

After the Midterms:

What's Next for Employers?

November 5, 2026

Seyfarth Shaw LLP

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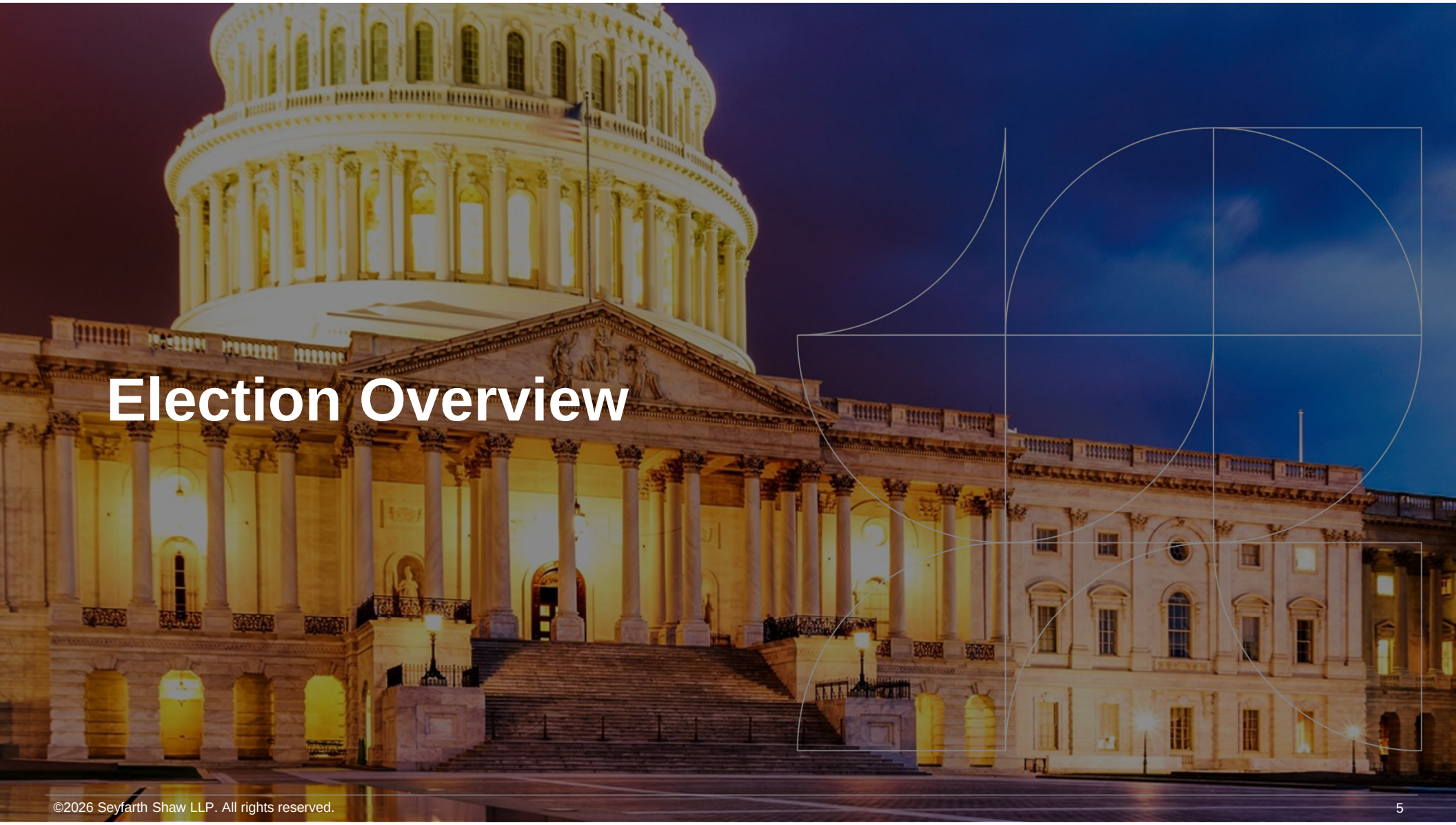
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SPEAKERS



Today's Agenda

1. Overview of Election Results
2. Impact of the Midterms on Federal Agencies
3. Cultural Flashpoints
4. Congressional Oversight



Election Overview

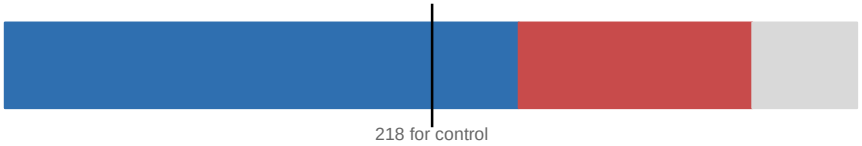
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Democrats Secure Control of Both Chambers

Called seats and races still undecided following the Nov. 3 election:

HOUSE

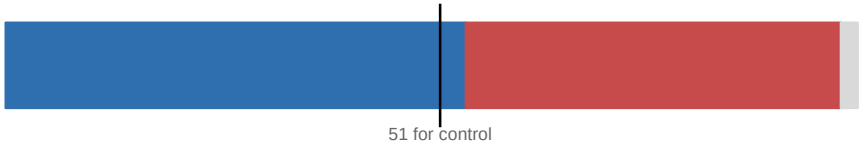
All 435 seats were on the ballot



240	147	48
Democrats	Republicans	Undecided

SENATE

35 seats were on the ballot; 65 were not



54	44	2
Democratic caucus	Republicans	Undecided

RACES STILL UNDECIDED

64 House races

12 Democratic-held
52 Republican-held

2 Senate races

Alaska
Mississippi

Bottom line

Remaining calls may enlarge, but cannot reverse, Democratic control.



Impact of the Midterms on Federal Agencies

- The 120th Congress: What Democratic Control Means for the Agencies
- Recent Supreme Court Developments: Impacts on the Agencies in 2026 and Beyond
- Federal Workforce Policy Under a Democratic Congress: Will Existing Policy Priorities & Enforcement Actions Change?

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The U.S. House of Representatives

Committee on Education and the Workforce

- Broad Workplace Jurisdiction – “matters dealing with employer and employee relations”
- 4 Subcommittees:
  - Early Childhood, Elementary, and Secondary Education
  - Higher Education & Workforce Development
  - Workforce Protections
  - Health, Employment, Labor, and Pensions (HELP)

Before

119th Congress

- **Chair**: Tim Walberg (R-MI)
- **Ranking Member**: Bobby Scott (D-VA)

After

120th Congress

- **New Chair**: TBD (*lead contenders: Bobby Scott, Jahana Hayes (D-CT), and Suzanne Bonamici (D-OR)*)
- **New Ranking Member**: TBD (*lead contenders: Tim Walberg (R-MI), Joe Wilson (R-SC), Mary Miller (R-IL)*)

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The House and the Agencies:

Tools of Influence



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The U.S. Senate

Committee on Health, Education, Labor, & Pensions (HELP)

- Broad Workplace Jurisdiction – “most federal labor and employment laws”
- 3 Subcommittees:
  - Education & the American Family
  - Employment & Workplace Safety
  - Primary Health & Retirement Security

Before

119th Congress

- **Chair**: Bill Cassidy (R-LA)
- **Ranking Member**: Bernie Sanders (I-VT)

After

120th Congress

- **New Chair**: TBD (*lead contender: Bernie Sanders)*
- **New Ranking Member**: TBD *(lead contenders: Rand Paul (R-KY), Tim Scott (R-SC), and Josh Hawley (R-MO))*

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The Senate and the Agencies:

Tools of Influence



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Consequences of Divided Government

President Continues to Rely on Executive Actions	Congress Turns to Oversight and Legislative Functions
• Executive Orders • Nominations & Removals • Acting Appointments • Rescissions • Enforcement Priorities • Veto Power	• Hearings • Subpoenas • Limited Funding and/or Conditions on Funding • Confirmations • Introduction of workplace bills on: AI, disparate impact, collection of workforce demographic data, LGBTQ+ protections, and traditional labor protections

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The Supreme Court's Reshaping of the Agencies

SLAUGHTER (2026)

THE QUESTION
Who controls the agency?

WHAT CHANGED
Humphrey's Executor overturned, principal officers can be removed at-will

THE SCOPE
Broad across independent commissions

AGENCIES LOST
Insulation

LOPER BRIGHT (2024)

THE QUESTION
What does the law mean?

WHAT CHANGED
Chevron overturned, courts now exercise independent judgment on statutory meaning

WHAT REMAINS
Skidmore respect (persuasive but not binding) and *Kisor* deference

AGENCIES LOST
Interpretive primacy

JARKESY (2024)

THE QUESTION
How can an agency impose penalties?

WHAT CHANGED
Seventh Amendment: civil penalties require a jury in an Article III court

THE SCOPE
In-house adjudication of private rights now vulnerable

AGENCIES LOST
Adjudicatory autonomy

CORNER POST (2024)

THE QUESTION
When can rules be challenged?

WHAT CHANGED
APA claim accrues at injury, not promulgation; long-settled rules newly exposed

IMPACT
Even old regulations lose their settled status

AGENCIES LOST
Finality

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EEOC Priorities and Impact

What Continues

- Prioritization of:
  - DEI discrimination investigations, subpoena action, and commission charges
  - Anti-American bias national origin discrimination outreach and investigation
  - Religious and PWFA accommodation cases
- Deprioritization of disparate impact theories of discrimination
- Investigation and enforcement actions against intentional discrimination

What Will Be New in 2027

- Final rules on UGESP interpretive rulemaking and EEO-1 reporting
- Proposed rule on UGESP recordkeeping
- New proposed rule on PWFA
- Continuation of initiation of systemic suits through mid-2027
- Congressional efforts to challenge disparate impact enforcement deprioritization
- Congressional efforts to scrutinize EEOC enforcement programs and recission activities
- Congressional efforts to initiate legislation on pay equity, disparate impact, and data reporting

What to Watch

- The quorum clock; Commissioner Kotagal's term ends July 2027
- Oversight hearings
- Funding riders
- Court challenges to EEOC actions
- New state laws regulating the workplace
- Legal challenges to EEO-1 rescission

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DOL Priorities and Impact

What Continues

- EO 11246 rules rescinded (effective October 26, 2026)
- H-1B prevailing wage proposal (March 2026)
- September 2026 H-1B order
- PERM suspensions
- Opinion letters

What Will Be New in 2027

- Final independent contractor rule (proposed February 2026)
- Final joint employer rule (proposed April 2026)
- Final H-1B and PERM prevailing wage rule
- OSHA heat & safety NPRM
- ERISA investment and health plan NPRM

What to Watch

- CRA disapproval
- Oversight hearings
- Limited funding and/or funding riders
- Slower confirmation process for DOL officials
- Legal challenges to final independent contractor and joint employer rules
- Statutory proposal to restore federal contractor EEO regime resembling OFCCP

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NLRB Priorities and Impact

What Continues

- GC Carey's memoranda, including GC 26-04
- 2020 joint employer rule restored (February 2026)
- Presidential removal power confirmed

What Will Be New in 2027

- Review of Biden-era precedent
- A heavy decision calendar:
  - — *Cemex*
  - — *Stericycle*
  - — *McLaren Macomb*
  - — *Thryv*
  - — *Lion Elastomers*

What to Watch

- The quorum clock; Chairman Murphy's term ends December 2027
- The three-vote tradition (the statute permits two-vote majorities)
- Senate confirmation of Murphy's successor
- Oversight of decision-making
- Legislation: PRO Act, Faster Labor Contracts Act

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AI In Employment Decisions

As the administration steps back from regulating AI, employers using AI in hiring and discipline face a growing patchwork of state laws, with more states now in a position to act as a result of the midterm election results.

Federal Agencies & Executive Branch

- EEOC and DOL AI guidance withdrawn; disparate impact deprioritized
- EO 14365: DOJ AI Litigation Task Force and conditions on broadband funding
- DOJ joined xAI's suit against CO's AI law
- FTC proposal targets CO AI law as possibly preempted

Congress After the Midterms

- A federal governance/preemption law is highly unlikely
- Algorithm accountability and civil rights legislation/amendments likely, such as No Robot Bosses Act, Stop Spying Bosses Act
- Oversight of withdrawn guidance and DOJ challenges to state laws
- Document demands, including the Commerce evaluation of state AI laws ordered by EO 14365
- Oversight of AI monitoring (NLRB, DOL)

States & Courts

- **In effect**: CA, IL, NYC, and NJ
- **Coming in 2027**: CT, CO, CA privacy rules and No Robo Bosses Act, and IL Civil Rights Safeguard Act
- 14 state AGs say disparate impact applies to algorithmic hiring tools
- Courts: *Mobley v. Workday*; *Kistler v. Eightfold AI*

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Enacting A New Agenda: 2025 → 2026

	2025 A Year of Policy Reversals *by Executive Action*	**2026** A Year of Institutionalizing Priorities *through Agency Action*
EEOC	• **Jan. 2025:** Aligning with EO 14168, begins rolling back Biden-era gender-identity guidance; ends non-binary markers; refocuses on sex-based rights • **Jan. 2025:** New Acting Chair signals realignment with administration priorities ahead of restored quorum • **Jan. – Mar. 2025:** Following EO 14151, EEOC and DOJ jointly issue technical assistance on unlawful DEI	• **June 4, 2026:** National Enforcement Plan (FY 2025-29) retreats from disparate impact • **June 2026:** Votes to rescind 1979 Affirmative Action Guidelines (29 C.F.R. Part 1608) and Compliance Manual § 607 • **July 23, 2026:** NPRM proposes rescinding EEO-1 through EEO-6 reporting
DOL	• **EO 14173 (Jan. 21, 2025):** Rescinds EO 11246; ends federal-contractor affirmative-action requirements • **2025:** Directs OFCCP to cease AAP enforcement	• **Deregulatory agenda:** 2026 rulemaking to rescind the EO 11246 regulations (Final Rules Effective October 26, 2026) • **Independent-contractor NPRM (RIN 1235-AA46):** economic reality, control, opportunity for profit or loss • **Workforce focus:** apprenticeships, domestic production, employer flexibility
NLRB	• **2025:** Personnel changes and removal of Biden-era leadership • **Positioned to reverse prior agenda:** organizing rights, remedies, joint employment	• **GC Crystal Carey:** “case-handling first” strategy to cut backlog and speed resolution of charges • **Precedent:** Identifies Board decisions for future challenge

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Enacting A New Agenda: Predictions

2027 A Year of Congressional Resistance

through challenges, restraints, and investigations

EEOC

- Hearings on the 2025 law firm letters, settlements, rescissions, deprioritization of disparate impact cases, same sex spaces, and DEI investigations; restraints on similar actions
- Quorum at risk after Commissioner Kotagal's term ends July 1, 2027, unless the Senate confirms a successor
- Proposed limits on DEI enforcement spending in the EEOC's funding bill
- Democratic sponsored bills on collection of workforce demographic data, disparate impact, and other EEO issues

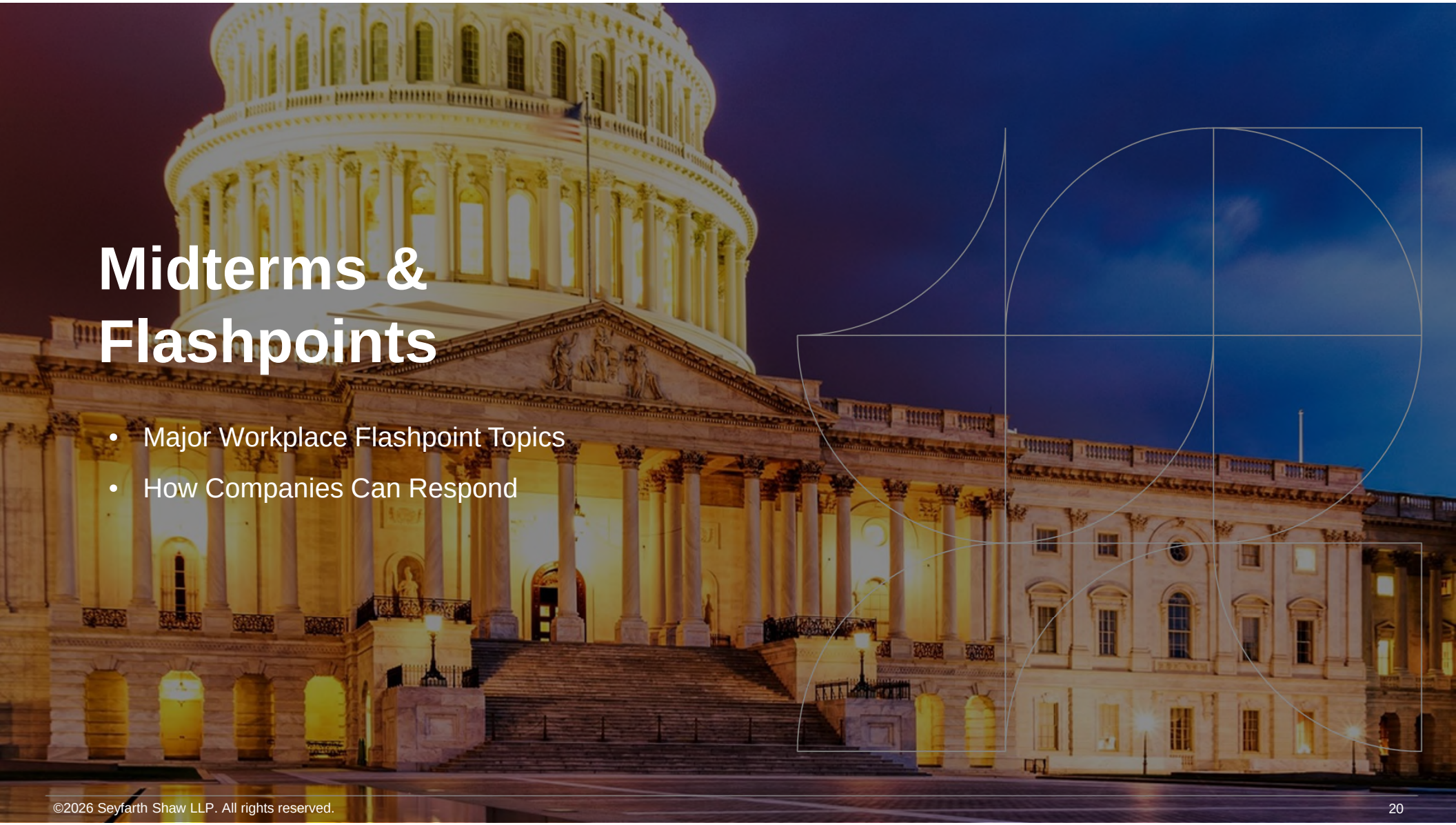
DOL

- Possible CRA votes to overturn the final independent contractor and joint employer rules, which the President would likely veto
- Subpoenas on the H-1B actions and the Executive Order 11246 rescission
- Slower action on Senate DOL nominees and proposed spending limits
- Potential federal contractor legislation

NLRB

- Hearings on how the Board decides cases and communicates with the White House
- Chairman Murphy's seat could stay vacant after December 2027, ending the three-member Republican majority
- The PRO Act and the Faster Labor Contracts Act take center stage

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Midterms & Flashpoints

- Major Workplace Flashpoint Topics
- How Companies Can Respond

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Major Workplace Flashpoints



- Ongoing, expanding war(s) in the Middle East
- Immigration and ICE activity
- Executive orders
- “Illegal DEI”
- Gender-affirming care and transgender rights
- Expanding claims to religious rights
- Increasing discrimination claims by Christian, White, and male individuals

Discussions of Flashpoint Topics at Work

Ways in which this may come up

- 1:1 conversations between employees
- Group discussions
- Offsites/travel
- Zoom backgrounds
- Slack/Jabber disputes
- Displays in office or cubicle
- Attire, hats, pins, flags, etc.
- Outside speakers at events

Applicable Law

Complex web of laws and regulations applicable to managing flashpoints

- Title VII and state law equivalents
- The National Labor Relations Act (NLRA)
- State political and off-duty conduct laws
- President Trump’s executive orders touching on diversity, religion, and gender identity
- EEOC and DOJ Guidance

How Companies Can Respond

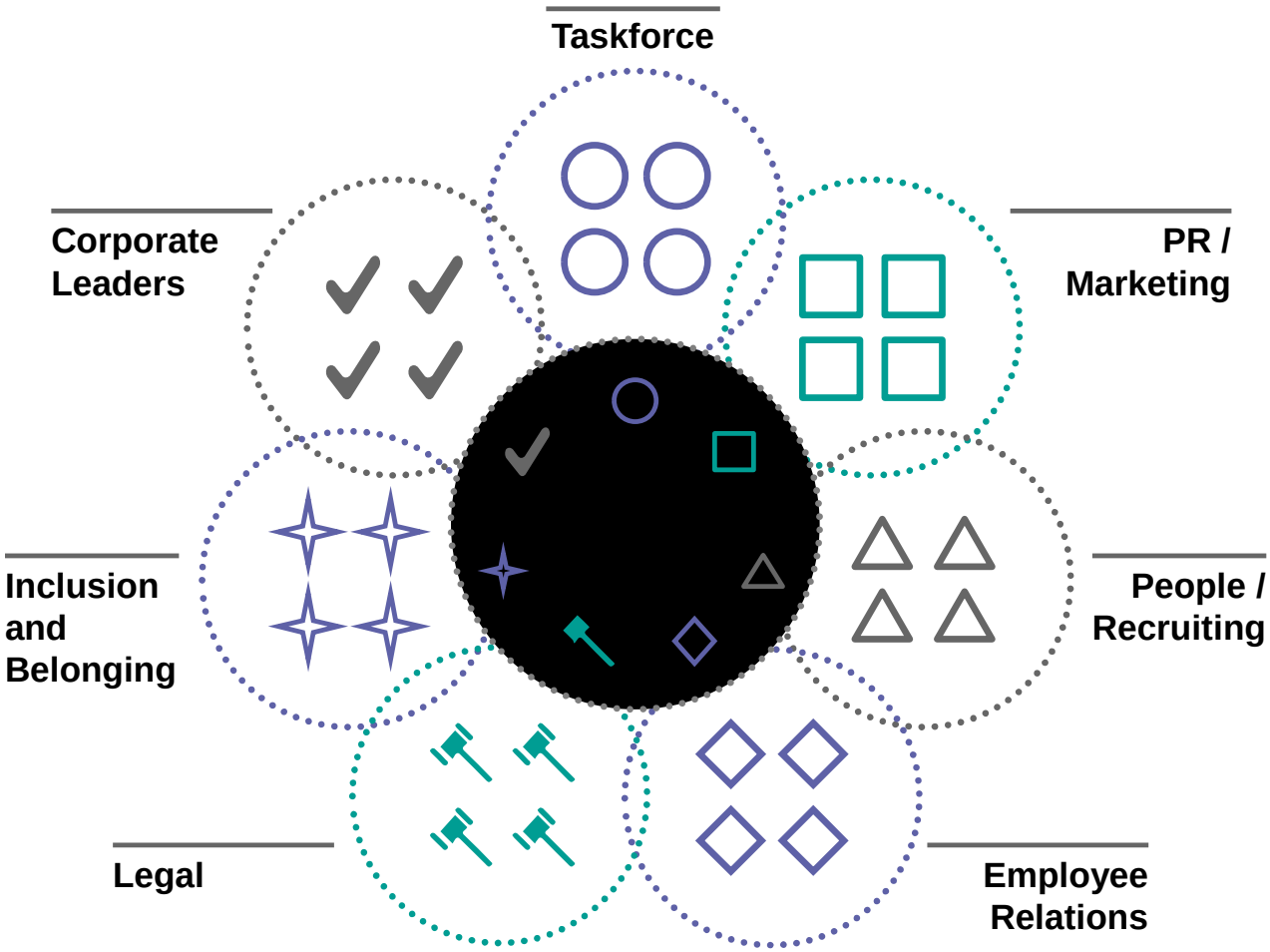




How our clients and others are:

- Building clear decision infrastructure;
- Creating guardrails through planning and policy; and
- Setting clear expectations of behavior onsite, in remote work offices, and online

Internal Flashpoints Team



Audit Policies and Training Materials



Social Media



Religious Accommodation



Political Expression



Respect



Discrimination, Harassment & EEO

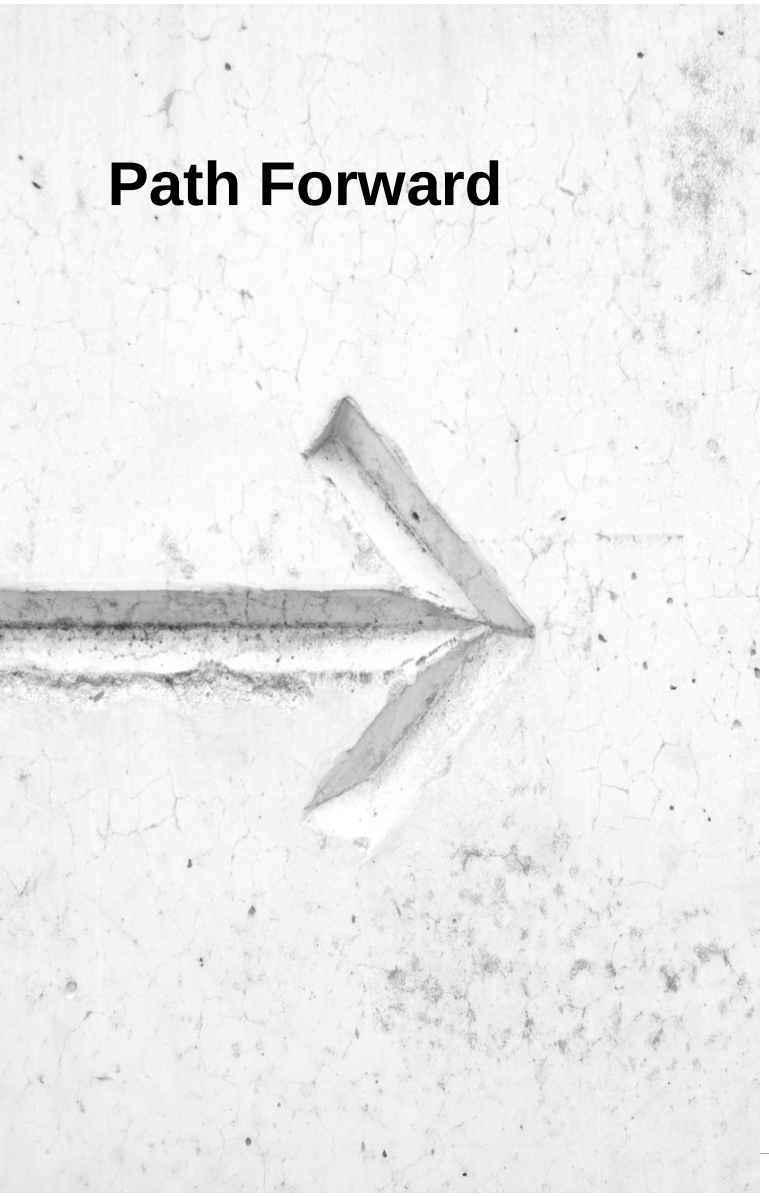


DEI/ERG Policies



Anti-Bias and DEI Training

Path Forward

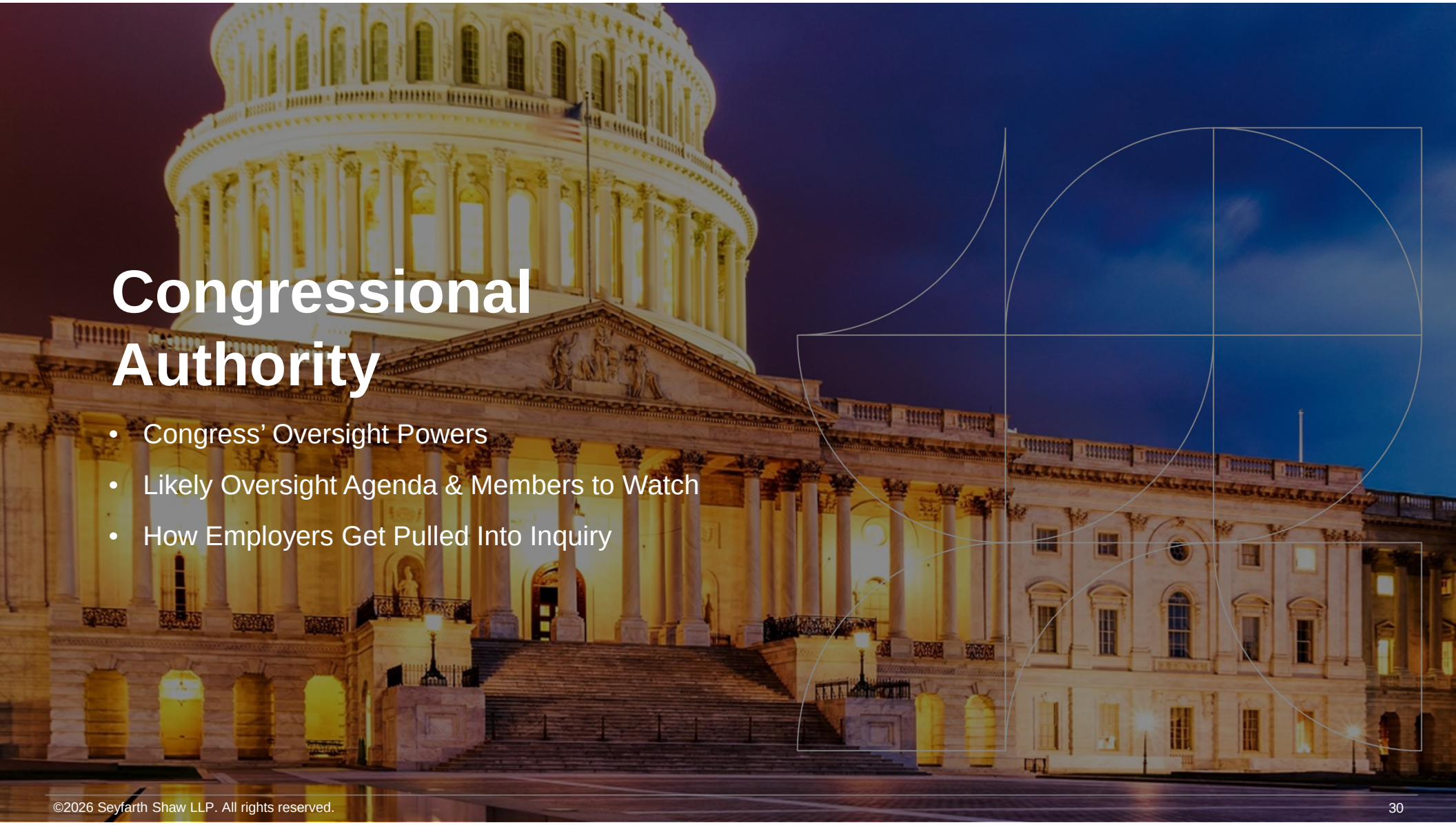






Operationalizing Culture

- Policy Framework
- Internal Flashpoints Task Force
- Training
- Leadership Behaviors
- Consistent, Thoughtful Processes on Key Points of Tension
- When to Speak Up (and When Not To)



Congressional Authority

- Congress' Oversight Powers
- Likely Oversight Agenda & Members to Watch
- How Employers Get Pulled Into Inquiry

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Congress' Broad Oversight Powers

- Committee control converts political priorities into compulsory process and a durable public record.

Hearings + Testimony

Public hearings, transcribed interviews and depositions can put agency leaders, executives, and subject-matter witnesses on the record.

Documents + Subpoenas

Requests may escalate from voluntary letters to subpoenas for records, communications, and testimony within committee jurisdiction.

Appropriations + Reports

Funding hearings, riders, GAO/IG work, committee reports, and referrals can pressure agencies even without enacted workplace legislation.

Enforcement Leverage

Noncompliance may trigger negotiation, contempt proceedings, civil litigation, or criminal referral, while publicity creates immediate business pressure.

Legal boundary The inquiry must fall within committee jurisdiction and serve a valid legislative purpose. Privilege and constitutional objections matter, but congressional processes do not mirror civil discovery.

Likely oversight agenda, and the members to watch

1	**EEOC + civil rights**	EEO-1 collection; funding and staffing; harassment guidance; LGBTQ+ claims; disparate impact; strategic-plan metrics.	**Scott • Omar • Takano**
2	**NLRB + collective rights**	Case backlog; settlement policy; remedies; organizing and bargaining standards; GC conflicts; Board independence.	**Scott • DeSaulnier • Mannion**
3	**Wage-hour + safety**	WHD and OSHA staffing; child labor; misclassification; retaliation; joint employer; heat and workplace-safety enforcement.	**Omar • Scott • Casar**
4	**DOL structure + immigration**	Agency capacity; OFCCP and contractor policy; ICE worksite operations; I-9 audits; visa-program enforcement; DHS–DOL coordination.	**Scott • Omar • Thompson • Jayapal**
5	**AI + workforce impacts**	Automated hiring and bias; worker surveillance; algorithmic discipline; job displacement; NLRA rights; safety; transparency; BLS data; upskilling and reskilling.	**DeSaulnier • Omar • Scott**

Why these names? They hold current committee or subcommittee leadership roles, or signed 2026 oversight requests in the identified area.

Specific questions likely to drive hearings and document requests

- Expect inquiries to connect agency policy choices with concrete effects on workers, cases, data, and employer practices.

EEOC

Why was EEO-1 collection changed or delayed? What happened to harassment guidance and gender-identity charge processing? How do funding and staffing affect inventories and litigation choices?

Likely voices: Scott • Omar • Takano

NLRB

How quickly are pending cases moving? Are settlements, remedies, 10(j) requests, organizing rules, and bargaining orders being narrowed? Are recusals and conflicts handled consistently?

Likely voices: DeSaulnier • Scott • Mannion

DOL / OSHA / Immigration

How did staffing and reorganization affect WHD, OSHA, OFCCP and visa-related enforcement? How are ICE worksite operations and I-9 audits selected, conducted, and coordinated with labor agencies?

Likely voices: Scott • Omar • Thompson • Jayapal

AI-enabled employment systems

Do automated hiring, scheduling, productivity, discipline, surveillance, and safety tools produce bias or obscure human accountability? What notice, validation, audits, human review, worker consultation, and outcome data exist?

Likely voices: DeSaulnier • Omar • Scott

➢ Employer implication: hearings could seek AI-system records and immigration-compliance files, including I-9s, audit trails, NOI responses, workforce rosters, vendor contracts, raid protocols, agency communications, and executive testimony.

How employers get pulled into an inquiry

The company may be a target, witness, records custodian, or the fastest path to facts the agency will not provide.



Chair or staff letter seeks documents, a briefing, or voluntary interview.	Subpoena, deposition, transcribed interview, or hearing invitation.	Press release, hearing exhibit, report, referral, or executive testimony.	Agency follow-up, state AG interest, employee claims, investor questions, and reputational pressure.

Records	Email, Teams/Slack, texts, board material, agency communications, contracts, EEO-1/payroll data, I-9s, NOI responses, visa files, and electronic audit trails.
People	CEO or CHRO, government affairs, HR operations, labor relations, DEI, safety, immigration, I-9/E-Verify owners, and site or security leaders.
Narrative	Public statements, litigation positions, agency filings, workforce data, and internal decision records must tell one story.

A 30-day oversight-readiness playbook

- Build one response architecture spanning Legal, HR, Government Affairs, Communications, IT, and the business.

01

Map exposure

Inventory federal contracts, grants, agency contacts, hot-button workforce programs, and pending disputes.

02

Control records

Name custodians; preserve email, collaboration tools, texts, HRIS exports, decision logs, and board materials.

03

Set the protocol

Route all committee contacts to a core team; define privilege, collection, review, interview, and approval rules.

04

Stress-test consistency

Compare public statements, agency filings, pleadings, contracts, EEO-1/pay data, and internal rationales.

05

Prepare humans

Identify likely witnesses; conduct document-based preparation; plan hearing, interview, and media posture.

06

Govern the risk

Brief the board; set escalation thresholds; coordinate regulators, state AGs, unions, employees, and investors.

Bottom line: prepare for a government investigation conducted in public, on a political timetable, with no civil-discovery rulebook.

SCAN ME

CLE: NEW PROCESS

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