

# LABOR DAY 2025: The Evolution and Erosion of Workplace Protections

Labor Day was born out of the unsafe, unsanitary, and unfair working conditions generated by the Industrial Revolution. Workers of all ages – including children – labored for endless hours locked in factories with no fresh air or break. Unions formed to change that; and on September 5, 1882, 10,000 workers organized by the Central Labor Union marched from City Hall to Union Square to bring attention to their efforts.

That was just the start of the labor movement. The government, hearing the outcry, slowly started to codify the protections that were being fought and negotiated for on a case-by-case basis.

In 1913, the United States Department of Labor was established to protect workers' wages and other basic labor standards. 1933 and 1935 saw the National Labor Relations Act (NLRA) pass, and establishment of the National Labor Relations Board (NLRB). The NLRA secured the rights of unions and workers' rights to organize. The NLRB was established to enforce those rights.

The rights of workers to be free from racial discrimination was an early right that the labor movement saw addressed. Executive Order 8802, signed by President Franklin Delano Roosevelt in June, 1941, prohibited racial discrimination in federal employment and defense contracting. President John F. Kennedy issued Executive Order 10925 in March 1961 establishing the Presidential Commission on Equal Employment Opportunity; and in 1964, Lyndon B. Johnson signed the Civil Rights Act, which prohibited discrimination on the basis of race, color, religion, sex, or national origin; and established the Equal Employment Opportunity Commission (EEOC).

The past nine months have seen changes to the institutions and principles that

have been at the heart of protecting workers' rights and employer responsibilities fought for by the labor movement. Like them or not, the changes have implications for all stakeholders — unions, workers, and employers.

## Organized Labor:

Within a few days of taking office, President Trump fired both the NLRB general counsel and a board member. This left the board without a quorum which is required for it to take action. A court reversed that decision and reinstated the member and required quorum, but that did not curtail the reformation.

The new general counsel, William B. Cohen, then revoked a series of memos that had been issued by the previous GC. That series included a 2023 memo that said that employer remediation of an unfair labor practice should include not only ending the practice, but also take steps to address any lingering effects. It also included a memo finding that the existence of a restrictive covenant in an employment agreement is a per se unfair labor practice. It is expected that the NLRB will continue to take measures that roll back employer liability under the NLRA.

## Equal Opportunity:

Like the NLRB, the EEOC saw immediate shake-ups in January 2025.

Staff was fired, leaving the agency without a quorum. That is still the case today, so the agency is unable to take certain official acts, including the issuance of new guidance or promulgation of regulations.

On January 28, the acting Chair issued a press release entitled "Removing Gender Ideology and Restoring the EEOC's Role of Protecting Women in the Workplace". Citing Executive Order 14168, the release announced certain EEOC changes. They included a policy shift "to defend the biological and binary reality of sex and related rights, including women's rights to single-sex spaces at work". The ability of staff to select their pronouns across agency applications was eliminat-

ed. The "X" gender marker is no longer an acceptable signature on complaints filed with the agency. The release also announced removal of "materials promoting gender ideology" and all materials on gender identification were removed from its website.

On March 19th, the EEOC issued guidance entitled "What You Should Know About DEI-Related Discrimination at Work" and "What To Do If You Experience Discrimination Related to DEI at Work". Citing Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," the EEOC announced its priority to eliminate "illegal DEI". Letters were then sent demanding information from law firms on their DEI (Diversity, Equity, and Inclusion) programs.

These shifts – at the EEOC and NLRB – are unprecedented and appear designed to upend the very purposes for which these agencies and the laws they enforce were established.

For employers, this means potentially easier times ahead. There certainly seem to be, from a practicing counsel perspective, fewer federal audits and less enforcement overall, by the federal government. It should be noted, however, that the State has overlapping jurisdiction in many of these matters and their enforcement remains aggressive.

For employees, it means potentially less protection. It certainly signals the abandonment of tolerance and understanding for certain groups of people though neither entity is in a position to take official action.

For students of government and politics, it is a critical point in our history that must be monitored and examined.

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