



Trump 2.0- What HR Professionals Can Expect Under the Current Administration




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Agenda

- Tightening employment-based immigration, including increased scrutiny of H-1B visa applications
- Workplace raids by ICE
- Form I-9 compliance requirements
- Non-Immigration developments in employment law

Tightening Employment-Based Immigration

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General Tightening

- Increased interior enforcement
- Continuous vetting & social media review
- Travel bans

H-1B Scrutiny & Change

- Higher prevailing wage
- Eligibility scrutiny – Requests for Evidence & adjudication delays
- Consular processing challenges
- Proposed lottery reform

Workplace Raids by ICE

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Types of Raids

- Targeted enforcement actions – targeted at foreign nationals for status violations
- I-9 audits – targeted at employers to ensure I-9 compliance
- Worksite visits – targeted at employers who sponsor foreign national workers
- Judicial warrant enforcement actions – targeted at employers for employing unauthorized individuals
- 287(g) actions – carried out by state & local law enforcement authorized to enforce immigration laws

Likely Enforcement

- Agriculture – Targeted enforcement actions & I-9 audits
- Staffing agencies – I-9 audits
- Large and high-profile employers – I-9 audits
- Frequent filers – Worksite visits
- Egregious violators – Judicial enforcement actions
- 287(g) jurisdiction – State & local enforcement

Response

- Understand – know the various types of enforcement actions and agencies involved
- Plan – prepare a written response plan
- Practice – review the plan with key stakeholders



Form I-9 Compliance Requirements

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Compliance Strategies

- Review standards and practices
- Ensure prospective compliance
- Self-audit (when ready) to verify past compliance
- Plan for audits
- Understand the limits of I-9 & E-Verify

Non-Immigration developments in employment law

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Employment Law and Agency Developments

- Executive Orders & Legislative Shifts
- EEOC-Enforcement Changes and Priorities
- NLRB
- Non-Compete and Contractor Classification
- Strategic Takeaways

Executive Orders- A Flurry of Change

- Over 30 executive orders impacting labor and workplace policy
- Key themes: deregulation, rollback of DEI, redefining sex/gender in law/elimination of affirmative action for women/minorities in government contracting.



Government Contractors

- No more affirmative action plans or programs for women and minorities.
- EO 14173 requires federal contractors to certify they do not operate a DEI program that violates anti-discrimination laws.
 - Creates False Claims Act liability for misrepresentation.
 - False Claims Act also allows employees with knowledge of misrepresentation to sue on behalf of U.S. Department of Justice and potentially get treble damages.

DOJ Targets DEI

- **February 5, 2025: Memorandum from AG Pam Bondi, "Eliminating Internal Discriminatory Practices"** (including possible private sector criminal prosecutions).
 - By May 20, 2025, heads of all agencies to submit a strategic enforcement plan for private employers to AG Bondi identifying, among other things:
 - The most egregious and discriminatory DEI practitioners in each sector of concern;
 - A plan of steps to deter DEI programs or principles that constitute illegal discrimination or preferences. Each Agency to identify up to nine potential civil compliance investigations of publicly traded corporations, large non-profits, foundations with assets of \$500mm or more, state and local bar and medical associations, and higher ed institutions with endowments of over 1 billion.
 - Compliance investigations, regulatory action and litigation.

July 29, 2025 Guidance from Bondi

- **Compliance Obligations:** All recipients of federal funds—including educational institutions, employers, and state/local governments—must ensure their programs do not discriminate based on race, sex, religion, or other protected characteristics. This applies regardless of the program's stated intent or terminology.
- **DEI Programs Not Exempt:** Programs labeled as DEI, DEIA, or DEIBA are subject to the same legal scrutiny. Euphemistic or indirect language does not shield discriminatory practices.
- **Prohibited Practices Include:**
 - Race- or sex-based scholarships, hiring quotas, or training sessions.
 - Use of proxies such as "cultural competence" or "lived experience" that functionally favor protected groups.
 - Segregated spaces or programs based on race or sex.
 - "Diverse slate" hiring mandates or contact preferences based on protected traits.
- **Sex-Based Protections:** The guidance reaffirms the importance of maintaining sex-separated intimate spaces and athletic competitions. Policies allowing biological males in female-only spaces may violate Title IX and Title VII.
- **Retaliation Protections:** Individuals who object to or decline participation in potentially discriminatory programs are protected from retaliation.

EEOC-From Inclusion to Enforcement

- DEI initiatives labeled "unlawful discrimination."
- Guidance now allows employees to file hostile work environment claims based on DEI training.
- Agenda aligns with Trump's executive orders that define "sex" strictly as biological and binary, rejecting gender identity as a protected category.
- EEOC and other federal agencies are now required to use "sex" rather than "gender" in all official documents and guidance.
- Guidance affects everything from restroom access policies to anti-harassment training and employee resource groups.
- Prioritizing cases involving religious discrimination, including antisemitism and bias against Christian employees.

EEOC cont.

- Pregnant Worker Fairness Act:
 - Covers "pregnancy, childbirth and related medical conditions."
 - EEOC regulations currently include abortion and fertility treatments in the definition of "related medical conditions."
 - Andrea Lucas, Acting Chair, opposes the inclusion of abortion and fertility treatments in PWFA.
 - The EEOC is not defending the rule's broader interpretation in court.
 - DOJ has asked courts to pause lawsuits to allow time for EEOC to reconsider and potentially change the interpretation to remove abortion and fertility treatments.

Special Note on LGBTQI Issues

- January 20, 2025: Executive Order 14168, *"Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government."*
 - * Withdraws federal recognition of transgender people and requires federal departments to recognize gender as an immutable male-female binary that cannot be changed.
- * January 28, 2025, Acting Chair of EEOC, Andrea Lucas, issues statement that EEOC returning to its "mission of protecting women from sexual harassment and sex-based discrimination in the workplace."

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Special Note on LGBTQI Discrimination

- Steps taken by EEOC:
 - Priority to investigate and defend the biological and binary reality of sex and related rights, including women's rights to single sex spaces at work.
 - Removed materials promoting gender ideology from website and internal documents.
 - Executive Order 14168 orders the EEOC's "Enforcement Guidance on Harassment in the Workplace" issued in 2024 to be rescinded. The Guidance states denial of access to a bathroom or other sex-segregated facility consistent with an individual's identity and repeated and intentional use of a name or pronoun inconsistent with an individual's known gender identity could be harassment.
 - EEOC cannot rescind Guidance without majority vote of full Commission and currently lacks a quorum.
 - Tension with current federal law which prohibits discrimination based on gender identity. (*Bostock v. Clayton County*, U.S. Supreme Court 2020).

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NLRB

- Chairman Marvin Kaplan reinstalled as Chair and William B. Cowen as Acting General Counsel.
- Cowen has rolled back guidance on captive audience meetings, non-compete clauses and union access to employer property.
- Cowen has issued memos on topics including surreptitious recordings in collective bargaining and deferral of unfair labor practice cases to arbitration.
- Revised guidance encouraging faster resolution of disputes.

NLRB cont.

- *Stericycle* decision from 2003 ruling on protected employee speech under Section 7 likely to be reversed.
- Captive audience meetings previously ruled unlawful, now expected to be reinstated as permissible employer conduct.
- Streamlined union election rules likely to be rolled back.

Non-Compete & Contractor Status

- Trump administration will not appeal the block on the proposed non-compete ban from Biden's FTC.
- DOL reverting to looser contractor classification test.



Strategic Takeaways

- Audit DEI programs to ensure they do not trigger EEOC scrutiny.
 - Remove race or sex-based preferences in hiring, promotion and training.
 - Ensure DEI initiatives don't create perceived "hostile environment" for employees.
 - Avoid mandatory DEI training that could be interpreted as coercive.
- Review gender identity policies.
- Make sure your policies on religious accommodation align with new Supreme Court precedent and EEOC's guidance.
- Stay alert to rescinded memos and revised interpretations from EEOC, DOL, and NLRB. Also, legal challenges are ongoing so policies may shift again.

Questions?


