

U.S. DEPARTMENT OF LABOR

Fall 2023 Statement of Regulatory Priorities

Introduction

The Department's Fall 2023 Regulatory Agenda represents Acting Secretary Su's commitment to build a worker-centric economy and good jobs that change lives. These rules will advance the Department's mission to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. Under Acting Secretary Su's leadership, the Department's rulemaking is focused on centering workers and improving job quality, empowering and protecting workers and their families, and promoting equity in opportunity and pathways to good jobs for all workers.

Since the start of the Biden Administration, the Department of Labor has pursued rulemaking to advance the Administration's priorities. To create and sustain good jobs, the Department has focused rulemaking on worker health and safety, fair wages, and supporting unions and workers who are organizing unions. The Department is advancing equity and supporting marginalized communities through rulemaking that bolsters protections for workers from discrimination. To tackle the climate crisis, the Department is pursuing a rulemaking on heat illness prevention in the workplace. Under the Administration's priority to improve service delivery, customer experience and reduce administrative burdens, the Department continues to regulate employer-provided retirement security and health care. These include the following rulemakings:

- We issued a Final Rule to update the regulations implementing Davis-Bacon and Related Acts—the most comprehensive review of the regulation in 40 years—to ensure employers on federally funded or assisted construction projects pay locally prevailing wages to construction workers. The Final Rule will speed up prevailing wage updates, creating efficiencies in the current system and ensuring that prevailing wages keep up with actual wages. Over time, this would mean higher

wages for workers, which is especially important given the administration's investments under the Investing in America Agenda.

- We finalized the rescission of certain provisions related to the religious exemption for federal contractors and subcontractors. The rescission returned OFCCP to its longstanding approach of ensuring that the religious exemption contained in Executive Order 11246 is applied consistently with nondiscrimination principles of Title VII of the Civil Rights Act of 1964, as amended. The rescission reaffirmed nondiscrimination protections for employees of federal contractors.
- We finalized the rulemaking to modify the agency's procedures for using resources strategically to remove barriers to equal employment opportunity. The rule strengthened OFCCP's ability to resolve potential employment discrimination at federal contractor workplaces, which created hurdles to effective enforcement.
- We issued a Final Rule that requires employers to check a box disclosing whether they are federal contractors or subcontractors on their "LM-10" forms, which are filed if they hire a consultant to persuade their workers about labor relations activities or to "surveil" employees or unions involved in a labor dispute.
- We issued a proposed rule to amend the existing standards to better protect miners against occupational exposure to respirable crystalline silica, a carcinogenic hazard, and to improve respiratory protection for all airborne hazards.
- We issued a proposed rule to provide guidance that would help employers and workers determine whether a worker is an employee or an independent contractor under the Fair Labor Standards Act. The proposed rule would combat employee misclassification that leads to workers being denied their rights and protections under federal labor standards.

- Along with the Departments of Treasury and Health and Human Services, we issued a Final Rule implementing the No Surprises Act, which aims to protect consumers against surprise medical bills. The Final Rule makes certain medical claims payment processes more transparent for providers and clarifies the process for providers and health insurance companies to resolve their disputes.
- Also, with the Departments of Treasury of Health and Human Services, we issued proposed rules to better ensure that people seeking coverage for mental health and substance use disorder care can access treatment as easily as people seeking coverage for medical treatments. The proposed rules aim to fully protect the rights of people seeking mental health and substance use disorder benefits, under the Mental Health Parity and Addition Equity Act, and to provide clear guidance to plans and issuers on how to comply with the law's requirements.

The 2023 Regulatory Plan highlights the Labor Department's most noteworthy and significant rulemaking efforts, with each addressing the top priorities of its regulatory agencies: Employee Benefits Security Administration (EBSA), Employment and Training Administration (ETA), Mine Safety and Health Administration (MSHA), Office of Federal Contract Compliance Programs (OFCCP), Occupational Safety and Health Administration (OSHA), Office of Workers' Compensation Programs (OWCP), and Wage and Hour Division (WHD). These regulatory priorities exemplify the Acting Secretary's vision to center workers in the economy; protect workers' rights, wages and safety on the job; and promote equity, job quality, and pathways to good jobs for all workers, especially those who have historically been left behind.

The Department's regulatory priorities also reflect our robust engagement process with stakeholders and our strong culture of evidence-based decision making. Through regular stakeholder meetings, public hearings, Small Business Advocacy Review Panels, and public comments on proposed regulations, the Department engages with diverse stakeholders to seek input on our regulatory agenda overall or feedback on proposed rules. We intentionally seek input from members of the public who have

not typically participated in the regulatory process, including workers with disabilities, union members, small businesses, low-paid workers, and immigrant workers, both as a Department and in cooperation with federal partners like the SBA Office of Advocacy. Among the specific rules described below, we include further details on previous stakeholder engagement and future opportunities for stakeholder engagement.

Centering Workers and Improving Job Quality

The Department's regulatory priorities reflect the Acting Secretary's focus on centering workers in the economy and improving job quality. This means protecting workers right to organize and form a union and ensuring the creation of good jobs by upholding strong labor and equity standards across every aspect of hiring and employment.

- WHD will finalize updates to the executive, administrative, and professional exemption for the Fair Labor Standards Act. Updating the salary threshold would ensure that middle class jobs pay middle class wages, extending important overtime pay protections to millions of workers and raising their pay. Prior to issuing the proposed rule, the Department conducted 27 virtual listening sessions around the country with more than 2,000 participants to gather information and input about possible changes to the overtime regulations. In addition to reaching out to national stakeholders, the Wage and Hour Division conducted 10 regional listening sessions for workers and worker advocates as well as employers and business leaders. This was an important and valuable step in the regulatory development process.
- WHD will finalize regulations that offer certain employees employed under the federal service contracts a right of first refusal of employment when contracts change over, thereby promoting the retention of skilled workers in the federal services workforce.

Empowering and Protecting Workers and Their Families

The Department's regulatory priorities reflect the Acting Secretary's focus on protecting workers' rights, wages and safety on the job and fighting discrimination in the workplace. This means leveling the playing field for America's workers by ensuring all workers get the wages they've earned, especially those in low-wage and historically underserved communities.

- WHD will finalize regulations that address and clarify the distinction between employees and independent contractors under the Fair Labor Standards Act. This proposed rule also benefited from extensive stakeholder engagement prior to its issuance.
- ETA is proposing regulations that will ensure that H-2 visa programs promote worker voice and worker protections.

Under this priority, the Department is also focusing on safeguarding workers' hard-earned benefits and pensions and ensuring access to health benefits, including mental health and substance use disorder benefits.

- EBSA will finalize joint rulemaking with the Departments of Health and Human Services and Treasury, implementing the Mental Health Parity and Addiction Equity Act (MHPAEA) will promote compliance and address amendments to the Act from the Consolidated Appropriations Act of 2021 to ensure parity of mental health and substance abuse disorder benefits so workers can access mental health care as easily as other types of care.
- EBSA, along with the Departments of Human and Human Services and Treasury, will finalize joint rulemaking regarding coverage of certain preventive services under the Affordable Care Act, which would establish a new pathway for individuals to obtain contraceptive services at no cost.
- EBSA is proposing regulations to reevaluate the criteria for a group or association of employers to be able to sponsor a multiple employer group health plan.

- EBSA is proposing to update the definition of the term “fiduciary” for a retirement plan to ensure retirement savers get sound investment advice free from conflicts of interest.

The Department's health and safety regulatory proposals are aimed at eliminating preventable workplace injuries, illnesses, and fatalities. Workplace safety also protects workers' economic security, ensuring that illness and injury do not force families into poverty. Our efforts will prevent workers from having to choose between their lives and their livelihood.

- OSHA will propose an Infectious Diseases rulemaking to protect employees in healthcare and other high-risk environments from exposure to and transmission of persistent and new infectious diseases, ranging from ancient scourges such as tuberculosis to newer threats such as Severe Acute Respiratory Syndrome (SARS), the 2019 Novel Coronavirus (COVID-19), and other diseases.
- OSHA will complete small business consultations as its next step in advancing rulemaking on heat illness prevention to protect workers from heat hazards in the workplace. Increased temperatures are posing a serious threat to workers laboring outdoors and in non-climate controlled indoor settings. Exposure to excessive heat is not only a hazard in itself, causing heat illness and even death; it is also an indirect hazard linked to the loss of cognitive skills which can also lead to workplace injuries and worker deaths. Protecting workers will help to save lives while we confront the growing threat of climate change.
- OSHA will propose regulations that update standards for emergency response and preparedness to reflect the full range of hazards or concerns currently facing emergency responders and other workers providing skilled support and the major changes in performance specifications for protective clothing and equipment.

- MSHA will finalize a new silica standard to effectively address health hazards and prevent irreversible diseases with a goal of ensuring that all miners are safe at their workplaces.
- MSHA will finalize a rule establishing that mine operators must develop and implement a written safety program for mobile and power haulage equipment used at surface mines and surface areas of underground mines, in order to reduce accidents and provide safer workplaces for miners.

Promoting Equity In Opportunity and Pathways to Good Jobs for All Workers

The Department's regulatory priorities reflect the Acting Secretary's focus on promoting access to good jobs free from discrimination and harassment, especially for those who have historically been left behind, and growing the workforce that brings in all of America, with a focus on expanding opportunities for women and people of color.

- ETA will ensure job-seekers can more easily get the support they need by issuing final rules updating the Wagner-Peyser Employment Service regulations.
- ETA is focused on apprenticeship and is proposing regulations for a National Apprenticeship System that is more responsive to worker and employer needs. This proposed rule was extensively informed by the deliberations of the Department's reconstituted Advisory Committee on Apprenticeships..