



# 2025 International Client Seminar

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### Light My Fire

*Actual And Potential Changes Following The November U.S. Elections*

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## Actual and Potential Changes Following the November U.S. Elections

The November elections in the United States were contentious and presented the country with presidential candidates who were polar opposites. After President Trump regained the White House, he did not waste any time in proposing and making sweeping changes to various executive orders, laws, and pronouncements issued during the Biden Administration, as he announced in his inaugural speech that the United States was entering a “golden age” to overhaul the government and “make America great again.” Indeed, the day of his inauguration, President Trump signed various executive orders to rescind or modify executive orders and rules put in place during prior administrations, and more are expected.

In addition to winning back the White House, the Republican Party also gained control of the Senate and retained control of the House. Thus, further and more permanent changes are expected to be forthcoming from the 119th Congress.

There have been more pronouncements and executive orders issued by the Trump Administration than we can address, but some of the more significant ones that will affect businesses in the U.S. and throughout the world are the following.

### EEOC Changes

In early February 2025, President Trump abruptly fired two (2) Democratic commissioners on the U.S. Equal Employment Opportunity Commission. What was surprising was that one of them, Jocelyn Samuels, had been appointed by President Trump during his first term to fill a Democratic seat. She was serving a second term that was not to end until July 2026. President Trump also removed Commissioner Charlotte Burrows, who was first appointed to the EEOC by former President Barack Obama and who also served under President Trump in his first term (and continued under President Biden).

Additionally, President Trump rescinded an executive order signed by President Lyndon Johnson that had mandated non-discrimination by federal contractors.

### Attacks on DEI Initiatives

President Trump and his administration did not waste any time in attacking diversity, equity, and inclusion initiatives and practices in both the federal government and private sector.

#### *Public Sector:*

- President Trump quickly issued an executive order following his inauguration mandating that the federal government only recognize two (2) genders, male and female.
- It also requires federal contractors to certify that they do not have any programs promoting diversity, equity, and inclusion, as doing so is illegal per a Trump Executive Order.
- Potential challenges to be filed under the federal False Claims Act are expected by workers who will argue that companies misrepresented their compliance with anti-discrimination laws

### *The Private Sector and DEI:*

- On February 5, 2025, new Attorney General Pamela Bondi issued a memo to her staff in which she stated that the DOJ will target private sector DEIA initiatives for potential “criminal investigation.”
- Prior to the Trump Administration taking office, some major U.S. companies had already begun to reduce or eliminate their DEI programs, including McDonald’s, Meta, Walmart, Target, and Google.
- Commentators are predicting that there may be a potential attack coming in the courts to the disparate impact theory of liability.
  - Critics of the theory argue that it unfairly punishes employers for unintentional practices whereas proponents of the theory argue that it removes barriers to employment that lack business justification.

### Immigration Initiatives

In addition to beginning mass deportations following his inauguration, President Trump immediately rescinded several Biden Administration executive orders, and issued executive orders with the following goals and directives:

- Federal agencies were directed to engage in enhanced vetting and screening when issuing visas and determining the admissibility of visa applicants. More specifically, the U.S. Department of State and U.S. Department of Homeland Security are to “vet and screen to the maximum degree possible all aliens who intend to be admitted, enter, or are already inside the United States, particularly those aliens coming from regions or nations with identified security risks.” Additionally, the Trump Administration is looking at potentially banning the entry into the U.S. of individuals from specific countries.
- Limiting birthright citizenship in the United States for children whose mother is unlawfully present in the United States and whose father is not or was not a citizen or a lawful permanent resident at the time of the child’s birth, and for a child whose mother is lawfully, but only temporarily, in the United States. On January 23, 2025, the U.S. District Court for the Western District of Washington issued a Temporary Restraining Order halting implementation of this directive.
- Directing government agencies to assess the impact of existing trade policies on American workers, farmers, ranchers, service providers, and other businesses, which could affect Canadian and Mexican workers who use Trade NAFTA or TN visas to enter the United States to work in qualified professional occupations.
- Prioritizing prosecution of criminal offenses concerning the unauthorized entry or presence of foreign nationals in the United States.
- Expanding the number of detention facilities for illegal aliens.

- Requiring undocumented individuals to register their presence.
- Creating a federal Homeland Security Task Force in states to coordinate enforcement priorities.
- Increasing the assessment and collection of fines and penalties from foreign nationals unlawfully present in the United States and from “those who facilitate such aliens’ presence in the United States.”
- Requiring Homeland Security to restrict sanctuary cities’ access to federal funds.

In addition to President Trump’s executive orders, the Department of Homeland Security reinstated the official use of the term “illegal alien” to replace the term “undocumented noncitizen.”

### NLRB Changes

President Trump also did not waste time in dismissing National Labor Relations Board General Counsel Jennifer Abruzzo. He likewise terminated Democratic board member Gwynne Wilcox, leaving just two (2) members on the Labor Board and the inability of the Board to have a quorum (the Board normally has five (5) members). Commissioner Wilcox was expected to challenge President Trump’s authority to remove her.

Further, the President has nominated former Oregon Congresswoman Lori Chavez DeRemer, a Republican with a pro-union voting record, to be the new Secretary of Labor.

### Joint Employer Definition May Be Subject To Yet Another Change

The National Labor Relations Board and the U.S. Department of Labor have flip-flopped between the prior Trump and Biden Administrations on the definition of “joint employer.”

During the Biden Administration, the NLRB proposed that a joint employer could be found if an entity exercised only “indirect and unexercised control” over an individual, which the courts rejected. The DOL also rescinded its prior definition requiring “actual control” in favor of a standard using a “totality-of-the-circumstances” approach.

The Trump Administration favors requiring “direct” and “substantial control” be found for an entity to be considered a joint employer. This approach is supported by franchisors (McDonald’s, Burger King, tech companies, etc.), who potentially have substantial liability if anything less than “direct” and “substantial control” over employees of a franchisee is required.

### Tariffs

President Trump has threatened and implemented tariffs directed at Mexico, China, and Canada. While he characterizes them as a means of forcing companies to return manufacturing jobs to the U.S., as well as creating a source of revenue, critics say that tariffs will primarily lead to increased prices to consumers, as companies likely will pass any increased costs onto those purchasing the goods they import from other countries.

### Shaping the U.S. Courts

While President Trump inherited fewer vacancies on the federal courts than when he came into office in 2017, there are still a substantial number of vacancies for a judiciary that already is arguably skewed to the right.

### Energy Regulations

President Trump has:

- Paused federal leasing and permitting for massive wind farms.
- Terminated the Biden Administration's electric vehicle mandate.
- Opened up offshore oil drilling and more energy exploration of Alaska.

President Trump also has rescinded many of the Biden Administration's green energy mandates relating to a consumer's choice of vehicles, showerheads, toilets, washing machines, lightbulbs, and dishwashers.

### Other Potential Changes Forthcoming

The DOL likely will not attempt to increase, and may remove, the minimum salary threshold in the Fair Labor Standards Act for salaried exempt employees.

Several Biden Administration pro-union rules could be changed, such as:

- Captive Audience Meetings, which were outlawed during the Biden Administration, may be reinstated.
- The NLRB's shortening of election timeframes may be rescinded and the timeframes expanded to prior levels.
- The Labor Board decisions whereby a union was given a default victory, and a company was ordered to recognize and bargain with the union, if the company had committed an unfair labor practice during the election campaign, may be rescinded.
- Various Labor Board rulings regarding employee handbooks and severance agreements may be modified or rescinded.

The Federal Trade Commission is expected to withdraw and cease efforts to implement a nationwide rule prohibiting non-compete agreements.

During his first term, President Trump was supportive of providing employees with some paid leave incentives, and he may reinstitute those efforts during his second term.