

Home > All News > Top Story > What's ahead in employment law?



President-elect Donald Trump walks with Elon Musk before the launch of a SpaceX rocket Nov. 19 in Boca Chica, Texas. Musk, the world's wealthiest man, and Vivek Ramaswamy, a mega-millionaire venture capitalist, are leading an outside advisory panel known as the "Department of Government Efficiency." (Brandon Bell/Pool via AP)

What's ahead in employment law?

Laura Brown // November 26, 2024 // 4 Minute Read

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Labor and employment law could undergo major changes over the next four years under the second presidential administration of Donald Trump — especially in DEI initiatives — according to Matthew Bodie, Robins Kaplan professor at the University of Minnesota Law School, and Joshua Newville, employment litigation group leader at Halunen Law.

Both Bodie and Newville remarked that the changes ahead will be reminiscent of what occurred eight years ago.

“The quick and easy answer is that it will be more of the same, more of what we saw in 2017 to 2021,” said Bodie.

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“We are getting the continuation of a prior administration to some degree,” said Newville.

“I am fascinated to see how aggressively employer-friendly he is prepared to be, compared to the populist messaging that he has had,” Newville said of Trump.

Bodie and Newville think that a lot of what happened during the Biden administration will be rolled back.



“The labor board will go back to having a Republican majority, so a lot of the changes that happened over the last four years in labor law, which were kind of notable in that a lot of them were departures from the usual sort of oscillation between Democrats and Republicans on the labor board, particularly the *Cemex* decision... there’s a real question of what courts will do with that standard, but with the Trump administration coming in, they will probably get rid of that,” Bodie explains. (The National Labor Relations Board’s *Cemex* decision introduced a new framework in determining when employers must bargain with unions with a representation election.)

But both Bodie and Newville see the potential for even greater changes than the usual back and forth between political parties. One unknown factor is the newly designed Department of Government Efficiency (DOGE). The leaders of the department, Elon Musk and Vivek Ramaswamy, indicate that they are going to cut back on the federal labor force in a significant way.

“With a Republican Congress, they can really take a huge chunk out of these places,” Bodie said. “The financing of the enforcement that these agencies are supposed to carry out, that could be, in some ways, the most dramatic change.”

Newville also asserts that, rather than affecting things through mere executive action, there might be “actual laws that are specifically meant to preempt the state protections that you see in the employment context across the board.”

One of the greatest impacts may be to DEI inclusion and anti-discrimination efforts that were championed especially in the beginning of the decade. Newville surmises that this is an area where Trump may have a great impact.

“Trump 2.0 might be even more aggressive,” added Newville. “At this point, we are going to see an effort to target diversity, equity, and inclusion initiatives at various companies. It is almost that he signaled the EEOC will now, which I think is probable a first in history, be treating DEI initiatives as if they are discriminatory, which, I’m curious to see how that plays out.”

“You might see more suits brought by the agency ... where there are allegations of ‘reverse discrimination,’ where a white or male plaintiff is charging discrimination on the basis of race or sex. You might see a lot more of those brought to the fore,” Bodie asserted. “The EEOC could choose a couple high-profile companies with diversity, equity, and inclusion programs and say, ‘You know, if those have any teeth, then they violate Title VII and we are going to go after them.’”

“We have seen a very clear, almost declaration, on anti-discrimination policies,” Newville said, specifically speaking about the transgender community. “Given the temperature of this discussion more broadly, and the undercurrent of rage that really accompanied Trump on the campaign trail with regard to this topic, I think that he and his administration is going to be far more aggressive this time around on targeting those sorts of anti-discrimination efforts compared to before, even.”

It is unclear what sort of impact these changes at the federal level will have in Minnesota, where the tone has been different.

“Clearly, the Minnesota Department of Human Rights, I think, will take a different view — I don’t want to speak for the department — than the EEOC is likely to take regarding many of these policies,” Newville said. “One question is to what degree does federal law preempt state law on these issues,” Newville said.

DEI is not the only area that will be affected. Newville — pointing to Trump’s first administration — noted that there were few areas that were not impacted, from wages to safety. As there will be a variety of changes affecting labor and employment law, Newville predicts a surge in labor and employment litigation. “I don’t think there will be an area that lacks an abundance of litigation,” Newville avowed. “There is going to be a lot of dispute and change over the next few years.”

One area in particular that Newville anticipates growing litigation is with respect to federal preemption. “I think you’ll see an uptick in federal preemption of state law,” Newville stated. “Where there’s conflict between California and Minnesota and Massachusetts ... and the federal government, I think you’ll see an uptick there.”

“There’s going to be litigation on down the line,” Newville avowed.

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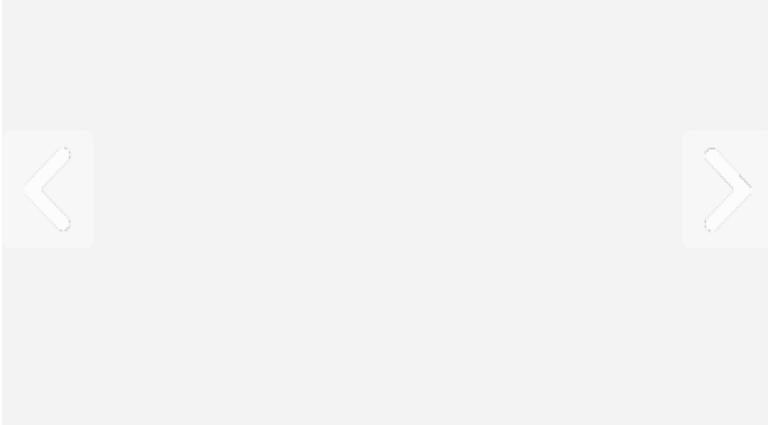
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