

Do you think new laws from DC and Raleigh are your biggest workplace challenge? Think again.

Congress is deadlocked on the big issues. Raleigh is pre-occupied with red ink. The real risk management threats to your workplace are Executive Orders, agency appointments and creative rulemaking. Here's what we know so far:

- The President signed seven Executive Orders affecting primarily federal contractors and helping labor unions (*Example: Mandatory project labor agreements on large federal construction jobs (EO 13502)*)
- Governor Perdue issued Executive Order #45 requiring state agencies to “meet and confer” with labor unions and discuss public employee terms of employment
- The US Department of Labor, led by “strongly pro-union” (AP, 12/08) Hilda Solis, has an ambitious agenda. We expect important changes to rules under the FMLA (Leave Act), FLSA (wage/hour laws), rules on independent contractors, OSHA, Hazard Communication, and Affirmative Action: all designed to enhance worker protection and strict rule enforcement with little concern for employer burdens or total costs/benefits.
- Appointments to key federal boards are causing concern among mainstream, compliant employers that see big swings in the balance of power and burdens between employers, employees and unions.
- An emerging theme of regulators is the “Good Job”. A Good Job means full-time work, full benefits (paid by the employer), wages at 400%+ of poverty, flexible work schedules, choice of location, mandated paid sick days, no geographic pay distinctions, no use of one-person independent contractors, labor union representation and significant new individual notifications and documentation of rights to ensure any employee who can state a claim against an employer is encouraged to do so. What about jobs in hard-hit rural areas or citizens with low-skills?
- I participated in a USDOL webcast April 28. When I raised a concern about “doing more harm to workers than good” by taking work away from independents, I received this response:
Bruce, I appreciate your comment. Our regulatory agenda includes updating record-keeping requirements. We expect this update to promote transparency and encourage greater levels of compliance by employers. We also expect the regulation to enhance awareness among workers of their status as employees or independent contractors, as well as enhance awareness of employee rights, and entitlements to minimum wage and overtime pay.



MY PREDICTION:

These major changes are now in process and will likely come to pass this year:

- 1) Required notices to independent contractors about their status and right to complain to DOL and the IRS; 250 new compliance officers
- 2) From the USDOL webcast: “Any employers that seek to exclude [exempt] workers from the FLSA’s coverage will be required to perform a classification analysis, disclose that analysis to the worker, and retain that analysis to give to WHD enforcement personnel who might request it.”
- 3) New recordkeeping rules shifting the burden of proof to employers on key issues in overtime claims (such as hours worked by an improperly classified exempt employee)
- 4) Further narrowing of employer rights (medical certification) in Family and Medical Leave Act claims and regulations expanding disabilities under the ADA
- 5) NLRB orders that will open employer-owned or managed electronic communications (email, intranet, team tools, passworded social media, IM) to labor organizer use.
- 6) Governor Perdue’s “Meet and Confer Order” will lead to a violation of our state’s prohibition against agreements between the state and labor unions.



HOW TO PREPARE:

No one should argue against compliance with the law. However, most workplace laws are filled with gray areas and interpretation risks. If the rules were 100% clear and we knew we were 100% compliant all the time, then extensive new notice and records obligations would “only” be a new paperwork cost. Creating arbitrary bright lines in these gray areas, then ordering you to highlight them to employees will mean a significant new flow of claims. NOW is the time to methodically self-identify your own gray areas and make a conscious decision whether you will drive over or UNDER the regulatory speed limit in case you and the trooper disagree on her radar reading.

Contact me directly if I can help you or your team.

Bruce

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Executive Scan provides a quick monthly update on legislative and external threats to your workplace with timely advice on ways to respond. It is provided to members and friends of CAI.

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