How Trump Admin May Approach AI In The Workplace

By **Bradford Kelley and Alice Wang** (January 6, 2025)

Because the U.S. has so far adopted a light-handed and decentralized approach to regulating artificial intelligence in the workplace, the reelection of Donald Trump is unlikely to have as dramatic an effect on AI regulations as it may on other labor and employment matters.

Nevertheless, the second Trump administration will have a significant influence on issues related to AI from January 2025 to January 2029, a critical time for the rapidly evolving AI regulatory environment. Overall, the incoming administration is likely to take an even more light-handed approach to AI regulation than the Biden administration did.

Bradford Kelley

Executive Actions

The incoming Trump administration is expected to roll back most of the Biden administration's AI regulatory efforts regarding the workplace, especially any measures that might be viewed as hampering innovation, purport to limit free speech or are overtly pro-union.

Alice Wang

Most significantly, the incoming Trump administration is expected to repeal the Biden administration's executive order on the safe, secure, and trustworthy development and use of AI issued on Oct. 30, 2023, because of concerns that it stifles innovation.

The AI executive order gave broad directives to a wide variety of federal agencies to address AI and laid out a road map intended to safeguard workers and consumers from the risk of bias and other potential harms posed by AI. The incoming Trump administration will also likely withdraw the Blueprint for an AI Bill of Rights, which addressed the possibility of employers using technologies for antiunion purposes.

The incoming Trump administration may turn to some version of Trump's 2019 executive order, titled "Maintaining American Leadership in Artificial Intelligence," which called on federal agencies to develop a road map for integrating machine learning technologies into the private sector to help America remain at the forefront of AI research, development and deployment.

While dated in some respects given the rapidly evolving field, Trump's previous executive order on AI maintains some risk management principles, referencing upskilling workers to AI technology, and "protect[ing] civil liberties, privacy, and American values."

The incoming Trump administration will likely turn to many of the same concepts developed during his first administration.

For instance, in December 2020, Trump issued an executive order that stated AI should be used to improve government operations in a manner that remains consistent with all applicable laws, including those related to privacy, civil rights and civil liberties. Among the

other principles to guide the federal government in its use of AI are accuracy, reliability, security, responsibility, traceability, transparency and accountability.

In January 2021, Trump signed the National Defense Authorization Act into law, which directed the U.S. Department of Commerce's National Institute of Standards and Technology to develop a voluntary risk management framework for trustworthy AI systems. NIST's framework sets forth guidelines and best practices that can help organizations manage the risks associated with AI systems, and provides a structured approach to identifying, assessing and mitigating risks through the life cycle of an AI system.

Because the NIST framework was spearheaded by Trump, and is nonpartisan and congressionally authorized — and precedes the Biden AI executive order — it is likely to remain an important point of continuity.

Moreover, the incoming Trump administration will likely put greater emphasis on voluntary industry self-governance rather than prescriptive federal mandates. The Biden administration focused its efforts on getting voluntary agreements from major tech companies to address AI, and the second Trump administration will likely accelerate this approach. Similarly, the incoming Trump administration will likely encourage companies to continue to embrace self-regulation to foster responsible AI deployment and development.

Indeed, it has become a standard practice for many leading companies to develop or publish their own AI principles or guidelines, establish diverse partnerships, and institute other measures to help ensure there are proper guardrails in place and to create the appearance that AI is being used in a responsible and legally compliant way. These self-regulatory efforts will likely accelerate in the second Trump administration.

However, there may be a push for the Trump administration to at least consider certain AI regulations, especially due to the influence of key informal advisers, such as Elon Musk. Historically, Musk has supported the creation of a regulatory body for overseeing AI to ensure that it does not present a danger to the public. In addition, Musk supported California's S.B. 1047, which would have put into place safety regulations for certain AI models.[1] This bill was later vetoed by California Gov. Gavin Newsom.[2].

Trump recently named Silicon Valley veteran David Sacks as his "White House AI and Crypto Czar," a role that, according to Trump, "will focus on making America the clear global leader in both areas."[3] Musk is expected to be involved in some capacity to guide the administration's AI policies.

Congressional Actions

Trump will also have Republican majorities in both houses of Congress, which will put the Trump White House in a powerful position to advance AI legislative priorities. Trump and the Republican Congress may work together on legislation to address the growing patchwork of laws across the nation and conflicting agency requirements, which present compliance challenges for employers.

More specifically, it is possible that Trump will work with Congress on legislation establishing a national standard that simplifies regulatory compliance and preempts conflicting regulatory frameworks at the state and local levels. The Trump administration may, however, adopt a more laissez-faire approach to regulating AI, as evidenced by his support of deregulation at the federal level in other areas of employment law, such as eliminating federal taxes on tips and overtime pay.

Agency Actions

The shift in power will also lead to changes in how the U.S. Department of Labor, the U.S. Equal Employment Opportunity Commission and the National Labor Relations Board address AI's growing influence in the workplace.

At the federal agency level, the incoming Trump administration is expected to withdraw certain AI guidance documents issued during the Biden administration that might be viewed as stifling innovation, or conceivably limit free speech or seem to be pro-union. The incoming Trump administration will likely want to address AI-related wage and hour concerns through opinion letters.

During the first Trump administration, the DOL's Office of Federal Contract Compliance Programs began issuing opinion letters, and that agency may also issue opinion letters to address AI in the workplace. Indeed, some of the DOL opinion letters issued during the first Trump administration specifically addressed workplace technology, including one on a virtual marketplace company and another regarding an employer's use of rounding software.

Overall, the incoming Trump administration's immediate effect on federal agencies' AI regulations may be limited since Democrats will likely continue to have a majority on the EEOC and NLRB for a significant part of his administration. But Trump will be able to appoint the EEOC and NLRB chairs. For AI regulatory efforts, this is significant, especially since all EEOC AI guidance thus far has been issued solely by the chair.

Furthermore, the EEOC chair can appoint the agency's legal counsel who heads the Office of Legal Counsel, which provides legal advice to the chair and the commission on a wide range of substantive, administrative and procedural matters. Equally important, the EEOC's Office of Legal Counsel is responsible for developing commission rules and guidance, including the agency's AI guidance.

Trump is also expected to fire the current EEOC and NLRB general counsel and name their replacements, which could also have a significant effect on AI regulatory efforts. This effect is aptly illustrated by the NLRB's general counsel memorandum issued in 2022 that warns employers that using electronic surveillance and automated management technologies presumptively violates employee rights under the National Labor Relations Act.

The EEOC's general counsel is responsible for managing and coordinating the enforcement litigation program, providing overall direction to all legal unit components within the agency, and filing amicus briefs. Given the EEOC's AI initiative launched in 2021 and the agency's recent strategic enforcement plan emphasizing the need to address AI in the workplace, the EEOC's general counsel will play a critical role.

Another unknown factor is the effect of Trump's selection of Lori Chavez-DeRemer to serve as labor secretary. Former Rep. Chavez-DeRemer was widely supported by labor unions, and she co-sponsored the controversial Protecting the Right to Organize Act, far-reaching legislation that contains what may be considered to be a wish list of union demands. Even though the DOL's involvement with traditional labor law and union-employer relations is minimal, Chavez-DeRemer may be hesitant to rescind certain pro-union policies, including those related to AI.

In addition, the incoming Trump administration will likely roll back interagency agreements,

or memoranda of understanding. The Biden administration has put a strong emphasis on the use of MOUs to address the purported misuse of AI. For instance, in October 2022, the current NLRB general counsel issued a memorandum emphasizing that the agency will use MOUs with several other federal agencies, including the DOL, Federal Trade Commission and U.S. Department of Justice, to facilitate coordinated enforcement against employers for their use of monitoring technologies.

We expect most of these MOUs to be rescinded.

State Level

The overall incoming administration's effect on regulating AI will be minor because most AI regulatory efforts are occurring at the state level. States have been more proactive in developing laws around AI use.

In 2024, at least 40 states introduced bills addressing AI use, including discrimination and automated employment decision-making. AI legislation will continue to proliferate at the state and local level. In Democratic-led states, we may see an uptick in AI regulations that establish a counterpoint to what's happening at the federal level.

Conclusion

The change in administrations will generate a lot of questions over how employers can comply with the law considering AI regulatory changes. Because of the uncertainty, it is critical that employers pay close attention to current and developing legal authority concerning AI.

Key indicators suggest that the incoming Trump administration will adopt a deregulatory approach to AI, allowing states to fill the void. Amid the trend toward more self-regulation and the patchwork of emerging laws, employers should prioritize transparency measures and proactive audits as attainable goals to managing the risk of bias inherent in AI tools.

In addition, employers should explore ways to minimize the potential legal and business risks associated with AI such as implementing an AI usage policy or establishing internal best practices.

Bradford J. Kelley and Alice Wang are shareholders at Littler Mendelson PC.

[1] See Bobby Allyn, California Gov. Newsom vetoes AI safety bill that divided Silicon Valley, NPR (Sept. 29, 2024), https://www.npr.org/2024/09/20/nx-s1-5119792/newsom-ai-bill-california-sb1047-tech.

[2] Id.

[3] See Kif Leswing, Trump says venture capitalist David Sacks will be AI and crypto 'czar',

CNBC (Dec. 6, 2024), https://www.cnbc.com/2024/12/05/trump-david-sacks-billionaire-ai-crypto.html.