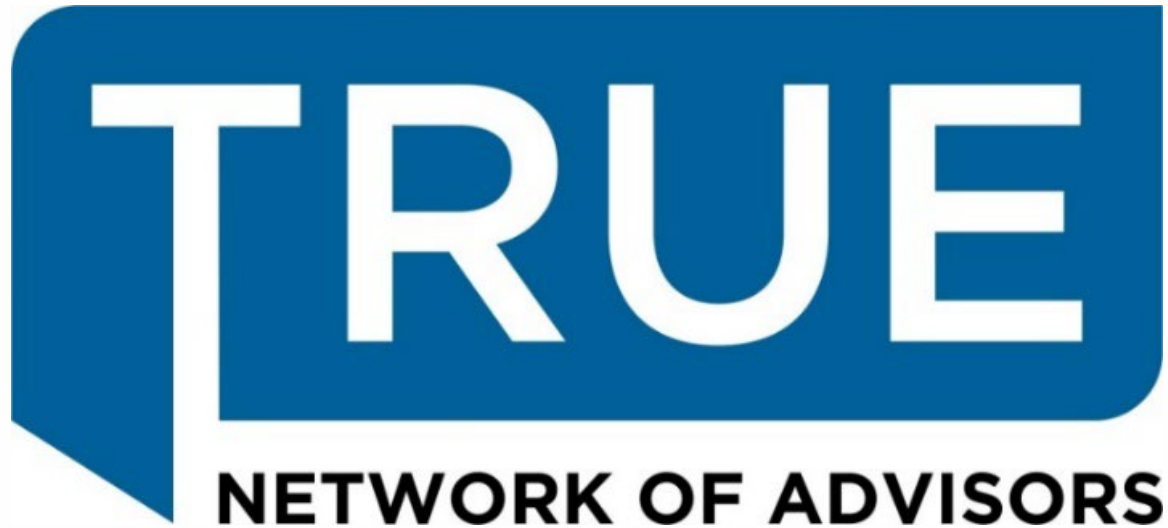


Labor, Employment & Benefits Law Outlook for 2025: What to Expect in the Second Trump Administration



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AGENDA

- **Labor Secretary Nominee, Rep. Lori Chavez-DeRemer**
- **DOL's Minimum Salary Rule**
- **Employment Initiatives and Legislation**
- **Immigration Implications for Employers**
- **National Labor Relations Board Changes**

LABOR SECRETARY NOMINEE



LABOR SECRETARY NOMINEE

- **Active in politics for 20 years**
- **First Republican woman to represent Oregon in the House**
- **One of two Hispanic women to represent Oregon in the House**
- **Served only one term in the House 2022-24, lost re-election bid**

LABOR SECRETARY NOMINEE

- Rep. Chavez-DeRemer was **one of just three** Republicans to co-sponsor the **Protecting the Right to Organize (PRO) Act** which would:
 - Implement card check for unionization, throwing out secret ballot elections
 - Prohibit state “right to work laws”
 - Prohibit employers from hosting captive audience meetings to make known their views on union organizing
 - Eliminate independent contractor status in the gig economy so that workers may be eligible to unionize



DOL'S MINIMUM SALARY RULE

- Biden DOL rule increased minimum salary to qualify for an FLSA white collar exemption to **\$844/wk (\$43,888/yr) effective July 1, 2024** and **\$1,128/wk (\$58,656/yr) effective January 1, 2025**
- Texas federal court issue **nationwide injunction against the Biden DOL's minimum salary rule on November 15, 2024**
 - Injunction applies to all employers in all states
 - Injunction applies retroactive to the July 1, 2024 increase
 - Means a **return to the Trump era minimum salary of \$684/wk (\$35,568/yr)**

DOL'S MINIMUM SALARY RULE

- Employers who already rolled out July 1, 2024 increase **have the right to roll it back**, subject to doing so prospectively
- Employers who announced plans for the January 1, 2025 increase **can reverse their plans**
 - Morale, recruitment, and retention considerations
 - Appellate considerations
 - Second Trump DOL considerations – will a new minimum salary issue?
 - Note that **pay transparency** continues to be top concern of applicants/employees

EMPLOYMENT INITIATIVES & LEGISLATION

- **Protecting the Right to Organize Act**
 - Passed the House in 2020, 224-194, with 7 Democrats joining Republicans to vote no, with no vote in the Senate
 - Passed the House in 2021, 225-206, with 5 Republicans joining all but one Democrat to vote in favor of it, with no vote in the Senate

EMPLOYMENT INITIATIVES & LEGISLATION

- **Independent Contractor Pendulum Swing**
 - Reversal of Biden DOL's rule against independent contractors
 - Revival of Trump era independent contractor rule
 - Not likely to change how courts and state agencies view the issues

EMPLOYMENT INITIATIVES & LEGISLATION

- **Federal Trade Commission's Non-Compete Rule**
 - **FTC's attempts to prohibit non-compete agreements nationwide was enjoined by a federal court on August 20, 2024**
 - **FTC has appealed the decision**
 - **Trump FTC seems unlikely to continue that appeal**
 - **Even if Trump FTC continued the appeal, the federal non-compete ban is not likely to succeed**

EMPLOYMENT INITIATIVES & LEGISLATION

➤ Diversity Equity & Inclusion

- The EEOC operates as an independent agency and balance of political appointments to the commission would not be expected to change until mid 2026 at the earliest
- Department of Justice has some overlapping authority to enforce federal civil rights law, and a second Trump Administration seems likely to utilize DOJ more aggressively

EMPLOYMENT INITIATIVES & LEGISLATION

➤ No Tax on Tips or Overtime

- To eliminate federal taxes on tips or overtime will require **sweeping federal legislation** that affects both the federal Fair Labor Standards Act and the Internal Revenue Code
 - Concerns about major shifts in how employees are compensated, scheduled
 - Avoidance of “categorizing” comp as a “tip” when it really isn’t
 - The legislation is likely to take months to develop followed by years of agency regulation to interpret and apply new rules

EMPLOYMENT INITIATIVES & LEGISLATION

➤ **Minimum Wage Legislation**

- The federal minimum wage was last increased 15 years ago (July 2009) to \$7.25/hr
- Minimum wage hikes can be inflationary
- Legislators tend to increase minimum wages after the labor economy has beaten them to it

EMPLOYMENT INITIATIVES & LEGISLATION

➤ Paid Family/Sick Leave

- It has become increasingly untenable to have one vacation/sick or PTO policy for employers with a multistate footprint
- A national law regarding paid leave would provide stability and greater certainty around paid leave and fringe benefits
- Trump has not outlined what his paid leave legislation would look like, but we have one indication from the paid leave for federal workers that was implemented in the first Trump Administration:

IMMIGRATION IMPLICATIONS FOR EMPLOYERS

➤ Multi-Pronged Agency Risks

- Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) both may audit employer compliance with federal immigration laws and worker eligibility
- Department of Labor may audit employer immigration visa, minimum wage, and child labor compliance
- Occupational Safety and Health Administration may audit employer safety compliance
- Department of Justice investigates federal conspiracies, racketeering, and related efforts to circumvent federal law
- State labor agencies have overlapping authority



IMMIGRATION IMPLICATIONS FOR EMPLOYERS

➤ **Trump Deportation Initiative**

- **Expect sweeping public enforcement actions and raids to draw attention to efforts to enforce federal immigration laws**
- **Creating circumstances that lead to self-deportation will be a priority**
- **How many DHS/ICE raids have to happen before undocumented/falsely documented workers leave?**
- **If enforcement prohibits the undocumented/falsely documented from earning a wage, will they stay?**

IMMIGRATION IMPLICATIONS FOR EMPLOYERS

- **Employers Have Been Lulled Into Lax Immigration Compliance**
 - Prior administration rarely raided or audited workplaces unless immigrant workers were perceived to be exploited
 - State and federal agencies have had a lack of cooperation
 - Federal agencies have thwarted state efforts to police immigration compliance

IMMIGRATION IMPLICATIONS FOR EMPLOYERS

- **Return to Immigration Compliance**
 - Self-audit I-9 compliance
 - E-Verify where applicable
 - Are your documents accurate, accessible?
 - Do employee IDs pass the “smell test”
 - How do you respond to Social Security “no match” letters

NLRB CHANGES

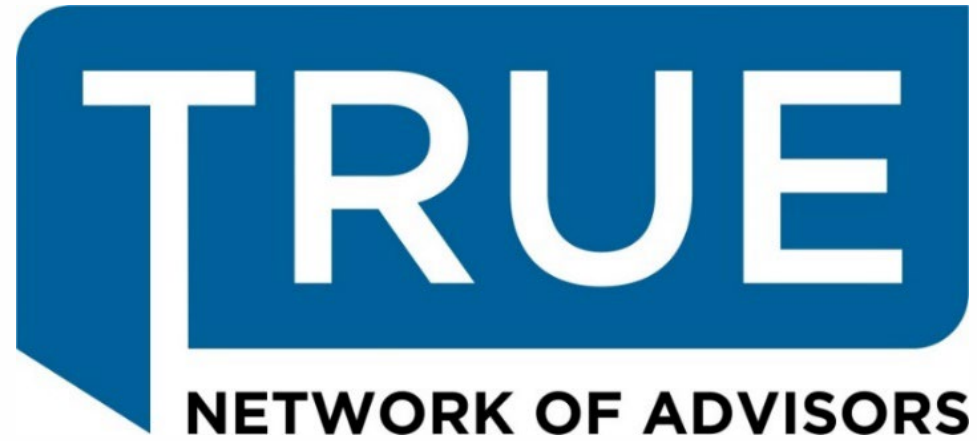
- **Biden NLRB was most active/aggressive in our lifetime**
- **Trump NLRB is likely to moderate, but no wholesale repudiation is likely**
- **Trump NLRB agenda is likely to be driven by a new General Counsel**
- **NLRB may not change political control until 2026**
 - **Current Board Chair, Lauren McFerran (D) is awaiting a Senate confirmation vote**
 - **Board members serve 5-year terms**
 - **Most of the Board's agenda is driven by its Acting General Counsel Jennifer Abruzzo, whom Trump is expected to fire upon inauguration**

NLRB CHANGES

- **Trump's selection for Acting General Counsel of NLRB will determine the course of the agency**
- **The General Counsel decides what complaints may go forward or be dismissed and by merely deciding which cases the agency will take, it can craft the entire agenda for the Board**
 - **This appointment is one employers should watch closely**

Action Items

1. Evaluate your strategy on minimum salary for white collar exemptions, and anticipate that a new minimum salary may be announced
2. Compensation transparency continues to be one of the biggest concerns for younger workers, evaluate how your compensation communications affect recruitment, retention
3. Self-audit your I-9 and E-Verify (where applicable) compliance
4. Monitor President-Elect Trump's NLRB appointments for an indication of changes in union organizing risk



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