

## Government Controversies and Public Policy Litigation

# 30 Executive Actions, 3 Days: A Look Inside President Biden's First Week

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President Biden issued 30 official presidential actions during his first week in office. These executive orders (EOs), presidential statements, and memoranda rescind dozens of Trump-era policies. They also set forth a more assertive approach to combatting the COVID-19 pandemic, establish stronger ethical standards for political appointees, and present a policy agenda focused on climate change, labor rights, social justice, and immigration reform.

**COVID-19 Response.** President Biden issued 14 actions designed to take aggressive federal action to combat the COVID-19 pandemic. These include:

- Requiring masks and physical distancing on federal property controlled by the executive branch<sup>[1]</sup>;
- Creating the position of COVID-19 Response Coordinator that reports directly to the president and is responsible for overseeing the federal government's pandemic response structure<sup>[2]</sup>;
- Maintaining US membership in the World Health Organization<sup>[3]</sup>;
- Extending the pause on federal student loan payments and collections<sup>[4]</sup>;
- Establishing a federal Testing Board to better coordinate testing supply logistics and policies across the country<sup>[5]</sup>;
- Encouraging the Department of Labor to increase worker protections for COVID-related risks, including under the Occupational Health and Safety Act (OSHA), 29 U.S.C. § 651 *et seq.*<sup>[6]</sup>;
- Requiring the Department of Education to provide guidance and resources for schools to reopen<sup>[7]</sup>;
- Imposing mask and other safety requirements during interstate travel and on public transit<sup>[8]</sup>;
- Supporting research into therapeutic treatments for COVID-19<sup>[9]</sup>;
- Encouraging data sharing amongst the federal government<sup>[10]</sup>; and
- Stating that the United States intends to join global coalitions in fighting COVID-19, including efforts to provide equitable distribution of vaccines to developing countries.<sup>[11]</sup>

**Civil Rights and Equity.** President Biden's early EOs consistently promote social justice and equity considerations regardless of the action's primary subject matter.<sup>[12]</sup> For example, his environmental actions encourage consideration of environmental justice concerns, such as the disparate impact of pollution on communities of color. He also issued directives specifically focused on civil rights and equity, including:

- Requiring that prohibitions on "sex discrimination" in federal statutes be interpreted to encompass discrimination on the basis of sexual orientation and gender identity<sup>[13]</sup>;
- Rescinding President Trump's EO that barred federal contractors and grant recipients from providing diversity and implicit bias training;
- Rescinding President Trump's EO that established the 1776 Commission on "patriotic education"; and
- Improving federal data collection on characteristics such as race and gender to better evaluate

equity in federal programs and procurement.

**Environment.** Several of President Biden’s week-one actions focused on combatting climate change and promoting environmental conservation, with many directives setting 2021 deadlines for regulatory action.<sup>[14]</sup> These include:

- Reentering the Paris Climate Accord<sup>[15]</sup>;
- Revoking the permit for the Keystone XL pipeline;
- Pausing oil and gas exploration in the Arctic National Wildlife Refuge;
- Establishing standards of performance and emission guidelines for methane and volatile organic compound emissions for existing oil and gas operations by September 2021;
- Developing a new Federal Implementation Plan for the 2008 Ozone National Ambient Air Quality Standards for California, Connecticut, New York, Pennsylvania, and Texas by the end of 2021;
- Revisiting Trump-era rules on appliance, building, and vehicle efficiency, including the Trump Administration’s attempted revocation of a waiver allowing California to set more stringent fuel economy standards;
- Considering the restoration of two national monuments’ original boundaries that had been reduced by the Trump Administration;
- Reinstating Obama-era moratoriums on offshore drilling and mineral exploration;
- Revoking President Trump’s EO creating the “One Federal Decision” policy that reduced the timeline for environmental reviews;
- Revoking President Trump’s EO that resulted in a more narrow definition of “waters of the United States” under the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, than had been promulgated by the Obama Administration; and
- Reinstating a focus on the effects of climate change on society and the economy when making regulatory changes and rules, including a specific focus on environmental justice.

**Ethics and Independent Government.** As every president has done in recent decades, President Biden issued an ethics pledge that every executive appointee must sign prior to joining the administration.<sup>[16]</sup> It expands upon the Obama Administration’s ethics pledge and includes:

- A lobbyist gift ban;
- An incoming two-year revolving door ban on appointees participating in matters “directly and substantially related” to their former lobbying or Foreign Agents Registration Act (FARA), 22 U.S.C. §§ 611–621, registrable-activity;
- An outgoing two-year revolving-door policy that bans communicating with or appearing before anyone in an appointee’s former employing agency with intent to influence;
- An outgoing two-year revolving-door ban on lobbying and engaging in FARA-registrable activities with executive branch officials for the remainder of the Biden Administration or for two years post-service, whichever is later;
- An expansion of previous revolving-door restrictions to include communications with White House staff;
- Restrictions on “shadow lobbying” by senior appointees, meaning they may not “materially assist others in making communications” to the appointee’s former agency; and
- An entirely new “golden parachute” provision that prohibits incoming appointees from accepting certain benefits from their previous employer before entering government service.

President Biden also issued an EO rescinding the Trump Administration’s changes to protections for civil service and federal employee unions.<sup>[17]</sup> This includes:

- Rescinding the Trump Administration’s establishment of Schedule F, which would have resulted in the re-designation of certain career employees as at-will and significantly reduce other civil service protections;
- Revoking President Trump’s EOs that had burdened federal employee unions, such as limiting the

- timeline and subject matter for collective bargaining; and
- Encouraging agencies to pay a “living wage” of at least \$15 per hour.

**Immigration.** The Biden Administration took early action to immediately reverse nearly all President Trump’s immigration policies. This includes:

- Pausing border wall construction and funding<sup>[18]</sup>;
- Reversing the Trump Administration’s expansion of immigration-enforcement priorities to include all undocumented immigrants<sup>[19]</sup>;
- Reversing the Trump Administration’s reinstatement of the “Secure Communities” deportation program;
- Ending the Trump Administration’s travel ban on individuals from many African and Muslim majority countries<sup>[20]</sup>;
- Extending work authorizations and protections against removal for certain Liberian refugees<sup>[21]</sup>; and
- Stating an intention to reinstate the Obama Administration’s Deferred Action for Childhood Arrivals (DACA) policy to provide work authorization and protection against removal for undocumented immigrants brought to the United States as children.<sup>[22]</sup>

**Regulation.** As is typical when the presidency changes political hands, the Biden Administration issued several broadly applicable actions to pause and revisit the Trump Administration’s regulatory policy. These include:

- Revoking six of President Trump’s EOs that had the stated purpose of “cutting costs” and “shrinking government”<sup>[23]</sup>;
- A memorandum issued to all agencies requesting recommendations for how to modernize the regulatory review process<sup>[24]</sup>; and
- A “regulatory freeze” memorandum from White House Chief of Staff Ron Klain withdrawing or encouraging agencies to reconsider regulations currently in progress.<sup>[25]</sup>

Given that this flurry of activity happened over just two and a half days, it is evident that the Biden Administration is trying to remove any vestiges of the Trump Administration as quickly as possible. We anticipate that in his second week, President Biden will continue to take executive actions on the economy, immigration, health care, the environment, and racial justice.<sup>[26]</sup>

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