2026 EMPLOYMENT LAW UPDATE



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HOT TOPICS 2026: DON'T GET "COLDPLAYED"



HOT TOPICS 2026: BALANCING GENDER PROTECTION

- **Narrower federal view of gender protection**
  - Executive Order 14168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government" (1/20/25) -- recognizes two sexes – male and female – that are not "changeable" -- is inconsistent with *Bostock v. Clayton County* (US 2020); lawsuits filed challenging EOs. See, e.g., *National Urban League v. Trump* (filed D.D.C., 2/19/25)(preliminary injunction denied 5/2/25)
  - On May 21, 2025, federal district court, W. La., vacated portion of 2024 PWFA final rule related to accommodating elective abortion as exceeding EEOC authority.
- **Colorado has an expansive view of "gender," including gender identity protection**

HOT TOPICS 2026: SCRUTINY OF DEI PROGRAMS

- Federal diversity, equity, and inclusion (DEI) programs have ended; expect federal and private legal challenges to employer DEI programs
- December 17, 2025, EEOC Chair Andrea Lucas, @andrealucasEEOC

Are you a white male who has experienced discrimination at work based on your race or sex? You may have a claim to recover money under federal civil rights laws. Contact the @USEEOC as soon as possible.



EEOC/DOJ ENFORCEMENT: BEWARE "ILLEGAL DEI"

- EEOC/DOJ "*What To Do If You Experience Discrimination Related to DEI at Work*" and "*What You Should Know About DEI-Related Discrimination at Work*" (3/19/25)
  - Title VII's protections apply equally to all workers. **Employers cannot unlawfully discriminate through DEI efforts**.
  - Prohibited conduct may include:
    - Limiting membership in workplace groups, such as Employee Resource Groups (ERG) or other employee affinity groups, to only certain protected groups;
    - Separating employees into groups based on race, sex, or other protected characteristic when administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources
    - Depending on the facts, an employee may be able to plausibly allege or prove that a diversity or other **DEI-related training created a hostile work environment** by pleading or showing that the training was discriminatory in content, application, or context.

SOME PERSPECTIVE ON DEI

- EEOC guidelines do not even define "DEI," creates uncertainty
- Proper DEI is lawful and may be required, e.g., end discrimination, duty to accommodate religion, disability, pregnancy
- Work training commonly includes EEO protections and how to recognize, avoid and report discrimination and harassment; discouraging training can create legal liability; discomfort with training focused on the law does not constitute unlawful harassment
- Under the law, there is no prohibition on organizing voluntary employee resource groups, e.g., affinity groups, to address common experiences and provide a supportive environment; simply must make such groups open to all employees who support group objectives.
- Employer practices designed to cast a wide applicant recruiting net are lawful; however, under Trump guidelines, expansive recruiting may actually pose greater legal risk to employers.
- Voluntary collection of workforce data to analyze barriers to opportunity is lawful and can ensure compliance with anti-discrimination laws.

HOT TOPICS 2026: THE FIGHT OVER AI

- **Federal vs. state artificial intelligence (AI) regulation**
  - On July 23, 2025, the White House released America's AI Action Plan, and three AI-related Executive Orders: "Preventing Woke AI in the Federal Government," "Accelerating Federal Permitting of Data Center Infrastructure," "Promoting the Export of the American AI Technology Stack"
  - **Colorado adopted broad AI law in 2024; in 2025, effective date postponed to June 2026**
  - **Trump EO, "Ensuring a National Policy Framework for Artificial Intelligence," December 11, 2025, attempts to pre-empt "onerous" state AI laws. Scope of EO is legally questionable, expect federal challenge to Colorado AI law.**

MUST TRACK COLORADO AI LAW IN 2026

- On May 17, 2024, Governor Polis signed SB 24-205, which outlaws AI job discrimination, **effective ~~February 1~~ *June 30, 2026,*** deployers of **"high-risk artificial intelligence systems"** must take "reasonable care" to prevent discrimination, such as by completing impact assessments for all AI systems annually and after modifications, and providing consumer disclosures about AI deployment. **Law will likely impact HR: Hiring, promotion, discipline, performance management and workplace surveillance**.
- Employers that use AI must provide consumers opportunities to **correct** any incorrect personal data processed by an AI and **appeal** adverse consequential decisions made by an AI. In the event that a deployer discovers that "algorithmic discrimination" has occurred, it must report the discovery to the state attorney general within 90 days.
- Exceptions available when deployer of AI has fewer than 50 full-time employees and does not use its own data to train the AI; the AI system meets certain exemption criteria; and the deployer makes an impact assessment of the AI available to consumers. **An affirmative defense is available if deployers cure violations or follow recognized AI risk management framework.**

COLORADO AI LAW: DUTIES OF AN EMPLOYER

- Law creates statutory tort liability for **AI algorithmic discrimination** in employment.
  - Requires employers using "high-risk" AI tools to implement risk management policies, conduct impact assessments, and provide detailed notices by June 30, 2026.
  - Colorado employers must identify "differential treatment or impact" on a broad list of protected categories: "actual or perceived age, color, disability, ethnicity, genetic information, limited proficiency in the English language, national origin, race, religion, reproductive health, sex, veteran status, or other classification protected under the laws of [Colorado] or federal law." **To comply with this duty, the bill requires extensive, and potentially costly, transparency, analysis, and documentation**.
  - Law, at present, is relatively narrow, limiting scope to machine-based algorithms that use inferential techniques to produce predictions, recommendations, decisions, or content more generally. Excludes certain AI-based and other technology tools, ranging from calculators and spreadsheets to firewalls, anti-virus software, and other complex electronic applications. Exclusion applies to AI-powered chatbots which need only disclose, to each individual with whom it interacts, that it is AI-based rather than human. Recognizes the possibility that AI can be used to counter discrimination, and thus exempts from its scope the use of AI to "identify, mitigate, or prevent discrimination," to "increase diversity or redress historical discrimination" within "an applicant, customer, or participant pool," or "otherwise ensure compliance with state and federal law."
  - Those who build or modify "high-risk" AI tools ("Developers") and those who use "high-risk" AI tools ("Deployers") owe a duty of "reasonable care" to all Colorado residents to protect them from "any known or reasonably foreseeable risks" of AI-driven algorithmic discrimination. Developers and Deployers must document their efforts to analyze and mitigate the potential discriminatory impact of each AI tool.

HOT TOPICS 2026: THE RISE OF RELIGION

- EEOC regained a quorum in October 2025. EEOC brought 11 religious bias lawsuits in FY25; highest number in 10 years.
  - Collision of religious rights and LGBTQ+ protections, particularly pronouns, restroom use, and gender identity protection
  - Social media policies (a 2025 case, *The Rock Snowpark*, alleges an employer fired an employee for making faith-based social media posts – Bible verses -- on his personal account which the employer construed as anti-gay; employee never referenced work or co-workers)
  - Requests for prayer or religious observance (a 2025 case involved an Apple store's failure to accommodate a Jewish employee's request not to work on the Sabbath)
- In 2025, the EEOC settled its lawsuit alleging anti-semitism at Columbia University for $21 million.

HOT TOPICS 2026: IS MARIJUANA LEGAL NOW?

- On December 18, 2025, President Trump issued an executive order titled, "Increasing Medical Marijuana and Cannabidiol Research," directing DHHS to begin the process of rescheduling marijuana for medical use under federal law.
  - EO does not make marijuana lawful for medical or recreational use
  - Marijuana remains illegal to use or possess under federal law
  - Employers subject to U.S. Department of Transportation drug and alcohol rules must continue to follow those rules by prohibiting all marijuana use and testing workers for marijuana metabolites
  - Nothing in the EO suggests that marijuana will become legal for recreational use
- If marijuana is rescheduled, it will be available for prescription use under medical care/treatment. Employers can expect requests for accommodation under the ADA; "direct threat" standard would still apply
- Moving from Schedule I to Schedule III status under the Controlled Substances Act would continue to classify marijuana as a controlled substance under federal law, but would allow its use for certain medical purposes. Thus, employers can still prohibit use and enforce drug-free workplace policies consistent with state law.

MUST TRACK THIS ISSUE IN 2026

US SUPREME COURT 2025: EMPLOYMENT-RELATED CASES

FLSA. In *E.M.D. Sales, Inc. v. Carrera* (U.S., January 15, 2025), Supreme Court clarified the burden of proof for employers to show an employee is exempt from overtime under the Fair Labor Standards Act. The Court adopted a "preponderance of the evidence" standard, like employment law claims under Title VII. The decision clears up a discrepancy among federal appellate courts; the 10th Circuit – which includes Colorado -- had already adopted *Carrera* standard.

US SUPREME COURT 2025: EMPLOYMENT-RELATED CASES

- **"Reverse" discrimination is discrimination. This case is significant.**
  - In *Ames v. Ohio Department of Youth Services*, a heterosexual female alleged her homosexual manager discriminated against her based on sexual orientation when she lost her job to a gay male co-worker.
  - On June 5, 2025, the Supreme Court (Jackson, J) unanimously struck down the "background circumstances" rule, which had required "majority-group" (white, male, straight) plaintiffs to meet a *heightened evidentiary standard* to establish a prima facie case of discrimination under Title VII. **This case invites more discrimination claims and challenges to DEI initiatives.**

US SUPREME COURT 2025: EMPLOYMENT-RELATED CASES

ADA. On June 12, 2025, in *A.J.T. v. Osseo Area Schools*, Court ruled unanimously that students bringing ADA and Rehabilitation Act lawsuits against public schools do not face a higher standard of proof than plaintiffs bringing discrimination lawsuits against other institutions. Student required scheduling accommodations to deal with severe epilepsy and cognitive deficits. When school administrators denied the student's requested accommodations, the student and her parents sued the school district, alleging disability discrimination.

US SUPREME COURT 2025: EMPLOYMENT-RELATED CASES

ADA. On June 20, 2025, in *Stanley v. City of Sanford, FL* (Gorsuch, J), Court held that a *former employee*, a disabled Florida firefighter who retired due to complications associated with Parkinson's disease, does not have standing to challenge her disability benefits package under the ADA. Retirees who do not hold or seek their former jobs are no longer qualified individuals with a disability.

FEDERAL LAW IN 2025: MORE USERRA PROTECTIONS

- Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act, signed into law by President Biden on January 2, 2025, amends Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).
  - Broadens USERRA's anti-retaliation protections, eliminating any requirement of adverse employment action
  - Increases liquidated damages, lowering threshold of proof from willful violation to knowingly failed to comply with USERRA, and establishes minimum award of $50,000
  - Broadens injunctive relief
  - Establishes prejudgment interest rate on lost wages of 3%
  - Mandatory attorneys' fees awarded to prevailing employee in a lawsuit.
  - Clarifies that active-duty military members are eligible for USERRA protection; not only Reserve and Guard members.

FEDERAL RULES IN 2025: NATIONAL ORIGIN GUIDELINES

- U.S. Equal Employment Opportunity Commission (EEOC) issued "technical assistance" regarding national origin discrimination (11/19/25)
  - **Reinforces that "national origin" includes Americans**
  - Defines national origin discrimination as "treating employees or applicants unfavorably or favorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background," and provides several examples:
    - Using discriminatory job advertisements, such as ads that suggest an employer prefers or requires applicants from a particular country or with a particular visa status;
    - Engaging in disparate treatment, such as making it more difficult for applicants from one national origin to apply for positions (e.g., preferring visa holders to American workers);
    - Harassing an employee based on national origin, such as subjecting them to severe or pervasive unwelcome remarks or conduct based on national origin; and
    - Retaliating because an employee has engaged in protected activity such as objecting to or opposing national origin discrimination in the workplace.
- Warns employers that customer/client preferences, e.g., for lower labor costs, or beliefs that workers of one national origin are "more productive" or possess a better work ethic than others from different groups, may be unlawful discrimination.

FEDERAL RULES: PWFA RULES RELEASED IN 2024; LIMITED IN 2025

- **Pregnant Workers Fairness Act (PWFA) signed in 2022; US EEOC issued a 408-page final rule effective June 18, 2024**
  - **Expansive scope of conditions** that qualify for a "request for accommodation" under the PWFA include current pregnancy, past pregnancy, **potential pregnancy**, lactation (including breastfeeding and pumping), use of **birth control**, menstruation, migraines, pregnancy-related conditions that are episodic-like morning sickness, postpartum depression, gestational diabetes, infertility and **fertility treatments**, preeclampsia, endometriosis, miscarriage, stillbirth, and having or choosing to have an **abortion**, among other conditions.
  - **Limits supporting documentation** to minimum documentation sufficient to confirm the employee's physical or mental condition; confirms the physical or mental condition is related to, affected by, or arises out of pregnancy, childbirth, or related medical conditions; and documentation that describes the change or adjustment needed at work due to the limitation.
  - Allows employee to be qualified for an accommodation, even if they cannot perform one or more essential functions of the job, if the inability to perform the essential function(s) is "temporary," the employee could perform the essential function(s) "in the near future," and the inability could be reasonably accommodated.

FEDERAL RULES: PWFA RULES RELEASED IN 2024; LIMITED IN 2025

- **Broad guidance as to possible reasonable accommodations**, including frequent breaks, sitting/standing, schedule changes, part-time work, and paid and unpaid leave to recover, remote work, closer parking, light duty, making existing facilities accessible or modifying the work environment, job restructuring, temporarily suspending one or more essential functions, acquiring or modifying equipment, uniforms, or device, and adjusting or modifying examinations or policies.
- **"De facto" reasonable**: Modifications that don't cause undue hardship in "virtually all cases" are allowing an employee to keep or carry water near and drink, as needed; allowing an employee to take additional restroom breaks, as needed; allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and allowing an employee to take breaks to eat and drink, as needed.
- **Prohibited practices**
  - Failing to provide (including unnecessary delay) a qualified employee or applicant with reasonable accommodation;
  - Requiring a qualified employee or applicant to accept an accommodation other than one arrived at through the interactive process;
  - Denying employment opportunities based on the employer's need to make a reasonable accommodation for the known limitation of an employee/applicant;
  - Requiring a qualified employee or applicant to take paid or unpaid leave if another reasonable accommodation exists; and
  - Taking adverse action against a qualified employee/applicant

FEDERAL RULES: PWFA RULES RELEASED IN 2024; LIMITED IN 2025

- The final rule states it is a best practice to provide an "**interim accommodation**" to an employee which may mitigate against a claim of delay by an employee.
- The rule clarifies there is no right to a reasonable accommodation under the PWFA based upon an individual's **association with someone else who may have a PWFA-covered limitation**, or even if the individual themselves has a physical or mental limitation arising out of someone else's pregnancy, childbirth or related medical condition.
- The rule clarifies that time for **bonding or for childcare is not covered by the PWFA**.
- **In 2025, rule was narrowed related to abortion**

FEDERAL RULES: FLSA OVERTIME THRESHOLD VACATED

- On April 23, 2024, US Department of Labor (DOL) announced its final rule increasing compensation thresholds for overtime eligibility under the Fair Labor Standards Act (FLSA).
  - July 1, 2024: Raised from $684/week ($35,568/year) to **$844/week** (**$43,888/year**)
  - January 1, 2025: $1,128/week (**$58,656/year**)
  - To be a "highly compensated executive," salary threshold increased: July 1, 2024, $132,964/year; January 1, 2025, $151,164/year.
- On November 15, 2024, a federal district court in Texas struck down the DOL final rule and enjoined enforcement of the rule nationwide. *Plano Chamber of Commerce et al. v. United States DOL* (E.D. Tex., Nov. 15, 2024)
- **Previous threshold of $35,568/year reinstated; "highly compensated remains at $107,432/year. No increases from 2019 rule. No automatic increases after three years. Biden administration appeal paused by Trump administration in April 2025.**

FEDERAL RULES: INDEPENDENT CONTRACTOR RULE

- On January 9, 2024, U.S. Department of Labor (DOL) announced the issuance of its final rule to clarify who is an independent contractor; rule effective March 11, 2024
- The DOL rescinded the Trump administration's 2021 rule in which two core factors—control over the work and opportunity for profit or loss—carried greater weight in determining the status of independent contractors. The new rule implemented an "economic realities" test with no favoritism towards any factor and relies on a "totality of the circumstances" analysis. Examples raise the bar for independent contractor classification. Additional factors in the economic realities test may include: The amount of skill required for the work; degree of permanence of the working relationship; worker's investment in equipment or materials required for the task; and extent to which the service rendered is an integral part of the employer's business.
- **DOL announced in May 2025, in Field Assistance Bulletin No. 2025-1, it will "no longer apply" the 2024 independent contractor final rule to determine employee or independent contractor status. Expect additional rulemaking.**

FEDERAL RULES: NEW HARASSMENT RULES LIMITED

- On April 29, 2024, US Equal Employment Opportunity Commission ("EEOC") finalized "Enforcement Guidance on Harassment in the Workplace." **First time since 1999** that the EEOC updated its harassment guidance! Under new rules, unlawful harassment included:
  - **Intentional misgendering**; **denial of access to a bathroom** or other sex-segregated facility consistent with the individual's gender identity; and "outing" an individual's sexual orientation or gender identity without permission.
- **On May 15, 2025, a federal court vacated portions of the EEOC guidelines related to sexual orientation and gender identity harassment**. EEOC no longer enforcing gender identity discrimination claims.

FEDERAL RULES: NEW HARASSMENT RULES

- Are no more! On January 22, 2026, the U.S. EEOC voted to rescind the 2024 Enforcement Guidance on Harassment in the Workplace in their entirety.
- Rescission does not alter federal anti-harassment law, but the lack of guidelines leaves questions for employers on EEOC enforcement positions on certain topics, such as remote or online harassment.

BEWARE ELECTRONIC HARASSMENT

- Female police captain learns that an "AI-generated" photo of a topless woman falsely said to be her has been spreading electronically among employees at work; and, as a result, employees are making lewd comments about her behind her back. Employee begs employer to (1) find the source of the photo and (2) notify employees that the photo is not of her and sharing it would be misconduct. Employer does neither; investigation took nine months; no person disciplined. **Is this sexual harassment if the female employee never saw the photo? YES!**
- *Carranza v. City of Los Angeles*, 111 Cal. App. 5th 388 (2025)(appellate court upheld $4 million jury verdict).

FEDERAL RULES: COLLEGES, TITLE IX AND DEI

- Educational institutions must review Title IX compliance program following April 4, 2025 creation of DOJ/DOE "Title IX Special Investigations Team" for the purpose of "ensur[ing] timely, consistent resolutions to protect students, and especially female athletes, from the pernicious effects of gender ideology in school programs and activities." Refer to Trump EOs "*Keeping Men Out of Women's Sports*" and "*Defending Women from Gender Ideology Extremism*."
- DOE "Dear Colleague" letter dated February 14, 2025 – reiterating *Students for Fair Admissions*, Inc. and scrutinizing DEI programs – was temporarily blocked nationwide by federal courts in New Hampshire and Maryland as "unconstitutionally vague" on April 24, 2025. Appeal expected. **Must review and assess DEI programs for legal compliance.**

HOT TOPIC: WILL DEI DIE?

- **The "anti-woke" backlash**: In 2025, Trump Administration ended DEI programs in the federal government and will scrutinize employers DEI initiatives; many private corporations have slashed DEI programs, e.g., Target, and will no longer participate in cultural awareness events; SHRM eliminated "equity," rebranding as "I&D." **However, most surveyed organizations say they remain committed to DEI in some form, anticipate more regulatory oversight.**
- **Beware the rise of "reverse discrimination" claims**. See e.g., *Dill v. International Business Machines Corp.* (W.D.MI., March 26, 2025)(denying employer motion to dismiss, male employee with positive record alleges he was fired to meet IBM's targeted diversity goals); *Raza v. Accenture* (complaint, N.D. Ill, April 14, 2025)(former senior manager accused employer of promoting female workers over him in pursuit of a gender parity goal in violation of Title VII)

HOT TOPIC: WILL DEI DIE?

- **US Supreme Court did not kill DEI**: *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* (2023) ended affirmative action in higher education, BUT Court held "nothing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise." Ruling does not limit *outreach, engagement, retention or completion* strategies aimed at enrolling diverse persons or promoting diversity based on socioeconomic background. But must consider Trump EOs.
- **DEI–related training is lawful.** Former Honeywell employee failed to show employer discriminated/retaliated against him when he was fired for failing to complete mandatory "unconscious bias" training. *Vavra v. Honeywell International, Inc.* (7th Cir. 2024). White employee called training a "joke," ignored reminders to complete online class, complained training cast whites as "villains." Employee could not show protected opposition to employer conduct when *he'd never seen the training* and could not form an objectively reasonable belief that the program violated law; **he insufficiently assumed training would vilify white people.**
- **But be careful**. Mandatory DEI training was not sufficiently severe or pervasive to constitute harassment of white male employee, but court warned that negative *race-based messaging* could support claims. *Young v. Colorado Department of Corrections* (10th Cir. 2024)(10th Circuit questioned validity/use of training materials)

HOT TOPIC: WILL DEI DIE?

- **Be attentive to training.** Christian former employee alleged his employer discriminated on the basis of religion when it fired him for refusing to retake a mandatory unconscious bias training. *Wright v. Honeywell International, Inc.*, (N.D. Ga., complaint 2/28/25) Employee completed training in 2022, claimed it "exemplified a belief system that divides human beings into discreet groups based on immutable characteristics," contrary to sincerely held religious beliefs, and employer refused request for exemption from training or alternative training.
- **Case dismissed by mutual agreement November 19, 2025.**

HOT TOPIC: WILL DEI DIE?

- **Be attentive to training**. Appellate court revived white former employee's racially hostile work environment claim alleging employer required her attend implicit bias training in which plaintiff was subjected to racist comments. *Chislett v. N.Y.C. Dep't of Educ.* (2nd Cir., September 25, 2025)
  - Court held that implicit bias training is not discriminatory per se. Instead, facts of each case are determinative:
    - Training instructors repeatedly said that "values of [w]hite culture are supremacist"
    - Employees were physically segregated and singled out by staff
    - Co-workers made racial comments outside training calling plaintiff a "racist" and "white and fragile"
    - Supervisors ignored plaintiff's claims of harassment

HOT TOPIC: WILL DEI DIE?

- On July 29, 2025, the US Department of Justice issued a lengthy memo to federal agencies providing "guidance" on what may constitute unlawful discrimination by recipients of **federal financial assistance**.
  - No **preferences**, quotas, set asides or "plus" factors. There is no "diversity" exception to unlawful discrimination. The DOJ has taken the position that "diverse slate requirements" likely are unlawful.
  - No use of "**proxies**." Unlawful proxies are defined as neutral criteria that function as substitutes for explicit consideration of race, sex or another protected characteristic. For example, assume an employer recruits at a historically Black college or university (HBCU). If the employer recruits there to increase the diversity of the applicant pool, its intent may be challenged as using an HBCU as an unlawful "proxy." Conversely, the employer's position is stronger if the employer recruits at the HBCU because of the talent there.
  - No **segregation**: Where a program, activity or resource "separates or restricts access based on race, sex, or other protected characteristics," even if the stated goal is to increase inclusion or address historical disparities. There cannot be segregation in training or ERG events.

HOT TOPIC: RELIGION VS. GENDER

- **Recall** *Meriwether v. Hartop* (6th Cir. 2021) holding that **public university** professor plausibly alleged that his First Amendment/academic freedom rights were infringed when the university disciplined him for refusing to refer to transgender female student by "she/her" pronouns in violation of the school's nondiscrimination policy. **Case settled in 2022 in professor's favor.**
- In 2023, appellate court rejected a public employee's claim that he was unlawfully discriminated against based on religion after he refused to attend mandatory LGBTQ anti-discrimination trainings because he did not want to be forced to listen to "indoctrination" in contradiction to the tenets of his faith. *Zdunski v. Erie 2-Chautauqua-Cattaraugus BOCES* (2d Cir. 2023) Court found *no evidence the training* -- recognizing the difference between sex and gender; understanding different aspects of gender identity -- *was discriminatory on the basis of religion*.

HOT TOPIC: RELIGION VS. GENDER

- **The Kluge case**. Federal appeals court upheld an Indiana school district's firing of a **music teacher who refused to address transgender students by their first names and pronouns** for religious reasons. *Kluge v. Brownsburg Community School Corp.* (7th Cir. 2023) Teacher's requested accommodation -- allowing him to use only last names to refer to all students – created an undue hardship on transgender students; therefore, district could require all school personnel to address students consistent with their names, pronouns, forms of address in the district's PowerSchool database of students.
- In 2024, on rehearing, applying *Groff v. Dejoy* (S.Ct. 2023) religious accommodation standard, court ruled for school district. Court determined that continuing the "Last Names Only" accommodation would be an undue hardship. Court found that the accommodation created an unreasonable risk of substantial disruptive litigation, citing discrimination cases filed by other transgender students, and imposing substantially increased costs.
- However, on August 5, 2025, 7th Circuit reversed the district court's ruling against Kluge and remanded the case for trial. The "school introduced nothing to show that a teacher using one's last name resulted in 'emotional distress' under an objective standard."

HOT TOPIC: RELIGION AND THE VAX CASES

- *Russo v. Patchogue-Medford Sch. District* (2nd Cir. 2025), **employer prevailed** on claim by school psychologist who requested exemption from COVID vax, or weekly testing, on religious grounds. Reasonably denied employee's request to work remotely as an accommodation since it would violate NY state law – a presumptive undue hardship -- and "physical presence" was required to conduct essential functions.
- *Melino v. Bos. Med. Ctr.* (1st Cir. 2025), **employer prevailed** on claim by hospital employee who requested a religious exemption from a hospital's COVID vax requirement and terminated her for refusing to be vaccinated. Employer's policy was based on objective, scientific information, including the CDC's recommendations that vaccines mitigated the effects and spread of COVID-19. Affirming summary judgment, the court agreed with the employer that permitting the plaintiff to work unvaccinated would have posed an undue hardship for the hospital "by increasing the risk of COVID-19 transmission amongst staff and patients."
- *Rodrigue v. Hearst Commc'ns. Inc.* (1st Cir. 2025), **employer prevailed** on claim by employee who requested religious exemption from the company's COVID vaccination requirement and terminated him for refusing to be vaccinated. Court found that granting employee's request would have imposed an undue hardship on the employer. Affirming summary judgment for employer, court concluded that based on evidence that vaccinated people are less likely to transmit COVID-19, accommodating the exemption request would be a substantial burden on the employer.
- Note: The exemption cases have favored Catholic employees who were denied an exemption based on objection to use of aborted fetal cells in vaccine development. See *Domski v. Blue Cross Blue Shield of Michigan* (E.D Mich. 2024)(jury awarded $12.7 million)

EXPANSIVE RELIGIOUS PROTECTION IN FEDERAL EMPLOYMENT

- In July 2025, the U.S. Office of Personnel Management (OPM) issued two memos regarding religious accommodations and religious expression in federal workplaces.
  - On July 16, 2025, OPM issued "Religious Accommodations for Religious Purposes." The OPM memo "encourage[s]" agencies "to adopt a generous approach to approving religious accommodations, prioritizing employee needs while maintaining operational efficiency." OPM specified that federal agencies must engage in a *good-faith interactive process* when an employee requests a religious accommodation and reminded agencies that they should *document the interactive process*. The memo's list of religious accommodations includes flexible work schedules, scheduled breaks, annual leave, earned compensatory time off for overtime work, leave without pay, and other time off.
  - On July 28, 2025, OPM issued "Protecting Religious Expression in the Federal Workplace." Federal employees "**must be allowed to engage in private religious expression in work areas to the same extent that they may engage in nonreligious private expression**." Specific examples of conduct for which agencies cannot discipline or fire a federal worker: displaying and using religious books or icons; having prayer groups or scripture studies with fellow employees during off-duty time; having religious conversations with coworkers during work breaks, including attempting to persuade others of the correctness of certain religious views, if such efforts do not rise to the level of harassment; inviting coworkers to worship at the employee's place of worship, even if they belong to a different faith; directing prayers or religious expressions at members of the public; having religious expressions or items in areas accessible or visible to the public; and expressing unwillingness to engage in religious conversations in the workplace.

2025 CO LEGISLATION



- SB25-005, *Worker Protection Act*, would eliminate the requirement for a second election to negotiate a union security agreement clause in the collective bargaining process
  - Altered 81-year-old Colorado Labor Peace Act
  - Currently, Colorado law requires two elections for workers seeking to form a union and collect dues: one complying with federal National Labor Relations Act to form a union; and a second election which must be won by a supermajority approval of at least 75% of those who vote, or 50% plus one of all employees eligible to vote, whichever is greater, to collect mandatory fees.
  - **Vetoed** by Governor Polis on May 16, 2025

2025 CO LEGISLATION

PASSED

- **SB25-144, Change Paid Family Medical Leave Insurance Program**
  - Amends CO FAMLI to provide up to an additional 12 weeks of paid leave for any parent who has a child receiving care in a neonatal intensive care unit (NICU). Could be up to **24 total weeks** of paid FAMLI leave (12 weeks of bonding leave and 12 weeks for time that the newborn is in the NICU). Effective January 1, 2026.
  - Lowers -- slightly -- premiums collected from each employee used to finance the wage replacement benefits under FAMLI. The premium collection will stay at 0.9% of wages per employee for the remainder of 2025; starting January 1, 2026, the premium amount will decrease to 0.88% of wages per employee. For each subsequent calendar year, the director of the FAMLI Division will set the premium on or before September 1st of the preceding year, with a maximum possible premium rate of 1.2% of wages per employee.

2025 CO LEGISLATION

- HB25-1312, also referred to as the Kelly Loving Act, clarifies that **gender expression** includes both an employee's "Chosen Name" and "How the Individual Chooses to be Addressed." However, "chosen name" cannot contain "offensive language," and the individual cannot be "requesting the name for a frivolous purpose," neither of which are defined.

PASSED

- HB25-1239, expands the remedies available to individuals with disabilities who experience discrimination **in places of public accommodation**. Individuals with disabilities may seek attorney's fees and costs, and either (a) actual monetary damages plus non-economic damages; or (b) a statutory fine of $5,000. Damages for non-economic losses are capped at $50,000. Damages are available to individuals with a disability who are both accompanied by a service animal (or a trainer of a service animal). Employers are entitled to a 50% reduction on the cap of non-economic damages if they correct the violation within 30 days of the complaint's filing, and their violation was not knowing, intentional, or reckless.

PASSED

2025 CO LEGISLATION

PASSED

- **HB25-1001,** *The Enforcement of Wage and Hour Laws*
  - Section 1 Expands definition of "employer" to include **individuals who own or control** at least 25% of a business
  - Section 2 Employers cannot deduct from payroll in a way that reduces a worker's pay below the applicable minimum wage
  - Section 3 The division director can waive penalties for late wage payments if specific conditions are met
  - Section 4 Repeals language allowing a court to award an employer reasonable costs and attorney fees in a civil action for unpaid wages or compensation in certain circumstances. In such an action, the court may pursue all equitable relief to deter future violations and prevent unjust enrichment.
  - Section 5 Increases the threshold for **Division to pursue claims** by increasing the amount from $7,500 to $13,000 for claims filed from July 1, 2026, through December 31, 2027, and in an amount specified by the director of the division to adjust for inflation beginning January 1, 2028.

DOES NOT APPLY TO PUBLIC SECTOR WORKPLACES

2025 CO LEGISLATION

PASSED

- HB25-1001, *The Enforcement of Wage and Hour Laws* (cont.)
  - Section 6 Requires an employer found to have misclassified an employee as a nonemployee **to pay a fine** in the following amounts, in addition to any other relief ordered:
    - For a willful violation, $5,000;
    - For a violation not remedied within 60 days after the division's finding, $10,000;
    - For a second or subsequent willful violation within 5 years, $25,000; or
    - For a second or subsequent willful violation not remedied within 60 days after the division's finding, $50,000.
  - Section 6 Decreases the amount of time the division must wait before paying an employee out of the wage theft enforcement fund from 6 months to 120 days.
  - Section 7 Expands protections against retaliation for employees and other individuals involved in wage and hour law claims; requires consideration of timing between protected activity and adverse actions to assess retaliation claims; declares using immigration status to undermine wage claims as unlawful intimidation; and allows the division to award attorney fees and costs in discrimination or retaliation cases.

DOES NOT APPLY TO PUBLIC SECTOR WORKPLACES

2025 CO LEGISLATION

- SB 25-083, *Concerning Limitations On Restrictive Employment Agreements*, limits physician and other healthcare employment agreements. Limits damages for leaving; employer can't limit physician from notifying patients about moving to another practice.

PASSED

- HB25-1208, *Local Governments Tip Offsets for Tipped Employees*, cuts the minimum wage for restaurants that are in a city/county where the city/county has raised the minimum wage above the state-required amount of $14.81 per hour.

PASSED

- HB25-1286, *Protecting Workers from Extreme Temperatures*, provides extensive protections for employees working in extreme temperatures (above 80°F and below 30°F).

POSTPONED

2025 CO LEGISLATION

- HB25-1300, *Workers' Compensation Benefits Proof of Entitlement*, makes numerous changes to Colorado's workers' compensation system, including broadening list of physicians from whom injured workers can seek care.

PASSED

- SB25-166, *Health-Care Workplace Violence Incentive Payments*, identifies performance metrics related to workplace violence in determining quality incentive payments to hospitals.

PASSED

COLORADO WEB ACCESSIBILITY: THE LONG ROAD TO DIGITAL ADA

- HB21-1110, Colorado's Web Accessibility Law, passed on **July 1, 2021**, requires that **all state and local governments' (cities, counties, content owners managing government websites, and any public entity providing digital services or information) websites** follow digital accessibility guidelines in compliance with the Americans with Disabilities Act (ADA). The law permits challenges to government websites in state court. Penalties include monetary damages, attorney's fees, $3,500 fine payable to each plaintiff for each violation.
- HB21-1110 set a deadline of **July 1, 2024** to meet Web Content Accessibility Guidelines (WCAG) 2.1 Level AA standards for digital accessibility. The State Chief Information Officer (CIO) published 8 CCR 1501-11, *Technology Accessibility Rules*, in February 2024. The rules can be found at https://oit.colorado.gov/ standards-policies-guides/guide-to-accessible-web-services/accessibility-law-for-colorado-state-0
- HB 24-1454 granted a "grace period" to **July 1, 2025**, but state and local governments must show having made a good-faith effort toward meeting digital accessibility standards by July 19, 2024, including creating a detailed progress report on their websites and updating it quarterly and providing an easy-to-find way for visitors to report accessibility issues with clear contact information on public-facing pages.

PROTECTIONS FOR PUBLIC WORKERS ACT (PROPWA) ALLOWS EXPRESSION

- Extends National Labor Relations Act (NLRA) protections to most **public employees in Colorado**; allows right to organize a union; does not include right or obligation to recognize or negotiate a collective bargaining unit.
- PROPWA protects public employee rights to engage in:
  - **speech on employee representation, workplace issues**, or PROPWA rights;
  - **concerted activity for mutual aid or protection**;
  - **political participation while off duty and not in uniform**, including (i) speech with the public employer's governing body (or any of its members) on work terms and conditions or matters of public concern, and (ii) political activity of other kinds in the same manner as other Coloradans;
  - organizing, forming, joining, or assisting an employee organization, or refraining from doing so; and
  - exercising any rights under PROPWA, including but not limited to complaining, testifying or otherwise submitting evidence or information about, or opposing what the employee believes, reasonably and in good faith, to be a violation of PROPWA.

2024 PROPWA RULES IDENTIFY SOME LIMITS ON EXPRESSION

1. "**Disruptive activity**" not protected if "expressive activity" is outweighed by the degree to which the activity **materially impairs significant interests**, such as (a) that a public employer must be able to deliver public services, maintain legally required confidentiality, or otherwise fulfill its obligations, (b) that a governing body (boards, commissions, etc.) must maintain relationships of trust with their policy-level and confidential employees, and (c) that a public employee must maintain professional relationships required to perform their duties. **"Disagreement with the content" of the activity, or viewpoint of the employee, cannot be a reason for activity to lose protection**.
2. Expressive activity not protected if it is pursuant to or part of "**official duties**" that the public employee either: (A) is paid by their public employer to perform; or (B) otherwise has a responsibility to perform under a directive from their public employer.
3. Expressive activity is protected in a "**public forum**" traditionally open to such activity or opened for such activity by a public entity unless contrary to a limitation on the **time, place, or manner** of such activity: (1) that is set and enforced on a content-neutral and viewpoint-neutral basis; (2) that is narrowly tailored to serve a significant governmental interest; and (3) that leaves open ample alternative channels for the activity that are known and available to the public employee.
4. "**Policy-level" employees** do not have PROPWA political participation protections

No private right of action under PROPRWA; rules effective July 1, 2024

INTERESTING IN 2025

- 8th Circuit reversed 2024 NLRB ruling in favor or employees, finding that "special circumstances" justified Home Depot's order that employees remove Black Lives Matter messaging from work apron. Appellate court found that the context of the situation, the Home Depot store was a few miles from where George Floyd was killed in 2020, and worker's insistence on wearing the message in 2021 incited unrest and potential harm to the store. Store had to close on two occasions due to unrest. the worker's insistence on wearing the message "posed a clear risk to customer and employee safety."
- The store also suggested a variety of other, similar messages the worker could wear on their apron, including a diversity, equity and inclusion pin or a "respect for all" pin. It also similarly barred divisive messaging that countered the BLM message, including "Blue Lives Matter" and "Thin Blue Line" messages, suggesting hot-button political messages were "evenly restricted" across the board.

INTERESTING IN 2025

- On May 12, 2025, Landry's Seafood House in Denver agreed to pay $90,000 to Iranian employee who was harassed for being Iranian and openly mocking her accent and physical appearance. Harassment did not stop despite two complaints to HR. *EEOC v. Landry's Seafood House – Colorado, Inc. d/b/a Saltgrass CO, Inc.*
- City of Lansing (MI) did not fail to accommodate a firefighter's request to bring an emotional support dog to work. Granting summary judgment for the employer, employee never showed a service dog was necessary for him to do his job. The ADA does not include emotional support animals in its definition of "service animals." *Fisher v. City of Lansing* (W.D. Mich., April 29, 2025)
- On April 23, 2025, President Trump issued an executive order, "Reforming Accreditation to Strengthen Higher Education," to stop accrediting organizations from imposing DEI requirements on colleges and universities.

INTERESTING IN 2025

- Reverse discrimination claim cannot be based on conjecture. *Waleyko v. Phelan* (1st Cir., July 25, 2025). Male was hired under a two-year probationary period. In the last seven months of his probationary period, plaintiff was investigated and then disciplined for three incidents, including sexual harassment and deletion of certain code files. At the end of the probationary period, the male employee was given the choice to resign or be fired, and he chose to resign, following which he filed suit for gender discrimination in violation of Title VII. Court upheld dismissal of the complaint as male only offered conjecture that female employees would have been treated differently is insufficient to support a complaint.
- Black male employee fired after using twice using racial slur, the n-word, toward a White male employee at work did not have a viable race claim against his former employer. *Murray v. Verizon Wireless*, LLC (E.D. Pa, October 8, 2025). Another Black employee complained to HR and the employer cited use of the slur as the reason for the firing. The federal district court rejected the former employee's claim of race and ethnic discrimination. The plaintiff never demonstrated that his race or ethnicity were the basis for his firing; the court found unpersuasive the employee's allegation that Verizon's policy of disciplining employees who use racial slurs was ambiguous and that other African-American employees who used the same slur received written warnings rather than termination.

Questions?

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Thank you!

