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What changes will the new Trump administration make to the federal employment law landscape?

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In the United States a complex interplay of federal, state, and local statutes, rules, and regulations has always shaped employment law. Politics and elections also play an important role in influencing the enactment and enforcement of the nation's employment laws. With the imminent shift from the administrations of Joseph Biden to Donald Trump, employers can expect a new direction and a raft of changes to the federal government's approach to labor and employment law and regulatory policies. These changes undoubtedly will significantly impact the American workplace. Unlike most changes in administration, employers can look to their actual experiences during President-elect Trump's first term to anticipate the direction a second Trump administration might take. President-elect Trump will likely revisit some of the labor policies he promoted during his previous tenure but will also pursue new initiatives aligned with pronouncements and economic policies he raised during the campaign. Below, we explore some of the potential changes we expect in the enforcement of federal employment laws from the second Trump administration.

1. Revisiting the Regulatory Rollback

During Donald Trump's first term, his administration pursued a broad deregulatory agenda. Agencies such as the Department of Labor (DOL), the Equal Employment Opportunity Commission (EEOC), and the National Labor Relations Board (NLRB) scaled back or revised Obama-era regulations. Trump likely will build on this agenda, further rolling back regulations he sees as burdensome to businesses.

Key Focus Areas:

- **Overtime Rule Changes**: The first Trump administration scaled back Obama-era efforts to expand the availability of overtime pay. We expect to see efforts to limit such expansions of coverage of overtime laws, or even the introduction of rollbacks.
- **Joint Employer Standard**: Trump's NLRB previously narrowed the criteria for determining joint employer liability, favoring businesses like franchisors. Watch for a Trump-appointed Board to solidify these changes, limiting the liability of parent

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companies for franchisees' employment practices.

- **Independent Contractor Rules**: During the first Trump term, the DOL issued rules making it easier for companies to classify workers as independent contractors rather than employees, limiting access to benefits like overtime and unemployment insurance. Biden reversed many of these changes by executive action. Watch for new, second-wave Trump regulators to reinstate the earlier rules to expand independent contractor classification and facilitate gig economy business models.

2. Labor Relations: Favoring Employers Over Unions

President Biden touted himself the "most pro-union President in history." President-elect Trump will not likely try to wrest that title away. The first Trump administration's stance toward labor unions and collective bargaining was sometimes adversarial, reflecting a preference for reducing union influence in the workplace. President Biden tried to bolster unions and signed an executive order promoting unionization and collective bargaining rights for federal employees. These included restoring protections rolled back during the first Trump administration and encouraging federal agencies to actively engage with unions. Trump's campaign appeals to union and non-union working-class workers could signal some softening of his earlier adversarial stance. On the other hand, we could see a return to initiatives that seek to tilt the balance in favor of employers.

Potential Changes:

- **Restrictions on Union Elections**: The Trump NLRB could continue adopting rules that make it harder for workers to organize, such as requiring more disclosure from unions or restricting access to employer premises during organizing campaigns.
- **Right-to-Work Expansion**: Although traditionally a state-level issue, President-elect Trump has historically supported national right-to-work legislation, which prevents mandatory union dues as a condition of employment. Renewed momentum for this legislation could emerge.
- **Bargaining Obligations**: Rules governing employers' obligations during collective bargaining could be softened, limiting unions' leverage in negotiations.
- **Federal Procurement and Labor Preferences**: President Biden issued executive orders promoting union workers and union-made products. The Trump Administration likely may modify or rescind these preferences.

3. Workplace Safety and OSHA Oversight

The Trump administration's previous approach to workplace safety focused on reducing penalties and inspections, favoring instead cooperative partnerships with employers, as opposed to punitive measures. A second Trump term will likely reduce enforcement activities by the Occupational Safety and Health Administration (OSHA).

Key Predictions:

- **Reduced Inspections**: Expect fewer workplace inspections, particularly in low-violation industries, as OSHA continues to prioritize voluntary compliance over enforcement.
- **Softened COVID-19 Standards**: Although the pandemic has ended, lingering workplace safety concerns related to infectious diseases remain a focus. President-

elect Trump seems likely to reverse some stricter workplace health standards adopted by the Biden administration.

- **Deregulation in High-Risk Industries**: Industries like construction, manufacturing, and energy could see reduced compliance burdens as OSHA revises or eliminates standards perceived as costly or unnecessary.

4. Equal Employment Opportunity: A Narrower Scope

Previously in President-elect Trump's first term, the EEOC adopted a more conservative approach to enforcement of civil rights laws. During that time, the Commission focused on individual claims over systemic investigations, and scaled back aggressive enforcement of workplace discrimination laws. A second Trump term likely will return to similar trends in this direction.

Expected Developments:

- **Limiting Expansive Interpretations of Discrimination**: The EEOC could restrict interpretations of Title VII of the Civil Rights Act that were intended to expand protections of workers from workplace discrimination.
- **Focus on Mediation and Settlements**: The new Trump EEOC might shift resources toward resolving individual claims through mediation rather than pursuing investigations or broader systemic cases.
- **Reduced Data Collection**: Expect requirements for businesses to report detailed workforce demographic data (e.g., EEO-1 Component 2) to be scaled back or even eliminated.
- **Federal DEIA Initiatives**: President Biden issued several orders directing federal agencies to prioritize diversity, equity, inclusion, and accessibility (DEIA) in hiring, promotions, and workplace culture. President-elect Trump's prior executive orders sought to limit training and programs which took into account protected classifications, or which focused on "critical race theory." We anticipate a return to the earlier approach, with President-elect Trump rescinding President Biden's DEIA initiatives.

5. Wage and Hour Policies: Business-Friendly Adjustments

President-elect Trump's first administration took steps to provide employers greater flexibility in complying with wage and hour laws, particularly the Fair Labor Standards Act (FLSA). A second term likely will build on these efforts.

Likely Areas of Reform:

- **Flexible Work Arrangements**: President-elect Trump's previous administration signaled interest in modernizing the FLSA to accommodate remote work and flexible schedules. Watch for renewed emphasis on policies that allow employers more leeway in structuring work hours.
- **Wage Transparency Rules**: Employers may see reduced requirements regarding the disclosure or pay scales or wage disparities, reversing trends under the Biden administration.
- **Tip Policies**: Revisions to tip pooling rules, allowing a broader range of employees to share in tip pools, may be enacted.
- **Minimum Wage for Federal Contractors**: President-elect Trump may abandon or

reverse President Biden’s Executive Order mandating a $15 minimum wage for federal contractors, which was recently enjoined by the Ninth Circuit Court of Appeals.

6. Immigration and Employment Law

A more restrictive immigration policy is sure to play a prominent role in the next Trump administration’s approach to the workplace. This will be particularly true for industries that rely on foreign labor, such as agriculture, technology, and hospitality. President-elect Trump has promised to pursue stricter immigration policies, which will impact hiring practices and workforce availability.

Potential Policy Directions:

- **H-1B Visa Restrictions**: The new administration likely will tighten the eligibility criteria for high-skilled foreign workers and impose heightened scrutiny of employers using the H-1B visa program.
- **E-Verify Expansion**: The Trump administration will likely seek to expand the use of E-Verify, an electronic system for verifying employment eligibility, but which is currently mandatory only for federal and some state government contractors.
- **Crackdowns on Unauthorized Work**: Expect increased workplace investigations, audits and penalties for employers found hiring undocumented

7. Paid Leave and Workplace Benefits

The first Trump administration was less aggressive than President Obama in promoting paid leave or workplace benefits reforms. While President-elect Trump and his surrogates expressed support for parental leave during his campaign, it remains to be seen if that will translate into legislative action on the issue. The second Trump term seems more likely to emphasize voluntary, market-driven solutions over federal mandates.

Key Expectations:

- **Parental Leave Incentives**: Instead of mandating paid leave, President-elect Trump will be more likely to use tax incentives or other voluntary measures to encourage employers to offer such benefits.
- **Opposition to Federal Mandates**: Similarly, efforts to expand federally mandated sick leave, family leave, or healthcare benefits will probably stall under President-elect Trump’s leadership.

8. Federal Judiciary and Employment Law

President-elect Trump’s lasting impact on employment law could extend beyond executive actions to reach the federal judiciary. His first administration appointed over 230 federal judges, including three Supreme Court justices, many of whom share a conservative interpretation of employment and administrative law. A second Trump term will likely further entrench this legacy.

Implications:

- **Pro-Business Judicial Rulings**: Judges appointed by President-elect Trump will likely be sympathetic to employer concerns in disputes over arbitration agreements, wage claims, or discrimination lawsuits.
- **Judicial Appointments**: Additional Trump appointments could shape the legal landscape for decades, reinforcing a business-friendly interpretation of employment statutes.

Conclusion: An Employer-Friendly Agenda with Broader Implications

The second Trump administration will likely deepen the deregulatory trends of the first, to prioritize business flexibility and minimize government influence and oversight. While such changes may reduce compliance costs for employers, workers may face greater challenges to vindicate employment law protections.

Employers will need to navigate these changes carefully, balancing the increase in their regulatory freedom with the need to comply with continuing legal obligations and to attract and retain talent in a competitive labor market. Workers and labor advocates, meanwhile, may need to look to the courts rather than government agencies as the primary way they may question employer actions and safeguard workplace rights.

As with every new administration, the next administration is sure to bring some surprises. Even with a preview of President-elect Trump's policies from the recent past, the dynamic legal, political and workplace environments make precise prediction impossible. As the legal and political landscape evolves, employers should keep abreast of changes and communicate effectively with company leaders and counsel.