WIMBERLY LAWSON WRIGHT DAVES & JONES, PLLC

BRIEFLY

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Trump's Immigration Overhaul: Employers Will Need to Navigate Enforcement and Workforce Challenges

Less than a month into his second term, President Donald Trump unleashed a transformative immigration agenda, reshaping the legal and practical landscape for employers nationwide. Executive orders issued on January 20, 2025, a rollback of Temporary Protected Status (TPS) for Haitians, and a surge in ICE workplace raids signal a **relentless enforcement push** that's already rattling businesses. Led by Border Czar Tom Homan, this crackdown promises to shrink the pool of legal workers, disrupt operations, and heighten compliance risks. Here's what employers need to know about the current state of immigration law enforcement and how to prepare for what's ahead.

Trump's Immigration Blueprint: Executive Orders and Beyond

Trump's January 20 executive orders (EOs) lay the groundwork for a stringent border policy with direct workforce implications:

- **Border Clampdown:**
  - Illegal alien entry is suspended, ending "catch and release."
  - New arrivals after January 20 face immediate removal, enhanced screening, and can't claim asylum under the Immigration and Nationality Act without medical and criminal vetting.
  - The CBP One App, which streamlined lawful entry applications, is terminated.
- **Program Cuts:**
  - Categorical parole programs (e.g., for Cubans, Haitians, Nicaraguans, Venezuelans) are halted for new entrants post-January 20, shifting to case-by-case reviews.
  - The Refugee Admissions Program is suspended until Trump decides its fate—likely a sharp reduction, mirroring his first term's cuts from 110,000 to 15,000 annually.
- **Existing Laws Enforced:**
  - The administration is doubling down on current immigration statutes, targeting overstays and unauthorized workers with renewed vigor.

These EOs don't immediately revoke work authorizations for legally present immigrants, but they choke future inflows, setting the stage for a **leaner workforce over time**.

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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 affilliation with the firms of Wimberly, Lawson, Steckel, Schneider & Stine, P.C., in Atlanta GA; and M. Lee Daniels Jr., P.C., in Greenville SC.

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TPS Rollback: Haitians and Beyond

On **February 20, 2025**, DHS Secretary Kristi Noem dealt a blow to an estimated 520,000 Haitians, rolling back an 18-month TPS extension (set to expire February 3, 2026) granted by Biden in June 2024. Now, Haitian TPS ends **August 3, 2025**—six months early—reflecting Trump's view, per Noem, that "temporary" status shouldn't linger. Haiti's designation, in place since the 2010 earthquake, faces a **June 2025 review**, with Trump's campaign rhetoric (e.g., October 2024 promise to "revoke it" for Springfield, Ohio, Haitians) hinting at termination.

- **Broader Implications:**
  - This follows a similar cut to Venezuelan TPS earlier in February, affecting a chunk of the 863,775 TPS holders from 17 countries (as of March 2024).
  - El Salvador (March 9, 2026) and other nations like Honduras and Nepal (expiring 2025 unless extended) are likely next, given Trump's past moves to end TPS for six countries in 2018, later stalled by courts.

ICE Raids: Homan's Hardline Campaign

Tom Homan, Trump's "border czar," is executing what he calls "the biggest deportation operation" in U.S. history, with workplace raids roaring back since January:

- **Hyundai Raid:**
  - On **February 18, 2025**, ICE stormed a Hyundai electric vehicle plant in Rome, Georgia.
  - Reportedly, hundreds fled—many allegedly undocumented Venezuelans hired via staffing agencies—after a worker claimed "80-90%" of his team lacked papers.
  - ICE hasn't confirmed detentions, but the raid spotlights employer vulnerability.
- **Broader Sweep:**
  - Early February raids in Aurora, Colorado (30 Venezuelan gang members detained), and Chicago (over 100 nabbed by mid-month) show ICE targeting labor-heavy sectors—**manufacturing, hospitality, construction**—often with FBI and DEA backup in pre-dawn operations.
- **Sanctuary Cities:**
  - Homan's doubled ICE manpower in Los Angeles, New York, and Chicago, defying local "sanctuary" policies.
  - His blunt warning—"We're coming, with or without their help"—underscores the push, though leaks (blamed on the FBI) have hampered efforts, prompting a DOJ probe.

Homan pledges to pursue employers who "knowingly" hire undocumented workers, but history (e.g., **72 manager arrests in 2018**) suggests workers face the brunt. The Hyundai case, if tied to intentional violations, could shift this dynamic.

Workforce Impact: Who's Affected?

Over **3.3 million work-authorized immigrants** currently aren't directly hit by the EOs, but their statuses are fragile:

- **TPS:** Beyond Haiti's 520,000, El Salvador's 250,000+ face a 2026 cliff unless Trump extends—a long shot. Expired TPS for Afghanistan and Cameroon signals more cuts.
- **DACA:** An estimated one (1) million "Dreamers" hold work permits, but Trump's past bid to end DACA (blocked by courts) and call for Congressional action leave them exposed.
- **Parole and DED:** One million parolees and DED recipients (e.g., Liberia until June 30, 2026) shift to individual reviews. Hong Kong's DED lapsed February 5, 2025.
- **Guestworkers:** H-2A/H-2B visas (500,000 seasonal workers) and other visa applicants face tighter scrutiny, reviving Trump's first-term playbook.
- **Biden's Labor Shield:** A 2023 deferred action for labor violation witnesses (four-year permits) may vanish, lacking statutory roots.

What Employers Should Expect

- **Immediate Disruptions:**
  - **Raids:** ICE's focus risks sudden workforce losses, especially in labor-short industries. Hyundai's chaos previews potential chaos elsewhere.
  - **TPS Expirations:** Haitian workers drop off August 2025; others follow in 2025-2026, shrinking legal hires.
  - **Visa Squeeze:** Fewer guestworkers and visa approvals loom as processing hardens.

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- **Compliance Risks:**
  - **I-9 Penalties:** Fines ($252-$2,507 per violation) and jail time await employers who retain unauthorized workers post-expiration. I-9 audits are back with a vengeance.
  - **Legal Pushback:** Haitian TPS cuts face lawsuits (like Venezuela's this week), but enforcement rolls on pending rulings.
- **Long-Term Shifts:**
  - **Labor Pool:** Suspended refugee and parole programs, plus TPS terminations, mean fewer legal immigrants by 2026.
  - **Policy Volatility:** Homan's raids and TPS decisions could escalate if courts do not intervene.

Planning for the Storm

- **Self-Audit Now:**
  - Check I-9s for TPS (e.g., Haiti by August 2025), DED, and parole expirations. y.
  - Scrutinize staffing agencies—Hyundai's raid shows third-party risks. Are you using staffing agencies or contractors to get your work done? They pose a potential legal risk if they are not verifying the employment eligibility of their workers.
- **Bolster Compliance:**
  - Train HR on real-time verification and record retention. ICE audits punish sloppy documentation.
  - Prepare for worksite raids with counsel—know your rights and best protocols.
- **Mitigate Shortages:**
  - Shift hiring to U.S. citizens and green card holders. Upskill existing staff to bridge gaps.
  - Explore automation where labor dries up, especially in raided sectors.
- **Stay Informed:**
  - Track June 2025 TPS decisions-Haiti's fate may preview others. Monitor raid patterns and court challenges.
- **Communicate Wisely:**
  - Avoid legal status guarantees to employees.
  - Stick to factual updates and "Know Your Rights" resources to dodge liability.

The Road Ahead

Trump's immigration overhaul—EOs, TPS rollbacks, and Homan's raids—spares current work-authorized employees for now, but guts future legal inflows and ramps up enforcement. Employers face a **double whammy:** workforce disruptions from raids and expirations, plus legal risks from non-compliance. Haitian TPS's August 2025 deadline is a bellwether; more cuts could follow by mid-2025. Legal battles and local resistance may slow the tide, but Homan's momentum suggests a relentless 2025. **Prepare now.**

Navigating the DEI and Affirmative Action Landscape: Where Employers Stand After Trump's Orders

The Trump administration's aggressive push to dismantle Diversity, Equity, and Inclusion (DEI) initiatives and affirmative action requirements has thrown employers—especially federal contractors—into a state of uncertainty. Executive Orders (EOs) 14151 and 14173, issued on January 20 and 21, 2025, aim to eliminate federal DEI programs and revoke long-standing mandates like EO 11246, which required federal contractors to maintain affirmative action programs (AAPs).

However, a federal court ruling on February 21, 2025, by Judge Adam Abelson in the U.S. District Court for the District of Maryland has temporarily halted key enforcement mechanisms of these orders, offering employers a reprieve—but not clarity. Here's where things stand for federal contractors and private employers, and what you need to do next.

The Trump Administration's Anti-DEI Agenda

EO 14151 ("Ending Radical and Wasteful Government DEI Programs and Preferencing") and EO 14173 ("Ending Illegal Discrimination and Restoring Merit-Based Opportunity") signal a seismic shift:

- **DEI Crackdown:** EO 14151 directs federal agencies to terminate "equity-related" grants and contracts within 60 days (by March 21, 2025), targeting DEI offices, training, and funding. EO 14173 extends this to the private sector, encouraging investigations of "egregious" DEI

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practitioners and requiring contractors and grantees to certify they don't operate DEI programs violating anti-discrimination laws.

- **Affirmative Action Revoked:** EO 14173 rescinds EO 11246, ending the Office of Federal Contract Compliance Programs' (OFCCP) authority to enforce AAPs for federal contractors based on race, color, sex, religion, or national origin. Contractors have a 90-day grace period (until April 20, 2025) to transition, after which "workforce balancing" based on protected traits is prohibited.
- **False Claims Act (FCA) Risks:** EO 14173 ties compliance with anti-discrimination laws to payment materiality, raising the specter of FCA lawsuits—potentially with treble damages—if contractors falsely certify DEI compliance.

The Equal Employment Opportunity Commission (EEOC), under Acting Chair Andrea Lucas, has echoed this shift, pledging to target "unlawful" DEI practices and dropping transgender discrimination cases to align with a binary sex policy. Reverse discrimination lawsuits—like Duvall v. Starbucks (2023), awarding $25.6 million to a white manager—are already on the rise, fueled by Title VII's equal protection for all groups and the Supreme Court's Students for Fair Admissions v. Harvard (2023) ruling against race-based preferences in education.

The Maryland Injunction: A Temporary Shield

On February 3, 2025, a coalition including the National Association of Diversity Officers in Higher Education (NADOHE) and the City of Baltimore filed suit in Maryland federal court, challenging EOs 14151 and 14173 as unconstitutional. Judge Abelson's February 21 ruling granted a nationwide preliminary injunction, pausing key provisions:

- **Enjoined Provisions:**
  - **EO 14151 § 2(b)(i):** Agencies can't terminate "equity-related" grants or contracts, preserving funding for DEI-related efforts.
  - **EO 14173 § 3(b)(iv):** Contractors and grantees can't be forced to certify their DEI programs comply with anti-discrimination laws, sidestepping FCA liability for now.
  - **EO 14173 § 4(b)(iii):** Enforcement actions (e.g., investigations, FCA suits) targeting DEI programs are blocked, though the Attorney General can still plan investigations.
- **Unenjoined Actions:** EO 14173's revocation of EO 11246 remains in effect, meaning AAP mandates for minorities and women are at least temporarily gone.

The court found these provisions unconstitutionally vague (Fifth Amendment) and viewpoint-discriminatory (First Amendment), chilling protected speech and risking arbitrary enforcement. For example, terms like "equity-related" and "illegal DEI" lack definitions, leaving employers guessing about compliance.

Where DEI Stands Today

- **Federal Contractors:**
  - **Pre-Injunction Pressure:** Before February 21, contractors faced immediate risks—e.g., the Department of Defense ordered contract amendments to remove DEI requirements (Jan. 28, 2025), and the CDC demanded grant recipients terminate DEI programs (Jan. 29, 2025). The OFCCP ceased AAP audits on January 24, 2025.
  - **Post-Injunction Relief:** The injunction halts terminations and certifications, allowing contractors to maintain DEI programs without penalty. Chatter from HR pros and labor attorneys confirms many are "staying the course," citing the ruling as a "shield" (e.g., "No OFCCP hammer coming down yet").
  - **Lingering Uncertainty:** The revocation of EO 11246 isn't enjoined, so AAPs aren't federally required at this time. However, the injunction protects related DEI efforts, creating a limbo where contractors can choose to continue DEI without enforcement risk—pending appeal.

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- **Non-Contractors (Private Employers):**
  - **EEOC Shift:** Lucas's EEOC is poised to challenge race- or gender-based DEI as discriminatory under Title VII, increasing reverse discrimination risks. Cases signal courts' growing receptivity to white/male plaintiffs in reverse discrimination cases.
  - **Unaffected by Injunction:** The Maryland ruling doesn't directly shield private employers, as it targets federal enforcement. EO 14173's private-sector encouragement (e.g., investigations via § 4) is paused, but EEOC and plaintiff-driven litigation remain threats.
  - **State Law Variability:** State anti-discrimination laws (e.g., California's FEHA) may still support DEI, complicating compliance for multi-state employers.

Where Affirmative Action Stands for Contractors

- **Mandate Gone, Practice Persists:** EO 11246's revocation ends AAP obligations as of April 20, 2025, per EO 14173's grace period. However, the injunction prevents enforcement against contractors maintaining AAPs as part of DEI.
- **Statutory Exceptions:** The OFCCP retains authority under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) and Section 503 of the Rehabilitation Act, mandating AAPs for veterans and individuals with disabilities—these are unaffected by EO 14173.
- **Practical Continuity:** For now, many contractors will likely keep AAPs for women and minorities, bolstered by the injunction's protection against termination or penalties. This reflects operational inertia and risk mitigation against future Title VII claims, if disparities emerge.

Legal Risks and Compliance Strategies

- **For All Employers:**
  - **Reverse Discrimination:** Programs favoring specific groups (e.g., quotas, set-asides) face heightened Title VII scrutiny. Example: A company reserving leadership spots for women risks male plaintiffs winning suits.
  - **Training Pitfalls:** DEI sessions singling out "privilege" could be deemed hostile environments.
  - **Retaliation:** Employees opposing DEI may claim retaliation if disciplined, per Title VII's anti-retaliation clause.
  - **Strategy:** Shift to inclusive, merit-based policies—e.g., broaden recruiting without targets, reframe training as universal fairness.
- **For Federal Contractors:**
  - **FCA Risk Paused:** The injunction blocks FCA liability tied to certifications, but contractors should document compliance efforts if the ruling is overturned.
  - **Contract Loss:** Post-April 20, 2025, non-compliant AAPs could theoretically jeopardize contracts, though the injunction delays this.
  - **Strategy:** Maintain AAPs voluntarily, focusing on VEVRAA/Section 503 compliance, and monitor appeal outcomes.

What's Next?

The DOJ is likely to appeal the Maryland federal court decision to the Fourth Circuit by April 22, 2025, given the orders' political weight. A stay or reversal could reinstate enforcement by mid-2025, potentially reaching the Supreme Court by 2026. The Court's conservative bent may favor Trump's "merit-based" vision, though First Amendment concerns could limit overreach. Meanwhile, EEOC guidance under Lucas—expected soon—will clarify DEI boundaries for private employers.

Takeaways for Employers

- **Federal Contractors:** Consider keeping DEI and AAPs intact for now—the injunction offers protection, but be ready to pivot if appealed. Focus on veterans/disability AAPs and Title VII-compliant diversity outreach and hiring.
- **Private Employers:** Brace for EEOC scrutiny and lawsuits. Avoid race/gender preferences, opting for neutral inclusion efforts (e.g., "all persons" access).

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- **All Employers:** Review your EEO and DEI policies with counsel to balance fairness, compliance, and litigation risk. Emphasize anti-discrimination processes over DEI branding.

The Maryland injunction buys time, but the DEI and AAP landscape remains fluid. Contact Wimberly Lawson to audit your programs and stay ahead of this evolving legal storm.

Federal Judge Reinstates Fired NLRB Member: What Employers Need to Know

In our last newsletter (article entitled "Trump's Agency Purge"), we flagged the potential for legal challenges stemming from President Donald Trump's efforts to assert greater control over independent federal agencies, including the National Labor Relations Board (NLRB). That possibility has now materialized.

On March 6, 2025, U.S. District Judge Beryl Howell ruled that President Trump's January 2025 firing of NLRB member Gwynne Wilcox was illegal under the National Labor Relations Act (NLRA) of 1935, ordering her reinstatement. This decision has immediate and long-term implications for employers, particularly those navigating labor relations, union activities, and workplace policies.

The Ruling: A Win for NLRB Independence

Gwynne Wilcox, the first Black woman to serve on the NLRB and its former chair, sued President Trump after her unexpected dismissal in late January 2025, just days into his second term. She argued that her firing, without cause or due process, violated the NLRA. The NLRA statute limits presidential removal of NLRB members to cases of "neglect of duty or malfeasance in office". Judge Howell agreed, declaring the termination "a blatant violation of the law" and reinstating Wilcox to the 5-member board.

In her 36-page opinion, Judge Howell sharply criticized President Trump's expansive view of presidential power, stating, "An American president is not a king," and affirming Congress's authority to shield independent agencies from political interference.

This ruling restores the NLRB's quorum (now 3 members), allowing it to resume issuing decisions on labor disputes, unfair labor practices, and union elections, functions stalled since Wilcox's removal left the Board inoperable.

Immediate Impact for Employers

For employers, the reinstatement of Wilcox signals a return to business as usual (at least for now) at the NLRB. Here's what may happen (as long as Judge Howell's decision stands):

- **Resumption of Case Backlog:** The NLRB can now address pending cases, including those involving union organizing, collective bargaining disputes, and allegations of unfair labor practices (e.g., retaliation, wage violations). Employers with active NLRB matters should prepare for decisions to move forward.
- **Resumption of Pro-Labor Tilt:** Wilcox, a Biden appointee with a term until August 2028, has a record of supporting worker-friendly policies. Her presence ensures the Board retains a balanced or slightly pro-labor perspective, potentially influencing rulings on issues like employee misclassification, joint employer status, and workplace rules (e.g., social media policies).
- **Stability Amid Uncertainty:** The ruling counters Trump's attempt to reshape the NLRB with appointees aligned with his administration's goals, which included rolling back labor protections. Employers can anticipate continuity in current NLRB precedents, at least until further legal developments unfold.

Broader Context: Presidential Power in the Spotlight

This decision is part of a larger clash over President Trump's efforts to expand presidential authority over

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independent agencies, a push that sparked the "No Kings Day" protests in February 2025 and lawsuits from other fired officials (e.g., at the Merit Systems Protection Board). An appeal will be made to the D.C. Circuit Court of Appeals, and legal experts predict it could reach the U.S. Supreme Court. At stake is the 1935 Humphrey's Executor v. United States decision, which upheld Congress's power to limit presidential removal of independent agency officials. A Supreme Court with a 6-3 conservative majority (with 3 justices appointed by Trump) might revisit this 90-year-old ruling.

What Could Happen Next?

If the Supreme Court takes up the case and sides with Trump, it could:

- **Weaken NLRB Independence:** A ruling stripping "for-cause" protections could allow presidents to fire NLRB members at will, aligning the board with each administration's political agenda. This might lead to more employer-friendly policies under Trump, but could swing the other way under future presidents.
- **Disrupt Labor Law Consistency:** Frequent board turnover could destabilize NLRB rulings, creating uncertainty for employers planning labor strategies or defending against union campaigns.
- **Affect Other Agencies:** A broader precedent could impact agencies like the EEOC, influencing workplace discrimination rules.

Conversely, if the Supreme Court upholds Howell's ruling, the NLRB's independence—and its current trajectory—would be preserved, offering employers more predictable labor oversight through 2028.

Action Steps for Employers

- **Monitor NLRB Activity:** With Wilcox back, expect a flurry of decisions. You may want to review your pending cases or compliance risks (e.g., union avoidance, employee handbook policies) with legal counsel.
- **Prepare for Volatility:** If this heads to the Supreme Court, brace for potential shifts in labor law. Scenario-plan for both outcomes—stable NLRB vs. a politicized one.
- **Stay Informed:** We'll keep you updated as this case progresses, especially if it escalates to the high court.

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