

BRIEFLY

FEBRUARY 4, 2025



SENATE VOTE ALLOWS TRUMP TO RESHAPE THE NATIONAL LABOR RELATIONS BOARD

In a significant blow to organized labor, the U.S. Senate voted on November 10, 2024, against confirming NLRB Chair Lauren McFerran for another term. This decision prevents McFerran from maintaining the Democratic majority on the National Labor Relations Board (NLRB) until at least 2026. Crucially, the decisive votes were cast by outgoing independents, Senators Joe Manchin and Kyrsten Sinema, both of whom left the Democratic Party and are departing office.

Sinema's opposition is consistent with her refusal to sponsor the Pro Act, and Manchin had previously voted against another Biden nominee to the Board. Their votes open the door for President Donald Trump to appoint two new members, securing a 3-2 Republican-appointed majority on the five-member Board.



Wimberly Lawson
Wright Daves & Jones, PLLC
Attorneys & Counselors at Law

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.

WHICH BIDEN-ERA PRO-UNION RULINGS WILL BE OVERRULED FIRST?

The shift in Board composition and a likely new Republican-appointed General Counsel will prompt rapid reversals of controversial pro-union rulings from the Biden administration. Notable targets include:

- **Cemex Construction Materials:** The decision effectively imposed "card check" union recognition when employers were found to have committed unfair labor practices, bypassing traditional secret ballot elections.
- **Amazon Case:** This ruling prohibited mandatory "captive audience" meetings, curtailing a longstanding employer practice of presenting anti-union messages to employees.
- **Starbucks Case:** The Board scrutinized statements by employers regarding unionization's impact on direct employee relationships, a move viewed as restricting employer speech rights.

Continued on page 2

WHICH BIDEN-ERA PRO-UNION RULINGS WILL BE OVERRULED FIRST?

Continued from page 1

At a recent presentation, the Board's sole Republican member, Marvin Kaplan, expressed frustration with the legal landscape created by the Biden-era Board. Kaplan noted the near impossibility for employers to draft legally compliant handbooks under current standards and hinted at plans to reverse many precedents where he dissented.

The appointment of a new Acting General Counsel will accelerate these changes, as the General Counsel directs enforcement priorities, shaping the labor law landscape even before formal Board rulings.

A TEAMSTER-SUPPORTED LABOR SECRETARY?

President Trump has nominated Republican Representative Lori Chavez-DeRemer of Oregon as U.S. Secretary of Labor. Despite her recent electoral loss, Chavez-DeRemer's pro-union record, including her rare Republican support for the Pro Act, positions her a consensus nominee likely to gain bipartisan Senate approval.

A PRO-WORKER AGENDA AT THE DOL?

Chavez-DeRemer will oversee ongoing Department of Labor (DOL) initiatives, including:

- Updating federal contract worker minimum wage rules.
- Revising independent contractor classifications.
- Raising the salary threshold for overtime exemptions.
- Adjusting prevailing wage rules under government contracts.

While some rules face legal and practical challenges, this nomination reflects Trump's outreach to union voters, who supported him in significant numbers during the recent election. Notably, Teamsters President Sean O'Brien spoke at the Republican National Convention, signaling a shift in traditional labor alignments.

Chavez-DeRemer's leadership could also spark tension within the Republican Party between its business-friendly and populist wings. Meanwhile, state legislatures and attorneys general, particularly from Democratic-led states, may challenge Trump administration actions through litigation.

The incoming DOL may pivot from strict enforcement toward compliance assistance, helping employers to better navigate regulatory requirements.

IMMIGRATION ENFORCEMENT AND WORKPLACE IMPACTS UNDER THE NEW TRUMP ADMINISTRATION

During his first term, President Trump implemented significant changes to immigration policy, tightening border controls, reducing refugee admissions, and introducing additional requirements for the legal immigration process. Enforcement priorities shifted under his administration, with an emphasis on increasing Immigration and Customs Enforcement (ICE) actions and deportations. This included attempts to terminate programs such as Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) for certain countries.

However, the actual deportation figures during Trump's first term—approximately 325,000—were modest compared to the 1.2 million deportations

Continued on page 3

IMMIGRATION ENFORCEMENT AND WORKPLACE IMPACTS UNDER THE NEW TRUMP ADMINISTRATION

Continued from Page 2

under President Obama across two terms. President Biden, in contrast, deported only about 140,000 individuals during his presidency. Notably, neither President Obama nor President Biden attempted mass roundups of undocumented individuals.

Targeted Enforcement Priorities

The incoming Trump administration has reiterated its focus on deporting immigrants with criminal histories and those with existing court-ordered deportations. Additional targets could include:

- **TPS Recipients:** Approximately 860,000 individuals live in the U.S. under TPS, granted to those from countries deemed too dangerous to return to, such as Venezuela and Haiti. President Trump has pledged to end these protections for many, with the first set of expirations affecting 230,000 Salvadoran migrants in March 2025.
- **Humanitarian Parole Programs:** These programs, covering nearly one million individuals, could also face heightened scrutiny and reduced protections.

Practical Challenges to Mass Deportations

Despite the rhetoric, large-scale deportations face logistical and legal hurdles. The U.S. can detain only about 40,000 individuals in immigration facilities at any given time. Furthermore, mass deportations would require extensive cooperation from state and local law enforcement. Currently, 21 states participate in the Section 287(g) program, allowing local officials to assist ICE in detaining immigrants. However, this level of cooperation varies widely, complicating the feasibility of mass operations.

While some have suggested declaring a national emergency to mobilize local law enforcement, federal agencies, and even the military, such measures face substantial legal and practical limitations. As a result, more targeted and localized enforcement efforts are likely.

Localized Enforcement Efforts: Insights from Tom Homan

Tom Homan, the newly appointed "Immigration Czar" and former ICE Director, has outlined potential strategies for the administration. Homan suggests ICE may conduct door-to-door operations in specific areas, focusing on individuals with criminal records or prior deportation orders. These localized efforts, reminiscent of operations conducted during the first Trump administration, were notably carried out in regions like Los Angeles.

Homan has emphasized that ICE agents would not ignore individuals encountered during these operations who lack legal status, even if their only offense is being in the U.S. unlawfully. While such measures may serve as a deterrent, they are unlikely to result in the type of large-scale deportations suggested in some media reports. Instead, these actions may function more as "showy efforts" to demonstrate a tough stance on illegal immigration.

Worksite Raids and I-9 Audits

The new administration is also expected to reinstitute workplace raids and increase the frequency of I-9 audits, commonly known as "silent raids." These practices, largely abandoned under President Biden, were last reported in 2020. In workplace raids, ICE may secure a business premises, preventing individuals from leaving while executing warrants to arrest unauthorized workers. These actions disrupt operations and generate negative publicity.

Continued on Page 4

IMMIGRATION ENFORCEMENT AND WORKPLACE IMPACTS UNDER THE NEW TRUMP ADMINISTRATION

Continued from Page 3

Silent raids involve ICE issuing a notice of inspection or subpoena for I-9 Forms, which employers must provide within 72 hours. Errors in the forms may lead to fines ranging from \$281 to \$2,789 per violation, while knowingly employing unauthorized workers can result in fines up to \$27,894 per worker and, in some cases, criminal charges. Employers may also be required to terminate employees determined to be unauthorized.

Compliance and Risk Mitigation

Employers should proactively maintain compliance with immigration laws to avoid enforcement actions and disruptions. Developing robust compliance programs, including proper I-9 procedures and self-audits, can help businesses navigate these challenges while protecting their workforce.

Our firm is equipped to assist employers in developing and implementing compliance strategies to mitigate risks and maintain operational continuity. Proactive measures can ensure compliance with immigration laws while avoiding potential legal and financial repercussions.

FMLA LEAVE FOR ADULT SIBLINGS

In *Chapman v. Brentlinger Enterprises*, (6th Cir. Dec. 13, 2024), the U.S. Court of Appeals for the Sixth Circuit (which includes Tennessee, Kentucky, Ohio and Michigan) addressed whether an employee could take leave under the Family and Medical Leave Act (FMLA) to care for her adult sister, focusing on the concept of an in loco parentis relationship between adults.

The plaintiff, Celestia Chapman, sought FMLA leave to care for her terminally ill adult sister, Sharon, who was incapacitated due to non-Hodgkin lymphoma. Chapman provided her sister comprehensive care, including financial support, daily caregiving, and emotional assistance.

The employer denied the FMLA leave request, asserting that the FMLA does not cover leave to care for adult siblings. Subsequently, Chapman was terminated for absenteeism. Chapman filed a lawsuit alleging FMLA interference and retaliation, among other claims.

The court examined whether an in loco parentis relationship—where an individual assumes the role of a parent—could exist between adult siblings under the FMLA. The court found that an in loco parentis relationship can develop between adults, including siblings, when one adult intends to and assumes a parental role over another incapacitated adult.

The FMLA's definition of "son or daughter" includes individuals over age 18 who are incapable of self-care due to a disability, and for whom the employee stands in loco parentis. The court emphasized that the formation of such a relationship does not require the dependent to have been a minor at the time the relationship began. The court remanded the case to the district court to determine if there was such a relationship in this case.

This decision broadens the interpretation of familial relationships under the FMLA, acknowledging that in loco parentis relationships can form between adults. Employers should carefully assess FMLA leave requests involving care for adult family members, considering the possibility of in loco parentis relationships beyond traditional parent-child dynamics.

Our Employment Law Team



MARY DEE ALLEN
mallen@wimberlylawson.com

ANDREW J. HEBAR
ahebar@wimberlylawson.com



GERARD G. JABALEY
gjabaley@wimberlylawson.com



MARY C. MOFFATT
mmoffatt@wimberlylawson.com

JEROME D. PINN
jpinn@wimberlylawson.com



BRENDAN M. WALSH
bwalsh@wimberlylawson.com

Here to help with your employment law needs



Wimberly Lawson
Wright Daves & Jones, PLLC
Attorneys & Counselors at Law

KNOXVILLE
865-546-1000

COOKEVILLE
931-372-9123

NASHVILLE
615-727-1000