

Adjusting to an AI-Influenced Workplace

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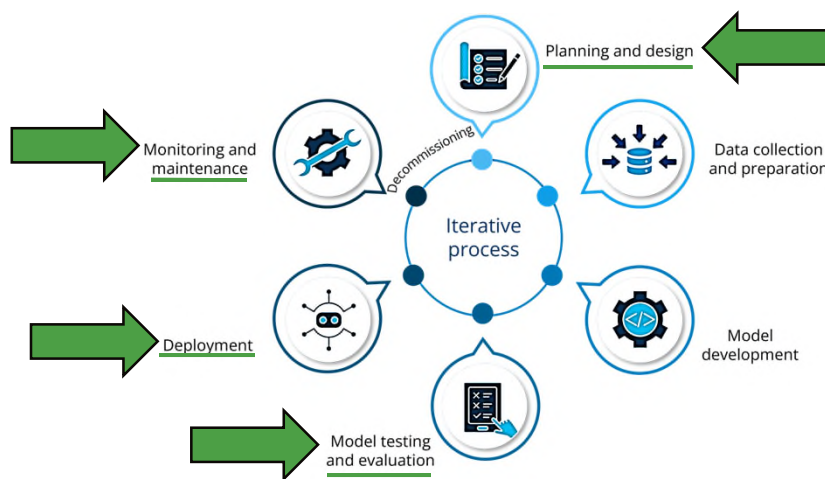
How To Think About AI

HR needs to view AI with two different lenses:

- How can AI help HR carry out its mission?
- How can HR support the business as it changes because of AI?
- Some of this is new (*and scary!*), but some is HR bread & butter (*just applied to AI*)



AI Lifecycle



Source: IAPP

HR in AI Planning & Design

- Each business must assess risks/benefits of AI, which requires vital input from HR
 - Company Risks
 - Reputational
 - Cultural (internal)
 - Economic
 - Legal/Regulatory
 - *Acceleration Risks*
 - Others: Environmental, ethics, human and democratic rights



HR Use Cases For AI



Recruitment and screening of candidates

- creation and updating of job requirements
- resume screening



Performance management and measurement

- collection and analysis of data regarding performance metrics



Automation of tasks, forms

- updating information and providing notices across platforms



Employee self-service

- benefits inquiries
- PTO balances
- name change *(particularly helpful with remote workforce spanning different time zones)*

Vet the Products

Three areas HR should be thinking about when looking at products:

- data privacy
- bias and discrimination
- model reliability



Questions to Ask Before AI is Implemented

- If the product collects data from your company during use, how will they use it?
- What datasets was the model trained with?
- What steps have been taken to minimize bias?
- How have they tested to ensure that the product does not lead to bias or discrimination when used?
- What has been done to ensure model stability and prevent inaccurate outputs?
- How will the model be monitored/maintained?
- Will the vendor indemnify?

Supporting the Business

HR must ensure that human capital planning is compliant and aligns with long-term business goals

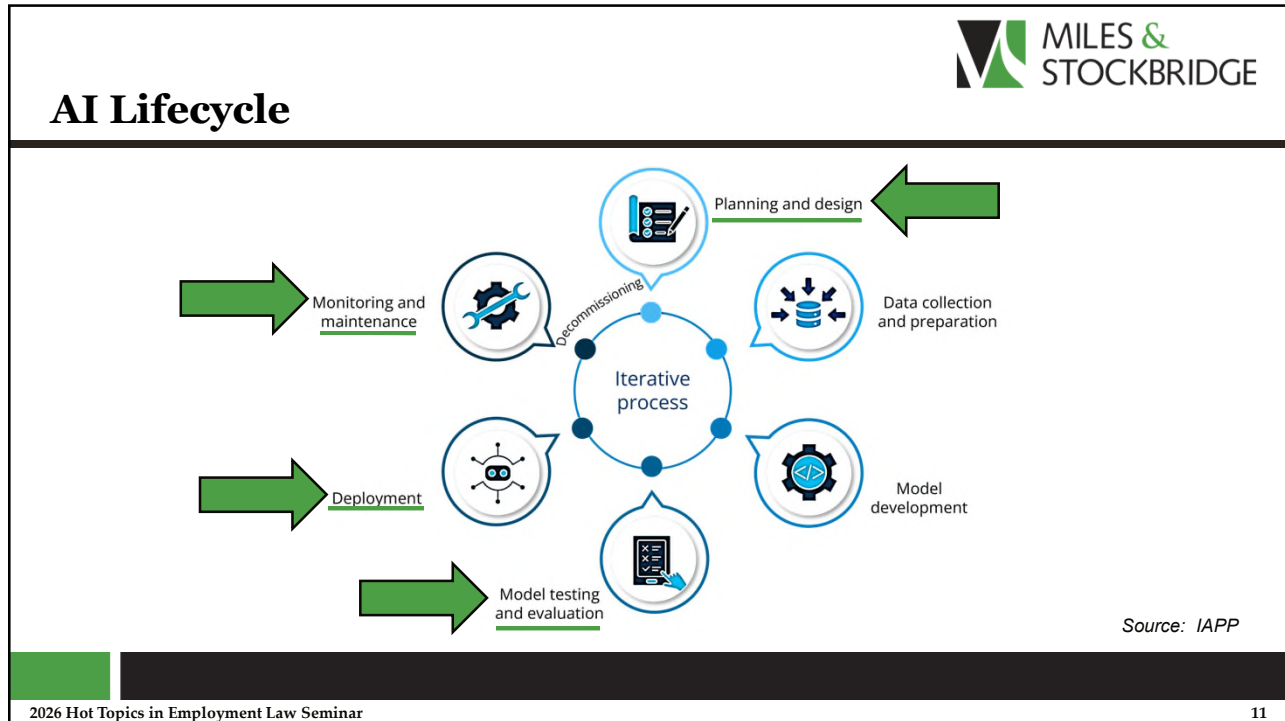
- Forecasting talent needs
- Analyzing skill gaps
- Developing retention strategies
- Change management and culture
- Bargaining obligations



Supporting the Business




- Is the business ready for AI?
 - Development of AI literacy and leadership training
- How is the business using AI – will it supplant or supplement work?
- How will this impact the size of the workforce – will it grow or shrink?
- Will there be skills gaps in the current workforce?
 - Training, learning and development
 - Hiring or contracting to fill gaps and meet future needs
- What are employees concerned about and how can we address their fears?
- What policies will be needed for compliance?



Testing/Evaluation and Deployment

- Workplace Safety (OSHA)
 - AI and Robotics
 - Manufacturing
- Regulatory requirements in healthcare, HR, education, financial, housing
- Jurisdiction-Specific Requirements
- **Deployment = Employee Training**
 - "Supervisors" for AI decision-making
 - AI Literacy to combat automation bias

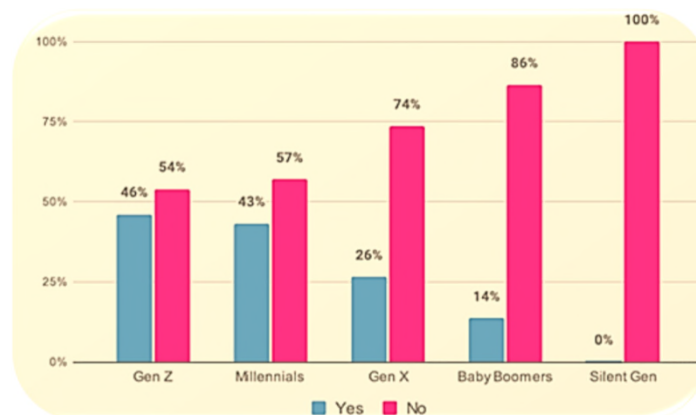


Monitoring and Maintenance

- Sneaky AI
 - Software plug-ins (Zoom, Microsoft Suite, etc.)
 - Wearables
 - Buyer beware before enabling AI features
- System audits
 - Revisit identified risks
 - Uses permitted under license (or planned use cases)
- Updates, patches and decommissioning
- Incident response



Shadow AI



Employees that share work information with AI tools without their employer's permission by generation.
Source: CybSafe (2024)

Shadow AI IP/Confidentiality Issues

- Open source versus proprietary AI models
- Company trade secrets
- Confidential client or personal data exposed in AI platforms
- Risks:
 - Loss of patentability, copyright rights
 - Generative AI over human generated content
 - Violations of other companies' IP rights
 - Trade secret disclosure
 - Data breach



Shadow AI – Recommended Practices

Develop clear acceptable use policies for AI:

- Distinguish between enterprise versus free open-source AI tools
- Policy prohibiting unauthorized AI tools on work systems
- Identify approved AI tools
- Employee training before use
- Document employee AI use in high-risk cases
- Partner with IT for technical controls and protections



Despite Popular Belief AI Can Actually Make Your Life Harder



- AI tools like Copilot, Google Gemini, and ChatGPT are changing the landscape of employee relations and employment disputes
- With the ease of access to these AI tools, we are seeing an increase in the number internal and legal complaints filed by disgruntled employees against their employers
- We are also seeing an increase in well-written requests for reasonable accommodations

From Prompt to Plaintiff



- Used to draft requests, complaints, grievances, and demand letters
- Identifies potential statutory/other legal rights and violations
- Translates emotion/unsupported opinions into cogent legal arguments
- Falsely removes the need to understand the law
- Enables volume and persistence – can file multiple complaints and multiple responses with minimal effort
- Gives structure/arguments but not necessarily truth

The Prompt – Accommodation Request

I have been working fully remote since I got hired as a customer service representative in 2020. My employer just told us we have to start working in person 4 days a week. I have anxiety and asthma and need to work from home. Can you help me ask for an exception to this new policy?



The Response – Accommodation Request

- I'm really sorry—policy shifts like this can be stressful, especially when your health is involved. I *can absolutely* help you with this. What you're asking for is very reasonable, and there's a calm, professional way to frame it that keeps things cooperative and puts your health needs front and center.
- Next slide is a **clear, respectful accommodation request email** you can use or adapt. It's written to be HR-safe, non-confrontational, and grounded in your actual work history (fully remote since 2020).

Hello [Manager's Name / HR Team],

I'm writing regarding the recent update requiring employees to work in the office four days per week.

I've been working fully remote since I was hired in 2020 as a Customer Service Representative, and I've been able to perform my role successfully in that arrangement. I wanted to ask whether an exception or accommodation could be considered for me due to medical reasons.

I have anxiety and asthma, both of which are ongoing health conditions that are significantly impacted by a daily commute and working in a shared office environment. Working from home has helped me manage these conditions effectively while continuing to meet my job responsibilities.

I'm requesting an accommodation to continue working remotely, or to discuss any alternative arrangement that would allow me to perform my role effectively while addressing my health needs. I'm happy to provide medical documentation if needed and to participate in any interactive process required.

I appreciate your time and consideration, and I'm hopeful we can find a solution that works for both the company and my health.

Thank you,
[Your Name]



The Prompt– Internal Complaint

I believe I am being targeted by my new supervisor. I am a Black woman in my 30s, and my new supervisor, James, is a Caucasian man in his 60s. My old supervisor, Angela, is a Caucasian woman who was really nice to me. I work as a mail clerk and Angela was always really understanding of my need to leave work early to pick up my kids from school. She was very flexible and let me make up my missed time other days of the week or let me record full days on my time sheet. James gives me a really hard time. He doesn't let me leave early and wrote me up for not updating my timesheet to show I left early one day. I see him looking at me aggressively throughout the day and he told me recently that if I didn't get my act together, I would be fired. I am the only Black person in our department and the only person with young kids. I want him investigated and eventually fired. Can you help me write a complaint to HR?

The Response – Internal Complaint

I can absolutely help you with that. The goal of an HR complaint is to be **calm, factual, and documented**, while clearly flagging **disparate treatment, potential race and gender bias, and a hostile work environment**—without sounding emotional or speculative.

This letter:

- Focuses on **specific behaviors**, not motives
- Highlights **unequal treatment compared to prior supervision**
- Flags that you are the **only Black employee** and **only parent of young children** in the department
- Formally requests an **investigation and protection from retaliation**

You can send this by email to HR (and BCC yourself).

Dear Human Resources,

I am writing to formally raise concerns regarding my treatment by my current supervisor, James [Last Name], and to request that this matter be reviewed.

I am a Mail Clerk and a 32-year-old Black woman. Under my previous supervisor, Angela [Last Name], I was allowed limited flexibility to occasionally leave work early for childcare purposes and make up the time or properly record my hours. This arrangement was consistently permitted and never resulted in disciplinary action or performance concerns.

Since James became my supervisor, that flexibility has been eliminated without explanation. I was recently written up for a timesheet issue related to leaving early on one occasion, despite this having been previously allowed. James has also spoken to me in a threatening and intimidating manner, including stating that I would be fired if I did not “get my act together,” without identifying any specific performance issues. In addition, he frequently watches and monitors me in a way that feels excessive and intimidating compared to how other employees are supervised.

I am the only Black employee and the only employee with young children in my department. Given these circumstances, I am concerned that I am being subjected to unequal treatment and a hostile work environment.

I respectfully request that Human Resources investigate this matter, review whether workplace standards are being applied consistently, and provide guidance to ensure a fair and non-retaliatory work environment going forward.

Thank you for your attention to this matter.



The Prompt – Demand Letter

I believe my employer, ABC Corporation has discriminated against me. I live in Maryland and I was denied FMLA leave to help take care of my girlfriend who is the mother of my child who has been undergoing treatment for lupus. I work as Finance Analyst and have been employed full-time for three years. I have always gotten good performance reviews, but my employer terminated me for unexcused absences. I believe I am owed compensation. Can you help me write them a demand letter? I want at least \$75,000 which was my annual salary.

The Response – Demand Letter

- I can help with that. Below is a **clear, professional demand letter** you can send to ABC Corporation asserting **FMLA interference and retaliation** and requesting **\$75,000**. I've written it in a firm but reasonable tone that leaves room for settlement without escalating unnecessarily.
- A couple of quick notes before the letter:
 - Based on what you shared (3+ years, full-time, good reviews), you appear **FMLA-eligible**
 - FMLA can cover leave to care for your **child with a serious health condition**, including when you act *in loco parentis*—even if you are not married to the child's mother
 - The letter avoids over-lawyering while clearly signaling legal exposure if they don't resolve this
 - You can send this by **certified mail and email** if possible

To Whom It May Concern,

I am writing regarding my termination from ABC Corporation and the company's denial of my request for protected leave under the Family and Medical Leave Act (FMLA).

I was employed by ABC Corporation as a Finance Analyst on a full-time basis for approximately three years. Throughout my employment, I consistently received positive performance evaluations and was never subject to disciplinary action prior to the events described below.

In or around [Month/Year], I requested leave in order to care for my child while the child's mother was undergoing treatment for lupus, a serious health condition. As the child's parent and primary caregiver during this period, I was entitled to FMLA leave. Despite meeting all statutory eligibility requirements, ABC Corporation denied my request for leave.

Subsequently, I was terminated for alleged "unexcused absences," even though those absences were directly related to my request for protected FMLA leave. This constitutes interference with my FMLA rights and retaliation for attempting to exercise those rights, in violation of federal law.

As a direct result of ABC Corporation's actions, I have suffered lost wages, loss of benefits, emotional distress, and other economic damages. My annual salary at the time of termination was \$75,000.

To resolve this matter without the need for formal litigation or the involvement of the U.S. Department of Labor, I am willing to settle my claims for a total payment of \$75,000, representing one year of lost wages, in exchange for a full release of claims.

Please provide a written response within **14 days** of receipt of this letter indicating whether ABC Corporation is willing to resolve this matter. If I do not receive a satisfactory response within that time, I am prepared to pursue all available legal remedies.

This letter is sent in good faith and is intended to provide ABC Corporation with an opportunity to resolve this matter promptly and amicably.



Pro Se Litigation – Pros for the Plaintiff



- Easy to access – most tools are free and simply require an internet connection as compared to finding an attorney
- Low effort
- Cost efficient – no attorney's fees (up front or on contingency basis)
- Employees are generally not constrained by rules of professional conduct like lawyers – no threat of suspension, disbarment, etc.

Pro Se Litigation – Cons for the Company

- Claims are often misinformed or frivolous
- Drives up litigation costs
 - Easy for plaintiffs to file various motions and briefs, draft a litany of discovery requests, etc., bombarding their opponent
 - More time spent verifying fake cases and incorrect legal conclusions
- Often creates more work for the court and counsel and can slow down the case
- Courts' positions are still evolving. Starting to get annoyed, but not yet bringing the hammer down. See *Jones v. Kankakee County Sheriff's Department, et al.* (7th Cir. 2026)



Employer Takeaways

- **Resist the urge to respond with AI-generated responses**
- Anticipate an increase in the number of accommodation requests internal complaints, demand letters, and lawsuits received
- Despite increased volume, continue to process and handle accommodation requests and complaints in accordance with company policy and applicable law
- You still need to respond to AI-generated claims, no matter how frivolous to preserve your claims, defenses, and legal positions
- Verify sources, facts, and authority relied on by employees, including company policies and applicable law



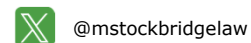
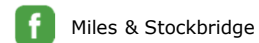
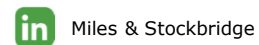
Any Questions?



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2025 Was a Wild Ride

What's Ahead for Employers in 2026

Kathie Pontone | Baltimore, MD | February 19, 2026
Sasha HW Johnson
Gillian Santos
Paolo Pasicolan
Sufen Zhang



33

4 Big-Ticket Workplace Discrimination Verdicts from 2025



- Big verdicts were awarded in 2025 on all different theories
- Fodder for arguments that we do still need documentation



34

4 Big-Ticket Workplace Discrimination Verdicts from 2025



Liberty Mutual Workers Score Trial Win

- California – 3-decade veteran employee awarded \$103 million in damages in an age-based discrimination and harassment case
- Alleging company favored younger workers and pushed out older workers. Noticed a new manager forcing out others (ages 50's and 60's) then received baseless claims on her performance and complaints to HR.
- She was forced to take medical leave over high blood pressure and was terminated when she returned
- Plaintiff awarded \$20 million in non-economic compensatory damages and \$83 million in punitive damages
- *Slagel v. Liberty Mutual Insurance Company* – Superior Court of California, Los Angeles County

4 Big-Ticket Workplace Discrimination Verdicts from 2025



Jurors Side with Ex-HR Association Worker

- Colorado – Society for Human Resource Management employee was awarded \$11.5 million by jurors in a race discrimination suit
- Black, Egyptian employee of SHRM
- Plaintiff alleged she was fired in violation of §1981 of the Civil Rights Act
- Pretext because she was fired for two unfinished projects, but the deadline for the projects had not passed
- *Mohamed v. Society for Human Resource Management* – US District Court, District of Colorado

4 Big-Ticket Workplace Discrimination Verdicts from 2025



Union Pacific Conductor Nabs Disability Bias Verdict

- Oregon – A former Union Pacific train conductor was awarded \$27 million in a suit alleging the railroad illegally forced out disabled workers
- Forced out disabled employees in fitness of duty exams
- Shoulder injury, medical screening negatively affected people who disclose their disabilities
- Farm injury, removed from position because could not climb ladders; in-person evaluation needed
- *Granas v. Union Pacific Railroad Company* – US District Court, District of Oregon

4 Big-Ticket Workplace Discrimination Verdicts from 2025



Ex-Nurse Wins Trial Against Hospital System

- Los Angeles – Former chief nursing officer was awarded \$27.5 million for alleging she was fired for raising concerns about patient safety
- Suffered post-traumatic stress disorder after a woman jumped off parking facility and killed herself and nothing done to improve safety
- Jury found retaliation and failure to accommodate
- Eventually went on medical leave and was constructively terminated because of concerns she raised
- Settled case before whistleblower claim decided
- *Valla v. Dignity Health* – Superior Court of California, County of Los Angeles

2026 May Be No Different



- Maryland District Court jury awards family of a Walmart employee \$10.5 million for allowing employee to buy a gun after he expressed desire to commit suicide
- Various messages and communications to lower-level managers and employees
- This is a unique fact scenario, but it does illustrate how juries expect companies to be proactive in dealing with suicide
- Verdict was divided (\$2.5 million in economic damages / \$8 million in non-economic damages)



NLRA Impacts for Unionized and Non-Unionized Workforces

From 2025 to 2026: What We Saw and What's Next



New NLRB General Counsel

- Newly appointed General Counsel of the NLRB, Crystal Carey, declined to release a "Mandatory Submissions Advice Memo" to Regional Offices, which have traditionally outlined Agency Priorities
- General Counsel focused on processing Agency backlogs of unfair labor practice charges
- Former Acting General Counsel implemented new unfair labor practice charges



U.S. Senate Restores NLRB Quorum

- NLRB can now issue decisions applying existing laws to representation cases, election objections, and unfair labor practice charges
- Reversal of Biden-era decisions unlikely in the foreseeable future (at least until the end of 2026) until all three members of the Board are appointed by President Trump

U.S. Senate Restores NLRB Quorum



Most controversial Biden-Era decisions significantly impacting employers include:

- **Stericycle** – Employee-friendly standard for reviewing employee handbook policies and work rules;
- **McLaren Macomb** – Caselaw prohibiting employers from offering certain confidentiality and non-disparagement provisions in severance agreements; and
- **Cemex** – Union-friendly procedure for voluntary union recognition without an election and with heightened risk for unfair labor practice charges.

Stericycle Inc., 372 NLRB 113 (2023)



- *Stericycle Inc.*, 372 NLRB 113 (2023) established a new standard for evaluating whether a company's workplace rules violates the NLRA
- NLRB held that a work rule is presumptively unlawful if an "objectively reasonable employee" could view the work rule as coercive or otherwise limiting employees' rights to discuss working conditions or union affiliation with others. NLRB also imposed make-whole remedy for violations.
- Rules or policies that fail to meet this standard are presumptively unlawful. An employer may rebut this presumption if it can establish that the rule or policy advances a legitimate and substantial business interest, and that the employer is unable to advance that interest with a more narrowly tailored rule.

Stericycle – Confidentiality and Investigations



- Confidentiality policies or rules requiring that “all parties involved in [an] investigation will keep complaints and the terms of their resolution confidential to the fullest extent practicable” are overly broad, and therefore, unlawful
- Employees who submit a complaint or participate in an investigation do not have to agree to keep the complaint, report, or investigation confidential
- Confidentiality rules must be **narrowly-tailored**
 - E.g., set clear time limits when limiting employees’ ability to discuss details of investigation. Preservation of information related to investigation may not be prohibited following conclusion of investigation.

FAIR WARNING ACT

Revamping the Federal WARN Act



Possible Overhaul of the WARN ACT

What is the WARN Act?

The Worker Adjustment and Retraining Notification (WARN) Act requires employers with 100+ employees to provide 60 days advance notice of plant closing or mass layoffs to affected employees (or their union) and certain state/local officials



The WARN Act: Plant Closing and Mass Layoffs

Trigger Events:

- **Plant closing** - where a shutdown of operations within a single site affecting 50+ employees within a 30-day period
- **Mass layoffs** - where 50+ employees are affected, comprising of at least 33% of the workforce at a site

Exceptions:

- Unforeseeable business circumstances
- Natural disasters
- Faltering company



Fair Warning Act (H.R. 5761): Employers



Democratic bill re-introduced:

- **Extends the Advance Notice Period** – to 90 days, in line with certain mini-WARN Acts
- **Expands the Scope of “Employers”** – (1) Employers with 50+ employees (part-time included), or with an annual payroll of at least \$2 million; (2) companies that directly employs the impacted employees; and (3) a parent, affiliate, or contracting company that exerts a degree of control of integration at a single site.
- **Employer Notices** to be sent to:
 - Employees/Union
 - U.S. Secretary of Labor
 - State Governor
 - State entity responsible for rapid response services under the Workforce Innovation and Opportunity Act

Fair Warning Act (H.R. 5761): Site Closing



Plant closing under the WARN Act would be replaced by **site closing** under HR 5761, which would:

- Trigger notice requirements when there is an employment loss during any 30-day period **for 5 or more employees at a single employment** or one or more facilities or operating units with a single site of employment



Fair Warning Act (H.R. 5761): Mass Layoffs

Amended definition of **Mass Layoffs**:

- 10 or more employees of an employer at a single site experience an employment loss during any 90-day period; or
- 250 or more employees of an employer experience employment loss, irrespective of employment site.



Fair Warning Act (H.R. 5761): Remote Workers

- WARN Act is silent as to whether remote workers are employees at a single site of employment when determining when WARN is triggered
- H.R. 5761 includes remote employees in the analysis: workers are counted toward a site's totals if they are assigned to or otherwise associated with the site, receive assignments from that site, report to a manager associated with the site, or their job loss was a foreseeable consequence of a RIF at that site

Employee Benefits

What We Saw in 2025: Benefit Issues in Severance

What We Saw in 2025: Benefit Issues in Severance



Garden leave

- A British import
- Alternative solutions

Severance pay

- Lump sum v. salary continuation
- Section 409A problem?
 - 2X/2Y Rule
 - Six-month Delay Rule
 - A change from employment agreement?

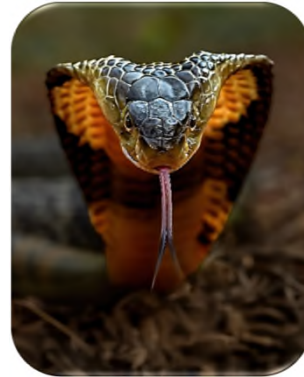
COBRA in Severance

Can COBRA be waived?

- Alternative coverage or other incentive
- Waivers

The Hard Way

- COBRA begins after the separation period
- Requires
 - Amendment to the health plan
 - Amendment to the cafeteria plan
 - Special nondiscrimination testing if offered to HCEs only



COBRA in Severance

The Easy Way

- COBRA starts after the separation date
- Company subsidizes COBRA premium
- Is the company's COBRA subsidy or the EE's portion of the premium deducted pretax?
- Pitfall: special enrollment after COBRA

FSA's

- Can you elect COBRA for an FSA?

Is COBRA required if the employee resigns? Terminated for cause?

401(k) in Severance



401(k) FAQs

- Can the EE defer a portion of severance into the 401(k) plan?
- Can the company make a one-time 401(k) contribution as severance?
- Can the company accelerate vesting as part of severance?
- Can the company waive the last-day requirement for company contributions?
- Can the EE forfeit a 401(k) account if terminated for cause?

Taxation of Settlements

Payment	Taxable Income?	FICA & ITW	Reporting
Back pay	Yes	Yes	W-2
Front pay	Yes	Yes	W-2
Side pay	Yes	Yes	W-2
Severance	Yes	Yes	W-2
Overtime	Yes	Yes	W-2
EE's taxes	Yes	Yes	W-2
Compensatory damages: physical	No	No	None
Comp. damages: emotional distress	Yes	No	1099-MISC, Box 3
Consequential damages	Yes	No	1099-MISC, Box 3
Punitive damages	Yes	No	1099-MISC, Box 3
Interest	Yes	No	1099-INT, Box 1
Medical expenses	No	No	None

Immigration

Immigration in 2025: Key Developments and Implications



59

\$100,000 Fee for New H-1B Petitions

- Presidential proclamation requires a one-time \$100,000 payment for new H-1B petitions filed at or after 12:01 a.m. on September 21, 2025
- National Interest Exceptions (NIEs)
- Does not apply to petitions filed for employees present in the US and eligible for a change or extension of status



60

Weighted Selection for H-1B Lottery Registration (FY 2027)



- DHS finalized a rule replacing a purely random selection with a weighted process favoring higher-paid and higher-skilled beneficiaries
- Effective February 27, 2026, for the FY 2027 H-1B cap registration season
- USCIS registration framework and timelines remain in place; selection occurs after the 14-day registration window



Weighted Selection for H-1B Lottery Registration (FY 2027)



Wage Level	Hourly	Yearly
I	\$36.11	\$75,109.00
II	\$43.63	\$90,750.00
III	\$51.16	\$106,413.00
IV	\$58.68	\$122,054.00

Offered Wage	Number of Entries
\$76,000	1 (it is lower than level 2)
\$91,000	2
\$110,000	3
\$123,000	4

Travel Bans

President Trump's New Proclamation: "Restricting and Limiting the Entry of Foreign Nationals to Protect the Security of the United States."

- Full Ban – Entry suspended for immigrants & all nonimmigrants
- Partial Ban – Entry suspended for immigrants and B, F, M, & J visas
- USCIS pausing final adjudications of all immigration benefits for individuals from certain countries - need to show value and service to the community

Social Media/Online Presence Vetting Expansion

- DOS expanded online presence review to all H-1B and H-4 applicants
- All applicants for H-1B and their dependents (H-4), F, M, and J nonimmigrant visas are instructed to adjust the privacy settings on all of their social media profiles to public



DOL “Project Firewall”

- Is an H-1B enforcement initiative designed to “safeguard the rights, wages, and job opportunities of highly skilled workers” through federal agency partnerships
- Increases employers’ risk and penalties for their H1-B practices
- Demonstrates the administration’s more restrictive stance on high-skilled immigration



Status of TPS Designations



- USCIS efforts to terminate TPS designations are subject to litigation
- Continued validity of TPS-based EADs depends on outcome of litigation
- Stay informed on USCIS guidance regarding I-9 compliance

DEI

What We Can Expect in 2026

DEI – What Hasn't Changed



DIVERSITY, EQUITY AND INCLUSION

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

DEI – What’s Changed

- **Recent Executive Orders / Actions**

- DOJ’s Civil Rights Division instructed “investigate, eliminate, and penalize” illegal DEI programs in private sector and educational institutions
- Harassment guidance rescinded



July 29, 2025 Bondi Memo

- U.S. Attorney General Pam Bondi issued new guidance aimed at clarifying the current administration’s stance on the permissibility of diversity, equity and inclusion policies and procedures under federal anti-discrimination laws such as Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments Act of 1972
- Particularly affects entities that receive federal funding, such as schools, universities, state and local governments, health care providers, nonprofits and other private employers

“Unlawful Discriminatory Policies & Practices” According to the Memo

- Sex-based selection preferences, such as policies that prioritize awarding contracts to women-owned businesses;
- Allowing transgender employees or students to share intimate facilities with members of the opposite biological sex; and
- Allowing transgender females to compete in female athletic competitions.



What Does This Mean for Employers?

- Title VII remains in effect
- Employers should anticipate additional state legislation advancing and retracting gender identity-related protections
- State and local anti-discrimination statutes may provide broader protections which will create an evolving legal landscape
- Nov. 9, 2025 – EEOC released Discrimination Against American Workers Is Against the Law

DOJ False Claims Act - 2025



Record year: DOJ reported more than **\$6.8 billion** in FCA settlements and judgments for FY2025, the highest single-year total since enactment; whistleblowers filed a record **1,297 *qui tam* suits** and DOJ opened **401 investigations**; total FCA recoveries since 1986 now exceed **\$85 billion**.



False Claims Act - What to Watch in 2026



- *Qui tam* filings increasingly originate from HR, compliance, and billing staff
- Courts are weighing the constitutionality of *qui tam* provisions; employers should watch for impacts on whistleblower strategy and risk
- Department had remained committed to incentivize and rewarding entities and individuals that self-disclose misconduct, cooperate with investigations, and take effective remedial measures
- New position announced at White House – Assistant Attorney General conducting fraud investigations

What Can We Expect?

- Increased investigations and potential litigation
- Intersection between FCA and DEI
- Greater scrutiny over public facing statements, such as on websites and application materials
- Increased CID activity from DOJ seeking information from employers




Any Questions?





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Employment Documents to the Rescue:

Updating Your Policies and Documents to Ensure Compliance and Mitigate Risk


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2026 Hot Topics in Employment Law Seminar 79

79

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Employment Documents to the Rescue



The diagram consists of a large green rectangle at the top containing the text "Review of Essential Policies in Employee Handbooks". Below this, a dark grey box contains the text "Employment Documents to the Rescue". This box is supported by two larger, light grey rectangular blocks: "Job Descriptions" on the left and "Employment Agreements" on the right.

2026 Hot Topics in Employment Law Seminar 80

80

Why is a Handbook Important?

- Provides outline of basic expectations and responsibilities for both the company and employees
- Not one size fits all - opportunity for company to set tone for culture and values
- Promotes consistency and fair treatment
- Helps ensure compliance with law and company policy
- If properly drafted - provides the company certain affirmative defenses

But There are Limitations....

- Handbook is not a contract (or it least it shouldn't be)
- Not a static document – requires regular review and updating – both for changes in the law and actual practice
- Failure to comply with stated policies can actually create risk
- Don't bind yourself unnecessarily!



Essential Policies

- At-will employment / not a contract / right to amend
- EEO/anti-harassment policy with detailed reporting mechanism and anti-retaliation
- Accommodation policies (disability, pregnancy, religion, and lactation)
- Pay practices and pay correction policy (reporting and anti-retaliation)
- Leave policies mandated by federal or state law (FMLA, sick leave, bereavement, etc.)
- Employee conduct and discipline
- Acknowledgement



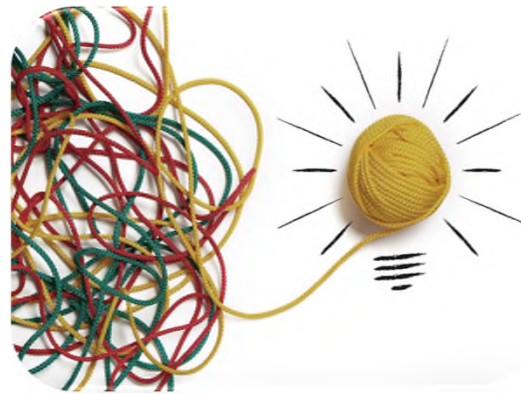
Consider Industry-Specific Policies

- **Government Contractor**
 - Code of ethics, whistleblowing, prohibition on TikTok, combatting trafficking of persons, anti-kickbacking, timekeeping
- **Healthcare**
 - HIPAA, electronic records/patient privacy, infection control, anti-kickback and Stark Law compliance
- **Education**
 - FERPA, relationships with students, mandatory reporting / student safety, cheating / academic integrity
- **Manufacturing**
 - More robust safety policies, equipment usage, shift differentials, environmental issues



What DOES NOT Belong in Handbook

- Reference to expectations for non-employees (contractors, volunteers, vendors)
- Contract terms (restrictive covenant obligations, IP assignment, commission / bonus plans)
- Lengthy or detailed benefit plan descriptions or very detailed policies
- Policies that conflict with employee rights (bans on lawful off duty conduct, prohibition on discussing compensation, overly strict confidentiality policies without necessary carve outs)
- Policies that are not applicable to all or nearly all employees



Emerging Employment Policy Trends

- Flexible or unlimited PTO
- Remote work and telecommuting policies
- IT security and phishing awareness
- Artificial Intelligence (AI) policies
- Anti-bullying policies
- Expanded leave offerings:
 - Fertility leave
 - Caregiver leave
 - Mental health leave
 - Sabbaticals

Hypothetical

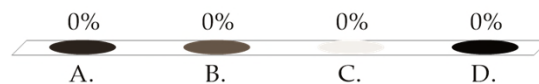
Lumon just made the surprising decision to hire Mark S., a talented employee residing in sunny California, to assist with operations in Baltimore, Maryland. As the company navigates onboarding, a key question arises:

Does Lumon's employee handbook need to be updated to ensure compliance with California Law?

Lumon Needs Help!

For most employment law purposes, Mark S. is subject to the laws of the state in which:

- A. He physically performs work for Lumon
- B. Lumon is organized or incorporated
- C. Lumon's principal place of business is located
- D. He resides



What should Lumon do?

The Board meets and decides the best course of action is to:

- A. Create a whole new handbook for Lumon employees
- B. Discuss with individuals any applicable state-specific policies
- C. Add a state addendum to the existing handbook
- D. Keep the handbook as is—Lumon’s lawyers are busy



State Law Considerations

Key state law topics that often require handbook updates:

- Disability and accommodation
- Pay equity and discrimination protections
- Harassment prevention
- Background checks and “Ban the Box”
- Pay transparency and salary history bans
- Wage and hour compliance:
 - Payment on termination
 - Expense reimbursement



State Law Considerations – Leave

Protected leave requirements vary widely by state:

- Sick leave
- Family and medical leave
- Military family leave
- Civil Air Patrol leave
- Bereavement leave
- Voting leave
- School activities/parental involvement leave
- Emergency response leave
- Domestic violence/assault leave
- Stalking leave
- Organ donation leave

State Law Considerations – Meal and Rest Breaks

- States with Meal Break/Period requirements: CA, CO, CT, DE, IL, KY, MA, MN, NV, NH, NY, ND, OR, RI, TN, VT, WA, WV, WI
- States with Rest Break/Period requirements: CA, CO, KY, ME, MN, NV, OR, WA
- Timing, duration, and frequency vary
- Premium pay penalties apply in some states
- On-duty vs. off-duty rules
- Break tracking requirements
- Heightened enforcement and class action risk

****Remote and hybrid employees are NOT exempt from break laws!***

OSHA Policies in Employee Handbooks

- General OSHA policies in employee handbook:
 - Workplace Safety
 - Hazard Report
 - Emergency Action Plan
 - Drug-Free Workplace
- Depending on the nature of your business, a separate manual may be required:
 - Construction
 - Hazardous Conditions or Work Site



OSHA – Document Retention

- Injury/Illness Records (OSHA 300 Log, 300A Summary, 301 Incident) 5 years
- Lockout/Tagout – retain certification 1 year
- Hearing Conservation Program – 2 years or length of employment
- Training Records – duration of employment or 3 years; whichever is longer
- Inspection Records – life of equipment



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

Workers' Compensation Policies

- Injury and illness reporting policy
- Medical treatment policy
- Return-to-work or modified duty policy
- Non-Retaliation policy
- Compliance with any other state workers' compensation law policies



Emerging Trends in Workers' Compensation



- Claims for mental health conditions
- Most states allow mental health claims when secondary to a physical injury
- Many states provide that a mental injury or disease may be compensable only if certain requirements are met. For example, states may permit workers' compensation for mental injuries or illness only if there is:
 - Sudden, unusual, or extraordinary mental stress relating directly to the employee's employment that caused the mental injury, illness, or condition (for example, a single, traumatic event, such as an assault or threatened assault)
 - Medical or psychiatric evidence
 - A diagnosis by a licensed psychiatrist or psychologist

Data Security and Privacy



Electronic Communication Devices

- Employers are generally allowed to monitor devices and services they provide to employees while at work
 - Policies need to give notice to employees before electronically monitoring their activities (for example, Delaware, Connecticut and New York)
 - BYOD agreement with employee needs to set parameter on use at work, required security measures and return of company data
- Common law invasion of privacy claims
 - If the intrusion would be highly offensive to a reasonable person



Employee Personnel Records

- Employers should maintain personnel records in a secure location, such as a locked file cabinet or password-protected electronic files
- Make the records available only to individuals with a legitimate business need to access the files
- Not all states have enacted laws specifically addressing employee personnel records
 - Personnel records are generally considered property of the employer and employee has no legal right to access/review the file
 - Some states allow employees the right to access personnel records
 - In some states this includes rights even after termination

Electronic Signatures In Employment Documents

- Generally valid and enforceable
- Governed by:
 - **E-SIGN Act** (federal law) – ensures the validity of e-signatures across 50 states for interstate and foreign commerce
 - **Uniform Electronic Transactions Act** (state law) – ensures contracts cannot be invalidated or denied enforceability simply because they were signed electronically
- 49 states have adopted UETA
- “Wet” signatures are not required



Retention of Electronically Signed Contracts

Employer bears the burden of showing:

- Intent to sign
- Consent to transact electronically
- Opportunity to review
- Document is unaltered and complete

Best Practices for E-Signature Retention:

- Preserve audit trails
- Maintain secure, accessible storage
- Protect document integrity
- Ensure retrievability for litigation and audits
- Platforms providing identity authentication, time stamps, IP tracking and tamper-evident records



Is the contract legally enforceable?

Lumon sent Helly R. a contract in PDF format. Helly used her mouse and Adobe's draw tool to "sign" the document and sends it back.

- A. Yes
- B. No



Even if legally enforceable...

...is Helly's Adobe "drawn" signature a good practice for executing employment agreements?

- A. Yes
- B. No



Hypothetical (cont'd)



Helly's Adobe "signature" may be legally valid, but it is not best practice because it:

- Lacks identity verification
- Creates a weak audit trail
- Makes it easier to argue:
 - 'That wasn't me'
 - 'I didn't intend to sign'
 - 'The document was altered'

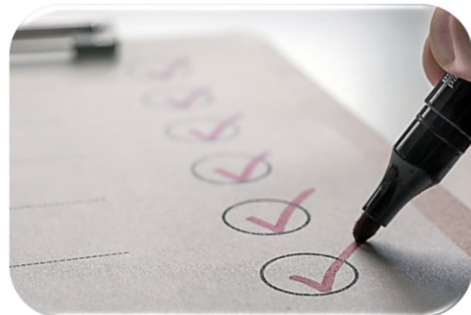
Why Are Job Descriptions Important?

- Define “essential” job functions (important for ADA accommodation discussions)
- Provide justification for compensation decisions and classification
- Reflect expectations for role which can help support defenses in EEO claims

Job Descriptions Should Include

Job Description Essentials:

- Essential duties and responsibilities
- Required qualifications (education, experience, skills)
- Reporting relationships
- Working conditions



Job Descriptions and the ADA

- The ADA does not require employers to maintain written job descriptions
- However, having job descriptions that identify **the essential functions for each position can be a significant benefit to employers**
- Identify whether an applicant can perform the essential functions of a position
- Engage in the interactive process to determine if a reasonable accommodation is possible
- Defend against a disability discrimination claim
 - A well written job description can help an employer establish that the individual cannot perform one or more of those functions, even with a reasonable accommodation

Purpose of Employment Agreements

- Define job role and responsibilities
- Outline compensation and benefits
- Protect confidential information and intellectual property
- Set terms for termination and notice
- Prevent unfair competition or solicitation
- Ensure compliance with laws and company policies
- Provide legal protection and reduce disputes with employees

Offer Letter v. Employment Agreement

Is an Offer Letter a Contract?

- “Your employment with the company will be subject to the terms outlined below.”
- “This offer is contingent on your acceptance of these terms and compliance with company policies.”

Offer Letter

- Often all that is necessary for “at-will” employee
- Can supplement with a separate Confidentiality / Restrictive Covenant Agreement
- Most important term to confirm – employment is “at-will”
- Should outline expectations and terms

Employment Agreement

- More commonly used with executives or employees who are not “at-will”
- Spells out terms of employment in more detail
- Will govern and can overrule other general policies (including Handbook)

Non-Disclosure Agreement

- Define “confidential information”
- Establish how such information should be utilized
- Often include IP assignment and clarification that confidential information belongs to the company
- Important carve outs:
 - Defense of Trade Secrets Act
 - State law limitations
 - Employee rights



States That Limit Confidentiality & Non-Disclosure Provisions

- Arizona
- California
- Colorado
- Hawaii
- Illinois
- Maine
- Maryland
- Nevada
- New Jersey
- New York
- Pennsylvania
- Tennessee
- Utah
- Vermont
- Virginia
- Washington



Restrictive Covenant Limitations

Protecting business interests, intellectual property, client relationships and goodwill – many options:

- **Non-Compete Agreements**
- **Non-Solicitation Agreements**
- **Non-Disparagement Clauses**

Choice of State Law is Really Important

- Law is always evolving (i.e., Delaware)
- Must have some connection – and some states will not recognize regardless

Non-Competes Banned or Limited

- California - **Banned**
- Colorado - Limited
- District of Columbia - Limited
- Illinois - Limited
- Maine - Limited
- Maryland - Limited
- Massachusetts - Limited
- Minnesota - **Banned**
- Nevada - Limited
- New Hampshire - Limited
- North Dakota - **Banned**
- Oklahoma - **Banned**
- Oregon - Limited
- Rhode Island - Limited
- Virginia - Limited
- Washington - Limited


Any Questions?





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