

Washington[®] MONTHLY

How Trump Could Dismantle Workers' Rights with Another Four Years

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April 6, 2020

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From the perspective of the liberal policy establishment, Donald Trump has launched an aggressive and unprecedented assault on workers' rights and the labor movement. From the perspective of the right, Trump has governed on labor almost exactly as any other Republican president might have.

“When he was first elected, I ventured his administration might be different from traditional Republicans in a few ways, including in its relations with unions,” Walter Olson, a labor policy expert at the libertarian Cato Institute, said. One of the president's first meetings in 2017 was with leaders of the building trades, Olson noted. “But in the end, they have been very much in line with what you would have expected from, say, Carly Fiorina.”

In many respects, Trump's administration has followed in the footsteps of Ronald Reagan and his acolytes, who pioneered the Republican playbook on weakening unions. From stacking his administration with anti-union ideologues to firing more than 11,000 striking air traffic controllers during his first year in office, Reagan set in motion a pro-corporate agenda that Trump has continued to push forward. In case there was any doubt about how the Trump administration regarded the conservative icon's labor record, in August 2017 then Labor Secretary Alexander Acosta announced that Reagan would be inducted into his agency's Hall of Honor.

One way Trump has taken aim at unions is through the National Labor Relations Board, or NLRB, which is the federal agency tasked with protecting the rights of private-sector workers and encouraging collective bargaining. Private-sector workers are barred from bringing workplace grievances through the courts themselves, so filing complaints with the NLRB—which has more than two dozen regional offices spread across the country—is how employees can seek redress if they feel their rights have been violated. If an issue can't get settled at the

regional level, it gets kicked up to the agency's five-person panel in D.C., which issues a decision.

Trump's NLRB has kept busy, handing down a spate of decisions that align with employer interests and overturn Obama-era decisions. In early 2017 the Chamber of Commerce, a powerful business lobby, published a wish list of 10 policies it wanted to see changed under the Trump administration. In less than three years, the NLRB addressed all 10 items on the list, even going beyond what the lobby requested in some instances. For example, new NLRB decisions make it harder for workers and union representatives to discuss issues on employer property, and give employers more power to unilaterally change collective bargaining agreements. Decisions like these tend to have modest immediate impact but become far more consequential as they have more time to take effect.

"Unfortunately, how the three Republicans on the NLRB seem to view their job is to weaken the law as it pertains to workers' rights, but also amp up scrutiny of unions and penalties against them," Lynn Rhinehart, a senior fellow at the left-leaning Economic Policy Institute (EPI), said.

Republicans say the flurry of Trump administration actions is a natural response to what they viewed as aggressive rule making by the Obama administration. "The perception on the Republican side is that Obama hit so many balls across the net, so [the administration] is responding by swatting balls back now," Olson, the Cato Institute expert, said. "Generally, I think the business community just wanted to get some relief from all the new rules imposed by the prior administration."

But beyond playing ping-pong with Obama-era dictates, the Trump administration has also been working to hollow out the NLRB. According to an EPI analysis, the number of full-time employees working in the agency dropped by 10 percent during Trump's first two years in office, including 17 percent fewer regional field staff. Given that the nation's roughly 129 million private-sector workers can't bring their grievances through the courts, the fewer NLRB staff available to process their complaints, the fewer opportunities workers ultimately have to get justice.

Perhaps the clearest example of the Trump administration's attitude toward unions is its treatment of federal workers. Over the past three years, with the strong encouragement of the president, agencies have taken steps to strip federal workers of their union rights and undermine their negotiated contracts.

"I have to admit federal workers have suffered," Everett Kelley, the national president of the American Federation of Government Employees, said. "We've seen federal worker contracts just ripped up and replaced with contracts written by management that had no negotiations at all," he said. Civil servants have been forced out, Kelley continued, while staff vacancies have been left unfilled.

Last October, the Trump administration instructed agencies to move as fast as possible to restrict unions in federal workplaces. One of the first, practical consequences was that many union reps, who for years had access to government agencies, were no longer welcome inside. In late

January, the president took another step, issuing a memo that gave Defense Secretary Mark Esper the power to end collective bargaining for the Pentagon's civilian workforce of roughly 750,000 people, more than half of whom are in unions. It's not yet clear what Esper will do with that power.

A second term for Trump would likely bring more of the same, said Donald Kettl, a professor of public policy at University of Texas at Austin and an expert on the federal government. While past Republican presidents have tried to diminish federal unions, he said, few presidents have been as successful as Trump. "He's skillfully found a way to use these issues to energize the [Republican] base," Kettl continued, and he's pursued tactics that don't require legislative action. Trump has latched on to recurring conservative themes—his "deep state" attacks on bureaucrats are not radically different from Nixon's "enemies list"—but his push has been "a more focused, concerted, and successful effort than the anti-bureaucracy campaigners have been able to muster in the past," Kettl said.

If Trump's first term was focused on making it tougher for workers to unionize, both conservatives and liberal policy wonks agree that a second term would likely mean more attention directed toward regulating gig workers. Generally, gig workers—like Uber drivers—aren't afforded the protections of traditional employees, like minimum wage, overtime, unemployment insurance, and the right to join a union. Increasingly, though, labor advocates are building a case that many of these workers have been shortchanged; they're functionally employees and should be protected as such.

It's clear that the Trump administration disagrees. In one 2019 decision, the NLRB reversed an Obama-era ruling to find that SuperShuttle drivers were independent contractors, not employees. The agency's general counsel, Peter Robb, another Trump appointee, reinforced that decision, issuing a memorandum declaring the same thing about Uber drivers. That sends a strong message to gig workers to not bother bringing any new cases to the NLRB on this topic.

Meanwhile, blue states have been pushing in the opposite direction. At the start of 2020, a sweeping new law known as AB5 went into effect in California, taking aim at the problem of misclassifying employees as independent contractors. Other states, like New York and New Jersey, are now following suit with their own versions of the law, and the Democrat-controlled House of Representatives passed its own bill in February that similarly would make it harder for employers to classify their workers as contractors. Other states, like Washington, are considering bills to allow for so-called "portable benefits"—where workers, regardless of whether they are employees or contractors, could accrue benefits on a per-hour basis, and these would be fully portable, like Social Security. (The Washington Monthly has championed this idea.)

Rachel Greszler, a labor policy expert at the conservative Heritage Foundation, said that while Republicans are interested in addressing some of the concerns faced by contractors and gig workers, their proposed reforms differ from laws like AB5. She suggested policies making it easier for contractors to pool together to finance their health insurance, using what are known as "association health plans." Greszler also pointed to universal savings accounts, which would function similarly to employer-administered 401(k) accounts. The Trump administration

supports both of these policies and has already taken steps to make association health plans available more broadly.

The decisions already issued by Trump's NLRB could weaken the impact of California's new labor law by confusing workers and deterring other states from moving forward with their own solutions. "I think it is probably very confusing to hear that you are not an employee and don't have a right to collectively bargain under federal law, but that you are an employee for the purposes of California law," said Sharon Block, an Obama Labor Department official and now a labor expert at Harvard Law School. "When labor rights are more complicated it makes it less likely that they will be invoked. It's good lawmakers are moving forward in California, but this counter-signal from the federal government could have a chilling effect on workers who might otherwise assert their rights."

Another four years of Trump, said Shaun Richman, a labor expert at SUNY Empire State College, would mean an even greater effort by the NLRB to try to stop federal labor law from adapting to "the modern workplace."

"They are closing their minds to the ways that business models actually work, they don't want the National Labor Relations Act to adapt to the fissured workplace," he said. "It's not an exaggeration to say four more years is an existential threat."