

What To Expect From Trump's Deputy Labor Secretary Pick

By **Bradford Kelley and Lorenzo Riboni** (February 3, 2025)

On Jan. 20, President Donald Trump officially nominated Keith Sonderling, former commissioner of the U.S. Equal Employment Opportunity Commission, as **his pick** for deputy secretary of the U.S. Department of Labor.

This is a significant appointment, as it places an experienced labor and employment attorney, who has served in both the EEOC and DOL, as second-in-command under the **previously announced** Secretary of Labor nominee Lori Chavez-DeRemer.

We will discuss what employers can expect from Sonderling as the deputy secretary of labor, both as attorneys following these developments and as Sonderling's former colleague — author Bradford Kelley was previously chief counsel to Sonderling when he was an EEOC commissioner, and also served as an adviser to Sonderling when he was the acting administrator of the Wage and Hour Division, or WHD.

Sonderling began his career as a management-side labor and employment attorney in Florida. After nearly 10 years in the private sector, he joined the DOL during the first Trump administration, where he held several roles. Most notably, he served as the acting administrator and deputy administrator of the WHD.

In 2020, Sonderling **was tapped** to become one of five commissioners at the EEOC. He was strongly supported by the business community, and was confirmed by the U.S. Senate with bipartisan support. He finished his tenure at the EEOC in August.

The deputy secretary of labor serves as the de facto chief operating officer of the DOL, managing more than 15,700 full-time employees and a roughly \$14 billion budget.

Further, the deputy labor secretary manages the politically appointed heads of each agency under the DOL, including vital agencies such as the WHD, the Occupational Safety and Health Administration, the Employee Benefits Security Administration, and the Office of Federal Contract Compliance Programs, among others.

Sonderling has a track record of prioritizing clear guidance on both traditional issues, such as those found in wage and hour law or occupational safety, and cutting-edge issues like the use of artificial intelligence in the workplace.

Sonderling's record throughout his career provides insight into what employers can expect from his leadership as the deputy secretary of labor.



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Sonderling is a complementary pick to the DOL secretary nominee.

Trump surprised many in the business community by selecting Chavez-DeRemer to serve as labor secretary, given that the former congresswoman was widely supported by labor unions. She also co-sponsored the controversial Protecting the Right to Organize Act, which is far-reaching legislation that contains what may be considered a wish list of union demands.

With Sonderling's close relationships to the business community and his preference for a deregulatory framework, he will complement Chavez-DeRemer's labor-friendly disposition to help achieve the policy objectives of the second Trump administration. In this regard, Sonderling is widely expected to bring more balance to the top levels of DOL leadership.

Given his deep experience working in the federal government, including in two presidential administrations and at multiple federal agencies, he will help Chavez-DeRemer navigate the bureaucracy.

Expect more opinion letters from the DOL that provide timely guidance to employers and the public in an ever-evolving labor market.

Sonderling is widely expected to prioritize and expand the DOL's compliance assistance, especially the use of opinion letters.

In brief, opinion letters are official written opinions from an agency about how a statute, its implementing regulations and related case law apply to a specific situation presented by the person or entity requesting the opinion.

Opinion letters provide timely guidance to both employers and individuals, as well as insight into positions the agency may take in potential rule proposals or litigation. Further, good faith reliance on an opinion letter can be used as a defense by employers facing potential liability under the Fair Labor Standards Act.

During Sonderling's tenure at the DOL in Trump's first term, opinion letters were brought back in full force after they were discontinued during the Obama administration.

Indeed, the Trump administration's WHD prioritized opinion letters and issued them consistently from 2018 until the final days of the administration. Notably, the WHD issued 80 opinion letters during the first Trump administration.[1] However, the use of opinion letters fell dramatically under the Biden administration, to just eight during his term.

Sonderling was also instrumental in issuing opinion letters at the EEOC when he served as the agency's vice chair. In 2020, the EEOC **issued** its first formal opinion letter in over three decades, confirming that employers can use a particular tax credit for hiring individuals with disabilities, veterans and other underrepresented workers without violating anti-discrimination laws.

In fact, the last time the EEOC had issued a formal opinion letter was during the leadership of now-U.S. Supreme Court Justice Clarence Thomas, who chaired the EEOC from 1982 to 1990.

In 2020, Sonderling played a key role in the EEOC's new process to make requesting opinion letters easier and more straightforward.[2]

Based on Sonderling's record at the DOL and EEOC, as well as his published work in the Missouri Law Review praising the use of opinion letters,[3] one can expect the detailed opinion letters of the first Trump administration to make a return. We can expect this not only at the WHD, but also in the Office of Federal Contract Compliance Programs and other agencies within the DOL.

The DOL may address AI, cryptocurrency, and other technologies that affect businesses and the workforce in a more comprehensive and impactful manner.

During his time as an EEOC commissioner, Sonderling made addressing the use of AI in the workplace a key priority. He saw that workplaces were increasingly turning to AI tools to assist in making employment-related decisions, and worked to provide clarity on how employers could utilize this new technology without running afoul of federal anti-discrimination laws.

With the inevitability of paradigm-shifting technologies entering every industry in the United States, we expect Sonderling to similarly prioritize providing comprehensive guidance in areas where AI is affecting the workforce, and where other evolving technologies, such as cryptocurrencies, may find themselves in further use in the formal economy.

Sonderling has consistently stressed the importance of enforcement agencies taking the lead to create an environment in which employers can feel comfortable implementing AI strategies and tools.

The goal is not only to be more efficient and productive, but also to ensure our nation maintains a competitive edge in the global economy. Progress in this realm may be impeded by a lack of guidance creating more risk of exposure, and thus, greater caution and less experimentation by industry.

Sonderling is welcome news for independent contractors and the gig economy.

Sonderling has a history of supporting independent contractors and providing clear guidance in this area. For instance, as head of the WHD, he **issued** a gig economy opinion letter in 2019, which examined whether service providers for a virtual marketplace company were employees or independent contractors.

The opinion letter examined the FLSA classification of service providers who used a virtual marketplace company to be referred to end-market consumers, to whom the services were actually provided. It determined that the service providers appeared to be independent contractors, not employees, of the virtual marketplace company.

The gig economy opinion letter received a great deal of attention from practitioners, scholars and even the media. In fact, the gig economy opinion letter was even prominently featured in the New York Times.

Even though the Biden administration withdrew the letter, several federal courts have utilized the analytical road map laid out in it. Based on this history, Sonderling will likely continue to advocate for clear and practical guidance regarding the classification of independent contractors.

Expect a return of proactive programs, such as self-audits.

Sonderling has long believed^[4] that voluntary compliance should be encouraged and incentivized. For instance, he was the WHD's acting head when it launched its self-audit program known as the Payroll Audit Independent Determination, or PAID, program, which encouraged employers to self-audit their compensation practices for compliance with the FLSA.

PAID was intended to resolve wage and hour disputes with greater expediency and lower costs for employers. To do so, PAID incentivized employers to self-report overtime and minimum wage violations of the FLSA, by not only mitigating the threat of penalties and extended statute of limitations, but also foreclosing affected workers from taking any private action based on the identified violations.

In exchange, the DOL would supervise settlements, approve agreements and ensure full payment of back wages. Although the Biden administration discontinued the program, Sonderling may try to bring it back or launch similar programs.

Conclusion

Sonderling's nomination signals a shift toward proactive business-friendly policies within the DOL.

His extensive experience in federal agencies, coupled with his advocacy for clear guidance and innovative approaches to emerging workforce challenges, positions him to make an immediate impact.

With Sonderling's leadership, employers can anticipate a renewed focus on compliance assistance, voluntary programs like self-audits, and efforts to address important issues such as AI and the gig economy.

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[1] <https://www.dol.gov/newsroom/releases/whd/whd20210119>.

[2] <https://www.eeoc.gov/newsroom/eeoc-announces-new-process-requesting-formal-opinion-letters>.

[3] One of the authors of this article, Kelley, co-authored the Missouri Law Review paper with Sonderling. <https://scholarship.law.missouri.edu/mlr/vol86/iss4/6/>.

[4] Kelley co-authored the paper cited here. <https://repository.law.miami.edu/umlr/vol77/iss1/3/>.