



The Wage & Hour Landscape: An Evolution of Law, Litigation, and Government Enforcement in a Trump Administration World

March 18, 2025

Seyfarth Shaw LLP

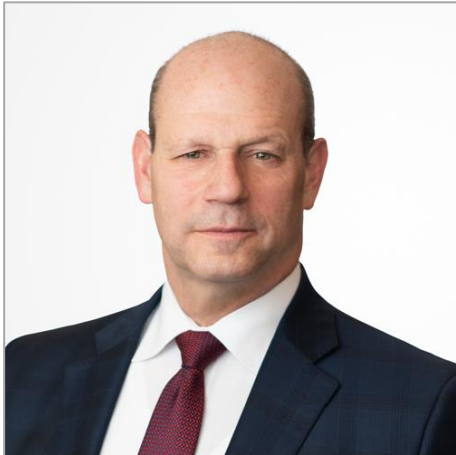
"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2025 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

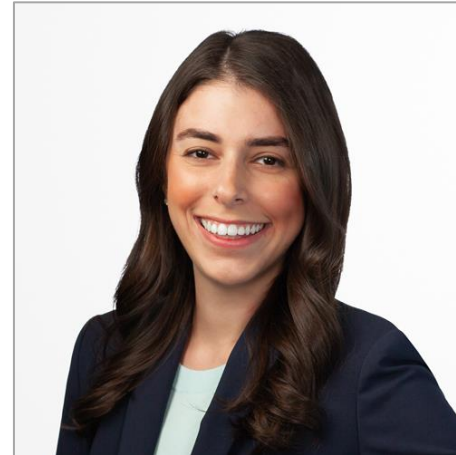
Presenters



Leon Rodriguez
Partner
Washington, D.C.



Brett C. Bartlett
Partner
Atlanta



Ariel D. Fenster
Associate
Atlanta



Agenda

- 01** FLSA Wage & Hour Trends and Current Affairs
- 02** US Department of Labor, Wage & Hour Division
- 03** Legislation, Regulation & An Active Plaintiffs' Bar
- 04** Trends to Watch
- 05** What to Do About All of This?

The Landscape

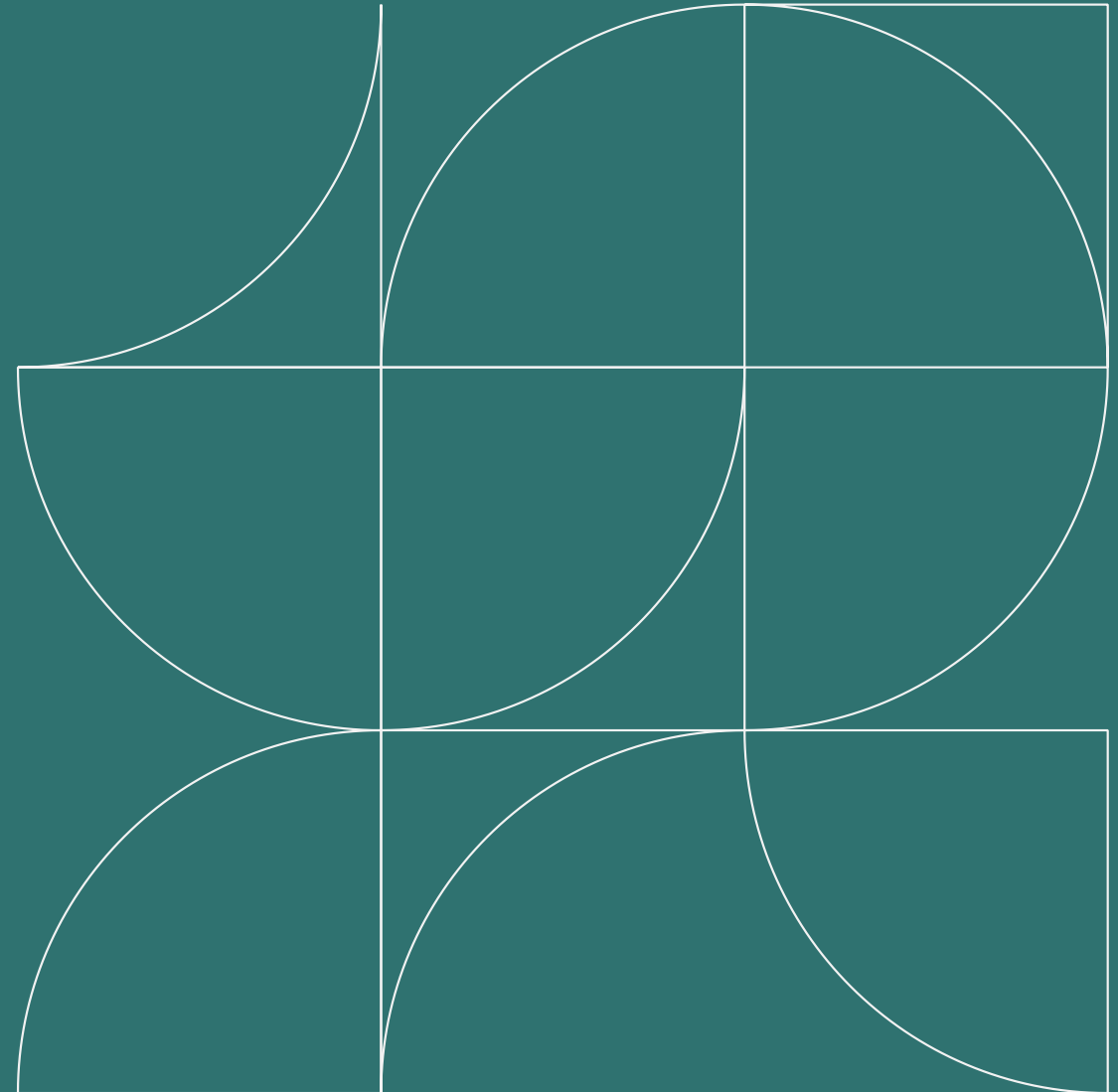
An Uneven Topography

- Campaign rhetoric & promises
- Executive orders
- Regulatory / sub-regulatory action
 - Agency impact
- “Legislative” change
 - “Set in Stone” initiative
- Court intervention



01

FLSA / Wage & Hour Litigation Trends and Current Affairs



Current Affairs Affecting the Wage & Hour World



Wage & Hour Division

DOGE

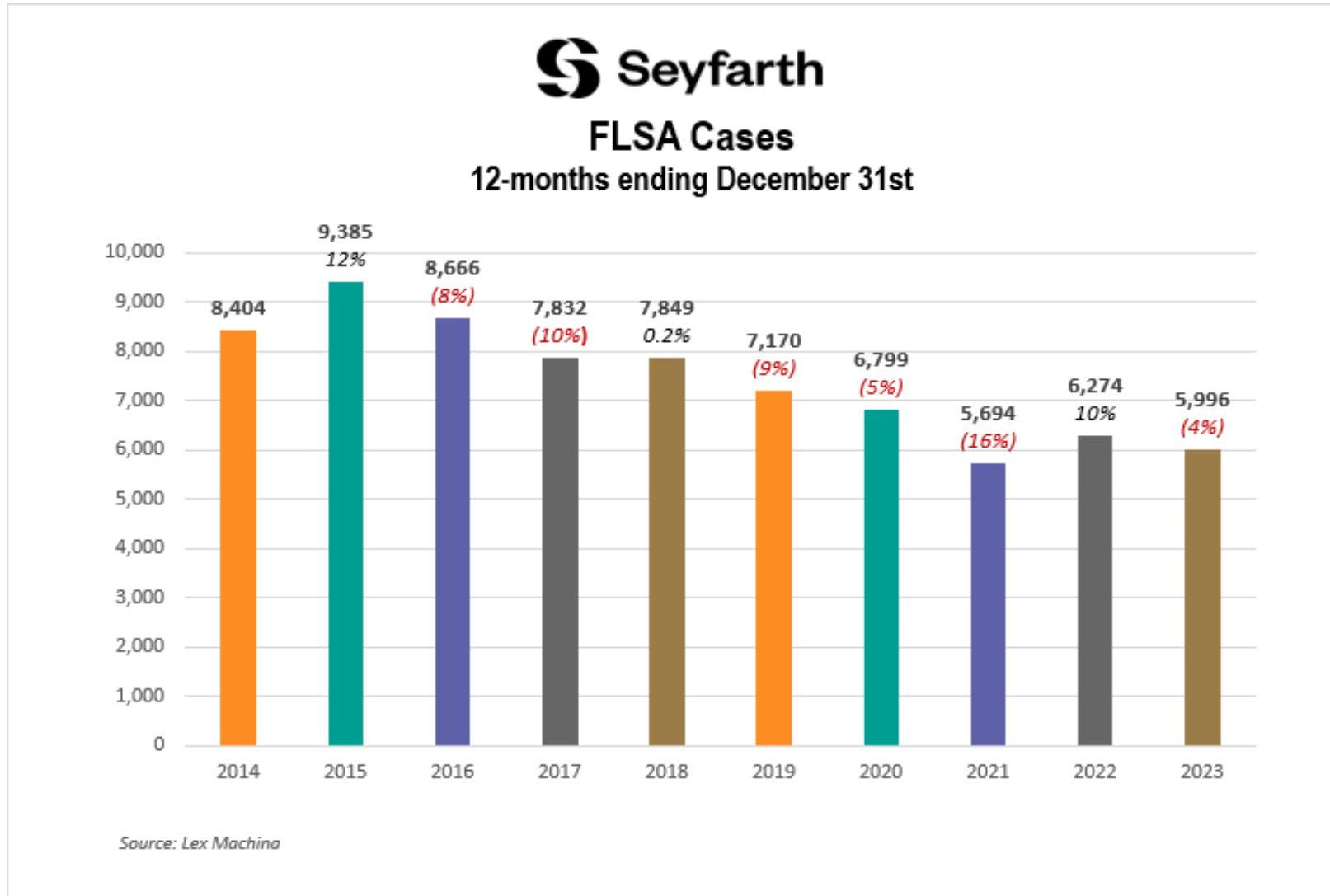
States / Localities

Loper Bright

Judicial Activism

Plaintiffs' Bar

Thousands of FLSA Suits, Even if Trend is Downward



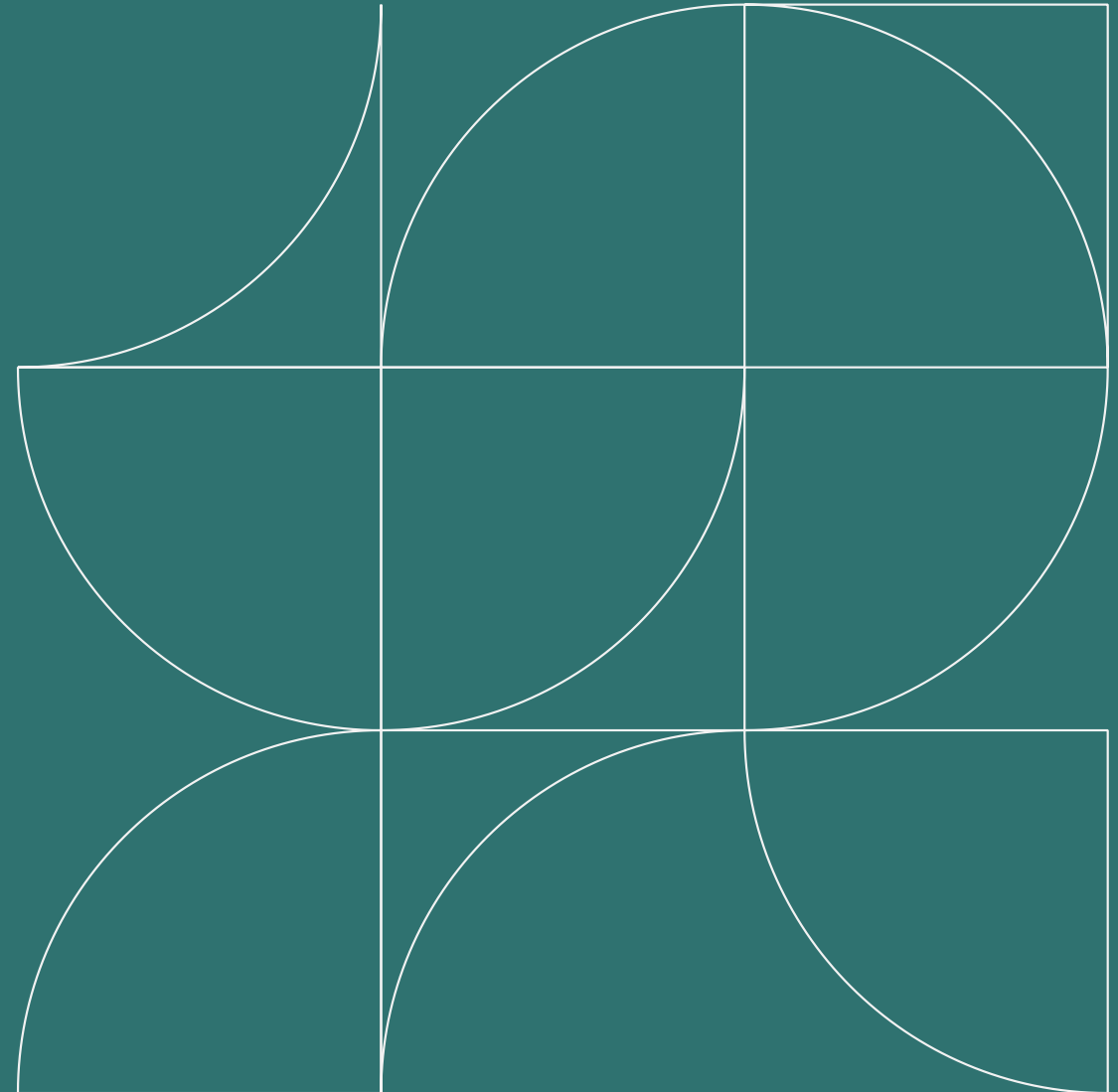
Economy's Impact on Wage & Hour Trends



- Good times—counterintuitively—seem to increase claims
- Uncertain and bad times seem to have a mixed effect on the number of claims filed
- Perceptions of rock-bottom seem to increase them

02

U.S. Department of Labor, Wage & Hour Division



New Secretary of the United States Department of Labor

Lori Chavez-DeRemer

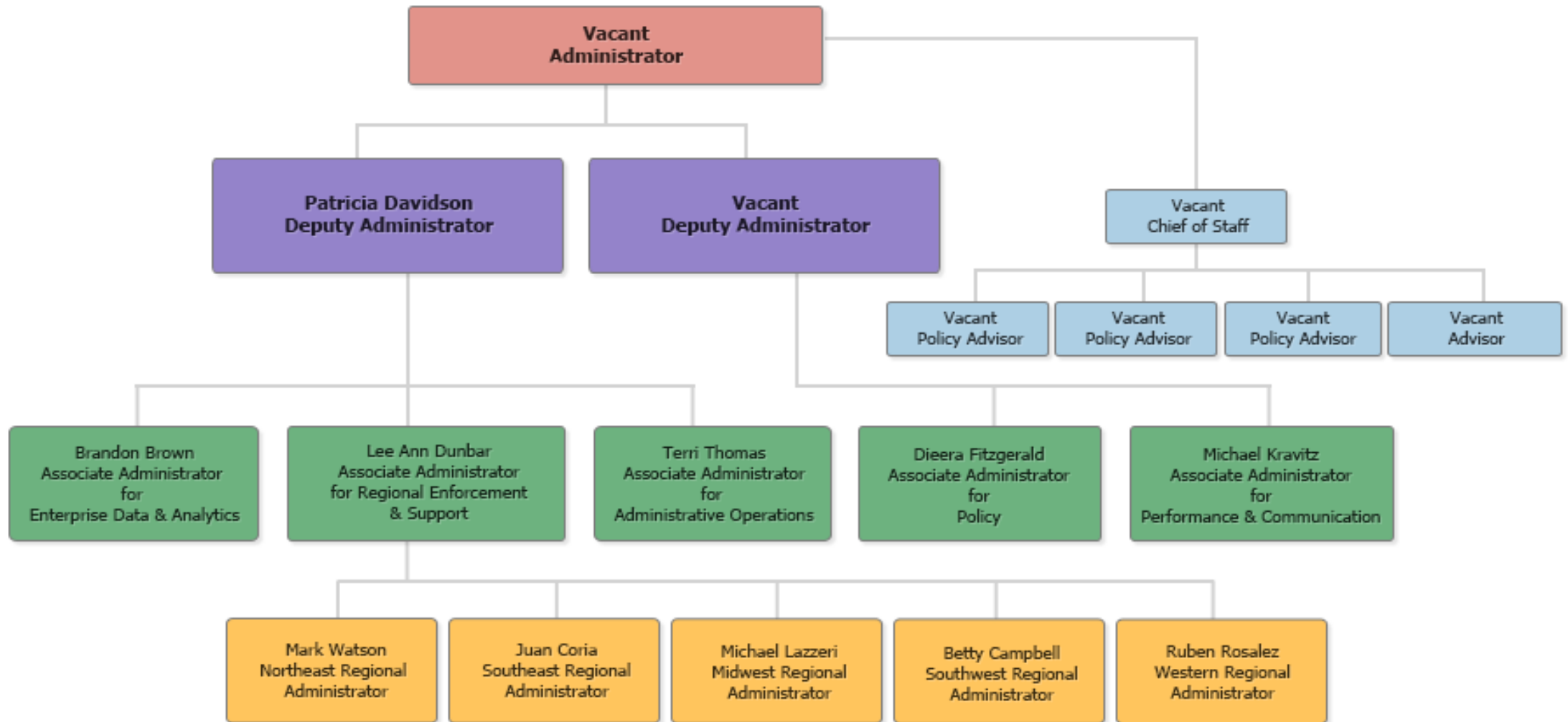
- Former U.S. Representative for Oregon
- Member of the Republican Party
- But has taken atypically pro-union / pro-employee positions, in comparison to other Republican congressmembers
- She co-sponsored and supported the PRO Act initially; in her confirmation hearing she was a little harder to pin down (suggesting she might have been pressured to back off her pro-union stance)
- The Teamsters (or at least its president) supported her nomination
- Some businesses opposed her
- She was confirmed on March 10, 2025, with several Democrats voting in her favor and a Republican voting against her

Secretary of Labor Chavez- DeRemer

Implications . . .

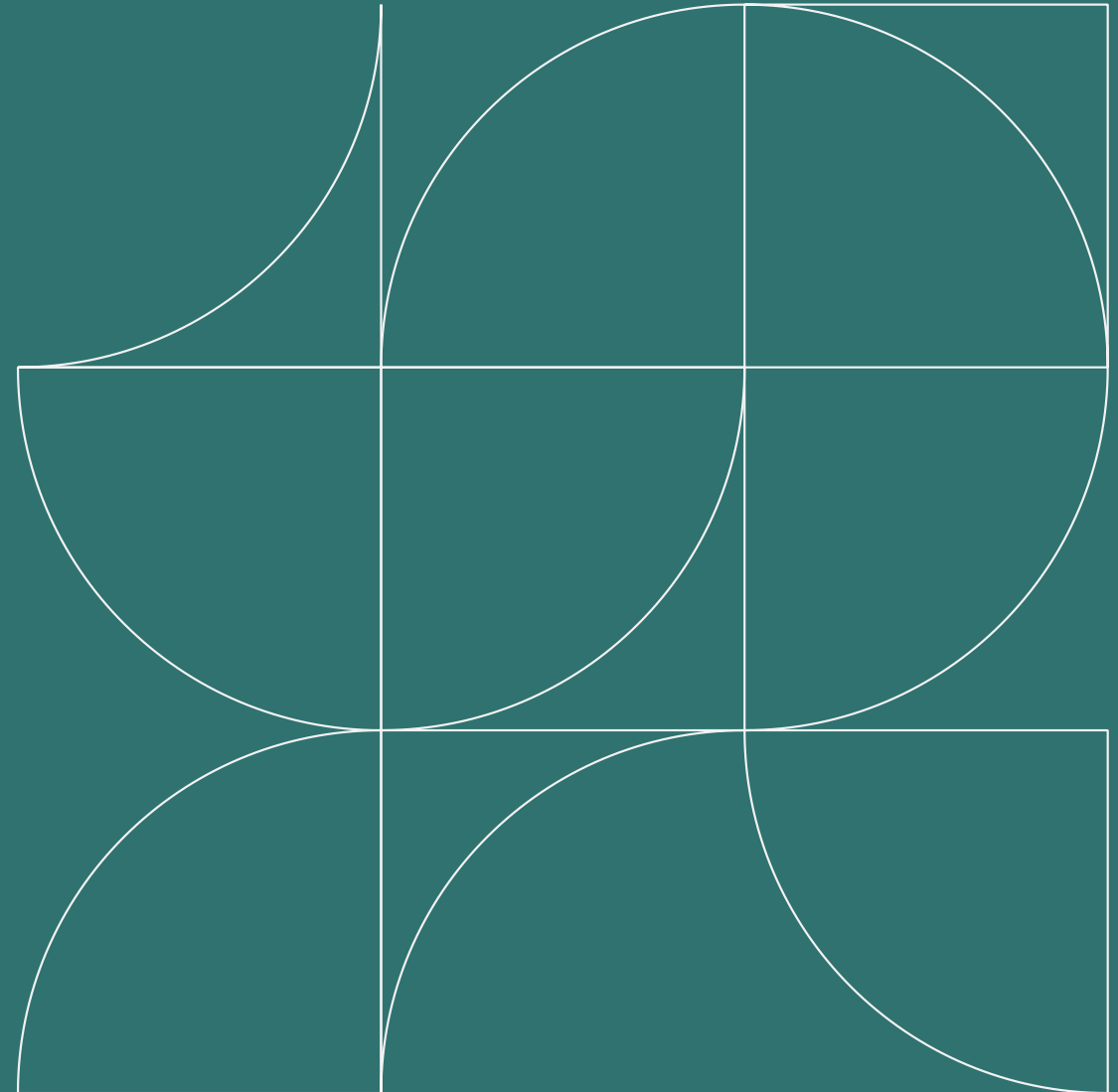
- Not really sure what this portends
- Her record on wage-hour is slim, and likely does not presage what her initiatives will be
- FLSA salary test for EAP Exemptions stalled in a Texas district court, but on a DOL appeal at the Fifth Circuit . . .
- What about independent contractor, joint employment, and other rulemaking?
- Enforcement at federal Wage & Hour Division seems chilled—might that change?
- Will FLSA take back seat to immigration issues?
- Keith Sonderling, nominee for deputy solicitor of labor, was acting and deputy Wage & Hour Division Administrator in prior Trump administration; and while an EEOC Commissioner, he focused on data analytics and AI initiatives (might suggest opening for use at DOL and WHD?)

Wage & Hour Division Org Chart (*eff. Jan. 20, 2025*)



03

Legislation, Regulation, & An Active Plaintiffs' Bar



Campaign Promises

Rhetoric or Reality?

- ***No Taxes on Tips***

- Incentivizes better reporting by employees for tip credit and minimum wage
- Could reduce overall labor costs and potential lower wage increases
- Could help with the overall hiring and turnover in the industry

- ***No Taxes on Overtime***

- Changes the stigma of exempt versus non-exempt and could help with reclassification
- Could cause a trickle-down effect on overtime or off-the-clock cases
- Could cause a scenario of increase unapproved overtime

- ***Overtime based on an 80-hour cycle***

- Small mumbles on the campaign trail
- Could reduce overall labor costs

*Potential
Lawmaking:*
**Federal, State, &
Local**

State Law “Gap-Filling”

- States like **California, Colorado, Illinois, Pennsylvania, Massachusetts, New Jersey, Oregon, Virginia, and Washington** have—in the past decade—developed as jurisdictions whose laws and authority are more employee-protective than the FLSA
- Some counties / localities have stricter requirements, too
- Might see more

An Active Plaintiffs' Bar

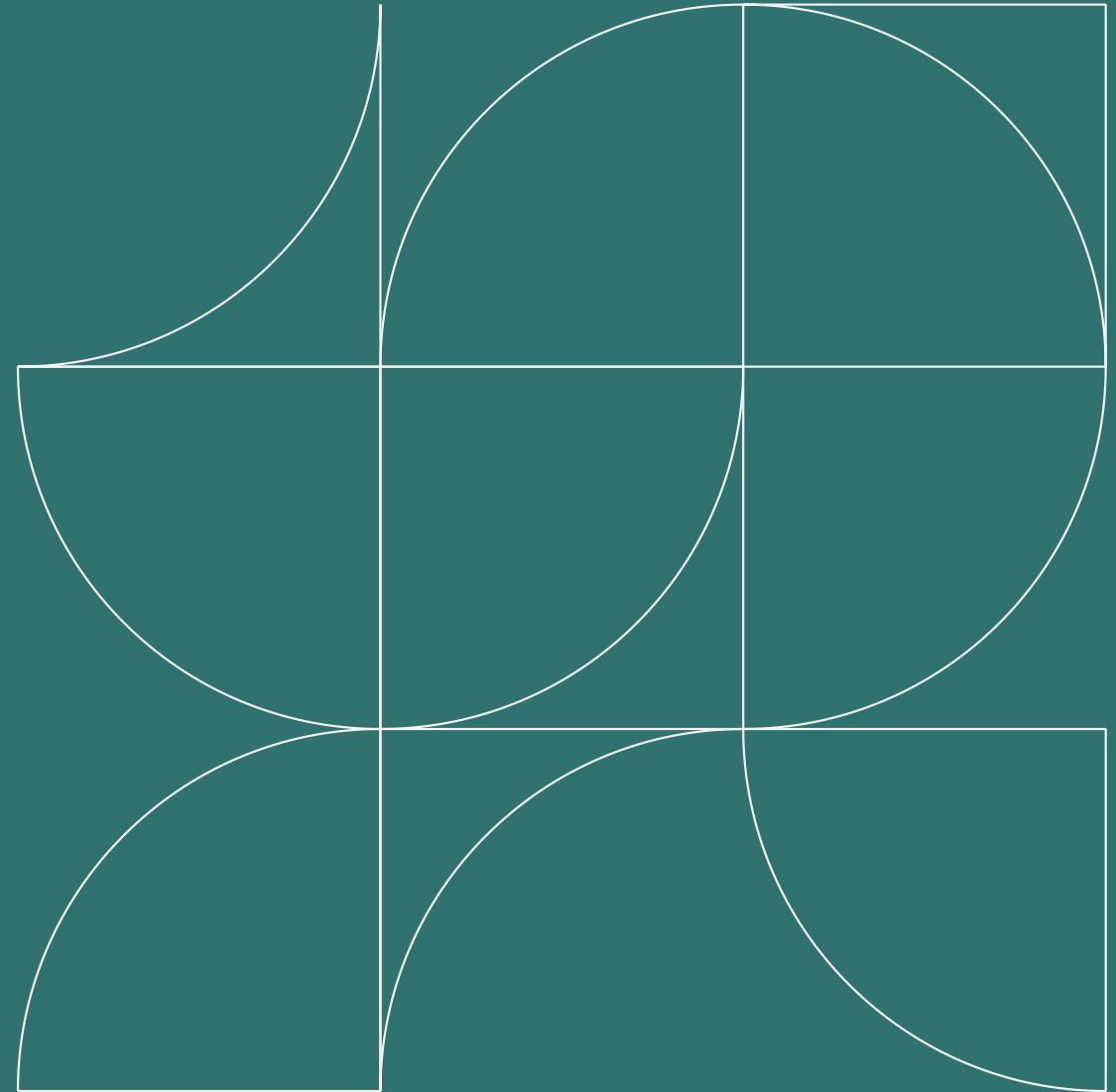


Always on the hunt . . .

- Plaintiffs' wage-hour bar are already hyper-active
- In times of job uncertainty, workers tend to bring more claims
- Plaintiff-side firms are joining forces to file suit in less-used jurisdictions
- They are advertising / soliciting in novel ways
- They are always looking for the next new claim

04

Trends to Watch



Litigation Trends



What will affect the landscape . . .

- Active judges willing to break the mold
- *Loper Bright Enterprises v. Raimondo*
- Class / collective certification standards
- Multi-jurisdictional attacks
- Industry-focused litigation
- Swing-for-the-fence mass claims
- Mass arbitration
- Settlement approvals

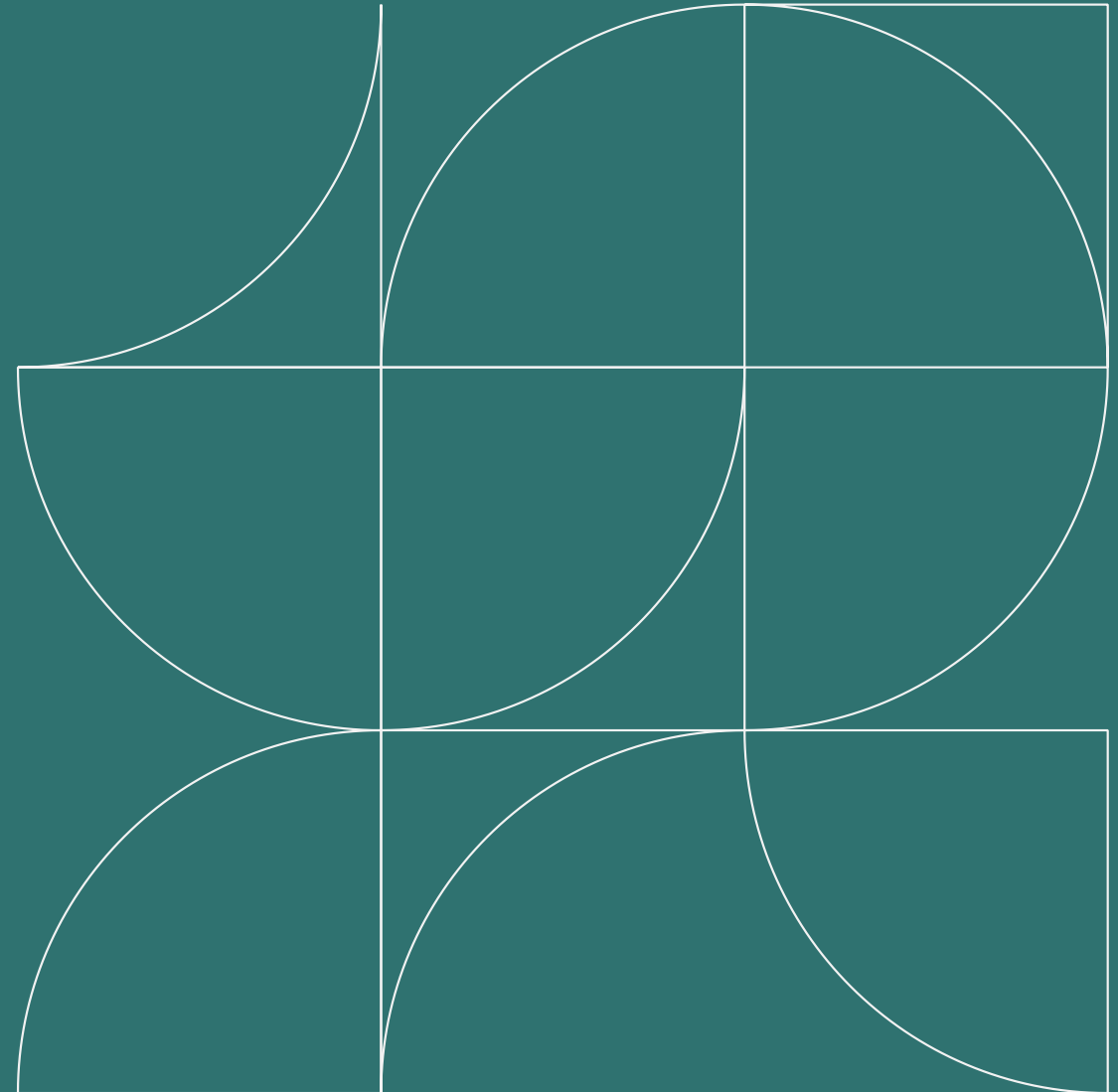
Government Enforcement Activity

Hot & Cold

- Federal agencies (WHD) impacted by DOGE and uncertainty
- State agencies – where they exist – might activate
- Could see move towards use of AI and targeted enforcement based on TBD factors
- Might see renewal of self-audit programs and opinion or administrator letters

05

What to Do About All of This?



Employers, Their Lawyers, and HR / Compensation Professionals

Awareness, Compliance, Proactivity, & Employee Relations

- Pay attention to the headlines
- Read beyond the headlines
- Assess compliance regularly
- Proactively address risk points
- This includes a focus on employee relations



SCAN ME

CLE: NEW PROCESS

Please scan the QR code and complete the digital attendance verification form to receive CLE credit for this program.

You will need:

1. **Title:** The Wage & Hour Landscape: An Evolution of Law, Litigation, and Government Enforcement in a Trump Administration World
2. **Date Viewed:** 3/18/2025
3. **Attendance Verification Code:** SS_____ (please listen for the code)

State-specific CLE credit information can be found in the form.

**thank
you**

Please reach out to us with any questions:

Leon Rodriguez: LeRodriguez@seyfarth.com

Brett Bartlett: BBartlett@seyfarth.com

Ariel Fenster: AFenster@seyfarth.com