



# FLSA UPDATE

April 9, 2025

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# FLSA Update

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- » Non-exempt employees must be paid for all hours worked.
- » Cannot volunteer time.



# FLSA Update

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- » Be wary of instructions.
- » Be here ten minutes early so you can be ready to work, and clock-in at your start time.

# FLSA Update

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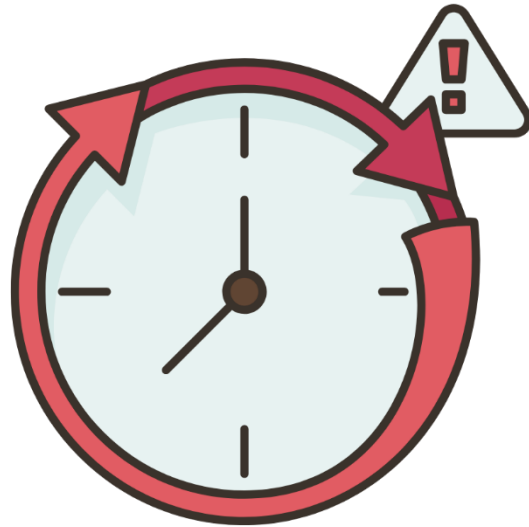
- » Non-exempt employees must be paid overtime for all hours worked over 40 in a workweek.
- » FLSA considers each week separate.



# FLSA Update

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- » Cannot dock overtime due.
- » Can issue corrective action for working unauthorized overtime.



# FLSA Update

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- » Exempt Employees
- » Must be paid on a salary basis.
- » A predetermined amount that does not vary with the quality or quantity of work.
- » The amount was set to change but was blocked by federal court injunction.

# FLSA Update

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- » Two attempts to change salary amount by DOL.
- » Both were blocked.
- » Congressional action required?



# FLSA Update

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» Duties test.

**Professional**

**Executive**

**Administrative**

# FLSA Update

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## » Executive

- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

# FLSA Update

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## » Administrative

- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

# FLSA Update

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## » Professional

- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

# FLSA Update

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## » Creative Professional

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$684 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.





# FLSA Update

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## » Computer Employee

- The employee must be compensated **either** on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$684 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below.

# FLSA Update

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## » Computer Employee

- The employee's primary duty must consist of:
- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- A combination of the aforementioned duties, the performance of which requires the same level of skills.

# FLSA Update

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## » Highly Compensated Employee

- Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 or more (which must include at least \$684 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

# FLSA Update

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## » Travel Time for Non-exempt Employees

### » **Home to Work Travel:**

» An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

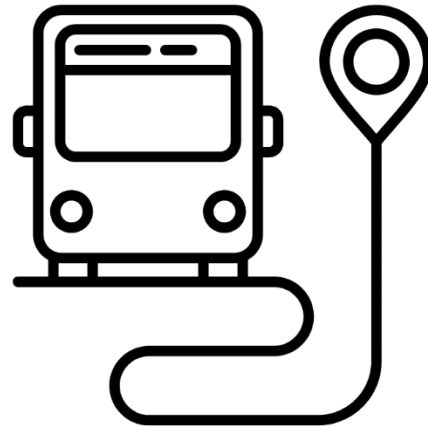


# FLSA Update

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## » Home to Work on a Special One Day Assignment in Another City:

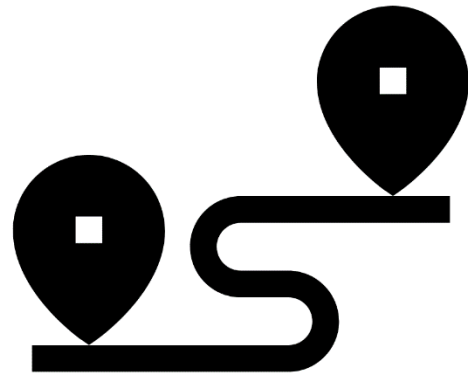
» An employee who regularly works at a fixed location in one city is given a special one-day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.



# FLSA Update

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- » **Travel That is All in a Day's Work:**
- » Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.



# FLSA Update

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## » Travel Away from Home Community:

» Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

# Thank you!



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# FORDHARRISON

## Loudon Monroe Seminar 2025

**NLRB Update**

**April 9, 2025**

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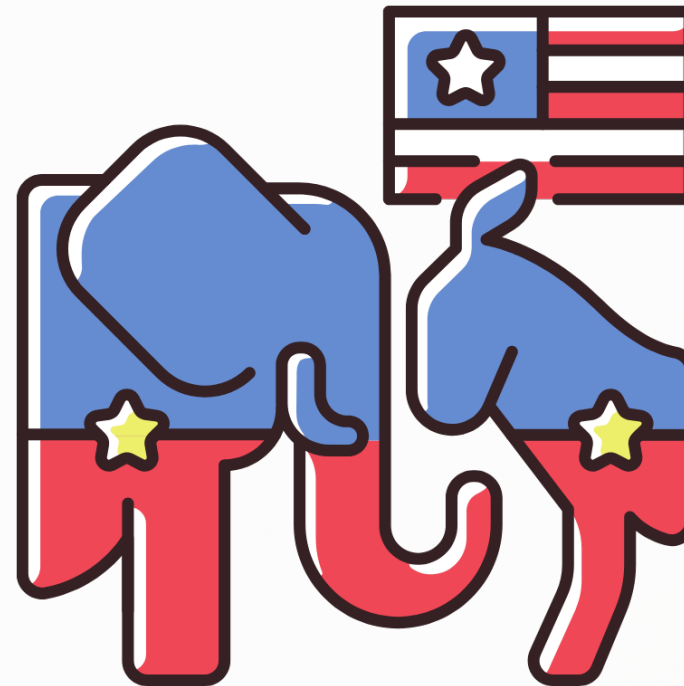
# NLRB Update

- » National Labor Relations Board
- » Five member Board that sits in Washington.
- » Issue regulations.
- » Decide cases.



# NLRB Update

Historically, eventual majority of same party as President.



# NLRB Update

## Humphrey's Executor



» President Hoover appointed, and the Senate confirmed, Humphrey as a commissioner of the Federal Trade Commission (FTC). In 1933, President Roosevelt asked for Humphrey's resignation since the latter was a conservative and had jurisdiction over many of Roosevelt's New Deal policies. When Humphrey refused to resign, Roosevelt fired him because of his policy positions.





# NLRB Update

However, the FTC Act only allowed a president to remove a commissioner for "inefficiency, neglect of duty, or malfeasance in office." Since Humphrey died shortly after being dismissed, his executor sued to recover Humphrey's lost salary.



# NLRB Update

Did section 1 of the Federal Trade Commission Act unconstitutionally interfere with the executive power of the President?





# NLRB Update

The unanimous Court found that the FTC Act was constitutional and that Humphrey's dismissal on policy grounds was unjustified. The Court reasoned that the Constitution had never given "illimitable power of removal" to the president.



# NLRB Update

Justice Sutherland dismissed the government's main line of defense in this case which relied heavily on the Court's decision in *Myers v. United States* (1926). In that case the Court upheld the president's right to remove officers who were "units of the executive department." The FTC was different, argued Sutherland, because it was a body created by Congress to perform quasi-legislative and judicial functions. The *Myers* precedent, therefore, did not apply in this situation.





# NLRB Update

- » President Trump removed NLRB member Gwynne Wilcox.
- » Said he did not think she would give employers a fair shake.

# NLRB Update

- » On March 6, 2025, U.S. District Court for D.C. judge ordered Wilcox reinstated.
- » Held President did not have the power to remove an NLRB member without cause.
- » On March 28, divided D.C. Circuit Court of Appeals removed court injunction, holding President likely has power to remove without cause.
- » Supreme Court decision is likely.





# NLRB Update

» Some things do not change.

» Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities.



# NLRB Update

Current General Counsel Rescinded GC Memos Of Predecessor

- » Remedies
- » Electronic Monitoring
- » Severance Agreements
- » Noncompete Agreements
- » Guidance on Cemex



# Thank you!



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# Effective Workplace Investigations

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# Workplace Investigations

## Introduction

# FORDHARRISON

Who will lead the investigation?

Very important decision.

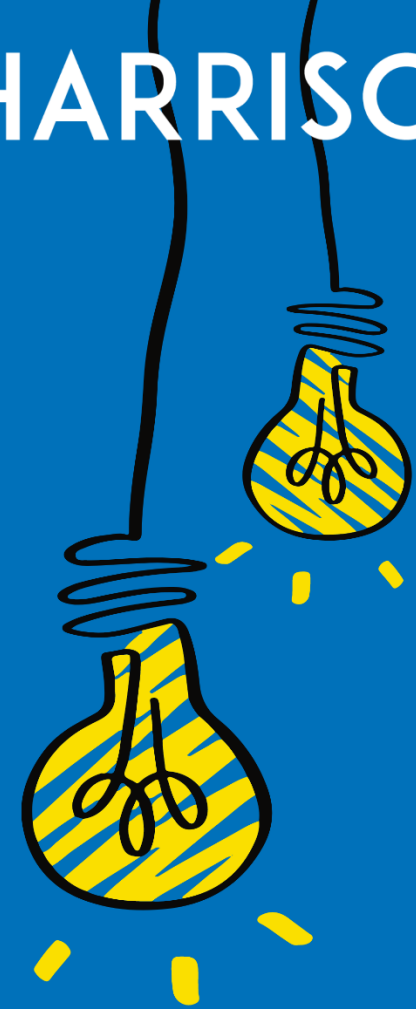




# FORDHARRISON

Who will assist the investigation?

Assistant should take notes.



# FORDHARRISON

**What should the notes say?**

**Time. Date. Identify all persons.**

**Record preliminary comments/explanation of reason for interview.**

**Just the facts, ma'am.**

**No retaliation statement.**



- 
- » Notes versus statements written by the witness.
  - » Witness can review and initial notes.

# FORDHARRISON

Before beginning the investigation, suspend the accused?



# FORDHARRISON

Who do you interview first?

Can vary with reason for investigation.

Harassment or discrimination complaint, normally the complainant.



# FORDHARRISON

Interview of complainant.

Consider the place, space and time.

Who is the concern? Anyone else?



# FORDHARRISON

**Interview of the complainant.**

**For each person identified as a concern, ask “W” question.**

**When did this start?**

**What did the person do at that time?**

**Any witnesses?**





# FORDHARRISON

Interview of the complainant.

Try to go chronologically and capture each event of concern.

Witness may say the person does certain things “all the time”.

Get estimate of number of times per day or per week.



# FORDHARRISON

**Interview of the complainant.**

**Continue with asking about events chronologically until the complainant says that is all.**

**Notes should reflect complainant verbalizing that he or she has provided all information as to the person named.**

**Go through this process for each person named as a concern.**



# FORDHARRISON

Interview of the complainant.

Any texts, pictures, social media posts, voice mails?



Interview of the complainant.

At the end, have you thought of anything else you would like to tell us?

Explain the investigation will continue.

We may need to speak with you again.



- 
- » Interview of the complainant.
  - » Confidentiality? EEOC and NLRB oppose.
  - » We would appreciate it if you would keep the interview confidential so that we can maintain the integrity of the investigation.
  - » No retaliation statement. Be sure this is in the notes.

# FORDHARRISON

Interview of witnesses.

Explain purpose of interview.

There have been concerns raised about [name of person].

Begin more general.

Have you observed conduct that you found concerning?



# FORDHARRISON

Interview of witnesses.

Move to more specific.

We have been told that on April 9, you attended a very questionable seminar. Is that true?

Go through the list for the witness.





Interview of witnesses.

At the end, is there anything else you think we should know?

Anyone else you think we should speak to?



**We would appreciate it if you would keep the interview confidential so that we can maintain the integrity of the investigation.**

**No retaliation statement. Be sure this is in the notes.**



# FORDHARRISON

**Interview of the accused person.**

**Very important step. Do not skip it.**



# FORDHARRISON

**Interview of the accused person.**

**Prepare for the interview.**

**What have you learned via the complainant and witnesses?**

**Structure and order of questioning will vary depending on the evidence to date.**



# FORDHARRISON

Interview of the accused person.

Begin more general.

[Name of complainant] has brought up concerns over your conduct.

Do you know why he/she would do that?



# FORDHARRISON

Interview of the accused person.

Consider whether to say, before getting to specifics, something like the following:

We understand people make mistakes sometimes. But we cannot have someone lie to us. (Pause)

This may result in the person confessing to what he or she may think you know already, or to what he or she may consider more minor events.



# FORDHARRISON

**Interview of the accused person.**

**Move to more specific questions.**

**Anything else you want to tell us about that?**

**Any witnesses you believe we should speak to?**



# FORDHARRISON

**Interview of the accused person.**

**Any reason you know of that [name of complainant] would bring allegations against you falsely?**

**No retaliation statement. Needs to be emphasized with this person. In the notes.**





Other considerations

When to call counsel?





**Other considerations.**

**When to use a third-party investigator.**

# FORDHARRISON

Other considerations.

Why can't my lawyer just do it for me?



# FORDHARRISON

Other considerations.

Avoid mission creep.



# FORDHARRISON

Sample case



# FORDHARRISON



## Takeaways:

Retaliation claims are dangerous before a jury.

Good investigations matter. Those three were worth \$365 million.

# Thank you!



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# Enforceability of Employee Restrictive Agreements

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# Non Competition Agreements

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- » Covenants not to compete are disfavored under Tennessee law and are **strictly construed in favor of the employee.**
- » However, non-compete agreements can generally be enforced provided the employer has a “**protectable**” **business interest** and the post-employment **restrictions imposed are reasonable in scope** (duration and geographic scope).





# FORDHARRISON

- Factors relevant to whether a covenant is reasonable include: (1) the consideration supporting the covenant; (2) the threatened danger to the employer in the absence of the covenant; (3) the economic hardship imposed on the employee by the covenant; and (4) whether the covenant is inimical to the public interest.



# The reasonableness of the restrictions

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- » The scope of a covenant not to compete must be reasonable in that “the time and territorial limits involved must be no greater than is necessary to protect the business interests of the employer.” If the scope of the covenant is reasonable as written, it will be enforced as written.
- » If the scope is unnecessarily burdensome to the employee, however, it will be enforced only “to the extent that [it is] reasonably necessary to protect the employer's interest ‘without imposing undue hardship on the employee when the public interest is not adversely affected.’”

# Enforcement

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- » A court may modify an unreasonable covenant so as to render it reasonable.
- » Courts will hold the entire covenant invalid if credible evidence supports a finding that the covenant is deliberately unreasonable and oppressive.
- » The enforceability of contracts is to be determined at the time they are executed not on the basis of subsequent events.

There is no statute of general applicability governing non-competes in Tennessee, but certain healthcare providers can be subject to non-competes.

» Tenn. Code Ann. §63-1-148.



# FORDHARRISON

- Under Tennessee law an employer cannot enforce a non-compete agreement that prevents a former employee from engaging in *ordinary competition*.
- Rather, **only “unfair competition”** may be restrained through use of a non-competition covenant.
- An **employee’s** *general* knowledge and skill belong to the employee even if it was acquired on the job through expensive training.



# What is a protectable business interest?

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- » **whether** the employer provided the employee with specialized training;
- » **whether** the employee is given access to trade or business secrets or other confidential information; and
- » **whether** the employer's customers tend to associate the employer's business with the employee due to the employee's repeated contacts with the customers on behalf of the employer.



# What is Specialized Training?

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- » **Training** that provides the employee with knowledge and skill that is *unique to the employer's business*.
- » Whether an employer has a protectable interest in its investment in training an employee depends on whether the skill acquired as a result of that training is sufficiently special as to make a competing use of it by the employee unfair.



# What Qualifies as Confidential Business Information or a Trade Secret?

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» Before business information can be deemed “**confidential business information**” for purposes of **meeting the** protectable business interest requirement, it must meet the definition of a trade secret.



# A “Trade Secret” is defined as:

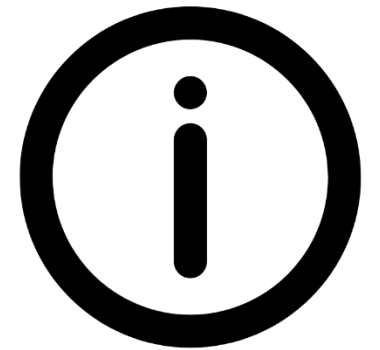
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- Information, without regard to form, including, but not limited to, technical, nontechnical or financial data, a formula, pattern, compilation, program, device, method, technique, process, or plan that:

- » **\*Derives** independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

- » **\*Is** the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- » Tenn. Code Ann. §47-25-1702



# Customer Relationships

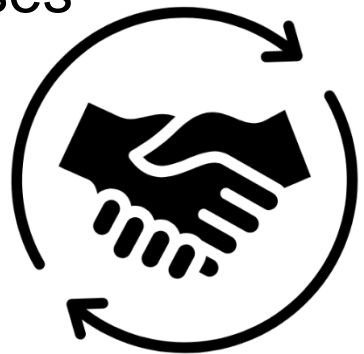
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- Customer Relationships

- » Business interest grounded in “Good Will”

- » **Implicated** when an employee has repeated contact with the **customer and becomes to the customer “the face of the employer” and receives information that is personal or confidential** with respect to the customer.

- » **A restriction that includes** an area in which the employee never performed services are unreasonable unless the employee possesses knowledge of the employer's trade secrets



# Non-Solicitation Provisions

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- » Courts are more inclined to enforce these provisions since their enforcement does not prevent the former employee from working for a competitor.
- » These provisions can be enforced absent a geographic restriction if they “prohibit the employee from soliciting the business of a specific and well-defined group of persons.”
- » Typically the restriction includes “customers” or “clients” of the employer. Tennessee courts have held that the protections apply only to “present” customers or clients of the employer which “are a protectable interest of an employer.”

# Consideration

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- » A noncompete signed prior to, contemporaneously with or shortly after employment begins is part of the original agreement and is supported by adequate consideration.
- » Where a noncompete is signed during the employment relationship, it is possible that employment for only a short period of time after execution of the noncompete would be insufficient consideration under the circumstances.
- » Salary increases, promotions, and other favorable changes in the terms and conditions of employment can constitute sufficient consideration for a non-compete signed during employment.

# Tennessee Uniform Trade Secrets Act

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- » Actual or threatened misappropriation may be enjoined.
- » Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.
- » If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice the amount of damages awarded.
  - » Tenn. Code Ann. §47-25-1702

# Thank you!



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# ADA & Workplace Accommodations

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# Americans with Disabilities Act

## 42 U.S.C. §§ 12101 *et seq.* (“ADA”)

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Under the ADA, employers must provide **reasonable accommodations** to qualified employees (and job applicants) where such an accommodation does not cause the employer **undue hardship**. 42 U.S.C. § 12112(b)(5)





# Definitions Under the ADA

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## **Who is considered an employer?**

- Employers with 15 or more employees are considered “covered employers” and must comply with the ADA.

## **Who is protected by the ADA?**

- Must have a disability or have a relationship or association with an individual with a disability.

## **Who is considered a qualified individual?**

- A person who can perform the essential functions of the position with or without reasonable accommodation.

# What is considered a disability?

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The ADA covers any individual with a disability who:

- (1) has a physical or mental impairment that substantially limits one or more major life activities; or
- (2) has a record of such impairment; or
- (3) is regarded as having such an impairment.

# Substantially Limiting

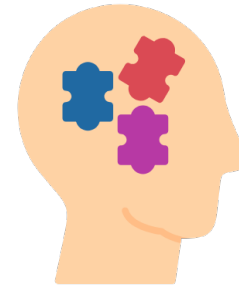
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A medical condition **does not** need to be **long-term, permanent, or severe** to be substantially limiting. Also, if symptoms come and go, what matters is how limiting the symptoms are when they are active.

# Examples of Disabilities Covered by the ADA

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- Cancer
- Diabetes
- Post-traumatic stress disorder
- Autism
- Deafness or hearing loss
- Blindness or low vision
- Epilepsy
- Mobility disabilities such as those requiring the use of a wheelchair, walker, or cane



# Reasonable Accommodation

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A **reasonable accommodation** is any change to the application or hiring process, to the job, to the way the job is done, or the work environment that allows a person with a disability to perform the essential functions or that job.

A **job function is essential** when the reason the position exists is to perform that function, when there aren't enough employees available to perform the function, or when the function is so specialized that someone is hired specifically because of his or her expertise in performing that function.

# How to Determine What is a Reasonable Accommodation

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An employer must look at the request made by the applicant or employee with a disability and make a determine on a **case-by-case basis**.

Whether or not an accommodation is reasonable will vary according to the position the employee holds, the way their disability affects their ability to do their job, and the environment they work in.

# Common Reasonable Accommodations

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- Making the workplace accessible for wheelchair users
- Providing reserved parking
- Providing a reader or interpreter for someone who is blind or hearing impaired
- Making a schedule change
- Granting telework
- Allowing leave for disability-related treatment or symptoms
- Reassignment to a vacant position where reasonable accommodation is not possible in the current job

# Interactive Process

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The interactive process requires employers and employees to engage in **good-faith, flexible dialogue** to explore possible accommodations for employees with disabilities.

Employers have a **legal obligation** to engage in the interactive process once they are aware of an employee's disability.

Even after an accommodation is put in place, the employer and employee should **continue communication** to determine if the accommodations are working and make adjustments accordingly.



# Documentation

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Under the ADA, no formal written document is required, but it is a **best practice** to document accommodations.



# Disability-Related Questions, Medical Exams, and Confidentiality

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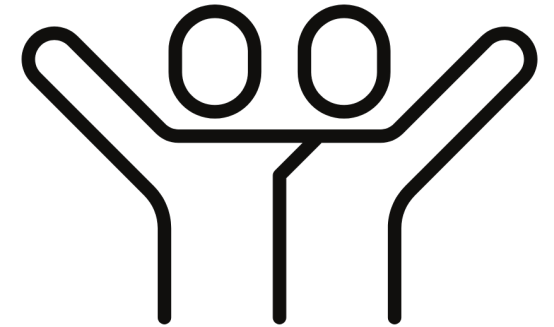
- Information that employers may obtain about employee's disabilities must be treated as **confidential**.
- An employer **may not** ask a job applicant to answer disability-related questions, such as if they have a disability, or require them to take a medical exam, before extending a job offer.
- An employer **may** ask job applicants whether they can perform the job and how they would perform the job, with or without accommodation.

# Association

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The law also protects people from discrimination based on their **relationship** with a person with a disability (even if they do not themselves have a disability).

For example, it is illegal to discriminate against an employee because the employee's spouse has a disability.



# Examples of Actions That Would Violate the Association Provision of the ADA

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- Refusing to hire an individual who has a child with a disability based on the assumption that the applicant will be away from work excessively or be otherwise unreliable.
- Denying an employee health care coverage available to others because of the disability of the employee's dependent.

# Harassment

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Harassment is a form of employment discrimination, under various federal laws, including the ADA.

Harassment is **unwelcome conduct** that is based on race, color, religion, sex (including pregnancy), national origin, age, **disability** or genetic information.

# Harassment

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Harassment becomes **unlawful** where:

- (1) Enduring the **offensive conduct** becomes a condition of continued employment, or
- (2) The conduct is **severe and pervasive** enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Petty slights, annoyances, and isolated incidents (unless extremely serious) **will not** rise to the level of illegality.

# Retaliation

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Employees are protected from **retaliation** from asserting their rights under the ADA.

Speaking out about or exercising rights related to workplace discrimination is called a “protected activity” and can take many forms, including complaint to a supervisor about harassment.

# Interference

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The ADA also prohibits **interference** with an individual's ADA rights.

Employers may not **intimidate, threaten, or otherwise interfere** with a job applicant's or current or former employee's exercise of ADA rights.





# Thank you!



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# **Navigating Employment Law Changes in 2025: What the New Trump Administration Means for Employers**

April 2025





# Presenter:



**Paige M. Lyle**

Partner

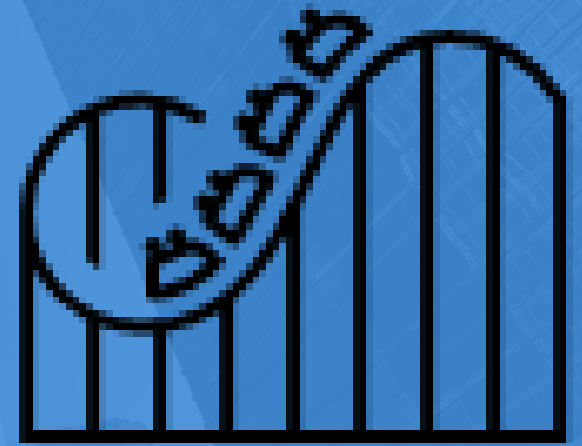
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# 2025: A Wild Ride



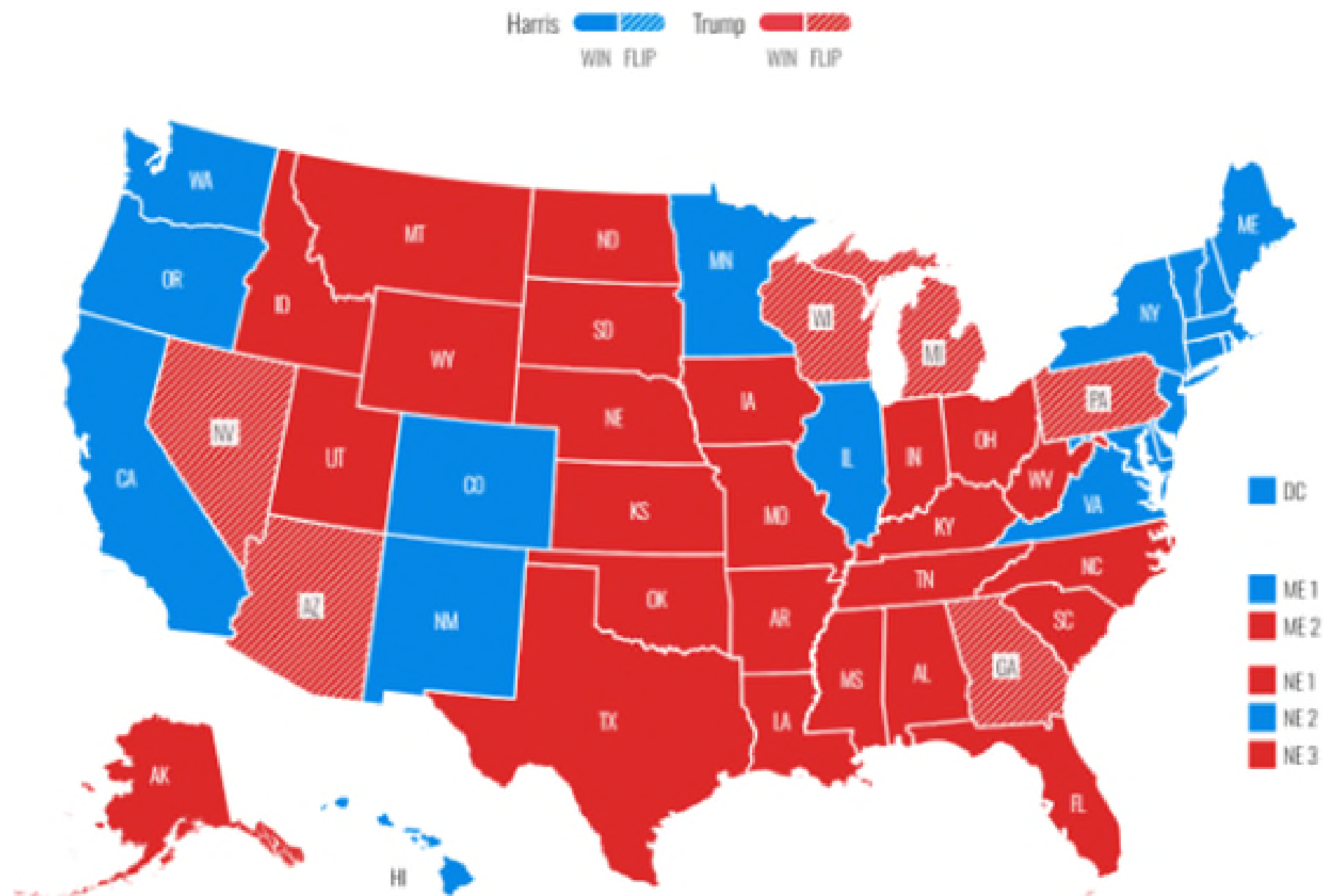


- EEOC Whiplash
- NLRB firings
- Executive Orders
  - DEI
  - Gender Ideology





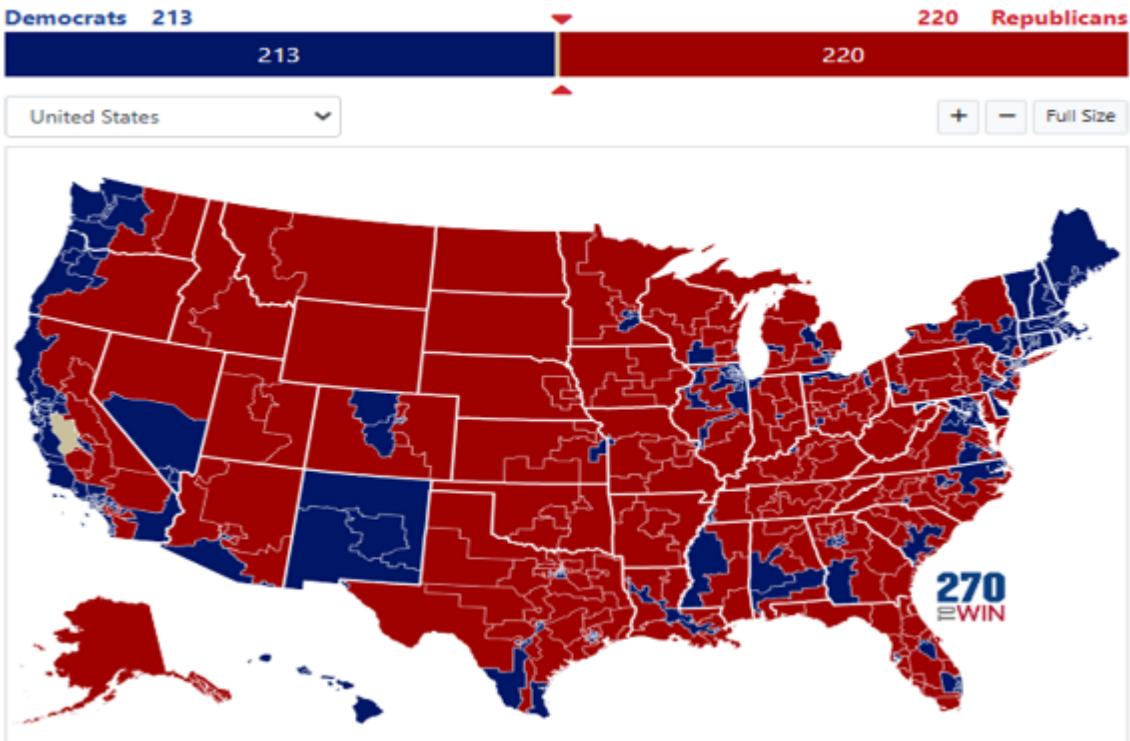
# Changes in DC and What to Expect in 2025



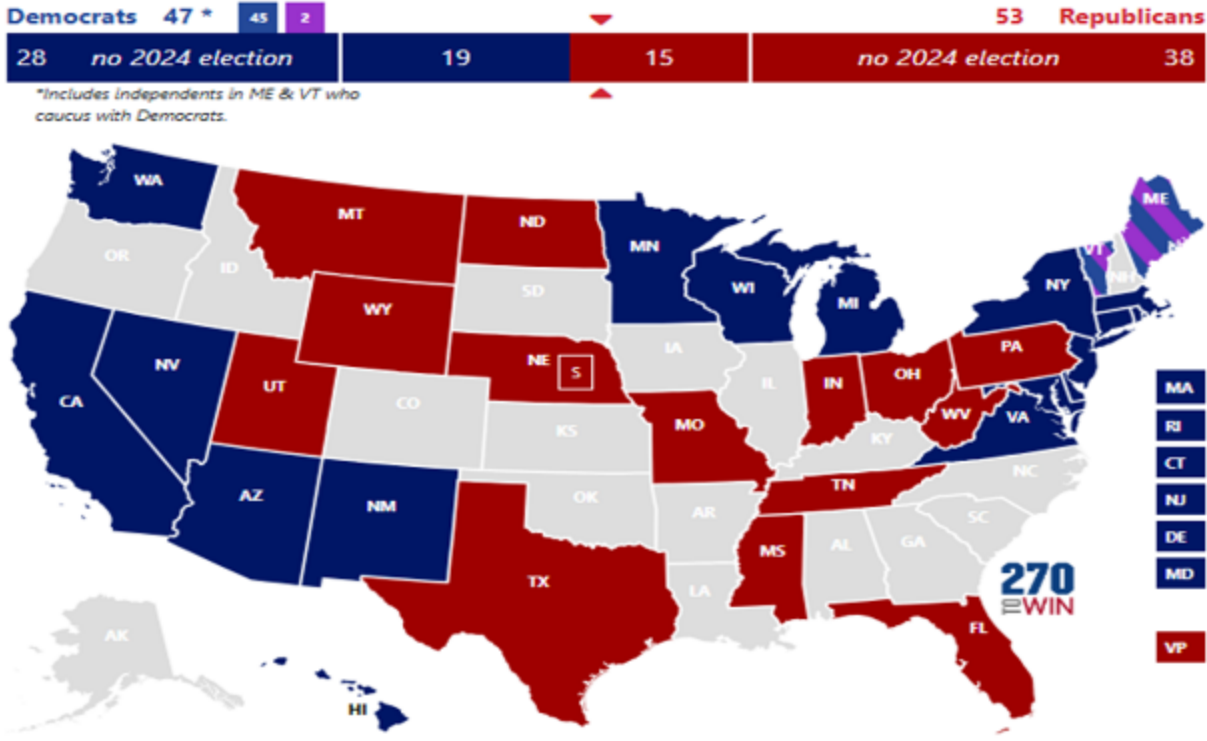


# A Closely Divided Congress

## U.S. House of Representatives



## U.S. Senate







# **IMPACT/STATUS OF AGENCIES**

# Lessons from Trump 1.0

## Predictions 2.0

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- » Reduction of expansive and/or ambitious use of agency power
- » End focus on DEI initiatives
- » ICE and need for I-9 audits
- » End to pursuit of non-competition ban
- » Roll back of controversial rules and enforcement actions – more “business” and employer friendly?
- » Project 2025
- » DOGE/Musk Takeover
- » New state laws – and more progressive state law action and enforcement?

# What to Expect from ICE/State Department

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- » More stringent limitations for employers that rely on the H-1B visa program to recruit highly skilled foreign workers
- » Higher standard for issuing employment-based green cards
- » Expanded penalties for employers who employ undocumented workers
- » Workplace raids
- » Reduction of available workforce upon implementation of mass deportation program
- » **I-9 audits and enhanced enforcement initiatives**

# What to Expect from the SEC, FTC, Treasury, Commerce, and other Federal Agencies

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- » End focus on Environment, Social, & Governance (ESG) / DEI initiatives
- » End to pursuit of non-competition ban (Trump Administration will not defend suits enjoining the FTC's proposed rule)
- » Discontinuation of PLA (project labor agreements) requirements for recipients of federal funding
- » End to FTC and DOJ initiatives focused on expanding gig economy workers' rights by targeting alleged employee misclassification
- » End of FTC advancement of labor issues in antitrust cases (e.g., Kroger/Albertsons merger)

# U.S. Equal Employment Opportunity Commission



# EEOC – General Overview

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## » Present EEOC Commissioners – No Quorum

- » Andrea Lucas (Republican) – acting Chair
- » Kalpana Kotagal (Democrat)
- » Vacant
- » Vacant
- » Vacant

## » General Counsel

- » Andrew Rogers
- » If confirmed, will replace Karla Gilbride, who Trump terminated

## » Vacancies/Replacement

- » Trump terminated two commissioners
- » Terminations being challenged
- » Without quorum, cannot adopt new regulations, issue legal guidance, or rescind guidance. Can still investigate, process, and resolve charges.





## Commissioner Lucas stated priorities

- » DEI motivated race and sex discrimination
- » Anti-American national origin discrimination
- » Women's rights to single sex spaces
- » Religious bias and harassment
- » "Remedying other areas of recent under-enforcement"

## On The Horizon

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- » Once the agency retains a quorum, expect the EEOC to quickly take action to further Commissioner Lucas's new priorities, such as rescinding Biden-era guidance on gender identity harassment (April 2024 guidance) and the Pregnant Workers Fairness Act and issuing new guidance on how the EEOC will interpret and enforce Title VII and other anti-discrimination laws.



# Pregnant Workers & EEOC Enforcement



# PWFA Litigation Status

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- » *EEOC v. Kurt Bluemel, Inc.* (September 30, 2024)
  - » failure to provide reasonable accommodations
- » *EEOC v. Polaris Industries, Inc.* (September 25, 2024)
  - » failure to provide a reasonable accommodation and constructive discharge
- » *EEOC v. Urologic Specialists of Oklahoma, Inc.* (September 25, 2024)
  - » failure to provide accommodations, forced unpaid leave, refusal to provide lactation breaks, and unlawful discharge

# PWFA Litigation Status

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- » **KEY TAKEAWAY:** The EEOC will hold accountable employers who place pregnant employees on unpaid leave if reasonable accommodations are available
  - » Interactive process is key!
  - » Monetary compensatory damages
  - » Back pay



# DEPARTMENT OF LABOR

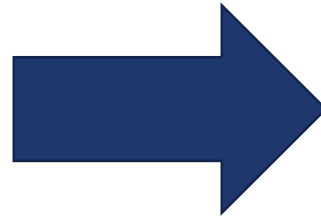


# U.S. Department of Labor

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**Julie Su**  
Former Deputy Secretary of Labor  
**NOW Acting Secretary of Labor (as of March 11, 2023)**



**Trump Nominee**  
**Rep. Lori Chavez-DeRemer,**  
Republic Representative from Oregon

# Rep. Lori Chavez-DeRemer

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On November 22, 2024, President-elect Donald Trump nominated Rep. Lori Chavez-DeRemer (R-Ore.) to serve as Secretary of Labor.

- » **Political Career:** Chavez-DeRemer served as the U.S. Representative for Oregon's 5th congressional district from 2023 to 2025. She was also the mayor of Happy Valley, Oregon, from 2011 to 2019.
- » **Pro-Labor Stance:** Notably, she was one of only three House Republicans to co-sponsor the Democratic-backed Protecting the Right to Organize (PRO) Act, which aims to make it easier for employees to unionize.
  - » Her father is also a long-time member of a union.

# Rep. Lori Chavez-DeRemer

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## Significance of the Nomination:

- » **Union Support:** Chavez-DeRemer's nomination has garnered praise from major unions. Teamsters President Sean O'Brien expressed support, highlighting her pro-labor record.
- » **Bipartisan Appeal:** Her history of working with both business and labor sectors positions her as a unifying figure capable of bridging divides.

# Rep. Lori Chavez-DeRemer

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## Potential Impact:

- » If confirmed by the Senate, Chavez-DeRemer would likely move the DOL in a more employer-friendly direction, beginning with a reconsideration of several regulations put forth by the outgoing Biden White House.
- » That said, her nomination indicates an openness to pro-labor initiatives within the Trump administration.



# DOL – General Overview – “Big Deal”

- » The U.S. Department of Labor (DOL) administers and enforces more than 180 federal laws.
- » Nearly \$14+ billion budget and approximately 17,000 employees.
- » Some of the laws that protect workers' rights, include:
  - » **Fair Labor Standards Act (FLSA)**: Establishes minimum wage, overtime pay, child labor standards, and recordkeeping requirements
  - » **Family and Medical Leave Act (FMLA)**: Provides eligible employees with up to 12 weeks of unpaid, job-protected leave per year
  - » **Employee Retirement Income Security Act (ERISA)**: Regulates benefits plans for workers, including pension plans, health insurance plans, and disability insurance plans
  - » **Whistleblower Protection Program**: Ensures that employers cannot retaliate against workers who report injuries, safety concerns, or other protected activity
  - » **Unemployment insurance**: Protects workers from unemployment
  - » **Equal pay**: Protects workers from discrimination based on gender
  - » **Occupational Safety and Health (OSH) Act**: Sets and enforces standards to ensure that workplaces are free of known dangers.
  - » **Service Contract Act (SCA)/Davis Bacon**: rules and regulations governing government contractor.



# Executive Orders



# Status of DEI EOs

- » **Executive Orders: “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” and “Ending Radical Government DEI Programs and Preferencing,”** which target federal programs tied to DEI and seek to influence private sector programs, have sparked legal challenges from national organizations who argue that the orders are unconstitutional.
- » On February 21, 2025, the US District Court for the District of Maryland issued a nationwide preliminary injunction halting the enforcement of three key provisions of President Trump’s Executive Orders intended to eliminate DEI in the federal government and beyond. *See National Association of Diversity Officers in Higher Education et al. v. Trump et al.*, No. 1:25-cv-00333 (D. Md. Feb. 21, 2025).
- » This decision will be appealed



The injunction provides temporary relief for organizations and individuals involved in DEI programs, ensuring they are not subjected to the threat of funding cuts, terminations, or other penalties under the challenged provisions.

It remains to be seen how this case will proceed in the coming months and whether the court will eventually strike down the Executive Orders in their entirety.

The injunction does not impede the EEOC from investigating alleged unlawful DEI programs pursuant to its Title VII enforcement priorities, or government agencies like the Department of Justice from investigating or litigating employer DEI initiatives it believes are in violation of the law.

Private employers should continue to assess their current policies to ensure any DEI initiatives do not engage in any form of “reverse discrimination.”

It is important to note that the Trump Administration argued that the Executive Orders simply reinforce the federal commitment to already-existing federal law prohibiting discrimination. As such, employers who have already ensured that their policies were lawful prior to the issuance of the Executive Orders should continue to monitor this case for new developments.





# Executive Order 14168 “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”



Among other things, the Executive Order requires that agencies, including the EEOC, rescind “all guidance documents . . . or such parts of such documents that are inconsistent” with the requirements of Executive Order 14168.

The Order specifically identifies the EEOC’s April 29, 2024 “Enforcement Guidance on Harassment in the Workplace” as a document that the Administration expects to be rescinded in whole or in part. The Enforcement Guidance clarified conduct that could form the basis of a harassment claim, including denial of access to a bathroom or other sex-segregated facility consistent with the individual’s gender identity and intentional use of a name or pronoun inconsistent with the individual’s known gender identity.

EEOC cannot yet rescind this Guidance without a quorum.





# Caught in the Middle?

- » Administration interpretation of Title VII contradicts SCOTUS Bostock Decision
- » Unless that decision is reversed, employer can expect to still see charges and litigation over LGBT discrimination.
- » Though it is unlikely the Agency pursues these claims.
- » Remain mindful of state laws.

# FordHarrison Resources & Events

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- » FordHarrison provides information on the latest in labor and employment law through our timely webinars, seminars, emailed legal alerts, and in-depth analysis articles.
- » Use this QR code to sign up for the many complimentary FordHarrison resources offered to employers throughout the year!







# Questions

