

Trump Executive Order grants White House greater power to hire administrative law judges as political appointees

A new Executive Order signed by President Trump on July 10, 2018, will give agencies greater flexibility in the hiring of Administrative Law Judges (ALJs). ALJs are hearing officers that issue legally binding reports and findings for claims that go before their respective administrative agency, such as the National Labor Relations Board. Prior to the Executive Order, ALJs were appointed through a competitive examination and service selection process. This was a merit-based process that disregarded personal political views on the issues ALJs were tasked with deciding.

Under this new policy, ALJs will be appointed according to Schedule E, which allows for agency heads (political appointees of the President) to directly make hiring decisions. This power is still subject to applicable Civil Service Rules & Regulations, which have basic requirements such as that the appointee have a valid, active law license and that they be in good standing with their state's bar. Under this Executive Order, the Trump Administration will have the power to directly appoint ALJs to hear unfair labor practice cases before, if ever, they reach the full National Labor Relations Board. These ALJ appointments will not be subject to a merit-oriented competitive examination and service selection process, but rather based on a political assessment.

The Trump Administration argued in the Order that the Supreme Court's decision in *Lucia v. Securities and Exchange Commission* earlier this year grants it power to appoint new ALJs under Schedule E. In *Lucia*, the Court held that ALJs are considered to be "officers of the United States," and are thus subject to the Appointments Clause of the Constitution. This Executive Order has the potential of using political considerations in the appointment of Administrative Law Judges.

ASHER, GITTLER & D'ALBA, LTD.
200 West Jackson Boulevard, Suite 720
Chicago, IL 60606 - 312.263.1500

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Dated: July 23, 2018

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