

Business Takeaways From Biden's Global Labor Rights Memo

By **Tom Plotkin and Pegah Nabili** (December 5, 2023)

On Nov. 16, President Joe Biden issued a memorandum to the heads of all executive branch agencies ordering a wide range of actions aimed at strengthening labor protections for workers around the globe.

The Biden administration has made labor rights a centerpiece of its domestic policy portfolio, and the new presidential memorandum on protecting worker rights in the U.S. and globally sets forth a broad strategy for expanding that focus internationally.[1]

The presidential memorandum appears to be the first directive of its kind outlining a whole-of-government approach to protecting workers' rights globally and upholding internationally recognized labor standards.

The memo's directives cover topics relevant to a number of stakeholders, including government, international organizations, labor unions, civil society, workers, development banks and the private sector.

In recent years, the U.S. government has taken a number of steps aimed at eradicating forced labor in companies' global operations and supply chains.

This presidential memorandum reiterates the importance of addressing global forced labor concerns, but also covers a broader set of labor-related rights, including freedom of association and the right to collective bargaining, child labor, discrimination, wage and hour protections, and safe working conditions — collectively referred to as labor rights in this article.

This article provides a summary of the presidential memorandum's most significant provisions and highlights takeaways relevant to the business community.

Presidential Memorandum's Five Priority Lines of Effort

The presidential memorandum frames its orders to executive branch departments and agencies under five priority lines of effort.

Within each of these five categories, the directives propose a range of actions, including increased coordination within the U.S. government and with allied governments, more robust stakeholder engagement, and the use of trade policy and tools to address global labor rights concerns.

The memo does not change any laws or regulations, nor does it propose any specific regulatory enforcement initiatives. The five categories are summarized below.



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1. Promote internationally recognized labor rights, worker empowerment and organizing.

The first priority line of effort directs various executive branch agencies to leverage traditional foreign affairs tools, such as diplomacy, foreign aid, trade and commerce, to promote internationally recognized labor rights and increase the focus on labor rights in agencies' international development work.

The memo calls for regular and robust engagement on labor rights issues with a range of external stakeholders, including with foreign governments through diplomatic channels, and with democratically elected trade union leaders, workers, labor rights defenders and other labor advocates.

The memo also asks agencies to consider strategies for partnering with the private sector to strengthen labor protections.

Potential strategies highlighted include high road investments that can lead to well-paying and safe jobs, and innovative joint worker-management labor compliance initiatives that include robust labor rights compliance monitoring.

The memo also highlights the importance of protecting labor rights as part of the global transition to clean energy — often referred to as the just energy transition.

The memo directs agencies to emphasize the role of workers and unions in just energy transition initiatives and directs certain agencies to engage with workers and labor unions when developing energy and just transition policy.

2. Protect labor rights defenders.

The second priority line of effort covered in the memo focuses on strategies for protecting labor rights defenders, who can be targets of repression and threats of violence in certain regions.

The memo directs various agencies to consider the use of a wide range of strategies for combating actions that threaten labor rights defenders, including diplomatic tools, financial sanctions, trade penalties and visa restrictions.

Agencies are also encouraged to speak publicly about these issues and advance proposals in international organizations to protect labor rights defenders.

3. Strengthen capacity across federal departments and agencies.

The third priority line of effort focuses on improving interagency coordination on global labor rights issues by increasing subject matter expertise within the executive branch.

The memo calls for strengthening technical labor rights knowledge across agencies and increasing job opportunities for labor rights experts in certain key departments.

The memo also directs the U.S. Department of Energy and other relevant agencies to coordinate the inclusion of workers and labor unions in policy and planning discussions related to the clean energy transition.

4. Improve international labor rights standards.

The fourth priority line of effort directs certain agencies to engage and strengthen relationships with allies, international organizations and other external stakeholders to improve international labor rights standards.

The memo instructs agencies to advance worker empowerment and labor rights concerns in their work with international organizations like the United Nations.

It also instructs agencies working with multilateral development banks to address labor issues in their projects and strategies, including through the incorporation of labor rights safeguards as a condition of project financing.

Agencies are directed to engage with labor rights and civil society organizations to inform them about the development of the federal government's recommendations on labor performance standards in preparation for the International Finance Corporation's sustainability framework review.

5. Enhance trade enforcement and other related tools.

The fifth priority line of effort directs certain agencies to advance trade policy to promote stronger global labor rights protections.

Proposals include leveraging current trade remedy laws and exploring new trade-related tools to bolster compliance with a wider scope of labor rights.

Elements of this directive include the following.

Continuing the Federal Government's Focus on Forced Labor

The memo asks various departments to consider developing a comprehensive, interagency effort to eradicate forced labor from global business operations and supply chains.

A number of potential tools are offered for consideration, including collaboration with external stakeholders, like workers, industry and civil society, increased use of existing customs law authorities such as forced labor import prohibitions, and information-sharing with allies and partners.

Expanding Uyghur Forced Labor Prevention Act Enforcement

The memo instructs the federal Forced Labor Enforcement Task Force to update the Uyghur Forced Labor Prevention Act enforcement strategy, which was last updated in August.[2]

It also directs the task force to continue efforts to make new additions to the UFLPA Entity List and consider requests for removal from the list or technical corrections to it.

The task force is also instructed to assess resource requirements to support robust UFLPA implementation.

Leveraging New and Existing Tools to Combat Labor Rights Abuses

The memo generally directs agencies to explore strategies for using and building on existing trade law authorities to promote internationally recognized labor standards and meaningful

remediation of labor rights violations.

The memo references preference programs, general enforcement and labor provisions in economic frameworks and agreements as potential areas of focus.

Collaborating With Allies to Enhance Labor Standards

The memo directs agencies to coordinate with allies and share information on best practices for protecting labor rights.

The memo also encourages information-sharing with allies, when appropriate, in order to facilitate legal enforcement actions addressing forced labor and other labor rights abuses.

Exploring Other Avenues to Address Significant Labor Rights Abuses

The memo directs the U.S. secretaries of state and treasury to consider efforts to use existing authorities intended to combat serious human rights abuses in order to address forced labor, child labor and related labor abuses in global supply chains.

It also directs various agencies to explore innovative approaches to promoting adherence to international labor standards in supply chains, including through concepts like worker-led labor rights compliance monitoring.

Takeaways for the Business Community

This presidential memorandum appears to be a significant signal from the Biden administration that it intends to address international labor rights more robustly moving forward.

Despite lacking provisions on specific legal and regulatory enforcement activity, the focus on government capacity-building and coordination, combined with the breadth of stakeholders and topics covered, suggests there will be more government action on this issue in the future.

We believe there are several key takeaways for the business community.

The federal government will continue to focus on forced labor enforcement.

Forced labor is flagged separately from other labor rights in various provisions throughout the memo. These provisions reflect the administration's intention to continue focusing on forced labor enforcement.

Additionally, the clause discussing UFLPA Entity List additions, removals and technical corrections suggests there may be interest in strengthening procedural safeguards around UFLPA enforcement.

Other labor rights will be in focus, but the nature of enforcement is not yet clear.

The memo's focus on a wide range of labor rights suggests the Biden administration is seeking to expand its focus beyond forced labor.

This approach would track with recent developments in the European Union, where new laws at the member state and EU levels require significant corporate due diligence and

reporting efforts relating to a range of labor rights.

It is unclear, however, what legal standards or enforcement tools the administration might use to expand enforcement activity related to labor rights abroad.

It will be important to monitor new regulatory proposals and possible legislative activity that could help Biden strengthen enforcement authorities on this topic.

The memo reflects an interest in working with the private sector.

The memo appears to anticipate a collaborative approach to private sector engagement on international labor rights issues.

The private sector is described as a key target for external stakeholder engagement, and there are several references to agencies working with the private sector to explore and promote high labor standards in global projects and development.

The memo also frames labor rights in the broader context of their benefit to economic and national security, and suggests some preliminary ideas for partnerships to improve labor rights compliance.

Based on the breadth of directives included in the memo, businesses may consider engaging in proactive outreach to the Biden administration to discuss opportunities for cooperation and collaboration.

There is a notable focus on the just transition.

There are multiple provisions in the memo speaking to the importance of protecting labor rights as part of the just transition, which has been an area of focus for the sustainability community in recent years.

The memo's repeated references to protecting labor rights and worker livelihoods as part of the clean energy transition is a significant signal from the Biden administration that it intends to address these concerns in international labor rights policy moving forward.

For businesses that are engaged in clean energy activities, both directly and indirectly, this focus reinforces the importance of considering labor rights and human rights impacts in the development of renewable energy projects and when taking steps to improve a company's environmental footprint.

Conclusion

This memo is one of the most direct and expansive statements that the Biden administration has made regarding international labor rights policy.

We expect to see significant activity across the executive branch to incorporate its directives. Businesses should monitor these developments to identify any changes in policy, including as it relates to regulatory enforcement, that may affect international operations or supply chains.

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[1] Presidential Memorandum on Advancing Worker Empowerment, Rights, and High Labor Standards Globally: <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/11/16/memorandum-on-advancing-worker-empowerment-rights-and-high-labor-standards-globally/>.

[2] <https://www.dhs.gov/uflpa-strategy>.