

U.S. Department of Labor

Fall 2022 Statement of Regulatory Priorities

Introduction

The Department's Fall 2022 Regulatory Agenda represents Secretary Walsh's commitment to serve American workers and empower workers morning, noon, and night. These rules will advance the Department's mission to foster, promote, and develop the welfare of wage earners, job seekers, and retirees; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. The Department's rulemaking is focused on building opportunity and equity for all; ensuring safe jobs, essential protections, and fair workplaces for workers; and improving the administration of and strengthening the safety net for workers.

Since the start of the Biden Administration, the Department of Labor has begun historic rulemaking on issues central to workers in the United States and their families, including worker safety, protections from discrimination, fair wages, and retirement security and health care. These include the following rulemakings:

- We have expeditiously withdrawn or rescinded rules as necessary to protect and strengthen workers' economic security, including rescinding the Joint Employer Rule.
- We issued a Final Rule implementing President Biden's Executive Order 14026 that increased the minimum wage for workers on federal contracts to \$15 an hour as of January 30, 2022, and will phase out the subminimum wage for tipped workers on federal contracts by January 1, 2024. This will improve the economic security of workers on federal contracts and their families, many of whom are women and people of color.
- We issued a proposal 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 proposed rules

would 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 Bipartisan Infrastructure Law.

- We finalized Interim Final Rules with the U.S. Department of Health and Human Services, the U.S. Department of Treasury, and the Office of Personnel Management to implement the No Surprises Act and protect people from unexpected medical expenses. Surprise billing can cause economic devastation for patients. This rule puts patients first by providing safeguards to keep families from financial ruin when they need medical care.

- We proposed a rule on determining employee or independent contractor status under the Fair Labor Standards Act. Protecting employees from being misclassified as independent contractors is critically important to ensure those workers receive the wages, benefits, and workplace protections they are entitled to under the law.

The 2022 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 Secretary's vision to empower all workers morning, noon, and night. In the morning, this means investing in and valuing the nation's care economy so workers can thrive in their jobs, knowing their family's care needs are met. At noon, we are building a safe, modern, and inclusive workforce so workers have good jobs, opportunities for advancement, and a seat at the table. At night, we are supporting a lifetime of worker empowerment so workers have peace of mind and a safety net to protect against setbacks.

Under Secretary Walsh's leadership, the Department's regulatory efforts are informed by our commitments to advance equity for all workers, create a strong culture of evidence-based decision making, and engage and seek input from stakeholders. Our Regulatory Agenda additionally reflects our ongoing commitment to the Biden Administration's prioritization of economic security, raising wages, supporting worker organizing and empowerment, and addressing the threat of climate change, while embedding equity across the department's agencies, policies, and programs.

Investing In and Valuing the Nation's Care Economy

The Department's regulatory priorities reflect the Secretary's focus on care infrastructure. That means ensuring workers can care for their families without risking their jobs, stay home when they're sick or when they need to care for a sick family member, and have access to the resources they need to manage their mental health. It also means supporting care economy workers to have safe and healthy jobs with fair pay.

- EBSA's 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.

In addition, OSHA will supplement its outreach and enforcement with rulemaking that protects employees in the care economy. Enhancing our care infrastructure starts with making sure our frontline care providers are safe on the job.

- OSHA will issue a Final Rule later this year to protect healthcare workers and healthcare support service workers from occupational exposure to COVID-19 in the workplace.

- 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 initiate small business consultations as its first step in developing a Prevention of Workplace Violence rulemaking, to provide protections for healthcare and other care economy workers, who are the most frequent victims of violence on the job.

Building a Safe, Modern, Inclusive Workforce

The Department's regulatory priorities reflect the Secretary's focus on building a safe, modern, inclusive workforce means people can have a job that is safe and healthy, a job that pays a fair wage, a job that does not discriminate and that has opportunities for advancement. And that means a job where workers have a seat at the table and have a say in their work.

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 launch 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.

- MSHA will propose a new silica standard to effectively assess health concerns and prevent irreversible diseases with a goal of ensuring that all miners are safe at their workplaces.
- MSHA will promulgate 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.

The Department's regulatory agenda prioritizes workers' economic security; ensures they receive a fair day's pay for a fair day's work, and do not face discrimination in hiring, employment, or benefits on the basis of race, gender, religion, disability, national origin, veteran's status, sexual orientation, or gender identity. OFCCP and WHD will focus on regulatory changes that will have significant impact on workers of color, immigrant workers, and workers with disabilities.

- OFCCP will finalize the proposal to rescind certain provisions related to the religious exemption for federal contractors and subcontractors. The rescission will return 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 will reaffirm nondiscrimination protections for employees of federal contractors.
- OFCCP will finalize the proposal to modify the agency's procedures for using resources strategically to remove barriers to equal employment opportunity. The rule will strengthen OFCCP's ability to resolve potential employment discrimination at federal contractor workplaces, which is creating hurdles to effective enforcement.
- WHD will finalize the proposal to update and modernize the regulations implementing the Davis Bacon and Related Acts to provide greater clarity and ensure workers are truly paid local prevailing wages on federal construction contracts.

- WHD will propose updates to the executive, administrative, and professional exemption in the overtime regulations for the Fair Labor Standards Act. Updating the salary threshold will ensure that middle class jobs pay middle class wages, extending important overtime pay protections to millions of workers and raising their pay.

- 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.

- ETA is proposing regulations that will ensure that H-2 visa programs promote worker voice and worker protections.

The Department is committed to ensuring workers have opportunities for employment and training and advancement in their jobs.

- 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 ensuring high-quality apprenticeship programs, and as part of this, has finalized the proposed rescission of the Industry Recognized Apprenticeship Programs (IRAP) rule in order to renew focus on Registered Apprenticeship.

The Department is committed to ensuring workers have a voice on the job and furthering this Administration's support for unions and workers who are organizing unions, which are critical to achieving economic fairness and racial and gender justice.

- OLMS will consider finalizing regulations that require 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.

Supporting a Lifetime of Worker Empowerment

The Department’s regulatory priorities reflect the Secretary’s focus on making sure people do not have to worry that the loss of a job or need for medical care will destroy their financial well-being. People should be able to save for retirement, access health care, and have the support they need to get through a personal or family crisis or when they become injured or ill on the job.

- EBSA will support the administration’s agenda to protect worker’s pensions from the threats of climate-related financial risk by implementing two executive orders that focus on the impacts of climate change and climate-related financial risk. To carry out Executive Order 13990 “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” and Executive Order 14030, “Climate-Related Financial Risks,” EBSA finalized its proposal to address provisions of the current regulation that inappropriately discourage consideration of environmental, social, and governance issues by fiduciaries in making investment and proxy voting decisions, and provide further clarity to help fiduciaries safeguard the interests of participants and beneficiaries in the plan benefits.
- EBSA is proposing to update the definition of the term for a retirement plan “fiduciary” to ensure retirement savers get sound investment advice free from conflicts of interest.
- EBSA, along with the Departments of Health and Human Services and Treasury, is proposing regulations to implement the advanced explanation of benefits requirements of the No Surprises Act to ensure patients have transparency in their health care treatment options and expected costs before a scheduled service.