


NOVEMBER 13, 2024 | WAGE & HOUR COMPLIANCE

Trump 2.0 U.S. DOL Wage and Hour Division Priorities: Rulemaking Rollbacks and a Reduced Focus on “Vulnerable” Workers

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With the 2024 election behind us, the [Labor & Employment Team](#) at Conn Maciel Carey, drawing on its members' breadth of experience representing employers under both Republican and Democratic administrations, provides this initial forecast on what may change with respect to Department of Labor wage hour enforcement, compliance assistance, and rulemaking under a second Trump Administration.

Outlook for the Overtime Exemption Rule

How the Trump Administration approaches President Biden's [overtime exemption regulation](#) will have immediate consequences for employers. In fact, the rule's second salary threshold increase currently goes into effect on January 1, 2025, so depending on whether and how court contests resolve, employers may have pre-inauguration obligations. 

Texas and business groups are battling the overtime rule in consolidated cases venued in the Eastern District of Texas. U.S. District Judge Sean D. Jordan on November 8, 2024 held oral argument on the parties' competing motions for summary judgment, so he may decide soon whether to expand the preliminary injunction he previously issued enjoining the Wage and Hour Division from enforcing the regulation against Texas as an employer. If the rule remains, employers will need to ring in the New Year by paying exempt workers a weekly salary of \$1,128 and an annual salary of \$58,656 – as well as continuing to meet the duties portions of the rule.

Recently, in *Mayfield v. U.S. Department of Labor*, the U.S. Court of Appeals for the Fifth Circuit upheld DOL's authority to include a salary threshold in its overtime exemption rule. However, the Fifth Circuit included the caveat that if “the proxy characteristic frequently yields different results than the characteristic Congress initially chose, then use of the proxy is not so much defining and delimiting the original statutory terms as replacing them.” *Mayfield* addressed the Trump era overtime exemption rule, which included a lower salary threshold than Biden's iteration, so the Fifth Circuit's decision could provide support for a second Trump Administration reviving its version of the rule, even if Judge Jordan invalidates one or both Biden threshold increases.

Other Rulemakings and Regulatory Challenges

As noted in our contemporaneous OSHA Defense Report [post](#), President Trump reassumes office toting a friendly Congress armed with the Congressional Review Act and recent Supreme Court decisions [Loper Bright](#), [Jarkesy](#), and [Corner Post](#) decreasing the scope and power of the administrative state. We expect less rulemaking activity under Trump 2.0, as he has stated – and previously executed on – the goals to reduce regulatory requirements and rein in agency action.

Coupled with fewer proactive rulemakings, as noted above, existing wage and hour regulations promulgated by the Biden Administration already face legal challenges. In addition to the overtime exemption litigation, business interests have challenged the Wage and Hour Division's independent contractor classifications rule – which also replaced a Trump era regulation. As with the overtime regulation, Trump 2.0 could look to reinstate its independent contractor rule. President Trump's independent contractor standard was lauded by industry for its clarity, as it focused on two "core factors": control over the work and opportunity for profit or loss. Biden's rule focused on at least six economic reality criteria, which critics suggest muddy the waters of the classification analysis. Reimplementing the core factors test could provide a relatively easy win for the returning administration in working toward a more employer-friendly compliance environment.

Other relatively recent regulations concerning Davis-Bacon Act prevailing wage requirements for federally-funded construction projects and implementing President Biden's executive order setting a minimum wage for employees working on covered government contracts have uncertain futures under Trump's second administration as well.

Resources and Enforcement

During President Trump's first administration, the number of investigators hit historical lows. Those numbers, and the low morale resulting from them, never fully rebounded during President Biden's term. It remains to be seen how new initiatives, like Elon Musk and Vivek Ramaswamy's "[Department of Government Efficiency](#)," will impact the Department of Labor and other agencies. But Trump projects such as the [PAID program](#) – which the Biden Administration [immediately killed](#) – demonstrated a departmental focus on employer assistance, with a goal of more efficient resolutions to wage claims.

Enforcement continued under President Trump, albeit at a reduced level and arguably with more control of regional personnel from the Administrator's Office in DOL's DC headquarters. Bad actors may have remained at high risk of enforcement activity – or at least on the receiving end of tough talk – but the overall environment was more employer friendly than the current Administration's has been. Employer representatives regularly visited the Wage and Hour Division's offices to discuss issues important to their clients; that's not to say employers lacked a voice during the Biden Administration, but the primary motivator was to amplify worker voices, and not always to consider business perspectives.

Workers, particularly those identified as "vulnerable," are a stated focus of President Biden's Department of Labor. He has repeatedly pledged to be the most Labor-friendly president in history. The intent of revising the Wage and Hour Division's overtime exemption rules, changing the way workers might be classified as independent contractors, updating the Davis-Bacon Act, proliferating anti-discrimination language in regulations, and setting a higher minimum wage for government contractor employees under the Biden Administration was to improve the lives of workers.

The success of these activities may be debated, but the purpose was clear. With the advent of a second Trump Administration, workers – and employers – should expect less public focus on these workers, with possible exceptions in circumstances where wage hour concerns overlap with human trafficking or immigration issues. The “law and order” approach traditionally adopted by Republican administrations could lead to an increased focus on bad actors, balanced against more compliance assistance for employers working in good faith to follow relevant laws and regulations.

State Activities

The Department of Labor’s agencies will continue their enforcement activities at the federal level, but with shifted priorities and more limited resources. So, where the federal executive and legislative branches demonstrate less interest in acting, we can expect states to address issues like minimum wage, child labor, and paid leave. We’ve seen tension in these areas, and we can expect these dichotomous approaches to persist during President Trump’s second administration. For example, several states with Republican governors have demonstrated an interest in loosening child labor restrictions to add minor employees to the workforce, asserting such opportunities allow younger workers to develop employment and other life skills. This approach is likely to align with Trump 2.0’s relaxed enforcement landscape.

On the other hand, states with Democratic leadership could pursue the aggressive enforcement approach exemplified by President Biden’s Wage and Hour Division. California Governor Gavin Newsom [has called for](#) a special December session of the California legislature designed to “Trump-proof” the State, and we can expect those efforts to include wage and hour protections.

The upshot: multi-jurisdictional employers must remain aware of developments at the federal and state levels because a state-by-state lawmaking approach will result in a patchwork of compliance obligations, with deepening differences among wage and hour requirements.

Please connect with the author or your friendly neighborhood [Conn Maciel Carey attorney](#) for further information on these and other [labor & employment](#) and [workplace safety issues](#).