

First & Foremosts

Legal Update
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TITLE VII AND GENERAL DISCRIMINATION PRINCIPLES

EEOC Shifting the Agency's Focus towards Conservative Principles

- Actions demonstrating Title VII protections extend to men.
 - Kickback Jack's Restaurants Settle Litigation with EEOC for \$1.1 Million for discrimination against male applicants for certain positions.

Equal Employment Opportunity Commission v. Battleground Restaurants, Inc., and Battleground Restaurant Group, Inc., Civil Action No. 1:24-cv-00792 (M.D.N.C.)

- EEOC Lawsuit challenging employer's sex segregated employer sponsored event violates Title VII.

EEOC v. Coca-Cola Beverages Northeast, Inc., Case No. 1:26-cv-00115 (D.N.H.)

Administration Continues Efforts Targeted at Illegal DEI

- EEOC:
 - Removes Harassment Guidance
 - Closes cases against Big Law
 - Files action to enforce subpoena against Nike for information related to allegations that the Company discriminated against white workers through its DEI-related 2025 Targets and other DEI-related objectives.
-EEOC v. NIKE, Inc., Case No. 4:26-mc-00128 (E.D.Miss)
- FTC: Threatens Antitrust Action against Law Firms for illegal DEI.
- DOJ: Using the False Claims Act to enforce DEI Executive Orders against Government Contractors.

Liability for Third Party Harassment

- EEOC and Most Federal Appeals Courts held employers liable for third-party harassment when the employer :
 - Knows or should have known of third-party harassment; and
 - Fails to take prompt remedial action
- Sixth Circuit held Employer liable for third-party harassment only when the employer ***intended*** harassment to occur.
 - Bivens v. ZEP, INC*, 147 F.4th 635 (6th Cir. 2025).

FLSA & Wage and Hour Law

Department of Labor to End Practice of Seeking Liquidated Damages in Wage and Hour Investigations

- DOL announced it will not seek liquidated damages during pre-litigation administrative investigations or resolutions.
- DOL and plaintiffs can still seek liquidated damages in any lawsuits against employers.

DOL Brings Back the Payroll Audit Independent Determination Program

- Encourages employers to conduct self-audits on compliance with the FLSA's minimum wage and overtime provisions, and now also the FMLA's leave requirements.
- Under the program employers voluntarily report violations to the DOL and work with the DOL to correct these violations and pay any back wages or implement any other remedies.

<https://www.dol.gov/agencies/whd/paid>

DOL No Longer Applying 2024 Independent Contractor Rule

- DOL issued its Independent Contractor Misclassification Enforcement Guidance to provide field staff guidance on the analysis to apply when determining employee or independent contractor status under the FLSA.
- DOL will not apply 2024 Independent Contractor Rule.
- DOL indicated it would be rescinding the 2024 Independent Contractor Rule.

<https://www.dol.gov/newsroom/releases/whd/whd20250501>

DOL WHD Issues Opinion Letters

- **FLSA2025-5:** Application of the overtime requirements of the FLSA to employee's work for two associated employers.
- **FLSA2026-2:** Whether section 7(e) of the FLSA permits an employer to exclude certain bonus payments from an employee's regular rate of pay.

<https://www.dol.gov/agencies/whd/opinion-letters/request#opinion-letter-search>

Maryland Supreme Court Adopts De Minimis Rule

- Martinez v. Amazon.com Servs. LLC, 491 Md. 38, 338 A.3d 636 (2025)
- *“In recording working time under the Act, insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes, may be disregarded. The courts have held that such trifles are de minimis...This rule applies only where there are uncertain and indefinite periods of time involved of a few seconds or minutes duration, and where the failure to count such time is due to considerations justified by industrial realities. An employer may not arbitrarily fail to count as hours worked any part, however small, of the employee's fixed or regular working time or practically ascertainable period of time he is regularly required to spend on duties assigned to him.”*
- 29 C.F.R. § 785.47

Worker Misclassification in the 4th Circuit

- *Chavez-Deremer v. Med. Staffing of Am., LLC*, 147 F.4th 371 (4th Cir. 2025)
- Economic Realities Test:
 - Degree of control
 - Opportunities for profit or loss
 - Investment in equipment or materials
 - Skill required
 - Permanence of relationship
 - Integral part of business

Federal District Court Ruling on Remote Work Hours

- *Lott v. Recker Consulting, LLC*, 798 F. Supp. 3d 778, 786 (S.D. Ohio 2025).
- Holding: Workday starts at the moment a remote worker opens and begins operating a program or application they use as part of the principal work activities they are employed to perform.

PWFA and ADA

EEOC Issues FAQs about Telework Accommodations for Disabilities in the Federal Sector

- Telework as a disability accommodation is not required to only mitigate symptoms.
- Employer must make an individualized assessment of whether telework was the only possible effective accommodation.
- Documentation – Accommodation needs must be evidence-based.
- Accommodations May Change!
- Employee rejecting an accommodation must provide evidence to back up the assertion.
- No obligation to provide remote work as an accommodation to assist the employee with getting to work. Courts disagree.
- Employer can consider conflicting or contradictory evidence when assessing an accommodation.

<https://www.eeoc.gov/FAQ-federal-sector-telework-accommodations-disabilities>

Employer Rewarded for Going Above and Beyond in Accommodating Disabled Employee

- Employer's efforts at accommodation of a disabled employee went above and beyond what the law required.
- Employee's essential functions required work on-site.
- Employer allowed remote work as an accommodation while work levels were low during the pandemic.
- When work levels returned, employer requested return to hybrid work.
- Employee returned intermittently, stopped communicating with the employer consistently, and failed to return to work, either remotely or in person.
- Employer terminated for job abandonment.

Haggins v. Wilson Air Ctr., LLC, No. 24-1010, 2026 BL 11479 (4th Cir. Jan. 14, 2026).

Courts in other Cases Hold that Barring Remote Work May be a Failure to Accommodate an Employee's Disability

- Employer provided disabled employee with remote work as accommodation during the pandemic.
- When pandemic restrictions lifted, employees were requested to continue working remotely full-time or in a hybrid environment.
- Employer denied because of significantly increased work levels.
- Employee resigned and alleged failure to accommodate. The employee cited her high performance reviews while working remotely to demonstrate that her telework caused no operational hardship.
- Court held that in person work was not essential for this position.

Smith v. District of Columbia, No. 23-cv-00018 (APM) (D.D.C. Aug. 13, 2025).

FMLA

7th Circuit Rules FMLA Leave Not Strictly Bound by Parameters in Medical Certification

- *Davis v. Illinois Dep't of Hum. Servs.*, 137 F.4th 641 (7th Cir. 2025).
- Doctor did not include any reference to employee's morning sickness or need for leave due to morning sickness in medical certification.
- Employer on notice of employee need for leave.
- Employer did not approve employee's FMLA leave for leave she took for morning sickness.
- Holding: Employee's entitlement to FMLA leave is not strictly bound by the precise parameters laid out in the medical certification.

NLRA

NLRB Action in New Administration

- <https://www.nlr.gov/guidance/memos-research/general-counsel-memos>
- 27-CA-325586 [Swirls Labs](#)
- 05-CA-353307 [The Baltimore Sun](#)

Other Changes in the Law

Other Changes in the Law

- The Fate of wider relief after *Trump v. CASA, Inc.*
- Payment for leave under USERRA.
- Violating employer's computer-use policy cannot support claim under the Computer Fraud and Abuse Act absent hacking.

Tax Deductions under the One Big Beautiful Bill Act

- Tax deduction for qualified tips and qualified overtime.
- Qualified overtime compensation -any overtime compensation paid to an individual as required under the FLSA and in excess of the regular rate of pay.
- <https://www.irs.gov/newsroom/questions-and-answers-about-the-new-deduction-for-qualified-overtime-compensation#:~:text=For%20tax%20year%202025%2C%20employers,Q7>.

Religious Accommodations

Failure to Accommodate Use of Preferred Pronouns

- Montgomery County Substitute Teacher Claimed MCPS policy requiring use of student's preferred pronouns violated religious beliefs.
- Teacher requested accommodation.
- MCPS initially assigned her to elementary schools only as an accommodation. Later they rescinded.
- Fourth Circuit will allow the Title VII claims to proceed.

-Polk v. MCPS No. 25-1136 (4th Cir. 2026)

Non-Compete Matters

Virginia Appellate Court holds non-solicitation of employees violates low-wage worker non-compete law

- Virginia law prohibits non-competes for non-exempt employees and those earning under the average wage in the Commonwealth, currently \$78,364.52 annually.
- Court held that this restriction extends to non-solicitation of employees provision because it is an agreement that restrains an employee's ability to compete with his former employer.

-*Sentry Force Security, LLC v. Barrera*, No. 1405-24-4, 2026 BL 24818 (Va Ct App. Jan 27, 2026).

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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Thank You!

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