



Navigating Employment Law Changes in 2025: What the New Trump Administration Means for Employers

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Presenter:



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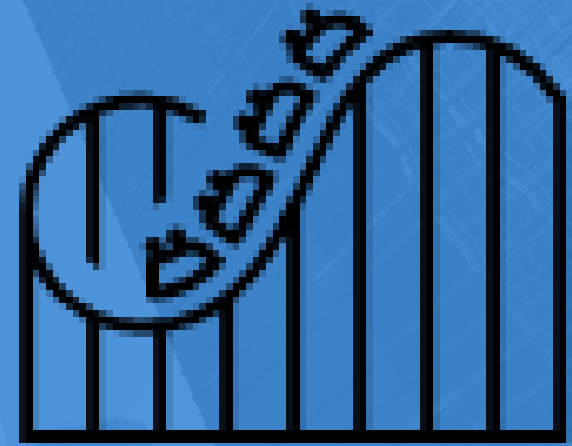
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2025: A Wild Ride



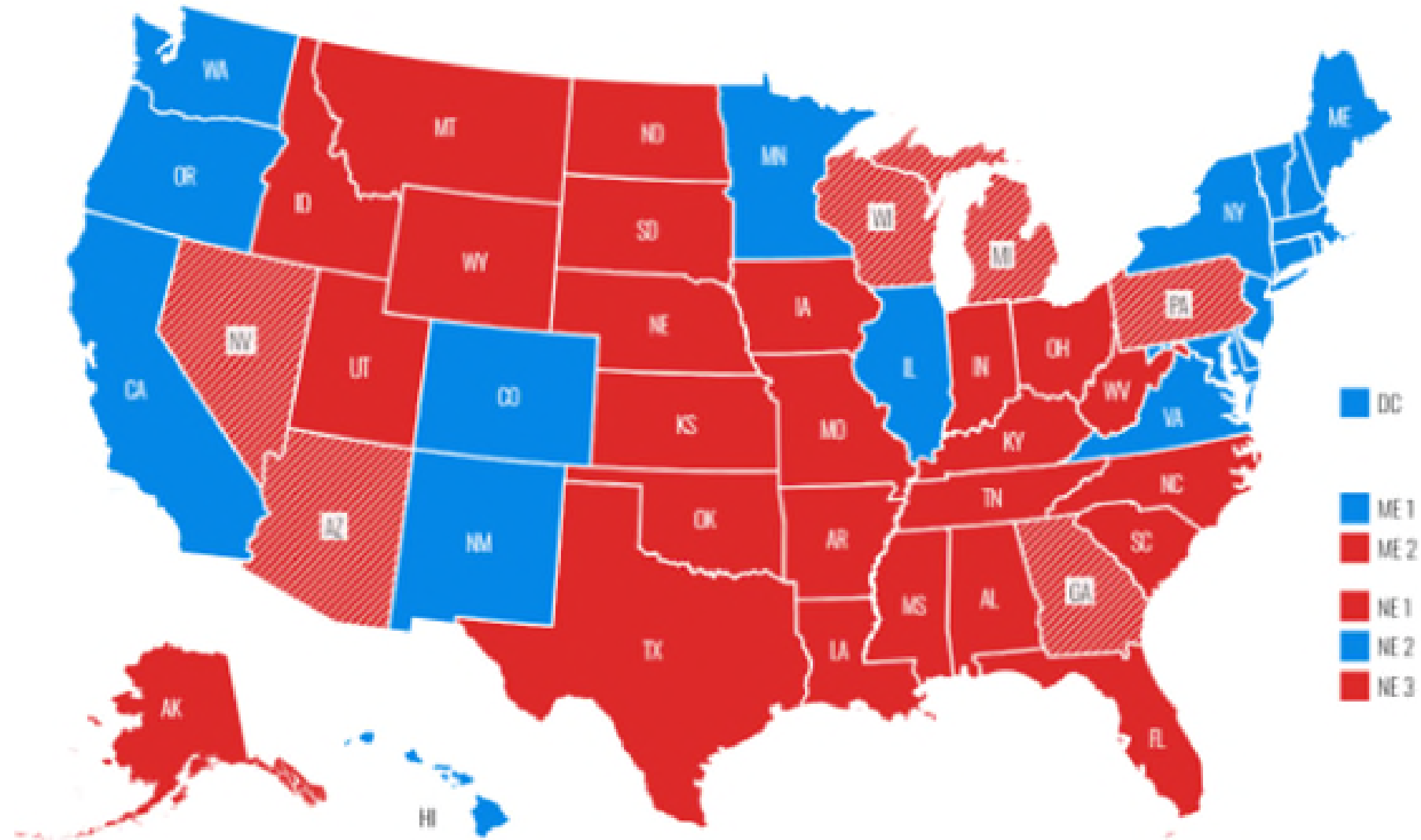
- EEOC Whiplash
- NLRB firings
- Executive Orders
 - DEI
 - Gender Ideology





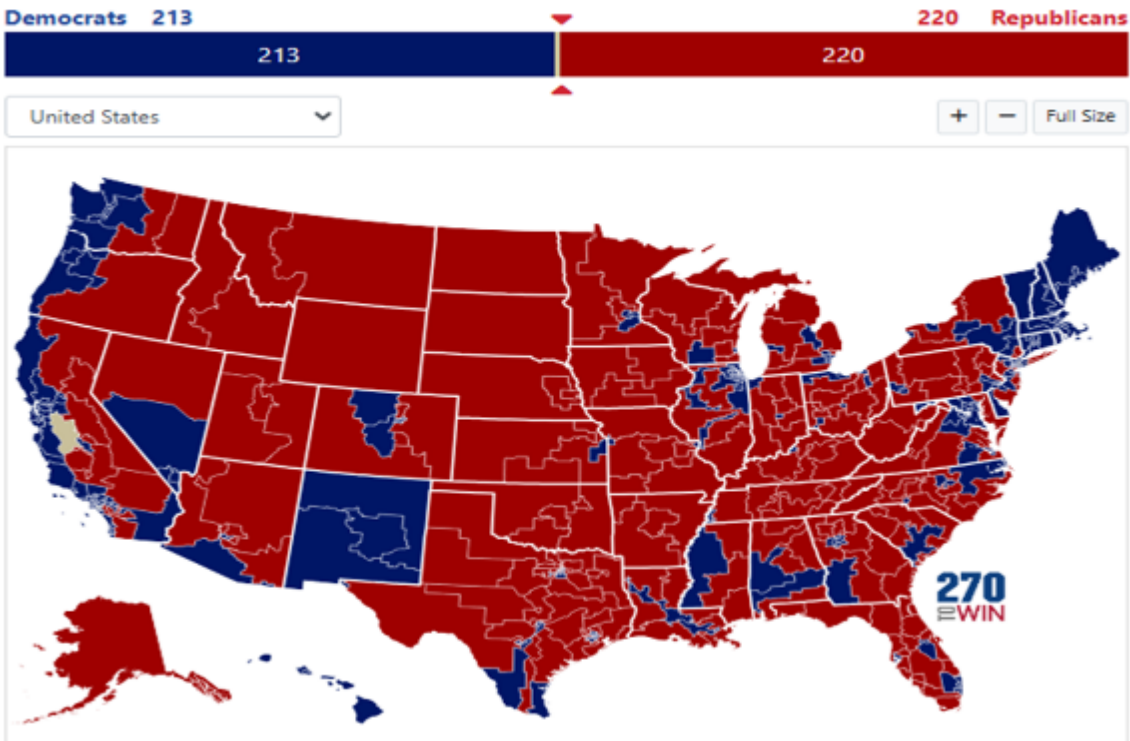
Changes in DC and What to Expect in 2025

Harris  WIN FLIP Trump  WIN FLIP

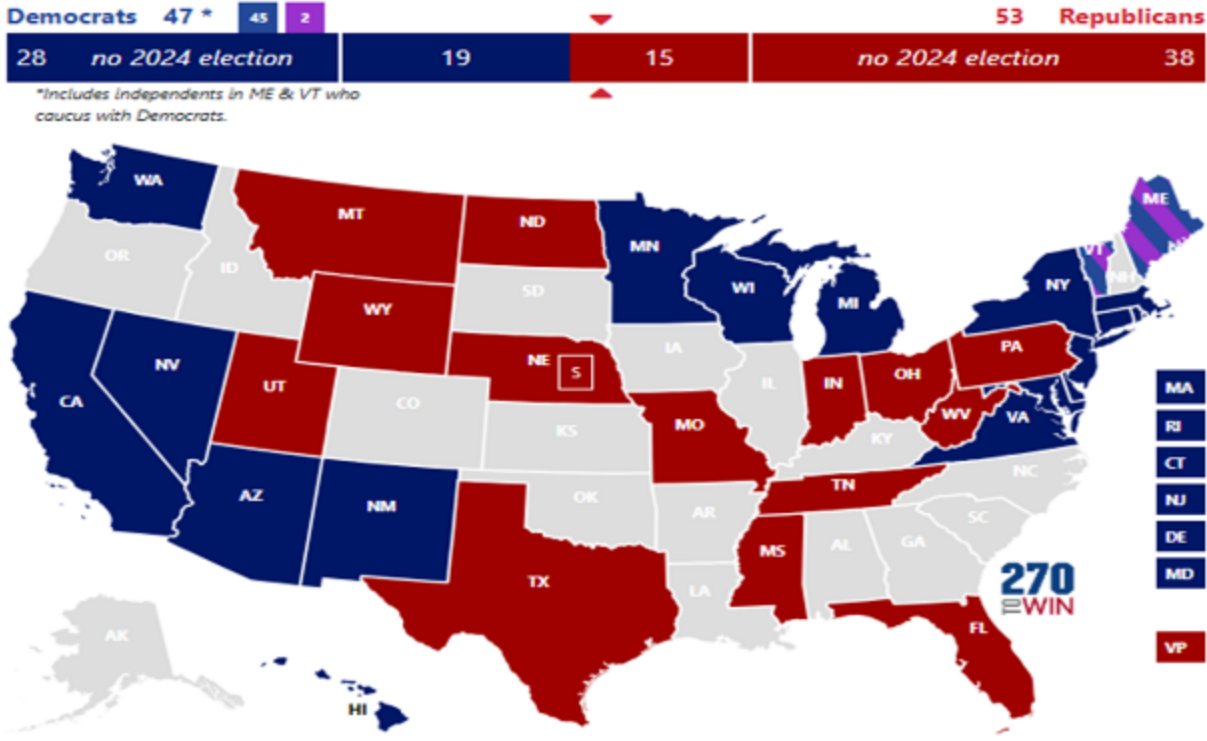


A Closely Divided Congress

U.S. House of Representatives



U.S. Senate





IMPACT/STATUS OF AGENCIES

Lessons from Trump 1.0

Predictions 2.0

- » Reduction of expansive and/or ambitious use of agency power
- » End focus on DEI initiatives
- » ICE and need for I-9 audits
- » End to pursuit of non-competition ban
- » Roll back of controversial rules and enforcement actions – more “business” and employer friendly?
- » Project 2025
- » DOGE/Musk Takeover
- » New state laws – and more progressive state law action and enforcement?

What to Expect from ICE/State Department

- » More stringent limitations for employers that rely on the H-1B visa program to recruit highly skilled foreign workers
- » Higher standard for issuing employment-based green cards
- » Expanded penalties for employers who employ undocumented workers
- » Workplace raids
- » Reduction of available workforce upon implementation of mass deportation program
- » **I-9 audits and enhanced enforcement initiatives**

What to Expect from the SEC, FTC, Treasury, Commerce, and other Federal Agencies

- » End focus on Environment, Social, & Governance (ESG) / DEI initiatives
- » End to pursuit of non-competition ban (Trump Administration will not defend suits enjoining the FTC's proposed rule)
- » Discontinuation of PLA (project labor agreements) requirements for recipients of federal funding
- » End to FTC and DOJ initiatives focused on expanding gig economy workers' rights by targeting alleged employee misclassification
- » End of FTC advancement of labor issues in antitrust cases (e.g., Kroger/Albertsons merger)

U.S. Equal Employment Opportunity Commission



EEOC – General Overview

» Present EEOC Commissioners – No Quorum

- » Andrea Lucas (Republican) – acting Chair
- » Kalpana Kotagal (Democrat)
- » Vacant
- » Vacant
- » Vacant

» General Counsel

- » Andrew Rogers
- » If confirmed, will replace Karla Gilbride, who Trump terminated

» Vacancies/Replacement

- » Trump terminated two commissioners
- » Terminations being challenged
- » Without quorum, cannot adopt new regulations, issue legal guidance, or rescind guidance. Can still investigate, process, and resolve charges.



Commissioner Lucas stated priorities

- » DEI motivated race and sex discrimination
- » Anti-American national origin discrimination
- » Women's rights to single sex spaces
- » Religious bias and harassment
- » "Remedying other areas of recent under-enforcement"

On The Horizon

- » Once the agency retains a quorum, expect the EEOC to quickly take action to further Commissioner Lucas's new priorities, such as rescinding Biden-era guidance on gender identity harassment (April 2024 guidance) and the Pregnant Workers Fairness Act and issuing new guidance on how the EEOC will interpret and enforce Title VII and other anti-discrimination laws.

Pregnant Workers & EEOC Enforcement



PWFA Litigation Status

- » *EEOC v. Kurt Bluemel, Inc.* (September 30, 2024)
 - » failure to provide reasonable accommodations
- » *EEOC v. Polaris Industries, Inc.* (September 25, 2024)
 - » failure to provide a reasonable accommodation and constructive discharge
- » *EEOC v. Urologic Specialists of Oklahoma, Inc.* (September 25, 2024)
 - » failure to provide accommodations, forced unpaid leave, refusal to provide lactation breaks, and unlawful discharge

PWFA Litigation Status

- » **KEY TAKEAWAY:** The EEOC will hold accountable employers who place pregnant employees on unpaid leave if reasonable accommodations are available
 - » Interactive process is key!
 - » Monetary compensatory damages
 - » Back pay

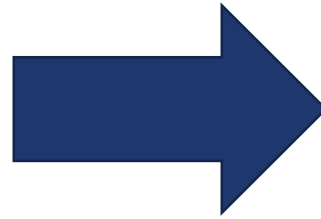
DEPARTMENT OF LABOR



U.S. Department of Labor



Julie Su
Former Deputy Secretary of Labor
NOW Acting Secretary of Labor (as of March 11, 2023)



Trump Nominee
Rep. Lori Chavez-DeRemer,
Republic Representative from Oregon

Rep. Lori Chavez-DeRemer

On November 22, 2024, President-elect Donald Trump nominated Rep. Lori Chavez-DeRemer (R-Ore.) to serve as Secretary of Labor.

- » **Political Career:** Chavez-DeRemer served as the U.S. Representative for Oregon's 5th congressional district from 2023 to 2025. She was also the mayor of Happy Valley, Oregon, from 2011 to 2019.
- » **Pro-Labor Stance:** Notably, she was one of only three House Republicans to co-sponsor the Democratic-backed Protecting the Right to Organize (PRO) Act, which aims to make it easier for employees to unionize.
 - » Her father is also a long-time member of a union.

Rep. Lori Chavez-DeRemer

Significance of the Nomination:

- » **Union Support:** Chavez-DeRemer's nomination has garnered praise from major unions. Teamsters President Sean O'Brien expressed support, highlighting her pro-labor record.
- » **Bipartisan Appeal:** Her history of working with both business and labor sectors positions her as a unifying figure capable of bridging divides.

Rep. Lori Chavez-DeRemer

Potential Impact:

- » If confirmed by the Senate, Chavez-DeRemer would likely move the DOL in a more employer-friendly direction, beginning with a reconsideration of several regulations put forth by the outgoing Biden White House.
- » That said, her nomination indicates an openness to pro-labor initiatives within the Trump administration.

DOL – General Overview – “Big Deal”

- » The U.S. Department of Labor (DOL) administers and enforces more than 180 federal laws.
- » Nearly \$14+ billion budget and approximately 17,000 employees.
- » Some of the laws that protect workers' rights, include:
 - » **Fair Labor Standards Act (FLSA)**: Establishes minimum wage, overtime pay, child labor standards, and recordkeeping requirements
 - » **Family and Medical Leave Act (FMLA)**: Provides eligible employees with up to 12 weeks of unpaid, job-protected leave per year
 - » **Employee Retirement Income Security Act (ERISA)**: Regulates benefits plans for workers, including pension plans, health insurance plans, and disability insurance plans
 - » **Whistleblower Protection Program**: Ensures that employers cannot retaliate against workers who report injuries, safety concerns, or other protected activity
 - » **Unemployment insurance**: Protects workers from unemployment
 - » **Equal pay**: Protects workers from discrimination based on gender
 - » **Occupational Safety and Health (OSH) Act**: Sets and enforces standards to ensure that workplaces are free of known dangers.
 - » **Service Contract Act (SCA)/Davis Bacon**: rules and regulations governing government contractor.



Executive Orders



Status of DEI EOs

- » **Executive Orders: “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” and “Ending Radical Government DEI Programs and Preferencing,”** which target federal programs tied to DEI and seek to influence private sector programs, have sparked legal challenges from national organizations who argue that the orders are unconstitutional.
- » On February 21, 2025, the US District Court for the District of Maryland issued a nationwide preliminary injunction halting the enforcement of three key provisions of President Trump’s Executive Orders intended to eliminate DEI in the federal government and beyond. *See National Association of Diversity Officers in Higher Education et al. v. Trump et al.*, No. 1:25-cv-00333 (D. Md. Feb. 21, 2025).
- » This decision will be appealed

The injunction provides temporary relief for organizations and individuals involved in DEI programs, ensuring they are not subjected to the threat of funding cuts, terminations, or other penalties under the challenged provisions.

It remains to be seen how this case will proceed in the coming months and whether the court will eventually strike down the Executive Orders in their entirety.

The injunction does not impede the EEOC from investigating alleged unlawful DEI programs pursuant to its Title VII enforcement priorities, or government agencies like the Department of Justice from investigating or litigating employer DEI initiatives it believes are in violation of the law.

Private employers should continue to assess their current policies to ensure any DEI initiatives do not engage in any form of “reverse discrimination.”

It is important to note that the Trump Administration argued that the Executive Orders simply reinforce the federal commitment to already-existing federal law prohibiting discrimination. As such, employers who have already ensured that their policies were lawful prior to the issuance of the Executive Orders should continue to monitor this case for new developments.





Executive Order 14168 “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”

Among other things, the Executive Order requires that agencies, including the EEOC, rescind “all guidance documents . . . or such parts of such documents that are inconsistent” with the requirements of Executive Order 14168.

The Order specifically identifies the EEOC’s April 29, 2024 “Enforcement Guidance on Harassment in the Workplace” as a document that the Administration expects to be rescinded in whole or in part. The Enforcement Guidance clarified conduct that could form the basis of a harassment claim, including denial of access to a bathroom or other sex-segregated facility consistent with the individual’s gender identity and intentional use of a name or pronoun inconsistent with the individual’s known gender identity.

EEOC cannot yet rescind this Guidance without a quorum.





Caught in the Middle?

- » Administration interpretation of Title VII contradicts SCOTUS Bostock Decision
- » Unless that decision is reversed, employer can expect to still see charges and litigation over LGBT discrimination.
- » Though it is unlikely the Agency pursues these claims.
- » Remain mindful of state laws.

FordHarrison Resources & Events

- » FordHarrison provides information on the latest in labor and employment law through our timely webinars, seminars, emailed legal alerts, and in-depth analysis articles.
- » Use this QR code to sign up for the many complimentary FordHarrison resources offered to employers throughout the year!





Questions

