



Labor & Employment Law in the First 100 Days of the New Administration

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Updates to Cover

- DOL
- OSHA
- Immigration
- DEI
- Labor Relations
- FTC and Restrictive Covenants
- AI
- The “Big Beautiful Bill”





Department of Labor (DOL) Updates

New Secretary of Labor

Lori Chavez-DeRemer

- Former Rep. from Oregon
- Publicly supported as nominee by Teamsters President Sean O'Brien
- One of three co-sponsors of the PRO Act
- Pro-business? Pro-labor?
Somewhere in between?



DOL Reboots Opinion Letter Program to Offer Guidance on Wage and Hour, Workplace Safety, and More

- On June 2, the Department of Labor (DOL) announced its expansion of the opinion letter program allowing employers to request opinion letters from five of its key enforcement arms:
 - Wage and Hour Division (WHD)
 - Occupational Safety and Health Administration (OSHA)
 - Employee Benefits Security Administration (EBSA)
 - Veterans' Employment and Training Service (VETS)
 - Mine Safety and Health Administration (MSHA) (which will operate through its own platform)

What Are Opinion Letters?

Opinion letters are formal, written guidance from DOL officials explaining to the public how the agency would apply the law to a specific set of facts.

They serve several key purposes:

- **Solid guidance:** Employers can feel more confident applying the DOL's opinion to the real-world workplace scenario in question. While they don't offer you a 100% shield from an adverse court ruling, they do provide a basis for an employer to demonstrate their application of the standard was consistent with the agency's own published interpretation.
- **Transparency and consistency:** Published letters allow others to potentially benefit from the agency's interpretation, even if they didn't submit the request.
- **Legal safe harbor:** Reliance on opinion letters can sometimes serve as a "good faith" defense under laws like the Fair Labor Standards Act (FLSA) – but they aren't get-out-of-jail-free cards, so you'll want to work with your legal counsel to understand their reach.

How to Use Opinion Letters

- Review newly issued letters for any that apply to your business model or workforce structure. Remember, opinion letters are made public and can be referenced by other employers facing similar situations, not just the business that submitted the request.
- The DOL has launched a new webpage to allow organizations to submit their requests for agency interpretation. Employers can submit a request if:
 - The question is based on specific, real-world facts.
 - The issue is novel or unclear.
 - The request falls under the jurisdiction of one of the five participating agencies.

<https://www.dol.gov/agencies/oasp/compliance-initiatives/opinion-letters>

Wave of Deregulation at DOL

WAVE OF DEREGULATION AT DOL **Key Proposals Impacting Employers**

Workplace Safety

Rolling back reporting for musculoskeletal disorders (MSDs) and limiting General Duty Clause enforcement in high-risk industries

Healthcare Industry

Eliminating minimum wage and OT protections for in-home care workers

Agriculture Industry

Revoking labor protections for seasonal H-2A visa workers

Federal Contractors

Rescinding affirmative action and audit obligations

Apprenticeships

Scrapping affirmative action requirements for apprenticeships

Employee Benefits

Revoking legacy fiduciary and plan rules under ERISA

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OSHA Updates

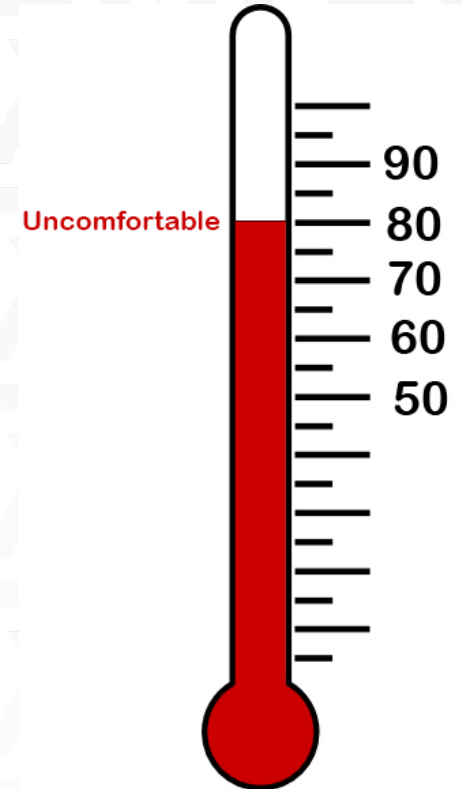
Increased Civil Penalties

- Effective as of January 15, 2025.
- The maximum OSHA penalties for serious and other-than-serious violations increased from \$16,131 to \$16,550 per violation.
- The maximum penalty for willful or repeated violations increased from \$161,323 to \$165,514 per violation.

Type of Violation	Penalty
Serious	\$16,550 per violation
Other-Than-Serious	\$16,550 per violation
Posting Requirements	\$16,550 per violation
Failure to Abate	\$16,550 per day beyond the abatement date
Willful or Repeated	\$165,514 per violation

Workplace Heat Stress Prevention Rule

- From 2011-2022, more than 400 worker deaths and thousands of hospitalizations were attributed to occupational heat exposure.
- Proposed July 2, 2024, and scheduled public hearing for July 16, 2025.
- Requires all employers to take specific actions when the heat index hits 80°F and implement stricter measures at 90°F (e.g., access to water and shaded rest areas, acclimatization plans for new and returning workers, training for both employees and supervisors, emergency response procedures).
- Protects employees in high-hazard industries from both **indoor** and **outdoor** heat-related hazards.



States with Heat Plans

State	Indoor	Outdoor	Temperature	HIPP	Additional
CA (1995)		X	80° F Ambient) 95° F (Ambient)	X	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.
CA (2024)	X		82° F (Ambient) 87° F (Ambient) – high heat	X	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.
OR (2022)		X	80° F (Heat Index)	X	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.
CO (AG) (2022)		X	80° F (Ambient) 90° F (Increased risk conditions)		Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water, observation. N/A if no more than 15 minutes work.
MN (1997)	X		86° F (WBGT), light; 80 ° F, Moderate work; 77° F, Heavy work		2-hour time-weighted average PEL training
WA (2023)		X	80° F (Ambient), all other clothing; 52° F, non-breathable clothing 90° F – high heat (Ambient)	Accident preven-tion	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.
MD (2024)	X	X	80° F	X	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.
NV (2024)		X		X	Rest breaks, training, acclimatization, emergency response, shade or cool-down areas, provide water.



Immigration Updates

Administration Staffing



Kristi Noem confirmed
Secretary of
Homeland Security



Tom Homan named
“Border Czar”



U.S. Attorney
General Pam Bondi

Current Executive Orders and Recent Actions

- Mass Deportation Initiatives
- Revocation of Temporary Protected Status (TPS)
- Previous Safe Zones
- Nationwide Alien Registration



Why Would ICE Be At The Worksite? Raids vs. Audits

- ICE may come to the worksite to:
 - Start an **I-9 audit** (Document will be called “Notice of Inspection”);
 - **Workplace raid** – **must have a judicial warrant**;
 - Detain a specific person – **must have a judicial warrant**.

Considerations and Action Items

- Adapt your I-9 compliance practices to new documentation considerations
- Expect increased immigration scrutiny and workplace disruptions
- Avoid discrimination and retaliation issues
- Be prepared for DHS audits and enforcement actions
- Stay tuned for legal challenges and possible state adaptations

Employers' Rapid Response Team Hotline

24/7 Emergency Hotline:

In the event of an active ICE enforcement action, call us at **877-483-7781** for immediate assistance.


DHSRaid@fisherphillips.com



Employers' Rapid Response Team Webpage

Complimentary checklist
available on the
[Employers' Rapid
Response webpage](#)

Employer DHS/ICE Raid
Preparedness Action Plan Checklist



- Immigration Point Person**
 - ☐ Assign a staff member as the primary contact for all DHS/ICE/CBP correspondence.
 - ☐ Ensure all employees are aware of who this person is and how to contact them.
 - ☐ Immigration Point Person:
 - Name:
 - Contact Info:
- Employee Awareness and Communication**
 - ☐ Train employees to immediately notify the Immigration Point Person in case of any contact from DHS/ICE/CBP.
 - ☐ Provide clear instructions on workplace rights and responsibilities in case of a raid.
 - ☐ Inform employees that they should not communicate with DHS/ICE/CBP on the Company's behalf.
- Workplace Signage and Access Control**
 - ☐ Ensure proper signage is displayed on all private and non-public workspaces.
 - ☐ Restrict unauthorized access to non-public areas unless legally required.
- Handling ICE or CBP Agent Arrival**
 - ☐ Step 1: Ask agents if they have a warrant.
 - ☐ Step 2: If no warrant is presented, deny access to employees, documents, and non-public areas.
 - ☐ Step 3: If a warrant is presented, carefully review its details.
- Validating the Warrant**
 - ☐ Confirm it is a **judicial warrant**, issued by a federal court and signed by a judge.
 - ☐ If it is an administrative warrant (issued by DHS/ICE/CBP), it does not grant access to non-public areas.

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- Managing the Search and Seizure Process**
 - ☐ Cooperate within the limits of the warrant.
 - ☐ Do not interfere with officers' search and seizure within the scope of the warrant.
 - ☐ Record details of the search, including items taken and persons spoken to or detained.
- Employee Rights and Conduct**
 - ☐ Inform employees that it is their choice whether to answer questions from ICE agents.
 - ☐ Inform employees that it is their choice whether to remain silent and request legal representation.
- Documentation and Evidence Collection**
 - ☐ Keep detailed records of all interactions, searches, and seizures.
 - ☐ Request a copy of the warrant and any inventory of seized items.
- Handling Arrested or Detained Employees**
 - ☐ Gather details on where detained employees are being taken.
 - ☐ Notify legal counsel or an immigration attorney for assistance.
- Protecting Business-Critical and Confidential Documents**
 - ☐ If agents attempt to seize confidential or critical business documents, request an accommodation to retain or copy them.
 - ☐ Consult legal counsel immediately for guidance.
- Post-Raid Review and Next Steps**
 - ☐ Conduct a debriefing with key personnel to document the event.
 - ☐ Consult an immigration attorney to assess the situation and respond appropriately.
 - ☐ Coordinate with crisis communications team to manage post-raid internal and external communications and to limit risk and minimize exposure.
 - ☐ Provide necessary support to affected employees.
 - ☐ Revise and update this action plan based on new developments or legal requirements.

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With almost 600 attorneys in 41 offices across the United States and Mexico, Fisher Phillips is an international labor and employment firm providing practical business solutions for employers' workplace legal problems. We regularly advise and counsel clients on issues surrounding wage and hour, employment discrimination and harassment, litigation, workplace safety, immigration, trade secrets and non-competes, and more.



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DEI Updates

Recent Executive Orders

- Flurry of Executive Orders in the first few days of the new administration apply to different groups differently
- Federal Contractors
 - Companies that provide a good or service necessary in whole or in part to the fulfillment of a federal government contract
- Federal Financial Assistance
 - Entities who receive federal funds whether through grants, awards, loans, are recipients of FFA
- Everyone else!
 - “Private sector” companies

Executive Order 14173 Impacts DEI

- EO 14173 – “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”
- Addresses diversity, equity, and inclusion (DEI) initiatives
- Directs federal agencies to combat “illegal private-sector DEI preferences, mandates, policies, programs, and activities”
- Defines prohibited conduct as:
 - Illegal discrimination and preferences; and
 - Workforce balancing based on race, color, sex, sexual preference, religion, or national origin
- Does not define what constitutes “illegal” DEI
- Federal officials are expected to identify up to nine potential civil compliance investigations of private entities, including non-profits
- Order omits veteran and disability preferences

EEOC Guidance

On March 19, the EEOC released technical assistance documents to provide clarity for employers. Key takeaways:

- Reminder on the scope of Title VII protections
 - Prohibits employment discrimination based on protected characteristics
 - “apply equally to all racial, ethnic, and national origin groups, as well as both sexes.”
- No “reverse” discrimination
 - Title VII protections apply equally to minority and majority groups
 - EEOC does not require higher showing of proof for so-called “reverse” discrimination claims.

Practical Takeaways

- Assess your DEI programs
- Conduct an attorney-client privileged legal review of DEI programs and related training materials with your FP counsel.
- Ensure hiring, promotion, and compensation decisions are transparent and well-documented.
- Train hiring managers and HR personnel on legally compliant practices and the practices that support your business objectives. Communicate diversity initiatives to emphasize workplace culture, professional development, and inclusive merit-based access to opportunities as sustainable business practices.



Labor Relations Updates

Changes in the NLRB

- Trump summarily dismissed two key NLRB figures in January
 - Wilcox and Harris both sued and initially won
 - SCOTUS ultimately ruled that Trump could fire the agency heads at will
- William Cowen appointed as NLRB Acting General Counsel until Morgan Lewis partner Crystal Carey is confirmed
- Cowen signaled a new policy direction in mid-February through his first GC Memo (GC 25-05)
 - Rescinded more than a dozen policies endorsed by Biden
- Changes to come slowly



FTC and Restrictive Covenant Updates

FTC's Joint Labor Task Force

- Trump appointed Andrew Ferguson to serve as new FTC Chair
- Joint Labor Task Force to identify and prosecute labor-market practices the FTC deems to be “deceptive, unfair, and anticompetitive”
- FTC's Task Force Responsibilities:
 - Prioritizing labor matters
 - Cooperating and sharing information
 - Public information sharing and outreach
 - Advocating for legislative and regulatory changes

Practices the Task Force Will Review

- Agreements between employers not to poach, hire, or solicit each other's staff
- Agreements among employers to fix wages they pay to workers
- Noncompete agreements
- Termination penalties
- Others (job scams, misleading franchise offerings, collusion or unlawful coordination on DEI metrics, etc.)

So What?

- As a practical matter, the FTC will be:
 - Focusing on Protecting Workers
 - Scrutinizing Non-competes
- What should you do?
 - Prepare for scrutiny
 - Fine-tune your practices
 - Remember the purpose



Artificial Intelligence (AI) Updates

Artificial Intelligence in the Workplace Currently

- How is HR using AI-powered tools?
 - Recruiting, Interviewing, Onboarding, Performance Management, Retention, Automation
- State and Local Laws
 - Colorado, Illinois, New York City – first three jurisdictions with AI-specific workplace laws
 - California and New York state – expected to catch up in 2025
 - Key matters pending in CA court
- Federal Laws
 - No federal AI-specific workplace law

New Era of AI Oversight

- Trump appoints David Sacks as the new “AI & Crypto Czar”
- What you can expect with Sacks:
 - Regulation rollbacks
 - State-level activity
 - Increased use of AI in oversight
 - Focus on innovation

Trump Rescinds Biden's Executive Orders on AI and Issued His Own Executive Order on AI

- Key takeaways:
 - AI companies are no longer required to report safety testing results for large-scale AI models
 - The role of the U.S. AI Safety Institute is uncertain
 - Federal AI guidance issued under Biden is now in limbo
 - National security and economic competition now take center stage

What should you do?

- Engage with industry groups and regulators to stay informed about best practices and evolving standards
- Focus on responsible AI use in your operations to align with the regulatory aim of Big Tech
- Stay informed about potential regulatory changes and emerging legal risks
- Assess how AI will impact your workforce



HOW WILL EMPLOYERS BE IMPACTED BY THE BIG BEAUTIFUL BILL?

No Federal Taxes on Overtime and Tips

- Tipped and hourly workers will be able to deduct significant portions of their tip and OT income from federal taxes
- Could provide a boost to employee recruitment

Medicaid Eligibility

- Stricter work requirements for Medicaid eligibility, requiring individuals to work or engage in qualifying activities for at least 80 hours/month.

Health Savings Account Expansions

- Several targeted expansions to HSAs, offering employers and employees pandemic-era flexibility in how they use pre-tax health dollars.

Dependent Care Flexible Spending Account Limit Increase

- Employee contribution limit will increase to \$7,500.
 - The enhanced tax benefit will be celebrated by employees, but employers must watch out for compliance traps before offering it.

Boosted ICE Budget

- Massive increase in funding for Immigration and Customs Enforcement Operations.
- Expect more enforcement action, including audits, I-9 inspections, and worksite raids, particularly agriculture, construction, hospitality, retail, and manufacturing.

Not Included in Bill: State AI Law Paws

- Senators voted to remove provision that would have dissuaded states from passing AI laws for a five-year period.
- Expect federal lawmakers to take up standalone legislation in an aim to regulate AI in the workplace
 - But states will take the lead and pursue their own measures

We are here to help!

New Administration Resource Center for Employers

Practical resources and other thought leadership to help you navigate the transition.

[Learn More →](#)



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Questions



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