

BRIEFLY

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Employers: Why These New Issues Warrant Your Attention

The first month of President Trump's second term has unleashed a torrent of federal policy shifts—executive orders, agency purges, and court rulings—that are rewriting the rules of your workplace. From ICE's workplace raids to the EEOC's gender policy pivot and the NLRB's labor law reset, these changes can hit your bottom line, affect workforce stability, and pose compliance risks.

These next two issues unpack each development with actionable strategies—because staying ahead isn't optional; it's essential. Whether you're a federal contractor navigating DEI injunctions or a small business facing complex legal challenges when you'd rather focus on business, these pages are a roadmap to understand and navigate this chaos. We at Wimberly Lawson are ready to guide you through these complex, ever-shifting challenges.



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Our Firm is a full service labor, employment, and immigration law firm representing management exclusively. We have offices in Knoxville, Cookeville, and Nashville, Tennessee, and maintain our affiliation with the firms of Wimberly, Lawson, Steckel, Schneider & Stine, P.C., in Atlanta GA; and M. Lee Daniels Jr., P.C., in Greenville SC.

Trump's Workplace Revolution: EEOC Shift and DOJ Enforcement Reshape Employer Obligations

February 2025 – President Donald Trump's labor agenda kicked off with a bang on January 20, 2025, when he signed Executive Order 14168, titled "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government." This order directs federal agencies to recognize only two immutable sexes, male and female, and mandates the enforcement of laws based on this definition. Acting EEOC Chair Andrea Lucas doubled down in a January 28 press release, vowing to reverse Biden-era gender-identity protections. Then, on February 5, Attorney General Pam Bondi threw her weight behind Trump's vision, issuing directives that amplify these shifts and target Diversity, Equity, and Inclusion (DEI) practices. Together, these moves—reshaping sex-based policies and enforcement—thrust employers into a compliance crucible. With an businesses can respond as of February 2025.

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The Sex Definition Order: A Binary Mandate

Biden's 2021 EEOC guidance was built on *Bostock v. Clayton County* (2020)—the Supreme Court ruling that firing someone for being gay or transgender violates Title VII's sex discrimination ban. Biden's guidance deemed misgendering (e.g., ignoring preferred pronouns) and denying restroom access based on gender identity as harassment. Trump's order insists on a biological, binary definition across federal policy, rejecting this expansion. Lucas, in her January 28 press release, embraced this, stating, "Biology is not bigotry. Biological sex is real, and it matters. Sex is binary (male and female) and immutable. It is not harassment to acknowledge these truths—or to use language like pronouns that flow from these realities, even repeatedly." She pledged to rescind Biden's guidance once the EEOC regains a quorum, arguing *Bostock* stops at termination protections, not restrooms or pronouns.

A federal judge's prior ruling—that Biden overstepped *Bostock* on facilities and dress codes—fuels Lucas's stance. By February 10, the EEOC dropped six transgender discrimination lawsuits tied to that broader view, signaling a major shift in EEOC priorities.

Lucas's Press Release: Redefining Enforcement

Lucas's January 28 stated the following:

"Because of biological realities, each sex has its own, unique privacy interests, and women have additional safety interests, that warrant certain single-sex facilities at work and other spaces outside the home. It is neither harassment nor discrimination for a business to draw distinctions between the sexes in providing single-sex bathrooms or other similar facilities which implicate these significant privacy and safety interests. And the Supreme Court's decision in *Bostock v. Clayton County* does

not demand otherwise: the Court explicitly stated that it did 'not purport to address bathrooms, locker rooms, or anything else of the kind.'"

Key changes include:

- Announcing that one of her priorities—for compliance, investigations, and litigation—is to defend the biological and binary reality of sex and related rights, including women's rights to single-sex spaces at work.
- Removing the agency's "pronoun app," a feature in employees' Microsoft 365 profiles, which allowed an employee to opt to identify pronouns, content which then appeared alongside the employee's display name across all Microsoft 365 platforms, including Outlook and Teams. This content was displayed both to internal and external parties with whom EEOC employees communicated.
- Ending the use of the "X" gender marker during the intake process for filing a charge of discrimination.
- Directing the modification of the charge of discrimination and related forms to remove "Mx." from the list of prefix options.
- Commencing review of the content of EEOC's "Know Your Rights" poster, which all covered employers are required by law to post in their workplaces.
- Removing materials promoting gender ideology on the Commission's internal and external websites and documents, including webpages, statements, social media platforms, forms, trainings, and others. The agency's review and removal of such materials remains ongoing. Where a publicly accessible item cannot be immediately removed or revised, a banner has been added to explain why the item has not yet been brought into compliance.

According to Lucas, "The Commission's [prior] harassment guidance was fundamentally flawed. It ignored biological reality, effectively eliminated single-sex workplace facilities, and impinged on all employees' rights to freedom of speech and belief. In unlawfully expanding past *Bostock*'s dictates, the EEOC exceeded its authority. The EEOC must rescind the guidance and protect the sex-based privacy and safety needs of women."

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Bondi's DOJ Muscle: Amplifying Trump's Orders

On February 5, 2025, Pam Bondi was sworn in as U.S. Attorney General, following her Senate confirmation on February 4, 2025. On her first day in office, Bondi issued 14 directives to the Department of Justice (DOJ) staff, signaling a shift in enforcement priorities under the Trump administration. These directives reflect the administration's broader agenda, including a review of DEI-related policies, enforcement of merit-based hiring principles, and a reassessment of DOJ consent decrees and grant programs.

•DEI Policy and Employment Review

One of Bondi's key directives ordered a comprehensive review of DOJ consent decrees, grants, and contracts to identify race- or sex-based preferences, diversity hiring targets, or DEI-related criteria in federally funded programs. Bondi stated that DOJ resources should be used in accordance with anti-discrimination laws, ensuring fairness without mandated diversity quotas or racial preferences. While no specific timeline for this review has been confirmed, legal experts anticipate DOJ recommendations and potential policy changes to be issued by April 20, 2025.

•Enforcement Priorities

Bondi has also emphasized strict adherence to the administration's legal policies, warning DOJ attorneys against non-compliance with these new directives. Although no formal enforcement guidance has been released, legal analysts expect increased scrutiny of affirmative action policies and DEI initiatives in federally regulated industries.

Practical Implications for Employers

This trifecta—EO 14168, Lucas's pivot, and Bondi's directives—creates a complex landscape:

- **Restroom Access:** Biden's guidance (still active) mandates gender-identity access, but Lucas and Bondi advocate biological-sex definitions. Allowing transgender women (biological males) in women's restrooms risks female breach of privacy claims—Lucas's "new frontier"—while restricting access could spark Bostock-based suits. Single-occupancy restrooms options mitigate dual threats, but availability varies.
- **Pronouns and Names:** Lucas's "biological pronouns aren't harassment" stance lowers EEOC risk for non-accommodation. Bondi's forthcoming guidance may bolster this, yet transgender workers (1 million-plus) could still sue under Bostock. Religious objections to pronouns conflicting with biological sex may arise, complicating HR's role under Title VII's religious accommodation clause.
- **DEI Programs:** For federal contractors, DEI programs are currently in limbo due to Executive Order 14173, which revoked affirmative action requirements and prohibited race- or sex-based hiring preferences, but a federal court injunction on February 21, 2025 (discussed in separate article below) has temporarily blocked enforcement of key provisions, pending further litigation. For non-contractors, while federal agencies like the EEOC and DOJ have deprioritized DEI enforcement, private employers still face potential state law requirements and reverse discrimination claims, requiring careful policy reviews and legal compliance assessments.
- **Legal Gray Area:** Bostock endures, and courts—not agencies—may uphold broader protections, exposing employers to suits despite the executive branch's retreat.

What Employers Should Expect

- **Enforcement Shift:** Lucas's EEOC deprioritizes gender-identity claims—e.g., six lawsuits dropped while Bondi's DOJ may probe DEI violations. Enforcement may take a dual track (EEOC & DOJ) with an anti-DEI focus.

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- **Policy Lag:** The EEOC lacking a quorum delays formal revisions. Current guidance is still in place, but enforcement reflects Lucas’s view. Bondi’s guidance could accelerate clarity once issued.

Action Steps for Employers

- **Monitor Developments:**
 - Track EEOC quorum restoration.
 - Watch March 15 DOJ reports for contractor DEI targets, if the February 21, 2025 Maryland federal court injunction (discussed below) does not stand.
- **Policy Review:**
 - **Restrooms:** Assess single-sex vs. gender-identity access. Single-occupancy “unisex” options can dodge claims where practical.
 - **Pronouns:** Offer optional accommodation—Lucas and Bondi lower EEOC risk, but Bostock suits linger. Address religious objections case-by-case.
 - **DEI:** Audit contractor DEI for EO 14173 compliance—consider removing race/sex targets by April 20. Non-contractors should weigh Bondi’s private-sector nudge.
 - **Training:** Reframe on Title VII basics—avoid pronoun mandates.
- **Legal Prep:**
 - Consult counsel—Bostock trumps shifting agency guidance; courts may diverge. Document policies and complaints for defense.
 - Review postings—Update “Know Your Rights” post-EEOC revision, but retain Bostock-aligned notices now.
- **Communicate Wisely:**
 - Avoid rigid edicts—balance rights and expectations.
 - Train managers—missteps (e.g., forcing pronouns) could trigger Bostock hostility claims.

- **Strategic Caution:**

- Delay drastic roll backs - e.g., scrapping gender policies entirely--until EEOC/Bondi clarify. State laws may counter, complicating multi-state plans.

The Road Ahead

Lucas’s January 28 roadmap and Bondi’s February 5 directives forge a workplace rooted in biological sex and stripped of DEI, reversing Biden’s gender-identity focus. Yet, Bostock persists, and with one (1) million-plus transgender workers, litigation looms—transgender suits under Title VII and female privacy claims under Lucas’s lens. Enforcement focus can change fast, but formal rules await an EEOC quorum and Bondi’s guidance, making 2025 a transitional minefield. Employers should adapt with precision—monitor, evaluate and brace for dual pressures. Wimberly Lawson can help navigate this seismic shift with clarity and compliance.

Trump’s Agency Purge: NLRB and EEOC Firings Ignite Legal Battle and Reshape Labor Landscape

February 2025 – In a breathtaking display of executive muscle, President Donald Trump on January 27, 2025, fired key figures at two cornerstone labor agencies: National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo and Board Member Gwynne Wilcox, alongside Equal Employment Opportunity Commission (EEOC) Commissioners Charlotte Burrows and Jocelyn Samuels, plus EEOC General Counsel Karla Gilbride. These unprecedented removals—particularly of sitting board and commission members—have paralyzed both agencies, triggered a looming legal showdown, and thrust employers into a vortex of uncertainty. As Trump aims to recast labor and employment policy, here’s what’s unfolding, the stakes involved, and how businesses should respond.

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The Unprecedented Shake-Up

Trump's January 27 purge defied decades of precedent:

- **NLRB:** Abruzzo's firing as General Counsel aligns with past practice—Biden ousted Peter Robb in 2021—but Wilcox's removal mid-term (expiring August 2028) is a first. The five-member NLRB now has only Republican Marvin Kaplan (acting chair) and Democrat David Prouty, lacking the three-member quorum required to decide cases. Regional offices can process disputes, but rulings are stalled.
- **EEOC:** Burrows (term ending July 2028) and Samuels (term ending July 2026) were axed alongside Gilbride, leaving only Republican Andrea Lucas (acting chair) and Democrat Kalpana Kotagal. The five-member EEOC can't set policy or rule without a quorum, though investigations persist.

The White House framed the moves as purging "radical leftists," targeting Abruzzo's pro-union zeal—e.g., seeking to restrict 'captive audience' meetings—and Wilcox's worker-friendly votes, plus Burrows' and Samuels' push for DEI and gender identity protections. Trump's speed contrasts with tradition: presidents typically wait out terms to shift agency control.

Legal Firestorm Brewing

The fired officials—Wilcox, Burrows, and Samuels—aren't yielding:

- **NLRB Challenge:** The National Labor Relations Act limits removal to "neglect of duty or malfeasance," per the NLRB. Wilcox, confirmed through 2028, filed suit February 5, 2025, in D.C. federal court, seeking reinstatement and arguing Trump's action flouts this safeguard. A hearing looms, backed by unions like the AFL-CIO, who call it an "illegal paralysis" of workers' rights.

- **EEOC Pushback:** Under 42 U.S.C. § 2000e-4, EEOC commissioners serve fixed terms, implying cause-based removal. Burrows and Samuels, exploring "all legal options," may sue, potentially under the Administrative Procedure Act (APA) for "arbitrary" executive overreach. No suit has been filed, but civil rights groups signal intent to do so.

The 1935 U.S. Supreme Court ruling in *Humphrey's Executor v. U.S.* shields multi-member agency independence, but *Seila Law v. CFPB* (2020) allows at-will firing of single directors. The Supreme Court hasn't tackled NLRB or EEOC member removals, making this a constitutional test case. If courts rule the firings unlawful, interim agency actions could be voided.

Developments as of late February, 2025

- **Legal Momentum:** Wilcox's suit seeks an injunction; a ruling could come by Spring. EEOC challenges lag, but advocates hint at filings soon. Trump initially saw Jessica Rutter step in as acting NLRB General Counsel after Abruzzo's firing on January 27, but fired her on February 1, appointing William Cowen as acting General Counsel on February 3. He plans for swift Senate confirmations—potentially three EEOC Republicans and two NLRB ones—aiming for control by mid-2025.
- **Agency Limbo:** NLRB cases and EEOC rulings (e.g., Pregnant Workers Fairness Act guidance) are frozen. EEOC's website has yanked gender and pregnancy guidance, reflecting Lucas's influence despite no quorum.
- **Political Heat:** Democrats decry a "power grab," with Senate confirmation fights brewing.

Implications for Employers

- **NLRB Gridlock and Shifts:**
 - **Stalled Cases:** Hundreds of unfair labor practice and union election disputes—like Amazon's Bessemer, Alabama union fight—await a quorum, delaying outcomes. Employers may gain breathing room or face prolonged uncertainty.

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- **Policy Pivot:** Once Trump secures a majority, expect reversals of Abruzzo's agenda: freer employer speech rules, narrower joint employer liability (easing franchisor risks), and relaxed non-compete stances. Kaplan's past votes favoring management signal this tilt.
- **EEOC Enforcement Gears Down:**
 - **DEI Under Fire:** Lucas, now steering the EEOC, targets "illegal DEI-motivated discrimination," per her January 28 pledge. Race- or gender-based programs face scrutiny, echoing EO 14173's anti-DEI thrust.
 - **Gender and Pregnancy:** PWFA abortion accommodations and *Bostock v. Clayton County* (2020) transgender protections may shrink—Lucas has dissented on both issues. Employers could see lighter mandates here.
 - **Litigation Pause:** Biden's lawsuit surge (e.g., 50% more EEOC cases in 2024) halts without a quorum, shifting focus to compliance aid—potentially a breather for businesses.
- **Legal Risks:**
 - **Interim Chaos:** If Wilcox or EEOC commissioners win reinstatement, post-firing decisions could unravel, forcing employers to redo compliance steps. Retroactive invalidation risks loom large.
 - **State Pushback:** States like California may ramp up labor and anti-discrimination enforcement, complicating multi-state operations.

What Employers Should Expect

- **Short-Term Freeze:** Both agencies are sidelined until Trump's nominees clear the Senate—likely in summer 2025 if Democrats don't filibuster. NLRB delays favor employers in union fights; EEOC stasis may ease discrimination lawsuit pressure.
- **Long-Term Shift:** A Republican NLRB could roll back worker protections (e.g., reversing student-athlete rulings), while an EEOC under Lucas may narrow Title VII's scope, especially on DEI and gender issues.

- **Court Wildcard:** A Supreme Court ruling (2026?) could uphold Trump's power—cementing pro-employer policies—or reinstate ousted members, snapping back Biden-era rules. The 6-3 conservative bench leans toward executive control, but separation-of-powers debates linger.

Planning for the Storm

- **Track Legal Battles:**
 - Monitor Wilcox's suit and EEOC challenges—rulings by mid-2025 could reset agency power. Senate hearings for nominees (e.g., March-April) will clarify timelines.
- **Policy Adjustments:**
 - **NLRB:** Review union policies—expect flexibility on speech and organizing once quorum returns, but hold off dismantling worker protections until rulings settle.
 - **EEOC:** Audit DEI for Title VII risks—shift to neutral inclusion to sidestep "reverse discrimination" suits. Brace for *Bostock* reinterpretation.
- **Legal Preparedness:**
 - Document compliance now. Courts still enforce *Bostock* and NLRA basics, despite agency flux.
 - Consult counsel on interim guidance—e.g., EEOC's pulled rules leave gaps employers must navigate.
- **Strategic Flexibility:**
 - Delay major labor policy overhauls until legal dust settles. If Wilcox returns, pro-union precedents could snap back; if Trump prevails, employer leverage grows.

The Stakes Ahead

Trump's purge—firings executed with surgical precision—aims to forge an NLRB and EEOC aligned with his "merit-based" vision, per EO 14173. Yet, it's sparked a constitutional crisis that could stretch to the Supreme Court. Employers face a dual reality: short-term relief from stalled agencies, long-term

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bets on a pro-business shift—or a jarring reversal if courts intervene. Through 2025, agility is key—balance compliance with readiness for upheaval. Contact Wimberly Lawson to chart your course through this seismic legal and labor storm.

CTA Rule Enforcement Resumes Small Businesses Face Urgent Reporting Deadlines

The Corporate Transparency Act (CTA) is back in force, and small businesses must prepare to comply with Beneficial Ownership Information (BOI) reporting requirements after a federal court lifted an injunction that had paused enforcement.

What's Happening?

A recent federal court decision has reinstated the Treasury Department's Financial Crimes Enforcement Network (FinCEN) authority to enforce BOI reporting under the CTA. This means small businesses previously exempt due to the delay now face a fast-approaching compliance deadline.

Key Deadline and Penalties

FinCEN has set March 21, 2025, as the new deadline for most companies to file initial, updated, or corrected BOI reports. While FinCEN may provide further updates, businesses should act now—delays are not guaranteed.

Noncompliance carries steep consequences:

- Civil penalties: Up to \$591 per day.
- Criminal penalties: Fines up to \$10,000 and imprisonment for up to two years for willful violations.

What Is the CTA?

Enacted on January 1, 2021, as part of the National

Defense Authorization Act, the CTA is a landmark anti-money laundering law. It aims to boost transparency and curb illegal activities like:

- Money laundering
- Terrorist financing
- Corruption
- Tax fraud

What Small Businesses Must Do

Under the CTA, certain entities must submit a Beneficial Ownership Information Report (BOIR) to the Treasury Department. The BOIR identifies "beneficial owners"—individuals who:

- Own 25% or more of the company, OR
- Exercise substantial control over it.

Required details include full legal names, birth dates, addresses, and ID numbers.

Who Must File?

The CTA applies to LLCs, corporations, etc., unless exempt, often impacting smaller businesses.

Who's Exempt?

Exemptions include:

- Publicly traded companies
- Large companies (meeting employee and revenue thresholds)
- Certain regulated financial institutions

What Might Congress Do?

The reinstatement of CTA enforcement has sparked debate, and Congress could step in to address concerns. Lawmakers may consider revising the CTA to clarify requirements, adjust deadlines, or expand exemptions—particularly for small businesses arguing the rules are overly burdensome. However, any legislative changes would depend on political priorities and bipartisan support, which remain uncertain as of late February 2025. Businesses should monitor developments but not rely on potential congressional relief to delay compliance efforts.

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Steps to Take Now

- Confirm applicability: Does your business need to file a BOIR?
- Collect data: Gather beneficial owner information.
- Monitor updates: Check FinCEN guidance as March 21, 2025 nears.
- Seek advice: Consult legal counsel to ensure compliance and avoid penalties.

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