



Cyclone SHRM

Legal Update

2025

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This slide features a dark blue background with a white dotted pattern in the top-left and bottom-right corners. A white rectangular frame in the center contains the title 'Cyclone SHRM' in a light blue sans-serif font, followed by 'Legal Update' and '2025' in a white sans-serif font. Two circular headshots of women are positioned on either side of the text. The Dickinson Bradshaw logo is in the bottom-left corner, and a small copyright notice is at the bottom center.

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Artificial Intelligence

Does HR Still Need Humans?

- Headcount will drop as companies leverage AI
- Fear that HR will be delegated prematurely to AI systems
- Common Uses in HR = talent acquisition, training courses and coaching, and performance management.
- AT IBM, 94% of common staff inquiries are handled by its AI tool called Ask HR
- The amount IBM spends on HR has dropped by 40% over the past 4 years
- What about the people aspect? People just prefer to deal with people
- State Legislation Impacting AI use

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This slide has a dark blue background with a white dotted pattern in the top-left and bottom-right corners. A white rectangular frame at the top contains the title 'Artificial Intelligence' in a white sans-serif font. Below the frame, the subtitle 'Does HR Still Need Humans?' is in a white sans-serif font. A bulleted list follows, with each item preceded by a white dot. The list includes points about headcount, AI delegation, common HR uses, IBM's Ask HR tool, IBM's spending reduction, the human aspect of HR, and state legislation. A large white 'D' logo is in the bottom-left corner, and a white geometric pattern of overlapping squares is in the bottom-right corner. A small copyright notice is at the bottom center.

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Artificial Intelligence

AI Is Forcing the Return to the In-Person Job Interview

- AI now makes it possible to create highly realistic deepfake videos and audios.
- FBI recently warned of a scam involving thousands of North Koreans posing as Americans to secure US jobs
- Gartner (research group) predicts that by 2028, 1 in 4 job-candidate profiles worldwide will be fake
- Some large companies encouraging HR to meet in-person with candidates at least once before extending an offer



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Artificial Intelligence

AI Boosts Chances White-Collar Jobs are Eligible for Overtime

- Use of technology for functions that traditionally require human discretion, or independent judgement could knock those workers outside of the FLSA exclusions for OT
- Example: Accountants
 - AI can flag duplicate transactions, spending patterns, financial fraud.
- Example: Attorneys
 - Associates who only do document review (no more legal judgement?)
- Recommendation: Audit Exempt Positions in Light of AI Technology



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Artificial Intelligence

Generative AI Use in the Workplace Policy

- What Generative AI Tools are Allowed? Which ones aren't?
- How Can the tools be used? What is Prohibited?
- Compliance with other policies
- What information can be entered into the tool? What can't be?
- No Expectation of Privacy



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Artificial Intelligence

Key Questions To Ask

1. Where exactly is your company using AI?
2. What Laws apply to your AI tools, and who's watching them?
3. Can you prove your AI follows the law?
4. How are you managing compliance risk with your AI vendors?
5. What's your backup plan?



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First Amendment

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a re-dress of grievances.”*



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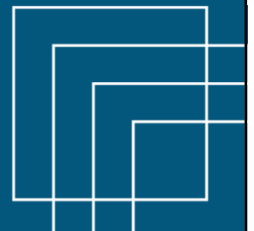
First Amendment

Public Sector Standard – Pickering- Connick Balancing Test

- (1) Did the employee’s speech touch on a matter of “public concern” — *meaning issues that affect society broadly, not just personal workplace grievances*; and
- (2) The employee’s right to speak against the government employer’s interest in maintaining efficiency and discipline.



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First Amendment

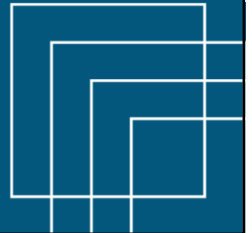
Private Sector Standard

Private employers are not bound by the First Amendment, though state and federal laws may afford protection.

Unless the NLRA or Title VII is applicable.



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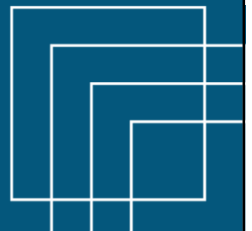
First Amendment

The National Labor Relations Act (NLRA) protects “concerted activities” for “mutual aid or protection.” Specifically, the NLRA protects speech between co-workers regarding:

- (1) unionizing;
- (2) workplace safety;
- (3) wages; and
- (4) collective bargaining.



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First Amendment

Impact on Unemployment

Nonetheless, an Iowa ALJ awarded unemployment to an insurance salesman fired after making a political speech that sparked accusations of racism.



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First Amendment

Policy Updates

- Consider a policy for regulation of speech in the workplace and how to handle off-duty activities or social media post that could impact work.
- Consider updating dress code policies and be careful when restricting messaging on clothing.
- Review current policies for compliance with laws.



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Immigration Issues



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E.O. 14159

“Protecting the American People Against Invasion”

- January 20, 2025
- Directs Dept. of Homeland Security to prioritize enforcement of federal immigration laws related to:
 - o Illegal entry
 - o Unlawful presence of immigrants



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E.O. 14159 – Impact on Employers

1. I-9 Inspections
2. Worksite Raids
3. Visa Processes and Foreign National Employees (hiring and retention)
4. Discrimination



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I-9 Inspections by HSI

- PAST: Mostly triggered by tips
- NOW: Expect more chosen by agency, based on industry & geography
- General Process
 - o Conducted by Homeland Security Investigations (HSI); starts with Notice of Inspection
 - o HSI requires originals (copy all documents provided!)
 - Do not waive the 3-days given to produce documents
 - Do not destroy or modify any documents
 - o Conduct mini-audit, if possible, before production; full self-audit during HSI's review
 - o Violation Types (least to most serious): Technical or Procedural Failures; Serious Failures; Suspect Documents
 - o HSI will re-Inspect later if any violations are found



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I-9 Reminders

- **Form:** Use unexpired I-9 forms; current form 1/20/25 (expires 5/31/27)
- **Document Reviews**
 - Do not choose from a stack of documents offered by the employee (make them choose)
 - Do not accept/copy/record every document offered – only those used for Section 2
 - Check unfamiliar documents against M-396 or state issued examples
 - Follow-up when you get a receipt for a replacement or a doc that expires
- **Filing & Purging**
 - Keep I-9s (and doc copies) in binders, not in personnel files
 - Separate current employee I-9s from former employee I-9s for easier purging



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E-Verify Positives

- Can start I-9 after offer is accepted and not wait for first day of work
- Proper completion of I-9 and verification from E-Verify provides *a rebuttable presumption* that the ER did not knowingly hire in violation of IRCA.
- Required for certain government contract work or to comply with certain government laws/regulations.
- May provide some information to employers when a particular status has been revoked (e.g., some TPP revocations)
- Can get E-Verify+ *when it becomes available* (not available now)
 - Employees enter their own information (Section 1) to pre-verify, reducing employer data entry errors
 - Employees can correct their own errors immediately



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E-Verify Negatives

- The enrollment process is onerous
- Requires training and keeping training up-to-date
- Can't begin I-9 process until start date and must finish within 3 days (different with E-Verify+)
- Requires copying documents, which can be used as evidence of non-compliance later
- Can only accept List B documents with a photo
- Privacy concerns (transmitting and storing PII)
- Can get false negative and false positive results
- Rebuttable presumption is not foolproof
- System is not available during government shut-downs
- Does not reduce the chance of an I-9 inspection



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Preparing for ICE Raids

- Have a written response plan
- Have the communication plan on Page 1 of it!
- Train receptionists on their part of the response/communication plan so they know what to do when ICE shows up
- Designate and train response team members
- OPT: Train all employees about their rights during a raid
- Include who/how to address questions from the media, workers, and workers' family members in the response plan



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Receptionist Training

- Clothing and even badges saying they are ICE Agents, ICE Police, etc., cannot necessarily be trusted, and does not, by itself, allow access
- “I do not have the authority to permit you with access to the business, but I will call a response team leader.”
- “I do not have the authority to answer your questions, but I will call a response team leader.”
- Know who to call and have their numbers close at hand
- Keep other communications to a bare minimum; silence is OK



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Response Team Training

- Contact Legal counsel (wait until arrival, when possible)
- Copy and examine identification badges; independently verify authenticity
- Copy and examine warrant; know differences among warrants and what each allows
- Clarify with the ICE agent what is allowed under the warrant
- Tell the ICE agent the company will allow nothing more than what the warrant requires
- Employer and employees have right to remain silent and refuse to answer questions without an attorney present.



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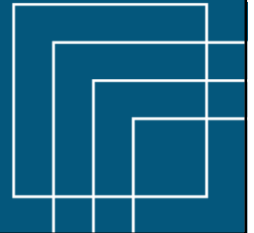
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Response Team Training – Judicial Warrants

- Allow access to public areas and any non-public areas listed on the judicial warrant
- Unlock any locked areas included on the warrant
- If Agents attempt to search areas not included in the warrant, you may object, but do not physically interfere (document)
- Do not assist ICE agents if asked to group people by citizenship/immigration status or country of origin



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Response Team Training, Cont'd

- Accompany agents and observe actions to ensure compliance with warrant
- You may tell employees it is their choice to speak with ICE, but do not direct them to cooperate or refuse to answer questions
- If ICE arrests any worker, do not interfere, but ask where they are being taken (helps employee's family and lawyer find them)
- Document everything



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Receptionist & Response Team Training

- Stay calm, pleasant, and cooperative
- Do not rush or be rushed
- Do not obstruct
- Do not lie or provide false information
- Do not hide or destroy any documents or items (nor attempt it)
- Do not help employees hide or leave, and don't encourage that



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EEOC Updates

EEOC to Close Workers' Disparate Impact Discrimination Changes

- On April 23, 2025, Trump issued EO denouncing disparate impact theories of discrimination.
- Agencies ordered to deprioritize these cases and theories.
- Committed to Merit and equality.



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EEOC Updates

Trump EEOC Agenda will Accelerate with Republican Confirmations

We now have a 3-member Quorum.

1. Challenges to Diversity Programs – Law Firms
2. Reducing LGBTQ+ Protections
3. Closing pending charges using disparate impact theory
4. Revisit its Pregnant Workers Fairness Act rules
5. Litigation – Targeting diversity, equity, and inclusion programs admin deems unlawful.
6. Strong interest in bringing Religious Discrimination cases.



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EEOC Defunds State Bias Probes

- **May 20, 2025:** EEOC halts funding for state investigations of disparate impact claims
- **Retroactive to January 20, 2025**
- Leaves many state agencies without resources to process claims
- Expected legal challenge from blue-state **FEPA agencies**



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Muldrow & Adverse Employment Actions

- SCOTUS in *Muldrow*: “Some harm” sufficient for Title VII claims
- Ongoing litigation on what counts as “adverse action”
- Paid leave, PIPs now under scrutiny
- Courts diverging on how to apply the new standard and whether it extends outside of Title VII, including to ADA cases



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DEI Update



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City of Waterloo

Davis v. City of Waterloo, 551 N.W.2d 876, 880 (Iowa 1996)

- Iowa Civil Rights Act & Title VII
- The City violated state and federal civil rights statutes by promoting an African American male over a Caucasian male because of the African American male's race.
- The City's Affirmative Action plan did not justify the discrimination.



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Students for Fair Admissions, Inc.

Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 198, 143 S. Ct. 2141, 2157, 216 L. Ed. 2d 857 (2023)

- Equal Protection Clause of U.S. Constitution and Title VII
- U.S. Supreme Court held it is unlawful for Harvard and UNC to make race-based admissions decisions especially when such decisions required stereotyping on the basis of race and racial balancing.



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Ames v. Ohio Dept. of Youth Services

Ames v. Ohio Dept. of Youth Services, U.S. Supreme Court, June 5, 2025

- The standard for proving disparate treatment under Title VII does not vary based on whether or not the plaintiff is a member of a majority group or minority group.
- A plaintiff who is a member of a majority group is not required to also show “background circumstances to support the suspicion that the employer is that unusual employer who discriminates against the majority.”
- The “background circumstances” requirement is not consistent with Title VII’s text or prior case law.



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Law Pre-2025 for Employment

Employers cannot discriminate or treat employees more favorably ***because of*** their protected class.

Few Exceptions in Employment (if that’s what you want to call them):

- Reasonable Accommodations for Qualified Individuals with Disabilities;
- Reasonable Accommodations for pregnant individuals with known limitations;
- Reasonable Accommodations for individuals based upon their sincerely held religious beliefs;
- Certain rights for veterans and employees in the military;



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State Initiatives



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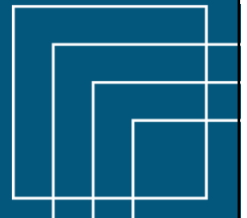
HF 856

Bans Public Entities from Funding DEI Programs

- Applies to Public Entities = the state, state agencies, boards, commissions, cities, counties, townships, public schools, and any other political subdivision of the state
- Prohibits public entities from spending **any** money on DEI programs and DEI employees
- Empowers the AG to file a lawsuit against any entities that violate the law
- Provides a private cause of action to students, alumni, and employees to file a lawsuit for injunctive relief
- Law took effect upon enactment (changes related to community colleges did not become effective until July 1).



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HF 856

What is DEI?

DEI includes:

- Using **race, sex, color, or ethnicity** as part of the admissions or application process
- Any effort to promote differential treatment or provide special benefits to individuals based upon **race, color or ethnicity**
- Any effort to promote or promulgate policies and procedures designed or implemented to encourage preferential treatment of or provide special benefits to individuals on the basis of **race, color, or ethnicity**



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HF 856

What is DEI?

DEI includes:

- Any effort to promote or promulgate trainings, programming, or activities designed or implemented to encourage preferential treatment of or provide special benefits to individuals on the basis of **race, color, ethnicity, gender identity, or sexual orientation**
- Any effort to promote, as an official position of the governmental entity, an opinion referencing unconscious or implicit bias, cultural appropriation, allyship, transgender ideology, microaggressions, group marginalization, anti-racism, systemic oppression, social justice, intersectionality, neopronouns, heteronormativity, disparate impact, gender theory, racial privilege, sexual privilege or any related formulation of these concepts



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HF 856

Also Bans DEI Employees

Governmental Entities cannot use any funds to employ people who are responsible for creating, developing, designing, implementing, organizing, planning, or promoting policies, programming, training, practices, activities, or procedures related to DEI. Also, cannot have DEI offices.

Some exceptions include:

- Attorneys who handle compliance with federal or state laws;
- An office / employee that a public entity is required to maintain pursuant to a contract or agreement with the federal government;
- A guest speaker or performer with a short-term engagement (**but remember HF 802**).



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Federal Initiatives



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Executive Orders 14151 and 14173

- EO 14151 Ending Radical and Wasteful Government DEI Programs and Preferencing
- EEO 14173 Ending Illegal Discrimination and Restoring Merit-Based Opportunity



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Executive Order 14173

Impact on Affirmative Action

- Revocation of Executive Order 11246, which has been the foundation for workforce-related affirmative action obligations for federal contractors since 1965
- Under Johnson's E.O. 11246, and its implementing federal regulations (40 CFR Part 60-2), federal government contractors were required to gather race and sex data on applicants and employees, engage in statistical analyses to evaluate the composition of their workforce and their employment decisions, identify specific steps to address underrepresentation of women and minorities in their workforce, report certain data to the Office of Federal Contract Compliance on an annual basis, and annually prepare AAPs that were subject to compliance reviews.
- Federal Government Contractors = (1) non-construction contractors with 50 or more employees that have a federal contract of \$50,000 or more; and (2) financial institutions with 50 or more employees



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Executive Order 14173

Impact on Affirmative Action

- Trump's E.O. 14173 instructed the OFCCP to stop holding federal contractors and subcontractors responsible for taking affirmative action based on race and sex.
- On March 24, 2025, the U.S. Department of Labor announced Catherin Eschbach as the new director of the OFCCP. On the same day, she directed her staff, in an email, to "verify" if contractors have "wound down" use of AAPs for race and sex, and to evaluate previously submitted programs to see if they "indicate the presence of longstanding unlawful discrimination."
- President Trump's Executive Order could not rescind statutory affirmative action requirements of federal contractors related to veterans and individuals with disabilities; those obligations remain in place.



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Executive Order 14151

Impact on Affirmative Action for Private Sector Employers

Recommendations:

1. All private employers (regardless of size or type) should remove all references to affirmative action with respect to sex and race.
2. Anti-Discrimination policies and statements should remain intact.
3. References to affirmative action with respect to veterans and disabled individuals must remain intact.



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Executive Order 14151

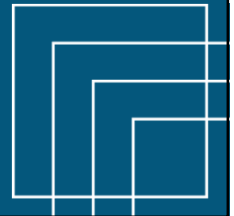
Impact on Affirmative Action

Will AAPs for Individuals with Disabilities Survive? Unlikely

- Proposal to move enforcement from DOL to EEOC
- But EEOC primarily acts when a complaint is filed (not necessarily doing proactive audits)
- The ADA does not actually include the AAP requirements – AAP requirements are contained in the implementing regulations.



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Executive Order 14151 & 14173

Impact on DEI

- Revokes a number of Biden's E.O.'s which were focused on promoting diversity and inclusion within the federal government.
- Instructs all federal agencies to terminate "illegal DEI" policies and programs.
- Instructs all federal agencies to terminate all DEI positions.
- *Instructs all federal agencies to terminate contracts or grants to federal contractors who have provided DEI training or DEI training materials.*
- *Instructs federal agencies to terminate all federal grants related to DEI.*
- *Instructs all federal agencies to include a term in grants that they certify they do not "operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws."*
- **Ordered USDE to issue guidance to schools related to Title VII**



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Nationwide Injunction of Executive Orders 14151 & 14173

U.S. District Court for the District of Maryland issued a preliminary injunction temporarily stopping the Trump Administration from enforcing certain aspects of its executive orders that ban "illegal DEI." The injunction is nationwide and applies to parties who are similarly situated to the plaintiffs in the case.

Relevant Excerpt:

Here, the vagueness of the Termination Provision leaves current grant recipients and contractual counterparts unsure about what activities are prohibited under the Executive Order.

Specifically, these individuals and organizations have no reasonable way to know what, if anything, they can do to bring their grants into compliance such that they are not considered "equity-related." The possibilities are almost endless, and many are pernicious.

If an elementary school receives Department of Education funding for technology access, and a teacher uses a computer to teach the history of Jim Crow laws, does that risk the grant being deemed "equity-related" and the school being stripped of funding?

However, the decision does not prevent others from bringing claims against recipients of federal funds based on DEI initiatives or a federal agency from pursuing investigations based on DEI training, programming, etc.



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Nationwide Injunction of Executive Orders 14151 & 14173

BUT....

Injunction is not currently in place because the Fourth Circuit Court of Appeals lifted the injunction during the appeal of the lower court's decision.

As a result, the Fourth Circuit opened the door for the Trump Administration to begin implementing and enforcing its Executive Orders.



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Nationwide Injunction of Executive Orders 14151 & 14173

BUT....

- U.S. District Court for the Northern District of Illinois enjoined the DOL from enforcing portions of these Executive Orders.
- Plaintiff was a non-profit organization that received federal funds.
- Injunction issued for similar reasons to the other injunction
- Scope of injunction limited to the Plaintiff and not other nonprofits or organizations



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Nationwide Injunction of Executive Orders 14151 & 14173

BUT....

At least one other court has declined to issue injunctions to block these E.O.s

- Federal District Court in Washington D.C.

AND THEN...U.S. Supreme Court recently held that district courts cannot issue broad orders that enjoin the government from any application of policies or actions the court has found to be unlawful or unenforceable (i.e., "universal injunctions."). Instead, injunctions are supposed to be limited to the named plaintiffs in the lawsuit. They do not apply to non-parties. ***Trump v. CASA, Inc.***



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EEOC FAQ

Question 6. When is a DEI initiative, policy, program, or practice unlawful under Title VII?

“In the context of DEI programs, unlawful segregation can include limiting membership in workplace groups, such as Employee Resource Groups (ERG), Business Resource Groups (BRGs), or other employee affinity groups, to certain protected groups. Unlawful limiting, segregating, or classifying workers related to DEI can arise when employers separate workers into groups based on race, sex, or another protected characteristic when administering DEI or any training, workplace programming, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.”

“Employers instead should provide ‘training and mentoring that provides workers *of all backgrounds* the opportunity, skill, experience, and information necessary to perform well, and to ascend to upper-level jobs.’ Employers also should ensure that ‘employees *of all backgrounds* . . . have equal access to workplace networks.’”



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EEOC FAQ

Question 8: Can an employer excuse its DEI-related considerations as long as the protected characteristic wasn't the sole or deciding factor for the employer's decision or employment action?

A: No. For there to be unlawful discrimination, race or sex (or any other protected characteristic under Title VII) does not have to be the exclusive (sole) reason for an employer's employment action or the “but-for” (deciding) factor for the action. An employment action still is unlawful even if race, sex, or another Title VII protected characteristic was just one factor among other factors contributing to the employer's decision or action.



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Where does DEI stand?

- No preferential treatment of employees unless permitted by federal or state statute (e.g., individuals with disability).
- Affirmative Action is dead in some areas and dying in others.
- Second Circuit held in September 2025 that mandatory implicit bias training isn't inherently illegal but can give rise to a race-based work environment if the training discusses a particular race "with a constant drumbeat of essentialist, deterministic, and negative language."
- Federal Agencies are apparently banning hundreds of word in public-facing and internal communications and in information submitted to them (e.g., federal grants). Words allegedly included on these lists are "diversity," "women," "disability," "abortion," "Native American," "Gulf of Mexico," "gender," "DEI," "inclusiveness," segregation, and derivatives of these words.



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Transgender Issues



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Bostock v. Clayton County

Bostock v. Clayton Cnty., Georgia, 590 U.S. 644, 645, 140 S. Ct. 1731, 1734, 207 L. Ed. 2d 218 (2020)

- Title VII applies to all employers with 15 or more employees.
- Title VII makes it “unlawful...for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual...because of such individual’s race, color, religion, sex, or national origin.”
- U.S. Supreme Court held: “Because discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender also violates Title VII.”



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U.S. v. Skrametti

US v. Skrametti, No. 23-477 (June 18, 2025)

- Supreme Court held that states can constitutionally prohibit puberty blockers and hormone therapy for transgender teenagers, rejecting an Equal Protection challenge to the law.
- The Court refused to extend *Bostock v. Clayton County*; however, the Court did not start to walk back *Bostock*. The Court went out of its way to distinguish *Bostock* without undermining *Bostock*’s holding.



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SF 418

Removes Protections for Transgender Individuals

- Defines a person's sex and gender as a person's biological gender, which can only be male or female.
- Outlaws individuals from changing their gender on their birth certificate. It must be their gender at birth.
- States that separate accommodations are not inherently unequal (e.g., bathrooms, locker rooms, etc.), and such separate accommodations are lawful if they are "substantially related to the important government objectives of protecting the health, safety, and privacy of the persons in these contexts."



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SF 418

Removes "gender identity" as a protected class from the Iowa Civil Rights Act. However, still requires employers to accommodate individuals who have a "verifiable diagnosis of disorder or difference of sex development."



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SF 418

Governor Reynolds stated SF 418 “safeguards the rights of women and girls,” and the “Civil Rights Code blurred the biological line between the sexes.”



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Federal Initiatives



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Executive Order 14168

“Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”

- Similar to SF 418
- States only two sexes, male and female. Will not recognize any other sex.
- Sex = sex at birth
- Passports, visas, etc. must accurately reflect sex



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Executive Order 14168

“Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”

- Federal agencies must remove any communications, materials, messaging that instill “gender ideology.” (e.g., Airforce removing references to pronouns in email signature blocks)
- Challenges Biden Administration’s application of *Bostock v. Clayton County* and states that agencies must protect sex-based distinctions.
- Requires prisons to only include males or females



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Executive Order 14168

“Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”

- Rescinds Fed. Gov. guidance related to gender identity
- Prohibits use of federal funds to allow for medical procedures, treatments, or drugs for the purpose of allowing someone to change their sex or maintain a different sex
- Requires Chair of the EEOC to prioritize investigations and litigation to enforce the rights and freedoms identified in the EO



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EEOC Cuts Funding Re: Transgender Complaints

- EEOC plans to stop paying state regulators (e.g., Iowa Office of Civil Rights) to investigate bias against transgender workers
- EEOC will not grant “credit for intakes or charge resolutions”
- Retroactive to January 20 (when President Trump returned to office)
- All charges that include gender identity or transgender status will be “subject to substantial review” in order to “ensure that such charges are appropriately handled for purposes of credit.”



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Texas Judge Strikes Down EEOC Guidance

- On May 15, 2025, a Texas Judge struck down portions of EEOC Enforcement Guidance related to gender identity and sexual orientation.
- Order overturned the following pieces of guidance:
 - Transgender employees must be permitted access to bathrooms, locker rooms, and showers that correspond to their gender identity;
 - Employers must allow transgender employees to dress or present consistent with gender identity; and
 - Intentionally and repeatedly using the wrong names and pronouns to refer to a transgender employee could contribute to a hostile work environment.



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EEOC's Response to Texas Opinion

- EEOC cannot officially revoke or rescind those portions of its guidance because it does not have a quorum at this time.
- However, the EEOC has highlighted and shaded those portions of its guidance and put a disclaimer on the guidance.



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EEOC Changes

- EEO-1 Changes announced (private sector employers with 100 or more employees and federal contractors with 50 or more employees who meet certain criteria)
- EEO-4 = no changes announced yet (state and local governments with 100 or more employees);
- EEO-5 = no changes announced yet (school districts with 100 or more employees);



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EEOC Changes EEO-1 Reporting

- The EEO-1 form will only include boxes for males and females.
- No alternative to indicate there are non-binary employees
- EEOC removed guidance for reporting non-binary individuals from their booklet.



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EEOC EEO-1 Reporting Otherwise Remains Intact

- Deadline to submit and certify reports was June 24, 2025
- No extensions
- EEOC has “reaffirmed” commitment of protecting the civil rights of all Americans with the caveat that the EEOC will follow President Trump’s Executive Orders.
- “Your company or organization may not use information about your employees’ race/ethnicity or sex—including demographic data you collect and report in EEO-1 Component 1 reports—to facilitate unlawful employment discrimination based on race, sex, or other protected characteristics in violation of Title VII. ...There is no “diversity” exception to Title VII’s requirements.”



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Where does “gender identity” stand?

- Transgender employees are still protected from discrimination and harassment based upon their gender identity under Title VII;
- State and Federal Government will allow discrimination against transgender students in the context of sports, locker rooms, and bathrooms;
- Religion will play a role in future decisions related to discrimination and harassment against transgender employees and students



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Religious Accommodations & Other Issues

Bilyeu v. UT-Battelle - 6th Circuit

- UT-Battelle imposed a COVID vaccine mandate.
- Employees asked for RA
- Panel interview about their belief's, read a vaccine fact sheet, and explain why their religious views didn't align with the church.
- Refusal – Administrative Leave
- The 6th circuit relying on (*Muldrow v. City of St. Louis* and *Groff v. DeJoy*) found employees no longer need to show that discrimination caused a "materially adverse" impact beyond the harm of being forced to choose between faith and work.



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Religious Accommodations & Other Issues

EEOC Doubles down on religious rights:

- **EEOC reversed Veterans Affairs** denial of Muslim physician's request to have Friday afternoon off to pray and offered to work more hours to recover time. Not undue hardship. (*Augustine V. v. Department of Veterans Affairs*)



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Religious Accommodations & Other Issues

7th Circuit Case re: Christian Teacher's Suit Over Student-Pronoun Rule

- **Issue:** whether permitting John Kluge to address all students by their last names only imposed an “undue hardship” on Brownsburg Community School Corp. under the clarified test the US Supreme Court recently set in Groff v. DeJoy.
- **Ruling:** Denial; of SJ, affirm no retaliation, reversed and remanded.



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Religious Accommodations & Other Issues

The Feds say that proselytizing at work is okay

- Trump EO that federal employees may pray at work, display religious icons, and attempt to persuade others.



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Pregnancy Discrimination

Gossett v. Jason's Deli

Facts: Gossett was a manager and told her supervisor she was pregnant and needed a chair to sit because her feet were swollen. Gossett also asked Bath for the following accommodations: (1) five-to-ten-minute breaks every two hours, (2) an exemption from tasks involving heavy lifting, and (3) no shifts longer than ten hours. Jason's Deli approved the requests.

Gossett sued Jason's for Preg discrimination and retaliation under Title VII and NFEPA.

Holding: Affirmed. SJ in favor of Jason's Deli



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No Tax on Overtime

- Employees can take a deduction on their federal income tax returns for “qualified” overtime pay for tax years 2025-2028;
- Maximum annual deduction is \$12,500 (\$25,000 for joint filers)
- Deduction phases out for taxpayers with modified adjusted gross income over \$150,000 (\$300,000 for joint filers).
- Reporting: Employers and other payors are required to file information returns with the IRS (or SSA) and furnish statements to taxpayers showing the total amount of qualified overtime compensation paid during the year.
 - ERS may need a pay code for “qualified” OT to help with this reporting obligation.
 - IRS has published a draft 2026-W2, but it cannot be used for 2025
- “Qualified” OT is defined as:
 - Only FLSA-required OT;
 - Only the half-time portion of OT.



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FLSA

Lott v. Recker Consulting

Holding: the workday starts when remote call center workers begin operating a program or application they use as part of the principal work activities they are employed to perform, not when they first boot up their computers.

- The court found that turning on a computer, typing in usernames and passwords, and opening applications are preliminary activities and not compensable time.
- Likewise, it found shutting down the computer, locking the screen, or putting it in sleep mode are postliminary activities and not compensable time.



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FLSA – *E.M.D. Sales, Inc. v. Carrera* (2025)

- **Issue:** Burden of proof for overtime exemption under the FLSA
- **SCOTUS Holding:** *Preponderance of evidence* is the standard—**not** clear and convincing evidence
- **Significance:**
 - Establishes a uniform federal standard
 - Employers face **lower evidentiary burden** when classifying exempt employees
 - Win for employers, particularly in circuits like the Fourth



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FLSA Compliance Reminders Post - *Carrera*

- Standard is now **clear across all circuits**
- **Employers must still:**
 - Meet FLSA duties & salary basis tests
 - Ensure compliance with **state-specific** exemption standards
- Risk remains if employees are misclassified—regular audits recommended



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Lack of Investigators and Budget Cuts at the DOL

- **Historic Low in Staffing**
 - Wage and Hour Division dropped to 611 investigators as of May – a record low
 - Oversight burden remains massive: 11 million workplaces, 165 million workers
- **Retention and Recruitment Issues**
 - Struggles tied to workload demands and low pay
 - Former staff cite burnout and inadequate compensation as key issues
- **Proposed Budget Reductions**
 - Trump administration proposes cutting 4,000 full-time positions – 25% of DOL workforce
 - DOL budget would fall to \$8.6 billion for FY 2026 — just 35% of prior year's funding
- **Workforce Development Reorganization**
 - Employment and Training Administration to merge 11 DOL programs into one:
 - “Make America Skilled Again” grant initiative



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DOL – Independent Contractor Classification

- **Biden Rule (2024):** Employee-friendly 6-factor economic reality test
- **May 2025:** DOL guidance tells investigators **not to use** Biden rule
 - Reverts to Trump-era (Fact Sheet #13 & Opinion Letter FLSA 2019-6)
- **Employers face dual risk:**
 - **DOL enforcement** favors IC status
 - **Private lawsuits** may still rely on 2024 rule



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Independent Contractor Rule - Takeaways

- Higher standard IC classification rule took effect under Biden DOL
- 2024 rule still valid law, but, as of May 1, 2025, not used in DOL enforcement
- **Private litigation** applies stricter standard
- Employers must:
 - Document IC relationships carefully
 - Monitor litigation risks and state-level rules



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U.S. Department of Labor – Opinion Letter Program

- **Program Launch**
 - **Announced June 2, 2025**, by the U.S. Department of Labor (DOL)
 - Aims to provide **official interpretations of federal labor laws**
- **Purpose**
 - Promote **clarity, consistency, and transparency** in the enforcement of federal labor standards
 - Help both **employers and workers** understand their rights and responsibilities
- **Participating Agencies**
 - Wage and Hour Division (WHD)
 - Occupational Safety and Health Administration (OSHA)
 - Employee Benefits Security Administration (EBSA)
 - Veterans' Employment and Training Service (VETS)
 - Mine Safety and Health Administration (MSHA)
- **Key Features**
 - **Anyone** can request an opinion letter—commonly used by employers for compliance clarity.
 - Published letters provide guidance that **benefits the broader public**.



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DOL Revives Voluntary Self-Audit Program

On July 24, 2025, the DOL's Wage and Hour Division (WHD) announced it has revived its Payroll Audit Independent Determination (PAID) program. Originally rolled out in 2018 under the first Trump Administration (and discontinued by the Biden DOL a few years later), PAID aims to encourage employers to self-identify and correct compliance issues under the FLSA and FMLA.

PAID is a voluntary program through which employers conduct a self-audit, disclose findings to WHD, and—if accepted into the program—resolve potential violations.

For employers, the program provides a potential avenue to correct mistakes without inviting the threat of fines, litigation, or plaintiffs' attorney fees (though, as noted below) not all exposure necessarily disappears). For employees, of course, the program offers a path to receive back wages or other remedies promptly and without the burden of litigation.

Employers are eligible to participate if: (1) no prior violations or pending litigation; (2) no current investigation; (3) no undisclosed complaints; (4) no recent involvement in PAID; and (5) no impact on state/local laws (i.e., ERS must acknowledge it will not cut off employee rights under other state or local laws).



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NLRA Updates

- “The Lost Year” - NLRB has lacked quorum almost all year, which means NLRB cannot issue decisions or rules, leaving many cases in legal limbo.
- NLRB’s Structure at Risk – in August 2025, the 5th Circuit handed down a decision in *SpaceX v. NLRB*, wherein the court upheld injunctions blocking NLRB enforcement proceedings. 5th Cir. Held that the NLRB’s structure is likely unconstitutional because its members and ALJs are insulated from at-will removal from the president.
- States are beginning to enact labor laws to increase ER obligations (N.Y. and Cali).



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NLRA Updates

- Acting NLRB has issued “opinion letters” and enforcement memos favorable to ERS, signaling a shift in policy away from Biden’s very pro-union stance:
 - Stricter standards related to “salting”
 - Preference for deferring cases to arbitration
 - Restrictions on the types of financial remedies for ULPS
 - Allow for non-admission clauses



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NLRA Updates

Union Activity in Iowa

- Merely Hay Starbucks Votes 11-5 to Unionize
- UnityPoint Nurses call for Union Selection



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FTC Noncompete Ban – Status & State Movement

- **FTC's Ban:**
 - Blocked by **TX & FL courts**; appeals placed on hold (120-day abeyance)
 - Future of federal rule is **uncertain under new leadership**
 - Acting General Counsel of NLRB issued Memo GC 25-05 rescinding the 2023 memo stating that certain non-compete agreements violate the NLRA
- **States Acting Independently:**
 - **Wyoming:** Noncompetes void (from July 1, 2025)
 - **New York:** Bill to ban noncompetes except for high earners & business sales
 - Other states targeting **healthcare-specific restrictions**



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Drug Testing

Flannery v. Peco Foods, Inc.

The 8th Circuit upheld the Arkansas Employer's decision to terminate Flannery after a drug test showed THC in his system. Flannery said it came from CBD oil, pointed to the company handbook, and argued his levels were under the listed threshold. None of it mattered. He worked in an at-will employment state, and the court said plainly: employers can terminate "for good cause, no cause, or even a morally wrong cause."



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Drug Testing

Lessons for Iowa Employers:

Iowa Employers may prohibit use.

Iowa Employers may test for marijuana, but must follow Iowa's Drug Testing Statute

Iowa Employers May Discipline or Terminate for a positive drug test provided they follow Iowa's Drug Testing Statute – no protection even if marijuana was consumed legally and outside of work hours

Unemployment Benefits May Be Denied



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Drug Testing

Amendments to Iowa's Drug Testing Law

- Written notices and requests may now be delivered in person or electronically
- ERs have discretion to determine which positions are "safety sensitive"
- Employee has the burden of proving by a preponderance of evidence that ER violated the statute and violation directly caused damages
- Removes the ability to sue individual supervisors or managers



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Iowa State Legislative Update

- **HF 889: Paid parental leave for state employees**
 - o 4 weeks for birthing/adopting parent, 1 week for non-birthing parent
- **HF 248: Private adoption leave protections**
 - o Employers must treat adoptive parents the same as biological parents



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Unemployment (Proposed Legislation)

IWD would like to propose legislation that would eliminate the second level of appeal for unemployment claims. Right now, the process is:

Fact-Finding Hearing;
Appeal to ALJ
Appeal to EAB

The proposal would eliminate the appeal to the EAB. A party would still have the right to appeal to District court. IWD has provided the following explanation for the change: (1) legally not required to provide this second appeal; (2) 93-95% of ALJ decisions are affirmed by EAB; (4) it adds 3-4 weeks to the process; and (5) the number of appeals are down.

Other IWD Updates

- The mobile unit is still going. It is currently at the state fair and has been to 200 events in the last 18 months.
- Employers will be notified in November of their new UI tax rates (under the new unemployment tax system) and should see a drop in UI taxes from 40=60%;
- IWD looks for unique apprenticeship opportunities now that it has a state apprenticeship office. Example provided = apprenticeship program for registered nurses with DMACC and Broadlawns.



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