

Employment Law Shifts: Key Issues for Texas Employers Under the Current Administration

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HAYNES BOONE



Today's Presenter's



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QUICK FACTS: LABOR AND EMPLOYMENT

EXPERIENCE INCLUDES

Wage and Hour
High Stakes Internal Investigations
Unfair Competition/Trade Secrets
Advanced Leave Issues
OSHA/Workplace Disasters
ERISA
Executive Compensation
Discrimination & Harassment Claims
Whistleblowers and Retaliation



“The Haynes Boone team has extensive experience in employment law, offering a deep understanding of both current regulations and emerging legal trends.”

Chambers USA 2025 (Chambers and Partners)



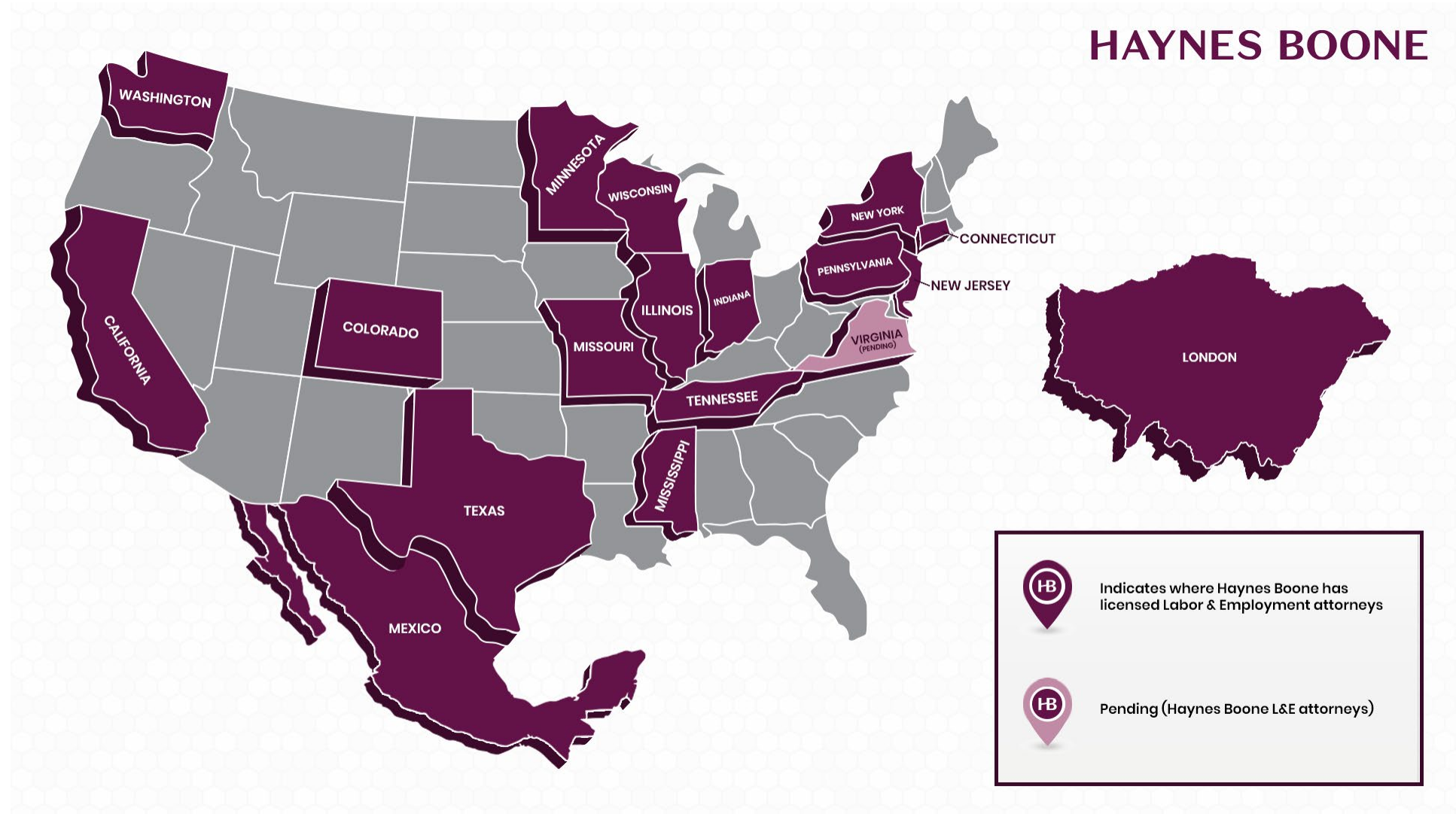
Haynes and Boone, LLP

INDUSTRIES SERVED

Aviation
Construction
Energy
Finance
Healthcare
Manufacturing
Retail
Real Estate
Pharmaceuticals
Technology
Logistics
Insurance
Private Equity

Employment Coverage Map

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Agenda



DEI under current landscape



NLRB Updates



Miscellaneous Employment Updates



Immigration Update

DEI Under Current Landscape

The Current Landscape

▶ The Executive Orders

- ▶ Exec. Order No. 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing* (**January 20, 2025**)
 - ▶ Directs all executive agencies to “terminate **illegal DEI** ... ‘equity-related’ grants or contracts” (the “Termination Provision”). Additional actions include terminating DEI positions at executive agencies and DEI performance requirements.
 - ▶ Requires OMB to generate a list of (a) executive agencies with DEI committees, positions, budgets, expenditures, etc., (b) federal contractors who have provided DEI training to executive agencies, and (c) federal grantees who have received funding to promote DEI.

The Current Landscape

▶ The Executive Orders

- ▶ Exec. Order No. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (**January 21, 2025**)
 - ▶ Requires executive agencies to end discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, etc.
 - ▶ Rescinds long-standing EO 11246 from 1965 which prohibited discrimination by federal contractors/subcontractors and required certain affirmative action steps.



The Current Landscape

- ▶ **Continued-** Exec. Order No. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (**January 21, 2025**)
 - ▶ Directs all executive agencies to “include in every contract or grant award” a certification, enforceable through the False Claims Act, that the contractor and grantee “does not operate any programs *promoting DEI* that violate any applicable Federal anti-discrimination laws” (the “Certification Provision”).
 - ▶ Requires the Attorney General to create a plan, within 120 days of the order, to encourage the private sector to “end illegal discrimination and preferences, including DEI, including having 9 large company/entity investigations” (the “Enforcement Threat Provision”).
 - ▶ Requires each federal agency to identify up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations; and institutions of higher education with endowments over 1 billion dollars.

Legal Challenges and Other Actions

- ▶ March 27, 2025 : A judge in Illinois blocked Trump's executive order that required companies seeking federal contracts to certify they do not use improper diversity, equity, and inclusion (DEI) programs.
- ▶ April 15, 2025 : Ten former high-ranking DOL, EEOC, and OFCCP officials send open letter responding to Executive Order 14173 and advising federal contractors to continue proactive compliance to prevent unlawful discrimination.
- ▶ May 5, 2025: DC judge issues permanent injunction enjoining EO against Perkins Coe as unconstitutional and null and void.
- ▶ June 27, 2025: Supreme Court held 6-3 that district courts likely exceed their authority when granting “universal” preliminary injunctions against the government’s enforcement of a presidential executive order, and that any injunctive relief should be limited to the parties in those cases.
- ▶ June 27, 2025: OFCCP invited federal contractors the option to voluntarily submit information about their compliance efforts re EO 14173. Future of OFCCP is unclear and how they’ll use information in light of proposed elimination.

DOJ Guidance as of July 2025

- ▶ DOJ Clarifies DEI Rules: Issued on July 29, 2025, new guidance outlines legal limits for workplace DEI programs.
- ▶ Applies to federal agencies and employers that receive federal funding, but notes all employers should review the guidance
- ▶ Emphasis on Non-Discrimination: DEI efforts must not use preferences or quotas based on protected traits.
- ▶ Review Employment Practices: Employers should ensure hiring and promotion are free from bias.
- ▶ Permissible Activities: Outreach and training are allowed if not discriminatory.
- ▶ Legal Risks: Non-compliant DEI programs may lead to lawsuits or investigations.
- ▶ Employer Actions: Audit DEI programs and document business reasons for initiatives.

DOJ Guidance Continued

- ▶ AG Memo lists four categories of unlawful practices that can put employers at risk.
 - ▶ (1) Preferential Treatment Based on Protected Characteristics
 - ▶ (2) Proxies for protected characteristics
 - ▶ (3) Segregation based on protected characteristics
 - ▶ (4) Training that promotes discrimination

DOJ Guidance Continued

- ▶ Provides Recommendations on Best Practices
- ▶ Nearly two pages of recommendations, e.g.:
 - ▶ Ensure inclusive access
 - ▶ Focus on skills and qualifications
 - ▶ Prohibit Demographic-Driven Criteria
- ▶ Important notes:
 - ▶ Document not binding
 - ▶ Courts not required to adhere
 - ▶ Highlights likely areas of enforcement by federal agencies

Strategies for Navigating the Current Environment

- ▶ What are some strategies for avoiding being deemed an “illegal DEI” program in the private sector?
 - ▶ Generally.
 - ▶ Recruitment and Hiring.
 - ▶ Professional Development and Retention.
 - ▶ Assessment and Integration.
- ▶ What about for federal contractors?
 - ▶ Maintain Section 503 and VEVRAA compliance (for now).



NLRB Updates

NLRB Quorum and Recent Nominations



President Trump nominated James Murphy and Scott Mayer to the National Labor Relations Board (NLRB) to restore its quorum.



James Murphy: Career NLRB attorney, most recently chief counsel to NLRB Chairman Marvin E. Kaplan.



Scott Mayer: Chief Labor Counsel for Boeing Corporation.



NLRB requires a minimum of three members to issue decisions; recent vacancies have limited its capacity

Legal and Political Context

Former board member Gwynne Wilcox's termination and ongoing legal battle over presidential authority to remove agency leaders.

D.C. Circuit ordered Wilcox's reinstatement, but the Supreme Court blocked it pending further proceedings.

Nominations referred to the Senate Health, Education, Labor, and Pensions (HELP) Committee; confirmation timeline uncertain.

Potential Impact on NLRB Activity

- ▶ Restored quorum would create a Republican-majority NLRB, likely shifting federal labor policy.
- ▶ Anticipated revisiting or reversal of key Biden-era decisions, such as:
 - ▶ McLaren Macomb (severance agreements and NLRA violations)
 - ▶ Stericycle (work rules standard and employee-friendly test)
- ▶ Employers should monitor developments closely

Miscellaneous Employment Updates

- ▶ Salute Program for USERRA Compliance
 - ▶ Employers can request technical assistance to proactively address and resolve any USERRA issues that may arise
 - ▶ Employer must confirm 1) it is not involved in a USERRA investigation, and 2) it is not asking for an opinion to use in a lawsuit that started before your request.
 - ▶ Beware of risk for use in subsequent litigation
- ▶ Texas Specific:
 - ▶ Ban on Nondisclosure and Confidentiality Provisions for Claims of Sexual Assault (SB 835)
 - ▶ retroactively applies
 - ▶ New Restrictions on Non-Competes with Physicians & Other Healthcare Practitioners (SB 1318)

Immigration Law Updates

Steven Malm – Head of Immigration Practice Group

Executive Orders

- “Protecting the U.S. from foreign terrorists and other national security and public safety threats”
 - Enhanced vetting of visa applicants
 - Certain countries/nationalities with “deficient” vetting and screening information may be barred
- “Protecting the American people against invasion”
 - Alien Registration Requirement
 - Expanded expedited removal
 - Restricting parole, Temporary Protected Status, and employment authorization
- “America First Trade Policy”
 - Trade agreements, such as USMCA, to be reviewed.
 - Visas falling under trade agreements include TN, E-1 treaty trader, E-2 treaty investor, E-3 Australian specialty workers, H-1B1 Chilean and Singaporean specialty workers

Executive Orders

- Contrast with “Buy American, Hire American” from first term
 - During first term, higher costs for sponsoring foreign workers through Requests for Evidence (“RFEs”) and denials
 - Temporary visas (e.g., H-1B, L-1 visas, etc.)
 - Green cards (e.g., EB-1, PERM, etc.)
 - So far, during second term, not seeing same rates of RFEs and denials
 - Processing times are slow, but unrelated
 - USCIS is primarily self-funded
 - Adjudications trending favorably in the high talent, extraordinary ability temporary (O-1) and green card (EB-1A) categories

Immigration Worksite Compliance

- I-9 Compliance
 - ICE Audits/Notice of Inspection
 - Short turnaround (3 business days to produce I-9s)
 - Advisable to conduct self-audit of I-9s
 - 5-year statute of limitations
 - Common errors
 - Timeliness
 - Missing date or signature
 - Incorrect date of hire
 - Supplement B reverification missing

Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

Employers must ensure the form instructions are available to employees when completing this form. Employers must follow the requirements for completing this form. See below and the [Instructions](#).

EMPLOYER NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot require an employee to present more documentation than what is listed in **Section 1**, or specify which acceptable documentation employees must present for verification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin is prohibited.

Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.

Last Name (if different from first name)		First Name (Given Name)		Middle Initial (if any)	Other Last Names Used (if any)
Apt. Number (if any)		City or Town		State	
U.S. Social Security Number	Employee's Email Address		Employee's Telephone Number		

Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the Instructions).

<input type="checkbox"/> 1. A citizen of the United States
<input type="checkbox"/> 2. A noncitizen national of the United States (See Instructions.)
<input type="checkbox"/> 3. A lawful permanent resident (Enter USCIS or A-Number.)
<input type="checkbox"/> 4. An alien authorized to work until (exp. date, if any)

If you check **Item Number 4**, enter one of these:

USCIS A-Number	OR	Form I-94 Admission Number	OR	Foreign Passport Number and Country
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Today's Date (mm/dd/yyyy)

Signature of Employer or Authorized Representative

Signature of Employee or Authorized Representative

Preparer and/or Translator Certificate

Employer Review and Verification: Employers or their authorized representative must complete and sign **Section 2** of the form by the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure approved by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter an "X" in the box for the documentation reviewed. See Instructions.

Immigration Worksite Compliance

- ICE raids
 - Restaurants and food processing
 - Construction
 - Agriculture
- Know rights and how to respond
- Independent Contractors
 - Potential for criminal liability if knowingly contract with undocumented labor



Parole and TPS revocations

- Supplement B I-9 reverification confusion
 - Cuban, Haitian, Nicaragua, Venezuela (CHNV) parole status
 - TPS Venezuela
- TPS uncertainty for other nationalities – Afghanistan, Burma (Myanmar), Cameron, El Salvador, Ethiopia, Haiti, Honduras, Lebanon, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, Ukraine, Yemen

Pending Litigation

CHNV Parole revocation

TPS Venezuela termination

Birthright citizenship EO



DOJ/IER Shift

- Department of Justice (DOJ) Immigrant and Employee Rights (IER) Section
 - Shift in emphasis away from investigating complaints of discrimination against immigrants towards complaints of discrimination by U.S. citizens
- I-9 impact
 - ICE/DOJ balance
 - Less focus on “overdocumentation”
 - Can arise in International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR) contexts
 - Technical Assistance Letters (TALs) provide clarification

Immigration encounters

- Requirement to carry proof of immigration status
 - Legal requirement to carry green card (misdemeanor)
 - State and local officials partnering with Federal authorities
 - Carry evidence of legal status/proof of presence in U.S. for at least 2 years
- Business visitors
 - CBP questioning
 - Permissible B-1 visitor activities
 - Meetings, consulting
 - No U.S. pay
 - Advisable to carry “invitation letter”
- Social Media monitored



**U.S. Customs and
Border Protection**

Visa Sponsorship Opportunities

- O-1 “extraordinary ability” visas
 - “Comparable evidence” of extraordinary ability opens eligibility outside of academia
- L-1 “intracompany transferees”
 - “Blanket L” – U.S. sales of \$25 million, workforce of 1,000, or 10 L- approvals during prior 12-month period
 - “Specialized knowledge”
- TN visas
- E visas
- H-1B alternatives

Questions – Please feel free to reach out

- Recent developments lead to inquiries concerning:
 - Status terminations and interpreting impact of litigation
 - How to complete I-9 and E-Verify requirements
 - Document retention requirements
 - Chances of success of miscellaneous visas (O-1, H-1B, L-1, TN, etc.) under current climate
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