning half of union households and the vast majority of working class households. Several Republican senators, including the Vice President, have taken positions supportive of organized labor and worker rights.

A reasonable forecast of her agenda, therefore, would be to be one of moderation and compromise, weighing employer's interests and those of workers and organized labor. The need to deal with organized labor will occur early in the Administration, as nearly 200 large union contracts are set to expire in 2025, covering more than 1.5 million workers. The earliest chance for a strike has been avoided with the recent settlement of the 45,000 longshoremen docks along the U.S. and Gulf Coast. The President actually voiced his support of the dockworkers' demands, rejecting further automation of the East Coast docks, after the parties reached a deal on a 62% wage increase over six years.

Further, it should be noted that any pro-union sympathies on the part of the new Secretary could conceivably be offset by Elon Musk, who has a history of confrontations with organized labor. In an August conversation with Elon Musk on X, Trump himself said: "I won't mention the name of the company, but they go on strike, and you say 'that's ok,' you're all gone," resulting in unfair labor practice charges from unions. Last October, in a 9-8 decision by an en banc panel, the U.S. Court of Appeals for the Fifth Circuit ruled that Elon Musk's tweets saying workers would lose stock options if they unionized was not illegal but was an opinion protected by the First Amendment.

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