

Final Touches: President Trump Rounds Out DOL Leadership with Two Nominees

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Wage and Hour

Takeaways

- Nominated to head the DOL Wage and Hour Division, Andrew Rogers would return to the agency after a stint at the EEOC.
- Nominated for DOL solicitor of labor, Jonathan Berry is an attorney in private practice and had authored the DOL chapter of the Project 2025 policy platform, which backs compliance assistance over enforcement.
- If confirmed, they will join newly installed Labor Secretary Lori Chavez-DeRemer to lead the DOL and employers can expect changes in direction at the agency.

Article

President Donald Trump has nominated Andrew Rogers to lead the Department of Labor's (DOL's) Wage and Hour Division (WHD). He also nominated Jonathan Berry to serve as solicitor of labor.

Trump sent the nominations to the Senate on Mar. 31, 2025. If confirmed, the nominees will join Labor Secretary Lori Chavez-DeRemer, who took the helm at the DOL on Mar. 11.

Andrew Rogers

Trump has tapped Andrew Rogers to lead the WHD, which oversees enforcement of the Fair Labor Standards Act (FLSA), laws regulating prevailing wages and other provisions related to federal contracts, and numerous other workplace statutes.

If confirmed, Rogers would come to the post with significant administrative agency experience. During the first Trump Administration, he was a senior advisor in the WHD, where he focused primarily on regulations and opinion letters. (The Trump DOL had a robust practice of publishing FLSA opinion letters, which are useful guidance directives for employers. Opinion letters dropped off considerably during the Biden Administration, which issued only three.) He then moved to the Equal Employment Opportunity Commission (EEOC) as chief counsel to Republican commissioner Andrea Lucas, who now serves as acting chair. Rogers is currently the EEOC's acting general counsel. Previously, he practiced employment law at a management-side firm.

Jonathan Berry

Trump has nominated Jonathan Berry to be solicitor of labor, the DOL's chief lawyer. Berry is managing partner at a Washington firm with a significant U.S. Supreme Court and administrative law practice. Berry served in the first Trump Administration as acting and principal deputy assistant secretary for policy at the DOL, where he oversaw agency rulemaking.

Most recently, Berry authored the "Department of Labor and Related Agencies" chapter

in the Heritage Foundation's Project 2025 policy document. The document calls for DOL to focus on compliance assistance over enforcement and for restrictions on the use of sub-regulatory guidance documents.

Specific policy prescriptions include *amending* the FLSA to:

- Permit private-sector workers to accumulate paid time off in lieu of overtime pay;
- Allow employers to set a two- or four-week pay period (rather than the 40-hour workweek) over which to calculate overtime hours worked;
- Clarify that benefits do not need to be included in calculating the regular rate for overtime purposes; and
- Require a time-and-a-half premium for working on the Sabbath.

Other policy recommendations in the Project 2025 document include measures DOL could adopt without Congressional action, such as:

- Restoring the Trump-era independent contractor rule;
- Clarifying that reimbursement for home office expenses is not part of an employee's regular rate; and
- Clarifying that an employee who teleworks "need only record time if the quantity of work assigned for that day exceeds the usual amount of work that employee performs so that the employee need not track every time he logs in and out and the employer need not do so either."

Berry may soon be in a position to enact some of these policy prescriptions.

Other DOL Appointments

If confirmed, Rogers and Berry will round out the administration's DOL leadership. The Senate has confirmed other key leadership posts at the agency, including Lori Chavez-DeRemer, who has taken the helm as secretary of labor, and Keith Sonderling, a previous WHD acting administrator and deputy administrator, for deputy labor secretary.

Chavez-DeRemer was a former U.S. Representative (R-Or.) and served on the House Education and the Workforce Committee. Her nomination cleared the Senate with bipartisan support, despite some misgivings from Republicans over her past support for the PRO Act, labor-backed legislation that would make it easier for unions to organize. Trump indicated his nomination of Chavez-DeRemer was a nod to his supporters in organized labor. Chavez-DeRemer distanced herself from the PRO Act during her nomination hearing.

What's At Stake

Currently, DOL faces litigation on numerous fronts, including at federal courts of appeal, over key Biden Administration regulations. The 2024 rule increasing the minimum salary for application of the executive, administrative, and professional (EAP) exemptions has been enjoined by a federal district court, but the DOL is appealing that decision. The 2024 independent contractor rule currently in effect has withstood numerous legal challenges, but litigation is ongoing. The DOL has asked the courts for more time to review the rules and the litigation to determine how it will proceed. Once the DOL leadership team is on board, we should have a clearer signal on whether the agency will continue defending these regulations and whether it will undertake new rulemaking.

We may also see a renewed focus on assisting employers with complying with the FLSA

and the other statutes the agency enforces, as well as restoring avenues for employers to report and promptly remedy inadvertent violations without risk of costly litigation.

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