

Lawyering in Changing Times: Employment and Environmental Updates in the First 180 Days of the Trump Administration

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Employment Updates:

Executive Orders and Beyond

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EEOC Guidance and Actions regarding Diversity, Equity & Inclusion

Employment Update

- Severance Agreements
- Restrictive Covenants
- Removing “stay or pay” restrictions
- Artificial intelligence
- FLSA
- Disparate impact
- Diversity, Equity & Inclusion (executive orders, EEOC Guidance)
- EEOC letters to 20 law firms
- Changes to independent contractor test
- General take aways

Environment Update

- Withdraw from Paris Agreement
- Rollback of PFAS regulations
- Deregulation of appliance efficiency standards
- Reduction in environmental justice funding
- Challenging state climate policies
- Constitution natural gas pipeline
- Reprocessing nuclear waste
- Opening Alaska for energy development
- EPA deregulation

Severance Agreements



- **Rescinded Biden-era NLRB General Counsel Memoranda GC 23-05 on Severance Agreements that had taken position:**
 - Most confidentiality provisions unlawful
 - Non-disparagement provisions essentially limited to defamation
 - “Duty to cooperate” provisions generally unlawful
 - Savings clauses do not cure overbreadth

Unfair Competition and Restrictive Covenants

- New NLRB Acting GC rescinded GC 23-08, which stated non-compete agreements given to non-managerial employees generally violate the NLRA
- On March 7, 2025, the Trump administration halted appeals to two rulings that blocked the FTC rule greatly restricting non-competes.
- The U.S. Dist. Court for the N. Dist. Of Texas and the Middle District of Florida had prevented the FTC rule from coming into effect but the administration advised it needs to reevaluate the rule, and halted appeals.



Removing “Stay or Pay” Restrictions

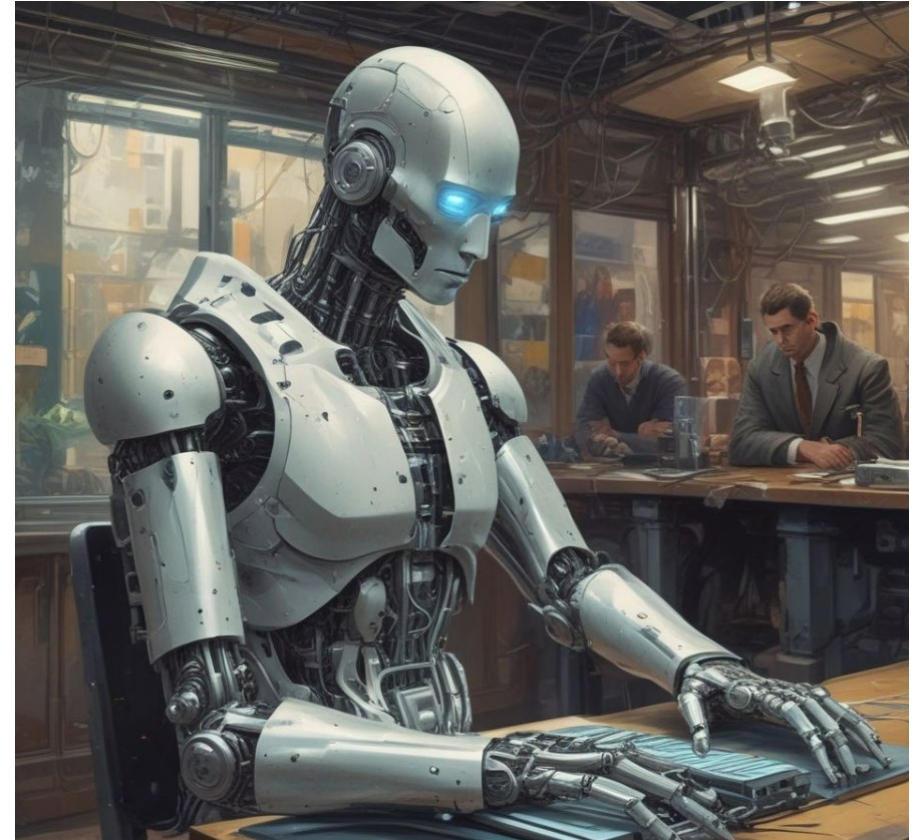
- “**Stay or pay**” provisions require repayment of some amount if an employee leaves an employer or leaves before a certain date — training repayment, relocation fees, educational repayment, quit fees, damages clauses, sign-on bonuses repayment, or other types of cash payments tied to a mandatory stay period
- New Administration rescinded GC 25-01, which found “stay or pay” reduced employee mobility, announced a presumption that such provisions were illegal, and provided a means of seeking damages against employers



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Artificial Intelligence

- **Employers' Uses for AI:** screen job candidates, employee self-service tools, evaluate employee job performance
- Pres. Trump revoked Pres. Biden's EO entitled "Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence "
- Eliminated (1) direction to agencies to use existing laws to prevent unintended bias, discrimination, infringements on privacy, etc. and (2) mandatory federal reporting requirements
- States will step in — see, e.g., California, Colorado, Illinois, and New York City



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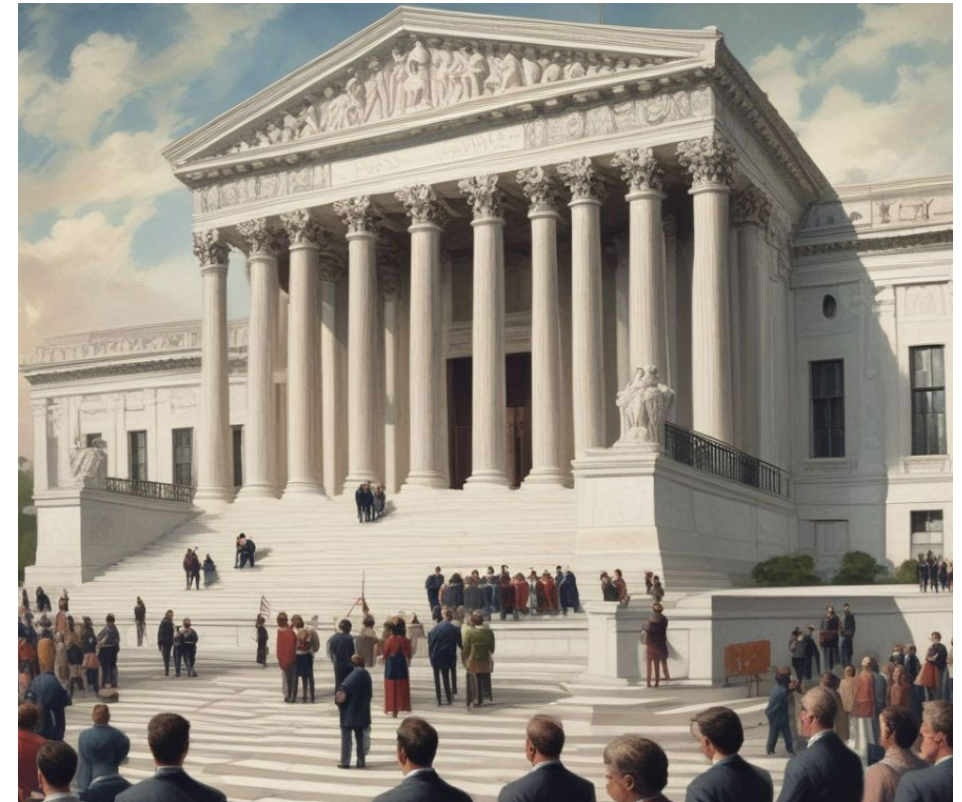
Fair Labor Standards Act



- DOL rule had raised the min. salary requirement for FLSA exemptions.
- In Nov. 2024, E. D. Tex. federal court vacated the DOL's 2024 rule as exceeding the agency's statutory authority.
- Pres. Biden's DOL appealed to the 5th Cir.
- Pres. Trump's DOL asked 5th Cir. to pause appeal to allow time to determine its position.

Disparate Impact Analysis

- April 23, 2025 EO attempts to dismantle “disparate impact” as a basis for discrimination liability:
 - asserts it is unlawful, violates our Constitution, and “threatens the commitment to merit and equality of opportunity that forms the foundation of the American Dream.”
 - directs AG to identify all state laws or decisions that impose disparate impact liability - determine whether federal action is warranted, and coordinate with other agencies to determine whether federal authorities preempt state laws imposing disparate impact liability.
 - directs federal government agencies to deprioritize consideration of discrimination claims that are predicated on the “disparate impact” of facially neutral policies or actions where there is no direct proof of discriminatory intent.



Executive Orders relating to Diversity, Equity & Inclusion

EO 14151: *Ending Radical and Wasteful Government DEI Programs and Preferencing*

- Directs federal agencies to end “diversity, equity, inclusion and accessibility” (DEIA) mandates, policies, programs and activities within the federal government
- Also eliminates DEI performance requirements for federal employees, contractors or grantees

EO 14173: *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*

- Ends prior executive actions to promote DEI in the federal government
- Directs the development of “appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI”
- Federal lawsuit filed to block this EO with a preliminary injunction issued

EEOC Guidance and Actions regarding Diversity, Equity & Inclusion

EEOC Guidance: *What You Should Know About DEI-Related Discrimination at Work*

- Provides Q&A explaining scope of protections regarding diversity-related programs

EEOC and DOJ Joint Document: *What To Do If You Experience Discrimination Related to DEI at Work*

- Outlines what “DEI-related discrimination look[s] like”
- Directs employees to contact the EEOC if believe they have experienced discrimination

EEOC Letters regarding Diversity, Equity & Inclusion

- EEOC issued letters to 20 law firms on March 17, 2025
 - Requesting information from firms about employment practices, such as:
 - Applicant and selection criteria for new hires and promotions
 - Use of affinity groups
 - Compensation data for multiple years
 - Data on promotional or lateral movement
 - Information on company policies
 - Publicly-released letters – departure from EEOC investigations being a confidential process until lawsuit is filed
- Executive Orders issued against some firms to suspend security clearances and restrict access to federal buildings/courthouses due to firms' diversity initiatives
- Law Firm Responses:
 - 4 settled; agreed to change diversity programs and compliance monitoring by the EEOC
 - 2 agreed to provide *pro bono* representation to causes supported by Trump administration
 - Others are challenging in court

Independent Contractor Test

Wage and Hour Division of DOL issued bulletin on May 1 providing new guidance to determine whether worker is independent contractor

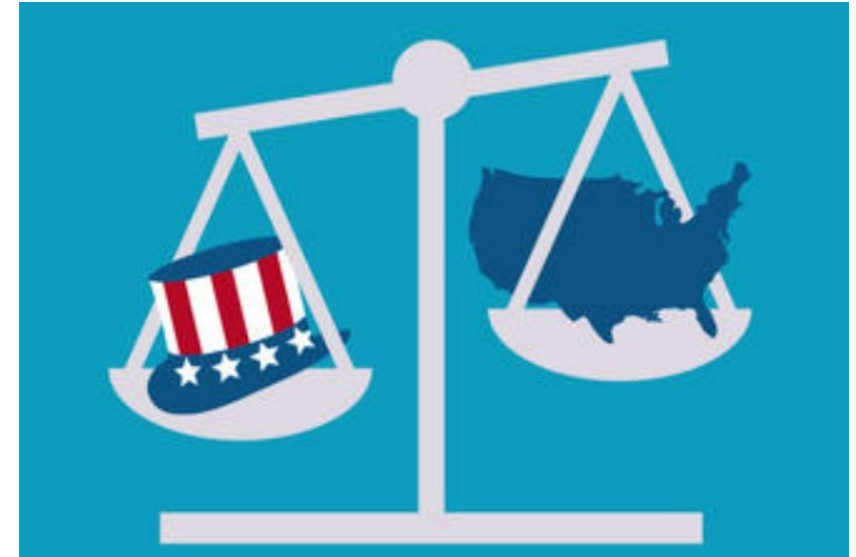
Chronology:

- **2021:** 5-factor test focusing on right to control and worker's opportunity for profit or loss
- **2024 Rule:** worker who is economically dependent on an employer is not an independent contractor
 - 6-factor "economic realities test"
- **2025:** DOL will stop applying 2024 rule and look to 7-factor test from 2008

2024 Rule remains in effect for purposes of private litigation, but DOL will not apply it in department investigations

Takeaways Regarding Employment Issues

- Less federal regulation in many areas
- Increased focus on state/local laws
- Widening disparity in various states' approaches on range of employment issues
- Expect further court challenges to EO's
- Importance of employer culture





Environmental Updates:

Key Executives Orders and Regulatory Changes

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Withdrawal from the Paris Agreement



Executive Order 14162:

“Putting America First in International Environmental Agreements”

Signed on January 20, 2025, marking the U.S.’s second withdrawal from the Paris Agreement.



Implications:

Reduces U.S commitment to global climate change mitigation efforts.

Rollback of PFAS Regulations

EPA's Action:

- Rescinded limits on certain PFAS chemicals (e.g., PFHxS, PFNA) and extended compliance deadlines for PFOA and PFOS to 2031.

Health Concerns:

- PFAS, known as “forever chemicals,” are linked to cancer, liver damage, and developmental issues.

Criticism:

- Environmental groups argue the rollback prioritizes industry over public health and may violate the Safe Drinking Water Act.

Deregulation of Appliance Efficiency Standards



Department of Energy's Initiative:

Proposed rollback of 47 energy and water efficiency standards for appliances like dishwashers and clothes washers.



Legal Concerns:

Potential violation of the Energy Policy and Conservation Act's "anti-backsliding" provision.



Impact:

Could lead to increased energy consumption and higher utility costs for consumers.

Reduction in Environmental Justice Funding

EPA's Decision:

- Canceled over \$2 million in grants for environmental justice initiatives in Southwestern Pennsylvania.

Affected Programs:

- Community-led efforts in air and water quality monitoring, job training, and food security.

Broader Implications:

- Reflects a shift in priorities, potentially undermining support for vulnerable communities facing environmental challenges.

Executive Order 14260- Challenging State Climate Policies

Protecting American Energy from State Overreach

Date Signed: April 8, 2025

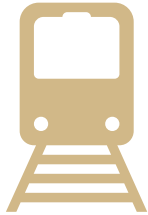
Key Provisions:

- Directs the Attorney General to challenge state laws that restrict fossil fuel use or impose stringent climate regulations.
- Targets state-level initiatives on greenhouse gas emissions and environmental justice.

Implications:

- Potential legal conflicts between federal and state governments over environmental regulations.
- Could undermine state-led climate change mitigation efforts.

Revival of the Constitution Natural Gas Pipeline



Project Overview:

A 124-mile pipeline intended to transport natural gas from Pennsylvania to New York.

Previously canceled in 2020 due to environmental concerns and permit denials.



Trump Administration's Actions:

Pushing to revive the project as part of its energy agenda.

Aiming to override state-level opposition, particularly from New York.



Challenges:

Strong resistance from environmental groups and local communities.

Legal and political hurdles remain significant.

Executive Order- “Ushering in a Nuclear Renaissance”



Objective:

Assess the feasibility of reprocessing nuclear waste, including plutonium, into reactor fuel.



Key Provisions:

Instructs the Department of Energy to evaluate legal and operational aspects of nuclear waste recycling.
Proposes increasing presidential control over nuclear project approvals.



Concerns:

Potential risks of nuclear proliferation.
Environmental and safety implications of reprocessing nuclear waste.

Executive Order 14153- Opening Alaska for Energy Development

Unleashing Alaska's Extraordinary Resource Potential



Date Signed: January 20, 2025



Key Provisions:

Rescinds Biden-era policies halting oil and gas leasing in the Arctic National Wildlife Refuge.

Directs federal agencies to expedite permits for energy exploration and production in Alaska.



Implications:

Potential environmental risks to sensitive Arctic ecosystems.

Legal challenges anticipated from environmental groups.

EPA's Deregulatory Actions Under Administrator Lee Zeldin

Overview:

- In March 2025, EPA Administrator Lee Zeldin announced the agency's most significant deregulatory initiative in U.S history.
- Plans include repealing dozens of environmental regulations, such as protections for wetlands and limits on air pollutants.

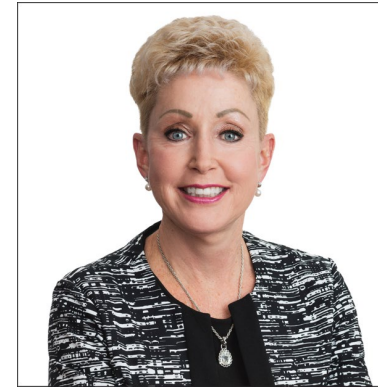
Additional Actions:

- Proposed budget cuts of 65% to the EPA.
- Elimination of the EPA's scientific research arm.
- Streamlining processes for coal power plants to obtain exemptions from mercury pollution regulations.

Questions?



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