

WEBINAR SERIES

First 100 Days of the New Administration: What Employers Need to Know

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Today's Presenters



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Today's Agenda

- New and Revoked Executive Orders
- Agency Implications
- The Economy
- SCOTUS
- What is Next for Employers

Webinar Forum

All participants are muted.

Please type questions in the side navigation panel and we will try to address most questions during today's session.

Today's presentation will be posted online at prestigepeo.com/webinars



Executive Orders & Agency Impacts

Executive Orders

- What is an Executive Order?
- History of Executive Orders
- Trends of Executive Orders





Diversity, Equity, and Inclusion

Diversity, Equity, & Inclusion

- The history of DEI efforts in America
- Title VII of the Civil Rights Act of 1964
- Recent SCOTUS cases



DEI

Three Most Notable Executive Orders impacting Employment Include:

- **E.O. 14173:** Ending Illegal Discrimination and Restoring Merit-Based Opportunity
- **E.O. 14168:** Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
- **E.O. 14281:** Restoring Equality of Opportunity and Meritocracy



Executive Order 14173

Ending Illegal Discrimination and Restoring Merit-Based Opportunity

- Impacts Three Categories of Employees:
 - Federal Workforce
 - Federal Contractors
 - Private Sector
- This order requires all agencies to “enforce our longstanding civil rights laws and to combat illegal private sector DEI preferences, mandates, policies, programs, and activities” and take “other appropriate measures to encourage the private sector to end illegal discrimination and preference, including DEI.”

Source: <https://www.federalregister.gov/documents/2025/01/31/2025-02097/ending-illegal-discrimination-and-restoring-merit-based-opportunity>

- What does this mean for employers in the private sector?

Executive Order 14168

Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

Also known as the gender ideology order:

- Mandates two sexes: male & female
- EEOC directed to enforce laws solely on binary basis
- Creates legal tension with SCOTUS precedent regarding Title VII's protection of gender identity
- Could create conflict with federal and state case law, resulting in significant compliance complexities

Executive Order 14281

Restoring Equality of Opportunity and Meritocracy

- Seeks to eliminate disparate impact liability as extensively as possible
- Disparate impact references otherwise facially neutral policies that still disproportionately affect specific demographic groups
- Issued within the last two weeks, so still very new and full effects are not yet known.

Revoked Orders: Related to DEI

- **Executive Order 11246, issued September 24, 1965**
 - Affirmative action programs for women and minorities
 - Issued on the heels of Title VII of the Civil Rights Act of 1965. Required federal contractors to implement and maintain.
- **Executive Order 13672, issued July 21, 2014**
 - Amended EO 11246 to require these same gov't contractors take affirmative actions to ensure applicants are employed and treated without regard to their sexual orientation or gender identify during employment.
- **Executive Order 14035, issued July 25, 2001**
 - Directed to the OMB to coordinate a gov't wide effort to promote diversity and inclusion in the federal workforce.
- **Executive Order 13593, issued August 18, 2011**
 - Directed the federal gov't and federal agencies to develop and implement coordinated DEI efforts.



Agency Impacts: EEOC

EEOC

Equal Employment Opportunity Commission

- EEOC is the agency tasked with enforcing Title VII
- New EO's will directly impact how the EEOC prioritizes, evaluates, and enforces DEI programs
- Operated by a panel of five commissioners that includes a chair, vice chair, and three commissioners
- In January, President Trump fired two commissioners, leaving only the acting chairperson, Andrea Lucas and one commissioner – resulting in no quorum
- Without quorum, the agency cannot issue new policies or major enforcement changes, but employers can expect right to sue letters and investigations to continue

Equal Employment Opportunity Commission

- Acting Chairperson Lucas' priorities:
 - “Rooting out unlawful DEI-motivated race discrimination”
 - “Protecting Americans from anti-American national origin discrimination”
- On May 7, President Trump nominated Brittany Bull Panuccio to serve on the civil rights panel
 - Current Florida US Attorney
 - Expected confirmation by the senate
 - Quorum will be restored – with a three person
 - Clear path for a Republican majority

Key Take Aways:

Key Take-Aways for Employers Include:

- What is “Illegal DEI”?
 - No legal definition
 - Longstanding DEI practices are being challenged
 - More claims of discrimination by non-traditional claimants
- Shift in priorities – issuance of Technical Assistance documents
 - March 19, 2025 EEOC and DOJ jointly issued
 - *“Under Title VII, DEI initiatives, policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated – in whole or in part- by an EE’s or applicant’s race, sex, or another protected characteristic.”*

Source: <https://www.justice.gov/opa/pr/eeoc-and-justice-department-warn-against-unlawful-dei-related-discrimination#:~:text=Under%20Title%20VII%2C%20DEI%20initiatives,sex%2C%20or%20another%20protected%20characteristic.>

Key Take Aways:

Key Take-Aways for Employers Include:

- Most recent EO related to disparate impact will deprioritize enforcement and litigation related to disparate impact claims by EEOC and the DOJ and a review of all pending claims
- Alignment with the Trump Administration's agenda on gender identity issue
 - EEO-1 reporting impacted by the removal of the non-binary option
- Anticipate more Religious Accommodation requests
 - Such as objections to participation in DEI training
 - Use of pronouns
 - Challenges related to the PWFA

Key Take Aways

Key Take-Aways for Employers Include:

- Increased retaliation and hostile work environment claims by EE's – being punished for challenging DEI initiatives
- Compliance considerations for Employers
 - Conduct an audit of DEI materials
 - Consider what is use in hiring/promotions – ensure interview and promotion objectives are consistent, documented, and do not use protected characteristics as goals or objectives
 - Avoid diversity targets or quotas
 - Review public disclosure risks such as annual reports or ESG disclosures
 - Focus should be on Inclusive and Neutral Compliance



Agency Impacts: Department of Labor

Department of Labor

- Leadership change at the DOL as well
 - Lori Chavez-DeRemer was confirmed by the Senate as the new Secretary of Labor
 - Former U.S. Representative from Oregon
 - She is known for her past support of labor and the PRO Act
 - Appointed by Trump as a gesture of good will to his organized labor supporters
- Other nominees include:
 - Andrew Rogers to lead the Wage and Hour Division, overseeing the enforcement of the Fair Labor Standards Act
 - Significant agency experience during Trump's 1st Admin
 - Jonathan Berry as solicitor of labor, DOL's chief lawyer
 - Authored proposed DOL FLSA changes

Department of Labor, continued

- Proposed changes to the FLSA includes:
 - Allow private-sector workers to accumulate paid time off instead of overtime pay;
 - Allow employers to set a two or four week pay period, instead of the 40 hour work week;
 - Require time and a half premium for working on the Sabbath;
 - Restoring the first Trump-Era Independent Contractor Rule
 - Clarify that reimbursement for home office expenses is not part of an employee's regular rate of pay.

Department of Labor, continued

- Biggest impacts of the new administration likely to be:

Independent Contractor Rule

- Likely that the 2021 IC Rule will be restored:
 - Five factor test with two of the most significant factors being: the *nature and degree of the worker's control over the work* and *the worker's opportunity for profit or loss*.
- Would replace the 2024 Independent Contractor Rule, **but not yet**.
- Current Six Factor test that focused on the “totality of the circumstances approach” and the economic realities:
 - Opportunity for profit or loss depending on managerial skill,
 - Investment by the worker and the employer,
 - Permanence of the work relationship,
 - Nature and degree of control,
 - Whether the work performed is integral to the employer's business, and
 - Skill and initiation.

Department of Labor, continued

- Biggest impacts of the new administration likely to be:

Federal Contractor Implications: Revocation of EO 11246

- DOL is required to immediately cease and desist all investigative and enforcement activity required under EO 11246 and cease promoting diversity, holding Federal contractors and subcontractors responsible for take “affirmative action;” and allowing and encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin


Revocation of EO 14026, Biden-era

- Trump issued EO 14236, *Additional Rescission of the Harmful Executive Orders and Actions*
- DOL will no longer be enforcing Biden–Era EO *Increasing the Minimum Wage for Federal Contractors*

Department of Labor, continued

What can Employers Expect:

- Modernization of the FLSA
- On March 25, 2025, Committee on Education & Workforce hearing on “The Future of Wage Laws: Assessing the FLSA’s Effectiveness, Challenges, and Opportunities.”



Agency Impacts: Nation Labor Relations Board

NLRB

National Labor Relations Board

- Leadership change at the NLRB as well
 - Currently only two sitting board members:
 - Chairperson Marvin Kaplan
 - Board Member David Prouty
 - One member shy of a quorum, therefore absent the ability to take meaningful action
 - Cannot issue decisions in representation and unfair labor practice cases
 - Fired General Counsel Jennifer Abruzzo
 - Appointed William Cowen as Acting General Counsel
 - Late March, Trump nominated labor lawyer Crystal Carey
 - Still needs to be confirmed

NLRB

National Labor Relations Board, continued

- Acting General Counsel rescinded more than a dozen GC memos issued by GC Abruzzo, including the NLRB's position on:
 - Non-competes
 - Stay or pay provisions
 - College athletes as employees

What can Employer's Expect:

- Employers with pending matters may see increased efforts to settle,
- Stay or Pay provisions will revert back to state law,
- Board will no longer evaluate the legality of non-compete agreements, state law will prevail.

NLRB

National Labor Relations Board, continued

- **Joint Employer Rule:**
 - **2020 Rule:** a business will be considered a joint employer of a separate company's employees only if the business possesses and exercises ***substantial direct and immediate control*** over essential terms and conditions of employment of another company's employees
 - **2023 Rule:** new Board, new proposed rule
 - Two or more entities may be considered joint employers of a group of employees if each entity has an employment relationship with the employee, and if the entities share or codetermine one or more of the employees' essential terms and conditions of employment
 - Pendulum shift resulting in legal challenges

New effective date on hold due to litigation

Likely return to the 2020 Joint Employer Rule



OSHA

OSHA

Occupational Safety and Health Administration:

- **Potential Rollback of Biden-Era Initiatives:**
 - 2024 Walkaround Rep Designation Process Rule
 - Expanded Electronic Injury Reporting Requirements
- **Less Emphasis on Standard Setting Initiatives:**
 - Heat-related illness standards
 - Workplace Violence Prevention standards
- **States Likely to Strengthen These Standards**



Immigration

Immigration

Recent Webinar

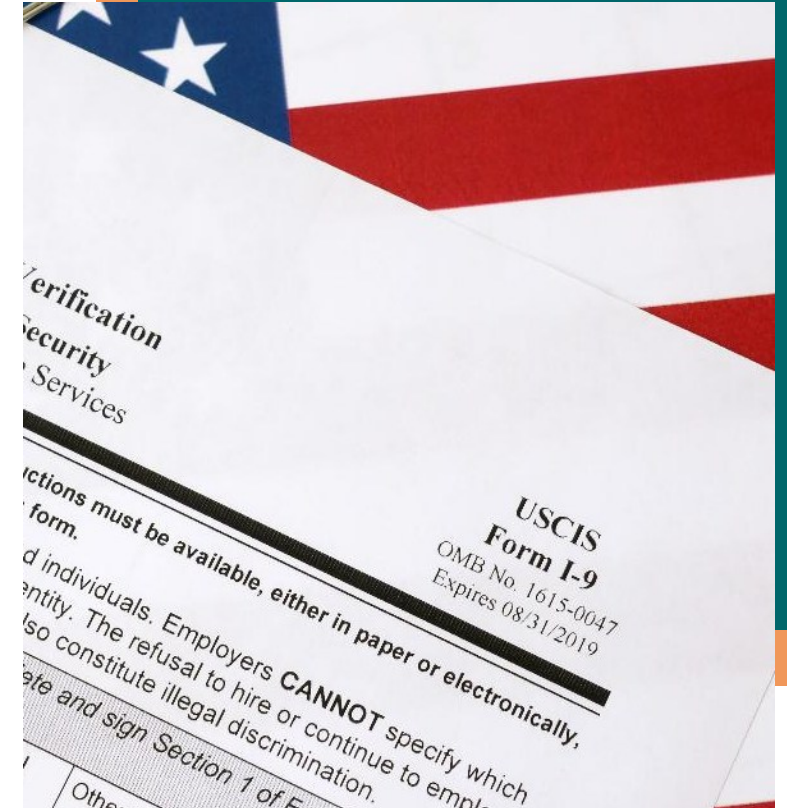
- PrestigePEO recently held an excellent and informative webinar on immigration. The content is available on our website.
- **Executive Orders:**
 - Issuance of more than 10 major Executive Orders and directives focused on immigration
 - Focus is on increased enforcement activities
 - Utilizing Immigration & Customs Enforcement (ICE)
 - Will take shape as both raids and audits that will impact employers and the workplace



Immigration

Employers are encouraged to proactively prepare

- Establish and ensure I-9 Compliance.
- Conduct internal, routine I-9 audits.
- Proper I-9 training, for EE's and HR staff on how to complete I-9
- Consider using E-Verify
- Establish a Rapid Response Plan



Artificial Intelligence

AI



Executive Order:

Removing Barriers to American Leadership in Artificial Intelligence

Purpose: The U.S. has long been at the forefront of artificial intelligence (AI) innovation, driven by the strength of our free markets, world-class research institutions, and entrepreneurial spirit. To maintain this leadership, we must develop AI systems that are free from ideological bias or engineered social agendas. With the right Government policies, we can solidify our position as the global leader in AI and secure a brighter future for all Americans.

Source: <https://www.whitehouse.gov/presidential-actions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/>

Revokes existing AI directives including:

- October 30, 2023 E.O. 14110: *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*

AI



Removing Barriers to American Leadership in Artificial Intelligence

- Implications on numerous state laws that already limit the use of AI in employment related regulations:
 - Colorado
 - California
 - New York
- Disparate Impact discrimination facilitated by the use of AI tools in employment related decisions, however unintentional, may violate Title VII under various state laws.

Economy

Trump's Economic Plan



1. Trade
2. Tax cuts
3. Deregulation
4. Increasing Government Efficiency



SCOTUS

Ames v. Ohio Department of Youth Services

Ames v. Ohio Department of Youth Services

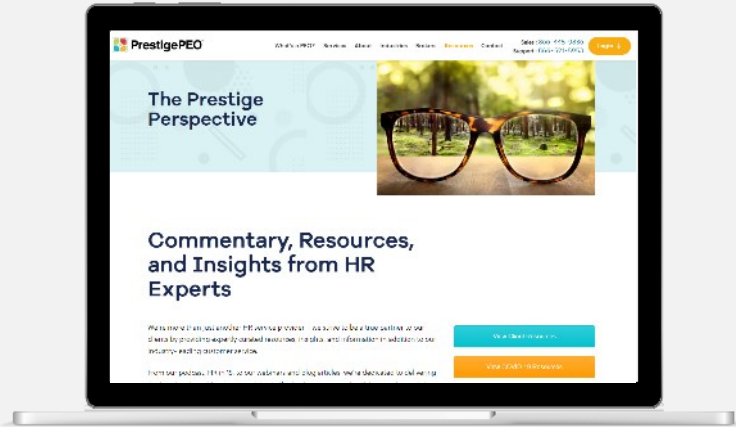
- Most recent SCOTUS case to examine “reverse discrimination”
- Issue: *Are plaintiffs in a majority demographic who allege “reverse discrimination” required to meet heightened pleadings standards in employment discrimination claims under Title VII of the Civil Rights Act of 1964, or “background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority.”*

Source: <https://www.scotusblog.com/cases/case-files/ames-v-ohio-department-of-youth-services/>

- Oral Arguments heard on February 25, 2025
- SCOTUS opinion expected early summer

Questions

Questions / Comments / Discussion?



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