



The Daily Dish

Labor Market Regulation

DOUGLAS HOLTZ-EAKIN | JANUARY 3, 2018

Eakinomics: Labor Market Regulation

I recall a conversation I had with a distinguished conservative labor lawyer early in the Obama Administration. Using a football analogy, he remarked that when control of entities like the Department of Labor (DOL), National Labor Relations Board (NLRB), and National Mediation Board (NMB) switched between the parties, "...the orientation of regulation moved back and forth between the 40s." "Now," he said, "the Obama guys are pushing everything to the 10 yard line." The [major vehicles](#) for doing so were minimum wage rules, overtime rules, and persuader rules from the DOL, and the joint employer, micro-union, and union election regulations from the NLRB.

The jarring, extreme push for a pro-union federal stance inflamed the business community and guaranteed — independent of the merits — that if conservatives regained control, the initiatives would be reversed. Still, the Obama-era labor market initiatives are disappearing in numbers and at a pace I did not anticipate. With little fanfare, in December the NLRB [reversed](#) the joint-employer ruling (the Browning-Ferris decision), reversed its [micro-union](#) decision in Specialty Healthcare, and issued a [request for comments](#) on the "ambush election" rule (meaning it will likely be scaled back or rescinded all together). In retrospect, the flurry of activity made perfect sense. Republicans held a 3-2 majority on the NLRB until then-chairman Phil Miscimarra's term expired on December 16. Until another member is confirmed, the board will operate with a 2-2 split.

Over at DOL similar actions are underway. The Obama [overtime rule](#) has been blocked in the courts and DOL is preparing a revised version with a lower salary threshold to be exempt from overtime pay requirements. The persuader rule — which would make it more difficult for businesses to consult with outside legal experts when facing a union organizing campaign — has also been blocked.

In short, the obvious executive overreach by President Obama has been nearly eliminated. However, there is nothing that would prevent overreach in the other direction and nobody should wish for a pendulum approach to labor market regulation that "moves back and forth between the 10s." This suggests that it is time for Congress to take up these issues and settle them statutorily. This would be permanent, require 60 votes in the Senate, and would consist of a compromise closer to midfield.