

**Morgan Lewis**

**INDUSTRY OUTLOOK**

# **THE TRENDS—AND TRAPS—THAT WILL SHAPE 2024**

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## THE TRENDS—AND TRAPS—THAT WILL SHAPE 2024

At a time marked by themes of “push” and “pull,” organizations across all sectors and jurisdictions are grappling with the pursuit of innovation within an increasingly complex regulatory framework. Over the next 12 months, the business world can anticipate an increasingly more complicated corporate environment amid rising geopolitical tensions and regulatory pressures; privacy and ethical concerns over the rapid development of emerging technologies, particularly generative artificial intelligence (AI); and striking a balance in meeting sustainability goals with advancing business objectives.

In the run-up of what will be a pivotal election year in the United States and in other global jurisdictions, Morgan Lewis lawyers provide a high-level overview of some major trends and regulatory and legislative developments that are on the horizon.

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## EMERGING TECHNOLOGIES

### Artificial Intelligence

#### *Sweeping AI Executive Order Aims to Improve Transparency*

In late 2023, US President Joseph Biden signed a comprehensive executive order that set out a road map for protecting consumers and workers from privacy, discrimination, and other potential harms presented by the widespread deployment of AI. Looking ahead, the order's effectiveness will likely hinge on how the directive is implemented and whether it is backed up by congressional action.

One area that could prove tricky is developing standards for tackling discrimination and bias in housing, employment, health care, banking, and other vital areas. "Ensuring fairness and equity in AI systems is a complex and evolving challenge," [Dion M. Bregman](#) said, adding that "the effectiveness of these measures in practice remains to be seen."

- For more information: [What to Know About the White House's Sweeping AI Directive](#), *Law360*

#### *AI Privacy Regulation Takes Off*

With the explosion of generative AI technologies, policymakers around the world have been stepping up their scrutiny of AI, releasing a flurry of laws, regulations, and voluntary agreements aimed at promoting the safe and reliable deployment of the emerging technology.

"Certainly, AI has been the huge issue this past year. In the past, regulation of technology [such as the internet and social media] has been a little behind the curve, but with AI, it's gotten so much attention and expanded quicker than any technology in memory, so regulators are really struggling to roll regulations out sooner rather than later." – [W. Reece Hirsch](#)

- For more information: [The Cybersecurity & Privacy Developments That Shaped 2023](#), *Law360*

#### *Global Antitrust Agencies Identify Generative AI Concerns*

Generative AI technologies—such as conversational AI chatbots and apps that can generate novel images and text from user prompts—have captured the attention of business leaders and the public around the world this year.

"Antitrust and competition authorities are no exception. Although disruptive new technologies may be procompetitive in many ways, competition agencies are also wary of missing out on any potentially anticompetitive trends associated with the rise of Generative AI, especially given the frequently voiced criticism that competition agencies failed to respond adequately to issues arising from the internet and smartphone revolutions. Global antitrust agencies, and governments more broadly, have accordingly signaled their interest in AI developments." – [Joshua M. Goodman](#), [Leonidas Theodosiou](#), [John Ceccio](#)

- For more information: [Global Antitrust Agencies Identify Generative AI](#), *TechREG Chronicle*

The Federal Trade Commission's (FTC's) aggressive agenda targeting big tech and other corporate mergers that could harm competition or the labor market is expected to continue into the new year. The Biden administration has called on the FTC to address AI.

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“It will be interesting to see if the FTC’s interest in AI involves enforcement actions or rulemaking in 2024. It’s always a challenge for everyone to deal with a new technology, but they clearly have indicated this is an area that they want to stay focused on.” - [Joshua M. Goodman](#)

- For more information: [FTC Will Put New Merger Guidelines to Work in 2024, Antitrust Experts Say](#), *National Law Journal*

## *AI Will Remain the Hottest Topic in IP*

Patent pools, plus an increase in graphical user interface patents, are among the trends to look out for in patent law for the year ahead.

“AI is rapidly transforming every industry, and patents in AI applications will continue to increase. Areas to watch are new patent applications related to machine learning, natural language processing, and computer vision, particularly in areas like autonomous vehicles, robotics, personalized medicine, and AI-powered tools that enhance productivity and creativity. Additionally, AI-powered patent analysis tools will become increasingly sophisticated, impacting patent prosecution strategies and patent litigation tactics.” – [Shaobin Zhu](#)

- For more information: [Patent Trends to Watch in 2024](#), *World IP Review*

## *Defense Legislation Encourages AI Development by Government Contractors*

President Biden recently signed the National Defense Authorization Act (NDAA) for Fiscal Year 2024 into law.

“In keeping with government-wide initiatives to expand agency use of artificial intelligence (AI)—especially in light of President Biden’s recent AI executive order—the NDAA promotes the use of AI by DoD subagencies. Specifically, the NDAA creates new opportunities for the use and development of AI emergent technologies in connection with defense operations. Government contractors can expect the further integration of AI into defense operations to lead to new contract opportunities.” – [W. Barron A. Avery](#), [Casey Weaver](#), [Sarah-Jane Lorenzo](#)

- For more information: [FY 2024 Defense Act: GHG Emissions, Subcontracting, and AI Considerations for US Government Contractors](#), *Morgan Lewis LawFlash*

## *Potential Legal Liabilities for Auto Manufacturers in Gen AI Application*

Auto manufacturers should be cognizant of the legal liabilities inherent in the rapidly developing area of generative AI programs as they continue to use AI for a number of use cases, from vehicle navigation to design and manufacturing. For example, when developing and training AI programs, companies should be cognizant of the source and any restrictions surrounding the data sets used, which may have access restrictions and underlying third-party rights.

“If using AI programs to generate new content, companies should be wary of the various copyright infringement claims this can raise. Currently, AI output is not copyrightable, per the US Copyright Office, unless there has been sufficient human authorship. As this caselaw develops, auto manufacturers should remain thoughtful when using AI and consider implementing best practices such as regular employee trainings on copyright law and the firm’s AI policy to reduce the risk of infringement.”

- For more information: [Innovation, Regulation, and Litigation: The Automotive Industry’s Road to 2024](#), *Morgan Lewis Report*

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## Critical Technologies

### *Anticipate 'Seismic Shift in Legal Practice'*

As one of the original forms of legal technology, along with legal research tools, ediscovery has been a mainstay of the legal profession for decades. Arguably more than anyone else, ediscovery professionals have had to not only adapt to new technologies but also master them in order to successfully deal with new data types and the evolving challenges they present for ediscovery.

"Anticipate a seismic shift in legal practice in 2024 with the potential demise of traditional privilege logs. The exorbitant costs associated with privilege logging, coupled with the limited utility of these logs, is driving a reevaluation of privilege logs. Further, there's a growing consensus to amend the Federal Rules governing privilege logs to address these burdens while certain courts are encouraging more discussion on use of alternative privilege logs and appropriate privilege log exclusions. Expect a push for reforms that streamline privilege logging processes, acknowledging the rarity of these logs impacting litigation outcomes while prioritizing cost-effective and pragmatic solutions." – [Scott A. Milner](#)

- For more information: [Legal Tech's Predictions for E-Discovery in 2024](#), *Legaltech News*

### *Fintech's Transformation in the Middle East*

With global summits such as COP28 and the membership of the Kingdom of Saudi Arabia and the United Arab Emirates to BRICS+, the Middle East region continues to be one of the world's most dynamic places to do business.

"Fintech is transforming the financial sector in the Middle East, particularly in the areas of mobile payments, remittances, and microfinance which could help improve financial inclusion and drive economic growth. Digital payment solutions are growing rapidly in the region, and the Middle East is in the stages of approving virtual assets, decentralized finance and central bank digital currency. SMEs and merchants are also using digital platforms to improve business processes and access capital. The Middle East is rapidly adopting digital technologies, with a high smartphone penetration rate and consequently growing adoption of e-commerce, fintech, and cloud computing solutions. Digital transformation will drive innovation and productivity across industries." - [Ayman A. Khaleq](#), [William L. Nash III](#), [Alishia K. Sullivan](#), [Ksenia Andreeva](#), [Sara K. Aranjó](#)

- For more information: [The Middle East: A Retrospective and Forward-Looking View](#), *The Oath*

### *Broadband Funding and Net Neutrality Face Turning Points*

One subject that is top of mind in the telecom industry is the expectation that the \$14 billion funding for the Affordable Connectivity Program (ACP) will run dry by the spring, resulting in millions of households losing federal subsidies to help pay for broadband service. However, questions about the program's effectiveness and concerns by some regarding waste, fraud, and abuse could also hamper efforts to fund it again, even though the program gained wide support early on.

The Federal Communications Commission's Universal Service Fund is also at a turning point, as policymakers try to iron out its future funding model. This year saw several legal challenges to the fund that are still playing out alongside the debate over revenue.

"Another priority is going to be universal service, both in terms of setting up higher qualifying speeds and also possibly looking at a broader contribution base to afford USF." – [Andrew D. Lipman](#)

- For more information: [The Telecom Developments That Defined 2023](#), *Law360*

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## *Deluge of Comments for FDA on LDT Final Rule Won't Slow Publication*

The White House has indicated that it expects the US Food and Drug Administration (FDA) to publish its final rule on regulating lab-developed tests (LDTs) by April 2024—but first, the agency must consider thousands of comments that have poured in since the proposal was published in October.

“Considering the ramifications’ the new regulations could have on the industry, partner [Dennis Gucciardo](#) expressed that he was not surprised by the amount of comments received on the proposal to regulate LDTs as medical devices, but that he anticipates the FDA to move expeditiously through the comments as it seeks to publish a final rule before a potential change in presidential administrations in 2025. However, he also expects whatever final rule the FDA publishes to be litigated in the courts, ‘and it appears so does the FDA, considering the extensive discussion and justification for the proposed rule drafted by the agency that accompanied the publication of the proposed rule.”

- For more information: [April Rule, or April Fool? Will Final LDT Rule Be Ready on Time?](#), *Medtech Insight*

## **REGULATIONS AND ENFORCEMENT**

### **Investment Management**

#### *SEC Increases Oversight in Private Funds Market*

One area of increasing oversight by the US Securities and Exchange Commission (SEC) is the private funds market as seen by the new Private Fund Advisor final rules and the agency’s amendments to Form PF. Of the latter, the amendments that have been adopted show a focus on current reporting and a requirement that large hedge fund advisers make certain reports within 72 hours of triggering events.

“Managers are thinking about how that’s going to inform the SEC examination program and the enforcement program, because now we’re looking at a situation where the SEC has new tools and new information to carry out the agency’s priorities.” – [Christine Ayako Schleppegrell](#)

“A lot of the themes in all of these proposals have been very prevalent areas of focus in the exam program over the course of the last year, and I expect that to continue, and we’ve seen enforcement actions on some of these topics.” – [Christine M. Lombardo](#)

- For more information: [Securities Regulations to Watch in 2024](#), *Law360*

#### *SEC to Prioritize Cryptocurrency, Emerging Financial Technology*

The SEC’s 2024 Exam Priorities Report stated that examiners will continue to observe cryptoassets and emerging financial technology, such as broker-dealer mobile applications and advisers providing automated investment advice to their clients. Several priority technology topics link to recent SEC rule proposals covering predictive data analytics.

For clients, the report is “really helpful”, especially those running compliance plans. “It gives them something they can point to and showcase internally to say, ‘Here’s why your internal management or others within the company should support my compliance program—the SEC cares about these things. The fact that [the report] came out early can also help compliance officers that hit the ground running in 2024.” – [Christine Ayako Schleppegrell](#)

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“I am never a proponent of trying to get into compliance with any form of proposed rules. But I think you have to look at those releases to understand how the SEC is thinking about particular issues because it’s clear that they’re focused on these things.” – [Christine M. Lombardo](#)

- For more information: [SEC Will Prioritize Cryptocurrency, Emerging Financial Technology in the Next Year](#), *National Law Journal*

## Food & Drug Administration

### *FDA to Reorganize Center for Drug Evaluation and Research*

On the manufacturing front, the US Food and Drug Administration (FDA) is expected to continue implementation of the many policies announced in 2023 as well as work toward implementation of a program related to platform technologies. Further, the Center for Drug Evaluation and Research’s (CDER) Office of Pharmaceutical Quality (OPQ) recently announced a planned reorganization slated for 2024, intended to continue its lifecycle approach to product regulation, centralizing OPQ’s research function, and reinforcing “stronger connections between assessment, inspection, surveillance, research, policy, and administrative operations.”

- For more information: [2023 Drugs and Biologics Year in Review: Will FDA’s 2023 Evolution Usher in Swift Resolutions for 2024?](#), *Morgan Lewis Report*

### *Sponsors to Have More Clinical Trial Design Options*

“On the whole, 2024—and beyond—is shaping up to be an exciting time for clinical trials as FDA is clearing the way for sponsors to explore more novel clinical trial designs that may speed up the time to market. Sponsors looking to avail themselves of these new tools, however, will need to invest increased time and effort in upfront planning and study monitoring to ensure that studies are being appropriately conducted. Sponsors also should be prepared for increased FDA interactions, as both sponsors and FDA work through these new clinical trial constructs.”

- For more information: [2023 Drugs and Biologics Year in Review: Will FDA’s 2023 Evolution Usher in Swift Resolutions for 2024?](#), *Morgan Lewis Report*

### *Greater Enforcement Coming in DTC Advertising?*

“In 2023 we saw a late-in-the-year uptick in the issuance of Untitled Letters, leading some to wonder whether this could indicate a trend of greater enforcement from FDA in the advertising and promotion space than we have seen in recent years. However, in the Direct to Consumer (DTC) advertising space more generally, the finalization of the guidance on the presentation of quantitative risk and efficacy information could serve as a trigger for greater enforcement in the space.

The compliance deadline for implementation of the final rule recently issued on presentation of the major statement in DTC advertising will also fall within 2024, which may provide more information on FDA’s implementation and enforcement in the space as well. What’s more, especially if/when FDA moves to finalize the draft guidance regarding dissemination of information on unapproved uses of approved drugs, we may begin to see firms utilizing the concepts outlined in the guidance and/or enforcement from FDA, which would likely provide greater clarity in how this new guidance will be received, addressed, and implemented by industry and FDA.”

- For more information: [2023 Drugs and Biologics Year in Review: Will FDA’s 2023 Evolution Usher in Swift Resolutions for 2024?](#), *Morgan Lewis Report*

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## Financial Services

### *Spring Bank Failures, Regulatory and Supervisory Fallout, and Crystal Ball for 2024*

In spring 2023, the world witnessed some of the most significant bank failures and financial market turmoil to occur since the 2008 global financial crisis. The consecutive, and some might say related, failures of Silicon Valley Bank, Signature Bank, and First Republic Bank, as well as the government-arranged acquisition of Credit Suisse AG, also helped produce, or at least accelerate, what looks to be a seismic shift in the regulatory and supervisory landscape for banking organizations. In the United States, the consequences of these failures are continuing to be felt throughout the financial sector—along with other sectors of the economy—but they may be most pronounced for banks, bank-holding companies, and other similar organizations. – [Christopher M. Paridon](#), [Kristin Lee](#), [Rebecca A. Raskind](#)

- For more information: [What the 2023 Bank Failures Taught Us, and What's to Come](#), *Law360*

### *The Next Wave of Fintech Regulation*

“Heading into 2024, the fintech industry sits at a unique position, shaped by a confluence of increasing regulatory scrutiny, technological innovation, and market dynamics. Interest from federal and state-level agencies is setting the stage for a year marked by evolving legislative frameworks.

The delicate balance between federal and state safeguards and the pursuit of innovation continues to be a focal point, with the United States remaining an attractive hub, even for international startups. As demonstrated by the CFPB’s Open Banking Rule proposal and some of the authentication technologies and fraud prevention measures, consumer protection remains a high priority and will be a huge focus for both regulators and industry stakeholders in the coming year.” – [Karen A. Abesamis](#), [Allen Denson](#), [Andrew M. Ray](#), [Sarah V. Riddell](#), [Christina W. Wlodarczyk](#)

- For more information: [Regulation, Innovation, and Authentication: What's on the Horizon for Fintechs in 2024](#), *All Things FinReg*

## Antitrust & Competition

### *Continued Global Enforcement of Cartels, Impose Severe Sanctions*

The year 2023 saw total cartel fines in key jurisdictions increase by 7.7% over the previous year. While the totals remain significantly below the peaks seen in the mid-2010s, record fines were imposed in several jurisdictions and there has been an uptick in dawn raids and own-initiative investigations, which demonstrates global competition enforcers’ continuing intent to pursue cartels and impose severe sanctions.

“Looking ahead to 2024, we expect to see an increased focus on labor market collusion in particular, given proposed changes in national laws on both sides of the Atlantic, which may make it more difficult for companies to restrict the freedom of employees to switch jobs, resulting in businesses seeking alternative, unlawful ways of achieving the same end. We also expect to see competition agencies continuing to seek ways to provide helpful guidance to businesses seeking to navigate changing national frameworks around topics such as sustainability or climate-change-related initiatives.” – [Omar Shah](#), [J. Clayton Everett, Jr.](#), [Jack Ashfield](#), [Leonard Impagliazzo IV](#)

- For more information: [Global Cartel Enforcement Report 2023](#), *Morgan Lewis Report*



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## Corporate

### *US States to Propose CTA-Like Statutes to Further Combat Illicit Financial Activities*

With the Financial Crimes Enforcement Network's (FinCEN's) final rule implementing the Corporate Transparency Act's (CTA's) beneficial ownership information (BOI) reporting requirements becoming effective on January 1, 2024, small and medium businesses should ensure adherence with their compliance obligations and keep track of additional rulemakings that still need to be finalized by FinCEN.

"Similar to the CTA, certain states have begun to pass or propose statutes that in certain ways mirror the federal provisions in order to create state-level databases of BOI. For example, the New York state legislature recently passed the LLC Transparency Act, which is awaiting Governor Kathy Hochul's signature; and California has followed suit and proposed its own version of the CTA particularly aimed at corporations not formed in California or LLCs registered to do business in California to report BOI information with the secretary of state."

- For more information: [Corporate Transparency Act: Beneficial Ownership Reporting Requirements for Small, Medium Businesses Effective Jan. 1, Morgan Lewis LawFlash](#)
- For more information: [Morgan Lewis's US Corporate Transparency Act Resource Center](#)

### *Up in the Air: DOJ Pilot Program's Route*

"In the months ahead, the defense bar will be focused on how the launch of the US Department of Justice's (DOJ) compensation incentives and clawbacks pilot program will be effectuated and in what circumstances. The DOJ is not just focused on clawbacks of compensation but is seeking to provide credit for all financial penalties levied by companies where serious misconduct exists. Companies should review their existing disciplinary matrices to explicitly contemplate financial disincentives (i.e., withholding bonuses, no merit increase, no promotability, or no equity) for serious misconduct."

- For more information: [White Collar Year in Review and a Look Forward, Morgan Lewis Report](#)

### *SEC Ramps Up Penalties for Securities Violations*

Gurbir Grewal, director of the SEC's Division of Enforcement, has been explicit since taking on his role that penalties for securities violations should not be viewed as simply the cost of doing business. As such, the agency has drastically increased the dollar amount of its penalties in enforcement actions. Companies operating in this space should take heed of this new posture and not rely on past enforcement actions as a guide.

"Typically in the past, if we were dealing with the SEC on our resolution, and trying to negotiate a settlement, we would look to and point to past precedent to try and determine approximately where we should come out in terms of charging decisions and financial remedies. We're seeing a very aggressive stance in this administration, where penalties that the SEC is assessing now really aren't tied to precedent, and they're much larger than they've been in the past." – [Kelly L. Gibson](#)

- For more information: ['Read the Tea Leaves': How Companies Can Steer Clear of Huge Penalties in Brutal Regulatory Climate, Corporate Counsel](#)

### *Finding Safe Harbor in DOJ M&A Policy*

"Acquiring companies resolving to take advantage of the DOJ's safe harbor policy impacting mergers and acquisitions (M&A) in 2024 should align on the M&A objectives and integration strategy in order to allow legal and compliance to perform adequate anticorruption due diligence, risk assessments post-closing,

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and timely integration of all internal controls (financial and anticorruption) in order to get the benefit of this safe harbor, if necessary.”

- For more information: [White Collar Year in Review and a Look Forward](#), *Morgan Lewis Report*

## Data Privacy

### *Growth of State Privacy Laws, Enforcement*

The red-hot data privacy and security arena shows no signs of cooling off in 2024, with the enforcement of several new state privacy laws expected to heat up, including in Montana, Oregon, and Texas, which all have new comprehensive privacy protections that will go into effect this year. Additionally, several other states are debating privacy legislation of their own.

In California specifically, the California Privacy Protection Agency is “likely to make its presence felt in 2024” when the enforcement restriction lifts, noting that he wouldn’t be surprised to see the agency bring an action that targets a California employer, given that the state’s privacy law is the only one so far to extend to employee and human resources data. – [W. Reece Hirsch](#)

- For more information: [Cybersecurity & Privacy Policy to Watch In 2024](#), *Law360*
- For more information: [What Healthcare Industry Players Need to Know About the Evolving Landscape of State Consumer Privacy Laws](#), *Morgan Lewis LawFlash*

### *Rising Trend of Healthcare Data Breaches*

Breaches at healthcare organizations have become increasingly common over the past five years and the trend is not expected to relent in 2024. The US Department of Health and Human Services’ Office for Civil Rights found a 93% increase in large breaches reported to the agency between 2018 and 2022 and a 278% spike in breaches involving ransomware during that period.

“Cyberattacks initially focused on larger healthcare systems, but smaller providers and business associates are now targets. Attackers are becoming more sophisticated too, using AI and machine learning tools to hone their strikes, including crafting more compelling phishing emails.” – [Amy M. Magnano](#)

- For more information: [Healthcare Technology Trends to Watch in 2024](#), *Healthcare Dive*

## ENVIRONMENTAL, CLIMATE, AND SUSTAINABILITY

### *Demand for Impact Investment Continues to Rise*

“Impact investing is a fast-growing movement seeking to channel capital and expertise to companies trying to solve some of the most urgent issues facing society. With a strong focus on emerging markets, we have represented funds investing in emerging geographies, like India, Latin America, Bangladesh, Indonesia, and Africa.” – [Joo Khin Ng](#)

- For more information: [Financial Services Emerge as Top Practice Area for Singapore’s Lawyers](#), *Singapore Business Review*

### *Sustainability Reporting in the EU and UK*

“EU-corporations and non-EU corporations should prepare for new sustainability reporting obligations heading their way under the European [Corporate Sustainability Reporting Directive](#) (CSRD). The CSRD

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obliges certain companies to disclose sustainability information pursuant to certain European sustainability reporting standards. It came into force in January 2023 with EU member states having until July 2024 to transpose the first part of the new provisions into national law.” – [William Yonge, Dr. Veronika Montes, Allison Soilihi](#)

- For more information: [Get Set for New Corporate Sustainability Reporting Obligations in the EU and UK, Global Relay](#)
- For more information: [New Corporate Sustainability Reporting Obligations in the EU, Global Relay](#)
- For more information: [New Corporate Sustainability Reporting Obligations in the UK, Global Relay](#)

## *Clean Water Takeover Faces Continued Hurdles*

Last summer, the US Environmental Protection Agency (EPA) proposed clarifying and streamlining the process for states and Native American tribes to assume authority over the Clean Water Act’s Section 404 permitting program for discharges of dredged and fill material. The EPA said its proposal is intended to ease that process, but there may be some hurdles in the months ahead.

“The agency’s refusal to allow tribes and states to assume only parts of the Section 404 program (e.g., for only certain water bodies or types of projects), combined with continuing uncertainty and potential future changes regarding the water bodies that are [waters of the US] subject to the Section 404 program, is likely to dampen the interest of tribes and states in pursuing assumption.”- [Duke K. McCall, III](#)

- For more information: [Biggest Environmental Regulations to Watch In 2024, Law360](#)

## *PFAS Regulation Shows No Slowdown*

This year could be another monumental year for per- and polyfluoroalkyl substances (PFAS) governance. The EPA’s steady focus on addressing PFAS contamination of air, land, and water in 2023 and into 2024 is expected to have far-reaching implications as new cleanup and reporting responsibilities for entities across many sectors of the economy begin to take effect. While some proposed rules pertaining to PFAS, particularly the National Primary Drinking Water Regulations (NPDWR), could face pushback and delay, importers or manufacturers of products in the United States and current or former owners or operators of potentially contaminated property in the United States would do well to stay informed of these developments and prepare for increased regulation. First on the EPA’s list for 2024 is finalizing the NPDWR for PFAS under the Safe Drinking Water Act.

- For more information: [Rewind and \(P\)FASt Forward: Current Developments in PFAS Regulation, Morgan Lewis Report](#)

## *An All-of-Government Approach to the Social Cost of Greenhouse Gases*

After the US Supreme Court declined to review cases brought by Republican-led states seeking to prevent the application of recent updates from the White House on how the social cost of greenhouse gases (GHGs) should be calculated, the Biden administration has pushed forward with its effort to broaden the use of those cost estimates throughout the federal government.

“Because the Biden administration has an all-of-government approach to addressing climate change, the next litigation could be in the context of something the USDA is doing, or another agency that you wouldn’t even necessarily associate with environmental regulation, that is using social cost of carbon in a way that somebody wants to challenge.... It’s going to require a lot of coordination with a variety of

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different agencies, consulting with EPA and consulting, potentially, with the White House. And, to the extent agencies don't have the expertise specific to the [estimates], they will need to rely on the expertise of those who do." – [Douglas A. Hastings](#)

- For more information: [Biden GHG Cost Estimates Face Uncertain Fate in Court](#), *Law360*

## *California's New Climate Disclosure Laws May Impact Asset Managers*

Last year, California enacted two watershed climate bills that will require companies with significant revenue to make climate-related disclosures beginning in 2026. The laws apply to any large company, public or private, that is "doing business in California," a broad concept that will require further clarification. Additionally, the laws' reporting requirements as to Scope 3 emissions, which encompass all indirect upstream and downstream GHG emissions in a company's supply chain, could prove to be a complicated hurdle for financial companies with investments in the state.

"Scope 3 emissions reporting will entail collecting emissions data from third parties in a company's supply chain, both upstream and downstream. For asset managers, depending upon forthcoming regulations that California still needs to issue and potential agency guidance, this could require asset managers to make disclosures that includes information from companies in which their funds hold securities. This could be a sea change, and could at least require new infrastructure and processes necessary to effectively capture and report this data." – [Elizabeth S. Goldberg](#), [Rick R. Rothman](#), [Benjamin K. Hand](#)

- For more information: [California's Sweeping Climate Disclosure Laws: Possible Impact to Asset Managers](#), *Reuters*

## *Scope 3 Emissions 'Likely on the Chopping Block' in SEC's Climate Disclosure Rule*

While California has enacted its own laws on this issue, the rest of the United States (and the world) awaits a final rule from the SEC that would require companies to disclose their GHG emissions. First proposed in March 2022, the SEC has postponed the issuance of a final rule while it gathers more public comments and grapples with the complexities and potential costs of requiring Scope 3 emissions disclosures.

The general consensus among experts is that Scope 3 is "likely on the chopping block," noted [Erin E. Martin](#), adding that it remains "one of the significant areas of concern [regarding] the ability to actually implement the necessary policies and procedures to provide that type of disclosure ... Even if scope 3 is no longer in the final rulemaking ... I do think that there's still going to be significant pushback about scope 1 and scope 2 as well."

- For more information: [To Keep or Not to Keep: The Fate of Scope 3 Emissions in SEC's Climate Disclosure Rule](#), *ESG Dive*

## *EV Adoption Will Require More Government Action, Regulatory Clarity*

The first federally funded electric vehicle (EV) charging stations opened in 2023 in Ohio and New York, two years after funding was made available for such projects through the Bipartisan Infrastructure Law's National Electric Vehicle Infrastructure Formula Program, following an "extraordinarily slow" rollout.

"There's still a tremendous need for public charging," [Levi McAllister](#) said, noting that despite lawmakers' attempts to get consumers to adopt EVs in the United States, "none of it will matter if there is not a way to charge them."

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This delayed action has also been mirrored by the rocky implementation of the Inflation Reduction Act and its various tax incentives for clean transportation, leading to growing confusion and uncertainty among consumers, car dealers and others.

"It creates a potential chilling effect in the industry about the extent to which [original equipment manufacturers] and, in turn, consumers can rely on these tax credits being available," Levi said.

- For more information: [Automotive Consumer Trends in 2024](#), *Automotive Dive*

## *Climate Financing and the 'Transition Away' from Fossil Fuels*

Following COP28 in Dubai, 2023 ended with an historic agreement among the world's nations to "transition away" from fossil fuels. This effort will be supported by a burgeoning climate financing market, with global governments making pledges to help emerging and developing economies prepare for the transition and reach net zero. Investors and other interested parties will look to novel uses of capital to facilitate this shift globally.

"I think that there will be a continued focus on those types of transactions, but I think everyone's also interested to monitor how there might be other uses of the capital markets, perhaps through direct investment in climate conservation efforts." – [Sandra J. Vrejan](#)

- For more information: [4 ESG Trends That Set the Tone for 2024](#), *ESG Dive*

## **GEOPOLITICAL TENSIONS**

### *Export Controls to Change with Circumstances*

In October 2023, almost exactly one year after the US Department of Commerce dropped a landmark set of proposed rules designed to complicate China's efforts to obtain or develop advanced semiconductors, the department's Bureau of Industry and Security did it again, and, more changes to the rules are forthcoming.

A top priority for additional funds should be export classification. "Commerce is weakest, according to past GAO studies, in that area. Export classification forms the foundation for every export licensing and compliance decision so a misclassification has significant downstream impact." – [Giovanna M. Cinelli](#)

- For more information: [Biggest Trade Policy Moves of 2023: Year In Review](#), *Law360*

### *DOJ Prioritizing National Security*

Since the beginning of the Biden administration, the DOJ has loudly proclaimed an interest in increased corporate criminal enforcement in traditional white-collar spaces. However, in recent months, the DOJ has signaled an additional priority: corporate enforcement related to national security issues. In the fall of 2023, the DOJ announced the appointment of the National Security Division's first chief and deputy chief counsel for corporate enforcement.

Given some of the national security issues that have emerged in recent years and are expected to continue, from trade secret theft to the visibility of non-state actors, the DOJ is expected to keep sending the message to companies that they need to crack down on misconduct that could have serious national security implications. The department's focus on national security extends to processes such as the Committee on Foreign Investment in the United States' (CFIUS's) regulatory process, which is focused on reviewing cross-border investments and not criminal activity.

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The DOJ will likely increase the number of investigations and subpoenas in 2024, which will increase legal costs for companies—especially companies with activities facing national security-sensitive regions, such as China, the Middle East, and Central Asia.

- For more information: [White Collar Year in Review and a Look Forward](#), *Morgan Lewis Report*

## *Outbound Investment Bears Brunt of Escalating US-China Tensions*

Measures such as the CHIPS Act and a projected reverse CFIUS regime have already been made public, but companies should prepare for more.

“Unfair trade practices such as anti-dumping, countervailing duty cases and circumvention cases are still alive and affect many Chinese products and supply chain IP protection.” – [Carl A. Valenstein](#)

“Many Chinese companies are subject to US sanctions or have been put on the US Entity List, which means they stop getting access to some US export items and technologies.” – [Todd Liao](#)

“As CFIUS continues to increase its attention on certain types of transactions, it’s a fair estimate to say that we have not yet hit the high watermark.” – [Christian Kozlowski](#)

- For more information: [Outbound Investment Bears Brunt of Escalating US-China Tensions](#), *IFLR*

## *Shift in Emphasis with Responsible Labor to Trade Remedies*

The prevention of forced labor in the global supply chain has been elevated in visibility and consequence over the last several years. Recent emphasis has focused largely, though not exclusively, on trade remedies.

“The United States enacted the Uyghur Forced Labor Prevention Act, the European Union proposed a ban on imports made with forced labor, and the United Kingdom proposed updates to the Modern Slavery Act. Outside of trade, litigation alleging claims of misrepresentation is pending in the US courts, and in the EU there are multiple investigations into allegations of forced labor in the fashion retail supply chain. Allegations of forced labor are not confined to China’s Xinjiang province—the focus of US legislation—but much of the recent attention has been directed toward China. China denies the allegations of forced labor and vows to respond, using the legislative tools it has developed in the last several years.” – [Jeffrey S. Dinerstein](#), [Carl A. Valenstein](#), [Gregg S. Buksbaum](#)

- For more information: [Responsible Labor Report: 2022–2023](#), *Morgan Lewis Report*

## *Increasing Congressional Investigations Activity*

In 2024, Washington, DC faces uncertainty with key policy issues unresolved, a new House Speaker, and the November elections looming large.

“While legislative agendas may be difficult to push forward, Congress can still have a significant impact on both US and non-US companies as various Congressional committees increase oversight and exercise their investigative authorities.” – [Amanda B. Robinson](#), [John F. Ring](#), [David Plotinsky](#)

- For more information: [3 Areas of Focus in Congressional Crosshairs This Year](#), *Law360*

## BUSINESS OPERATIONS

### Labor & Employment and Benefits

From AI in the workplace, to cultural and diversity issues, to mental health care, to noncompete issues and salary disclosure rules, and beyond, employers around the world are constantly trying to keep up with the changing landscape of global, US, state, and local laws and regulations that govern the workplace.

#### *DOL Is Expected to Expand Overtime Pay*

In spring 2024, the DOL is expected to wrap up a highly anticipated rulemaking that would make at least 3 million salaried workers newly eligible for overtime pay, according to the latest regulatory agenda.

“Even though the rulemaking hasn’t been finalized and is expected to change from the proposed version, employers should start to consider potential payroll changes now. You can’t just flip the switch for employees and reclassify them,” – [Russell R. Bruch](#)

- For more information: [Punching In: AI, Overtime Update Top Employers’ Focus for 2024](#), *Bloomberg Law*

While proposed regulations the US Equal Employment Opportunity Commission (EEOC) unveiled in August shed much-needed light on employers’ obligations under the Pregnant Workers Fairness Act (PWFA), there remains plenty of room for refinement in the final rule.

“It’s the same as in any new law — Congress passes the statute, and there are often areas of ambiguity that need to be clarified and that’s the role of the rulemaking agency... Regulations, when done well, provide needed clarity to both the regulated community and to employees, answering a lot of questions about what does the law mean and how does it work in practice.” – [Sharon Perley Masling](#)

- For more information: [What Employer-Side Attys Want from EEOC Pregnancy Rule](#), *Law360*

#### *Litigation Threats Challenging Employment-Related DEI Initiatives on the Horizon*

Litigation threats challenging employment-related DEI practices, foundations, and other charitable institutions, vendor and supplier diversity programs, corporate board governance programs, and investment strategies emerged using the Supreme Court’s reasoning in the *Harvard/UNC* decision.

“DEI in the wake of all this activity is an evolving space with complex legal issues that are top of mind for many clients. Challengers to DEI-related initiatives are likely to continue bringing more claims seeking to expand the reach of the Court’s rationale for striking down race-conscious decision making in the *Harvard/UNC* decision to other areas.” – [Sharon Perley Masling](#), [Ami N. Wynne](#)

- For more information: [The Four Groups Grappling with DEI-Related Litigation Following the Affirmative Action Decision](#), *Corporate Counsel*

#### *Compliance Challenges with Mental Health Parity Requirements*

Lawyers representing employers, health plans, and insurers are closely watching to see if final parity-in-coverage rules emerge that are aimed at expanding employer health plans’ compliance with a law requiring equal coverage of mental health and substance use disorder treatments compared to physical care.

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"Clients are going to continue to work with consultants to generate, refresh and continue the upkeep on those competitive analyses, should they receive a subpoena from the Department of Labor," [Sage Fattahian](#) said. "[I]n 2024 employers and plans need to prepare for potential DOL audits."

- For more information: [5 Policy Moves Benefits Attys Should Watch for in 2024](#), *Law360*

## *NLRB's Joint Employer Rule Poses Risk-Cost Analysis*

A business's response to the National Labor Relations Board's (NLRB's) new joint employer rule may boil down to one question: whether the business would ever need to control another employer's workers. If the business doesn't foresee the need to control them, changes to its contracts, policies, and practices may be in order, so that there isn't a joint employer relationship. However, if the business needs to control another employer's workers and is resigned to the possibility of being a joint employer, no changes may be needed.

"If a business doesn't want to be a joint employer, then it's time to conduct a comprehensive assessment of business relationships and changes to avoid reserved or indirect control over essential terms and conditions of employment." – [John F. Ring](#)

- For more information: [NLRB's Joint Employer Rule: Do You Want to Control Other Employers' Workers?](#), *HR Magazine*

## *Workplace Fairness Comes to the Forefront*

Predictive scheduling is one of the latest trends in the ever-evolving labor and employment law landscape. Particularly targeting workers in the fast food, hospitality, and other retail environments, predictive scheduling is gaining momentum throughout the United States, while adding a layer of complexity to wage and hour compliance.

"The rise of predictive scheduling and fair workweek legislation has seen a wave of state and local agency enforcement actions and class action lawsuits resulting from alleged noncompliance. While it's expected that predictive scheduling will continue to expand into additional metro areas and states as we head into 2024, employers that aren't yet affected should pay close attention as their jurisdictions might adopt such laws next." – [Ashley J. Hale](#), [Michael D. Schlemmer](#)

- For more information: [The Rise of Predictive Scheduling: What Employers Need to Know in 2024](#), *Total Retail*

With pressure from organized labor, as well as a rise in employee activism, showing no signs of abating, 2024 looks to be another challenging year for employers of all shapes and sizes. So, what should businesses, especially those less used to unionization, look out for over the coming 12 months?

"Employers are recognizing the importance of employee engagement in achieving organizational goals. As a result, they are investing in initiatives to improve employee engagement, such as providing opportunities for feedback, recognizing employee achievements, and creating a positive work environment." – [Matthew Howse](#)

"There is also an increased awareness of the importance of mental health, particularly in the workplace, leading to a growing understanding of the impact of mental health on overall health and wellbeing." – [Louise Skinner](#)

- For more information: [Global Employment Landscape Undergoing Rapid Transformation](#), *International Employment Lawyer*



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Another bill that will be introduced into the Parliament of Singapore in 2024 is the Workplace Fairness Legislation.

The bill aims to protect workers from discrimination on the basis of race, religion, language, sex, marital status, age, disability, sexual orientation, and other relevant factors. “It will also provide a clearer legal framework for reporting and addressing workplace discrimination.” – [Joo Khin Ng](#)

- For more information: [4 Measures Investors and Businesses Must Be Aware of in 2024](#), *Singapore Business Review*

## Immigration

### *Employers Remain Alert to Imminent Changes to H-1B Regulations and Registration Process*

Employers should begin evaluating their H-1B needs for fiscal year (FY) 2025. Each January, US Citizenship and Immigration Services (USCIS) releases dates for the H-1B cap registration processes, with registration generally opening at the beginning of March. While awaiting USCIS’s announcement detailing this year’s cap, employers should review the immigration status of their current and potential foreign national employees and identify any individuals for whom H-1B status might be beneficial.

“Employers should begin assessing their FY2025 H-1B needs now—identifying current and potential foreign national employees for whom H-1B status might be beneficial—in preparation for the registration period. By preparing early, employers can collect and organize applicable data to ensure they are ready for this dynamic multistep process.” – [Eleanor Pelta](#), [Whitney Lohr](#)

- For more information: [Employers: Time to Begin Planning for the Fiscal Year 2025 H-1B Filing Season](#), *Morgan Lewis LawFlash*

### *US Eases Barriers as Global Talent Wars for AI and STEM Workers Heats Up*

Recognizing the critical role of human ingenuity and capital in the AI ecosystem—and the global competition for the talent required to develop AI and related STEM-based technologies—the October 30 AI executive order includes several immigration-related provisions that seek to reduce current barriers to timely and predictable immigration for AI and other science, technology, engineering, and math professionals from around the world.

“The immigration provisions within the order represent a strategic approach to addressing the global competition for talent by seeking to attract and retain AI and STEM talent from around the world. By streamlining visa processing, enhancing educational and exchange programs, promoting the US as an AI destination, and improving current visa programs and pathways to permanent residency, the Biden administration aims to cultivate a diverse and skilled AI workforce that will drive innovation and contribute to the nation’s economic competitiveness. The effective implementation of these measures will be crucial in ensuring that the US remains at the forefront of AI development and utilization.” – [Eric S. Bord](#)

- For more information: [How AI Executive Order Aims to Compete for Foreign Talent](#), *Law360*

## Intellectual Property

### *AI, Patent Eligibility, and Fintiv*

2023 saw some notable developments relating to AI, patent eligibility, and the Fintiv rule. A few key items related to patents in the United States are at the forefront of shaping our patent laws now and beyond in 2024.

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"2023 saw interesting changes to the US patent landscape and it will be interesting to see what is in store for 2024. The rise of AI presents unique challenges and opportunities. Legislative efforts such as PERA will be interesting to follow as stakeholders demand clarity on issues such as patent eligibility for computer technology. And the PTAB landscape should continue to evolve under Director Vidal's active leadership, including the rule changes and proposals brought forth this year." – [Manita Rawat](#), [Alexander B. Stein](#)

- For more information: [2024 Forecast: AI, Patent Eligibility and Fintiv](#), *Life Sciences Intellectual Property Review*

## *Modernization and Expansion of EU's IP Framework*

The year 2024 will undoubtedly be another exciting year for intellectual property (IP), as the European Union continues to modernize and expand its existing framework.

"Most notably, the reform of the 20-year-old [EU design legislation](#) is underway, which aims to update and better harmonize design protection in the EU, including clarifications on the conditions of the 'repair clause' and the possibility of cumulating protection afforded by registered designs and copyright laws." – [Nick Bolter](#), [Eva Baliner-Poggi](#)

- For more information: [2023 in Review: Notable IP Moments in the EU](#), *World IP Review*

## **Family Offices**

### *Adaptability of Family Offices*

Investors in many asset classes are positioning themselves to be more adaptable in 2024 to minimize volatility in uncertain market conditions. That is equally true for many family offices, as they are paying closer attention to how these regulatory changes in 2024 will affect their investment strategies amid a changing global economy and more sophisticated acquisitions.

"As where family offices are investing has recently expanded, both in terms of geography and asset types, it is more important than ever for these multigenerational, high-net-worth individuals to have a firm grasp of both the legal and geopolitical landscape." – [Sara A. Wells](#), [Jack J. O'Brien](#), [Christine Ayako Schleppegrell](#)

- For more information: [5 Recent Developments Family Offices Are Watching in 2024](#), *Law360*

## **Tax**

### *Much-Anticipated Guidance on Clean Hydrogen Tax Credit Arrives*

The Internal Revenue Service and the US Department of the Treasury recently published proposed regulations setting forth rules applicable to the credit for the production of clean hydrogen and the election to treat clean hydrogen production facilities as energy property under Sections 45V and 48(a)(15) of the Internal Revenue Code enacted under the Inflation Reduction Act of 2022.

"The Proposed Regulations provide much-anticipated guidance regarding eligibility for and the requirements for claiming the two types of clean hydrogen federal income tax credits. Among the most sought-after guidance, the Proposed Regulations address the use of energy attribute certificates, such as renewable energy certificates, to support a project's clean hydrogen emissions profile (e.g., for hydrogen produced from electrolyzers powered by electricity sourced from the grid)." – [Casey S. August](#), [Douglas A. Hastings](#), [Kenneth M. Kulak](#), [Mark A. Lazaroff](#), [Andres N. Andrews](#), [M. Jared Sanders](#)

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- For more information: [Parsing Treasury's Proposed Clean Hydrogen Tax Credit Rules](#), *Law360*

## *A New Approach to Limited Partnerships' Tax Obligations*

Following the US Tax Court's decision in *Soroban Capital Partners LP v. Commissioner of Internal Revenue*, private equity, hedge fund, and other investment fund sponsors organized as limited partnerships under state law will need to reexamine whether their limited partners are subject to the Self-Employment Contributions Act tax on investment professionals.

"The *Soroban* decision changes how state law limited partnerships and their limited partners should approach this issue. Moving forward, a limited partnership and its limited partners should consider engaging in a functional analysis of the partners' roles and responsibilities. Based on this functional analysis, they should consider whether a distinction can be made with respect to income attributable to a partner's services to, or for the benefit of, the partnership, as opposed to income attributable to a partner's equity ownership in the partnership." – [Jennifer Breen](#), [Richard S. Zarin](#), [Daniel F. Carmody](#)

- For more information: [How 'As Such' Changes LPs' Self-Employment Tax Exposure](#), *Law360*

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