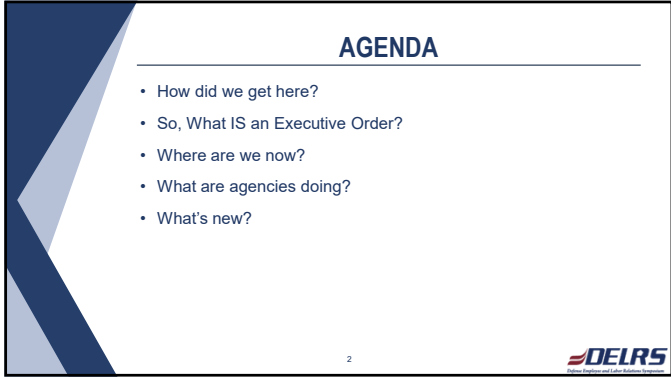
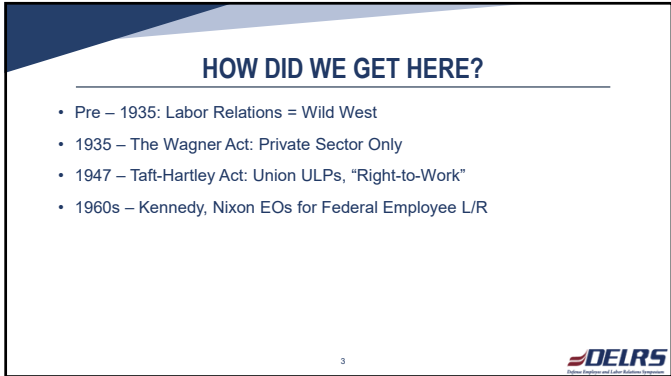


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HOW DID WE GET HERE? (cont.)

- 1978 – “The Statute” [Title 5 U.S.C. Chapter 71]
 - Collective Bargaining is in the Public Interest [§7101(a)]
 - Consistent with Effective, Efficient Government [§7101(b)]
 - President Retains Regulatory Authority [§7135(b)]
 - Comprehensive Admin and Judicial Review [Subchapter III]





4

HOW DID WE GET HERE? (cont.)


- Clinton, Bush, Obama: Executive Order Ping-Pong
- Trump Ping-Pong Slam: Revokes Obama EO, AND:
 - EO 13836 – Collective Bargaining Order
 - EO 13837 – Official Time Order
 - EO 13839 – Removal Procedures Order
 - “Schedule F” EO



5

HOW DID WE GET HERE ? (cont.)


- Biden Ping-Pong Slam Return:
 - EO 13991/99 – Protect Worker Health and Safety
 - EO 14003 – Revokes Trump EOs, Permissive Bargaining
 - EO 14019 – Promote Employee Access to Voting
 - EO 14025 – Worker Organizing and Empowerment
 - EO 14043 – Requiring COVID-19 Vaccines
 - EO 14063 – Project Labor Agreements - Large Contracts
 - EO 14119 – Apprenticeships and Labor/Mgt Forums



6

SO, WHAT IS AN EXECUTIVE ORDER?


- Instruction to Executive Department employees
 - On how to run government, not unions
 - May affect citizens by regulatory enforcement
- Force of law?
- What are the Enforcement mechanisms
 - Look at its terms – may endorse or eliminate methods
 - Congress and the Courts may overturn



7

SO, WHERE ARE WE NOW?


- EO 13991/99 – Protect Worker Health and Safety
 - Still in effect, subject to CDC/Local Gov't direction
- Vaccine mandates rescinded, 12 May 2023
 - Some Vaccine-mandate litigation refuses to die
 - For example:
 - *Abbott v. Biden* — TX National Guard mandate; 5th Cir.
 - *Keene v. San Francisco* — 1st Amend/Rel. Freedom; N.D. CA



8

SO, WHERE ARE WE NOW? (cont.)


- Regulatory provisions may linger on after the EOs are rescinded because of the Administrative Procedures Act
 - e.g., 5 CFR 432.108, 752.104, 752.407
 - . . . agency shall not agree to erase, remove, alter, or withhold from another agency . . .
 - A notice had to be published [4 Jan 2022] – to rescind these "clean record" limitations
 - Final new rule wasn't published until Apr 2023
 - Since then, "clean-record" settlement provisions are back – though it took more than 2 years



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SO, WHERE ARE WE NOW? (cont.)


- President Biden’s – EO 14003 [21 JAN 2020]
 - Rescinds Trump Labor Relations EOs
 - Requires Agency Heads to:
 - Review/identify existing agency actions “related to or arising from” Trump orders and ASAP, “suspend, revise, or rescind”
 - Publish notice for “proposed rules suspending, revising, or rescinding” those actions
 - Negotiate over Permissive [5 U.S.C. 7106(b)(1)] topics



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SO, WHERE ARE WE NOW? (cont.)


- E.O. 14003, Section 4:
 - Agency heads “shall elect to negotiate over [5 USC 7106(b)(1), permissive] subjects,” and
 - “Shall instruct subordinate officials to do the same”
- No specific enforcement language
 - Section 7(a)(i) – Don’t construe the EO to affect “authority granted by law to an executive department or agency, or the head thereof”
 - Do construe “consistent with applicable law”



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SO, WHERE ARE WE NOW? (cont.)


- OPM Guidance on EO 14003 [5 Mar 2021; 28 Oct 2021]
 - “It is now Executive Branch policy to . . . bargain over 7106(b)(1) topics”
 - But . . .
 - Guidance is not APA-compliant government-wide Regulation
 - Guidance extends beyond the wording of EO 14003
 - Not an order of DoD’s Agency Head
 - Suggests agencies do not enjoy an ability to withdraw, from permissive bargaining, but must bargain to impasse, then use impasses procedures



12

WHAT ARE AGENCIES DOING?


- USPS – FSIP procedures stayed
- Some agencies are returning to old agreements
- Some refuse to negotiate, assert no FSIP jurisdiction
- DoD Guidance – Pending



13

SO, WHERE ARE WE NOW? (cont.)


- EO 14019 – Promote Employee Access to Voting
 - Includes the standard time-off for voting
 - Adds in a provision for up to 4 hours administrative leave to serve as a non-partisan poll worker
 - Implemented by OPM Memo CPM 2022-05 [dtd 24 Mar 2022]
 - No DoD guidance, yet



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SO, WHERE ARE WE NOW? (cont.)


- Executive Order 14025 [26 Apr 2021] - Task Force on Worker Organizing and Empowerment:
 - Cabinet-level task force to:
 - ... identify statutory, regulatory, or other changes
 - ... more effective means of supporting worker organizing and collective bargaining
 - Report issued 7 Feb 2022
 - Included requirement to publish bargaining-unit info in USAJOBS
 - Other action pending



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SO, WHERE ARE WE NOW? (cont.)

- EO 14063 [2 Feb 2022] – Project-specific labor agreements:
 - On "Large-Scale Construction Contracts"
 - Pre-hire, with "one or more" labor organizations
 - Every contractor/sub must agree to be bound
 - Must include dispute-resolution provision



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SO, WHERE ARE WE NOW? (cont.)


- EO 14035 [25 Jun2021] - Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce
 - Be a model for diversity, equity, inclusion, accessibility
 - Requires a "coordinated Government-wide initiative and strategic plan"
- EO 14100 [15 Jun 2023] - Enhance economic security for military and veteran spouses
 - OPM to issue regulations



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SO, WHERE ARE WE NOW? (cont.)

- EO 14119 [6 Mar 2024] - Scaling and Expanding the Use of Registered Apprenticeships in Industries and the Federal Government and Promoting Labor-Management Forums
 - "Labor-Management Forum" means a nonadversarial forum for managers, employees, and employees' union representatives to discuss how Federal Government operations can promote satisfactory labor relations and improve the productivity and effectiveness
 - [Forums] Allow managers and employees to collaborate in order to continue to deliver the highest quality goods and services to the American people.



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SO, WHERE ARE WE NOW? (cont.)

- Executive Order 14062 [31 Jan 2022]
 - 2022 Manual for Courts-Martial Amendments
- Executive Order 14103 [28 Jul 2023]
 - 2023 Manual for Courts-Martial Amendments


19 

19

SUMMARY

- **“May He Live in Interesting Times”**

Robert F. Kennedy
“Ancient Chinese Curse”

20 

20



**ANY
QUESTIONS**

21 

21



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