

# The Biden Administration's Recent Executive Orders that Impact Workers

By Alia Al-Khatib  
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Beginning on Inauguration Day, the Biden Administration has demonstrated that strengthening protections for workers is a clear priority. Recent measures seek to improve health and safety protections for workers during the [COVID-19 pandemic](#). The Administration has also recognized the importance of addressing racial and gender inequities in the workplace. Signed on Inauguration Day or shortly thereafter, these recent Executive Orders (EOs) are likely just the beginning of the Administration's expansion of worker protections.

## Worker Health and Safety Protections

[EO 13999](#), "Protecting Worker Health and Safety" orders the Secretary of Labor to take immediate action to reduce workers' risk of contracting COVID-19 in the workplace. One section orders the Secretary to review enforcement efforts of the Occupational Safety and Health Administration (OSHA) to improve the agency's practices. Charged with ensuring safe working conditions for workers, the federal OSHA has struggled to respond effectively to workers' complaints during the COVID-19 pandemic. As of the end of January 2021, the federal OSHA had [received](#) a total of over 13,000 COVID-related complaints, yet had initiated an inspection in response to only a small [fraction](#) of those complaints. Reviewing OSHA's enforcement efforts thus far - with an examination of its shortcomings - is a critical step to protect workers' health and safety. For workers not protected by the Occupational Safety and Health (OSH) Act, such as workers in industries, like mining, nuclear energy, and transportation, over which other federal agencies regulate working conditions, the EO instructs Secretaries of various federal agencies to explore mechanisms to ensure these workers remain healthy and safe at work.

The EO also instructs the Secretary to consider issuing emergency temporary standards in response to COVID-19. When issued, emergency temporary standards are mandatory and effective immediately. To issue such a standard, OSHA must determine that "workers are in grave danger due to exposure to . . . new hazards and that an emergency standard is needed to protect them."<sup>[1]</sup> Although the federal OSHA has not yet issued such standards, states with state OSHA plans, like [Virginia](#) and [California](#), issued emergency temporary standards in 2020. (Virginia's standard recently became the [final standard](#) effective January 27, 2021.) Despite efforts to get the federal OSHA to issue such a standard, including an emergency mandamus petition in federal court,<sup>[2]</sup> the agency never did so under the prior Administration. Under the EO, the Secretary has until March 15, 2021 to determine whether emergency temporary standards are necessary and, if so, to issue them.

In addition, the EO orders the Secretary to revise guidance to employers around COVID-19.

On January 29, 2021, OSHA issued stronger workplace safety [guidance](#). This guidance recommends implementing a COVID-19 prevention program in the workplace that includes specific actions, such as:

- Identifying measures to limit the spread of the virus in the workplace, such as installing barriers, improving ventilation, and using face coverings;
- Educating workers in a language they understand about COVID-19 policies and procedures;
- Ensuring workers who are infected or potentially infected stay at home by, for example, making sure absences are not punished; and
- Making vaccines available at no cost to employees who are eligible.

Because this OSHA document is merely guidance, it creates no new legal obligations, though employers have an existing obligation under the OSH Act's [General Duty Clause](#) to provide their workers a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm." Nonetheless, this guidance is a step in the right direction and may serve as a template for any future emergency temporary standards.

## **Gender Equity**

[EO 13988](#), "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation," seeks to ensure that all federal agency policies, regulations, and actions are consistent with the Administration's goals of advancing gender equity. The EO adopts an expansive interpretation of gender equity that encompasses protections on the basis of [gender identity and sexual orientation](#). The EO cites the Supreme Court's ruling in *Bostock v. Clayton County*<sup>[3]</sup> that Title VII's prohibition on sex discrimination covers discrimination on the basis of sexual orientation and gender identity. The Administration extends *Bostock's* reasoning to other laws that prohibit sex discrimination, including those related to education, health, and housing. The EO also acknowledges how discrimination on the basis of gender may intersect with other forms of discrimination, such as [race](#) or [disability](#). With this expansive understanding of gender equity, the EO instructs agencies to review all existing agency actions to ensure that they are consistent with this new framework.

## **Racial Equity**

[EO 13985](#), "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," focuses on addressing systemic racism and other forms of discrimination in federal policies and programs.

While not specific to employment issues, this EO instructs all federal agencies to assess systemic barriers for underrepresented communities in receiving federal benefits or accessing federal programs. "Underrepresented communities" include "Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." The Director of the Office of Management and Budget (OMB) must identify and report to the President strategies for allocating federal resources to invest more in underrepresented communities. The EO calls for agencies to consult with members of impacted communities in making assessments about the barriers faced by these communities, and it also establishes a working group to improve the collection of federal data related to race, ethnicity, gender, disability, and other

demographic information.

This EO is significant not only for its forward-thinking measures, but also for prior executive orders it revoked. Specifically, the Administration revoked EO 13950, which prohibited government contractors from providing workplace trainings about gender and racial inequities, among other things. That specific section of the Trump EO was enjoined by a California district court [order](#) in December 2020.

While this EO explicitly focuses on advancing racial equity, it is not the only indication of the new Administration's focus on these issues. The two EOs mentioned above also acknowledge the intersection of racial equity and other issues, like gender equity and worker health and safety. In framing these orders through a lens of racial equity, these EOs represent a significant shift in the federal government's goals and suggest broader changes to advance racial equity that are yet to come.

### **Organizing and Federal Minimum Wage**

While [EO 14003](#), "Protecting the Federal Workforce," is limited to federal employees, the Administration clearly indicates its support for union organizing and collective bargaining, stating that it is "the policy of the United States to encourage union organizing and collective bargaining" and that the federal government "should serve as a model employer." This EO revoked a number of prior executive orders related to union time and collective bargaining agreements governing federal employees. Notably, this EO also called upon the Director of OMB to report to the President recommendations for promoting a \$15 per hour minimum wage for federal employees.

### **What's Next**

While some of these EOs serve to reverse various actions by the prior Administration - by revoking various EOs and requiring reviews of existing rules and regulations - other measures show that the Administration has plans to expand worker protections and not merely return to the status quo that existed before the last Administration. These EOs suggest future measures that will seek to address systemic issues in federal laws and programs, especially around racial inequities. For workers and for individuals belonging to underrepresented communities, these orders are an important start, but legislative enactments will be needed to help the vast majority of people who work for private employers.

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[1] U.S. Dep't of Labor, Occupational Safety & Health Admin., *OSHA Standards Development*, <https://www.osha.gov/laws-regs/standards-development>.

[2] *See In re: American Federation of Labor and Congress of Industrial Organizations*, No. 20-1158 (D.C. Cir. June 11, 2020) (denying AFL-CIO's emergency mandamus petition seeking an emergency temporary standard on the grounds that OSHA reasonably determined that one was not necessary at this time).

[3] 140 S.Ct. 1731, 590 U.S. \_\_\_\_ (2020).