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Becca Rainey (00:00)

Welcome to the FP5: Five Things for Your 9-to-5. We help employers make sense of the fast-moving world of workplace law and compliance by breaking down topics into five parts. I'm Becca Rainey from the Fisher Phillips Content team.

Today, we're taking a closer look at President Trump's nomination of Keith Sonderling to serve as US Secretary of Labor. We'll discuss his background and what his leadership could mean for the Department of Labor's enforcement priorities and upcoming rulemakings.

Joining me today is Braden Lawes, Senior Government Affairs Analyst in Fisher Phillips's, Washington, DC office, where he helps employers track and understand the federal policy and regulatory developments shaping the workplace. Thanks for being on the show today, Braden.

Braden Lawes (00:49)

Great to be with you. Thanks for having me.

Becca Rainey (00:51)

Before we get started, tell us a little bit about your role at Fisher Phillips and how you ended up following employment and labor policy in DC.

Braden Lawes (01:00)

So I'll start by saying that even though I work at a law firm, I'm not a--and my last name is Lawes--I am not a practicing attorney. And my role, I would say, definitely changes depending on the day, and mostly revolves around what is going on in DC at the time. And as you mentioned, I think tracking federal and state legislative and regulatory developments is a big part of my job that specifically impacts employers on a variety of topics, whether it's AI or wage and hour or labor relations issues. There's a lot happening in DC and at the state level these days. So that's kind of my role here.

And I'll make a couple shameless plugs if I could: one for FP on the Hill, which is our weekly government affairs newsletter, in which I am one of the authors of that. And then secondly, FP Policy Pulse, which is our monthly government relations webinar that covers all the happenings at DOL, its subagencies, the EEOC, the National Labor Relations Board, even the Supreme Court. I mean, there's there was a ton of rulings last week, so all of those typically make their way into FP Policy Pulse as well. And I would definitely invite folks to subscribe and to follow those if you are not already.

Becca Rainey (02:11)

So for our listeners, what is the top labor policy issue or workplace policy issue that you're tracking right now? If you had to pick one.

Braden Lawes (02:22)

Oh man. I think, I mean we'll talk about this more in in depth later, I think, but I feel like AI is really the hot topic of the day and of the year. But I think there again, it impacts so many different areas to the extent that it you know it touches workplace bias or when it comes to using it to screen resumes for hiring or just it's becoming so integrated

in workforces and the administration is taking actions to, you know, further implement the use of AI in the federal government and trying to figure out still how the states are going to be regulating AI.

So I feel like that is one of those issues that you don't necessarily inherently think of, workforce and AI, but like there is a lot of overlap there. I think that's just every conference I go to in DC, there's some segment on that. And it always seems to be the most widely attended.

Becca Rainey (03:12)

Right, there's so many questions about it, and you're absolutely right, it can touch every aspect of workplace decision making, whether it's hiring, safety, all sorts of things.

Let's get into it. Our first thing today, tell us about who this guy is. Who is Keith Sonderling? What's his background and how did he find himself leading the Department of Labor?

Braden Lawes (03:42)

Well, I'll start by saying that Keith Sonderling is certainly no stranger to working in the federal government, having worked at the EEOC before as a commissioner, working at the Labor Department previously under the first Trump administration as the acting administrator of the Labor Department's Wage and Hour Division. And then a fun fact, actually, if you didn't know this, he is currently the head of the Institute of Museum and Library Sciences and the US Office of Government Ethics. So two other smaller, little-known federal agencies. And people often joke about Marco Rubio having multiple jobs within the administration, Keith Sonderling is another one. It's like you don't think of, but all is to say he would be, if confirmed, I think the youngest labor secretary in the US history as well. So having all that experience under his belts already is certainly nothing to scoff at.

But we'll start with the EEOC in this case. So he was commissioner at the EEOC from 2020 to 2024. He served under President Trump in the first term and President Biden, where he was Vice Chair with the Chair, Janet Dillon, at the time. And then at the EEOC, Sonderling became one of the agency's most prominent leading voices on how AI is impacting the workforce in general and trying to get American workers up to speed on how they can be using it and should be using it, given that this technology is mostly here to stay. And at the time when he did that, it was really, not a lot of other people were doing that at the federal government level. So he kind of made waves in that way in that he was able to kind of bring attention to this issue that was at the time still very much emerging. So and then while he was there as well, I'll just mention that he was worked with the rest of the commission to advocate for the initiative on AI and algorithmic fairness, which essentially sought to ensure that AI HR tools complied with civil rights law. So that's kind of the extent of his AI work. I know he also at the time was an opponent of certain provisions of the Pregnant Workers' Fairness Act and was one of the dissenting voices on that as well. So again, not just AI related, but other issues as well. That was his portfolio at the EEOC.

Becca Rainey (06:03)

I know since the start of the second Trump administration, he has been serving in the deputy role at the Department of Labor, which is the kind of second-in-command, from my understanding about the position, it's more of like managing DOL staffing. There's also a little bit more of a hand on, you know, the rulemaking as opposed to the secretary, which has responsibilities when it comes to being the face of the agency and traveling and talking about the president's agenda, et cetera. So what have we seen during his time as deputy secretary? I know there's been the return of some compliance programs, but what's the big picture here?

Braden Lawes (06:44)

The big picture is that it's no easy feat to oversee, to help oversee an agency that has a \$14 billion dollar budget and just the general day to day operations. Like that's a lot that's a lot of responsibility. And I don't wanna jump the gun and talk about this too soon, but I think the a lot of the rulemaking that we've seen so far is, whether it's joint employer or independent contractor, which I'm sure we'll talk about more. Those are a couple of the examples of what we've seen, that's kind of the latest. There's more, the Employee Benefit Security Administration has a couple of rules that they're working on. All that to say is that it's full steam ahead on a lot of the regulatory efforts that that we're seeing.

Becca Rainey (07:34)

The second thing we'll discuss today, is this nomination going to shake up how the DOL does things?

Braden Lawes (07:40)

No, short answer, no, it's not going to. And we expect, like you said, that a lot of the focus will be on compliance assistance. We've already seen that in the form of the opinion letters that have come out on several issues, which for those folks that are not aware are written guidance for DOL officials explaining to businesses how the agency would apply the law in a certain situation ...

Becca Rainey (08:03)

And when it comes to the Trump DOL's approach to enforcement, it's really been a shift when we're comparing it to the previous administration towards helping employers better understand the law. You know, some people will term it as a shift away from sort of "gotcha" enforcement. And I know just by tracking the agency, we've seen that in what you mentioned, those opinion letters.

I understand, you know, Sonderling has largely been credited with, expanding that program by telling employers, "we're gonna take your questions from other agencies, not just typically wage and hour." We'll also, I think it's safety as well was expanded in there. And also perhaps employee benefits. And again, as you mentioned, that's just where if you have a very, you know, specific question about how the law applies, you can write a letter into the DOL without concern about repercussions and they publish it so that, you know, businesses can maybe use it to help guide them about very, you know, nuanced and specific scenarios under the law.

And then we also saw the reinstatement of the payroll audit independent determination program, which allows employers who are concerned about potential wage or overtime or even leave violations within their own company, they can self-audit and kind of self-report and correct those issues. That program was ended by the Biden administration. It started during the first Trump administration and now has been rebooted and expanded. So those are just a couple examples of the compliance assistance efforts we've seen since Sonderling has taken office.

Moving on to our third thing: we're two years into this administration and DOL's rulemaking is moving full steam ahead. So given what you've already said, we expect that to continue, right?

Braden Lawes (10:07)

Yes, absolutely. And I'll say that I think it's notable that Republicans in general and the administration will want to move forward with the rulemaking and any sort of policy changes at the on the legislative side now, but especially as it pertains to rulemaking, given the Congressional Review Act, which is, for those that are not aware, a law that

allows the legislative branch to overturn rules made by federal agencies. So I think, and again with midterms coming up in November, that instance or that likelihood increases should Democrats take back the majority in November, at least in the House and/or the Senate.

Becca Rainey (10:46)

I know the DOL is also currently working on two very closely-watched rulemakings regarding independent contractor relationships and also something called joint employer status. And these are both under the Fair Labor Standards Act, which sets minimum wage and overtime requirements. So what's going on with those rulemakings and how will Sonderling elevating himself to the top of the agency change that?

Braden Lawes (11:10)

Yeah, that's a good question. I think both of those instances were implemented fairly recently in terms of like not super long ago. So even if it was under his predecessor, Lori Chavez-DeRemer, you know, I think him being at the helm in that respect will not be much different than her, but in terms of kind of where we stand and like where these both of these rules are now, I'll address the joint employer first, in that the comment period on that is officially closed as of June 22nd. And we can expect that the final rule and the review of that final rule are imminent. And then as it relates to the independent contractor rule, that is a rule that has, according to the head of the Wage and Hour Division, Andrew Rogers, received 16,000 stakeholder comments regarding that proposed rule. And he didn't give any specific details on when we can expect that to be publicized, finalized. But those are two rules that certainly will continue to move forward under the Sonderling DOL.

Becca Rainey (12:12)

For listeners who are curious about the joint employer rule or want to learn more about the independent contractor proposal from the Department of Labor, check out our previous episodes covering those two topics in our show notes.

You're listening to the FP5. I'm Becca Rainey and we're here with Braden Laws. Braden is a Senior Government Affairs Analyst in Fisher Phillips's Washington, DC office. For more on what employers need to know about Keith Sonderling, check out the insight linked in this podcast show notes.

And for our fourth thing today, might we expect a few big moves on AI policy out of a Sonderling-led Department of Labor?

Braden Lawes (12:57)

I think that's something that we can absolutely expect. And I'm gonna answer that question actually by talking about a few of the actions that the administration has already taken up to this point on AI. So the big thing I'll highlight is that the administration put out its AI Action Plan last year, where essentially it created and it is creating what is known as the AI Workforce Research Hub to track how AI is impacting the labor market and the overall economy.

The administration also launched the US Tech Force, which also came out of the AI Action Plan, which is looking to recruit engineers and tech folks to work within the federal government to help folks within the federal different federal agencies, including DOL, scale up government's infrastructure of AI, and just getting I think getting folks more comfortable with using it is especially in the within the federal government is critical. So those are a couple of the actions that they've taken so far.

I know the Employment and Training Administration also released their AI Literacy Framework to help guide workforce and educational preparation efforts. That's what we've seen so far. And the White House had previously tried to institute a 10 year and then a five year moratorium on AI in the states. And that was ultimately unsuccessful, so I think that's all the more reason that there will be more movement from the Sonderling-led DOL on AI issues.

Becca Rainey (14:20)

Right. I think definitely within the guidance space for sure, just because of, you know, what you mentioned as well going on with Congress, there's a big debate as to whether they should overrule the states, the handful of states that have issued artificial intelligence legislation. So it will be really interesting because I know that is something that frequently comes up to our attorneys that, you know, navigating AI in the workplace, whether it's through the hiring process or you know, safety or just, you know, integrating the technology within your regular workflows. You know, Keith Sonderling was actually been talking about AI in the workplace long before it became a mainstream topic. In fact, he actually spoke about AI bias in the workplace at FP's annual AI conference back in 2023. And listeners, we'll put a link in the show notes to that as well, if you want to go back and hear what he said back then.

So Braden, how do you expect Sonderling's experience at the EEOC to shape the Department of Labor's approach to AI, and what should employers be watching for?

Braden Lawes (15:21)

I think the main thing is that the administration and the Sonderling-led DOL will be working to ensure that American workers are effectively trained on how to use the technology, given that as I said, it's not going away and is here to stay and is advancing every single day. I was at our AI conference this past year and someone made the point that, you know, the AI that we're using today is going to be way different from the AI that we're using six months from now.

And that really stuck with me because I'm like, wow, whether you're a teacher teaching students on how to use it for an eventual position in the workplace, or you're an employer trying to make sure that your employees are up to speed on everything they need to know on it, the change is all so rapid. And I think that's where the administration comes in to say, hey, this is what we are doing to make sure that given this technology is here to stay, that folks are aware of how to use it.

Becca Rainey (16:16)

Absolutely. And I know it's definitely a very early issue. And I would be very surprised again, as I mentioned earlier, if anything coming out of the DOL when it comes to artificial intelligence is regulatory or required, rather. I feel like a lot of it is guidance and kind of helping employers navigate what's to come.

Braden Lawes (16:38)

Yeah, and they promised, the administration promised a "light touch," as it were, on regulations pertaining to AI when President Trump came back into power. And I think that's a lot of what we've seen. Like with the exception of the moratorium, I think a lot of it is, like you said, guidance and sort of papers and or white papers or things of that nature rather than, you know, sweeping mandates saying you need to do this, it's a requirement.

Becca Rainey (17:02)

Right. We're also still in this early stage where it's hard to fully explain the impacts of AI. We don't know what the full impacts of AI will be, especially in the employment context. So it is kind of hard to regulate before we know what we're trying to fix or prevent.

So fifth and finally, how does the business community feel about Keith Sonderling's nomination?

Braden Lawes (17:32)

I think from a lot of folks in the in the business community there was a sigh of relief in that I think the nomination represents continuity and just sort of a return to more or less business as usual.

I think there was a lot of uncertainty when President Trump decided to nominate Lori Chavez-DeRemer to that position, given that she had more of an organized labor-friendly background, was a sponsor of the PRO Act, which for folks that don't know is a essentially a mega-bill of Democratic priorities when as it relates to labor policy. And when she was in Congress, she was a Republican that sponsored this bill. And that was at the time, I remember thinking, "Wow, that's kind of unusual." And the administration ended up elevating her to the top drop at DOL. So I think for folks in the business community that are that are watching this administration, I think this is something that it's like, okay, this is more of what we were well, what we'd expect and a move that brings continuity to the administration.

Becca Rainey (18:32)

So what's next in the confirmation process? He's just been nominated, so what now?

Braden Lawes (18:37)

The immediate next step is that the Senate Health, Education, Labor and Pensions Committee or the HELP Committee, is set to vote on Sonderling's nomination. I'll note that when he was nominated for the deputy secretary role, it was a party-line vote. So I would expect that it would probably be a party-line vote again if I were to bet on what were to happen, although this is politics in 2026, so one would be wise not to bet on knowing what's gonna happen because no one really does.

But I'll say that Lori Chavez-DeRemer did receive some crossover support from Democrats in her confirmation. And I don't necessarily expect the same for Sonderling. I do expect it to be more a more of a party-line vote in that respect. And then following the nomination out of the out or the committee vote, it will then move to the full Senate for a vote. And this will all be likely happening in, I would say before Labor Day again. Like there's kind of that compressed timeline with August being mostly recess. I think there's one week in August where the Senate is in session, that's it. So that's out. And then midterms are November, so you kinda have to do it fairly soon.

Becca Rainey (19:49)

And a little news actually just came in. The day we're releasing this podcast, Sonderling is actually scheduled to go before that Senate HELP Committee. So that's again the first step in the process, he still will have to be confirmed by the Committee before he goes to the full Senate for a vote, but the process is beginning. So we are kind of you were kind of right in your prediction that they were gonna do their best to move quickly before the midterms. With all that context in mind, do you think that Sonderling may have a hard time being confirmed if we do have to wait into next year?

Braden Lawes (20:26)

I think the longer it goes, the more problematic it could become. I'll be very interested to see what happens with certain members of the HELP Committee, given that this is a midterm year and for example, Susan Collins is a Republican from Maine who is facing a competitive re-election bid there. And she sometimes will vote for Trump's nominees and then sometimes will not. So what will she do here? You have Lisa Murkowski, who again is more moderate. So what is she gonna do? The most interesting one probably to me is Senator Bill Cassidy, who is the chair of the help committee, who President Trump recently endorsed his opponent, Representative Julia Letlow, who's now probably going to be the next Senator from Louisiana. And Cassidy, I mean, as the Chair of the committee, I would assume that he would vote for Sonderling. I'm not sure that would make sense, but at the same time, it's like, well, he's not gonna be in the Senate next year. So if he were to buck the President or buck the administration, I could see him saying, "Well, I don't have anything to lose."

Becca Rainey (21:34)

One thing that I will note too for our listeners that's interesting about this choice of nominee for this position is that Trump didn't have to nominate Sonderling for him to remain atop the agency because he was in the deputy position, which is the number two. And it is a settled matter of debate, there was a lot of drama about this during the Biden administration, that a deputy who has been confirmed by the Senate can serve as the labor secretary once the labor secretary position is vacated, pretty much indefinitely. There's a lot of, you know, legal nuances there and questions, and there was a lot of debate about this, again, with the previous administration. But now that he can serve in that position indefinitely, I do think it does send an interesting message that President Trump decided to put him up for this position and for the full nomination.

Braden Lawes (22:29)

I totally agree. And one actually, if I can come back to the folks to your question before about his likelihood of being confirmed by the committee. Another senator that comes to mind is Senator Josh Hawley, who again has been sort of a thorn in the side of the administration mostly as it relates to labor policy. So it'll be interesting to see what he does. He did hold up now-NLRB general counsel Crystal Carey's nomination for a bit of time, as well as Scott Mayer, who is now a board member on the NLRB. So again, another member to watch on the Republican side when it comes to his nomination. And I don't, like I said, anticipate any Democrats to cross over.

Becca Rainey (23:09)

Interesting. There could be some drama maybe.

Braden Lawes (23:13)

There's never a dull moment these days.

Becca Rainey (23:23)

So this is the best part of the episode. Let's get to know you a little better in, of course, five questions. Are you ready?

So what's the latest show you've binged?

Braden Lawes (23:32)

I binged a show called Pluribus recently on Apple TV, which is about a happiness virus, which is a very interesting topic. And I really go for shows and movies as of late that are not just a redone version of the same thing over and

over again. And I've never heard that concept before. And basically like only a few people were immune from it. So the whole show is about "why are they immune from it." So it's great.

Becca Rainey (23:59)

I haven't heard of that, but I'm definitely going to watch that. That sounds great.

Number two, are you an iPhone or an Android user?

Braden Lawes (24:08)

iPhone a hundred percent, Apple snob, and even like when someone texts me and the green message boxes come up, I'm like, no.

Becca Rainey (24:15)

Right, right. No, my partner is not an iPhone person and it just sucks because everything is connected, you know, through Apple. It's like my computer, my iPad, all of it. So I don't get it. All right.

Number three, are you an early bird or a night owl?

Braden Lawes (24:33)

I would say I'm a night owl. I remember in college I would stay up pretty regularly, almost, not every night, but most nights until one or two in the morning working on things and I do that I try to do that less these days, although sometimes the commute will force me to be a morning person. But I'm not that by nature at all. And I don't drink coffee, so definitely not.

Becca Rainey (24:56)

Yeah, I'm sure that was what you were up doing until one and two in the morning in college was studying, aha me too.

Number four, what's one word the rest of the Government Affairs team at FP would use to describe you?

Braden Lawes (25:03)

I would say "reliable." I think in DC and in general, any job, I feel like you wanna be that go to person that when your boss or someone higher up comes to you and says, "Hey, what's the latest on this?" Which in the field of government relations is often, you wanna be that person that has the answer ready and the go-to person that folks in your team can rely on. So yeah, I'd say reliable.

Becca Rainey (25:39)

Yeah, and you're a Washingtonian, so what's your favorite Smithsonian museum and why?

Braden Lawes (25:45)

I'm gonna go with one that is, I think people know, but it's not one that people necessarily think of first, and that is the National Portrait Gallery. I feel like most people will say, Air and Space or Natural History, but the Portrait Gallery has a fantastic, if you haven't been, exhibit on all of the presidential portraits and they all have kind of their unique almost personalities in a way, and they're done in a little different ways, especially the newer ones. So yeah, I took my dad there when he was here, so couldn't recommend it enough.

Becca Rainey (26:15)

Yeah, it's always so cool to see the news when they unveil one of those portraits and like just to see like which artist the president chose and which style they kind of wanted to incorporate, and the like little things too that they'll have like in the image that are supposed to be symbolic. It's a lot of fun.

Braden Lawes (26:33)

Yeah, I enjoyed it. But yeah, definitely I would recommend, check it out if you haven't.

Becca Rainey (26:38)

Well, that is all the time we have for now. Thanks again for being on the show, Braden.

Braden Lawes (26:42)

Thanks for having me.

Becca Rainey (26:45)

And thank you for listening to the FP5. You can read more about Keith Sonderling in the insight linked in our podcast show notes. We'll see you next week.

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