



October 20, 2022

WHAT YOU NEED TO KNOW ABOUT

## Upcoming Workplace Rules

### PRO POINTS

- **President Joe Biden took office as the pandemic was transforming the workplace, with a pledge to shift its balance of power toward workers.**
- **Despite a handful of blocked nominees, the Labor Department and other agencies have plowed ahead with an array of regulations that not only rescind Trump-era rules but set new standards for overtime pay, independent contractors and more.**
- **The fresh policies are coming from several corners, including regulations out of DOL's Wage and Hour Division, Occupational Safety and Health Administration, and Employment and Training Administration, as well as rulings and rules from the independent National Labor Relations Board.**

### HOW WE GOT HERE

As soon as the 2020 election was called for Biden, employers began bracing for big changes. Under former President Donald Trump, agencies like OSHA and the NLRB took a back seat in deference to the private sector. But Biden — a self-described “union guy” — campaigned on pledges to heighten workplace safety enforcement and eliminate the subminimum tipped wage, among other things.

After his inauguration, he broke precedent by immediately clearing out GOP appointees at the NLRB and replacing them with his own picks. And even though Republican opposition continues to hold up his nominee to lead the WHD, a key DOL agency, the department has moved quickly to rescind Trump-era rules and, in some cases, replace them with new regulations. One such policy, finalized in October 2021, limits the situations in which employers can pay employees the subminimum tipped wage. Another, finalized in September 2020, reinforces the Registered Apprenticeship program.

Biden has set in motion several of these rules by signing executive orders spurring the agencies and has appointed the agency chiefs overseeing the process. His administration corrals much of the feedback from stakeholders both before and during the rulemaking process.

### WHAT'S NEXT

There are several upcoming rules in various stages of the regulatory process at DOL and NLRB; some are still being drafted, while others have been proposed. Still others are under review by the White House Office of Management and Budget. These include regulations that would redefine what it means to be a joint-employer; protect workers from heat; dictate when retirement plans can account for climate-related risks; update federal contractors' affirmative action programs; and revise prevailing wage policy (also known as Davis-Bacon).





Many of these were listed in the agencies' semiannual slate of upcoming regulations. But some weren't. The DOL's new independent contractor rule, proposed in October 2022, was not included in the agency's spring 2022 agenda. And OSHA's chief has said it is working on a final rule to replace an emergency temporary standard that protects health care workers from coronavirus, which it could roll out by the end of 2022. There are also a number of NLRB cases that the agency is currently considering that — while not formal rules — would also transform key facets of the workplace like gig work.

## Informal rulemaking process includes several stages for feedback

Proposed rule	OMB feedback	Drafting final rule	OMB feedback	Final rule
An agency publishes a proposed rule in the Federal Register. The public may send feedback and comments on the rule for a set period of time, typically at least 60 days.	The agency may have to submit the rule to OMB for feedback if the rule is considered "significant" — a standard set in an executive order signed by President Bill Clinton.	The agency considers public and OMB feedback in making changes to the preliminary rule.	The agency submits its final rule to OMB for a second review. Again, this is necessary only if a rule is deemed significant.	The agency publishes the final rule in the Federal Register. Generally, the rule is not allowed to take effect until 30 days after its final publication.



## Federal employment regulations under consideration or recently finalized

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■ Finalized rules ■ Final rule expected

Issue	Agency	Proposed rule published	Public comments due	Most recent OMB review completed	Final rule published
Apprenticeships	Employment and Training Administration, DOL	Nov. 15, 2021	Jan. 14, 2022	Sept. 13, 2022	Sept. 26, 2022
Gig workers	Wage and Hour Division, DOL	Oct. 13, 2022	Nov. 8, 2022	TBD	TBD
H2-A visas	Employment and Training Administration and Wage and Hour Division, DOL	July 26, 2019	Sept. 24, 2019	Sept. 12, 2022	Oct. 12, 2022
COVID-19 health care	OSHA	Emergency temporary standard published June 21, 2021	N/A	N/A	Expected fall 2022
Health care workplace violence	OSHA	TBD	TBD	TBD	TBD
Joint employers	NLRB	Sept. 6, 2022	Nov. 7, 2022	N/A	TBD
Overtime pay	Wage and Hour Division, DOL	Expected fall 2022	TBD	TBD	TBD
Prevailing wages	Wage and Hour Division, DOL	March 18, 2022	May 17, 2022	TBD	Expected winter 2022
Retirement plans	Employee Benefits Security Administration, DOL	Oct. 14, 2021	Dec. 13, 2021	Pending	TBD
Union elections	NLRB	TBD	TBD	N/A	TBD
Workplace heat	OSHA	TBD	TBD	TBD	Expected post-spring 2024

Source: Federal Register, DOL, NLRB, OMB



## POWER PLAYERS

- **Labor Secretary Marty Walsh** is at the department's helm while its agencies navigate the process of drafting, unveiling and enforcing new rules.
- **OSHA head Doug Parker — as well as Biden's nominee to lead WHD, Jessica Looman** — are the assistant secretaries (or assistant secretaries to be, in Looman's case) behind the bulk of DOL's rules.
- **NLRB General Counsel Jennifer Abruzzo** has significant discretion over which cases and issues the independent agency considers, as does NLRB Chair Lauren McFerran.