



FEBRUARY 26 - 27, 2026 | THE TESS, AUTOGRAPH COLLECTION | ATLANTA, GA

# 2026 Executive Healthcare Labor & Employment Law Conference

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**2026 EXECUTIVE HEALTHCARE LABOR & EMPLOYMENT LAW CONFERENCE**

# **DC Update – Inside the Beltway**

**G. Roger King**

Senior Labor and Employment Counsel

CHRO Association

WIFI

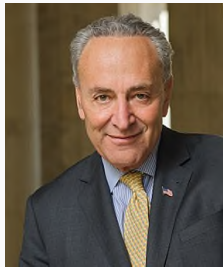
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# Closely Divided Congress

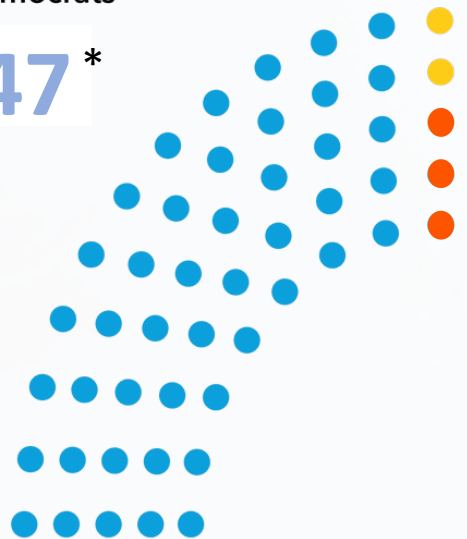
## Senate Balance of Power



**Chuck Schumer (D-NY)**  
Senate Minority Leader

Democrats

47\*



Republicans

53



**John Thune (R-SD)**  
Senate Majority Leader

\* Yellow indicates independents who caucus with Democrats.

Bloomberg Government



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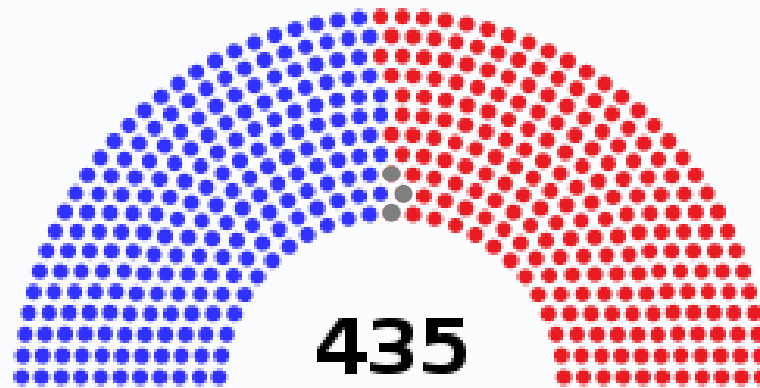


# Closely Divided Congress

U.S. HOUSE OF REPRESENTATIVES



Rep. Hakeem Jeffries  
(D-NY)  
House Minority Leader



214 DEMOCRATS | 218 REPUBLICANS

\*3 Vacancies



Rep. Mike Johnson  
(R-LA)  
Speaker of the House



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# New Laws/Nominations?

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## » The House

- » Slim Republican majority and ideological differences between members makes House agenda uncertain

## » The Senate

- » Slim Republican majority
- » Presence of the filibuster rule
  - » 60 votes needed to cut off debate (cloture)
  - » Rule can be changed at any time by majority vote



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# New Laws/Nominations?

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- » Presidential nominations not subject to the filibuster rule – majority vote needed for nominees
  - » Vice President can break ties of Senate votes
  - » Use of budget reconciliation procedure – must get past Byrd Rule – importance of Senate parliamentarian
    - » For legislation to proceed under the budget reconciliation process, it must have a “nexus” to the federal budget and not be a major policy change initiative.
    - » If the proposed legislation meets those tests, it can be approved on a majority vote.



# 2026 Political Outlook

## » The Senate

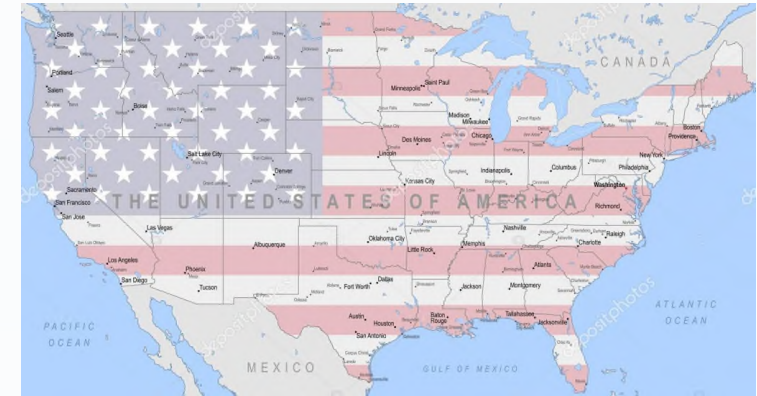
- » Will have 35 seats up for election – 13 Democrats and 22 Republican

## » The House

- » Will Republicans be able to hold their slim majority?

## » National issues

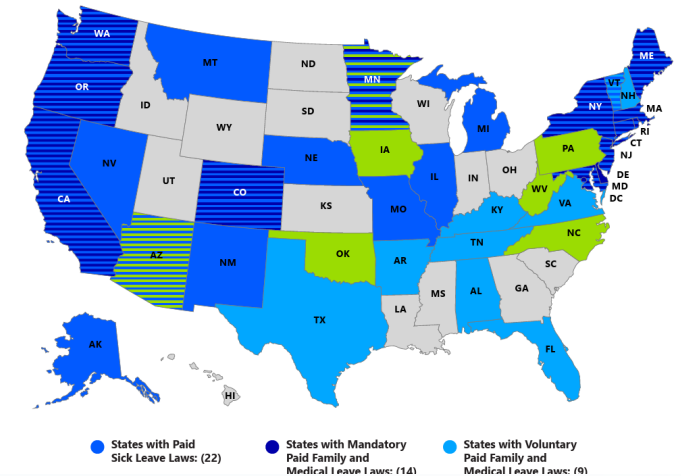
- » Inflation, immigration, DE&I, school governance, classroom agenda, government spending, Ukraine, Israel, tariffs, Venezuela, Greenland, congressional redistricting...





# State Patchwork Continues to Grow

- » In the absence of federal legislation and lasting regulations, states continue to fill the workplace policy void.
- » Red and blue states alike continue to pass new laws on paid leave, AI, labor (captive audience meeting bans), pay transparency, and restrictive covenants.
- » New proposal in CA would mirror MA ballot initiative that granted collective bargaining rights to app-based drivers





## State Enactment and Consideration of “Mini NLRB” Statutes

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- » New York and California have enacted legislation to assert labor law jurisdiction over private sector employers based on a “trigger” approach wherein the NLRB would no longer have jurisdiction.
- » Massachusetts is considering similar legislation.
- » The New York law and the California law have serious preemption issues and have been successfully challenged on preemption grounds in the courts and are presently enjoined from enforcement. In the interim, however, they have the potential to cause considerable disruption for private sector employers that have business operations in those states.



# A Political Realignment?

## A PRO-WORKER FRAMEWORK FOR THE 119TH CONGRESS

U.S. SENATOR JOSH HAWLEY

**Delivering Transparency in the Workplace:** Employers should be required to post and maintain notices of their employees' labor rights — and affirmatively notify new employees of these rights when they're hired — just like employers already do with OSHA standards.

**Holding Abusive Employers Accountable:** Warehouse workers, who help power the modern economy, face dangerous conditions at big corporations like Amazon. This framework will prohibit unsafe work speed quotas and other corporate policies that lead to high rates of worker injuries.

**Making Union Elections Fair and Timely:** Employers often respond to union campaigns by requiring employees to attend so-called "captive audience" meetings to persuade workers to stop organizing — and can even terminate employees who don't attend. This proposal ends that practice while protecting free speech rights of business owners. It also ensures hostile employers can't delay union elections indefinitely by requiring a timely vote in less than 20 business days.



# A Political Realignment?

**JOSH HAWLEY**  
U.S. SENATOR FOR MISSOURI

This labor policy proposal creates a better workplace for American workers and helps protect good American union jobs. It strengthens protections for organizing and collective bargaining — empowering workers to know their labor rights, avoid coercive management tactics, hold union elections, and negotiate their contracts fairly.

**Supporting Initial Union Contracts:** After workers vote to join a union, employers sometimes delay the formation of an initial collective bargaining agreement through stalling techniques. This strategy traps workers in limbo, preventing them from enjoying the benefits of the union they've voted for. This proposal provides that, after workers have voted to join a union, the employer and the union must begin negotiating within 10 days and execute their agreements within months, not years.

**Boosting Penalties for Unfair Treatment:** Currently, employers don't face real civil penalties for violating the main federal labor law, the National Labor Relations Act. This framework creates real penalties to deter employers from breaking the law. Workers subjected to unfair labor practices will also receive more substantial compensation and have the ability to seek redress in court if the National Labor Relations Board (NLRB) fails to bring suit.



# Warehouse Worker Protection Act

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» A bipartisan group of Senators and Congressmen have introduced the Warehouse Worker Protection Act. The bill's primary sponsors are Senators Ed Markley (D-MA) and Josh Hawley (R-MO). Senator Roger Marshall (R-KS) has joined Senators Markley and Hawley, along with other Democrat Senators, in sponsoring S.2613 in the Senate. The House bill, H.R. 4896 was introduced by Donald Norcross (D-NJ), with one Republican House member and a number of other Democrat House members.



# Warehouse Worker Protection Act

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- » This Act would do the following:
  - » Create new standards regarding quotas and workplace surveillance to micromanage warehousing and the distribution industry
  - » Create a new federal regulatory program by establishing a Fairness and Transparency Office within the USDOL Wage and Hour Division
  - » Resurrect the Occupational Safety and Health Act (OSHA) ergonomics standards for the warehouse industry
  - » Eliminate employer due process rights by forcing employers to abate “serious, willful, or repeated” hazard citation before the employer can challenge the findings
  - » Create a new unfair labor practice charge against employers for alleged employer infringement upon employee rights in the workplace, with respect to surveillance, imposition of quotas, and other similar workplace standards
- » This legislation does not appear to have any chance of support in this Congress.



# Trump Administration Initiatives

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- » Administration has nominated highly qualified individuals for leadership positions at the USDOL, including Keith Sonderling as Deputy Director
  - » Sonderling formerly served as Wage and Hour Administrator and EEOC Commissioner
- » Crystal Carey, formally a Partner at Morgan Lewis, has been confirmed to be the new General Counsel of the NLRB
- » The President has nominated and the Senate has confirmed Scott Mayer of the Boeing Corporation and James Murphy, a long time NLRB official, for two of the vacancies on the NLRB
- » Proposal to eliminate the Federal Mediation and Conciliation Service



# Trump Administration Initiatives

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- » DOGE initiatives to eliminate positions in various sectors of the federal government has been by and large eliminated with mixed results at best
- » 383 Executive Orders have been issued, including the following the labor and employment area:
  - » Rescinding cause of action in employment discrimination cases based on “disparate impact”
  - » Eliminating EO 11246 with respect to affirmative action programs and redirecting focus of the Office of Federal Contracting Compliance Programs (OFCCP)
  - » Issuing EO 14215 that permits the President and the Attorney General to Override decision of executive agencies



## Federal Trade Commission - Covenant Not to Compete Agreements

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- » The Trump FTC has decided, as expected, not to defend the Biden not to compete rule in federal courts.
- » The FTC has announced, however, that it will pursue litigation against companies that inappropriately utilize covenant not to compete agreements to restrict employee movement.
- » The Trump FTC has also asked for comments from stakeholders for factors it should review and analyze in deciding when to pursue litigation scenarios.



# U.S. Department of Labor



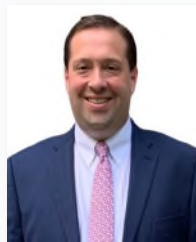
Lori Chavez-DeRemer  
Secretary of Labor



Keith Sonderling  
Deputy Secretary of Labor



Ashley Romanias  
Director of OFCCP



Andrew Rogers  
Wage and Hour Administrator



Jonathan Berry  
Solicitor of Labor



Elisabeth Messenger  
Director of OMLS



David Keeling  
Assistant Secretary of OSHA



# OIG Investigation of Secretary Chavez-DeRemer

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- » Accusations include:
  - » Improper travel expenses
  - » Alcohol consumption on worktime
  - » Improper personal relationship with staff



# USDOL - OMLS

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- » Under the Biden Administration, the USDOL increased reporting requirements for employer's use of "persuaders"
  - » Should unions be required to file similar reports for use of SALTS?
  - » What will the position of the Administration be with respect to monitoring of "persuader activity?"
  - » What degree will union finances be under scrutiny?



# Future of the Biden USDOL Overtime Rule?

» On April 23, 2024, the Biden Department of Labor announced a final overtime rule

DATE	STANDARD SALARY LEVEL	HIGHLY COMPENSATED EMPLOYEE TOTAL ANNUAL COMPENSATION THRESHOLD
Before July 1, 2024	\$684 per week (equivalent to \$35,568 per year)	\$107,432 per year, including at least \$684 per week paid on a salary or fee basis.
July 1, 2024	\$844 per week (equivalent to \$43,888 per year)	\$132,964 per year, including at least \$844 per week paid on a salary or fee basis.
January 1, 2025	\$1,128 per week (equivalent to \$58,656 per year)	\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis.
July 1, 2027, and every 3 years thereafter	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.

» Highly Compensated Employees (HCEs)

EARNINGS THRESHOLD	CURRENT AMOUNT	MINIMUM SALARY AMOUNT BEGINNING JULY 1, 2024	MINIMUM SALARY AMOUNT BEGINNING JANUARY 1, 2025
Total Annual Compensation Requirement for Highly Compensated Employees (HCEs)	\$107, 432 per year, including at least \$684 per week paid on a salary or fee basis	\$132,964 per year, including at least \$844 per week paid on a salary or fee basis	\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis



# USDOL – Regulatory Landscape

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- » Independent Contractor Classification
  - » The Biden DOL repealed a Trump rule that made it easier for employers to determine the proper classification of workers. A federal district court in Texas reinstated the Trump independent contractor rule. This rule remains in effect at present.
  - » The Biden rule expanded DOL’s view of the factors to consider in making independent contractor decisions - many were open-ended statements
  - » The Biden DOL proposed rule incorporated the “Integral to the Business” factor, which is essentially Prong B of California’s ABC test
- » New Administration has stated, in a recently released regulatory agenda, that is will reinstate previous Trump independent contractor rule, with some potential modifications.



# USDOL – Regulatory Landscape

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## » Joint Employer Liability

- » The Biden DOL has also repealed a Trump-era rule on joint employer liability, which limited employers' liability to situations in which it exercised direct and continuous control over another employer's employees' terms and conditions of employment.
  - » A Biden DOL joint employer rule would have expanded liability to companies who only have potential or limited control over another employer's employees' terms and conditions of employments.
    - » The potential impact of this proposal would have been considerable for contractors, franchisees, suppliers, etc.



# USDOL – Regulatory Landscape

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## » Joint Employer Liability

### » Litigation pending

- » The House and Senate adopted CRA resolutions rejecting the rule – President Biden vetoed the attempted repeal
- » Litigation challenging the NLRB joint employer rule became moot when the Board withdrew its rule
- » The Administration has stated in the new regulatory guidance that it will promulgate a new joint employer rule.



# Office of Federal Contract Compliance Programs (OFCCP)

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- » Will the OFCCP continue under this Administration?
- » Executive Order 11246 has been rescinded and, accordingly, affirmative action programs are no longer required for federal contractors.
- » Government contractors are now prohibited from holding educational DE&I sessions with their employees and from implementing similar programs.





# OSHA “Walkaround” Rule

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- » OSHA issued final “walkaround rule” in April 2024, with an effective date of May 31, 2024 – rule will be rescinded by the new Administration
- » The rule allows workers to choose third-party reps, including union reps, to accompany OSHA safety inspectors during workplace inspections.
  - » Minimal requirements to be a qualified third party, OSHA reps given full discretion over whether to approve third parties
  - » No limit on number of third parties
  - » Could potentially enable nearly unrestricted access to employer facilities
  - » Foot in the door for unions
  - » Rule is being challenged in federal district court in Texas



# National Labor Relations Board (NLRB) as of August 26, 2025



David Prouty (D)  
Member  
Term Expiration – August 2026



James Murphy (R)  
Member  
Term Expiration – December 2027



Scott Mayer (R)  
Member  
Term Expiration – December 2029



Vacant Member Seat



Vacant Member Seat



Crystal Carey  
General Counsel  
Confirmed by the Senate on December 18, 2025



# Impact of the Board's New Budget

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- » The Board's budget for this coming fiscal year is \$294 million - a slight reduction from previous years.
- » What impact, if any, will the Board's budget have on its staffing?
- » Will the Board consider consolidating certain regional offices?
- » What are the prospects for the Board to eliminate its backlog of cases and pending delays in various regions in the processing of cases?



# NLRB Rulemaking Initiatives

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- » Business-oriented trade associations expect to file petitions with the NLRB requesting rulemaking on the following subjects:
  - » Independent contractor definition
  - » Modification of *Cemex* ruling
  - » Codification of right of employer to hold mandatory meetings with employees regarding unionization issues
- » Interpretation and application of General Counsel Member 26-02



# EEOC



**ANDREA LUCAS**  
CHAIR  
TERM ENDS JULY 1, 2030



**KALPANA KOTAGAL**  
COMMISSIONER  
TERM ENDS JULY 1, 2027



**BRITTANY BULL PANUCCIO**  
COMMISSIONER  
TERM ENDS JULY 1, 2029



VACANT



**M. CARTER CROW**  
NOMINATION PENDING TO  
SERVE AS GENERAL  
COUNSEL



**CATHERINE ESCHBACH**  
PRINCIPAL DEPUTY GENERAL  
COUNSEL





# EEOC Developments

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- » Chair Lucas now has a quorum and can proceed with her agenda
- » Important developments to date include:
  - » Recission and rewriting of the regulations implementing the Pregnant Workers Fairness Act
  - » Changing the delegation from Commission to General Counsel doctrine and regulations permitting more Commissioner control over the litigation docket
  - » Rescinding the prior Commission definition of the term “sex” to include only male and female, thereby rescinding previous Commission position providing discrimination protection for LBGTQ+ individuals



# EEOC Issues to Watch

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- » President Trump fired former Chair Charlotte Burrows and Former Vice Chair Jocelyn Samuels
  - » Former Commissioner Samuels has filed a lawsuit challenging her termination
- » The President also fired former General Counsel Karla Gilbride and has nominated M. Carter Crow to serve as General Counsel
- » The litigation involving the removal of Commissioners Burrows and Samuels will be determined, in part, by the outcome of former NLRB Member Wilcox's pending lawsuit
  - » However, there is no statutory protection for EEOC Commissioners or EEOC GCs



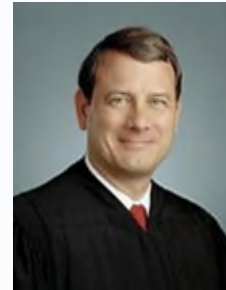
# Composition of the Supreme Court



Justice Sonya Sotomayor, 71



Justice Clarence M. Thomas, 77



Chief Justice John G. Roberts, 71



Justice Ketanji Brown Jackson, Age 55



Justice Samuel A. Alito, Jr., 75



Justice Brett Kavanaugh, 60



Justice Elena Kagan, 65



Justice Neil Gorsuch, 58



Justice Amy Coney Barrett, 54





## ***Louisiana v. Callais***

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- » This case is currently pending decision by the Court and involves important redistricting of Congressional seats.
- » The Court will review the application of the Voting Rights Act and the interaction with the Equal Protection Clause under the 14th and 15th Amendments.



# *Trump v. Slaughter*

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- » The Court is expected to issue a decision in the pending *Slaughter* litigation before the end of its current term.
- » The key issue for regulatory agencies, including the National Labor Relations Board, is the extent of the scope of the unitary executive theory.
- » Former NLRB Member Gwynne Wilcox was summarily terminated by the President shortly after the beginning of his term, and her termination has been upheld by the DC Circuit Court of Appeals.



# *Trump v. Slaughter*

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- » Most analysts expect the Supreme Court to uphold the President's ability to terminate Executive Agency, Senate confirmed individuals.
  - » What impact would such a decision have on the future of the National Labor Relations Board and other "independent" agencies?



# Composition of Federal Court of Appeals and U.S. District Courts

Court	Authorized Judgeships	Vacancies	Nominees Pending	Nominees Pending for Future Vacancies
US Court of Appeals	179	0	0	0
US Court of Federal Claims	16	0	0	0
US Supreme Court	9	0	0	0
US Court of International Trade	9	1	0	0
US District Courts (includes territorial courts*)	677	39	5	1
Total	890	40	5	1

Source: <http://www.uscourts.gov/judges-judgeships/judicial-vacancies>.

- » The Trump I Administration was successful in having 234 judicial nominees confirmed by the Senate.
- » The Biden Administration was successful in having 235 judicial nominees confirmed by the Senate.
- » As of February 12<sup>th</sup>, 2026, 267 Article III judicial nominees by the President have been confirmed by the Senate - 60 U.S. Court of Appeals judges and 207 U.S. District Court judges



# Questions?

**G. Roger King**

Senior Labor and Employment Counsel

CHRO Association

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