



2025 EMPLOYMENT LAW TRENDS & UPDATES

DAVEANTE JONES
07.24.2025

f x in

LITTLE ROCK

ROGERS

wlj.com

SINCE 1900



WRIGHT
LINDSEY
JENNINGS



today's discussion

- Shifts in Focus on Equal Employment Opportunity (EEO)
- Administration's Priorities Impacting Immigration
- Movement on National Labor Relations Board (NLRB) Front
- Approaching Wage and Hour Issues
- Artificial Intelligence (AI) Development on the Horizon

ILLEGAL DEI

- A major priority of the current presidential administration has been addressing **“illegal” DEI programs focused on race or gender conscious efforts.**
- Since January 2025, President Trump has signed multiple executive orders seeking to eliminate DEI in federal government:
 - **Ending Radical and Wasteful Government DEI** – Requires federal government and its agencies to eliminate DEI programs deemed discriminatory and establishes reporting on federal agencies, departments, contractors, and grantees that have participated in DEI-related activities.
 - **Ending Illegal Discrimination and Restoring Merit-Based Opportunity** – Eliminates affirmative action requirements for federal contractors and prohibits private organizations from conducting DEI programs for jobs created by federal contracts

Illegal DEI, cont.

- **March 2025** – EEOC and DOJ jointly issues technical assistance documents covering their updated enforcement stance with respect to DEI initiatives and compliance with Title VII and specifying examples of unlawful DEI-related workplace for private employers:
 - Use of quotas and other balancing efforts
 - Disparate treatment in various aspects of employment
 - Limiting membership in workplace groups
 - Unlawful harassment during DEI training
 - Retaliation for objecting to or opposing employment discrimination related to DEI
- **May 2025** – DOJ publishes memo announcing its launch of a new Civil Rights Fraud Initiative to address what the DOJ views as unlawful discrimination by federal contractors or other recipients of federal funds.

Illegal DEI, cont.



- **Arkansas Act 116** – Legislation intended to “prohibit affirmative action and preferential treatment by the State of Arkansas and other public entities.” Essentially prohibits promotion of:
 - Preferences based upon race, color, sex, ethnicity, or national origin;
 - Differential treatment on the basis of race, color, sex, ethnicity, or national origin; or
 - Political or social activism to consider race, color, sex, ethnicity, or national origin as factors in decision-making, except when required by federal or state law.”
- Goes into effect **August 5, 2025**.

“Reverse” Discrimination



“Reverse” Discrimination (pre-Ames)

- “Background circumstances” rule required majority-group plaintiff to make a heightened showing at **prima facie** stage of discrimination claim
- Show that defendant is unusual employer who discriminates against the majority

Ames v. Ohio Dep’t of Youth Services:

- Ames (heterosexual woman) applies for management position but it is ultimately awarded to homosexual woman
- Ames later demoted and is replaced by homosexual man
- Ames files Title VII suit arguing she was passed over because she was heterosexual
- **Current standard:** Evidentiary burden for majority-group plaintiff to establish Title VII claim is “**same burden**” applicable to minority-group plaintiff
- EEOC takes same position

Rollback of EEOC Harassment Guidance

- Trump signed Executive Order titled **Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.**
- Directed EEOC to rescind, among other things, those portions of Enforcement Guidance on Harassment in the Workplace that conflict with the Executive Order. In response, EEOC Acting Chair Andrea R. Lucas rolled back much of the EEOC's guidance and highlighted a number of changes.
 - Made defending **biological** and **binary** definitions of **sex** and related rights an agency priority.
 - Removed agency's "**pronoun app**" for network profiles.
 - Removed "**X**" gender marker for filing discrimination charge and the prefix "**Mx.**" as option for filing charges and related forms
 - Removed info "**promoting gender ideology**" from EEOC's platforms

Rollback of EEOC Harassment Guidance



State of Texas v. EEOC (May 15, 2025):

- **Vacated** portions of Harassment Guidance that specifically pertain to **sexual orientation** and **gender identity**
- Guidance's expansion of definition of "**sex**" was unlawful
- Essentially was a misinterpretation of **Bostock** decision which court says only decided question of whether "'fir[ing] someone simply for being homosexual or transgender' violated Title VII's prohibition on sex discrimination"

Rollback of EEOC Harassment Guidance



- EEOC cannot rescind or deny even the vacated parts of its Harassment Guidance due to its lack of a quorum.
- **Bostock** decision remains good law unless and until it is reversed.
- For now, Title VII continues to protect against workplace discrimination on basis of sexual orientation and gender identity to the extent that employees may not be terminated because of their sexual orientation or gender identity.

ACTION ITEMS



- **Individual v. Systemic:** EEOC is now focusing less on systemic discrimination and more on individual cases.
- **DEI Programs:** DEI programs should be reviewed to make sure they do not violate Title VII or other state and federal laws.
- **Legal Developments:** Continue to monitor both federal and state developments.
- **Policies/Procedures:** Evaluate anti-discrimination policies, particularly regarding LGBTQ+ protections, as underlying statutory protections remain in effect despite policy shifts.

PREGNANT WORKERS FAIRNESS ACT (PWFA)



- Requires employers (15+ employees) to provide **reasonable accommodations** to an applicant's or employee's known limitations due to **pregnancy, childbirth, or related medical conditions**, unless the accommodation will cause an **undue hardship**
- A “**related medical condition**” includes limitations related to pregnancy, childbirth, and post-partum symptoms, as well as symptoms related to fertility treatments
 - Limitations can be modest, minor, or episodic
- EEOC believes some accommodation requests should almost always be granted like taking more frequent breaks or allowing employee to carry or keep water or food for consumption.
- Cannot make employee take leave if another reasonable accommodation can be provided

PWFA, cont.



EXAMPLES OF CONDITIONS COVERED:

- Fertility treatments
- Morning sickness
- Preeclampsia
- Stillbirth and abortion*
- Anemia
- Dehydration
- Hemorrhoids
- Vision changes
- Antenatal anxiety or depression
- Postpartum depression

PWFA, cont.

- EEOC's Final Rule definition of "**related medical condition**" included "**termination of pregnancy, including via miscarriage, stillbirth, or abortion.**"
- As a result, Final Rule required employers to reasonably accommodate employees who receive an abortion, absent undue hardship, and prohibited them from taking adverse employment actions against individuals who requested or used such accommodations.
- In May, federal district court in Louisiana **vacated** part of Final Rule interpreting PWFA to require elective **abortion-related** accommodations and **removing abortion** from definition of a **pregnancy-related medical condition**.
- Current EEOC likely will not appeal ruling so employers likely not required to follow PWFA's requirement to provide accommodations for **purely elective** abortions that are **not medically necessary**.

PWFA, cont.



- Employee must make employer (manager) aware of pregnancy or childbirth related condition and must ask for accommodation.
- Managers have no obligation– and **SHOULD NOT** – ask employees whether they are or plan to become pregnant or have a pregnancy or childbirth related condition.

REMEMBER – **NO MAGIC WORDS** EMPLOYEE REQUIRED TO USE:

- Question to ask – did employee communicate a need for an adjustment at work due to a condition related to pregnancy or childbirth?
- Did employee express some type of issue with her job duties as a result of a condition related to pregnancy or childbirth?

Religious Discrimination



- Title VII requires an employer to reasonably accommodate an employee's **sincerely held religious beliefs** unless it would cause an **undue hardship**.
- Discrimination, segregation, and harassment based on religion is also prohibited.
- Harassment can occur when employee is subjected to “**unwelcome remarks or conduct based on their religion**” or when employee is required to “**coerced to abandon, alter, or adopt a religious practice as a condition of employment.**”

Religious Discrimination, cont.



UNDUE HARDSHIP (pre-*Groff*)

- More than a minimal burden on the operation of the business
- Violating seniority system, causing lack of necessary staffing, jeopardizing security or health, or costing more than a minimal amount

Groff v. DeJoy:

- Groff informs USPS he could not work any Sunday shifts due to his religion
- USPS required Sunday work to ensure timely delivery of Amazon packages
- Groff disciplined for missing shifts and has to resign
- USPS: administrative burden of scheduling changes as well as impact on morale of other employees was undue hardship
- **New standard**: Has to result in “**substantially increased costs in relation to conduct of its particular business**”

Religious Discrimination, cont.



- Assumption that **more people with the same religious practices** may need accommodation is **not** evidence of undue hardship
- **Temporary or administrative costs** or having to institute **voluntary or occasional** shift swapping is likely not sufficient evidence of undue hardship

QUESTIONS TO ASK:

- What are legitimate issues company is worried about?
- Other alternative options available?
- Is there some concrete financial cost?
- Are there non-monetary considerations to take into account? E.g., coworkers' legal rights and interests.

Religious Discrimination, cont.



- In **March** press release, EEOC emphasized agency's plans to prioritize holding universities and colleges accountable to prevent the creation of hostile work environment for Jewish employees.
- This was consistent with Executive Order signed by President Trump titled Additional Measures to Combat Anti-Semitism.
- Acting Chair has encouraged individuals who believe they have experienced discrimination or anti-Semitism at work to file a charge. This could possibly lead to rise in charges filed on this basis.
- Be sure to review policies and practices to ensure they include provisions against religious discrimination and consider implementation of regular training sessions addressing religious discrimination.

IMMIGRATION



- A big priority for this administration is **America First**.

So what does that look like. . .

- ICE funding will increase from \$10 billion to over \$100 billion by 2029, likely meaning it will become biggest federal law enforcement agency. Likely will be increase in employer **I-9 audits** and **workplace ICE raids**.
- EEOC shifting focus of national origin discrimination enforcement to discrimination against Americans. In February, announced \$1.4 million settlement of lawsuit alleging national origin discrimination against American workers by Guam-based hotel.
- Increase in social media vetting for F, M, and J visa applicants (students and exchange visitors) as of June 26.

NATIONAL LABOR RELATIONS ACT (NLRA)



- Among other things, NLRA guarantees employees the right to engage in “**concerted activities** for the purpose of collective bargaining or other **mutual aid or protection.**”
- The key thing here is that this has to include “**terms and conditions of employment.**”
That could include:
 - Discussing dissatisfaction with **working conditions**
 - Participating in **concerted refusal** to work in **unsafe work environment**
 - Discussing **wage rates, bonuses, benefits**, or other **working conditions**
 - Criticizing **actions of management** that affect **terms** and **conditions of employment**

NLRA, cont.



- Biden administration set out to be most pro-union administration ever. For instance, you saw that in the Board's approach to workplace rules, stating such rules must be "**narrowly tailored**" and "**advance a legitimate and substantial business need.**"
- Any interference with rights of an employee under the NLRA was presumptively unlawful, and it was employer's burden to show special circumstances to demonstrate the rules was necessary.
- That touched on policies that required some sort of confidentiality, attempted to dictate some sort of speech or activities (e.g., social media, solicitation, conflict of interest, outside employment), attempted to monitor employee activity/speech (e.g., camera and video use, electronic monitoring), subjected employees to discipline for actions/speech (e.g., personal conduct, civility).

NLRA, cont.



- Board also took aggressive approach to invalidate language in things such as confidentiality/non-disparagement agreements, non-compete agreements, repayment agreements (relocation, tuition reimbursement), and outside employment policies.
- Trump administration's position will be different than what has taken place over the past 4 years.
- Trump wasted no time in changing leadership as he removed previous General Counsel Jennifer Abruzzo and NLRB Board Member Gwynne A. Wilcox in the weeks following his inauguration. This left Board without quorum.

NLRA, cont.



- Board currently cannot issue any decisions, issue regulations, or otherwise take any action that would require Board approval since there is no quorum.
- Memo issued in February by acting General Counsel to all field offices rescinding several memoranda issued by the former General Counsel asserting stances on available remedies, rights of student-athletes under the NLRA, electronic monitoring, severance agreements and non-compete agreements.
- Trump recently nominated two individuals to fill two vacant seats on the Board, potentially restoring Board's ability to issue decisions. Senate confirmation could still take months. But once confirmed, more big picture changes will happen.

FINAL OVERTIME RULE



- Released by the U.S. DOL on April 23, 2024

A refresher on the Fair Labor Standards Act (FLSA) overtime requirements . . .

- Employers not required to pay overtime to “white collar” executive, administrative and professional (EAP) workers and highly compensated employees (HCE) if they are paid on a salary basis at a rate that meets certain thresholds *and* perform specific duties that are considered exempt under the FLSA regulations

FINAL OVERTIME RULE, cont.



- Final rule in... threshold requirements... exemptions
in two pha



- Starting July 1, ..., the salary thresholds were to automatically update every three years to reflect current earnings data

FINAL OVERTIME RULE



Any actions to take in response?

- For those who received salary increases back in July 2024? **Reverting** back to lower salary level would be problematic for a variety of legal reasons, as well as non-legal reasons, such as worker morale.
- Review payroll classifications
- Stay updated on DOL actions

OTHER WAGE/HOUR ITEMS



- ***E.M.D Sales, Inc., et al. v. Carrera***: Supreme Court holds that employers must prove employee is exempt from minimum wage and overtime pay provisions of Fair Labor Standard Act by only a **preponderance of the evidence**, and not by “clear and convincing” evidence.
 - Employers should take appropriate steps to ensure they would be able to demonstrate that they properly classified each employee who is not paid minimum wage or overtime by ensuring they have appropriate and sufficient records of their payment on a salary basis and of the nature of the duties the employee performs.
- Department of Labor Wage and Hour Division **no longer seeking liquidated damages** in any negotiated settlement with an employer prior to litigation. An incentive to seeking early resolution in audit/investigation phase.

OTHER WAGE/HOUR ITEMS



NO Taxes on **Tips** and **Overtime Pay**:

- Tax **deductions** for **OT** pay apply only to workers making less than **\$150,000** per year or **\$300,000** for couples jointly. Cap of **\$12,500** per year or **\$25,000** if married.
- Tax **deductions** on **tips** are available only for employees who customarily or regularly receive tips. List of covered occupations will be published by Treasury Secretary.
- Tip deduction also only applies to workers making less than **\$150,000** per year or **\$300,000** for couples filing jointly. Cap for deduction is **\$25,000** per worker.
- Both deductions only set to last until **2028** as of now.

ARTIFICIAL INTELLIGENCE (AI)



President Trump's "**American AI Action Plan**"

- Unveiled on July 23, 2025. Identifies 90 Federal policy actions across three pillars—**Accelerating Innovation, Building American AI Infrastructure**, and **Leading in International Diplomacy and Security**.
- Plan expresses that the Trump administration “supports a **worker-first AI agenda**. By accelerating productivity and creating entirely new industries, AI can help American build an economy that delivers **more pathways to economic opportunity** for **American workers**.”
- Potential for employers to be able to offer tax-free reimbursement for AI-related training.



QUESTIONS?

DAVEANTE JONES

dljones@wlj.com

[f](#) [x](#) [in](#)

LITTLE ROCK

ROGERS

wlj.com

SINCE 1900



WRIGHT
LINDSEY
JENNINGS