



## LEGAL UPDATES

# Trump 2.0: What Closely Held Businesses Need to Know About Immigration, Employment & Benefits Issues

As a new administration takes office, CHBs should prepare for significant policy changes across immigration, employee benefits, and employment and labor law that could impact their businesses in 2025.

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With Inauguration Day done, it's time for closely held business (CHB) leaders to prepare for regulatory changes poised to impact their organizations in 2025 and beyond.

President Trump and former President Biden are particularly far apart on issues like immigration and employment laws, areas that could significantly disrupt business as usual. Yet despite lingering questions around how those differences will play out, CHB leaders have a unique opportunity to plan ahead, given that Trump's previous administration offered insights into his Day One priorities.

With the presidential hand-off complete, here are three key policy areas CHBs should keep a close eye on—and how to navigate them.

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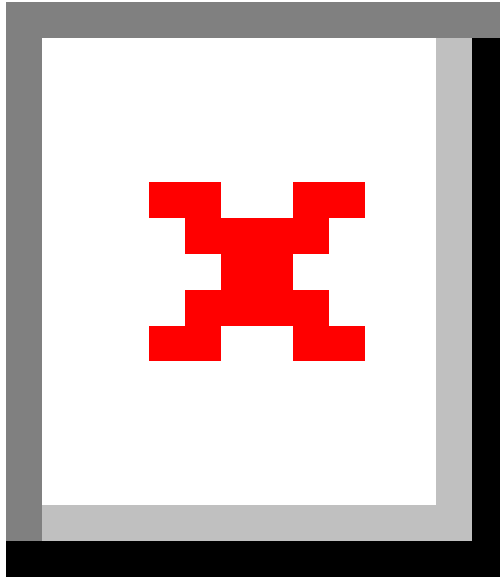
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## **Employment and Labor Law: A More Employer-Focused Approach**

Exactly how Trump's campaign platform will translate into policy remains to be seen, but one thing is clear: He is likely to take a much more business-friendly approach to employment and labor issues than President Biden.

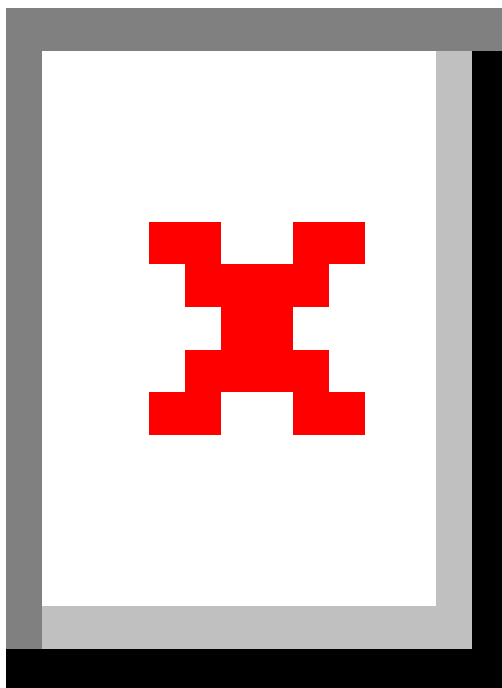
That starts with new and amended policies and leadership appointments, which will occur across key federal agencies in 2025, including at the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB) and the Department of Labor (DOL).

Specifically, President Trump is likely to reinstate his earlier policy making it easier for CHBs to hire independent contractors and will probably not support the FTC's 2024 ban on non-compete agreements currently tied up in court—to the benefit of employers. At the same time, he's also indicated a willingness to raise the federal minimum wage to support workers as 23 states are set to see higher minimum wages go into effect in 2025.

CHB leaders should prepare by auditing and documenting internal policies, including wage-and-hour practices and employee handbooks. For CHBs that operate in multiple locations—including “blue” states such as Massachusetts, New York and California—it would be wise to work with an attorney to identify potential areas of risk at both the federal and state levels. After all, as more states pass employment and labor laws that run contrary to the federal policy agenda, including around non-compete agreements, it will become increasingly difficult for businesses to remain fully compliant.

CHBs should also communicate with employees around policy issues regularly, maintain an open conversation with experienced outside advisors, and remain flexible during this period of transition.

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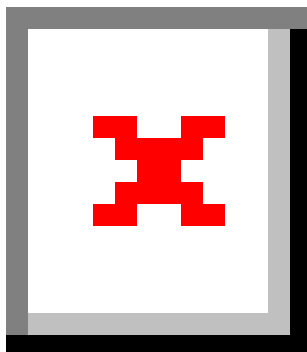
## Immigration: Expanded Enforcement and Procedural and Other Challenges

Immigration was a top issue in the 2024 election—and one of the areas likely to see a dramatic change with the incoming administration. CHB leaders should prepare for anticipated changes on this front, including:

- **Increased Compliance Enforcement:** CHBs should prepare for increased enforcement actions in the form of audits, investigations and even possible raids by U.S. Immigration and Customs Enforcement (ICE). To ensure compliance, CHBs should consult with their counsel and review their organizations' I-9 Employment Eligibility records and processes, as well as develop and disseminate a policy or process to centralize any internal or external immigration-related inquiries.
- **Procedural Hurdles and Delays:** CHBs that offer visa sponsorship should expect increased scrutiny and slower processing times. Heightened use of Requests for Evidence, audits and site visits could become the norm. Some forms of travel restrictions, potentially based on citizenship or geographic region, are also likely to impact the entry or re-entry of international personnel or business visitors. CHBs should work with their legal counsel to review all employment-related sponsorship matters (including compliance documents like Labor Condition Application Public Access Files) and identify relevant deadlines for preparing and submitting petitions, applications, extensions and amendments. CHBs should also review and ensure that sponsored employees are working in roles and locations specified in visa petitions and file amended petitions to update records as needed. They should also evaluate workforce needs for the next six to 12 months and begin immigration processes early.
- **Increased Uncertainty and Employee Concerns:** The uncertainty of shifting immigration policies and the rhetoric around immigration could create significant anxiety for visa-sponsored employees and other foreign workers. To mitigate concerns, CHBs should review and evaluate their organizations' visa sponsorship policies and practices for consistency. They may also want to develop responses to common employee questions about travel and visa status maintenance. CHBs with employees who are beneficiaries of humanitarian immigration programs that could be impacted by administrative action, such as DACA and Temporary Protected Status, may also want to evaluate options for those employees.

It will take some time to identify and assess the full impact of future changes to U.S. immigration policy. However, preparing now can minimize future disruption and delays stemming from major anticipated changes.

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Allie Itami

## **Employee Benefits: Uncertain ESOP Regulations**

CHBs looking to make an exit with an employee stock ownership plan (ESOP)—which gives ownership to employees when existing owners are ready to retire and / or the next generation doesn't want to run the business—may have to keep waiting for further clarity on key provisions.

There are several regulatory hoops a business must jump through when putting an ESOP in place, including stipulations that employees pay no more than "adequate consideration" for ESOP securities. However, since 1988, there has been little to no guidance on what counts as "adequate consideration," leading to widespread enforcement and litigation from the DOL. This trend has had a chilling effect on ESOPs and the third-party providers that run these plans; ESOPs often just present too much risk, even if they're the preferred exit strategy.

The DOL recently wrote a proposal with guidance, but this has been held up at the Office of Management and Budget (OMB). With any change in administration, proposals tend to get delayed or die at the OMB. The same could be true of this guidance, even though ESOPs are generally favored by both sides of the aisle.

As a result, CHB owners currently exploring ESOPs may want to wait until the clarification is published or look for a different buyer that presents less risk. It may also help to speak with elected representatives that can put pressure on agencies to move this guidance forward—or at least take less enforcement action while uncertainty persists.

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## **Change is Coming**

Few know what the next weeks and months may hold, but the Trump administration will offer a notable break from President Biden's approach to any number of issues impacting CHBs.

Conducting relevant audits, documenting policies and working with experienced outside advisors are the best ways to prepare for the changes ahead.