



# UNION MEMBERS AND FEDERAL LAW

Through executive actions, the president has the power to take away your pension, your collective bargaining rights and your ability to organize.

## PRESIDENTIAL APPOINTMENTS

### FEDERAL COURTS AND JUDGES

*Disputes under the National Labor Relations Act, Occupational Safety and Health Act, and Davis-Bacon Act are decided by federal judges.*

- Federal judges are appointed by the President and confirmed by the Senate
- **Appointments are for life**, so judges can shape the courts for a generation
  - Trump has appointed judges at breakneck speed
    - **Two Supreme Court justices, 50 district court<sup>1</sup> and 112 circuit court judges<sup>2</sup>**
      - More circuit judges by this point in his presidency than any president in recent history<sup>3</sup>
      - Approximately **1 out of every 4 active judges** on United States Courts of Appeals<sup>4</sup>
    - The current Supreme Court is one of the **most pro-business in decades**
      - For the 2017-2018 court term, the corporate community had a 90 percent victory rate<sup>5</sup>
      - 2018 Janus case: Supreme Court upended 40 years of established law to rule against working people and unions
        - By doing away with the ability of public sector unions to collect fair share fees, the Court has weakened and restricted the voice of public sector workers<sup>6</sup>

<sup>1</sup> <https://thehill.com/opinion/judiciary/476796-the-trumpification-of-the-federal-courts>

<sup>2</sup> <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-appointing-historic-number-federal-judges-uphold-constitution-written/>

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> <https://aflcio.org/speeches/trumka-calls-new-supreme-court-direction-yale-law-school>

<sup>6</sup> <https://www.theatlantic.com/politics/archive/2018/06/janus-afscme-public-sector-unions/563879/>



## THE DEPARTMENT OF LABOR (DOL)

*The purpose of the Department of Labor is to foster, promote and develop the well-being of wage earners, improve working conditions, advance opportunities for profitable employment and assure work-related benefits and rights.*

- The DOL is responsible for enforcing the **Fair Labor Standards Act**, the law which establishes minimum wage and overtime pay eligibility for private and public sector workers
  - Until now, employers found guilty of failure to pay workers minimum wage were required to double their backpay as a deterrent
  - On 7/01/20, the Trump Labor Department rolled back that penalty, mandating that victims of wage theft are entitled only to back wages<sup>7</sup>

## THE NATIONAL LABOR RELATIONS BOARD (NLRB)

*The National Labor Relations Board interprets and enforces the National Labor Relations Act (NLRA), the federal law meant to **protect the right to organize**.*

- Five-member board issues decisions that affect workers' ability to organize
  - Presidential and Senate politics control the NLRB
  - On the board now are two management-side lawyers and a former Capitol Hill staff member who worked on policies to strip workers of union rights<sup>8</sup>
    - All are corporate ideologues preventing workers from joining together to negotiate for better wages and working conditions
- Key board decisions:
  - In Johnson Controls, Inc., (7/3/19) the Trump Board made it easier for employers to throw out the union<sup>9</sup>
  - In Raytheon Network Centric Systems, (12/15/17), the Trump Board gave employers the power to make unilateral changes in terms and conditions of employment between contracts<sup>10</sup>

<sup>7</sup> <https://thehill.com/opinion/white-house/505225-trumps-labor-department-walks-away-from-wage-theft>

<sup>8</sup> <https://www.nlr.gov/about-nlr/who-we-are/the-board>

<sup>9</sup> <https://news.bloomberglaw.com/daily-labor-report/trump-nlr-eliminates-hurdle-to-employers-kicking-out-unions>

<sup>10</sup> <https://www.morganlewis.com/pubs/trump-national-labor-relations-board-reverses-major-obama-era-decisions>



- In SuperShuttle DFW, Inc., (1/25/19), the Trump Board made it easier for employers to exclude workers from the NLRA's protections<sup>11</sup>
- Other decisions:
  - Made it easier for employers to develop work rules that chill employee speech
  - Made it harder for employees to communicate through email
  - Delay the union election process unnecessarily
  - Allow employers to more easily pack a proposed bargaining unit with "no" votes

## OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

*OSHA is the agency that is responsible for ensuring workplace safety.*

- The number of OSHA inspections has fallen drastically during the Trump administration<sup>12</sup>
- Former head of OSHA, David Michaels, said, ***"Under the Trump administration, the agency is suffering from malignant neglect."***<sup>13</sup>
- Under Trump, key decisions scuttled standards designed to protect workers:
  - One ensured that businesses could be fined for failing to record employees' injuries as required by law (2019)<sup>14</sup>
  - Another required employers to transmit OSHA records of their employees' injuries and illnesses, and would have allowed for certain data to be posted on the internet (2019)<sup>15</sup>
- OSHA has **refused to issue an emergency temporary standard for keeping workers protected** during the coronavirus pandemic
  - The AFL-CIO unsuccessfully sued the Department of Labor for its failure to require employers to supply personal protective equipment to workers and implement adequate testing procedures, social distancing and design measures to keep workers safe<sup>16</sup>
  - On 7/15/20, Virginia became the first state in the nation to issue a comprehensive standard to protect all workers from COVID-19<sup>17</sup>

<sup>11</sup> <https://www.hrlegalist.com/2019/02/supershuttle-common-law-test-independent-contractors/>

<sup>12</sup> <https://www.nelp.org/news-releases/number-federal-workplace-safety-inspectors-falls-45-year-low/>

<sup>13</sup> <https://www.statnews.com/2019/10/10/silicosis-outbreak-malignant-neglect-of-osha/>

<sup>14</sup> <https://citizenvox.org/2018/08/31/this-labor-day-trump-leaves-workers-behind/>

<sup>15</sup> Ibid

<sup>16</sup> <https://thehill.com/news-by-subject/labor/498284-afl-cio-sues-osha-to-demand-standard-for-worker-protections>

<sup>17</sup> <https://www.nbc29.com/2020/07/16/new-emergency-workplace-safety-standards-mandated-due-covid/>



## DAVIS-BACON ENFORCEMENT

*The Davis-Bacon Act protects the wages of construction workers by **requiring that contractors on public projects pay no less than the prevailing wage.***

- Davis-Bacon enforcement is lagging
  - The number of investigators for Davis-Bacon enforcement has gone down by 20 percent<sup>18</sup>
  - Under the Davis-Bacon Act, workers cannot go to court with wage complaints
  - If the Department of Labor doesn't engage in enforcement, low road contractors will drag down wages in public construction

## EXECUTIVE ORDERS

Executive orders are used by presidents to achieve policy goals and set uniform standards for managing the executive branch.

## FEDERAL EMPLOYEES

On 5/25/18, President Trump issued three executive orders which, taken together, **amount to union busting in the federal sector**<sup>19</sup>:

- The first limits how much paid time union officials can use to conduct union business, prevents them from using paid time to pursue grievances and bars employees from using government office space for union business
- The second takes many collective bargaining subjects off the table completely, says bargaining should not take more than 4-6 months and directs agencies to impose contract terms if negotiations take longer, even if impasse has not been reached
- The third makes it easier to fire employees

<sup>18</sup> <https://news.bloomberglaw.com/daily-labor-report/trump-wage-chief-overhauls-agency-internal-documents-reveal>

<sup>19</sup> <https://www.federaltimes.com/management/2018/05/25/trump-targets-feds-in-latest-series-of-executive-orders/>



## DEFENSE DEPARTMENT EMPLOYEES

On 2/20/20, President Trump gave the Defense Department the **authority to abolish the collective bargaining rights of its civilian labor unions.**<sup>20</sup>

*“The Department of Defense requires maximum flexibility to respond to threats to carry out its mission of protecting the American people,” President Trump said. “Where collective bargaining is incompatible with their organizations’ missions, the Department of Defense should not be forced to sacrifice its national security mission.”*

## FEDERAL CONTRACTORS

On 3/27/17, Trump nullified Obama’s **Fair Pay and Safe Workplaces** executive order that required federal contractors to report labor law violations, including violations of the Davis-Bacon Act, NLRA and OSH Act<sup>21</sup>. Obama’s order was aimed at preventing taxpayer dollars from rewarding low-road contractors who depress labor standards by violating the law.

## COLLECTIVE BARGAINING

A Statement of Administration Policy was released on 2/5/20 **in response to House of Representatives passage of the PRO Act**, which would strengthen labor rights by providing more protection for workers including the right to organize and negotiate for higher wages and benefits.

*“If H.R. 2474 were presented to the President in its current form, his advisors would recommend that he veto it.”<sup>22</sup> (the PRO Act passed the House on 2/6/20)*

<sup>20</sup> <https://www.govexec.com/management/2020/02/secret-white-house-memo-could-end-unionization-pentagon/162981/>

<sup>21</sup> <https://governmentcontractsnavigator.com/2017/03/28/president-trump-rolls-back-obama-era-fair-pay-and-safe-workplaces-rule/>

<sup>22</sup> [https://www.whitehouse.gov/wp-content/uploads/2020/02/SAP\\_HR-2474.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/02/SAP_HR-2474.pdf)



## APPRENTICESHIPS

On 6/15/17, Trump issued an executive order calling for the Department of Labor to establish a parallel, non-registered apprenticeship system that, if implemented, would **undermine IBEW's training programs in the construction industry, and our members' credentials.**

- Known as the **Industry-Recognized Apprenticeship Program (IRAP)**, it would allow private organizations like employers and trade associations to create their own watered-down apprenticeship standards and to certify apprenticeship programs to meet those lesser standards<sup>23</sup>
- IRAPs would make it easier for low-road contractors to replace union members with lesser-skilled, low-wage workers
- The IBEW and other building trades unions launched a campaign urging the administration to **exclude the construction sector from the proposed IRAP system**
- On 3/10/20, the Trump Administration backed off its plan to undermine the century-old construction apprenticeship system<sup>24</sup>

## PRESIDENTIAL STAFF TURNOVER AND FIRING OF INSPECTORS

Turnover in the **most influential positions within the Executive Office of the President: 88 percent**, which is higher than each of the five most recent presidents.<sup>25</sup>

### Recent firings of ethics and government watchdogs:

- State Department Inspector General Steve Linick for investigating Secretary of State Mike Pompeo<sup>26</sup> 5/15/20
- Intelligence community Inspector General Michael Atkinson for disclosing to Congress the Ukraine whistle-blower complaint<sup>27</sup> 4/3/20
- Department of Defense acting Inspector General Glenn Fine for his oversight of the \$2 trillion coronavirus relief bill<sup>28</sup> 4/6/20

<sup>23</sup> <https://www.whitehouse.gov/presidential-actions/3245/>

<sup>24</sup> [http://www.ibew.org/media-center/Articles/20Daily/2003/200317\\_UnionsFight](http://www.ibew.org/media-center/Articles/20Daily/2003/200317_UnionsFight)

<sup>25</sup> <https://www.brookings.edu/research/tracking-turnover-in-the-trump-administration/>

<sup>26</sup> <https://www.npr.org/2020/06/10/874451896/ex-state-department-inspector-general-says-he-was-given-no-valid-reason-when-fired>

<sup>27</sup> <https://www.politico.com/news/2020/04/05/atkinson-trump-fired-whistleblower-complaint-167371>

<sup>28</sup> <https://www.msn.com/en-us/news/politics/the-trump-administration-has-recently-moved-to-oust-4-government-watchdogs-here-they-are/ar-BB14bpf2>



**Firing of federal prosecutor:**

- U.S. Attorney for the Southern District of New York, Geoffrey Berman, who pursued investigations into Trump’s former lawyer Michael Cohen and current lawyer, Rudy Giuliani, and Trump’s inaugural committee<sup>29</sup> 6/19/20

**Planning to oust:**

- Department of Health and Human Services acting Inspector General Christi Grimm, who reported severe shortages of coronavirus tests and equipment<sup>30</sup>

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<sup>29</sup> <https://www.usatoday.com/story/news/politics/2020/06/21/geoffrey-berman-firing-ag-barr-glowing-account-clouds-dismissal/3232734001/>

<sup>30</sup> [https://www.stltoday.com/news/national/tapper-warns-trumps-firings-of-inspectors-general-create-a-world-where-watchdogs-are-replaced-with/article\\_3c001128-8549-5d03-b573-8da13eab0c5e.html](https://www.stltoday.com/news/national/tapper-warns-trumps-firings-of-inspectors-general-create-a-world-where-watchdogs-are-replaced-with/article_3c001128-8549-5d03-b573-8da13eab0c5e.html)