

FP's Workplace Law Forecast 2025

Your workplace law recap for 2024 and predictions for 2025 to help you prepare for the coming year.

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Phillips**



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As we close out 2024 and look ahead to 2025, one thing is clear: this has been a year like no other. From a groundbreaking Supreme Court ruling to a pivotal election result that will usher in a new administration, employers faced seismic shifts that demanded sharp focus, careful planning, and swift action. Through it all, we were by your side – helping you navigate the challenges, capitalize on opportunities, and keep your business on track.

If there's one takeaway from this past year, it's that uncertainty is a constant. But the good news? You can always count on us to provide clarity.

That's why the FP Forecast report is one of my favorite resources we produce each year. Inside, you'll find a comprehensive look back at 2024's biggest developments in workplace law and the practical steps you need to take to adapt. From regulatory upheavals to litigation trends, we've summarized the most critical events and shared actionable guidance that goes beyond the obvious – rooted in our deep understanding of your business and your goals.

And just as important, we've taken a hard look at predicting what 2025 will bring. From the growing influence of AI to the increasingly global reach of business and the rise of international law's importance, we're tracking the trends that will shape the year ahead. You'll also find updates on the ever-evolving privacy landscape – one of the most complex issues businesses face today.

Our goal is simple: to arm you with insights that not only help you react to change but also stay ahead of it.

We hope our FP Forecast report provides the foundation you need to plan for a successful 2025. And as always, our team will be here every step of the way with the sharp thinking and practical advice you've come to expect.

Here's to navigating the future together.



John Polson

Chairman and Managing Partner
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2024 PREDICTIONS RECAP

Court Halts Federal Overtime Rule Nationwide

Last year, we predicted that the Biden DOL would move swiftly to finalize a higher exempt salary threshold for the FLSA's so-called "white collar" overtime exemptions. We also anticipated that certain states and employer advocates would challenge the rule in business-friendly jurisdictions like Texas and Florida. We were right. In November, a federal judge in Texas [blocked the rule nationwide](#), holding that the DOL exceeded its authority by raising the threshold too high (in two phases from \$35K to \$44k and then \$59K) and allowing for automatic adjustments every three years.

Focus on Child Labor Laws

We also correctly predicted a [heightened focus at the federal and state level](#) on child labor laws, since the DOL reported a 70% increase in the number of children illegally employed by companies in recent years. Although [Florida](#) relaxed work restrictions for older teens in July, other states, including [California](#) and [Illinois](#), took steps to encourage compliance with child labor laws and fill in gaps in existing law, respectively.

No FLSA Joint Employer Updates

During the Trump administration, the DOL issued a joint employer rule that briefly created a more business-friendly standard by making it harder for employees to prove joint employment for wage and hour purposes. [Biden's DOL formally rescinded the rule in 2021](#) – and while we expected the Department to issue an update in 2024, a new rule was never proposed.

More Agency Partnerships

We knew the DOL would continue to partner with other agencies in 2024, particularly regarding investigations and data sharing. Indeed, in August, NLRB General Counsel Jennifer Abruzzo [signed a Memorandum of Understanding \(MOU\)](#) with the DOJ Antitrust Division, the DOL, and the FTC "to strengthen worker protections and fair competition by collaborating on labor issues in antitrust merger investigations." The [agencies have agreed to similar partnerships over the past few years](#) – but we do expect the incoming administration to focus less on investigations and enforcement and more on employer education and community outreach.

HOW'D WE DO ON OUR PREDICTIONS?



We got the predictions
**MOSTLY
RIGHT**

Return to Employer-Friendly Rules

Now that the Biden administration is coming to an end, we don't think the incoming Trump administration will pick up the legal battles over the OT rule, and the threshold will remain \$35k for now—although we do anticipate that the DOL will take steps to modestly increase the salary threshold (as it did during the first Trump administration). This means [employers have some critical decisions to make on how to move forward with compensation plans](#), particularly since many employers already complied with the now-halted phase one of the rule, which raised the threshold to \$44k. We also expect the DOL to drop a Biden-era independent contractor standard and return to the more lenient rule issued during Trump's first term. [You can read more about those rules here](#). Similarly, we think the DOL will shift back to its pre-Biden, [more employer-friendly joint employer standard](#).

More Lawsuits from Business Groups

In addition to the Trump administration returning to employer-friendly rules, we expect businesses to continue challenging Biden-era rules that strained operations. Notably, SCOTUS issued its blockbuster ruling in 2024 that [overturned the famous Chevron doctrine](#) and held that courts shouldn't defer to an agency's interpretation of an ambiguous federal statute. Already, the district court that blocked the overtime rule in November [cited to the SCOTUS decision](#) in its ruling. We expect even more litigation in 2025 challenging DOL rules under the new Supreme Court precedent.

Support for Federal Minimum Wage Hike

Although President-elect Trump criticized the idea of increasing the federal minimum wage as harmful to small businesses during his 2020 campaign, the political winds have shifted a bit since then and his 2024 campaign supported "raising wages." It would not be surprising to see a push for a slight increase to the \$7.25/hour federal minimum wage – but nowhere near the \$15/hour rate supported by the Biden administration. Of course, Trump would need the approval of Congress to carry out any federal minimum wage hike, so that must be taken into account.

Uptick in State and Local Activity

We predict that the federal government will ease its enforcement efforts in 2025. On the flipside, we expect to see more activity at the state and local level. As employers continue to face costly wage and hour actions, you should note that state and local requirements can vary significantly – which makes it critical to stay informed about workplace trends in the locations where you operate.



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2024 RECAP

Colorado and Illinois Become First States to Take AI Legislative Plunge

In May, [Colorado became the first state](#) that will soon require employers to take steps to ensure AI doesn't discriminate against their workers, including mandatory notifications and impact assessments. [Illinois followed with a similar law](#) in September. Meanwhile, both [California](#) and [New York](#) saw similar efforts fail in 2024, while [multiple AI bills failed in Congress](#) this past year – including a [notification/opt-out proposal buried in a data privacy bill](#).

D.C. Provided Guidance to Employers

While we didn't see any definitive AI law or significant regulation come to pass from D.C. in 2024, we did get some guidance that could help create a series of best practices for businesses. A bipartisan group of Senate leaders [unveiled a long-awaited AI roadmap in May](#), while the Department of Labor provided [10 steps employers can take to avoid AI discrimination during the hiring process in September](#). And then the [CFPB reminded employers and vendors in October](#) that they have FCRA obligations when it comes to use of workplace-related AI tools.

The Wave of Workplace AI Litigation Has Begun

2024 was the year that cracks in the dam began to show when it comes to claims involving the use of workplace AI. The [ACLU filed claims with the EEOC and the FTC in May](#) over AI-fueled personality assessment tests, video interview tools, and cognitive ability assessment screening devices. And a California federal court [gave the green light in July to a discrimination lawsuit against an AI-based vendor](#) after more than 100 employers that use the vendor's screening tools rejected an older disabled Black applicant.



SAVE THE DATE

AI ADVANTAGE: An FP Conference for Business Leaders

July 23-25, 2025

The Willard Intercontinental, Washington, D.C.

The third annual conference promises to be our best yet, blending practical guidance with cutting-edge lessons about how to gain a competitive advantage through AI.



Government and AI

- Trump will revoke [Biden's AI Executive Order](#) by February, and his agency heads will follow suit to rescind current guidance. Some will be replaced with broad, industry-friendly guidelines, others will simply be deleted. And we won't see any big AI legislation from Congress.
- California or New York is going to pass something big. Expect disclosure and opt-out requirements for workers and applicants. We'll soon see a patchwork of state laws with different approaches for addressing AI bias and other AI legal issues.
- Someone new to D.C. is going to get wrapped up in an AI-related scandal. Get your bingo boards ready!

In Your Workplace

- [AI Governance will become all-but-mandatory](#). It will allow companies to adopt AI with guardrails to help mitigate liability and risk issues.
- AI will become an integral part of managing safety in industrial workplaces. It will be used more frequently to predict and intervene to prevent workplace injuries.
- Schrödinger's AI will have job seekers favoring pro-AI employers that show off their productivity suite in job postings, while objecting to any AI being used to grade their applications.

At Your Desk

- You're going to open Microsoft Word one day in 2025 and be greeted by your new in-document AI Drafting Assistant. Will it be Clippy 2.0? Or something more useful?
- Autonomous AI Agents will take things to the next level. Going on a trip? AI will not only create a perfect itinerary but make the reservations for you. It will also help employers automate administrative work so employees can focus more on higher skills tasks.
- Will AI become your new best friend? In 2025, we will see AI being marketed as not only a business tool but a personal friend. [Open AI has already warned that users may become emotionally connected to its advanced voice mode](#). Other LLMs will follow that lead. Will AI also become your life coach and therapist?



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Trump Shocks Businesses with Labor Department Leader Nomination

Of all the surprising things that President-elect Trump has done since Election Day, employers might include the selection of Lori Chavez-DeRemer as his Secretary of Labor nominee at the top of the list. After all, this one-term House member made news this past year when she was one of only three Republicans to back the union-friendly PRO Act. We still believe she'll largely carry out most of the employer-friendly initiatives you'd expect from a Trump appointment, though. [Read all about what employers can expect here.](#)

Republican Trifecta Won't Lead to As Many Congressional Gains As You'd Think

Republicans captured back the White House and the Senate and retained a House majority – but don't expect to see a cavalcade of conservative wish list items passed in Congress over the next two years. The Rs hold an insanely narrow majority in the House, meaning that ambitious plans can easily get derailed by upstart conservatives or moderate centrists. And John Thune's (R-SD) tenure as Senate Majority Leader will be similar to Mitch McConnell's – especially with several moderate Senators (namely Susan Collins (R-ME) and Lisa Murkowski (R-AK)) remaining in the chamber, joined by John Curtis (R-UT) – perhaps frustrating those who wish to plow forward with drastic policies and norm-busting sentiments.

But a Few Interesting Weapons at Their Disposal

That's not to say we'll see a toothless Congress in the next term. The party will band together to pass a fair number of business-friendly initiatives. At their disposal? The Budget Reconciliation process, an expedited way to pass legislation dealing with spending, and the Congressional Review Act, a tactic to snuff out some of the more hard-to-swallow Biden-era regulations.

SCOTUS Power Solidified For Years to Come

Another development to watch unfold in 2025 (or 2026) – the expected retirement of at least one conservative Justice on the U.S. Supreme Court. We expect to see Clarence Thomas (age 76) or maybe even Samuel Alito (age 74) decide to hang up his robe while the Senate remains in Republican control. If President Trump follows his first-term playbook and selects a replacement in their 50s, we could see a conservative SCOTUS for at least the next decade.



FP ADVOCACY IS HERE TO HELP

Your organization needs a voice in the halls of power - both in D.C. and in your statehouse - now more than ever. FP Advocacy provides premier legislative and regulatory advocacy services to businesses across the country. With decades of insider experience in the political process and comprehensive knowledge of workplace law, we provide unparalleled access to key players and stakeholders – and a proven track record of accomplishment.



2024 IN REVIEW

PAGA Reformed by Lawmakers and Limited by Courts: Employers Just Kept Winning

A groundbreaking law enacted on July 1 (and effective the same day) [overhauled California's Private Attorneys General Act](#), offering much-needed relief to employers. A victory lap followed, as state courts issued decisions that [limit the powers of additional non-party plaintiffs in PAGA actions](#), [clarify public entities' exemption from PAGA penalties](#), and [bar PAGA representative claims after an employer prevails in arbitration](#). More employers were served a win in September, thanks to an [extension of a PAGA exemption](#) for certain construction employers.

But California Employers Raced to Keep Up with New Workplace Laws

Many [new workplace laws took effect this year](#), requiring covered employers to develop a [workplace violence prevention program](#), comply with a [new heat illness standard for indoor work areas](#), and expand [paid sick leave policies](#). In addition, Governor Newsom [signed off on a wide range of new workplace laws](#) this year that will take effect January 1, such as [a ban on "captive audience" meetings](#), [an expansion of victim-of-violence leave](#), [rules against driver's license discrimination](#), and [new protections for freelance workers](#). Notably, California voters just rejected a [ballot measure wage hike](#) – meaning that the state's non-industry-specific hourly minimum wage will rise to "only" \$16.50 rather than \$18 in 2025.

Data Privacy Took the Spotlight

In February, a California appeals court gave state privacy officials the green light to begin [enforcing new regulations governing the state's cornerstone data privacy law](#) (and the state's Supreme Court denied an appeal from the coalition of business groups). The California Privacy Protection Agency also issued its first Enforcement Advisories this year, including one in April on [data minimization requirements](#) and another one in September on the [importance of avoiding "dark patterns" on websites](#). The CCPA has big plans for 2025, as you'll see in our predictions.

Lofty Efforts to Regulate Artificial Intelligence Fell Short

While California lawmakers [considered more than 30 AI-related bills](#) this year, a groundbreaking AI discrimination bill [failed to pass](#), Governor Newsom [vetoed a controversial AI safety bill](#), and only a few AI bills were actually signed into law (including two new [AI "digital replica" laws](#) that could play a crucial role in resolving a drawn-out labor dispute between video game actors and developers). But the state is just getting started – so check out our predictions.

LOOKING AHEAD TO 2025

California Will Revive Its Role as the Leader of the "Trump Resistance"

California will lead the blue states resisting changes by the incoming Trump administration, in line with [Gov. Newsom's November 6 proclamation](#). Most of the substantive labor protections in California are already stronger than federal law, but California will attempt to push the legal envelope into areas of federal control – such as protecting immigrant workers and finding ways to make it easier for employees to unionize.

California Will Enact the Nation's Strongest AI Employment Regulation

While a bill aimed specifically at the use of AI in employment (AB 2930) did not make the cut this year, it will certainly be back in 2025. Moreover, two different state agencies (the California Civil Rights Department and the California Privacy Protection Agency) are moving forward with ground-breaking initiatives ([like these](#)) regarding the use of AI in employment. Either by legislation or regulation, California will join and likely surpass other jurisdictions that have recently enacted their own requirements in the absence of comprehensive federal regulation.

California Will Further Explore Industry-Specific Regulation

Labor advocates succeeded in California this year with the [creation of a Fast Food Council](#), a [fast-food specific minimum wage](#), and a [healthcare minimum wage](#). In a tough environment for union organizing (which may be made even tougher under a second Trump administration), labor advocates will look to explore other creative ways to legislate specific working standards for other industries.



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2024 PREDICTIONS RECAP

SCOTUS Ended So-Called “Chevron Deference”

The Supreme Court [stripped power from federal agencies](#) – including the National Labor Relations Board – by overturning the decades-old *Chevron* doctrine in June, just as we predicted. The landmark *Loper Bright* ruling replaces deference to an agency’s “reasonable” interpretation of ambiguous regulatory provisions with the court’s independent judgment.

The Joint Employer Rule Died Again...

As we predicted, employer advocacy organizations continued efforts to block the NLRB’s [controversial joint employer rule](#), which would have resulted in increased union organizing efforts with related companies. Thanks to those efforts, a federal court [struck down the rule](#) in March just days before it was set to take effect. The Labor Board appealed the decision but [dropped that fight](#) soon after SCOTUS issued *Loper Bright*. Keep in mind that the Board’s definition of “joint employment” has flip-flopped several times throughout the past decade, and that the agency could soon try to shift the landscape through agency decisions.

Ex-Cell-O-Corp. Remained Intact – But Captive Audience Meetings Did Not

In a welcome surprise, labor officials did not expand remedies for unfair labor practices concerning failure to bargain, despite years of pushing for the reversal of the NLRB’s *Ex-Cell-O Corp.* decision. Even better? The Supreme Court issued a decision in June that [undermines the Board’s ability to impose financial penalties on employers](#). However, the Board did endorse its General Counsel’s position on mandatory meetings discussing union matters and in November [banned these “captive audience” meetings](#) as unlawful interference with employees’ right to organize.

MORE OF 2024 IN REVIEW

The Agency’s Outsized Power Persisted in Many Ways

The new union representation process installed by the Board last year unsurprisingly led to an [astronomical increase in election petitions filed in the first half of FY 2024](#). The Board’s General Counsel continued to push an ambitious policy agenda, including by issuing new guidance [banning most non-compete agreements](#), [cracking down on “stay-or-pay” provisions](#), and [imposing heavy burdens on employers responding to union recognition demands](#). And the NLRB issued [a final rule that makes it harder for workers to undo union representation](#), as well as a groundbreaking decision [restricting employer communications about unionization](#).

SCOTUS Ruled Against the NLRB

The Supreme Court [sided with Starbucks](#) in June by holding that a lower court should have applied a more stringent standard when evaluating the Board’s request for temporarily reinstating workers – who were fired for hosting media interviews after-hours in a closed store in violation of company policy – while an unfair labor practice claim played out in court.

More States Banned Captive Audience Meetings

Captive audience bans continued trending at the state level, as [California](#), [Hawaii](#), [Illinois](#), [Vermont](#), and [Washington](#) enacted captive audience bans (and [Alaska](#) voters approved a ballot measure to adopt one). But legal challenges to these bans are popping up across the country.

HOW’D WE DO ON OUR PREDICTIONS?



We got the predictions **MOSTLY RIGHT**



The Labor Relations Arena Will Return to a Level Playing Field

Between the end of *Chevron* and the incoming Trump administration, we will see balance restored when it comes to federal labor law policy. Employers will have not only a [new powerful tool to fight back against regulatory overreach](#) under *Loper Bright* (perhaps paving the way for a lower threshold to challenge the Board’s ever-expanding interpretation of “protected concerted activity,” as well as decisions impacting both unionized and non-unionized employers) but also [more leeway over the next four years under the Trump administration](#).

A New NLRB General Counsel Will Undo Much of the Current GC’s Efforts

We expect Donald Trump to jettison Jennifer Abruzzo as one of his first acts as President and appoint a new NLRB General Counsel who may work to undo much of the policy that GC Abruzzo pushed this year and in past years (such as directing agency investigators to [target workplace surveillance and other electronic monitoring](#)).

Over Time, New Board Leaders Will Chip Away at the Biden Board’s Gains

Once Republicans take control of the Board, we will see decisions such as [Cemex](#), [McLaren](#), [Stericycle](#), and [Thryv](#) overturned. We’ll also see a rescission of the [“quickie” election rule](#) and a return to more equitable decertification procedures.



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2024 PREDICTIONS RECAP



SCOTUS Shakes Things Up

The Supreme Court issued several momentous decisions last term that will have a lasting impact on employer practices. The Justices continued to shape the workplace law landscape by ruling on an array of issues involving [federal agency power](#), [labor relations](#), [arbitration](#), and [employment discrimination](#). Most significantly, as we predicted, SCOTUS [overturned the decades-old Chevron doctrine](#), which required courts to defer to a federal agency's position on the law when a statute is open to interpretation. The Court tossed out that standard in favor of judicial interpretation, enabling courts to strike down agency rules much more easily and giving employers a powerful tool to fight back against regulatory overreach.



Uptick in "Nuclear" Jury Verdicts

Employers have increasingly been on the receiving end of massive verdicts from so-called runaway juries in recent years, and we knew this trend would continue. [A groundbreaking study from the U.S. Chamber of Commerce](#) revealed that the jump in eight-figure jury verdicts over the past decade had far outpaced inflation, and record-breaking numbers continue to be reached year after year for workplace trials. In July, for example, a group of nursing facilities was [ordered to pay a whopping \\$36 million](#) in an overtime pay action. Employers need to take compliance more seriously than ever given the risk of massive damage awards.



AI Reshapes Litigation

We knew Generative AI would have a huge impact on many aspects of work in 2024, [including litigation](#). Beyond legal research, document review and drafting, and summarizing large amounts of data, AI technology continues to revolutionize the way litigators perform in and out of the courtroom. [But you should be sure to have checks and balances in place](#). The only way to ensure that the AI you use aligns with your business goals, complies with regulations, and operates ethically is through "AI governance."



MORE OF 2024 IN REVIEW

Feds File First Lawsuit Under Pregnant Workers Fairness Act

The EEOC filed a lawsuit in September against an employer for [allegedly failing to accommodate an employee's known pregnancy-related limitations](#). This was the first-ever lawsuit filed under the Pregnant Workers Fairness Act (PWFA), prompting many employers to take a closer look at their compliance plans.

HOW'D WE DO ON OUR PREDICTIONS?



We got the predictions
RIGHT



SCOTUS Watch

The Supreme Court's 2024-2025 term is well underway, and we're watching several cases that will likely impact the workplace. Here's what we're predicting after tuning in to oral arguments in a few cases:

Justices Will Reject Higher Standard of Proof in OT Exemption Cases

- What evidence does an employer need to show a court to prove it correctly classified employees as exempt from minimum wage and overtime pay? The Supreme Court [heard oral arguments in November](#) in a case raising this question – and the Justices seem poised to agree with the employer that an unusually high "clear and convincing" evidence standard **does not** apply to federal wage law. Employers will want to pay close attention to *E.M.D. Sales Inc. v. Carrera* as the decision will impact your litigation strategy. It will also have practical implications when determining whether to classify your employees as exempt or non-exempt.

No RICO Claim for Driver Who Failed Drug Test

- A commercial truck driver who lost his job after failing a drug test wants to hold cannabis product makers liable under a federal racketeering law. The driver claims the product he used was advertised as THC-free, but he says it actually contained the psychoactive component of cannabis. Notably, these claims are generally brought under state law, and [based on oral arguments in October](#), we think the Justices will say his federal racketeering claim is a stretch. Businesses in the cannabis industry will want to pay close attention to this case and employers in general may also be curious about how a SCOTUS ruling in *Medical Marijuana, Inc. v. Horn* will impact evolving cannabis laws.

SCOTUS Will Make It Harder for Plaintiffs to Recover Attorney's Fees

- The Justices will soon decide whether obtaining a preliminary injunction is sufficient to qualify as a "prevailing party" to recover attorney's fees in certain civil rights actions. After hearing oral arguments in October, we predict the Court will rule that obtaining a preliminary injunction, without a final determination from the court, is insufficient. While *Lackey v. Stinnie* is not a workplace case, it could impact the ability of employers to recover fees when challenging a state regulation, or how courts view other workplace laws, like civil rights or wage and hour laws, that grant attorney's fees to prevailing plaintiffs.

More Cases to Track

We're also [following additional SCOTUS cases](#) involving Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act, arbitration, and more. Make sure you're subscribed to [Fisher Phillips' Insight Systems](#) so you don't miss out.



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2024 PREDICTIONS RECAP



More States Passed Consumer Privacy Laws

We predicted that 2024 would see a rise in the number of states that would pass consumer privacy laws. Sure enough, we saw a big jump from 13 to 20 states. This past year saw new laws take effect in [Texas](#), [Florida](#), Montana, and Oregon, while 2025 will see laws come online in [Maryland](#), [New Jersey](#), Delaware, Iowa, Minnesota, New Hampshire, Nebraska, and Tennessee – not to mention those taking effect in 2026 ([Kentucky](#), Indiana, and Rhode Island).



Congress Did Not Pass a Federal Privacy Law

Even though a bipartisan group of federal lawmakers unveiled [a sweeping proposal that would enact the nation's first data privacy law in April](#), we predicted that no such law would come close to passing this year. And we were right. Disagreements over whether and to what extent state laws should be preempted and whether consumers should have a private right of action doomed the bill before it gained any serious traction.



Cybersecurity Took Center Stage

We predicted that ransomware and other cyberattacks would continue to plague businesses in 2024, with vendors becoming a favorite target. Sadly, we were right. [The Snowflake attack](#) became one of the largest data breaches of all time in May. A finance company [lost more than \\$25 million to a deepfake scammer](#) in January. And perhaps most troubling? A prominent cybersecurity training company got fooled itself when it hired a remote worker in July who turned out to be [a North Korean cybercriminal who used AI deepfake tools](#) to infiltrate the organization.



MORE OF 2024 IN REVIEW

Consumer Privacy Couldn't Be Ignored

No longer could businesses ignore the [concept of consumer privacy](#). The new slate of consumer-friendly state laws, the expansion of such laws across state lines, and expanded data collection and transparency obligations meant that this needed to be front and center for all businesses in 2024. The last year also saw [an astronomical increase in lawsuits](#) filed against businesses that host third-party cookies, pixels, and other tracking technology on their websites, not to mention [a \\$16.5M FTC fine against a company](#) in June for unfairly collecting, storing, and selling consumers' browsing information without adequate consent or notice.

HOW'D WE DO ON OUR PREDICTIONS?



We got the predictions
RIGHT



We'll See a Skimpy Federal Privacy Law – and State-Led Litigation

With Republicans in control of Congress, and the Trump administration's stated goal of reducing federal oversight, we'll see a renewed push for a federal privacy law. But the aim of this legislation will be largely to supersede the patchwork of state laws on the books and reduce the perceived administrative burden of compliance (particularly for broad laws like California's). It won't touch on employment-related data and it won't include a private right of action. We'll then see blue states filing suit to maintain their own comprehensive laws in order to retain as much power as possible.

State Laws Will Continue to Proliferate

This federal privacy bill will not be one of the first matters addressed by the incoming administration and Congress, leaving a period of time in which state-specific consumer laws will continue to proliferate. Additionally, any federal privacy law will likely not replace laws relating to biometric privacy, facial recognition, geolocation tracking, employee monitoring, and other issues that are often the subject of state or locality-specific laws. We will continue to see new developments in these areas across the country.

Plaintiffs Will Continue to Get Creative

The ongoing trend of wiretapping and related claims filed against businesses that use third-party cookies, pixels, and other tracking technology will continue. While we hope to see more rulings like [the recent court decision in Massachusetts](#) that said third-party website tracking software does not violate the state's wiretap act, it's also possible that we will see more courts follow the lead set by the [9th Circuit in a May 2022 decision](#) that originally opened the floodgates for decades-old wiretapping laws to apply to modern technology. Either way, we expect to see more decisions in 2025 addressing the issue of the application of state wiretapping laws to the use of tracking technologies. We'll see those decisions concentrated in two-party consent states (such as Illinois and Pennsylvania), which have seen a spike in wiretapping litigation in recent years.

INTRODUCING THE FP U.S. CONSUMER PRIVACY HUB

The lack of a comprehensive federal privacy law has led to a diverse landscape of state privacy laws that often confuse the businesses trying to keep up. Each has their own set of requirements, definitions, protections, and enforcement mechanisms. The FP U.S. Privacy Hub provides businesses with an overview of the current state privacy laws, highlighting key similarities and differences while exploring their implications.



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2024 PREDICTIONS RECAP



Major Focus on Data Privacy

As we predicted, multinational businesses grappled with new data privacy laws, regulations, and rulings in 2024. For example, [new rules took effect in Brazil](#) regulating international data transfers, and Brazil's Superior Court of Justice [recently offered helpful data privacy guidance](#). Understanding and navigating data privacy laws in every jurisdiction in which you operate has become more important than ever, which Dutch officials made clear by [imposing a staggering penalty](#) on Uber. Additionally, companies doing business in Mexico will want to keep updated on the country's [comprehensive data privacy framework](#).



Increased Use of PEOs and Employers of Record

To keep up with business needs and hire an ever more global workforce, we predicted more companies would turn to professional employer organizations (PEOs) and employers of record (EORs) in foreign countries where they have a relatively small workforce – and we were right. [Click here](#) for an example regarding temporary employment and professional employer organizations (PEOs) in Germany.



MORE OF 2024 IN REVIEW

Massive Award Granted in International Trade Secrets Dispute

A recent federal appeals court ruling applied a U.S. trade secrets law to sales outside the country, finding that Motorola was entitled to \$407 million in damages from a foreign competitor for trade secrets misappropriation. For businesses with an international workforce, this is likely a welcome development. The Defend Trade Secrets Act (DTSA) provides robust protections for employers, and now there is strong precedent for how it can be used to punish foreign acts. However [the ruling also comes with a few cautions](#).

Vietnam Took Steps Toward Major Overhaul of Trade Union System

As global manufacturers pivot away from China and set their sights on Vietnam, [the country's labor and employment landscape is rapidly changing](#). This surge in demand from Europe and the U.S. has not only sparked economic growth, but also amplified pressure on Vietnam to modernize labor standards and safeguard workers' rights.

UK Introduced Landmark New Employment Rights Bill

The bill aims to end unfair employment practices and help deliver economic growth. According to the United Kingdom's Prime Minister's Office, [this is set to be the biggest upgrade to worker's rights in a generation](#).

HOW'D WE DO ON OUR PREDICTIONS?



We got the predictions **RIGHT**



More AI Transparency for HR and Hiring Tools

AI's role in employment — especially in hiring, performance management, and data analytics — is likely to see strict oversight in several countries. The EU's AI Act will likely inspire similar legislation elsewhere, with mandatory disclosures when AI is used for workplace decision-making. Companies may need to give employees the right to opt out of AI-driven processes, especially when it impacts career progression or compensation. Key focal points will be transparency in algorithms and avoiding hiring discrimination.

The Rise of "Right to Disconnect" Laws

While the ["right to disconnect"](#) has gained traction in the EU, we expect other regions to implement similar regulations, especially in Asia and the Americas. These laws will likely cover work-from-home policies, limiting after-hours communication, and regulating response times. Countries like Japan and South Korea, where burnout is a significant concern, may lead Asia in introducing such protections.

Enhanced Pay Equity and Transparency Rules

Pay equity efforts have already seen significant momentum in the EU and UK — and 2025 will likely bring a surge in similar laws globally. This could extend to mandatory salary range disclosures for job postings, detailed internal audits on pay discrepancies, and stricter enforcement mechanisms — and large multinational companies may need to ultimately disclose gender pay gaps. Additionally, pay transparency could be expanded to include a range of demographics, not just gender.

Prioritizing Employee Well-Being and Mental Health

Employee well-being, including mental health, will move from being a perk to a mandated corporate responsibility in many countries. Regulatory bodies may implement metrics for psychosocial risks in the workplace, and mental health protections could be built into workplace standards. Many governments, notably in Europe and North America, could implement guidelines requiring employers to take measurable steps to support employee mental health.

New Regs on Short-Term "Digital Nomad" Employment

The [popularity of digital nomad visas](#) will prompt new laws distinguishing between traditional employment and short-term, location-flexible work arrangements. Countries will likely create specific digital nomad legislation that include labor, benefits, and tax obligations. This could lead to a global patchwork of regulations, making it more complex for companies to manage and hire digital nomads.



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2024 PREDICTIONS RECAP



More States Join the Pay Transparency Trend

We were right that more states would enact pay transparency requirements in 2024. Indeed, we saw a flurry of activity as [New Jersey](#), [Massachusetts](#), [Vermont](#), [Minnesota](#), and [Maryland](#) joined the trend. [Illinois](#) also has a pay transparency law that will take effect in the new year. These laws highlight the importance for multistate employers to develop uniform pay disclosures for job postings and advertisements. Many employers have also worked with legal counsel to [conduct a privileged pay audit](#), and you may want to consider doing the same.



EEO-1 Reporting Changes

Annual EEO-1 reporting is required for nearly all employers with 100 or more employees and for many federal contractors or subcontractors with at least 50 employees. We expected the Biden administration to make some key changes to reporting requirements in 2024, and while they pushed for changes, many of these changes haven't been finalized. For example:

- **Race/Ethnicity Categories:** As we predicted, in March the federal government [changed how it categorizes people by race and ethnicity](#) for the first time in over 25 years. The goal is for agencies like the EEOC and OFCCP to more accurately collect and report data. Notably, however, federal agencies were given 18 months to submit a compliance plan – so we're still waiting for the EEOC and OFCCP to adopt these changes.
- **Pay Data Reporting:** According to a regulatory agenda released in July, the EEOC is [seeking to revive Component 2 pay data collection](#) as part of the annual EEO-1 submission, which is highly contested by the employer community. Covered employers had to briefly submit this compensation information a few years ago after a contentious legal battle on the issue, but the Trump administration dropped the requirement to report pay data. We accurately predicted that the Biden administration would aim to pick this up again, but we expect the Trump administration to abandon the effort.



MORE OF 2024 IN REVIEW

NYC Poised to Have Most Stringent Pay Data Reporting in Nation

A [bill proposed in the New York City Council in July](#) would amplify pay equity and transparency efforts by requiring employers with 25 or more employees who work within the five boroughs to comply with stringent pay and demographic data reporting rules. The [State of New York](#) requires that employers ensure equal pay for equal or substantially similar work and prohibits wage discrimination based on many protected categories, and both the [State](#) and [New York City](#) have recently implemented pay transparency laws requiring certain wage disclosures on job postings. But this NYC law would take the goal of pay equity to the next level.

HOW'D WE DO ON OUR PREDICTIONS?



We got the predictions **MOSTLY RIGHT**



Trump Administration Won't Pursue Pay Equity Initiatives

We expect the incoming Trump administration not to pursue new pay equity initiatives – or even block them altogether. As mentioned, in 2017, the Trump administration dropped the [revised EEO-1 report](#) that the Biden EEOC is now seeking to revive. Trump officials cited concerns that the move to collect pay data lacked practical utility, would be unnecessarily burdensome, and failed to adequately address privacy and confidentiality issues. It seems unlikely that his position would have changed on this proposal, especially given the trend against expansion of agency power we have seen take root in the past year.

States Will Step Up Their Game

As you know, pay transparency was a hot topic in 2024 with lots of movement at the state level. We expect the momentum to continue in 2025. We predict that even more states will pass laws requiring employers to disclose salary ranges in job listings, among other related requirements. These laws affect all aspects of workplace relationships – including hiring, recruitment, and retention efforts; supervision and leadership; and compensation and benefits. So, you should be sure to track developments in the locations where you operate.

Pay Data Reporting Will Be Required in More Cities and States

We expect New York City to finalize its pay data reporting bill – and we also think more cities and states will mandate pay data reporting in response to the federal government shifting focus away from these initiatives.

Rise in Pay Equity Litigation

Failure to comply with state pay transparency laws has begun to spawn costly litigation across the country. As states become more active in passing and enforcing pay transparency laws, we expect to see a major surge in litigation over these rules. Thus, you'll want to work with legal counsel to create a compliance plan and review your policies to ensure they are up to date.



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2024 RECAP

Non-Compete Ban Struck Down

The news that dominated 2024 was celebrated by many employers across the country: [a Texas federal court struck down the FTC's proposed non-compete ban](#) mere weeks before it was set to take effect in September. Even though [the FTC has several appeals pending in an effort to resurrect the rule](#), we anticipate the incoming administration will drop these efforts and cast the non-compete ban into the dustbin once and for all in 2025.

NLRB's GC Doubled Down on Restrictive Covenant Attacks

The court setback described above didn't stop the NLRB's General Counsel from continuing her assault on restrictive covenants. Following her 2023 move to label just about all non-compete agreements as running afoul of the NLRA, GC Jennifer Abruzzo followed up in October by issuing [a memo saying that many "stay-or-pay" provisions – agreements where workers are asked to repay their employer if they separate from employment – also violate federal law](#). But we also anticipate this memo to be swept aside shortly after the new administration takes office and most likely fires Abruzzo.

Massive Court Award Demonstrates Reach of Trade Secrets Law Beyond Borders

A federal appeals court applied U.S. trade secrets law to sales outside the country in a stunning July ruling, finding that [Motorola was entitled to \\$407 million in damages from a foreign competitor for trade secrets misappropriation](#). A China-based company admitted to poaching key engineers who stole trade secrets and used them to develop a line of two-way radios identical to Motorola's products. The 7th U.S. Circuit Court of Appeals concluded that Motorola was entitled to recover the competitor's foreign profits from the misappropriation under the Defend Trade Secrets Act (DTSA). The ruling is good news for global businesses seeking damages in such situations – but comes with a few cautions, [which you can read about here](#).



Feds Will Be Less Interested in Regulating Non-Competes

This is a fairly obvious prediction, but it needs to be emphasized. The Trump administration will quickly replace the NLRB GC, meaning her aggressive positions against [non-competes](#) and [stay-or-pay provisions](#) will be jettisoned by the end of January. Similarly, we'll likely see new leadership at the FTC and the Department of Justice, so the efforts to ban non-competes on a federal level will die in the courthouse in the first quarter of 2025.

Blue States Will Take Up the Fight Against Non-Competes

But all that doesn't mean your business is free and clear to do what it wishes. The last few years have seen an expansion of restrictions against non-competition agreements in traditionally progressive states (such as Colorado, Illinois, Massachusetts, Minnesota, Oregon, Virginia, and Washington), and we expect the pace to pick up in 2025. State lawmakers and governors in blue states will team up to respond to the Trump administration's efforts to free up restrictive covenants, and we expect more of them will pass laws banning or limiting the use of non-compete restrictions. Be on the lookout in Delaware, Maryland, New Mexico, New York, Vermont, and Rhode Island, all of which seem likely to move in this direction. Additionally, attorneys general in the aforementioned states might get into the picture by bringing claims that certain types of restrictive covenants (such as those in the franchise context) constitute unfair competition.

More Overlap Between Trade Secrets and Data Privacy Law

States are passing an increasing number of data protection laws, which means the scope of employee access to sensitive information is also increasing. 2025 will see more situations where an employee who steals information in the final days of employment is going to (unwittingly) implicate data privacy laws as well as trade secret protection statutes. This is something that both plaintiffs and defendants will need to keep in mind.

HAVE YOU MET BLUE PENCIL BOX?

To stay up to speed on changes that will crop up in states across the country in 2025, check out one of FP's latest offerings – [Blue Pencil Box](#). This comprehensive resource not only provides detailed daily summaries of cases and laws involving non-competes and other restrictive covenants, but also maintains a comprehensive database and customizable checklists to help you comply.

BluePencilBox



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2024 PREDICTIONS RECAP

OSHA's New Electronic Recordkeeping Rule Impacted Employers Nationwide

A long-anticipated [electronic recordkeeping rule took effect January 1](#) and, as we predicted, changed the game for many employers across the country. For example, establishments with 100 or more employees in designated "high-hazard" industries became newly required to electronically submit information from their OSHA Forms 300 and 301 to the agency each year.

Union Walkthroughs Became a Reality

We correctly predicted that OSHA's proposed "walkthrough" rule [would become finalized and effective](#) by mid-year. Since May 31, workers have been allowed to designate a union representative (or other third party) to accompany an OSHA inspector during a facility walkthrough inspection – even if the facility is not a union shop. Check out our [FAQs for Employers](#).

Safety Officials Stressed the Importance of Criminal Enforcement Coordination

We warned employers about OSHA's enhanced criminal enforcement coordination, and an [enforcement report](#) published in January confirmed exactly that (and [Cal/OSHA announced similar efforts](#) in August). Federal OSHA [announced](#) in November that worker death investigations had so far decreased in 2024 and partially attributed the decline to its increasingly aggressive criminal referrals, particularly with regard to unprotected trenches.

HOW'D WE DO ON OUR PREDICTIONS?

We got the predictions

RIGHT

MORE OF 2024 IN REVIEW

OSHA Released First-Ever National Heat Safety Rule

The agency announced a new proposed rule in July that aims to protect workers from heat-related illnesses and fatalities. The groundbreaking rule would require employers to implement robust measures to safeguard employees from extreme heat both indoors and outdoors.

DOL Cracked Down on Workplace Contract Provisions

The Labor Department's top lawyer announced in October the agency's plans to target certain employment-related contract provisions, including those that require workers to report safety concerns to management first before going to workplace safety agencies like OSHA (contrary to workers' rights under federal law). The DOL will also target provisions that incorrectly classify workers as independent contractors just to dodge legal responsibilities such as safety standards.

OSHA State Plans Also Ramped Up Safety Initiatives

In addition to California's [workplace violence prevention program](#) taking effect in July, the state's legislature passed a [slew of new workplace safety laws](#). In June, Nevada OSHA issued its own proposed [heat safety rule](#), which took effect in November. The Maryland State Plan [finalized a heat stress rule](#), which took effect on September 30. That same day, Kentucky's safety officials adopted an [emergency regulation](#) (which took effect the next day) in line with federal OSHA's new walkaround rule. And New York enacted a law that [requires retail employers](#) to implement comprehensive workplace violence prevention measures starting in March.



First-Ever "Department of Government Efficiency" Leaders Will Make Significant Cuts to OSHA

Trump's new DOGE initiative (which, despite its name, will not be an official government agency) will take off next year, led by Elon Musk and Vivek Ramaswamy. Musk claims that DOGE can reduce the federal budget by "at least \$2 trillion" – while most agree this is an untenable goal, you can bet on big slashes to federal agencies, including significant reductions to OSHA's overall headcount and to the number of compliance, safety, and health officers.

Trump's OSHA Will Undo or Scale Back Safety Rules Issued During the Biden Administration

Safety professionals can expect several key changes from the Trump administration. However, Trump surprised the business community on November 18 when he announced Lori Chavez-DeRemer, who has earned the endorsement of several unions, as his nominee to lead the DOL. If approved by the Senate, Chavez-DeRemer would have an enormous influence on workplace safety, and we would ultimately see OSHA's heat standard finalized in 2025 (though likely in a scaled-back form). But we still expect this Trump administration to put electronic submission requirements back on the shelf, just as the first one did. We will also say goodbye to the new walkaround rule, but a pending lawsuit in a Texas federal court will be the more likely means to that end. Most MSHA personnel will not change, but we will see a pull-back on discretionary enforcement initiatives.

SCOTUS Decisions This Year Will Transform Workplace Safety and Mine Safety

Employers and advocacy groups will rely on two Supreme Court rulings issued in June this year to fight back against regulatory overreach. First, they will use the Court's landmark ruling overturning the decades-old *Chevron* doctrine to combat rules issued by both OSHA and MSHA. Second, they will point to *SEC v. Jarkesy*, which narrowly limited how agencies can use administrative law judges and left the door open for broader challenges, to erode ALJ authority. And the DOL will look to change its procedure for appointing ALJs to address arguments that those judges are double-protected from removal in violation of the Constitution.



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2024 PREDICTIONS RECAP



E-Verify+ Aims to Streamline the I-9 Process

Initially known as E-Verify NextGen, [the new E-Verify+ trial](#) was launched in May. We accurately predicted that the federal government would launch the new system in 2024 with the goal of modernizing the I-9 and employment verification process. DHS and SSA authorities have sought to reduce the burden on employers by combining aspects of the I-9 and E-Verify systems into a single, united process. In addition, the responsibility for accurate data input will be shifted to employees. Stay tuned for more updates in 2025.



Revised H-1B Visa Process Quickly Finalized

Last year, federal immigration authorities [proposed long-awaited revisions to the H-1B visa process](#) intended to tighten the annual lottery system, [reduce fraudulent duplicate filings](#), and address issues that have been a source of frustration for employers and employees alike. We correctly predicted that [the resulting regulations](#) would be quickly finalized and implemented in early 2024. These revisions resulted in fewer fraudulent filings and a second-round lottery selection.



Return of Stateside H-1B and L-1 Visa Renewals

We told you that stateside H-1B visas were on their way back – and we were right. After an almost 20-year absence, federal officials brought back the stateside issuance of nonimmigrant visas through a pilot program, which allowed H-1B and L-1 workers the option of renewing their visas without leaving the U.S. This significant development provided welcome relief to many foreign nationals and played a strategic role in workforce planning – [but there were some key limitations](#). Though the initial pilot program was limited in scope and duration, the Department of State is actively pursuing a broader, long-term program to provide domestic visa renewals for not only H-1B specialty occupation workers but also their dependents and workers in additional categories, including treaty investors.



MORE OF 2024 IN REVIEW

Increased Filing Fees

The cost for expedited service rose in 2024, meaning employers had to adjust their budgets to manage their foreign national workforces. For example, USCIS [increased the filing fee for those requesting Premium Processing](#) as of February 26. The Premium Processing program has been a welcome addition in recent years, allowing a petitioner or applicant to pay an additional government filing fee to request that USCIS adjudicate a filing. This is a very useful option, as “normal” case processing times are extremely lengthy.

HOW'D WE DO ON OUR PREDICTIONS?



We got the predictions
RIGHT

Uncertainty After *Chevron* Overturned

The Supreme Court's landmark ruling in June that gives employers a powerful tool to fight back against regulatory overreach will have a broad impact on just about every area of workplace law. While the end of “*Chevron* deference” is largely viewed as a win for employers, we expect to see two sides to the immigration impact on employers. On the one side, employers will have more tools to challenge federal agency regulations that make it harder to hire and retain foreign national employees. On the flipside, you may see helpful regulations tied up in litigation as well. [We encourage you to take these five steps to remain agile during this period of uncertainty.](#)



Mandatory E-Verify+

As the [new E-Verify+](#) moves from a trial to full implementation, we expect to see the federal government take steps to make its use mandatory. Of course, creating new HR solutions that properly synch with the new government portal may prove to be quite difficult. So, we recommend that you [stay updated on developments in this area](#) as E-Verify+ progresses through the trial stage and is ultimately launched full scale.

More Scrutiny of Work Authorization and Visa Programs

Immigration reform was a centerpiece of the first Trump administration, and we anticipate more of the same during round two. We expect the new administration to set limits on work authorizations for F-1 students on OPT/STEM OPT and H-4 spouses, as well as humanitarian programs like Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS). We also expect to see policy changes designed to limit H-1B, E-3, L-1, and TN work visas and increased scrutiny of work visa petitions through Requests for Evidence. These policy changes would have a significant impact on the workforce, and we recommend that you reach out to your Fisher Phillips attorney to create an action plan.

Heightened Immigration Enforcement

President-elect Trump also promised to focus on immigration enforcement, and his announcement that former ICE Acting Director Tom Homan would serve as the new “border czar” is yet another strong reminder that employers should anticipate major changes when the new administration begins in January. With Homan set to lead an aggressive enforcement strategy, employers should take concrete steps to safeguard their operations and be prepared to handle potential ICE audits and raids. [Be familiar with key areas of focus to ensure your business is ready.](#)



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2024 PREDICTIONS RECAP

Employers Fine-Tuned Long-Term Remote Work Policies

The rise of remote work has forced employers to tackle one challenge after another, and 2024 was all about figuring out [how to effectively manage remote and hybrid workforces for the long term](#) – just as we predicted. This year employers worked to create solid plans and robust policies to manage payroll tax obligations and deliver top tier benefits across multiple locations.

401(k) Plan Changes and Opportunities Rolled Out Under SECURE 2.0

As we correctly predicted, employers sponsoring 401(k) plans implemented mandatory and other changes that took effect this year, such as an increased age for Required Minimum Distributions and [eligibility for long-term part-time employees](#). Employers also explored new opportunities created by SECURE 2.0, such as emergency savings accounts and matching contributions for student loan payments. And the IRS issued guidance just before 2024 began [clarifying various SECURE 2.0 provisions](#).

HOW'D WE DO ON OUR PREDICTIONS?



We got the predictions
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MORE OF 2024 IN REVIEW

ERISA Class Actions Against Group Health Plans

ERISA class action lawsuits against retirement plan fiduciaries have become commonplace over the last few decades, but now, thanks to new disclosure requirements and transparency laws, [health plan fiduciaries are starting to face similar class actions](#). This year also brought a [wave of class-action lawsuits against employer-sponsored health plans that include tobacco surcharges](#), with plaintiffs arguing that surcharges added to tobacco users' premiums are not compliant with federal laws such as ERISA, the Affordable Care Act, and HIPAA.

Battles Over Union Pension Plan Withdrawal Liabilities

In March, a federal appeals court [ordered a Teamsters pension fund to return approximately \\$2 million in withdrawal liability payments](#) to an employer that had stopped contributing in 2005. But a bankruptcy court in September [upheld rules issued by the Pension Benefit Guaranty Corporation](#) that severely impact post-bailout withdrawal liability calculations. And a waste hauler contractor settled a lawsuit in November after the contractor had been [blindsided by a \\$7.5 million withdrawal liability demand](#) filed by a pension fund based on a theory of successor liability.

New HIPAA Requirements and Concerns

Federal health officials finalized a rule in April [adding more compliance requirements aimed at supporting reproductive healthcare privacy](#). And a cyber attack on a leading healthcare claims processing provider in February had an unprecedented impact on patients and healthcare providers across the country – reminding group health plans to ramp up their cybersecurity efforts to [comply not only with HIPAA but also with fiduciary rules under ERISA](#).



Reversal of the Biden Administration's "ESG Rule" for 401(k) Plans

This rule established standards for employers to consider environmental, social and governance factors in choosing 401(k) plan investment options (as opposed to considering only the traditional factors of risk and return). In lieu of the prior focus on ESG-related investments, we will see a focus on the ability to offer other non-traditional investment options in a 401(k) plan, such as private equity and electronic currency.

Dialing Back the Affordable Care Act

While attempts at a full ACA repeal are possible, it is more likely that the Trump administration will dial back prior regulatory efforts related to nondiscrimination, preventative care mandates, tax subsidies, and association health plans.

Employment-Related Taxes and Exclusions will Play a Large Part in Further Tax Reform

A big focus of the new administration and Congress will be the extension of the 2017 tax reforms that are set to expire at the end of 2025. Add to this the need to consider campaign promises of no taxes on overtime and tips, and the result will be a renewed interest in reforms that will replace the lost revenue and "pay for" other initiatives. One target will be the COVID ERTC payroll tax credits through a retroactive repeal and an extension of the time period for IRS audits. Also on the table will be the largest "tax expenditure" of them all – the exclusion for employer-paid health coverage.



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2024 IN REVIEW

Independent Contractor Standard Shifted Again

When the Department of Labor finalized a rule last January to [make it much harder for businesses to use 1099 labor and more likely that workers will be considered W-2 employees](#), it had an especially significant impact on the PEO community. If you haven't adjusted to match the new standard, [make sure to read our four suggestions](#) – which include suggestions about making sure your clients have workers' comp coverage for contractors and updating your service agreements.

Controversial Joint Employment Rule Struck Down

A Texas federal court judge [struck down the Labor Board's controversial joint employer rule](#) right before it was set to take effect in March, and [the agency abandoned the rule in July](#). This year was a good time to [review your service contracts](#), paying careful attention for language that reserves the right of control (either directly or indirectly) over co-employed workers regarding the terms and conditions of employment – particularly language that may be required under certain state laws.

State-Level Patchwork Got Even More Complex

The patchwork of legal compliance measures springing up around the country continued to get more complex in 2024 – and PEOs were caught in the middle. [Data security](#), [workplace privacy](#), [pay transparency](#), paid leave, wage and hour, and minimum wage are just a few of the areas where employment laws varied even more from state to state – and in some cases by county or city. PEOs had no luck with any sort of uniform set of standards that could apply on a nationwide basis, especially as Congressional gridlock ground D.C. to a halt for the past year.

PAGA Reform Meant Relief for PEOs in California

Anyone doing business in California is no doubt familiar with the Private Attorneys General Act – or PAGA, the scariest four-letter word in the state for employers. What you might not know is that a July overhaul provided much-needed relief to PEOs and their customers. Specifically, employers that take “reasonable steps” to comply with California law before a PAGA claim is filed can earn up to an 85% discount in penalties. This helps both PEOs who have employees in California and PEO customers with worksite employees in the state. [We gave you three steps to help you enjoy that relief here](#).



Expect a Business-Friendly Atmosphere in D.C. – But Some Changes May Come Too Fast for PEOs

Despite the fact that the Secretary of Labor nominee supported union-friendly legislation while in [Congress](#), we still expect the incoming administration to create an environment friendly to businesses – including PEOs – starting early in 2025. For example, we expect the DOL to loosen independent contractor restrictions and push for a new joint employment rule that will reflect the evolving nature of flexible work arrangements. But these kinds of changes may come too quickly for some PEOs. It takes time and effort to adapt the complex systems that support PEO customers, and even a good change can be problematic if it comes without adequate preparation time.

M&A Activity in PEO Sector Will Be Hot and Heavy

Rising compliance burdens and the increasing complexity of state regulations will drive further consolidation in the PEO market. Larger players with robust compliance infrastructures will acquire smaller PEOs. Also, expect more strategic partnerships with technology firms to develop scalable solutions for workplace compliance challenges.

Workplace AI Will Face Increasing Regulation

The use of AI in hiring, performance management, and payroll systems will draw increasing regulatory scrutiny in 2025. PEOs should guide their clients on [how best to integrate AI systems](#) while ensuring compliance with new state laws aimed at preventing bias and discrimination. [Work with them to develop policies addressing AI governance](#), including transparency, accountability, and audits.

Tighter Immigration Policy Will Lead to PEO Challenges

The anticipated changes in immigration policies under the new administration will put greater pressure on employers to comply with workplace immigration laws. PEOs may need to assist clients with ensuring proper I-9 documentation, preparing for ICE audits, managing visa-related employment, and [deciding on E-Verify usage](#). Expect a rise in demand for PEO services that address workforce planning in light of [potential raids or policy changes affecting undocumented workers](#).

FP PeopleLaw2025

Join Us at PeopleLaw2025!

Early-bird pricing for the nation's premier conference for PEO, staffing, gig, and others in the alternative work arrangement field expires this December 31. [Make sure you secure your spot today](#) and join us this March 3-6 at the Terranea Resort in Rancho Palos Verdes, CA.



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2024 IN REVIEW

Overtime Rule Salvation

It's a big deal for staffing agencies that a [federal court halted the dramatic overtime rule from taking effect](#) in November. After all, the industry relies on salary exempt recruiters and other similar employees to carry out your most important tasks. And while [the nomination of Lori Chavez-DeRemer as Secretary of Labor](#) might mean that we could see a renewed effort for an OT rule to boost workers' wages, we predict that any such rule would be much more moderate in nature than the Biden-era attempt.

Stay-or-Pay Crackdown

When the NLRB's General Counsel announced in October that [certain "stay-or-pay" provisions infringe on workers' federal rights](#), it hit the staffing industry especially hard given the common reliance on them to retain personnel and protect business interests. We outlined [some best practices](#) to navigate this new reality – but also have hope that [a new NLRB GC will jettison this position](#) once the new administration arrives in January.

Post-Chevron Celebrations Need to Be Tempered

The Supreme Court rocked the legal world in June when it [overturned the famous Chevron doctrine](#) and held that courts should use their independent judgment and not simply defer to an agency's interpretation of an ambiguous federal statute. Knowing this could cut away a lot of burdensome red tape – from joint employment, to the overtime rule mentioned above, to overbroad workplace safety rules – many staffing agencies celebrated this decision as an all-out win. But not so fast. [The demise of Chevron might lead to unintended consequences for the staffing industry as we explain here.](#)

State-Level Assault on Staffing

Anti-staffing advocates took their battle to the states in 2024. Minnesota staffing agencies will no longer be able to enter into contracts that restrict their customers from hiring workers placed at their jobsites thanks to [a new law that took effect in July](#). And an Illinois law set to take effect in April would have heightened equal benefit obligations under the state's Day and Temporary Labor Services Act – but [a court put a halt to that portion of the law](#) in March [while retaining equal pay responsibilities](#).

Sign Up for Our Staffing Insights and Events

To make sure you stay in the know regarding critical developments in the Staffing industry – and receive practical guidance you can apply to your own business – make sure you sign up to receive Staffing updates through [the Fisher Phillips Insight system](#).



Bogged-Down Immigration Structure Will Hamper Industry

As explained in our Immigration section, we expect businesses to find it more difficult to secure the services of foreign workers across the board in 2025. This will have a particularly acute impact on the staffing industry – especially in the healthcare and IT staffing fields.

State-Level Attacks Will Continue

With business-friendly changes taking root in the federal government, we will see another round of attacks from anti-staffing advocates in statehouses from coast to coast. It will be more important than ever to participate in local advocacy efforts to help shape the law to reflect the realities of the modern business arrangement.

Patchwork of Pay Transparency Laws

We'll also see [varying pay transparency laws from state to state](#) continue to proliferate, making compliance efforts even more critical for multistate staffing agencies.

Nurse Staffing Will Add Cumbersome Rules

We predict we'll see an increase in legislation at the state level requiring registration and licensure of nurse staffing agencies – not to mention data collection obligations. These new rules will increase your operational costs and raise the specter of hefty penalties for non-compliance.

The Age of AI is Here

The staffing firms that use AI in recruitment (resume screeners, chatbots, etc.) will gain a competitive edge in 2025. They will need to manage the increased data privacy obligations brought about by such changes to ensure compliance.



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TECHNOLOGY INDUSTRY



2025 PREDICTIONS

Increased Use of Independent Contractors

Despite the [selection of a union advocate for the top spot at the Department of Labor](#), the Trump administration will support policies to make it easier for businesses to classify workers as contractors rather than employees at the federal level. This is especially beneficial in the tech sector, where flexibility is key.

Reduced Antitrust Concerns

The new-look FTC will be less aggressive in policing tech mergers for antitrust concerns, opening the doors for free-flowing transactions between innovative companies.

Trouble for Foreign Workforces

The impending immigration crackdown won't just target unauthorized workers and criminals. The tech sector will get swept up in the coming turbulence. Under the Trump administration, visa programs like the H-1B will face increased restrictions, higher costs, and stricter eligibility requirements. You'll need to provide support for current visa holders, such as legal assistance or career development opportunities, to shore up your workforce and improve retention. At the same time, you may need to diversify talent acquisition strategies by investing in domestic upskilling or outsourcing roles to regions with more favorable immigration policies.

AVs Will Get the OK

The federal government will create additional incentives and ease regulations for those businesses developing fully autonomous vehicles. We'll see an increasing number of them on the road by the end of 2025.

Sign Up for Our Tech Insights and Events

To make sure you stay in the know regarding critical developments in the Tech industry – and receive practical guidance you can apply to your own business – make sure you sign up to receive updates through [the Fisher Phillips Insight system](#).

RETAIL INDUSTRY



2025 PREDICTIONS

Uptick in Spending Will Lift Retail

Inflation is already significantly cooling, and we expect an extension of tax cuts that will reach consumers across the country – or at least boost consumer confidence sufficient for them to feel comfortable spending again. We expect the first half of 2025 to see a robust economy with a stronger dollar. All of this adds up to consumers being more willing to purchase retail products after having been cautious about big purchases for the past few years. Be prepared to be flexible with your workforce as you grow to meet demand. Streamline your hiring processes to remain nimble. Focus on retention efforts now (stay bonuses, incentives, etc.). And bolster your supply chain by proactively working with suppliers on delivery schedules and stock replenishments.

Retail Wages May Increase

The retail worker will feel pretty good heading into the new year. It was no accident that one of President-elect Trump's most memorable campaign moments was working at a fast-food restaurant, cementing his focus on lower-wage earners. [The nomination of a pro-union Secretary of Labor](#) further demonstrates that this won't be a typical Republican administration favoring business at the expense of blue-collar workers. We expect federal lawmakers and agency heads (not to mention state leaders trying to keep up) to look for ways to boost retail worker wages. We'll see minimum wage increases in states and local areas even if Congress doesn't push for a federal raise. Retailers with tiered wage structures may face wage compression issues, as entry-level wage increases will build pressure for you to boost mid-level employee salaries to prevent pay disparities. Make sure to factor potential wage increases into your 2025 budget, and consider a privileged pay equity audit to ensure you stay on the right side of the law.

Tariffs Could Cause Workplace Disruption

President-elect Trump has made it clear he wasn't joking when he said he would impose increased tariffs as part of his 2025 economic strategy. With many retailers buying goods from China, the threat of increased tariffs could cause price bumps that eventually dampen consumer demand. You may also face inventory challenges if you source alternative suppliers. If costs rise significantly, retailers might need to cut costs in other areas, potentially leading to reduced staffing, hours, or benefits later in the year. Conversely, increased complexity in supply chains might require you to bring specialized staff aboard to improve your logistics.

Unions Will Continue to Focus on Retail

Speaking of pro-union leadership in the administration, union organizing will remain a persistent issue in the retail sector in 2025. The past four years have seen a major shift with labor aiming at organizing the retail sector, an industry they typically avoided. This won't change in the new year, and will likely accelerate as workers feel even more emboldened. Make sure you coordinate with your FP counsel to develop an effective plan for responding.



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2024 PREDICTIONS RECAP

Some Highly Anticipated Title IX Changes Arrived While Others Did Not

In line with our predictions, the Department of Education [finally released new Title IX regulations](#) in April that expanded Title IX in various ways and significantly changed how institutions must respond to sexual harassment and discrimination claims. The new rules took effect August 1 – but not for everyone, thanks to [ongoing litigation across the country](#). In September, the DOE released guidance to [help colleges and universities comply with pregnancy-related aspects of the new rules](#). To our surprise, however, the DOE has not yet finalized a rule addressing gender identity in athletics.

SCOTUS Declined to Weigh in on Transgender Bathroom Policies

We predicted that the Supreme Court could resolve [a division among federal appeals courts](#) regarding whether schools can require students to use only the bathroom that corresponds to their biological sex or a gender-neutral bathroom. But in January the Court [declined to hear](#) a public school district's appeal to a [7th Circuit ruling](#) in favor of a transgender student. Further, the new Title IX rules prohibit federally funded schools from denying transgender students access to facilities, such as bathrooms or locker rooms, that align with the student's gender identity (though, as mentioned above, the rule has been blocked in certain states).

HOW'D WE DO ON OUR PREDICTIONS?

We got the predictions **SOMEWHAT RIGHT**

NOT QUITE



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MORE OF 2024 IN REVIEW

Some Good Title IX News for Private Schools

A federal appeals court ruled in March that Title IX does not apply to a private school based purely on its nonprofit status, [restoring the status quo that had been in place for decades for private schools in Maryland, Virginia, West Virginia, North Carolina, and South Carolina](#). The decision could influence other courts to follow suit on an issue that has courts split across the country.

More Good News for Religiously Affiliated Higher Educational Institutions

In a rare rebuke of its own General Counsel, the National Labor Relations Board in September rejected an invitation to flip-flop on its own precedent and will instead continue to apply a simple, bright-line test when determining whether it has jurisdiction over religiously affiliated higher educational institutions. The Board's recent decision is [welcome news to schools](#).

Due Process Rights Became a Hot Topic

What must schools do to satisfy their due process obligations? In March, a federal appeals court [sided with a medical school by holding that it did not violate a resident's due process rights](#) when it dismissed her from its residency program, which is run by a public university. But a California jury [hit a private school with a \\$1 million verdict](#) in May for expelling high school students without due process – affirming that California private K-12 schools (including religious schools) must comply with the state's "fair procedure" standard before imposing discipline on students. Private schools in other states can apply this standard as a best practice, even if the state does not require it.

Focus on State Autonomy Over Education... But Also on Parental Rights

President-elect Donald Trump has promised to close down the U.S. Department of Education and has said that Linda McMahon, who Trump announced on November 19 as his nominee to lead the agency, will fight tirelessly to expand "universal school choice" to all states. We will see the Trump administration give states more control over schools, yet also push for more parental empowerment in education, a movement that has swept across red states in recent years.

More Support for Religious Liberty

The first Trump administration was hugely supportive of religious liberty and religious exemptions, and we expect the same from the second one. For religious schools, we will see 2025 bring some combination of broader support for religious schools enforcing religious tenets, and we may even see broader interpretation of the Title III ADA exemption, and relaxed requirements for the ministerial exemption provided by the Constitution.

Immigration Reform Will Significantly Impact Schools

The incoming Trump Administration has pledged the largest deportation operation in U.S. history, as well as the end of Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) for several countries. Schools and their student bodies will be particularly impacted. While schools can currently enroll K-12 students regardless of immigration status, it's unclear whether that option will remain in 2025. Expect to see movement towards using school enrollment as another "opportunity" to ask about immigration status.

New Title IX Rules Will Be Rolled Back, But States Could Take Protective Measures

The Biden administration's Title IX changes will be jettisoned or significantly scaled back under Trump. And while there's never been federal protection for private school transgender students (other than at those schools subject to Title IX), be aware of any applicable state laws and anticipate that some states will respond to the expected Title IX cuts through proactive legislative changes.

Increased Scrutiny of Diversity and Inclusivity

This year we saw courts [start to define the boundaries of permissible DEI programs](#) in the aftermath of last year's SCOTUS decision limiting "race conscious" programs such as affirmative action in college admissions. Some of these decisions, along with Trump's clear stance against DEI initiatives, may cause concern for schools that provide affirmative action opportunities. They also serve as a reminder to review your financial aid, fellowships, and other inclusion programs to ensure they comply with federal equal rights law.





2024 PREDICTION RECAP



Hospitality Employers Embrace AI

All industries have their early adopters, and hospitality is no exception. We correctly predicted that hotels, resorts, restaurants, cocktail bars, spas, cruise lines, and others in the industry would continue to leverage or experiment with artificial intelligence. Indeed, AI is being used to guide customer experiences, improve efficiency and profitability, and predict what guests are going to want next. [Here's our guide on leveraging AI while showing care for your guests.](#)



MORE OF 2024 IN REVIEW

Court Strikes Down Onerous 80/20/30 Tip Credit Rule

A federal appeals court delivered good news when it [blocked the DOL's infamous 80/20/30 rule](#) in August, providing immediate relief to hospitality employers around the country by vacating the regulations in question. The DOL's rule — which created time-keeping and other compliance nightmares — applied to employers that take the tip credit toward their minimum wage obligation under federal wage and hour law. The 5th U.S. Circuit Court of Appeals said the DOL's interpretation doesn't align with the FLSA's text or the intent of Congress. We expect cases making similar arguments and relying upon this decision to crop up in district courts around the country.

Entire Industry Braces for NYC's Safe Hotels Act

New rules regulating hotels in NYC will take effect in 2025 under the Safe Hotels Act. NYC lawmakers are aiming to address safety concerns regarding human trafficking, crime, and cleanliness — but the act goes far beyond simply addressing these straightforward concerns. The law, passed in October, will place restrictions on how hotels operate as a whole and seemingly encourages unionization. [Hospitality businesses nationwide will want to track this new law](#), as unions could push for similar rules in more cities.

Restaurant Settles After Denying Cook's No-Sundays Request

A North Carolina restaurant franchisee agreed to pay \$40,000 and take other corrective measures in August to settle a religious discrimination and retaliation lawsuit filed by the EEOC after being accused of denying a cook's no-Sundays request. This settlement highlights the importance of [taking steps to protect your restaurant and comply with federal and local anti-discrimination laws.](#)

Staffing Shortages Remain Critical Concern

Hospitality employers have been facing major staffing shortages in recent years, straining operations and impacting customer service — as well as the bottom line. We expect employers to continue grappling with staffing issues in 2025. Additionally, President-elect Trump's [announcement that former ICE Acting Director Tom Homan would serve as the new "border czar"](#) is yet another strong reminder that employers should anticipate a renewed focus on immigration enforcement come January. Deportations and voluntary departures will likely have a major effect on the hospitality industry — especially regarding the use of staffing agency employees.

No Movement on "No Tax on Tips" Proposal

President-elect Trump vowed to [support legislation that ends federal income taxes on tips for hospitality workers](#) — but this campaign promise is a long way from becoming law. Supporters say such a move would help employees take home more pay without forcing hospitality employers to increase base wages in the face of high inflation and low margins. Critics, however, say income-tax-free tips may drive base wages down, encourage customers to tip less, and cause a revenue shortfall for the federal government. We've seen [some movement in Congress on this issue](#), but it is a controversial proposal that we expect to face significant opposition.

More Big Changes Expected Post-Chevron

SCOTUS rocked the legal world in 2024 when it overturned the famous *Chevron* doctrine, holding that that courts shouldn't defer to an agency's interpretation of an ambiguous federal statute. The *Loper Bright* ruling gives the courts — not administrative agencies — the power to say what the law actually is. Already, courts have cited to *Loper Bright* in decisions blocking [the 80/20/30 tip credit rule](#) and [the federal overtime rule](#) — which aimed to raise the salary threshold for the so-called "white-collar" exemptions to about \$59k and caused significant compliance challenges for hospitality employers. We don't expect those two rules to be resurrected, and we expect more federal agencies rules that impact the hospitality industry to be challenged and potentially dismantled in 2025. [Click here to explore the various ways this blockbuster SCOTUS ruling could impact on your workplace in 2025 and beyond.](#)

HOW'D WE DO ON OUR PREDICTION?



We got the prediction
RIGHT



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2024 PREDICTIONS RECAP



Labor Organizing Continued

Union organizing at healthcare organizations has been a key trend for the last few years – and we correctly predicted it would continue well into 2024. Indeed, we saw record highs when it comes to petition filings and elections in the industry. For the overall workforce, [data from the NLRB](#) showed that petitions for union elections doubled from FY2021 to FY2024. And [Fisher Phillips' Union Organizing Activity Map](#) revealed that SEIU – the largest healthcare union in North America – continued to be one of the most active when it comes to petition filings. To minimize disruptions in 2024, employers needed to be proactive with workplace relations.



Staffing Shortages Persisted

We correctly predicted that healthcare facilities, unfortunately, would continue [to experience staffing shortages in 2024](#). This is another trend that has persisted over the last few years, and many employers explored alternative staffing models to try easing some of the pain.



Wage and Hour Carveouts

California's healthcare minimum wage increase finally took effect in October, hiking wages to \$21 per hour for workers at many healthcare facilities and as high as \$23 per hour for workers at dialysis clinics and large healthcare systems. Although we expected to see other states follow California's lead and pass similar measures – buoyed by the support of labor unions and worker advocates – this trend has yet to take hold in other locations.

MORE OF 2024 IN REVIEW

New HIPAA Privacy Protections for Reproductive Healthcare

A new HIPAA rule finalized in April added more compliance requirements aimed at supporting reproductive healthcare privacy. The rule impacts healthcare providers, employer-sponsored group health plans, and other covered entities.

Data Breach Laws Impact Industry

A California federal court ruled in July that disclosure of certain data collected through website cookies that may qualify as health information could trigger a data breach under the CCPA – a decision that should cause healthcare companies to rethink data privacy practices.

Nursing Facilities Ordered to Pay \$36M

A group of nursing facilities in Pennsylvania was recently ordered to pay a whopping \$36 million in overtime pay and damages to workers who claimed their employers deliberately paid them less than they actually earned. [Here's what you need to know about the lawsuit and a 10-step plan to avoid the same fate.](#)

HOW'D WE DO ON OUR PREDICTIONS?



We got the predictions **MOSTLY RIGHT**



Continued Staffing Shortages

Unfortunately, we predict that long-standing staffing issues in the industry will persist in 2025. COVID-19 intensified staffing shortages that already created challenges for healthcare employers in prior years, and we have not seen the rebound we hoped for in recent years. Indeed, [consulting firms predict](#) that these challenges aren't going away any time soon. You'll need to stay proactive when it comes to your recruitment and retention strategies.

Private Equity Firms Will Continue to Acquire Healthcare Providers

We'll see a continued push by private equity firms in 2025 to acquire and merge healthcare providers using "roll-up" strategies. We expect this to have the most impact on family practices, dentists, eye doctors, and radiology groups. This will create unique issues for physician-owned practices and may require them to proactively prepare employment agreements for the physicians.

Immigration Focus Will Impact Foreign Healthcare Workers

In a tight labor market, employers often seek to fill vacant roles with qualified foreign nationals. Since immigration reform was a centerpiece of the first Trump administration, we anticipate more of the same during the second term. We'll see the Trump administration curtail the reliance on highly skilled foreign workers, throwing roadblocks up for employers who rely on solutions like the H-1B visa program.

Union Activity May Die Down ... A Little

Labor advocates have enjoyed the Biden administration's pro-union actions over the past few years, but we expect that to change a bit in 2025 with the new administration rebalancing the scales when it comes to federal labor law policy. Just as President-elect Trump rolled back Obama-era NLRB rules in his first term, we predict he'll do the same this time around and give employers more leeway. But there's a caveat: [Trump's appeals to organized labor on the campaign trail](#) and [recent nomination of Lori Chavez-DeRemer to lead the Department of Labor](#) indicate that his administration may have a different approach this time around. This highlights the importance of ensuring compliance with recent NLRB decisions until changes are officially made.



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2024 IN REVIEW

A Big Year for Whistleblowers and Coming Clean

The Department of Justice announced in March [new whistleblower programs](#) that reward companies with reduced sentences for self-reporting misconduct and offer financial rewards to employees who report corporate illegal activities. In April, the DOJ's Criminal Division rolled out an initiative that [rewards individuals who voluntarily disclose original information about illegal corporate misconduct](#) – even if they actively participated in the illegal activity. The whistleblowing only got louder when federal officials [launched yet another program](#) in August that gives employees tremendous incentives to report alleged wrongdoing on a very tight timeframe, meaning both public and private corporations need to react with speed and efficiency if they wish to take advantage of valuable cooperation credits for self-reporting.

EEOC Guidance Gave Employers Key Workplace Investigation Tips

In April, the EEOC [updated its enforcement guidance on harassment in the workplace](#), which included key tips for ensuring your workplace investigations run smoothly, comply with legal standards, and put you in the best position to reach a fair and reasonable outcome. We answered the [five biggest questions raised by the guidance](#). For a case study on what not to do, check out this [botched investigation at a medical spa](#).



LOOKING AHEAD TO 2025

Employers Should Stay Vigilant Despite the Changing Administration

It is unclear whether the aggressive push to promote whistleblowing will continue under the new administration. But given the huge push this year to incentivize whistleblowers, employers will need to continue to ensure prompt, effective investigations of potential wrongdoing or face the potential of significant fines from regulatory bodies.

Use of Artificial Intelligence in Internal Investigations

The trend of using AI and related data analytics to spot suspected transactions and unlawful conduct by employees will likely accelerate. These tools can quickly spot outliers and target investigatory resources to the highest risk areas. In 2025, employers will need to evaluate new tools that can assist in spotting potential issues and support workplace investigations with evidence gathering and targeted investigatory tools.

2024 IN REVIEW

New Farmworker Protection Rule Took Effect – But Was Halted By Several Courts

The DOL [issued a final rule in April](#) that expands employment protections for farmworkers in the H-2A visa program and enhances the agency's capabilities to monitor and enforce program compliance. The Farmworker Protection Rule took effect on June 28 and applies to H-2A applications filed on or after August 29 this year. However, a federal judge in Georgia [blocked the rule for employers in 17 states](#), just days before it was fully implemented, and two separate federal courts halted different portions of the rule on November 25. Check out our predictions to see what we expect will happen to the rule next year.

OSHA Proposed First-Ever Heat Safety Rule and Promised to Target Agricultural Industry

The agency [announced a new proposed rule](#) in July that aims to protect workers from heat-related illnesses and fatalities. If finalized, this groundbreaking rule would have a [particularly big impact on agricultural employers](#), and OSHA has promised to prioritize programmed inspections in agricultural industries that employ temporary, nonimmigrant H-2A workers for seasonal labor.

Agricultural Employers in California Faced Heightened Challenges

California employers in the agriculture industry faced challenges after [two major developments in March](#). First, new rules took effect requiring employers to provide a special written notice to H-2A employees. Second, farmworker allegations came to light regarding union organizers' coercion and misuse of federal funding benefits to promote their services. But employers could breathe a sigh of relief after Governor Newsom [vetoed a workers' compensation bill](#) that would have severely punished employers for failing to comply with heat standards.

LOOKING AHEAD TO 2025

Immigration Impact for Agricultural Employers

Groups like the United Farm Workers have been touting the Deferred Action for Labor Enforcement (DALE) program, which was expanded under President Biden's DOL to provide protection from deportation for up to four years if an employee makes a labor-related claim against their employer. However, the Trump administration will roll back a recent DHS interpretation that expanded deferred action to employees who make a labor-related claim. We will also see more I-9 audits in 2025.

The Farmworker Protection Rule Will Not Survive

The three separate injunctions issued against the new rule have effectively rendered it unenforceable nationwide. While those injunctions are temporary, we don't expect them to be lifted before President Trump returns to the White House, and we also don't expect the new administration to fight to reinstate the rule. But stay tuned for updates as all of this plays out.

This Trump Administration Will Prioritize Policy Shifts Relating to Employee Rights

Under the prior Trump administration, we saw heavy DOL enforcement of wage and hour issues for H-2A employers and agricultural employers in general. We expect the second Trump administration to continue enforcement but to focus more on shifting policies away from protecting H-2A employee rights and potentially toward protecting U.S. workers.

Blue States to Push for Unionization of Farmworkers As Feds Turn in the Other Direction

While employers can expect a less union-friendly landscape under the Trump administration, blue states will push for "card check" laws (similar to laws already in place in California and New York) or some pathway to unionization for agricultural employees.



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2024 PREDICTIONS RECAP



Feds Announce New Race/Ethnicity Categories

We accurately predicted that the federal government would change how it categorizes people by race and ethnicity. In March, the White House [announced](#) that [the federal government was making key revisions](#) – for the first time in over 25 years – to the questions agencies use to collect such information. Although the changes took effect immediately, [agencies still have time to roll out their new data collection approaches](#), so employers should look for directions from the applicable agencies.



Delayed OFCCP Regulations on Modernization

With the uptick in remote work in recent years, the OFCCP has recognized that AAP structures based on establishment or physical location are becoming unworkable for many contractors. But we missed the mark on thinking the agency would release regulations in 2024 aimed at refining the structure of affirmative action programs to accommodate changes in the way companies work. Instead, the agency has said it should issue a modernization rule by May 2025.

MORE OF 2024 IN REVIEW

New FOIA Requests

The OFCCP once again received several Freedom of Information Act (FOIA) requests to disclose certain reports from federal contractors that include sensitive employee demographic data — specifically the release of 2021 EEO-1 consolidated report information. Employers that oppose having 2021 EEO-1 Type 2 Reports disclosed [were given an opportunity to submit a written objection](#).

Pay Transparency Measures Proposed

Back in January, the Biden administration [announced new pay transparency measures](#) intending to reduce wage gaps based on gender and race. Like many of the state laws aimed at closing the wage gap, President Biden's multi-pronged approach includes salary history bans, reinforcement of equal pay obligations, and a proposal that would require federal contractors and subcontractors to disclose expected salary ranges in job postings. We expect the final rule to be issued any day now.



HOW'D WE DO ON OUR PREDICTIONS?



We got the predictions
**SOMEWHAT
RIGHT**

Post-Chevron Challenges Expected

In the wake of a [Supreme Court decision](#) reducing the power of federal regulators and placing more authority in the hands of judges, we expect to see courts strike down more agency rules. How will this impact federal contractors? OFCCP has pushed broad interpretations of its regulations to govern federal contractors, including an expansive and ever-changing approach to compensation and significant revisions to the [audit scheduling letter](#). And some observers even go so far as to wonder whether the Executive Order that created the entire affirmative action system for federal contractors is an overbroad regulatory reach.

Trump Administration Will Shift Focus

As President-elect Trump prepares to return to the White House, we can take several cues from his first term to predict how his administration will approach federal contract compliance:

- **More Enforcement:** Trump's OFCCP will increase its enforcement efforts since the agency had more financial recoveries during his first term than during the prior nine years combined.
- **Rescind Contractor Minimum Wage:** The new administration will rescind a Biden-era order that [significantly raised the minimum wage](#) for workers on covered federal contracts. Notably, in November, a [federal appeals court](#) held that President Biden didn't have the authority to set a federal contractor minimum wage, and we expect the court battle to continue as the incoming administration determines next steps.
- **End Certain Diversity Training:** OFCCP will return to Trump-era restrictions on diversity training for federal contractors – including reissuing the [Executive Order prohibiting "divisive" training](#), which President Biden [revoked](#).
- **Ensure Religious Exemptions:** The administration will ensure religious organizations have clear and appropriate exemptions.
- **More Transparency:** We also expect to see a return to enforcement policies and procedures that often provided more transparency to the contractor community.
- **No Pay Data Reporting:** Finally, as we mentioned in our Pay Equity section, we think the EEOC will abandon its attempts to resurrect its EEO-1 pay data reporting requirement.



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2024 PREDICTIONS RECAP



Union Walkthrough Rule Started to Have an Impact

We predicted that [OSHA's union walkthrough rule](#) would have an impact on the manufacturing sector. Early data shows this to be accurate. According to the NLRB, election petitions increased by 27% in FY2024 compared to the previous year – and last year's total (3,286) was more than twice what we saw just a few years ago in 2021 (1,638). While overall union membership rate in the manufacturing sector has declined over the past few decades, 2024 witnessed significant unionization activities across the industry, particularly in the automotive field.



Manufacturers Looked South for Opportunities

We also predicted that sweeping labor reforms in Mexico would lead manufacturers to turn their attention south of the border once again. We were right. Manufacturing operations increasingly shifted to Mexico to the point where over 90% of North American manufacturers have relocated at least some production or supply chain there.



AI Increasingly Prevalent in the Industry

We were also correct in predicting that AI would be used to optimize workforce allocation, scheduling, supply chain processes, safety monitoring, and predictive maintenance with increasing frequency in 2024. [A September report](#) highlighted the transformative nature of AI over the past year – and describes what we can expect in the next decade.



HOW'D WE DO ON OUR PREDICTIONS?



We got the predictions **RIGHT**

Trump Administration Will Create Challenges and Opportunities for Manufacturers

We will see both challenges and opportunities for growth once the new administration takes office in 2025.

- **Tariffs Could Impact Sector:** A central pillar of Trump's campaign was revitalizing American manufacturing by encouraging "Buy American" efforts – and tariffs are anticipated to play a significant role. Manufacturers should plan now for their impact, both with respect to purchasing necessary materials to continuing (or expanding) operations and demand for goods domestically. If significant tariffs are instituted, domestic manufacturers will be forced to look closely at supply lines and could see an increase in demand against equivalent imports.
- **America-First Policies:** Additionally, Trump placed a heavy emphasis on American manufacturing, specifically targeting some company's plans to move some production from the Midwest to Mexico. While it's unclear what specific steps outside of tariffs the incoming administration may take, manufacturers should pay close attention to the evolution of this point of emphasis as it relates to any offshoring plans.
- **Stricter Immigration:** Lastly, manufacturers are already facing a very tight labor market. The Trump administration's heavy emphasis on tightening immigration could place a heavier strain on hiring efforts. Manufacturers would be well served by focusing on retention efforts now since the labor pool may further contract in 2025.

We'll See Widespread Deregulation

The incoming Trump administration has plainly stated its intention to minimize regulatory burdens on production. The Biden administration issued environmental and labor regulations that heightened the burdens for manufacturers in a number of ways. 2025 will see a renewed effort at deregulation similar to the first Trump administration, during which it accomplished 22 acts of deregulation for every act of regulation in the first year alone. In this type of shifting landscape, manufacturers must regularly monitor policy announcements and updates from relevant government agencies to anticipate changes and understand their potential impact on operations. This is also the time to participate in industry associations and forums that provide insights and advocacy on regulatory matters.

Continued Adoption and Evolution of Technology

With generational technological changes happening every other year, manufacturers must continue to adapt to, adopt, and evolve the technological tools available to them. Prior investment by the Biden administration through the CHIPS and Science Act should begin paying tangible benefits to manufacturers seeking access to semiconductors and other key component parts necessary to drive their production efforts forward. Additionally, continued development and expanded application of AI tools will create areas of opportunity for manufacturers outside of direct production applications. Areas like marketing, people management, and analysis are witnessing rapid changes and innovation. Manufacturers will be well served by investing in and exploring these tools in 2025.



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2024 PREDICTIONS RECAP



DOL Compliance Actions Slightly Decreased, But the Agency Still Brought the Heat

While the construction industry saw a slight decrease in [DOL compliance actions](#) in FY 2024 (1,966 compared to 2,134 in FY 2023), it remained in the top three of all industries facing the most enforcement activity – and the agency brought the heat, just as we predicted, in other ways. Federal rules issued in January and April [made it harder for businesses to classify workers as independent contractors under federal wage and hour rules](#) and [made millions of additional workers eligible for overtime pay](#) (but see the Wage and Hour section to see where the overtime rule stands).



Labor Activity Remained High

This year saw another uptick in labor organizing activities across all industries, just as we predicted. In fact, the National Labor Relations Board [reported in October](#) that it received 2,593 petitions during FY 2024 – up 27% from the prior fiscal year (and more than double the number of petitions received in FY 2021).

HOW'D WE DO ON OUR PREDICTIONS?



We got the predictions
RIGHT

MORE OF 2024 IN REVIEW

NLRB Lowered the Bar for Construction Industry Unionization

The Labor Board issued a [new regulation in July](#) that not only scrapped three Trump-era rules that had made it easier for workers to undo union representation but also reinstated a prior doctrine shielding voluntarily recognized unions from prompt decertification, once again easing the way for union recognition in the construction sector.

California Extended the PAGA Exemption for Certain Construction Employers

Governor Newsom [signed legislation in September](#) that will ensure certain unionized construction employers are completely exempted from PAGA lawsuits for the next 14 years. As a result, construction employers that meet certain standards – including paying workers 30% more than minimum wage – will see the Private Attorneys General Act (PAGA) exemption they have enjoyed for past decade pushed out to January 1, 2038.

OFCCP Announced New Compliance Filings

The Office of Federal Contract Compliance Programs announced in November that it is [reinstating a monthly compliance filing report for covered construction contractors and subcontractors](#). With an initial due date of April 15, 2025, and reports due every 15th of the month thereafter, covered construction contractors and subcontractors will soon have to submit their CC-257 reports to the OFCCP.

Construction Employers Will Challenge More Agency Actions in Court

The Supreme Court's demolition of the decades-old *Chevron* doctrine in June gives [construction employers a new toolset to push back against regulatory actions](#) taken by federal agencies such as the DOL, OSHA, MSHA, and the Environmental Protection Agency. Construction employers and their advocates will be in a better position to challenge overly burdensome regulations – such as OSHA's [proposed national heat safety rule](#) if it is finalized next year.

Relaxed Regulatory Environment – But a Mixed Bag on Construction Costs

Once Donald Trump returns to the White House, a relaxed regulatory environment will return to the construction industry, including streamlined climate and environmental regulations, which will cut red tape and fast track construction activity. While we anticipate a reduction in the costs of domestic construction materials, President Trump's promised new tariffs and increases on existing tariffs on foreign goods will result in increased costs of construction materials such as solar panels and steel.

Labor Shortages and Hiring Skilled Workers

The president-elect's plan for heightened immigration enforcement ensures ongoing challenges with labor shortages and hiring skilled workers. Increased ICE raids will impact business operations and lead to public relations issues – particularly because the construction industry often employs higher concentrations of undocumented workers. We've put together [five steps you can take to safeguard your operations against the anticipated enforcement](#).

Federal Infrastructure Will Remain a Priority While Other Biden Initiatives Will Be Left Behind

The incoming Trump administration will continue to prioritize federal infrastructure, with an emphasis on domestic preference policies such as highway expansion. However, we will likely see a shift away from public transportation, high-speed rail, urban transit, and green initiatives.



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2024 IN REVIEW

President Scheinbaum Proposes Workplace Reforms

Soon after [Claudia Scheinbaum assumed the office of President on October 1](#), she set into motion several changes that could impact employers across Mexico in the coming years.

- She wants to implement annual minimum wage hikes of approximately 12% – which is especially significant given that approximately 40% of workers earn minimum wage.
- She supports reducing the standard workweek from 48 to 40 hours, a reform previously proposed but not yet enacted.
- She wants to strengthen women’s rights through a constitutional equal pay guarantee for equal pay and a “women’s bill of rights” to help identify and combat gender discrimination.

Hefty New Penalties for Excessive Work Hours

A revision to Mexican federal law that took effect in June means that employers could face not only significant fines but possible criminal penalties if they require employees to work excessive hours. [Read about the changes and a plan of action for employers here.](#)



LOOKING AHEAD TO 2025

Expect Review of the USMCA/T-MEC

The United States-Mexico-Canada Agreement (USMCA), known as “T-MEC” in Mexico, has played a key role in Mexico’s labor reform by including strong labor provisions and compliance obligations since 2020. However, with new leadership taking reins at the executive level in both Mexico and the U.S., we can expect a review of the accord with possible revisions in 2025.

Judicial Elections Will Reshape Country

The largest judicial change in Mexican history will take hold in June 2025 as we begin to see the popular election of all federal judges, including Supreme Court justices. This year, we’ll see the election of new Supreme Court justices and half of all other judicial positions. The remaining positions will be contested in 2027.

2025 PREDICTIONS

Goodbye, Overtime Rule – But Don’t Ignore Compliance

[Following a Texas court’s nationwide injunction that blocked the Overtime Rule](#) and prevented a January 1 minimum salary increase to \$58,656, the incoming Trump administration will withdraw the rule altogether in early 2025 – which will grant much welcome relief to dealers. However, dealers should still be vigilant about wage and hour and pay plan compliance, as increased attention on employee compensation may expose other potential violations.

FTC Might Scale Back, But Some States Will Fill the Void

The incoming administration’s focus on deregulation will weaken current FTC measures (such as the CARS Rule, TILA, Buyers Guide Rule, Red Flags Rule, etc.) which have proven onerous to car dealers. However, we’ll see a corresponding increase in state regulatory activity on fair practices and consumer protection in 2025. This will require dealers to remain attentive to data privacy and similar issues.

Dealers Will Use AI to Help Navigate Uncertain Times

It’s not clear whether an anticipated decrease in interest rates will strengthen automotive sales, or whether President-elect Trump’s proposed tariffs may cause supply chain disruptions that could accelerate dealers’ return to pre-COVID profit levels. Given this uncertainty, 2025 will be the year that many dealers invest in AI tools to improve efficiencies among their labor forces and provide more stability through potential market shifts.



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SPORTS INDUSTRY



2024 RECAP

House v. NCAA Settlement

- May 2024: [The NCAA and the Power Five conferences agreed to a \\$2.7 billion settlement in the *House v. NCAA* class-action lawsuit.](#) This settlement will allow schools to pay student-athletes directly for the first time ever, and includes back payments to athletes who were previously prohibited from earning endorsement money.
- October 2024: [A federal judge granted preliminary approval over the settlement.](#)
- **Current Status: Interested parties can file objections until January. A fairness hearing will take place in April 2025, after which the judge will issue her final decision.**
- **What Will Happen in 2025? We expect the judge to approve the settlement, perhaps with some minor tweaks. We'll see student-athletes enjoy direct payments and benefits from a pool made up of 22% of the Power Five schools' average athletic annual revenue – estimated to be worth over \$20 billion over the life of the deal. All scholarship limits will be eliminated and replaced with roster limits. We'll also start to see an advent in new Title IX litigation when female athletes test the pay equity structure of the restructured system. But this decision will not resolve the underlying question of whether student-athletes are "employees" for union or other purposes.**

Johnson v. NCAA Litigation

- July 2024: The 3rd Circuit Court of Appeals became the first federal appeals court to [rule that student-athletes at NCAA Division I schools can bring lawsuits](#) claiming they are employees and may be entitled to minimum wage and overtime payments under federal wage and hour law. This decision runs in conflict with two other federal appeals courts and prior DOL Guidance stating that interscholastic athlete participation in extracurricular activities does not create an employment relationship.
- **Current Status: Plaintiffs in the *Johnson* case filed a Third Amended Complaint on November 4. The defendant universities and NCAA have until February 7 to respond. The *House* settlement described above will not resolve this litigation as they apply to two different areas of law.**
- **What Will Happen in 2025? We expect one or more of the individual universities and the NCAA to file renewed motions to dismiss the most recent Complaint, possibly teeing the case up for another trip to the Third Circuit Court of Appeals, and perhaps a request for Supreme Court intervention. We also believe the Republican-held Congress could step in to resolve the matter given the outsized importance this matter holds in many states.**

2024 RECAP

Student-Athlete Employee Status Battle Waged All Year

The fight over the status of collegiate student-athletes took place on at least four different fronts in 2024. We'll recap what happened and give you a current status for each of them.

Dartmouth Case

- February 2024: The National Labor Relations Board (NLRB) Regional Director in Boston ruled that Dartmouth College men's basketball players are employees under the National Labor Relations Act (NLRA) and allowed them to hold a union election.
- March 2024: [After the men's team voted 13-2 in favor of unionizing under the SEIU, Dartmouth declined to negotiate with them and maintained they were student-athletes and not employees.](#)
- August 2024: The union representing the players filed an unfair labor practice (ULP) complaint against the college for refusing to bargain with the players.
- **Current Status: The case remains pending at the Board on a request for review.**
- **What Will Happen in 2025? The wild card here is knowing when the Republicans will retake control of the NLRB. It appears at time of publication that the current Board chair's pending nomination will fail. That means that President Trump could start his second term with two vacancies he can fill with GOP appointees. The outcome of the Dartmouth case will hinge in the balance.**

USC Case

- May 2023: The NLRB's Los Angeles Regional Office issued a ULP complaint against USC, [its conference, and the NCAA itself](#), alleging they unlawfully misclassified players as student-athletes rather than employees.
- August 2024: The parties closed the administrative hearing and filed their post-hearing briefs.
- **Current Status: The case is now pending and the ALJ could issue a decision at any time.**
- **What Will Happen in 2025? We do expect Trump to fire the NLRB's General Counsel shortly after his inauguration, just as Biden did with her predecessor. If the ALJ rules in favor of USC, the new Trump-appointed GC won't appeal and will let the case die. If the ALJ rules in favor of the student-athletes, the decision would go to the full NLRB – and see above for a discussion about what to expect then.**

Do You Have Your Investigation House in Order?

Dominating headlines in 2024 yet again were story after story about alleged inappropriate conduct in professional and collegiate sports settings. From harassment to toxicity, and from pay equity to discrimination, you should feel lucky if you escaped this past year without such a claim in your inbox. But don't press your luck in 2025. Make sure you proactively engage FP counsel to establish best practices that better your odds and your success rate, and call on [our Workplace Investigations team](#) should you face the need.



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