



**FEW Washington Legislative Update  
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Congress is adjourned until November 13, 2024  
*A Special Report***

**Congressional Outlook for the Remainder of 2024**

***Lame Duck Session's Packed Legislative Agenda***

Lame duck sessions allow sitting administrations to reinforce their legacies before a new administration takes the helm, but even that is contingent on the election outcome.

The big picture: Congress has only 20 days occurring in the post-election lame duck session, and a packed agenda to accomplish by the end of the year.

Crucial government funding bills, multiple must-pass authorization, and extender bills, as well as the Fiscal Year 2025 National Defense Authorization Act (NDAA) and several other large congressional lifts hang in the balance.

Since Congress passed a short-term continuing resolution (CR) to extend discretionary program funding into December, it must then decide how to act on the 12 regular appropriations bills to fund the government through September 30, 2025, which is the end of the next fiscal year. The outcome of the November elections may impact whether Congress decides to pass full-year legislation or simply pass another CR that extends into 2025 (and the next Administration). Congress will also have to pass disaster funding for the natural disasters experienced across the country including the most recent hurricanes.

In 2023, Congress passed these bills in two packages, with each combining six of the bills. The first package included Agriculture, Commerce-Justice-State, Energy-Water, Interior, Military Construction-VA, and Transportation-HUD. The second package included Defense, Financial Services, Homeland Security, Labor-HHS-Education,

Legislative Branch, and State-Foreign Operations. Passage of the bills in this format required bipartisan majorities. Congress may be forced to try a similar approach in December.

## **National Defense Authorization Act (NDAA)**

Congress has passed an annual defense authorization bill for 63 straight years and is expected to do so again in December. On June 13, the Senate Armed Services Committee reported the National Defense Authorization Act on a 22-3 vote. On June 14, the full House passed the Servicemember Quality of Life Improvement and National Defense Authorization Act (H.R. 8070), 217-199. The inclusion of several social-issue provisions assured a partisan vote in the House. Congress must negotiate several differences between the two bills. Among other things, the Senate legislation authorizes \$9 billion more than the House bill. More than 1,100 amendments have been filed in the Senate. House and Senate negotiators will attempt to resolve differences before the bill is brought to the Senate floor during the lame-duck session.

**No matter who wins in November**, a new administration is coming ... this Outlook covers a few things to watch:

- **Unfinished business:** The Biden admin's attempts to empower workers are largely stalled in court ... Congress needs to pass essential spending bills in its "lame duck" session ... and Democrats are considering filibuster reform to pass priority bills by year's end.
- **Decentralized impacts:** Most policy actions are with federal agencies, state legislatures, and the judiciary. We'll soon see if the end of "Chevron deference" leads to less regulatory overreach.

Workplace issues from pay equity and transparency to union organizing and *AI* are gaining traction in the U.S. and internationally amid global elections and rising populist rhetoric.

- Expect increased activity in the Judicial and Executive branches through the election with a legislative uptick after November 5 when both sides of the congressional aisle can come together without ceding ground.
- We are already seeing agencies come together to send key messages to this effect (e.g., the recent collaborative effort on antitrust and labor enforcement announced by DOL, FTC, DOJ, and the NLRB).

## **Converging Global Trends and Policy**

**Employment policy** is experiencing a *global convergence* as a record number of elections affecting nearly half the global population influence workplace public policy agendas.

- **Employees worldwide** are demanding more from their employers, while international unions are actively institutionalizing.
- **Intragovernmental pressure** is a likely new tactic, such as the Biden Administration's unprecedented move urging Germany to investigate Mercedes for unfair labor practices after the UAW's failed unionization vote in Alabama.
- **Global tensions** in the Ukraine, Russia, Israel and Gaza are inflaming U.S. political divisions and impacting the workplace.

**Diversity, Equity & Inclusion (DEI) is trending worldwide.**

- **A year after SCOTUS' ruling** against affirmative action in college admissions, activists are pressuring companies to retreat from DEI commitments. Europe, meanwhile, is adopting more DEI mandates.
- **EU nations** must carry out the Women on Boards Directive, requiring large, listed companies to ensure women hold at least 40% of non-executive director positions by 2026.

**Pay transparency and equity** are hot topics globally.

- **The EU Pay Transparency Directive** mandates employers to disclose the pay gap between male and female workers and provide pay ranges for job openings. It also bans inquiries about pay history, similar to many U.S. state laws.
- **In the U.S.**, 11 states have enacted laws requiring pay ranges in job postings and 22 states have salary history bans with more expected next year.
- Brazilian and Australian employers face new gender pay gap reporting requirements, signaling a commitment to tackling pay inequity.
- In the U.S., the EEOC aims to expand pay reporting in 2025.

**Workplace AI and working hours** are also under the spotlight.

- **America's** recent union wins and uptick in worker organizing may prove superficial if actual agreements are not reached. This may provide even greater motivation to strengthen federal labor law, depending on who wins in November.

**Labor: What's Left for President Biden?**

**After promising** to be the most pro-labor president in the nation's history, President Biden has only months left to deliver on his labor legacy.

**Labor law reform will remain elusive:** President Biden sought to deliver federal labor law reform in the form of the PRO Act, which would have radically changed the law in favor of union interests.

- While introduced multiple times, the PRO Act failed to gain any traction in Congress under President Biden and stands zero chance of passing before the end of the year.
- Expect no changes on the legislative front, with the potential exception of pro-labor provisions snuck into funding bills that will ultimately be swatted down by House majority members.

**The National Labor Relations Board (NLRB) marches on:** The Board will continue to be the main implementing tool of the Biden labor agenda as legislative and other regulatory efforts have fallen short. Decisions impacting the workplace that could arrive before year end include:

- **Restrictions on:** Non-compete agreements ... arbitration agreements ... mandatory employer-held meetings.
- **Increases to:** Union access to employer property ... damages for failure to bargain in good faith ... protections for political and social protests.

**Yes, but:** Federal courts have increasingly rejected unreasonable NLRB decisions, providing some relief for employers.

- Recent court rejections include NLRB decisions on employee dress code limitations and disciplining employees for offensive conduct.
- We may see more rejections of Board decision-making before the end of the year, including the highly controversial *Cemex* decision (card check).

**The NLRB Chair McFerran's term expires at the end of the year, setting up a pivotal nomination battle in the Senate.**

- The Biden administration aims to push through McFerran's confirmation, along with a Republican nominee, to maintain control of the Board through at least 2026.
- Expect fierce opposition from Senate Republicans and potential Democratic defections.

**The bottom line: The NLRB is likely to be the only source of significant labor law developments through the end of the year. Even so, these decisions could face more resistance in federal courts, blunting any potential negative implications for employers.**

**Federal Court:**

As part of its “all of government” approach, the Biden administration introduced several key regulations over the last two years, including non-compete agreements, overtime, worker classification, joint employer liability, and OSHA workplace inspections.

**What's next:** Except for non-competes, expect decisions by the end of the year that will largely determine the fate of these rules - stay tuned!

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