



36TH ANNUAL SEMINAR

Labor & Employment Relations Law

Year in Review 2025 Labor and Employment Legal Updates

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Today's Presenters



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Today's Agenda



FEDERAL
EMPLOYMENT LAW
DEVELOPMENTS IN
2025



EEOC PRIORITIES
AND ENFORCEMENT
TRENDS



NOTABLE U.S.
SUPREME COURT
DECISIONS



STATE AND LOCAL
TRENDS



EMERGING TRENDS
& WHAT TO WATCH
IN 2026



PRACTICAL
TAKEAWAYS FOR
EMPLOYERS



Q&A

Federal Employment Law Developments in 2025

Notable Bills Proposed In Congress – Not Yet Passed & Highly Unlikely to Pass

- Paycheck Fairness Act (H.R. 17)
 - More effective remedies to victims of discrimination in the payment of wages on the basis of sex and other purposes.
- Protecting the Right to Organize (PRO) Act (H.R. 20)
 - Make union representation more robust and effective and cover a larger number of working people.
- Farm Workforce Modernization Act (H.R. 3227)
 - Creates temporary legal status for farmworkers and modernizes the permanent residence (green card) process.
- Legal Workforce Act (H.R. 251)
 - Directs the Department of Homeland Security (DHS) to create an electronic eligibility confirmation system to replace the E-Verify system
- Workplace Violence Prevention for Health Care and Social Service Workers Act (H.R. 2531)
 - Requires employers within healthcare and social services industries to develop a comprehensive workplace violence prevention plan
- Protecting America's Workers Act (H.R. 3036)
 - Amends OSHA to increase protections for whistleblowers and increases penalties for high gravity violations.
- Equality Act (H.R. 15)
 - Prohibits discrimination on the basis of sex, gender identity, sexual orientation, and other purposes – closes gaps in the Civil Rights Act of 1964 specifically for LGBTQ folks.
- Protections and Transparency in the Workplace Act (H.R. 4599)
 - Requires public companies to provide sexual harassment claim disclosures in certain reports, requires public companies to implement mandatory sexual harassment training.

Notable Executive Actions Impacting Employers

- Executive Order 14173 – “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (January 21, 2025)
 - Expressly revokes Executive Order 11246, a Civil Rights era EO with the stated intent to ensure nondiscrimination in federal contracting.
 - Warned private employers against implementing and maintaining illegal DEI programs.
- Executive Order 14151 – “Ending Radical and Wasteful Government DEI Programs and Preferencing” (Jan 20, 2025)
 - Directs any and all DEI programs throughout the federal government to be eliminated.
 - Directs federal agencies to terminate, to the maximum extent permitted by law, all “equity-related” government grants or contracts.
 - Federal employee performance reviews shall reward individual initiative, skills, performance, and hard work. Reviews cannot consider DEI/DEIA factors, goals, policies, mandates, or requirements.
- Executive Order 14168 – “Defending Women from Gender Ideology Extremism” (January 20, 2025)
 - Aims to reverse federal policies and regulations that recognize gender identity as distinct from biological sex.
 - Directs federal agencies to base definitions, data collection, and policy decisions on biological sex rather than gender identity, with the stated goal of protecting women’s rights and safety.

Notable Executive Actions Impacting Employers Contd.

- Executive Order 14281 – "Restoring Equality of Opportunity and Meritocracy" (April 23, 2025)
 - Aims "to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals."
 - The EO posits that disparate impact liability is contrary to the concept that all citizens are treated equally under the law and employers may try to avoid disparate impact liability by intentionally or unintentionally engaging in affirmative action or to overcorrect for the impact of the neutral policy or practice.
 - Directs agencies to deprioritize enforcement of statutes and regulations that include disparate-impact liability. This includes Title VII.
 - Instructs the AG and Chair of the EEOC to assess pending investigations, lawsuits, or positions taken in ongoing matters under Federal civil rights laws, including Title VII, that rely on the theory of disparate-impact liability and take actions consistent with the EO.
- Attorney General Memorandum for All Federal Agencies (July 29, 2025)
 - Aimed at clarifying "the application of federal antidiscrimination laws to programs or initiatives that may involve discriminatory practices, including those labeled as Diversity, Equity, and Inclusion programs."
 - Offers Best Practices which are characterized as "non-binding suggestions" and "practical recommendations" for compliance.
- Proclamation – "Restriction on Entry of Certain Nonimmigrant Workers" (Sept. 19, 2025)
 - Announced \$100,000 fee for new H-1B petitions filed after 12:01 AM ET on Sunday, September 21, 2025 (effective date).
 - Effective for 12 months after the effective date and may be extended
 - USCIS clarification: does not apply to individuals who are the beneficiaries of petitions that were filed prior to the effective date, are the beneficiaries of currently approved petitions, or are in possession of validly issued H-1B non-immigrant visas.

EEOC Priorities and Enforcement Trends

EEOC Status Update

- January 20, 2025 – President Trump Appoints Andrea Lucas as EEOC Acting Chair.
- July 31, 2025 – U.S. Senate confirmed Lucas by a vote of 52-45.
- No quorum yet, but the Senate received Brittany Panuccio's nomination on May 6, 2025.
- Lucas has announced certain agenda items:
 - Focus on Anti-American bias
 - Directed Federal Government to enforce laws governing sex-based rights, protections, and opportunities
 - Removed and is reviewing some Biden-era AI guidance
 - Ordered closure of disparate impact cases
 - Focus on religion claims
 - Focus on DEI-related claims

WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION RELATED TO DEI AT WORK

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on protected characteristics such as race and sex. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees are harmed. Title VII's protections apply equally to all racial, ethnic, and national origin groups, as well as both sexes.



EEOC Status Update Contd.

- Pursuant to Executive Order 14168, Chair Lucas has taken the following actions:
 - Announced as priority to defend the biological and binary reality of sex and related rights, including women's rights to single-sex spaces at work.
 - Removed the agency's "pronoun app," a feature in employees' Microsoft 365 profiles, which previously displayed internally and externally.
 - Ended the use of the "X" gender marker during the intake process for filing a charge of discrimination.
 - Removed "Mx." from the list of prefix options on charge and related forms.
 - Commenced review of the content of EEOC's "Know Your Rights" poster.
 - Removed materials promoting gender ideology on the Commission's internal and external websites.
- Lucas stated: "Biology is not bigotry. Biological sex is real, and it matters," . . . "Sex is binary (male and female) and immutable. It is not harassment to acknowledge these truths—or to use language like pronouns that flow from these realities, even repeatedly."

The EEOC's PWFA Final Rule

- May 21, 2025: Western District of Louisiana vacated the PWFA's final rule requiring accommodations for elective abortions
 - Concluded the final rule exceeded the EEOC's authority
 - Directed the EEOC to remove all provisions that require employers to consider accommodations related to employees' elective abortions
- **Reminder:** employers may request only “reasonable documentation,” which is:
 - (1) is the minimum sufficient to confirm that there is a physical or mental condition underlying the individual’s limitation;
 - (2) confirms that the condition is related to, affected by, or arises out of “pregnancy, childbirth or related medical conditions”; and
 - (3) states that the requested change or adjustment to the individual’s job or application process is needed due to the limitation

EEOC Charge Data

	FY 2021	FY 2022	FY 2023	FY 2024
Total Charges	61,331	73,485	81,055	88,531
Race	20,908	20,992	27,505	30,270
Sex	18,762	19,805	25,473	26,872
National Origin	6,213	5,500	6,963	8,266
Religion	2,111	13,814	4,341	3,640
Color	3,516	4,088	5,819	6,684
Retaliation (all statutes)	34,332	37,898	46,047	42,301
Retaliation (Title VII)	25,121	28,462	31,972	29,207
Age	12,965	11,500	14,144	16,223
Disability	22,843	25,004	29,160	33,668
Equal Pay	885	955	1,012	1,116
GINA	242	444	361	393
PWFA	n/a	n/a	188	2,729

Notable U.S. Supreme Court Decisions (2025 Term)

Ames v. Ohio Department of Youth Services

Decided June 5, 2025 – unanimous

- **Holding:** Title VII does not permit a heightened burden for majority-group plaintiffs
 - Resolves A Circuit Split – cannot require a higher standard of proof for “majority group” plaintiffs
 - No “Background Circumstances” test
 - Lowers the barrier to reverse discrimination claims
 - *McDonnell Douglass* framework intact

E.M.D. Sales, Inc. v. Carrera

Decided January 15, 2025 – unanimous

- **Holding:** when an employer asserts an exemption under the FLSA, the employer must prove the exemption by the preponderance of the evidence standard (not a higher “clear and convincing” standard)
 - Easier for employers to prove exemptions
 - Resolves a circuit split – some circuits used the “clear and convincing” standard, some used the “preponderance of the evidence” standard

Catholic Charities Bureau v. Wisconsin LIRC

Decided June 5, 2025 – unanimous

- **Issue:** does a state violate the First Amendment's religion clauses by denying a religious organization an otherwise-available tax exemption because the organization does not meet the state's criteria for religious behavior?
- **Holding:** a state law that exempts nonprofit organizations from unemployment taxes for being "operated primarily for religious purposes" may not condition that exemption on particular theological practices such as proselytizing or serving only fellow believers
 - The First Amendment prohibits government favoritism or discrimination between religions, particularly when based on theological differences
 - Reinforces that government cannot second-guess the religious nature of organizations for benefits or exemptions

State and Local Trends

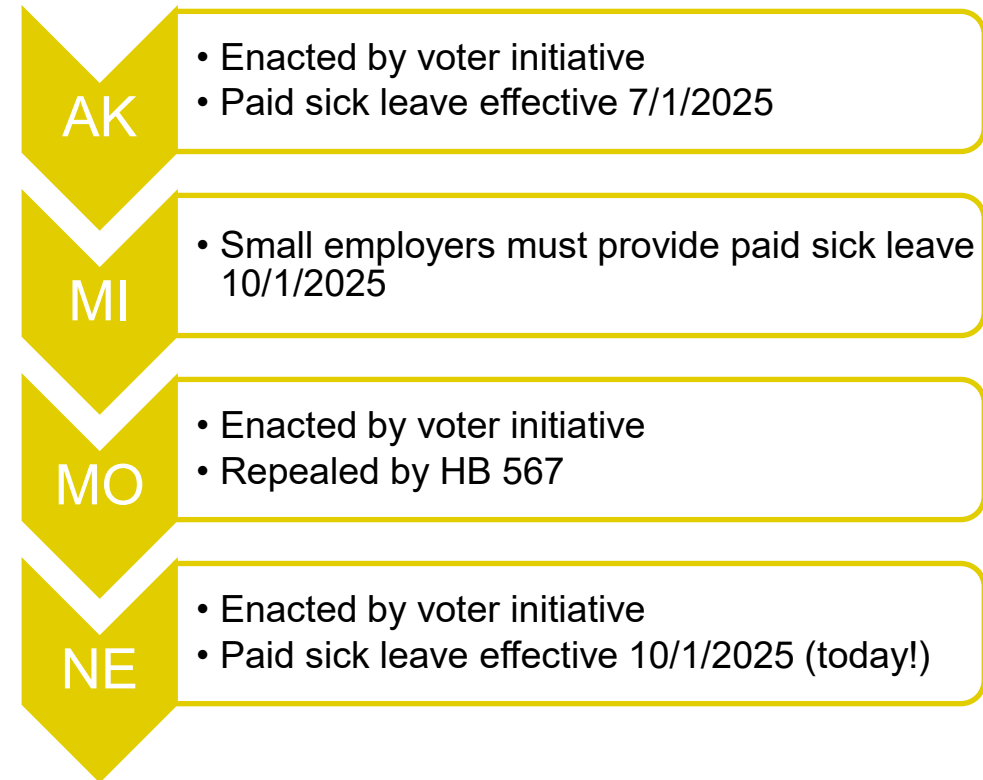
Paid Family Leave Laws

- Thirteen states and the District of Columbia have mandatory paid family and medical leave laws

CO	• Leave expansion as of 1/1/2026
DE	• Benefits payable as of 1/1/2026
ME	• Claims can be processed by 5/1/2026, subject to potential delay
MD	• Benefits payable as of 1/3/2028
MN	• Benefits payable as of 1/1/2026
RI	• Leave expansion as of 1/1/2026

Paid Sick Leave Laws

- Twenty-Six states and the District of Columbia require paid sick leave
- Paid sick leave is no longer limited to "employee-friendly" states
- Voter initiatives may result in additional state coverage



Non-Compete Restrictions

- FTC issued rule in April 2024 that would have banned most non-compete agreements
 - The rule was stopped by the courts and appeal efforts have been abandoned
 - August 20, 2024: a district court issued an order stopping the FTC from enforcing the rule.
 - October 18, 2024: the FTC appealed that decision
 - September 5, 2025: the FTC took steps to dismiss its appeal in the Fifth Circuit
- States continue to enact restrictive non-compete bans (WY)
 - Exception: Florida's newly enacted law
- Expanded protections from non-compete agreements for physicians and other healthcare professionals (AK, CO, IN, MD, PA, TX)

Pay Transparency Laws

- Rapidly Growing Area
- States are lowering the employer size threshold for disclosure requirements
- Likely to see more states and localities enacting legislation in the future
- Requirements vary across states – difficult patchwork to navigate
 - Reporting pay data
 - Job posting pay and benefit disclosures
 - Notification of internal promotion opportunities
 - Notification of pay on request
 - Salary history inquiry bans

Reminder:

- MA's law is effective October 29, 2025
- NJ's law went into effect June 1, 2025
- VT's law went into effect July 1, 2025
- IL & MN: Went into effect January 1, 2025

Cannabis and the Workplace

- August 11, 2025: President Trump said, "We're looking at reclassification and we'll make a determination over the next few weeks"
- States are passing legislation prohibiting employers from discriminating against employees for off premises lawful use of cannabis
- Some states and localities are enacting laws prohibiting pre-employment testing of cannabis
- These restrictions do not apply to safety-sensitive jobs

Emerging Trends & What to Watch in 2026

What to Watch 2026

- Regulation rollbacks and changes
 - PWFA
 - Deductions on tips and overtime
 - Changes to protections for migrant workers
 - Shift Back to “Economic Realities” Test to determine who counts as an employee v. contractor (FLSA)
- Expanded Paid Family Leave
 - More state and local laws
 - Additional permissible uses
- Laws requiring notice when using AI in hiring/other AI regulation
 - AI Bias Training

Practical Takeaways for Employers

Practical Takeaways

- Update pay transparency practices
- Update paid leave policies
- Use caution when using AI in hiring
- Modernize your workplace's harassment and DEI training
 - Ensure training reflects the current climate
- Review exempt and non-exempt employee classifications
- Review policies around religious and other accommodations
- Continue to adapt to flexible workplace schedules including remote and hybrid work options

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Q&A

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Additional Webinars

- Tomorrow, October 2
 - Understanding New H-1B and Gold Card Proposals
- November 6
 - California Labor & Employment Year in Review: What Employers Need to Know for 2026
- November 12
 - Immigration Update for Employers: ICE Enforcement and Visa Program Changes

Office Locations

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515 Congress Avenue, Suite 2500
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8300 Arista Place, Suite 300
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Charlotte

227 West Trade St, Suite 1500
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Wilmington

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