

First & Foremosts

Legal Update March 26, 2025

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TITLE VII AND GENERAL DISCRIMINATION PRINCIPLES

“Removing Gender Ideology and Restoring the EEOC’s Role of Protecting Women in the Workplace”

EEOC has implemented changes to comply with this Executive Order:

- EEOC Priority to “defend the biological and binary reality of sex and related rights, including women’s rights to single-sex space at work”
- Removal of pronoun app in EEOC employee profiles, the term “Mx.” from prefix options, and the “x” gender marker during the intake process.
- Acting Chair Lucas opposes defining harassment as “repeated and intentional use of a name or pronoun inconsistent with an individual’s known gender identity.”
- EEOC filed motions to dismiss pending law suits alleging employers’ tolerance of deadnaming, misgendering, outing or other harassing or invasive comments from co-workers based on gender identity.
- This may result in potentially conflicting obligations under federal and applicable state law.

Trump's designation of English as the "official language of the United States" is a reminder for Employers on English-Only policies.

- President Trump mandated that English be used to streamline communications within the Federal Government but allowed agency heads to make decisions to fulfill their missions.
- Implementation of an English-Only policy in a private-sector workplace may result in discrimination or hostile work environment claims under Title VII unless there is a “business necessity” to justify the rule.
- Mandating that employees use English while on personal time at the workplace such as lunch hours, breaks, or private phone conversations as these are not necessary to support a business rationale.

President Trump's Pushback on Illegal DEI

- Executive Order 14173 – “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”
 - Eliminates EO 11246 requiring Affirmative Action Plans by Gov't Contractors
 - Requires Contractor Certification of No DEI practices
 - Encourages private sector to end “illegal” DEI and directs the AG to develop a strategic plan targeting sectors and entities engaged in illegal DEI
- 16 State Attorneys General Responded by publishing an open letter declaring DEI practices are not illegal and encouraging employers to continue with lawful DEI policies
- Currently being challenged in various lawsuits but the Fourth Circuit has lifted a nationwide injunction allowing the Administration to implement the E.O.

President Trump's Pushback on Illegal DEI

EEOC and Department of Justice issued informal guidance outlining what constitutes a discriminatory DEI program:

- [What To Do if You Experience Discrimination Related to DEI at Work](#)
- [What You Should Know About DEI-Related Discrimination at Work](#)

Ames v. Ohio Department of Youth Services

- US Supreme Court heard oral argument in this case last month
- Plaintiff argued she had a gay supervisor and was passed over for a promotion in favor of a gay woman and demoted in favor of a gay man less qualified than her.
- The 6th Cir Court of Appeals said that Ames had to show that the employer is the unusual one who discriminates against the majority.
- The Justices appear to be aligned to make it easier for members of “majority groups” to bring discrimination claims.

Jones v. Fluor Facility & Plant Services

- Sixth Circuit held racially charged speech that plaintiff claimed was a “term of endearment” made by his colleague was nonetheless was severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive.
- 2025 Westlaw 707869 (6th Cir. 2025)

EEOC Sues Equinox Holdings, Inc. for Disability and Sex Discrimination

- In December the EEOC filed suit against Equinox, the fitness center and gym for sex discrimination and failure to accommodate.
- Applicant requested a few days' delay of second round interview due to painful cramps associated with menstruation.
- Equinox allegedly failed to schedule second round interview claiming it believed she would regularly need time each month in the future.

NLRA

NLRB Acting General Counsel Rescinds Numerous General Counsel Memoranda of His Biden Era Predecessor

- Acting General Counsel rescinds certain memoranda issued by former General Counsel, including:
 - GC 23-05 on severance agreements; and
 - GC 23-08 and GC 25-01 on non-compete agreements

FLSA & Wage and Hour Law

WHD Publishes Opinion Letters by the Administrator for FLSA and FMLA

- [FMLA2025-1-A](#) - Do the Family and Medical Leave Act regulations pertaining to substitution of paid leave apply when employees take leave under state or local paid family leave programs?
 - Answer: No, employers cannot require employees to use accrued paid leave when taking FMLA leave and receiving benefits from a state or local paid family leave program.
- [FLSA2025-1](#) - Can a manager or supervisor under section 3(m)(2)(B) of the FLSA can receive tips from a tip pool when working in a non-supervisory capacity?
 - Answer: No, the manager or supervisor cannot receive tips from a tip pool when working in a non-supervisory capacity.

WHD Publishes Opinion Letters by the Administrator for FLSA and CCPA

- [FLSA2024-02](#) – Can a bar owner who manages and supervises bartenders the business employs participate in a tip pool with the bartenders?
 - Answer: No, the bar owner cannot participate in a tip pool with the bartenders they supervise.
- [CCPA2024-01](#) – Do payments and reimbursements to employees pursuant to an employer-provided educational assistance program constitute earnings for purposes of applying the CCPA limitations on wage garnishment?
 - Answer: No, they do not constitute earnings for purposes of applying the CCPA limitations.

Commissions Deemed “Wages” under Virginia Wage Payment Act

- *Campbell v. Groundworks Operations, LLC*, 82 Va. App. 580, 908 S.E.2d 136 (2024).
- Four former employees of Groundworks paid partially or solely by commission.
- Groundworks did not pay commission to employees if the customer’s final payment was not received within two weeks of an employee’s termination.
- Terminated employees filed suit for unpaid commissions under the Virginia Wage Payment Act.
- Court determined that “wages” includes commission payments.

FMLA

FMLA Leave for Siblings?

- *Chapman v. Brentlinger Enterprises*, 124 F.4th 382 (6th Cir. 2024).
- *In loco parentis* relationships can form between adults, including adults who also happen to be siblings.
- Four factors to consider in determining whether there is an *in loco parentis* relationship:
 - Whether the *in loco parentis* parent is in close physical proximity to the adult *in loco parentis* child
 - Whether the *in loco parentis* parent assumes responsibility to support them;
 - Whether the *in loco parentis* parent exercises control or has rights over them; and
 - Whether the *in loco parentis* parent has a close emotional or familial bond with them, akin to that of an adult child.
- New [DOL Fact Sheet](#) on using FMLA leave when in the role of a parent to a child.

ADA

Helping Patients Deal with Pregnancy– and Childbirth– related Limitations and Restrictions at Work Under the Pregnant Workers Fairness Act

- EEOC Releases PWFA Information for Health Care Providers
- <https://www.eeoc.gov/laws/guidance/helping-patients-deal-pregnancy-and-childbirth-related-limitations-and-restrictions>

Nguyen v. Bessent

- Employee was a disabled IT Specialist at the IRS with depression, anxiety and cognitive impairment
- She requested multiple accommodations: transfer to a different division, formal training, part-time schedule, ability to work from home or transfer to a location with a shorter commute
- IRS partially granted her requests but denied telework.
- Employee complained that it was not reasonable.
- The Court disagreed.
- No. 23-1220 (4th Cir. 2025).

State & Local Laws

New York Enacts Clean Slate Act

- Law automatically seals misdemeanor and certain felony criminal records to try to relieve the barriers to employment for individuals with criminal convictions.
- Law prohibits employers from making any inquiry regarding automatically sealed convictions or making any adverse decision concerning an individual's employment based on automatically sealed convictions.
- Employers must provide a copy of criminal history information gathered in any background investigation to applicant/employee, regardless if employer intends to make an employment decision based on that information.

Massachusetts Employers Brace for Salary Range Law

- Beginning October 29, 2024, employers with 25 or more employees in Massachusetts must disclose the pay range of a job:
 - in any job advertisement or posting, including recruiting efforts by a third party;
 - to an employee offered a promotion, transfer, or a new position with different responsibilities;
 - to an employee for their current position upon request; and
 - to an applicant upon request.

Attorney General Schwalb Announces Seven Settlements Protecting DC Workers

- Under the terms of seven separate settlement agreements, seven employers will pay more than a total \$860,000 to affected workers and the District, and reform their workplace practices.

Maryland FMLI Updates

- MDOL proposes delay in implementation of FMLI:
 - Under Maryland Department of Labor's new recommended plan:
 - Payroll deductions would begin on January 1, 2027.
 - Benefits would become available on January 1, 2028.
- MDOL issues new proposed regulations on claimant appeals of benefit determinations.

About the Presenter



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Employment attorney **Julie Reddig** helps employers build and maintain productive workplaces by navigating the many federal, state, and local laws protecting employees in the workforce. She counsels management on avoiding and defending against employment claims before administrative agencies and local, state, and federal courts in Maryland and the District of Columbia.

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Nicole Behrman has represented clients before the DC Superior Court, District Court for the District of Columbia, the EEOC, DC Office of Human Rights, and DC Office of Administrative Hearings. She has litigated cases involving claims of discrimination, harassment, retaliation, FMLA interference and retaliation, wage and hour violations, breach of contract, and wrongful termination in violation of public policy.

Thank You!

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