

# DOL GENERAL COUNSEL DIRECTS ENFORCEMENT AWAY FROM UNIONIZED WORKPLACES, VOWS MAX COMPLIANCE ASSISTANCE

Insights  
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## DOL General Counsel Directs Enforcement Away From Unionized Workplaces, Vows Max Compliance Assistance

The US Labor Department just announced it will shift the focus of its investigation resources to non-union workplaces, promising to provide “maximum clarity” about employers’ legal obligations. The new strategy was outlined in a February 26 memo titled “Enforcement Priorities to Protect the American Worker and Those Who Depend on Him” released by DOL General Counsel Jonathan Berry. The blueprint underscores the agency’s shift to an employer-friendly, compliance focus, as it endeavors to enact President Trump’s goals of cutting federal regulations. It also sheds further light on the agency’s priorities as it navigates staffing reductions and new enforcement projects, such as its ramped-up scrutiny of the H-1B immigration program. Here are the important points of the memo that your business should know.

### Non-Union Focus

In the instruction to DOL’s associate and regional solicitors, Berry said that the agency’s enforcement arm shouldn’t prioritize investigation at workplaces covered by collective bargaining agreements “that provide adequate and regularly implemented remedies.”

“In those cases, unions are better situated on the ground to evaluate and rectify harms to workers – especially where

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employees possess a federal private right of action to address employment-law violations," the memo, reviewed by FP, said.

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But that doesn't mean unionized workplaces have a get-out-of-jail-free card. Berry says the "presumption" will be suspended if there's evidence that the union isn't "fairly representing" both members and non-members with grievances, or if contractual remedies are insufficient to resolve violations.

## **Service Focus**

Employee Benefits and Tax

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**A note on arbitration clauses:** The memo makes clear that the Trump DOL doesn't plan to advance policies restricting the use of arbitration agreements in the employment context. "An arbitration agreement will not be an obstacle to an enforcement action that is otherwise appropriate," Berry said.

## **Keeping Targets Large**

The memo directs DOL attorneys to target cases with "significant numbers of workers" and closely scrutinize major employers "whose market power permits them to dominate their respective labor markets." Berry says this focus will allow the agency to utilize its limited resources in the most effective way. Repeat violators and cases involving trafficking are also top priorities.

The directive also reiterates the Trump DOL's promises to boost compliance assistance for businesses and employers, vowing "maximum clarity" about the laws enforced by the DOL through "careful attention to regulatory drafting and to producing abundant advisory content." The DOL expanded compliance efforts like its opinion letter program last year, which offers employers, workers, or other interested parties the agency's position on a specific legal question. **It allows the public to inquire** about how the agency interprets the law across five different enforcement agencies.

**Eyes on ERISA:** The memo also signaled that the agency will be stepping up enforcement on ERISA compliance, particularly with regard to retirement plan fiduciaries, and highlighted widespread issues related to the mismanagement of plan assets and failures to control excessive fees.

## What Should My Business Do in Response?

**1. Unionized employers** should continue to work in good faith with employee representatives and consider engaging more frequently with those representatives. The memo could embolden union shops to increase their own oversight of wage, safety, and other workplace issues with the expectation of decreased enforcement at the federal level. Maintaining a productive working relationship with the union representing your staff will be conducive to resolving these concerns.

**2. Remember that state law** still applies. And keep in mind that this memo has no bearing on the National Labor Relations Board's enforcement strategy, which is a separate agency entirely. While federal DOL may be prioritizing enforcement towards non-unionized shops, several states have their own workplace safety programs or stricter labor laws compared to the federal level. State inspectors will still be inspecting your workplace regardless of federal DOL's enforcement plan.

**3. Consider taking advantage of DOL's voluntary compliance assistance programs.** If you have a particular wage and hour, retirement, or safety legal question, the agency has emphasized that it wants to provide more guidance to employers. Talk with your FP counsel about utilizing these programs to ensure you're in compliance.

### Conclusion

Fisher Phillips will continue to monitor DOL enforcement activity and guidance documents and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Wage and Hour Law Practice Group](#), [Workplace Safety Team](#), or [Employee Benefits and Tax Group](#).