



Changes Ahead

Watch out for new administration's evolving rules

by: Greg Goldberg, BTA General Counsel

The arrival of a new year and a new presidential administration means big changes are on the horizon for business owners. Over the last several months, Legal Perspective has covered important developments in U.S. law, including the Federal Trade Commission's (FTC's) ban on noncompete agreements, the Department of Labor's (DOL's) new rules regarding overtime pay and the Treasury Department's new reporting requirements under the Corporate Transparency Act (CTA). All three rules have since been suspended nationwide.

Underpinning all three policy reversals is *Loper Bright Enterprises v. Raimondi*, the June 2024 U.S. Supreme Court decision that did away with the Chevron Doctrine — the 40-year-old policy of courts deferring to federal agencies' reasonable interpretations of federal laws. *Loper Bright* ended so-called Chevron deference, taking rulemaking authority away from executive-branch agencies like the FTC and the DOL and vesting it in the federal courts. This month's column takes stock of where things stand and highlights legal and regulatory shifts likely to surface post-*Loper Bright* under President Donald Trump's second term.

On Aug. 20, a federal judge in Texas issued a nationwide injunction preventing the FTC's ban on noncompete agreements from going into effect. It is highly improbable the incoming administration will appeal the injunction, so noncompete agreements that meet legal requirements regarding geographic scope and duration are overwhelmingly likely to remain valid and enforceable. State laws prohibiting noncompete agreements, such as those in California, Minnesota, Oklahoma and North Dakota, will remain effective.

On Nov. 15, another federal judge in Texas halted implementation of the DOL's new overtime rules. As a result, the minimum salary thresholds for certain "white-collar" workers who were previously exempt from earning overtime pay will not increase in 2025 as planned. Employers who have already raised salaries in anticipation of the new rules may find themselves in a predicament. Even though those employers could lawfully reduce salaries back to previous levels, doing so might devastate employee morale. Employers who planned to increase salaries beginning in 2025 may be able to reverse course depending on whether they announced their plans in advance.

Most recently, the Fifth Circuit Court of Appeals reversed the decision of a third federal judge in Texas seeking to block enforcement of the new provisions under the CTA requiring



reporting companies to provide beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN). That means beneficial ownership information is still required to be reported nationwide. It remains unclear whether the Supreme Court will take up the case and, if so, how the conservative-leaning justices will rule.

The incoming administration is likely to reverse a number of other rules impacting the employment landscape. To begin with, it is expected that the Trump DOL will make it easier for businesses to classify workers as independent contractors rather than employees. Employers can realize significant cost savings by hiring independent contractors because they are not subject to wage and hour laws, do not receive paid time off and are generally not eligible for employee benefits. Additionally, the Trump DOL is expected to revisit rules regarding environmental, social and governance (ESG) investments for retirement plans; to recommend executive orders limiting or eliminating diversity, equity and inclusion (DEI) initiatives; and to roll back newly enacted worker protections, such as the Pregnant Workers' Fairness Act.

As the federal government shifts toward a more hands-off, deregulatory stance, individual states are likely to attempt to implement more worker-friendly policies. The result will be a patchwork of different laws where workers' rights may vary widely depending on where they live and work. Areas where states are expected to introduce new laws or regulations include: increased minimum wage requirements in excess of the federal minimum wage; expanded pay transparency requiring employers to post salary ranges alongside job descriptions; paid leave for employees suffering from medical conditions or taking care of children or the elderly; artificial intelligence (AI) regulations governing the use of AI technology in HR; and noncompete agreements to protect workers' rights to remain in the workforce after separating from an employer.

Watch this space in the coming months as the policy priorities of the new administration come into focus and courts continue to insert their own judgment in place of agency experts. The whiplash may be just beginning. ■

Greg Goldberg, partner at Barta | Goldberg, is general counsel for the Business Technology Association. He can be reached at ggoldberg@bartagoldberg.com or (847) 922-0945.

