

Labor Weekly: DOL Guidance Ends ESOP Enforcement; Virginia, Illinois, South Carolina Move on Noncompete Restrictions; Report Proposes Labor-Centered Abundance Agenda

DOL moves to pull back enforcement on ESOPs and stock valuation in new guidance. The Employee Benefits Security Administration (EBSA), a division of DOL, announced last month that it would no longer prioritize investigations and enforcement actions against Employee Stock Ownership Plans, or ESOPs. The agency will instead use “notice-and-comment rulemaking and sub-regulatory guidance,” according to a [memo](#) on enforcement priorities.

The regulatory pullback furthers DOL objectives under Trump’s second term. In January, the Department ended the ESOP National Enforcement Project, which since 2005 dedicated resources and regulatory focus on ESOPs. EBSA head Daniel Aronowitz testified before the House HELP subcommittee on April 16 that he intended to end the “war on ESOPs.”

ESOPs tie up the entirety of employees’ retirement contributions in stock holdings in their employer. If a company’s stock price is growing as an employee reaches retirement, ESOPs can generate high returns—but if the stock price is falling, or even flat, employees might earn far less from their retirement contributions than they would from a diversified plan.

Beyond their quality as retirement plans, ESOPs raise regulatory concerns primarily on two fronts: conflict of interest between company executives and beneficiaries, and inflated valuations of shares of non-public companies.

Unlike standard retirement plans and 401Ks, ESOPs are legally permitted to be leveraged, which makes them attractive vehicles for large shareholders—often founding partners of closely-held companies—to unload their shares without paying capital gains taxes.

That dynamic, according to Sean Anderson, a law professor at the University of Illinois who studies ESOPs, opens the door to a unique conflict of interest that other retirement plans don’t present.

“Corporate insiders have an incentive to install an ESOP or expand an existing ESOP and sell it more shares without regard to whether that is a good decision for the participants,” Anderson said.

ESOPs also present risks of improper stock price valuation. As the method for large shareholders to divest their holdings and the determinant of retirees’ proceeds, ESOP-issuing companies are highly incentivized to receive high stock valuations. Companies hire independent fiduciaries and

valuation experts to calculate those prices; EBSA is charged with regulating those entities against overvaluation.

But stock price valuation for private companies is “more of an art than a science,” Anderson said. And valuation experts have a lot to gain from offering favorable valuations.

“Who acts on behalf of the ESOP in deciding what independent fiduciary to hire? It's the officers and directors of the employer,” Anderson said. “These independent fiduciary firms and valuation firms know that if they play hardball and negotiate too aggressively on behalf of the participants, they're going to stop getting hired.”

The April enforcement guidance effectively marks the end of a 20-year effort to regulate valuation practices and conflicts of interest around ESOPs that began with the 2005 national enforcement project.

This move, Anderson cautioned, could signal to the worst actors that pressure is off the valuation experts and fiduciaries. Like other federal enforcers, EBSA’s capability to initiate a small number of lawsuits against violators has historically acted as a deterrence force against the most severe misconduct.

“One danger of the administration apparently backing off on [enforcement actions] and signaling to the ESOP industry that [it’s] not going to come after you anymore, is that at the margins, some actors in the ESOP industry will be incentivized to be less careful and more aggressive about valuation and fiduciary decision making,” Anderson said.

EBSA did not immediately respond to a request for comment.

Virginia, Illinois, other states move ahead on legislation restricting noncompetes. Legislators in Virginia, South Carolina, Illinois, Connecticut and other states are moving toward enacting substantial limits on noncompetes, clauses preventing employees from working for a competitor.

After the FTC under Chairman Andrew Ferguson ended its defense of its 2024 rulemaking effort to ban nearly all noncompetes nationwide, states have stepped in to fill the regulatory void. In the past year, Washington state and Wyoming have banned nearly all noncompetes, and many states have restricted their use in certain industries such as health care.

Virginia Governor Abigail Spanberger, a Democrat, signed a suite of bills on April 13 amending the state’s employment laws, including a ban on noncompetes for terminated employees.

The legislation prohibits enforcement of noncompetes against employees terminated without cause unless they received severance payments. It also banned noncompetes for all licensed healthcare professionals, including physicians, nurses and pharmacists.

The package also expands Virginia’s existing definition of low-wage workers—for whom noncompetes are prohibited—to include all workers entitled to overtime pay under the Fair Labor Standards Act. The laws go into effect July 1.

In South Carolina, a [bill](#) banning noncompetes for physicians passed the state House in late March, and on Tuesday the state Senate committee on labor issued a favorable report on the proposal. If passed, South Carolina would join more than a dozen other states in widely prohibiting noncompetes for physicians.

The Illinois legislature is weighing a bill to ban noncompetes as well as nonsolicitation agreements, which keep workers from poaching clients after leaving a job. After amendments raising the maximum salary for enforceability from \$70,000 to \$300,000, the state house sent it back to a rules committee for a second time last month, after which it will be reheard by the house labor and commerce committee.

Connecticut legislators are considering a bill to restrict noncompetes for lower-paid employees. According to the [Yankee Institute](#) this week, a new proposed draft of the bill would increase the income restriction on noncompete enforceability from twice the state minimum wage to three times the minimum wage, which would include earners of up to around \$100,000.

Roosevelt Institute proposes ‘Democratic Abundance’ with labor at the center. America needs to build bigger, innovate more, and eliminate the bureaucratic and regulatory barriers that hold projects back: those are the broad strokes of the “abundance agenda,” a policy roadmap for left-of-center governance laid out in Ezra Klein and Derek Thompson’s 2025 book *Abundance*.

Since its publication, critics have scrutinized the book’s libertarian-inflected embrace of deregulation and noted its indifference toward the role of organized labor in its prescriptions. Josh Barro, a prominent abundance proponent, made explicit the movement’s relationship to labor in [remarks](#) at a conference last year: “When I look at policies in New York that stand in the way of abundance, very often if you look under the hood you eventually find a labor union,” he said in conversation with Rep. Ritchie Torres (D-NY).

“Democratic Abundance,” a new [report](#) by the Roosevelt Institute, a progressive think tank, makes the case for a policy agenda that centers organized labor and counteracts concentrated business power in the push for ambitious infrastructure and innovation.

“The mainstream version of abundance, at least it has as it has been developed by some of its proponents, is incomplete and even sometimes incorrect,” Kate Andrias, a Columbia Law School professor and co-author of the report, told *The Capitol Forum*. “Because it treats workers and organized labor as bottlenecks rather than as institutions that can help government deliver.”

Andrias and her co-author, Alexander Hertel-Fernandez, a professor of government at Columbia’s School of International and Policy Affairs, argue that labor unions can be a central force in facilitating, rather than impeding, the stated goals of an abundance movement.

The skilled labor workforce required to develop large-scale infrastructure, the report argues, is best provided by union training and apprenticeship programs. It also contends that union organizations can provide political base and support system to get enact pro-growth political programs enacted and aid in their implementation.

The report also refutes arguments that union labor artificially inflates costs of constructing infrastructure; rather, evidence suggests that the presence or strength of labor unions does not generate high housing and infrastructure costs. Higher labor costs in the United States compared to other countries, Andrias and Hertel-Fernandez argue, reflect costly procurement processes which “involve substantial interagency regulatory review, including consultants and lawyers, as well as overstaffing of white-collar labor supervising construction work.”

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