

Podcast: Overtime Rules, Minimum Salaries, and DEI: Employment Changes Under a New Administration

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Employment law is constantly evolving, and 2025 will be no exception. In this episode, we'll cover hot topics at the federal level and what a new administration could mean for laws surrounding overtime work and diversity, equity, and inclusion (DEI) initiatives.

Chase Stoecker: Welcome to the More with McGlinchey podcast. Today, we'll focus on hot topics in HR at the federal level. I'm Chase Stoecker, a member of the Labor and Employment Practice Group in McGlinchey's Tampa office. In addition to my labor and employment work, I have a broad commercial litigation practice and counsel and represent cannabis and cannabis ancillary companies.

I'm joined today by my colleague Courtney Joiner, who's located in McGlinchey's Baton Rouge, Louisiana office. Courtney is a fellow member of our Labor and Employment Practice group. His practice includes education, law, and complex civil litigation.

Now, Courtney, we're seeing a shift to a new administration, and with these shifts, we always see changes in rulemaking. We see different priorities being put forth by these new administrations. Two of these areas that we expect to see some development in are the minimum salary threshold requirements in laws under the Fair Labor Standard Act (FLSA), as well as the new administration's approach to DEI programs and related affirmative action programs where we expect to see a change from the way that Biden handled going to the Trump administration. I'd like to first talk about the minimum salary thresholds on the Fair Labor Standard Act, because we recently saw some activity in that space. Can you give us a little bit of background color as to what was going to be implemented, and what has been stopped from being implemented?

Courtney Joiner: Effective July 2024, the Department of Labor (DOL) increased the salary threshold, which made millions of previously exempt employees into non-exempt employees, eligible for overtime. The new rule increased the FLSA salary threshold to \$43,888 annually, up from \$35,568. There was supposed to be a subsequent increase in January, so within a short period of time, there were going to be two increases in that threshold.

Chase Stoecker: With that being said, did those increases go into effect on January 1st, with the new administration coming into office on January 20th?

Courtney Joiner: The increase scheduled to go into effect on January 1st, 2025, did not go into effect, but not because of the administration. On November 15th, 2024, a federal district court judge in the Eastern District of Texas invalidated and issued a nationwide injunction on the DOL rule, which would've increased the salary threshold in January. Interestingly enough, the court also invalidated the increase that went into effect on July 1st, 2024.

I'm not optimistic that [appeals on the salary threshold injunction] will prevail. One reason is that the judge who issued the nationwide injunction in 2020 was the same judge who issued the nationwide injunction in 2016... And I think more important than that is the fact that the appeal won't be supported by the new administration coming into the White House.

Chase Stoecker: Has the Department of Labor decided to appeal this ruling?

Courtney Joiner: Yes. An appeal has been filed with the Fifth Circuit Court of Appeal.

Chase Stoecker: Ultimately, do you think they'll prevail?

Courtney Joiner: I'm not optimistic that they will prevail. One reason is that the judge who issued the nationwide injunction in 2020 was the same judge who issued the nationwide injunction in 2016, which enjoined the Obama increases that were set to take effect in 2016. And his decision was affirmed on appeal. It appears his decision is legally sound, an appeal won't be successful. And I think more important than that is the fact that the appeal won't be supported by the new administration coming into the White House. So, I don't think it will be successful, and it won't be supported by the new administration.

Chase Stoecker: So, employers who are concerned about these wage increases that were supposed to go up on January 1st, 2025, should they still harbor those concerns, or what approach should they be taking at this time?

[For some industries or employers,] once the salary is increased, you can't reduce the salary. So that begs the question, what happens? What do employers do in the circumstance where they increased an employee's salary to meet the new threshold that was set forth in July, and now it's been invalidated?

Courtney Joiner: I think the best approach is to stand pat. We know that the salary increase that was set to take place will not go into effect. So, from the standpoint of the next four or five months, I think employers should stand pat where they are. I think the interesting point is this: there are some industries or employers, so let's say, for example, when the threshold increased in July, I think naturally, some employers increased the salary for their employees because there was only an \$8,000 increase. The question for me is, in those industries, for example, I represent a lot of school systems. Once the salary is increased, you can't reduce the salary. So that

begs the question, what happens and what do employers do in the circumstance where they increased an employee's salary to meet the new threshold that was set forth in July, and now it's been invalidated? I think that's a bigger issue for some employers, and how do you navigate through those things? But as far as increasing again, I think there's little to no chance that the salary threshold will increase.

Chase Stoecker: So, keeping in line with the new administration's priorities, I'd like to switch gears and talk about what's been a very hot-button issue for various reasons the past few months: DEI programs both in the private and public sectors. Those have been making headlines. Various groups have brought legal action against companies that implemented these policies. I know that certain government agencies have policies put in place under the umbrella of DEI. When Trump was campaigning, he was very vocal that he was interested in shifting away from these policies. With this new administration coming on board, what do you anticipate changes to the public and private sectors?

The affirmative action case that was issued by the Supreme Court made no mention of DEI. It didn't invalidate it. However, its rationale did open up the door to attacks from various private policy think tanks and organizations.

Courtney Joiner: I think right now, what you have in the wake of the affirmative action cases, was a door opened, and it was a little crack. Now, the affirmative action case that was issued by the Supreme Court made no mention of DEI. It didn't invalidate it. But, its rationale did open up the door to attacks from various private policy think tanks and organizations. I think right now, what you're going to see is, that door has been kicked wide open. So, from a national standpoint, I feel an all-out onslaught on DEI programs under the Trump administration. And more important than that, because you have Republican control of the House and the Senate, without any amount of uncertainty, DEI programs are going to be under a vicious attack in the upcoming months.

Chase Stoecker: So you mentioned that you represent a lot of school systems. In your practice, have your clients rolled out DEI programs over the past couple of years?

Courtney Joiner: No, they haven't. Not in my particular sector. They haven't.

Chase Stoecker: Okay. And is there any advice that you would provide to those companies that invested in their DEI programs and built out this framework, in the face of mounting lawsuits and an administration that's not going to be very friendly to such programs?

Courtney Joiner: I don't think anybody would say that they are opposed to a more diverse and inclusive workforce, even the opponents of DEI programs. But the reality is this: it's under attack. And I think the worst thing an employer can do is stand pat. You have to adjust, and that's what they have to. And so you're seeing that now. There was a college in Louisiana that had an Office of Diversity, Equity, and Inclusion, and the name was changed. It can be as simple as that. And so I think for employers, regardless of where you stand, you're either opposed to DEI initiatives or whatever, what that means in your perspective sector, or you're against it. I think we all can agree that having an inclusive workforce from a diversity standpoint and an equity standpoint is important. And for those employers that want to continue that mission, they have to adjust. There are a

multitude of ways that they can happen. It can be as simple as changing the name of your DEI program, or shifting the focus.

There was a college in Louisiana that had an Office of Diversity, Equity, and Inclusion, and the name was changed. It can be as simple as that.

Chase Stoecker: Your recommendation at this point for those companies who have built out a DEI program the past couple of years is, re-evaluate but don't eliminate, correct?

Courtney Joiner: Absolutely. Absolutely. Chase, you're primarily in Florida, and this has been a hot-button topic, especially in the early parts of the presidential election with the candidate from Florida. Were there any attacks at the state level on DEI programs, and how was that met from a public standpoint and from a legal standpoint?

Chase Stoecker: Our governor, Ron DeSantis, passed legislation. There were two components of it. It was colloquially called the "anti-woke law," but there were two components. One eliminated the availability of DEI training programs and DEI type of instruction in the public sector, and the other one eliminated it at the private level. It had a chilling effect, especially for private companies, because the law was written in a way that was fairly vague. As a result, companies weren't sure if the training they required their employees to do would run afoul of that law. And I think that was the point of the law, right? The point of the law was, be vague so that companies don't move forward with any training whatsoever. This presented a significant problem for companies operating nationwide, in which some states had required these types of training, or it was encouraged.

Ultimately, [Florida's "anti-woke laws"] overstepped. The courts ruled that there was a First Amendment right that companies have to free speech, and they can have their employees trained on whatever policies and procedures the company wants them to.

So, in some states, they had to have or would have this training, and in Florida, they couldn't have this training for their employees. It created, also, in addition to this chilling effect, some confusion. Ultimately, though, these laws overstepped. The courts ruled that there was a First Amendment right that companies have to free speech, and they can have their employees trained on whatever policies and procedures the company wants them to. And that was an Eleventh Circuit case. It was not appealed to the Supreme Court by the DeSantis administration. So ultimately, the vagueness in that law did not set a blueprint for other states, because other states saw that law and said, okay, it likely would be challenged fairly quickly and overturned. So we had about a year to year and a half of uncertainty and confusion, and now it's back to what other states are experiencing.

That being said, the government can learn from this. And if a government is interested in deterring DEI programs, training, courses, or policies, it can look to Florida law. And some other states also have been more successful than Florida. The federal government could craft a law that would likely pass muster in some capacity. These little states or incubators, the Trump administration may look at these states and say, this is what works and doesn't. And you know, whether it's through executive order or, like you said, the Republicans control both houses. Most likely, legislation on this topic would be passed by his administration if he felt the need to move it forward. So, long story short, Florida: it worked for a brief period of time but it was an overreach. But that

doesn't mean that it was an impossible feat. It could be done, and you can use Florida as an example. Okay, you went too far, but this is what we can do.

What is Trump's response to his promises he made on the campaign trail regarding diversity? Is it going to be an executive order, or is it going to be legislation, or is it just going to be that he's going to tweet about it? Ultimately, time will tell.

Courtney Joiner: Right. And I think that's what I found when you see them, from the Republican side who tends to support these efforts to ban DEI, they are strategic. They learn from defeat, and they come back and institute programs that are within the confines of, or do not exceed, the original program that was invalidated. Also, from a federal level, one thing that we can expect to see under the Trump administration is this. In 2020, he issued an executive order that basically banned diversity training at the federal level. I'm almost certain that a very similar executive order will be re-implemented in the opening days of this administration.

Chase Stoecker: We're trying to read the tea leaves here based on what was campaigned upon over the past couple of years. Of course, what we anticipate may not come to fruition. And that's always what happens when you've got a changing of the guard. And when you've got these administrations, which are so policy-driven, like the Department of Labor and the offices responsible for rolling out diversity initiatives, they will be driven by the administration behind it. So it's interesting, and this will be something we revisit in the next few months, and we'll have some answers, Courtney. What is Trump's response to his promises he made on the campaign trail regarding diversity? What's he going to do? Is it going to be an executive order, or is it going to be legislation, or is it just going to be he's going to tweet about it? So, ultimately, time will tell. I'm interested to see where this ends up. If you were to advise your clients right now, I know you said don't stand pat, evolve.

There's no question that DEI is a hot political topic that's divisive. It's a talking point for the president and it's a key issue that will be tackled. What employers have to do is realize that it's coming, and you have to adapt, adapt, adapt. That is a key takeaway: anticipate and adapt.

Courtney Joiner: We are in uncharted waters, but this is a president who's in the second term, although he served his initial term and then lost and has been reelected. So that gives us a blueprint to follow. There's no question that DEI is a hot political topic that's divisive, and it's a talking point for the president, and a key issue that will be tackled. What employers have to do is realize that it's coming and you have to adapt, adapt, adapt. That is a key takeaway: anticipate and adapt.

Chase Stoecker: Courtney, this has been a very interesting discussion. We anticipate these topics will heat up even more with the changes in federal agencies expected after the inauguration.

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