

CHALLENGES AND SOLUTIONS FOR THE NEXT PRESIDENT AND CONGRESS

A woman with long blonde hair and safety glasses is focused on working on a mechanical component in a factory. The scene is overlaid with a blue tint. The background shows industrial equipment and a factory floor.

# COMPETING TO WIN

LABOR IN FOCUS

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## Adapting Labor Policies for a 21st-Century Workforce

### Introduction

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Manufacturing supports an estimated 18.5 million jobs in the United States—about one in six private-sector jobs—and employs 12.3 million men and women directly. In 2015, the average manufacturing worker in the United States earned \$81,289 annually, including pay and benefits—27 percent more than the average worker. This wage and benefits premium reflects the enormous productivity and skills of today’s manufacturing worker. At the same time, there is a severe shortage of skilled workers to fill current demand and projected future demand, including replacement of those nearing retirement.

Unfortunately, labor policies from the Obama administration are only making it harder to maintain and grow a flexible workforce to handle today’s manufacturing challenges. To keep manufacturing an engine of the economy, we need policies that support flexibility and innovation.

The manufacturing workforce has adapted to global competition by increasing collaboration between managers and employees, developing best practices for career advancement and providing competitive pay and benefit options as well as creating cultures of safety. Existing labor statutes and policies are stagnant and antiquated, making it harder for business owners to be more creative with respect to different work arrangements and benefits. For example, the Occupational Safety and Health Administration (OSHA) continues to put barriers in place to incentivizing cultures of safety in our facilities.

Unfortunately, the agenda and policies implemented over the past eight years assume a 1950s culture in manufacturing that no longer exists. Policymakers have consistently demonstrated an overreliance on organized labor to negotiate workplace wages, benefits and safety, when employees are increasingly comfortable communicating directly with managers and are increasingly empowered to make decisions about production processes and improvements. An attitude has emerged in some corridors of influence that the public shaming of companies that do not meet specifically defined criteria produces the best results for employees. Such a strategy runs counter to a collaborative approach to improving the lives of working men and women and creating the world’s most competitive manufacturing sector.

### Trends Shaping the Changing Labor Landscape

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#### *The Regulatory Pendulum*

Each time a new administration takes office, business owners and other stakeholders in the labor community see the pendulum swing in labor policy in favor of whichever political party holds the presidency. Unfortunately, this creates a policy oscillation every four to eight years. The back and forth is bad for long-term business certainty, but it is even worse for employees who are caught in the middle of constantly changing policies that affect their daily lives both at work and at home. Unfortunately, over the past eight years, the National Labor Relations Board (NLRB) has shifted from its traditional role of the unbiased adjudicator to an outright labor rights advocate.

Policymakers should work to restore balance and advance labor and workplace policies that are in the best interest of promoting a competitive manufacturing sector. Only a competitive manufacturing sector will be able to create and sustain millions of good-paying manufacturing jobs. Manufacturers are constantly evolving and adapting to the demands of a 21st-century economy to remain productive and competitive. Out-of-date rules and assumptions about the modern manufacturing workforce must be eliminated to allow the next generation of workers to benefit from the manufacturing of the future.

These recent policies also fail to account for large differences in the size and sectors of the economy and the different competitive environments they face. A one-size-fits-all approach to regulating manufacturers in urban or rural facilities with global supply chains will not work. As a result of adopting these new policies, the manufacturing workforce will be pushed backward instead of driving it forward with new, innovative ideas to meet the needs of a 21st-century workplace. A careful reevaluation of unnecessary and unhelpful changes is needed to bring balance back to labor policy.

# America's Challenge: Creating Labor Policies That Promote Job Creation and Economic Growth

We must return to a balanced and fair approach to labor policies and regulations.

## The Challenge

The regulatory overreach on labor-management relations creates uncertainty and high costs and poisons a collaborative culture.

**“The new obligations take a wrecking ball to eight decades of NLRA case law.”  
– Philip Miscimarra, member, NLRB**

## The Stakes

Elections do have consequences, but the amount of longstanding labor law precedent overturned in the past eight years is unlike anything done before it.

This level of volatility and policy uncertainty harms manufacturers and their employees who cannot rely on past reasonable interpretations of the law when planning human capital investments. Instead, everything previously settled is up for grabs in a partisan contest of wills.

Furthermore, the costs of these union-boosting rules are estimated at \$17.5 billion over the next 10 years and require 136 million hours of paperwork (Figure 1).

## The Solutions

The federal government must return to a balanced and fair approach to labor policies and regulations. There is a long list of regulations, case decisions and guidance that has come from federal agencies, including shortening the time it takes to hold an organizing election, reducing the size of collective-bargaining units, redefining business relationships when one company seeks the services of another company, redefining required reports to the government about conversations or materials concerning union organizing and even permitting unions that do not represent employees to accompany health and safety inspectors during a facility audit.

To restore balance, the next administration should do the following:

- **Appoint NLRB board members committed to the rule of law and fair treatment of employees and employers.**
- **Rescind the “ambush elections” rule.** This rule shortens the time to 10–14 days in which a representation election is held; requires pre-election hearings to take place within seven days of the petition; requires employers to hand over personal cell phone and email addresses as well as work locations, shifts and job classifications of all employees in the petitioned-for unit; requires an employer to file a “statement of position” by the date of the pre-election hearing; limits the issues that can be litigated prior to the election; and does away with an employer’s right for a pre-election review.
- **Reestablish longstanding interpretation of a “joint employer.”** The previous standard deemed businesses joint employers only when they share direct and immediate control over essential terms and conditions of employment, including hiring, firing, discipline, supervision and direction. Now manufacturers who contract out for any product or service with another company could find themselves in a joint-employer relationship triggering unanticipated responsibilities.
- **Reverse course on support for “micro-unions.”** The NLRB’s decision in the Specialty Healthcare case in 2011 overturned 70 years of labor law regarding the standard for an appropriate size of a collective-bargaining unit. Under the new standard, as few as two people can now form a “micro-union” in one facility or location.
- **The permanent injunction on the U.S. Department of Labor’s (DOL) persuader rule should not be appealed, or the new administration should begin efforts to repeal the rule.** Under the final rule, the definition of “persuader” activity subject to reporting was expanded to include many activities recognized as labor law advice. The proposed changes would likely make it more difficult for employers, particularly smaller-sized manufacturers, to access legal assistance in navigating complex labor laws. It would effectively “gag” employers to keep employees from hearing both sides of the unionization debate.

Manufacturers will support actions by the next administration to codify and reestablish labor law precedent with respect to union organizing, appropriate bargaining unit sizes and definitions of key labor terms. Manufacturers also support policies that ensure meaningful and effective oversight of all labor agencies to prevent regulatory overreach. Manufacturers seek to restore the proper balance between labor and employers providing an environment of cooperation.

## We must adapt to the changing needs of the modern manufacturing workforce.

### **The Challenge**

Unnecessary and costly rules and mandates hamper economic growth and job creation in the manufacturing sector.

### **The Stakes**

The Manufacturing Institute projects over the next decade nearly 3.5 million manufacturing jobs likely need to be filled. The skills gap is expected to result in 2 million of those jobs going unfilled. This costs manufacturers up to 11 percent of earnings annually in increased production costs and lost revenue. Manufacturers need more tools in their toolkit to fill these jobs and retain employees by offering different incentives and unique benefits with paid time off or flexible work schedules. Recent policies, such as the overtime and silica rules, will cost as much as \$49 billion over the next 10 years and require more than 146 million hours of compliance time, further diverting scarce resources from business investment (Figure 1).

### **The Solutions**

Leaders should take the following actions to improve the flexibility of the manufacturing workforce:

- **Reconsider OSHA's rule on crystalline silica.** Without real benefits, the rule imposes significant costs on concrete, oil, gas, foundry, glass, china and pottery, brickmaking, metal and mineral production, paint, cut stone, structural clay and refractory industries as well as anyone in their supply chain. These manufacturers, and others, are already implementing appropriate controls and taking the necessary steps to ensure their employees' safety. The rule impacts 534,000 businesses and 2.2 million workers, including 25,000 hydraulic fracturing employees and 1.85 million construction workers. Estimates by engineering and economic consultants show an impact of \$5.5 billion in annualized costs.
- **Repeal the mandated sick leave requirement for federal contractors.** Manufacturers provide excellent paid leave benefits to their employees. Mandated requirements come at the cost of flexibility and with costly recordkeeping rules.
- **Withdraw the overtime rule.** The DOL more than doubled the minimum salary threshold for employees exempted from overtime pay and added a costly automatic increase provision. Small and rural businesses were hit especially hard by the change. The proposal failed to account for the varied types of work done by affected employees and the increasing need for flexible work arrangements.

Manufacturers will continue to oppose misguided legislation and regulation that hampers the ability to establish flexible work and leave arrangements and will support initiatives promoted by the next administration that will allow manufacturers to be innovative with employee work arrangements and benefits. This will incentivize employees to enter and remain in the manufacturing sector.



**Figure 1: The Aggregate Economic Cost of New Labor Market Regulations**

Regulation	Annual Agency Costs	Industry Cost Estimates	Compliance and Paperwork Costs	Compliance Hours Required
Blacklisting	\$400 million	\$338 million	\$3.2 billion	21.7 million
Overtime	\$304 million	\$33 billion	\$24 billion	25 million
Silica	\$1.1 billion	\$5 billion	\$25 billion	121.1 million
EEO-1	\$53 million	N/A	\$1.9 billion	18 million
Union Boosting: Ambush and Joint Employer	N/A	N/A	\$17.5 billion	136 million
Injury and Illness Reporting	\$13 million	\$1.1 billion	\$10 billion	90 million
<b>Totals</b>	<b>\$1.5 billion</b>	<b>\$39.4 billion</b>	<b>\$81.6 billion over 10 years</b>	<b>411 million hours</b>

**Source:** <http://www.nam.org/Data-and-Reports/Reports/Labor-Market-Regulations/LaborMarketRegulations-study/>

We must eliminate regulatory burdens from complicated and outdated labor policies.

**The Challenge**

The administration promulgated a series of poorly designed rules intended to “shame” companies to achieve their policy objectives; instead, the proposals provide useless and inaccurate information to the public.

**The Stakes**

Many labor statutes and rules were established decades ago. The Fair Labor Standards Act was enacted in 1938, and the Occupational Safety and Health Act was enacted in 1970. Both were designed with a different workforce and economy in mind. Global competition requires manufacturers to constantly reevaluate their production processes and find ever greater efficiencies. A modern regulatory system that promotes our global competitiveness is a necessary condition for manufacturing success.

**The Solutions**

Leaders should take the following actions to improve the regulatory climate for American manufacturing:

- **Revoke the Blacklisting Executive Order (E.O.), acquisition rule and DOL guidance.** The Fair Pay and Safe Workplaces E.O. and accompanying rules attempt to exclude contractors and subcontractors from doing business with the government even if there is a mere allegation that a company has violated a labor law. This could exclude companies acting in good faith and result in higher prices for federal purchasing.
- **Rescind the changes to the EEO-1 form that collect pay data without context.** The new requirements would add aggregate data on pay ranges and hours worked to the information already collected. Disclosure of this data not only raises concerns of confidentiality, but it also exposes employers to unfair characterizations of total compensation because it lacks critical context like qualifications or years of service.
- **Reform the injury and illness reporting rule to provide complete information and to truly incentivize safety.** Disclosing raw data from injury and illness reports serves little public good, is easily misinterpreted and can lead to unfair conclusions or judgments about a company or particular industry. The numbers of injuries and illnesses published on the OSHA website would also include non-work-related incidents, leading to further misperceptions of a company’s record.

## Manufacturers Seek Collaborative Approaches and Outcomes-Based Solutions That Yield a Safety Culture, Productivity and Economic Growth

An adversarial relationship with employers does not foster the level of cooperation and collaboration necessary to lead to the highest standards of excellence in safe and competitive workplaces. Treating allegations as facts and publicly shaming employers who may be working to remedy a problem do not build relationships of trust between the regulator and the regulated. Recent data from the Bureau of Labor Statistics have shown injury rates in the private sector have been declining substantially. Rather than celebrate these improvements and reward a safety culture, regulatory agencies punish companies for innovative safety programs. Manufacturers instead welcome the opportunity to publicly highlight stories of true success with new workforce initiatives, tout innovative ideas that engage employees, solve emerging problems and share best practices. Manufacturers believe that collaborating on the best way to remedy issues would be a better approach than focusing on only negative actions. Manufacturers believe in strong enforcement of rules and regulations. The next administration should also embrace opportunities to collaborate and spotlight best practices and innovative ideas in the manufacturing sector to promote safety and compliance.



# COMPETING TO WIN

## THE UNITED STATES WINS WHEN WE LEAD

### Conclusion

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While historically the policy environment surrounding labor rules is more adversarial than collaborative, manufacturers believe there is an opportunity to change this approach in the next administration. Labor policy needs to adapt to current workforce needs, rather than turn the clock back. The past eight years have taken us backward by altering decades-old definitions and well-established laws without any justification and rolling out policies that are counterproductive to building a modern manufacturing workforce. To achieve the best labor policies possible, broad stakeholder involvement is critical.

The United States will not maintain its mantle of economic leadership unless all labor stakeholders work together to ensure the best and most productive workplaces. Employees, organized labor, management and lawmakers should collaborate in search of outcomes that deliver a positive work environment, opportunities for employee professional growth and safe and healthy facilities.

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