

JANUARY 23, 2025 | STATE & LOCAL TRENDS

State Law Considerations Under a New Administration

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As eyes turned toward Washington this week and what employers anticipate on a range of labor and employment law issues, practitioners are keeping a close eye on how the changing landscape at the federal level may impact state action. While employers are always wise to track changes impacting their workforce, now more than ever is a good time to prepare for shifting sands and the need to regularly review and revisit policies and procedures to ensure compliance.

Here are just some of the issues on which we expect to see activity at the state level.

Civil Rights Enforcement and DEI

Leading up to the inauguration, President Trump made statements to cut Diversity Equity and Inclusion (“DEI”) initiatives from the Federal Government. Those statements came to fruition just days into the new administration through an [executive order](#) dismantling the federal government’s diversity and inclusion programs and placing DEI staff on paid leave immediately. On the same day, President Trump nominated Andrea Lucas to serve as Acting Commissioner of the Equal Employment Opportunity Commission. In a [press release](#) following the nomination, Ms. Lucas outlined her key enforcement priorities, including rooting out unlawful DEI-motivated race and sex discrimination and anti-American national origin discrimination:

Consistent with the President’s Executive Orders and priorities, my priorities will include rooting out unlawful DEI-motivated race and sex discrimination; protecting American workers from anti-American national origin discrimination; defending the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces at work; protecting workers from religious bias and harassment, including antisemitism; and remedying other areas of recent under-enforcement.

Given this shift in enforcement philosophy from the federal level, the rise in additional protection provided under state and local laws and different enforcement positions will be something to closely monitor over the next several years. The EEOC works with state and local Fair Employment Practices Agencies (FEPAs) to process discrimination claims, and there are also non-contract FEPAs that only enforce discrimination laws within the

state or a local jurisdiction. Employees have the option of dual filing with the EEOC and state agency where federal laws are implicated, but employees can also file state law claims solely with a state or local agency.

Over the past several years, numerous states have passed legislation providing for increased protections for protected categories or additional categories that are not covered by federal law. These additional protections provided by state law will likely change the landscape in how discrimination claims are pursued by claimants in many jurisdictions going forward.

Wage and Hour

As we've discussed on our blog over recent months, there have been a number of recent changes to the wage and hour landscape at the federal level (*e.g.*, see [here](#) and [here](#)). Perhaps most notably, a federal court recently struck down an anticipated increase to the salary threshold for the federal overtime exemption that would have increased the annual minimum salary required to qualify for exemptions from overtime to \$58,656 on January 1, 2025. As a result, the threshold remains at the previous minimum annual salary of \$35,568.

While it is unknown whether the Department of Labor will take further action on the salary threshold for the federal overtime exemption, there are a number of states with their own salary and duties requirements for determining whether an employee may properly be exempt from overtime under state law, including Alaska, California, Colorado, Maine, New York, and Washington. And, to the extent state law is more protective than federal law, employers must comply with the more protective law.

Regarding minimum wage beyond the issue of overtime exemptions, the majority of states currently have minimum wages higher than the federal minimum wage. Nearly two dozen states experienced an increase in minimum wage on January 1, 2025, with many cities and counties also raising minimum wages above their state wage. Assuming efforts to increase wages at the federal level stall, we may see even more activity at the state level. To the extent state minimum wages increase periodically, employers should review their employees' salaries to ensure compliance with the law.

Accordingly, it is the ideal time for employers to review both the salary and duties of their employees currently classified as exempt to ensure such classification is proper under both federal and state law. In addition, employers should track minimum wage requirements impacting their workforce to ensure compliance with applicable federal, state and local requirements.

Safety and Health

While there is some uncertainty about what federal OSHA's regulatory and enforcement priorities will be under a new administration (more thoughts on that available [here](#)), there are 22 State Plans covering private sector and state and local government workers as well as seven State Plans covering only state and local government workers. Many of these state plan states have workplace safety and health requirements that are unique to their state or are stricter than existing federal obligations. We can expect State Plans, particularly the more aggressive agencies, to continue with their enforcement priorities as well as efforts to fill regulatory gaps to address safety and health concerns in their state. For example, even as the federal heat illness prevention rule has worked its way through rulemaking, we've seen state plans adopt their own heat illness rules to address more immediate concerns over worker safety (for example, see our recent article about [Alaska's new heat illness regulation](#)).

We may also see state legislators continue to weigh in on key issues. For example, last year the California legislature enacted changes to the state labor code detailing new workplace violence prevention requirements. Likewise, the Governor of New York signed the [New York Retail Worker Safety Act](#), designed to address concerns of workplace violence in retail environments.

Non-Competes

During the Biden administration, the Federal Trade Commission (“FTC”) finalized a [rule](#) to ban or limit the use of non-compete agreements by employers, which prompted multiple legal challenges where the rule was ultimately set aside in August 2024. The fate of the FTC’s persistent efforts to ban non-competes and the ongoing legal challenges will be in the hands of President Trump’s appointees to key posts at the FTC. FTC Chair Lisa Khan – the lead advocate and architect of the non-compete ban – recently announced her resignation, which will leave the Commission split between two Republican and two Democratic Commissioners. President Trump swiftly nominated Andrew Ferguson as acting Chair of the FTC and will be appointing a new Commissioner to the five Commissioner panel soon. Notably, Mr. Ferguson voted against the agency’s non-compete ban, and it is likely he will direct the Department of Justice to withdraw the FTC’s pending appeals in the Fifth and Eleventh Circuits pursued by Ms. Khan to revive the ban. Assuming that occurs (or assuming the FTC’s appeal is unsuccessful even if it is not withdrawn), the FTC non-compete ban will continue to be void, and the legal landscape on non-compete will remain at the state level.

State regulations on non-competes generally fall into a few categories:

1. no restrictions that rely on case law or undefined standards like “reasonableness” to regulate non-compete agreements.
2. income bans that use an income threshold to restrict non-competes to higher earning employees
3. limited restrictions that impose industry-specific limitations that are not based on income; and
4. full bans prohibiting non-competes for employment but generally allow exceptions for business sales, partnership dissolution, disassociation of members or partners in corporation, partnership, or LLC.

Considering this changing legal landscape and the reversal of the FTC’s non-compete ban, now is a good time to brush up on state laws to evaluate compliance and understand the requirements in each jurisdiction in which you conduct business.

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