

AI and HR: Transforming the Future of Workforce Management

*Presented by:
Kirsten Eriksson
Veronica Jackson*



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How do you feel about AI?



- A. Excited
- B. Concerned
- C. Both concerned and excited
- D. Just plain confused



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Do you currently use a form of AI in your business?



- A. Yes
- B. Not yet, but planning to
- C. No, because I don't understand what AI is or how it can help our business
- D. I have no idea



What is true about AI?




- A. AI is without bias because it is a computer
- B. AI results are always accurate
- C. AI is a confidential tool
- D. None of the above
- E. All of the above

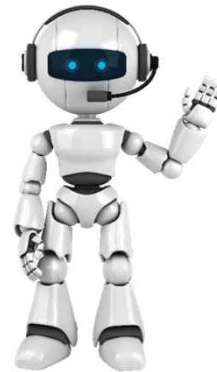


Meet Miles - Our AI For the Day



 Hi Miles, nice to meet you. Looking forward to working with you.

 Hello. It's nice to meet you.




 Can you give me some examples of AI?



 Think Siri, Alexa, Chat GPT, Gemini, *etc.*



What is AI?

 AI is a tool that processes information based on algorithms and patterns found in data, not through conscious thought or understanding.

How Does Miles Learn?

Traditional Computing

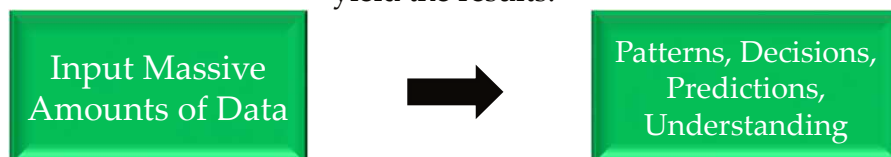
Human defines the rules and the computer applies it to data to create answers.

(i.e., calculators, Google)



Artificial Intelligence

Human defines the data and output (or examples of answers). The system is programmed to yield the results.



Is this a Sandwich?



What are Some Major HR Risks Associated with the Use of AI?

- Bias
- Inaccuracy and Hallucinations
- IP
- Privacy and Confidentiality violations
 - Especially open-source AI tools
- Transparency (*How did you get that answer and who can challenge it?*)



What Laws are in Place That Regulate AI?

The world's most robust AI legislation is in the European Union. The ("EU AI Act") establishes a common regulatory and legal framework.

- Became effective August 1, 2024.
- EU AI Act adopts a risk-based approach for categorizing AI systems into four tiers: unreasonable risk, high risk, limited risk, and minimal risk.
- Users (deployers), as well as developers and importers, have compliance obligations.
- Systems used in employment, employee management, access to self-employment are considered "high risk" and are heavily regulated.

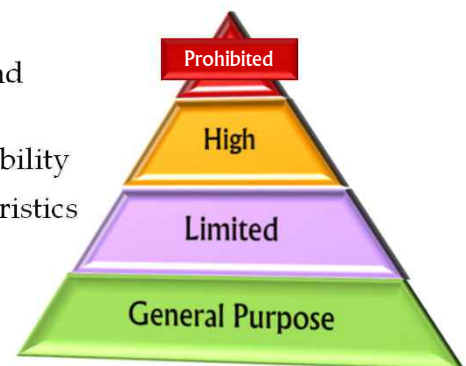
Prohibited and High Risk AI (EU AI Act)

Examples of Prohibited AI:

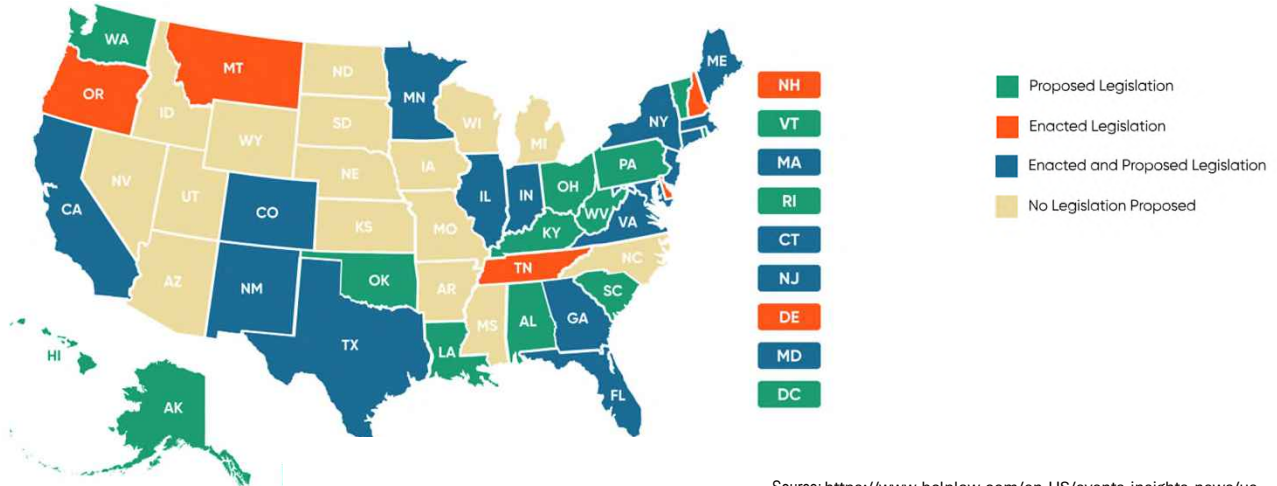
- Social credit scoring systems
- Emotion recognition systems in the areas of workplace and education institutions
- AI that exploits a person's vulnerabilities, like age or disability
- Biometric categorization systems using sensitive characteristics

Examples of High Risk AI:

- Systems in education or vocational training, including admissions
- Systems used in employment and employee management
- Access to self-employment



Which U.S. States Have Considered/Enacted AI Legislation?



Source: <https://www.bclplaw.com/en-US/events-insights-news/us-state-by-state-artificial-intelligence-legislation-snapshot.html>

Please summarize the enacted AI state laws.




California - mandates that AI systems implement comprehensive measures to disclose when content has been generated or modified by AI.


Colorado - prohibits employers from using AI to discriminate against workers and requires companies to take measures to avoid such algorithmic discrimination.

Illinois - Notice re: AI and predictive data analytics cannot use race or zip code/proxy to reject applicant or employee.

New York City - obligatory bias audits – but is only triggered when automated tools play a predominant role in decisions.


🔍 Is there any Federal regulation on AI?

 The EEOC had guidance on AI, but it was taken down.

 On January 23, 2025, President Trump signed an Executive Order that “establishes the commitment of the U.S. to sustain and enhance America’s dominance in AI to promote human flourishing, economic competitiveness, and national security.”

🔍 Could the use of AI violate existing laws?

 Yes, AI could discriminate against protected classes.

 AI could also create “disparate impact,” which is a form of unintentional discrimination.

- A neutral test or selection procedure
- Has a disproportionate impact on individuals with protected characteristics
- An example is a physical strength test requiring applicants to lift 75 lbs. Women are more likely to fail this test than men.



How would a plaintiff prove disparate impact?



The proportion of individuals in a protected class that are negatively impacted by the practice is statistically significant as compared to the proportion of individuals not in the protected class who are negatively impacted.

- For example, 80% of women fail the 75 lb. lifting test, while only 20% of men fail

How does an employer defend disparate impact?



Show that the practice is "job-related and consistent with business necessity":

- The test relates to the job;
- The test is predictive of success in the job; and
- There is not a substitute that would have a lesser disparate impact.
- This may require job analysis, validation studies, and expert testimony.



Who is responsible if AI violates employment laws?



- Employers are ultimately responsible for any employment discrimination, whether intentional or unintentional.
- Third-party vendors may be responsible for adverse impact caused by AI tools that are purchased from them or administered by them.
- Employers may be able to negotiate indemnity against liability.

How can employers protect themselves?



- Employers cannot rely only on the vendor's predictions or studies of whether their AI tools will cause discrimination. They must monitor AI to ensure no discrimination occurs in their own processes.
- Before "going live" with an AI selection tool, employers should perform analyses or run models to ensure that the use of AI does not result in discrimination.
- Require contractual indemnity if promises of nondiscrimination do not hold up.

Have there been lawsuits related to AI?



- Tutoring company agreed to pay \$365,000 to resolve EEOC complaint that its AI-powered hiring selection tool discriminated against women over 55 and men over 60.
 - Rejected applicants resubmitted their same resume with a later birthdate – and this time secured an interview.
- Workday moved to dismiss complaint alleging that its AI-powered applicant screening tools discriminate on the basis of race, age, and disability; Workday claims it is not an “employer.”
 - Motion denied, based upon the theory that Workday could be an “agent” of the employer and thereby liable.

How are HR Professionals Using AI in Their Business?



In many ways but some examples include:

- Recruitment and Talent Acquisition
- Performance Management
- Compensation and Benefits
- Diversity, Equity, and Inclusion (DEI)



Recruitment and Talent Acquisition

AI-powered video interview platform that analyzes candidate responses during interviews. It evaluates not only the content of responses but also non-verbal cues such as facial expressions, tone of voice, and body language to help HR teams assess candidates more effectively and objectively.

- **Pros:** Consistency
- **Cons:** Privacy, Bias (disability). How do you check the model?

Predominant role in decision-making?

Performance Management

AI to provide continuous performance management. It offers AI-powered weekly check-ins, goal tracking, and feedback tools to help managers stay connected with employees and ensure consistent performance monitoring.

- **Pros:** Consistency, more recordkeeping
- **Cons:** Privacy, Performance management isn't one size fits all, more recordkeeping



Compensation and Benefits

AI to analyze compensation data across industries, regions, and job functions. HR teams can use these insights to ensure their compensation packages are competitive and equitable, adjusting salary structures to attract top talent.

- **Pros:** Consistency, removes/reduces bias
- **Cons:** Hallucinations (fake job posting), privacy, lack of transparency, risky to question/tweak, Pandora's box

Diversity, Equity, and Inclusion (DEI)

AI-driven writing platform helps eliminate biased language in job descriptions and HR communications. It scans the text and provides suggestions to make the language more inclusive, helping organizations attract a more diverse candidate pool.

- **Pros:** Consistency, removes/reduces bias
- **Cons:** Confidentiality, false sense of perfection, accuracy/effectiveness, lack of transparency

Buyer Beware

When choosing an AI tool:

- Understand the source of underlying data feeding AI.
- Be sure to ask the vendor whether the tool has been validated (but remember, that is not enough).
- Assess AI selection tools early and often regarding the impact on employment decisions.
- Check with organization if open-source AI tools violate your company's confidentiality policy.
- Review contract provisions regarding privacy, confidentiality, indemnity.



Best Practices

When implementing AI use in business:

- Disclose the use of AI
- Trust but verify its results
- Exercise caution if inputting confidential information into certain AI tools



The Post-Election Landscape: What Employers Can Expect in the Next 4 Years

Presented by:
Paolo Pasicolan
Sufen Zhang
Gillian Santos
Kathleen Pontone



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Hot Topics on Employee Benefits



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ESG Investing

Rule on environmental, social, and governance

- ESG as tiebreaker: If a fiduciary concludes that competing investments “equally serve the financial interests of the plan over the appropriate time horizon,” the fiduciary is not prohibited from selecting the investment based on “collateral benefits other than investment returns.”

ESG Investing

Spence v. American Airlines (N.D. Tex. 2025)

- AA — and its retirement committee — sued (initially) for offering ESG funds that underperformed.
- Potential class of 100,000 pilots
- Alleged \$16 million in damages

ESG Investing

Evolving complaint

- AA selected ESG funds.
- AA selected funds that are managed by BlackRock, who pursues ESG policies.
- AA failed to leverage its voting power make BlackRock vote against ESG policies.

ESG Investing

Ruling: prudent but disloyal

- AA did **not** breach its duty of prudence in outsourcing its proxy vote to its investment manager
- AA **did** breach its duty of loyalty for failing to stop its investment manager from voting for ESG policies.

ESG Investing

Plot twist: Daniel Aronowitz

- “We think ESG investing is wrong.”
- Fiduciaries “have a fiduciary obligation not to change the world with fiduciary retirement assets.”

ESG Investing

Daniel Aronowitz (con't)

- “The vast majority of defined contribution plans in America do not offer ESG investments in their core lineup.”
- ESG investing “is a political lightning rod with little actual bearing on the retirement security of 401k plan participants.”

Daniel Aronowitz

Background

- Attorney from Vienna, VA
- Owner of an insurance company that underwrites fiduciary liability insurance
- Writes a blog

Daniel Aronowitz

Plaintiffs' lawyers dictate laws

- “ERISA fiduciary rules are now whatever a plaintiff law firm can convince federal judges to allow in manufactured lawsuits.”
- Plaintiffs’ lawyers create “new, retroactive regulatory liability through litigation.”
- There is “a different fiduciary standard in every federal court across the country.”

Daniel Aronowitz

DOL is MIA

- Too focused on ESG, fiduciary rule instead of
 - Plan forfeitures
 - 401(k) recordkeeping fees
 - PBM spread pricing
 - Pension risk transfers

Gender-Affirming Care

Section 1557 of the Affordable Care Act

- Prohibits discrimination based on race, color, national origin, sex, age, or disability in a health program or activity **receiving federal funding** or **being administered by an executive agency**

Gender-Affirming Care

Comments on final regulations

- Section 1557 “does **not** impose a categorical requirement that covered entities must provide gender-affirming care.”

Gender-Affirming Care

Comments on final regulations

- “The focus of any investigation will not be to generally review a covered entity’s clinical judgment but rather to determine whether the assertion of that judgment reflects **unlawful animus or bias**, or is a pretext for discrimination.”

Gender-Affirming Care

Folwell v. Kadel (4th Cir. 2024)

- WV's Medicaid program violated Section 1557 for excluding "transsexual surgery."
- U.S. Supreme Court awaits.

Gender-Affirming Care

Trump Administration

- EO: Health plans sponsored by the federal government must eliminate coverage for gender-affirming care for minors.
- Nonenforcement enforcement of Section 1557?
- Categorical ban on gender-affirming care? For minors?

Immigration Hot Topics



Aggressive Immigration Enforcement

- Expansion of deportations and arrests
- Increased ICE raids and enforcement actions
 - Sensitive locations (schools, hospitals, churches) – no more
- Broader scope for expedited removal



ICE Visits – What to do?

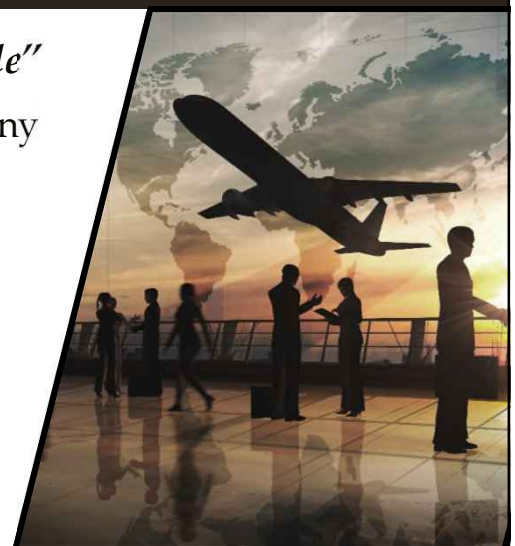


- Establish internal protocols and designate point(s) of contact
- Understand your rights and obligations
- Be mindful of laws as to privacy and confidentiality
- Avoid actions that could be perceived as harboring/interfering/obstructing

Impact on Business Immigration - USCIS

“vet and screen to the maximum degree possible”

- Tougher adjudication and increased scrutiny
- More requests for evidence
- Expanding in-person interviews
- Slower processing times
- More site visits



Impact on Business Immigration – State Department



“vet and screen to the maximum degree possible”

- Tighter vetting processes for visa applicants
- Longer wait times for interview appointments
- More frequent administrative processing delays
- Sudden, unexpected disruptions or suspensions of visa services

Visa Suspension in Colombia



- **Key Event:** Suspending visa services in Colombia
- **Reason:** To pressure Colombia to accept repatriation flights
- **Impact:** Disruptions and delays
- **Broader Implications:**
 - Potential for this tactic to be applied to other countries
 - Potential for future visa suspensions with little to no notice

Implications for Employers



- Anticipate challenges (hiring and onboarding delays; business disruptions; reduced “service” levels; higher denial rates)
- Budget more resources for immigration sponsorship

Implications for Employers

Take proactive steps to manage risks

- Avoid non-essential international travel
- Accelerate initiation of filings and sponsorships
- Utilize premium processing
- Strategically evaluate and pursue sponsorship options

Prepare for potential immigration enforcement



National Labor Relations Board (NLRB) Hot Topics



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NLRB Status



- NLRB currently only has 2 members.
- NLRB cannot issue new decisions without a quorum (at least 3 members).
- Biden-era NLRB decisions still control until overturned by new decisions.

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Impact of a Quorum - Less NLRB

- NLRB will begin issuing employer-friendly decisions when a new member is appointed and confirmed by the Senate.
- Challenge over Member Gwynne Wilcox's removal may further delay or impact NLRB's ability to issue final decisions.
- NLRB Regional Offices and Administrative Law Judges will continue to process petitions and charges.
- Representation Petitions (or "RC" Petitions) will be processed subject to the Board's decision in *Cemex Construction Materials Pacific LLC*, 372 NLRB 130 (2023).

NLRB – What To Do – Unfair Labor Practice Charges and Other Petitions

- Pending and new unfair labor practice (ULP) charges must be handled as if the Board does not lack quorum. Employers should continue preparing for affidavits and investigations.
- Other NLRB petitions (*e.g.*, Unit Clarification Petitions, Decertification Petitions, RM Petitions, *etc.*) will also be processed by the Regions.
- Employers may continue to file request for review of adverse decisions to the full Board but should not expect processing until the third Board member is appointed and confirmed.

NLRB – What To Do – Voluntary Recognition Requests



- If faced with a voluntary recognition request from a union, immediately challenge the union's claim for majority status within two weeks by filing an RM-Petition. Failure to do so will result in an unfair labor practice charge, with the NLRB Regional Director likely a bargaining order without holding a union election. *Cemex Construction Materials Pacific LLC, Pacific LLC, 372 NLRB 130 (2023)*.
- If a Representation ("RC") Petition is filed after the voluntary recognition request, NLRB will process the petition in accordance with current rules and regulations.



NLRB Cases – What To Do – Voluntary Recognition Requests



- If an RC Petition is filed and the employer commits an unfair labor practice in the run-up to the election, the NLRB Regional Director may also issue the employer a bargaining order to recognize and bargain with the union.
- **Trump Board** expected to prioritize overturning *Cemex* and revert to prior standard in which bargaining orders were not issued during the recognition petition process unless the employer engaged in egregious unlawful conduct, and the remedy for unfair labor practices was a mere re-do of the union election.

The Upshot: Trump Has Appointed Acting General Counsel



- Rescission of certain Biden-era policy memos began last week, including those on workplace rules, confidentiality and non-disparagement clauses, and non-compete agreements.
- Backlog of cases and new guidance memos to be issued may result in:
 - Earlier resolutions of recent charges; or
 - Favorable settlement agreement terms for employers.
- Unions likely to be reluctant to file unfair labor practice charges.

NLRB Anticipated Changes - Workplace Rules



- *Stericycle Inc.*, 372 NLRB 113 (2023) established a new standard for evaluating whether a company's workplace rules violated the NLRA.
- NLRB held that a work rule is presumptively unlawful if an "objectively reasonable employee" could view the work rule as coercive or threatening toward employees' right to discuss working conditions or union affiliation with others. NLRB also imposed make-whole remedy for violations.
- **Trump NLRB** likely to return to prior Trump Board decision giving greater deference to an employer's legitimate business interests. *Trump-Appointed Acting General Counsel rescinded GC 24-04, outlining Biden NLRB's "full remedies" enforcement guidelines for workplace rules violations on Feb. 14, 2025.*

NLRB Anticipated Changes - Confidentiality and Non-Disparagement Provisions



- In *McLaren McComb*, 372 NLRB 58 (2023), Biden Board ruled that employers cannot offer severance agreements broadly prohibiting employees from making statements that could disparage or harm the image of the employer.
- Held that these provisions were overly broad and violated the employees' rights under Section 7 of the NLRA; and that former and current employees are entitled to the same protections under Section 7.
- *Trump-appointed Acting NLRB General Counsel rescinded prior General Counsel memo on enforcement of McComb principles on Feb. 14, 2025.*

NLRB Anticipated Changes – Noncompete Agreements

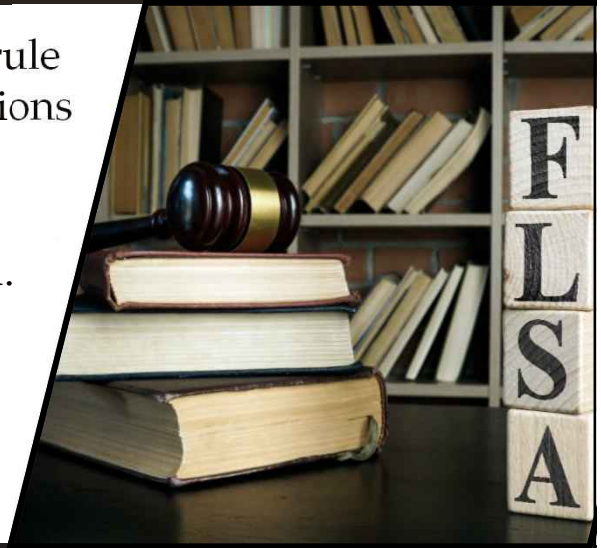


- Biden NLRB General Counsel issued guidance memo asserting that noncompete and “stay or pay” provisions violate Section 8(a)(1).
- Both denied employees ability to switch employers by prohibiting them from pursuing other opportunities and creating fear that exercising their rights under Section 7 would trigger a payment obligation.
- *Trump-appointed Acting NLRB General Counsel rescinded prior General Counsel memo outlining enforcement guidelines of Non-competes on Feb. 14, 2025.*

Fair Labor Standards Act (“FLSA”) Exemptions



- **April 26, 2024:** DOL published new rule increasing minimum pay for exemptions to \$56,000.
- **November 15, 2024:** Federal judge in Texas vacated new rule. Appeal filed.
- 2019 rule’s minimum salary levels in place - \$684/week (\$35,568/year); \$107,432 for highly-compensated.



FLSA Exemptions



The passive/aggressive message on the current DOL website:

- Unless the employee’s salary is above the \$56,000 threshold we wanted to set, prepare for a battle on whether this employee is really exempt.
- And really unless the salary is over \$107,000 per year, you really aren’t safely exempt.
- Avoid the hourly pay trap by ensuring that, unless someone takes a full day off as part of a leave bank system, you aren’t docking them for taking time off on an hourly basis.

Yes, we know this causes a conflict under the various leave laws which require you to allow leave in shorter increments.

FLSA Exemptions - Employer's Burden of Proof



E.M.D. Sales, Inc. v. Carrera, decided January 15, 2025

- Employer's burden of proof to establish employee is exempt from minimum wage and overtime provisions of FLSA is **preponderance of the evidence**
- 4th Circuit was only jurisdiction applying higher standard
- Reasoning – higher burden of proof for civil litigation only applied when required by statute, the Constitution, or “uncommon” cases where “the government seeks to take unusual coercive action,” none of which apply to FLSA exemption determinations

Focus on Religious Accommodations



Groff v. DeJoy, 600 U.S. 447, 143 S. Ct. 2279 (2023)

- Previously, employers defending a claim of religious discrimination under Title VII had to show that the requested accommodation would be an undue burden, interpreted as “more than a *de minimus* cost.”
- *Groff* holding – employers claiming undue hardship must show that the “burden is substantial in the overall context of an employer’s business.” Courts must make a fact-intensive inquiry and consider:
 - Requested accommodation;
 - Practical impact based on nature, size, and operating cost of employer.

Trends Since *Groff* in the VAX Cases – The Good News



1st Circuit, 2nd Circuit, 3rd Circuit, 6th Circuit:

- Consistently ruled in favor of health care entities where the employer relied on:
 - “Objective, scientific information” from public health authorities to determine that granting a religious exemption for the COVID-19 vaccine would be an undue hardship; or
 - Potential violation of state law sufficient to show undue burden (*i.e.*, state law requiring vaccination at time of employment action).

Trends Since *Groff* - But Bad News



9th Circuit:

- Held that where alternative accommodations were available for an employee who requested a religious exemption for the COVID-19 vaccine with minimal cost to the employer, the employer’s termination of the employees likely violated Title VII and FEHA.

4th Circuit, 10th Circuit:

- Strongly disfavor disposing of religious accommodation claims at the motion to dismiss phase or denying preliminary injunctions.
- Inquiry is very fact-specific for both elements of claim and employer defenses.

Trends Since *Groff* – Facial Hair



Potter v. District of Columbia, 2025 WL 310525 (D.C. Cir. Jan. 28, 2025)

- Muslim firefighters had won an injunction in 2007 on a Religious Freedom Restoration Act claim that policies effectively banning facial hair violated free exercise clause.
- During the pandemic, N95 respirators were required. Muslim firefighters were transferred to administrative duty on grounds that beards interfered with function of the respirators.
- Firefighters moved for civil contempt, arguing N95 policy violated 2007 injunction after firefighters were returned to field duty but settlement negotiations failed.
- D.C. Circuit reversed dismissal of civil contempt determination and remanded to District Court to determine their rights.

Religious Accommodation – Employer Best Practices

- Evaluate religious accommodation requests on an individual basis
 - Is it sincerely held?
 - Is it religious in nature?
- Undue hardship – even more important to engage in good faith dialog. Do not have to consider other possible accommodations not proposed by employee, but assessing one alternative accommodation probably not enough.
- Use a neutral policy, apply uniformly (can't favor one religion's beliefs over another's)

OSHA – Review of Biden-Era Rules



Walk Around Rule: Final Rule published April 1, 2024.

- Employer and employees have right to have a representative accompany OSHA officials during an inspection.
- Allows employees to authorize an employee or non-employee to be their representative during the inspection where it may be “reasonably necessary to conduct an effective and thorough inspection based upon skills, knowledge, or experience.” 29 C.F.R. Part 1903.
- Challenged in court by Chamber of Commerce. Trump administration may settle and agree to withdraw rule.

OSHA – Review of Biden-Era Rules



Heat Safety Rule: Comment period closed January 14, 2025.

- Would require employers with 10 or more employees to have a written heat injury and illness prevention plan (HIIPP), designate a heat safety coordinator to implement the HIIPP, including monitoring heat hazards, indexes and other measures of heat, and compliance with the rule.
- As written - provides general guidelines that are incorporated into the OSHA regulations for shipyards, marine terminals, longshoring, construction, and agriculture. 89 F.R. 70698, 2024-14824.
- States Heat Safety Rules – CA, CO (agriculture only), MD, MN, OR, WA.

Covid-19 Healthcare Rulemaking: Terminated January 15, 2025.

- Stated reason was “to focus its resources on the completion of an Infectious Diseases rulemaking for healthcare.”
- The role of CDC guidance, if any, in agency rulemaking under the Trump administration is an open question.

Joint Employer Rule

2023 Rule: Vacated, appeal withdrawn.
2020 rule in place.

2020 Rule: Joint employer only if entity exercises “substantial direct and immediate control” over one or more essential terms and conditions of employment.



View from the Trenches: Managing the Modern Workforce

Presented by:

Stephanie Baron

Tyler Duckett-Oliver

Kimberly Gilreath

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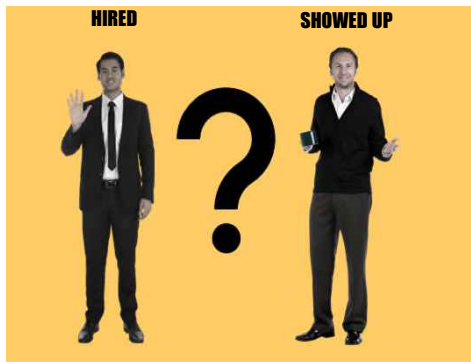
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HUH? EMPLOYEE WHO INTERVIEWED FOR JOB IS NOT WHO SHOWED UP ON FIRST DAY



Recently, a user wrote in to r/AskHR to weigh in on a truly bizarre workplace problem. In a nutshell, they said that the person they interviewed and hired for a job was not the same person as the guy who showed up to work a few weeks later.

Specifically, the man interviewed “Josh” was Hispanic and had a slight accent. He had black curly hair, stubble, and was average height. On the day he was scheduled to start, however, the person who showed up was a tall

white man with wavy brown hair. The nameplate on the door had Josh’s first and last name, so the user asked the man if Josh was in – assuming he was the IT guy helping set up.

In response, the man replied “Good Morning it’s nice to see you again” as if he was Josh. The reddit user asked “has anyone in HR heard of something like this before?”

Source: *Buzzfeed*

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Navigating a Remote and Hybrid Workforce



- Reduced productivity and engagement
- Employee accountability – are they really working?
- Wage and hour concerns
- Varying state and local requirements
- Barriers to workplace culture – lack of cohesion/relationship building
- Digital nomads



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Important Considerations: Remote v. Hybrid Work



- Provide clear communications and expectations
- Implementation efforts that foster collaboration across teams and organizations
- Audits/location tracking
- Why are we doing this – at whose convenience?
- Tax implications – especially for multi-state employees

Tax Implications on Remote Work – State Taxes



Employee location impacts an Employer's state tax obligations:



- Employer generally required to withhold income taxes based on where employee physically works.
 - Exception – state reciprocity arrangements
- Employer unemployment obligations depend on work location and operation base.
- Aside from employment taxes, employee location may impact an employer's income tax and other business tax obligations.
 - Example – states that use payroll tax apportionment method

Tax Implications on Remote Work – Home Office Expenses



Employees generally not eligible to deduct unreimbursed job expenses

Properly reimbursed expenses, however, may be deductible by employer



Home office deduction limited to self-employed individuals

Home office space must be *exclusively* used for business

Working with Professional Employer Organizations (“PEO”)



Pros

- Reduce in-house administrative costs
- Shift payroll tax responsibility to PEO
- Assist with employee compliance matters
- Library of resources on employee policies and state specific requirements



Cons

- Payroll tax liability if PEO not statutory employer
- Loss of control over payroll data
- Quality of service and resources vary

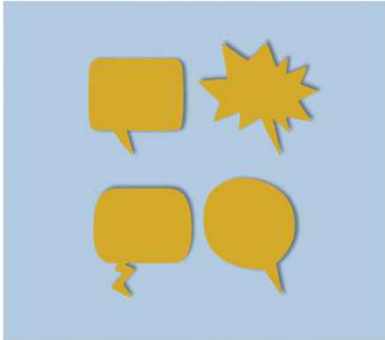
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“YOU’RE FIRED”: POLITICS IN THE WORKPLACE



Recently, dozens of employees at Google were terminated after engaging in a sit-in-style protest demanding an end to Google’s contracts with the Israeli government due to the employees’ views on the conflict in Gaza.

In the wake of the protests at Google, CEO, Sundar Pichai, sent a company-wide memo to staffers urging them to keep “politics” out of the workplace. The chief executive told workers that “this is a business, and not a place to act in a way that disrupts coworkers.” Pichai went on

to urge Googlers not to “fight over disruptive issues or debate politics” in the workplace.

These tensions are simmering in workplaces, especially as the Trump administration rolls out new policies, splitting employees and putting pressure on companies to act. Some employers have sought to prohibit or rein in political discourse on the clock.

Source: BBC

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Political Discussions in the Workplace



In increasingly polarized times, how do employers manage political discussions in the workplace?

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Are Political Discussions Protected?



- Title VII does not protect “political affiliation” as a protected category.
 - Some jurisdictions (like Washington, D.C.) do
- Louisiana and South Carolina put strict limits on employer’s ability to restrict political speech.
- The NLRA requires employees be able to discuss topics that relate to working conditions, like pay, benefits and workplace safety.

Practical Considerations

- **How do we manage?**
 - Leadership and manager training
 - Is this really a terminable offense?
 - When and where is the conduct taking place?
 - Create a space for proper discussions to take place
 - Lead by example



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“OUR COMPANY IS MAKING US DO UNREASONABLE THINGS TO ACCOMMODATE A COWORKER’S MENTAL HEALTH”



“My coworker, ‘Casey,’ has worked at the same company as me for just over two years. Casey has mental health issues with obsessive-compulsive disorder (self-acknowledged and openly talked about) that have gotten progressively worse as time goes on. Casey is on medication and currently in therapy, but it isn’t enough any more. It has gotten to the point where it’s out of control and affecting the lives of others.

Some examples: Casey likes everything to be the same, and so to accommodate this management has amended the dress code to say that if clothes have patterns they must be uniform and even that if anyone

wears a ring, watch, or bracelet on one hand they must wear one on the other so it’s the same. Another example is that some people who work here take public transit and there is a bus stop outside of our office. To accommodate Casey, we were directed by management to line up for the bus as male/female/male/female, etc., so the line is orderly... When we bring our concerns to management or HR, they just tell us about the ADA and being tolerant. Short of finding a new job, can you recommend any other ways to get management to see why this is a problem?”

Source: Askamanger.org

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Increased Accommodation Requests



We are seeing increased accommodation requests in a number of areas:

- Mental health accommodations
- Schedule and remote work accommodations
- Requests for leave
- Accommodation for pregnancy and lactation
 - State and local legal considerations

THE MILES DAILY NEWS

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FEDERAL GOVERNMENT TARGETING DEI PROGRAMS



The federal government recently announced several executive actions and initiatives targeting DEI programs and efforts within the federal government, in federal contracting, and in the private sector.

Specifically, the White House has issued executive orders terminating internal DEI and DEIA offices and programs within the federal government, eliminating affirmative action

and DEI requirements in federal contracting, and calling for increased enforcement actions against private sector companies with DEI initiatives – calling, for example, for the identification of 9 potential targets among publicly traded corporations, large non-profits and higher education institutions, and state and local bar and medical associations by May 21.

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True or False?



Employers can still sponsor affinity groups for racial minorities, LGBTQIA+ employees, religious groups, women, etc.

A. True

B. False



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Answer – **TRUE (but note)**

- Employers can sponsor affinity groups but assigning or denying membership may come with legal risk.
- It has yet to be determined by the courts if affinity groups can restrict membership to employees of a certain race, gender, *etc.*
- Employee resource groups have been highlighted as areas for attack in recent memoranda issued by the OMB – which could have broader implications



First Things First – Take a Deep Breath

- There's a lot going on right now – terminations, executive orders, policy memos
- No clear guidance
- Now is not the time for panic or taking hasty action
- Instead, it's a time to **evaluate, assess, and gather information**

DEI – What’s Changed



Recent Executive Orders/Actions

- DEI efforts prohibited in federal contracting and spending
- Reporting obligations on race and gender revoked
- Contractors and grantees required to affirm they will not engage in DEI efforts
- All federal departments and agencies encouraged to take action to end private sector DEI efforts, including civil compliance investigation and litigation

DEI – What Hasn’t Changed

Discrimination based on race, color, religion, sex, and/or national origin remains illegal



What Can We Expect?

- Greater scrutiny over public facing statements, such as on websites and application materials
- Increased investigations and potential litigation
 - Reverse discrimination claims
 - Increased claims under the False Claims Act for contractors and grantees
 - Continued change



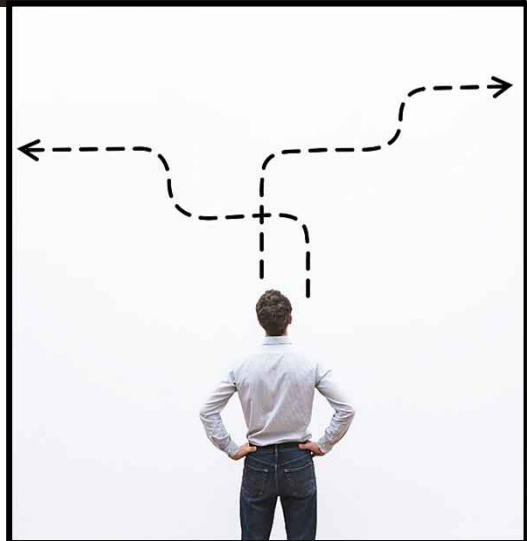
Evaluate

- Are the program's opportunities open to all, without regard to an identity trait, like race or sex?
- Is the availability of the program effectively communicated to all individuals so that participation is open to all?
- What is the overall intent of the program? What is being done, how is it being done, and why?

General Parameters

Programs that address race, gender, religion, *etc.*, on their face are likely to be problematic, especially as they relate to ultimate employment actions like hiring and promotion.

- Quotas are unlawful because they indicate that the ultimate employment decision was based on race.
- Providing “extra credit” to a minority or female candidate is likely to also be unlawful.



What Can Employers Do?



- Increase the pipeline of qualified candidates by expanding recruitment and advertising, such as developing relationships and recruiting at HBCUs, women’s colleges, and specialized schools.
- Implement blind application screening to avoid unconscious bias/allegations of preference.

What's Buzzing: Navigating Challenging Workplace Issues

Presented by:
Suzanne Decker
Sasha Hodge-Wren
Victoria Hoffberger



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Fort McHenry Manufacturing Co.



Imagine you're the Human Resources Officer at Fort McHenry Manufacturing Company, a baseball glove design and production company in Baltimore, MD with 75 employees. FMM sells to big box retailers and the U.S. Navy.

2025 Hot Topics in Employment Law Seminar

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Hypothetical



Marijuana is now legal in Maryland, and Camden Clarke is talking with his best work friend Raven Row about how much fun he had getting high last weekend. You overhear them talking. They both work in safety sensitive positions on the manufacturing line.

Do you need to do something about this behavior?

- A. No, unless you believe that he is high at work.
- B. Yes, given the nature of his job.
- C. Yes, the company is a government contractor.
- D. None of the above.



Marijuana Usage



- Legal in MD and DC
- Can still enforce no on-duty usage and prohibit being under the influence
- Difficult with remote work
- Treat like any substance abuse issue
- Federal contractors have different considerations

Hypothetical



A manager of your company, Nat Bohlander, is very religious and routinely posts articles about her pro-life views. Recently, she posted multiple times, calling out certain large companies as “murderers” for supporting certain non-profits such as Planned Parenthood. Unfortunately, some of those companies are your clients. A member of the public has posted on X and outed Nat as working at FMM.

Can Nat be disciplined for this behavior?

- A. No, because Nat was posting her personal opinions on her own time.
- B. No, Nat was posting about a protected political opinion.
- C. Yes, if the posts caused reputational or other harm to FMM.
- D. None of the above.



Off Duty Conduct



- Some states protect legal off duty conduct generally
 - California, Colorado
- Public employers must consider First Amendment
- Consider the conduct and the implication on the business
- Could also implicate NLRA

Off Duty Conduct

- Recommend clear guidelines for social media.
- Can generally enforce policy that employees cannot post harassing, intimidating, offensive, abusive, or threatening language.
- Employees also cannot post privileged, confidential, or business information.
- Easy to check where somebody works.

Hypothetical



Raven Row, a machinist, is pregnant and requests to have her customized uniform refitted.

Does Raven need to provide medical verification?

- A. No, you can tell she looks pregnant.
- B. Yes, the need for a reasonable accommodation is not obvious.
- C. Neither, because she has no right to this accommodation regardless.
- D. None of the above.



Hypothetical



Raven usually works a 12-hour shift on her feet all day. A job opens up that would allow her to sit the majority of the day. You move her into that position, which is an 8-hour shift.

Should you have adjusted her job?



- A. Yes, her job would likely become too strenuous.
- B. Yes, the need for a reasonable accommodation is obvious.
- C. No, she needs to make the request through the formal accommodation process.
- D. None of the above.



Pregnant Workers Fairness Act (“PWFA”)



- Covers “known limitations” related to pregnancy, childbirth, or related medical conditions
- Employee need not be “disabled”
- Generally, cannot require employee to go on leave
- Medical verification not required in 4 common scenarios or when breastfeeding/lactation is the request
- May require temporary suspension of an essential element of position

Hypothetical

A new employee Edgar Allen informs you that his grandfather suffered a fall over the weekend and that he'd need leave to care for him while he recovers. Edgar has only been working for three months.

Is Edgar eligible for leave and benefits?

- A. No, he has not worked long enough at the company.
- B. No, his grandfather is not an immediate family member.
- C. Yes, because he is his grandfather's caretaker.
- D. None of the above.



Navigating State Paid Family Medical Leave and the FMLA



- California, Colorado, Connecticut, District of Columbia, Delaware, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, and Washington
- Maryland FAMLMI contributions begin July 1, 2025

Time Machine into 2026



A new employee Edgar Allen informs you that his grandfather suffered a fall over the weekend and that he'd need leave to care for him while he recovers. Edgar has only been working for three months, but you know he worked fulltime as a barista down the block before joining the company.

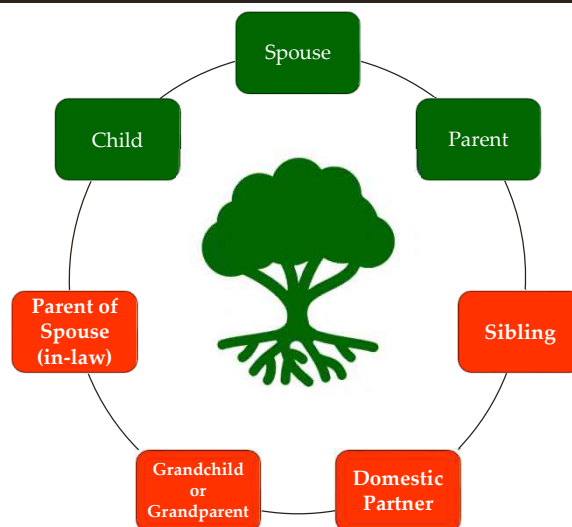
Will Edgar be eligible for leave and benefits in 2026?



- A. No, he has not worked for long enough at the company.
- B. No, his grandfather is not an immediate family member.
- C. Yes, because Edgar worked at least 680 hours of qualified employment in the previous year.
- D. None of the above.



Maryland and DC Family Member Compared with FMLA Family Member



*Red are included in Maryland and DC paid leave but not FMLA definition

Navigating State Paid Family Medical Leave and the FMLA



- An event may qualify for leave through both FMLA and state Paid Family Medical Leave
- There will be cases when an event only qualifies for state Paid Family Medical Leave, and the employee does not use any FMLA time
- In most cases, state Paid Family Medical Leave laws apply to employers with one or more employee without needing to meet the FMLA's 50 employee threshold

Reduction in Force



The company lost a large contract with the Chicago White Sox. As a result, the company determines that it needs to cut one employee from every department.

Hypothetical

While Raven is on FMLA leave, the company decides to move forward with the RIF. Raven is the least senior and third lowest performing employee, and you decide that she should be the employee selected from her department.

Hypothetical



Can you include Raven in the RIF even though she is on protected leave? If so, when?

Are There Obligations Under WARN Act Related to the RIF?



- **Mass layoff:** at least 50 employees are laid off in a 30-day period, or at least one-third of the full-time workforce is laid off in a 30-day period
- **Plant closure:** a plant closure affects 50 or more employees
- **Relocation:** a relocation of at least 100 miles affects any number of employees

Local Considerations



- **DC:** Displaced Workers Protection Act: applies to service contracts, provides job protection when change in service contract
- **MD:** 50+ employees, if layoff is 25% of workforce or 15 employees over any 3-month period, also note unemployment notice obligations
- **Philadelphia:** voluntary permanent shutdowns

The Non-Compete

As a part of the offer, the company required Raven to sign a Non-Compete which it requires all employees to do under company policy. The agreement prohibits Raven from working for any competitor in any capacity and in any jurisdiction for 2 years after her employment ends and from soliciting the company's customers and employees for the same period. The agreement advises Raven to confer with an attorney before signing and gives her 21 days to consider the agreement.

Did the company do anything wrong?

- A. Yes, the non-competes lasts for too long to be enforceable.
- B. No, the company has a legitimate interest in preventing Raven from sharing its trade secrets with a competitor.
- C. Yes, because a machinist is not an employee for which a non-competes is appropriate.
- D. No, because the Agreement advises Raven to confer with an attorney and gives her 21 days to consider the agreement.



What About the FTC's Non-Compete Ban?



- Federal Trade Commission issued a Final Rule banning non-compete clauses between employers and workers on April 23, 2024
- The FTC's Final Rule was set aside on August 20, 2024

Non-Competes Banned



- California*
- Minnesota
- Oklahoma
- North Dakota

Non-Competes Limited

- **Colorado:** \$127,091 per year (adjusted annually)
- **District of Columbia:** Non-medical specialist employees – \$154,200. Medical specialists – \$257,000 (adjusts based on CPI)
- **Illinois:** \$75,000 per year
- **Maine:** 400% of the federal poverty level (currently \$62,600 for individuals)
- **Maryland:** 150% of state minimum wage (\$22.50 per hour or \$46,800 per year)
- **Massachusetts:** Must be exempt (\$684* per week)
- **Nevada:** No hourly employees
- **New Hampshire:** 200% of federal minimum wage (\$14.50)
- **Oregon:** \$116,427 per year (adjusted annually)
- **Rhode Island:** Exempt and earning 250% of the federal poverty level (\$39,125 for individuals)
- **Virginia:** \$76,082 per year (adjusted annually)
- **Washington:** \$123,394.17 per year (adjusted annually)

Non-Compete Provision



In addition, employers should:




1. Bolster the other provisions in their restrictive covenants on non-solicitation and non-disclosure;
2. Take steps to protect trade secrets and other confidential information appropriately; and
3. Solidify their practices and policies on onboarding and offboarding employees.

Any Questions?



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