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The Year Ahead 2026

Introduction

As the administration enters its second year, employers face a fast-shifting mix of federal priorities and the state-level and market responses they prompt. *The Year Ahead 2026* connects the dots across agencies, multijurisdictional legislation, litigation, technology and workforce trends — equipping organizations to anticipate risks, seize opportunities and act with greater confidence.

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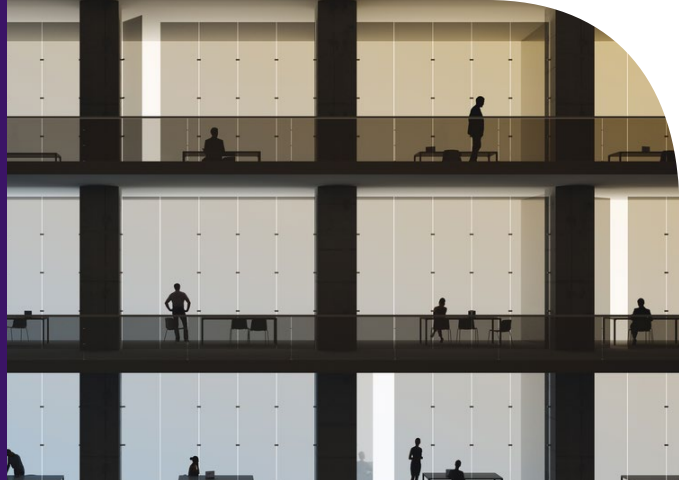
AGENCIES ARE OFF AND RUNNING

As 2026 unfolds, the focus shifts to the practical priorities of federal agencies that are being shaped by newly established quorums.



National Labor Relations Board

Quorum Return Sets Up High Expectations

With the five-person NLRB regaining a quorum in early Jan. 2026 for the first time in nearly 12 months, the NLRB can now address its growing case backlog. NLRB decisions likely will lean toward being more employer friendly. Here's a closer look at what to expect.

Board Actions to Expect

Note: A long-held NLRB tradition has been to only change precedent with at least three votes in the affirmative.

With Two Majority Members	With Rulemaking or Third Majority Member
• Unfair labor practices sufficient to order employer to recognize a labor organization • Work rule and handbook savings clauses • Consequential damages • Special circumstances sufficient to limit union paraphernalia • Narrower interpretation of protected concerted activity	• Forced recognition through cards • Test to determine lawfulness of work rules and handbook policies • Independent contractor test • Quickie election final rule • Blocking charge policy • Mandatory captive audience meetings • Standard to determine bargaining unit composition

A Closer Look: Board Actions Requiring Rulemaking or Third Member

1. *Ordering Union Recognition*

The Biden Board decision that made it easier for unions to circumvent the Board's election procedures is not likely to survive the courts of appeals.

That decision also provided that if an employer commits an unfair labor practice (ULP) that would require the election to be set aside, the Board will dismiss the petition without an election and order the employer to recognize and bargain with the union. That approach to bargaining orders is also likely to be overturned in the courts before the Board has a chance to address it.

Even if the decision is not overturned in the courts, the Board will likely overturn the decision. The Board could act quickly to narrow the types of ULPs that would justify such a bargaining order.

2. *Work Rules + Handbook Policies*

In 2026, employers can expect that the Board likely will overturn Stericycle and return to a more consistent, employer-friendly standard.

Stericycle overturned the *Boeing* decisions, which classified company rules into three categories:

1. Rules that are lawful to maintain under the NLRA;
2. Rules that warrant individualized scrutiny; and
3. Rules that are unlawful and the adverse impact on NLRA rights is not outweighed by justifications associated with the rules.

The *Boeing* decisions, however, were not a model of clarity, and the Board may simply return to asking how reasonable employees "would" construe a rule at issue, versus "could." The Board could also address the use of savings clauses.

3. *Independent Contractor Test*

The Trump Board will likely return to the *SuperShuttle* test for determining whether an individual is an independent contractor. This would be a shift from the current *The Atlanta Opera Inc*. standard that makes it easier to establish employee status.

The *SuperShuttle* test focuses on the extent to which the arrangement between the ostensible employer and the alleged employee provided the individual an "**entrepreneurial opportunity.**"

This issue will likely ultimately be resolved in the courts.

4. *Mandatory "Captive Audience" Meetings*

The Trump Board will likely return to long-standing precedent that permitted employers to hold mandatory captive audience meetings during union election campaigns. Such meetings are useful for employers in messaging employees and were permitted under the Act as long as employees were not threatened, interrogated, punished or promised benefits.

Some states have already enacted laws restricting captive audience meetings (*e.g.*, NY, CT, OR, IL, NJ); the courts will likely determine ongoing legal challenges.

5. *"Quickie Election" Final Rule*

The Biden Board issued a final rule returning to its "**quickie election**" rules: Tight timelines on hearing dates and elections, promoting election speed over clarity of legal issues.

The Trump Board will likely issue a notice of proposed rulemaking to return to the 2019 rules, which emphasized pre-election clarity. The 2019 rules provided more time for the Board to receive papers, hold a formal hearing, review briefs, issue a thorough decision and conduct an on-site secret ballot election.

6. *Election Procedures Final Rule*

The Trump Board also will likely issue a final rule similar to its 2020 rule on union election procedures: The rule would modify the Board's blocking charge policy, directing that elections be held as scheduled, regardless of pending ULP charges, and ensuring employees have a chance to be heard and not have their vote delayed.

The rule will also likely reestablish the Trump-era voluntary recognition policy, which limited the period employees and competing unions could file an election petition challenging recognition to a 45-day period after recognition.

Department of Labor
Compliance Assistance, Regulatory Rollback + More

Focus on Compliance Assistance

DOL re-launched its voluntary Payroll Audit Independent Determination (PAID) program. It also announced it will no longer seek liquidated damages when trying to settle wage violations through administrative proceedings. It also resurrected its opinion letter program.

Regulatory Rollback

DOL has stayed litigation defending these rules issued by prior administrations and has declined to enforce them, where still on the books:

- 2024 minimum salary rule.
- 2024 independent contractor rule.
- Rule implementing executive order increasing minimum wage for federal contractors.
- 2023 Davis-Bacon Act rule changes.
- Phase-out of 14(c) subminimum wages for workers with disabilities (proposed rule withdrawn).

New Rulemaking

DOL has proposed a rule to remove the following sub-regulatory guidance from its Code of Federal Regulations:

- Part 776, general coverage under the FLSA (and construction industry in particular).
- Part 779, application of FLSA to retail and service establishments (including 7(i) exemption for certain commissioned employees).
- Part 782, Motor Carrier Act exemption.
- Part 789, "hot goods" provision for child labor enforcement.

It has also proposed a rule on the FLSA "companionship services" exemption.

On the Agenda

DOL Independent Contractor Proposed Rule

- The DOL rule would address independent contractor status **under the FLSA**.
- The proposed rule likely will return to the independent contractor factors adopted by rulemaking late in the first Trump Administration. This test focused on **two "core" factors** as having the greatest weight:
    1. The nature and degree of control over the worker's work; and
    2. The worker's opportunity for profit or loss based on initiative and/or investment.

DOL Joint Employer Proposed Rule

- The rule will guide DOL enforcement of joint employer liability **under the FLSA**.
- DOL likely will return to the 2020 joint employer rule adopted in the first Trump Administration:
    - Actual, not mere theoretical, exercise of control is required to establish a joint employment relationship.
    - The existence of a franchisor relationship is a "neutral" factor, among other "neutral" business models, practices and contract provisions.
    - Economic dependence is irrelevant.
- For now, case law controls, and the breadth of "joint employment" varies by circuit.

White-Collar Exemption Rule

- 2024 DOL rule raised the minimum salary floor for application of executive, administrative, and professional exemption, in two stages, from $35,568 to $58,656 per year.
- Texas federal court invalidated this 2024 rule; DOL appealed, but the case is held in abeyance.
- DOL indicated it will take further regulatory action on the regulation "defining executive, administrative, professional [EAP], outside sales, and computer professional exemptions."
- DOL may adopt a more modest increase to the minimum salary requirement for EAP exemption.
- Still to be determined is whether DOL will modify EAP duties tests and other "white-collar" exemptions.

Dual Jobs Rule

- The "dual jobs" rule, first issued in 1967, applies to employers that take the tip credit against the minimum wage.
- The 2021 final rule codified "80/20" guidance interpreting the dual jobs rule and imposed further restrictions on work that does not directly produce tips.
- The Fifth Circuit invalidated the 2021 final rule, but the 1967 rule and sub-regulatory 80/20 guidance are still intact.
- DOL has indicated it will issue a proposed rule rescinding the underlying dual jobs rule in its entirety.

Project Firewall

DOL launched Project Firewall in September 2025, an H-1B enforcement initiative designed to "safeguard the rights, wages, and job opportunities of highly skilled workers" through federal agency partnerships. Signaling the current administration's tougher, more restrictive stance on high-skilled immigration, Project Firewall increases employers' risks and penalties for their H-1B practices.

- DOL secretary may personally certify investigations based on reasonable cause without a prior complaint.
- DOL targets include alleged failure to recruit U.S. workers in good faith, wage underpayment, misrepresentation of job duties or worksites, and displacement of American workers.
- Consequences for noncompliance may include back wages, civil penalties, temporary debarment from H-1B programs and public access file enforcement.
- Employers should anticipate intensified scrutiny of H-1B practices, including wage compliance, recruitment documentation and program integrity.

Equal Employment Opportunity Commission
Unlawful DEI, Religious Bias + More

The EEOC regained a quorum on Oct. 7, 2025, with the Senate confirmation of Brittany Panuccio, giving Republicans a majority on the Commission.

Upon quorum restoration, EEOC Chair Andrea Lucas, first appointed in 2020 during President Trump's first administration, commented: "Now the agency is empowered to deliver fully on our promise to advance the **most significant civil rights agenda in a generation** under President Trump, on behalf of the American worker."

EEOC's Objectives + Priorities

"[R]ooting out unlawful DEI-motivated race and sex discrimination; protecting American workers from anti-American national origin discrimination; defending the biological and binary reality of sex and related rights, including women's rights to single sex spaces at work; protecting workers from religious bias and harassment, including antisemitism; and remedying other areas of recent under-enforcement." — 01.21.25 EEOC Press Release

1. *National Origin Discrimination Against Americans*

On Nov. 9, 2025, the EEOC released Discrimination Against American Workers Is Against the Law guidance which, as the title suggests, focused on anti-American discrimination and instructs employers that:

- Examples of unlawful practices include job ads that prefer workers of a specific nationality or visa status, disparate treatment in hiring/firing, and harassment based on national origin.
- Common business reasons like customer preferences, lower labor cost or perceived productivity differences do not justify discrimination against workers.

2. *Disparate Impact Claims*

President Trump signed an executive order in April instructing agencies to deprioritize disparate impact claims. As a result, the EEOC is not likely to pursue disparate impact claims against employers. An internal EEOC memo (Oct. 2025) reportedly directed the agency to discharge all disparate impact discrimination claims. That said, employers may still face disparate impact claims brought by plaintiffs in various forums.

3. *DOJ +DEI: Increased Enforcement*

- The attorney general directed the DOJ's Civil Rights Division to "investigate, eliminate, and penalize" illegal DEI programs in the private sector and in educational institutions.
- On Jan. 8, 2026, Vice President JD Vance announced the creation of a new position at the White House to conduct fraud investigations. The position is detailed in a Fact Sheet.
- The new role will be an assistant attorney general. It remains to be seen how the new role will interface with the Civil Rights Fraud Initiative, created in May 2025 to utilize the False Claims Act to "to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws."
- In 2025, the DOJ issued a number of civil investigative demands to employers seeking information on their DEI programs. We anticipate seeing additional, similar activity from the DOJ, the new position, and other agencies, such as the FCC, in carrying out their charges.

4. *EEO-1 Reporting*

- Uncertainty remains concerning how the agency will manage the future of the annual EEO-1 Report, a collection of employee race, ethnicity, and sex data reported by job category.
- For years, the EEOC and the Office of Federal Contract Compliance Programs used the report to identify potential workplace discrimination trends.

5. *Religious Accommodations*

The EEOC published "200 Days of EEOC Action to Protect Religious Freedom at Work" in August 2025, acknowledging the agency's work "to defend the religious liberty of American workers."

- Employers should expect to see a continued emphasis on religious accommodation from the EEOC and employees:
- On July 28, 2025, the Office of Personnel Management issued guidance related to federal workers' rights to practice their religious faith in the workplace.
- Employee accommodation requests are on the rise and some are testing the limits of accommodation obligations.
- Employers should be alert for accommodation requests that may appear to conflict with other legal obligations, including Title VII protections and state law obligations.

6. *Gender Identity: EEOC's Harassment Guidance*

- In Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, President Trump directed the EEOC to rescind guidance — including the harassment guidance issued in April 2024 — inconsistent with the terms of the order.
- In May 2025, a Texas federal district court vacated portions of that harassment guidance.
- On Jan. 22, 2026, the EEOC voted to rescind its harassment guidance.
- Employers should anticipate additional state legislation advancing and retracting gender identity-related protections and consider all applicable laws, regulations and guidance when considering gender identity-related policies, practices and issues.

7. *Pregnant Workers Fairness Act*

Employers can expect changes to the EEOC's Final Rule implementing the Pregnant Workers Fairness Act (PWFA).

- On Jan. 14, 2026, the **5th Cir. announced it will reconsider whether the PWFA was constitutionally enacted**.
- Although Chair Lucas supports the PWFA, she issued a public statement on Apr. 3, 2024, while still a Commission member, saying that she believes the final regulations go too far.
  - According to the statement, the rule's interpretation is overly broad and conflates accommodations related to pregnancy and childbirth with accommodations related to female biology and reproduction in general.
  - Lucas specifically disagreed with the inclusion of abortion within the scope of "**related medical conditions**."
  - According to Lucas, menstruation, infertility, menopause and the like are not caused or exacerbated by a particular pregnancy or childbirth — but rather the functioning, or ill-functioning, of the female worker's underlying reproductive system — and so do not qualify for accommodation under the PWFA.
- A Louisiana federal district court vacated a portion of the EEOC's final rule interpreting the PWFA as requiring employers to accommodate what the court refers to as "**elective abortions**" and ordering the EEOC to revise the PWFA Final rule.
- Watch for states and local governments to respond with their own new laws.

Other Accommodation Issues to Watch

Issues to watch in 2026, beyond religious accommodations, include the following:

Remote work	PWFA
Reassignment	Hearing and visual impairments
Mental health	Medical marijuana
AI systems	

Department of Homeland Security
Broader Enforcement, Disrupted Workplaces

USCIS' Expanded Role in Immigration Worksite Enforcement

Fraud Detection and National Security Directorate (FDNS) site visits are increasing in frequency and impact. Additionally, unannounced visits tied to employment-based visa petitions are serving as gateways to enforcement. Here are three key takeaways for employers in 2026:

- Site visit findings are increasingly referred to ICE and DOJ.
- There is greater scrutiny of job duties, worksite locations and remote work arrangements.
- Inconsistencies between petitions and actual practices are more likely to trigger subsequent action.

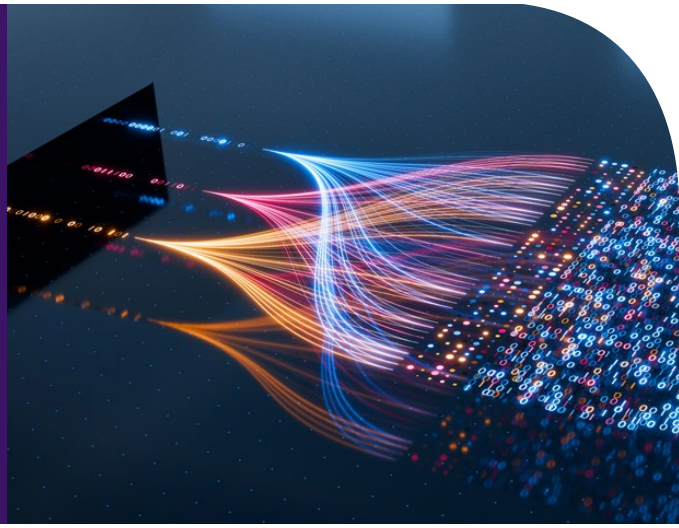
ICE: Broader Enforcement, Disrupted Workplaces

Worksite investigations will continue to be a core interior enforcement tool of the current administration in 2026, with raids to deter noncompliance and uncover broader violations. Raids are often preceded by indicators such as prior I-9 audits, FDNS referrals, tips or data-driven discrepancies across filings. Employers should:

- Expect little or no advance notice and limited opportunity for informal resolution once agents arrive.
- Maintain written response protocols, designate trained points of contact and ensure staff know how to respond to warrants and requests. Preparation is critical.
- Focus on advanced planning and training to help reduce disruption, avoid obstruction allegations and protect employer rights during enforcement actions.

ENHANCING DATA-DRIVEN DECISION-MAKING

Workforce data not only shapes how employment decisions are made — but how they're scrutinized. Whether addressing pay equity, evaluating AI tools or managing reorganizations 2026 is a good year for employers to anticipate risk early, align with compliance obligations and support decisions that hold up under scrutiny.

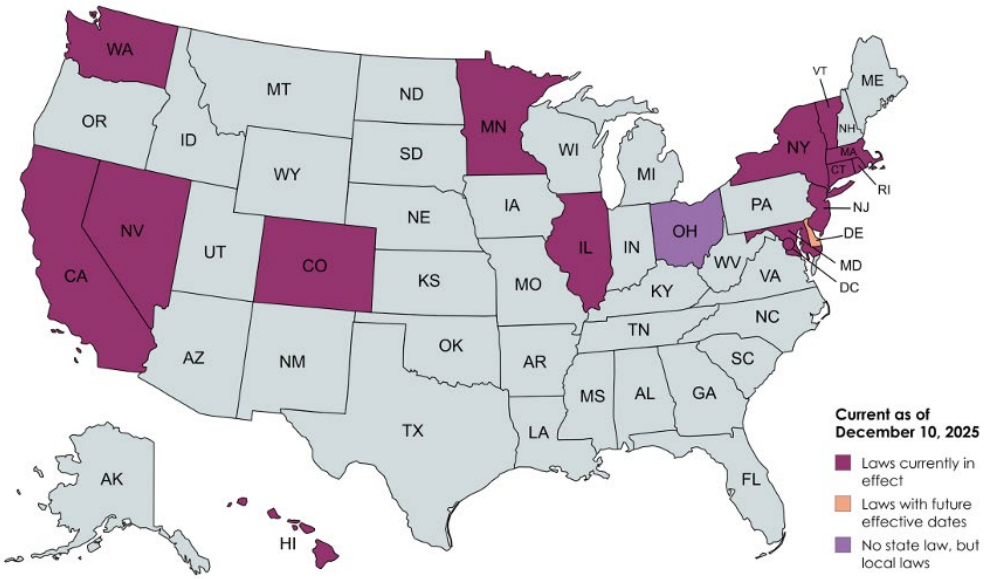


Pay Equity + Transparency
Expanded Efforts at State + Local Levels

Legal requirements surrounding pay equity are expected to continue expanding at the state and local levels. An area that once centered on federal law now includes a patchwork of state laws, international mandates and growing pay transparency and pay data reporting obligations. At the same time, data-driven analysis can be a helpful tool in evaluating compensation systems, adding to employers' compliance complexity.

Here's what employers need to know for 2026:

State-Level Pay Transparency



Differences in Pay Range Disclosure Requirements

- Washington: "Full" pay range.
- California, Colorado, other states: Reasonable starting pay range in job postings.
- Connecticut, Nevada, Rhode Island: Other conditional triggers (upon request, post-interview).
- New Jersey (proposed rules): Would cap range at no more than 60 percent of the minimum.

Local Considerations

- Local laws typically operate in addition to state requirements, not in place of them.

Fragmented State Job Posting Disclosure Requirements Create Implementation Challenges

- Inconsistent definition of "pay range"; some states require full, starting, "reasonable" ranges.
- Some states require disclosure of promotion and transfer opportunities and pay ranges.
- Requirements vary on whether benefits must be disclosed and to what level of specificity.
- Pay data reporting requirements are increasing at state and local levels.

Pay Transparency Requirements for International Employers Are Developing in the EU

- Employers are encouraged to see the EU and Global Pay Transparency Compliance section of this report for further information.

Pay Transparency Strategy

Looking forward, multistate employers should consider a harmonized disclosure approach and consistent practices to help ensure compliance.

- Build a unified disclosure approach to reconcile differing state formulas to reduce the likelihood of noncompliance.

- Use automation to align postings, requests and internal-mobility disclosures as well as with reporting obligations.
- Prepare for expanding reporting obligations across states and localities.
- Rely on compliance framework for monitoring current and developing obligations.

Pay Equity Enforcement Trends and Data-Driven Defenses

Agencies and Plaintiffs Allege Pay Differs Because of Protected Status or Activity

- Generally, clearly defined, consistent pay structure, ranges and/or levels can help provide a legitimate, nondiscriminatory explanation for pay differences.
- Can provide a framework for defending claims of discriminatory pay practices.

Allegations of Unfair Pay Also Cover Incentive, Bonus and Equity Compensation.

- Developing, communicating and following clear compensation plan(s) based on objective criteria can mitigate risk.
- Conducting routine proactive pay analyses can help ensure pay is implemented fairly.

Pressure on AI Hiring Tools
Regulatory Focus on Validity + Transparency

Selecting, auditing and validating AI and other employment decision tools will be more challenging for employers in 2026. Here's why:

- Bias-audit mandates are expanding across states and cities:
- California: Regulations under the Fair Employment and Housing Act.
- Colorado: Effective 2026.
- Illinois: Effective 2026.
- New York City: Local Ordinance.
- EU: Classifies employment-related AI as a high risk.
- Employers must ensure transparency, notice and measurable fairness.
- Employers have responsibilities to protect applicant and employee data.

Tip 1: Ensure Tools Are Valid, Job-Related + Defensible

- Conduct formal validation studies tied to essential job functions.
- Document vendor due diligence, data sources and testing methodology.
- Comply with recordkeeping rules.

Tip 2: Engage in Proactive Risk Mitigation

- Inventory all AI tools and determine which laws are applicable.
- Implement periodic adverse-impact testing and bias auditing.
- Establish cross-functional governance to oversee AI-driven decisions.
- Implement AI use policies.
- Monitor impact of EO 14365 ("Ensuring a National Policy Framework for Artificial Intelligence"), focused on state and local AI law preemption.

Restructuring/Reduction in Force Analytics
Thoughtful Strategies for Broader Anticipated Restructuring Activities

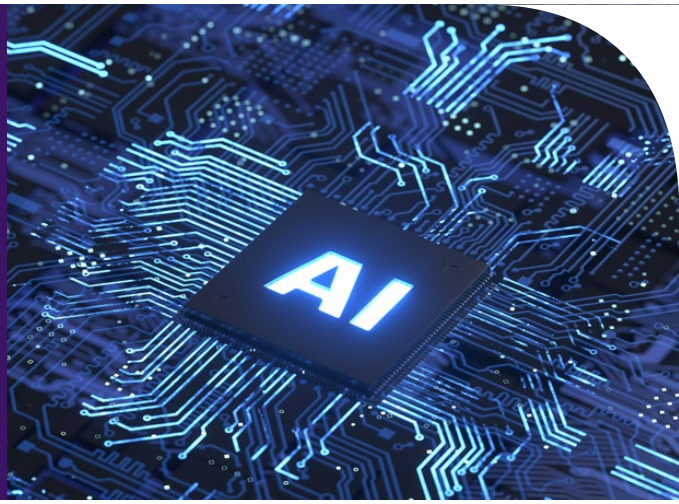
Organizations can anticipate increased restructuring activities in 2026 as they pursue automation and cost containment. A key to any strategic workforce change is to have legally defensible, data-informed support.

Employers seeking a unified framework for supporting multistate compliance in this area should make sure their restructuring/RIF plans include:

- Adverse impact analyses to evaluate potential risks early.
- Federal WARN Act and state-level notice obligations.
- Selection criteria review for consistency, job-relatedness and defensibility.
- OWBPA release compliance.
- A review of separation agreements to ensure compliance with state law nuances.

WORKPLACE CONSIDERATIONS IN A GLOBALLY MOBILE, AI WORLD

From technological innovation and digital nomadism to physical + emotional safety considerations and more, what work is, how it gets done, who does it and what workplaces mean will continue to engage employers in 2026.



Tech's Expanding Impact on Workforce Planning
Shifting AI Regimes Impact Global Talent Strategies

Employers can expect a growing patchwork of global compliance risks due to rapidly shifting AI-privacy regimes responding to myriad concerns from multiple angles. AI decision-making and "bossware" continue to trigger governance, monitoring and privacy challenges. And emerging algorithmic-management laws promote transparency, fairness and worker rights.

AI's Role in Global Talent Strategy

- AI enhances recruiting, workforce planning and performance management — but with compliance risk.
- Reskilling and talent redeployment become core business imperatives.
- Multinational use of AI tools raises cross-border data, transparency and bias-audit obligations.

Immigration + Global Mobility Costs
The Considerations of Broader Fees Across Categories

The Sept. 2025 "Restriction on Entry of Certain Nonimmigrant Workers" presidential proclamation introducing a new $100,000 fee requirement for certain H-1B nonimmigrant visa petitions is facing two lawsuits that are in the initial stages and raise the possibility that the proclamation could be halted or ultimately found unlawful before the annual registration and lottery.

Still, most employers are anticipating the heightened H-1B fee that, along with broader fee increases across visa categories, would significantly raise per-employee immigration costs. Here are key consequences of these collective costs:

- Ongoing volatility in visa reform, adjudication standards and processing timelines make long-term immigration planning more difficult.
- Expansion of cross-border remote and hybrid work raises immigration, tax, payroll and permanent establishment risks across jurisdictions.

Employers should discuss with counsel how to manage global mobility costs, prioritize sponsorship decisions and structure compliant cross-border work arrangements.

EU Pay Transparency Directive
More Reporting + Rigor for Multinationals

EU member states have until **June 7, 2026**, to implement the EU Pay Transparency Directive 2023/970 into their national law.

The Directive requires **salary transparency**, broadens **employee access** to pay data and mandates **pay data reporting** for employers with at least 100 employees. It applies to all employers based in the EU or with employees in EU member states, strengthens enforcement and imposes **potential penalties** at the member state level.

Here's what employers need to know and can start to do as 2026 begins:

EU Employer Obligations

- Disclose starting salary or pay range in job postings or before interviews; no salary-history questions.
- Provide employees with information about their pay and average pay levels for comparable roles, upon request.
- Employers with 100+ EU employees must publish pay gap data.
- Conduct joint pay assessments with worker representatives if gaps exceed five percent without objective justification.
- Reports for larger employers (250+ employees) are due in 2027, with smaller employers following on a staggered schedule.

Multinational Employers + the Road Ahead

- Conduct **pay structure audits** now to identify potential risks before reporting begins.
- Create Directive-aligned **hiring and pay-progression policies** that integrate EU, U.S., and other global transparency requirements.
- Ensure HRIS and analytics systems can capture, standardize and **report** required pay data across countries.
- Employers should discuss with counsel how to **structure** pay transparency practices, equity analyses, action plans, training and documentation in a way that supports compliance while mitigating risk.

POWERING THROUGH THE PATCHWORK

A wave of recently enacted state and local labor and employment legislation is reshaping employer compliance obligations as these measures take effect. Spanning traditional issues such as accommodations and wage and hour requirements as well as emerging areas like employee monitoring and data use, these laws reflect legislative responses across the political spectrum and evolving federal enforcement priorities, creating an increasingly complex compliance landscape for employers operating across jurisdictions.

State Legislation in Federally Preempted Areas
Expanding State Statutes Run Up Against the NLRB

California and New York have enacted statutes expanding state labor board authority into areas traditionally governed exclusively by the NLRB. Massachusetts is considering similar legislation. However, such legislation creates parallel regulatory frameworks covering private-sector labor relations, an area historically preempted under the NLRA and the U.S. Constitution's Supremacy Clause.

The NLRB warns that such state laws risk conflicting rulings, employer uncertainty and a fragmented national labor policy. Here are highlights of key state efforts that employers should know as 2026 begins:

California: AB 288

- Expands PERB's authority to intervene in private-sector labor disputes where federal protections are deemed "**unavailable or ineffective**."
- The National Labor Relations Board sued California, arguing AB 288:
  - Violates the NLRA by infringing on the Board's exclusive jurisdiction.
  - Could lead to conflicting outcomes between state and federal labor authorities.
  - Threatens a fragmented national labor relations system.
- This legislation is partially enjoined, for now, leaving AB 288's implementation uncertain.
- California's move mirrors New York's effort, signaling a state-level push into federally preempted labor space.

New York: S.8034A

- Amended its State Labor Relations Act to allow its PERB to certify bargaining representatives for private employers and enforce collective bargaining agreements in matters covered by the NLRA.
- The Board filed *NLRB v. State of New York et al.*, 1:25-cv-1283 (N.D. N.Y. Sept. 12, 2025), alleging:
- The statute intrudes on the Board's exclusive jurisdiction.
- Creates a conflicting, parallel regulatory scheme and is therefore preempted and unconstitutional.
- The bill is enjoined, for now, after businesses filed similar lawsuits challenging the statute.

State Legislative Updates
Employment Compliance Considerations Continue to Grow for Multistate Employers

The patchwork of state and local laws addressing a range of employment practices across the employee life cycle is becoming even more intricate and will continue to create compliance challenges for multijurisdictional employers. The interactive map below provides a selection of these workplace rules, responsibilities and requirements from a long list of enacted legislation with effective dates ranging from late 2025 into 2026.

Arkansas HB 1974

Effective 01.01.26 | Enacted 04.21.25

- Creates a requirement for public employers to enroll with and use E-Verify to verify all new employees.

California SB 53

Effective 01.01.26 | Enacted 09.29.25

- Enacts the Transparency in Frontier Artificial Intelligence Act, which exempts from the California Public Records Act a report of a critical safety incident submitted to the Office of Emergency Services, a report of assessments of catastrophic risk from internet use, and a covered employee report made pursuant to the whistleblower protections.

California AB 288

Effective 01.01.26 | Enacted 09.30.25

- Expands the PERB's jurisdiction by authorizing certain workers to petition the PERB to protect and enforce their rights, as provided, if certain conditions are satisfied, among other provisions.
- Litigation has been brought to enjoin the enforcement of this law and, to date, a partial preliminary injunction is in place.

California SB 303

Effective 01.01.26 | Enacted 10.01.25

- Provides that unlawful discrimination does not include an employee's assessment, testing, admission or acknowledgment of their own personal bias made in good faith and solicited or required as part of a bias-mitigation training.

California SB 513

Effective 01.01.26 | Enacted 10.11.25

- Expands the scope of personnel records that current and former employees or their representatives have a right to inspect and/or receive copies of their records to include education or training records, and requires those records to contain certain information about the training.

California SB 590

Effective 01.01.26 | Operative 07.01.28 | Enacted 10.13.25

- Expands eligibility for benefits under the Paid Family Leave program to include individuals who take time off work to care for a seriously ill designated person.

California AB 692

Effective 01.01.26 | Enacted 10.13.25

- Makes it unlawful to have, or to require a worker to execute as a condition of employment or a work relationship, any employment contract with specified contract terms requiring a worker to assume a debt if the employment is terminated, except as provided;
- Provides that the unlawful contract is a contract in restraint of trade and is void; and
- Provides for a private right of action.

California SB 464

Effective 01.01.26 | Enacted 10.13.25

- Requires employers to collect and store demographic information gathered separately from employees' personnel records.
- Beginning 01.01.27, increases the number of job categories private employers must report on for existing pay data reporting requirements.

Colorado SB25-144

Effective 08.06.25 | Enacted 05.30.25

- Expands FAMLI on 01.01.26 to allow eligible employees to take up to an additional 12 weeks of FAMLI leave to care for a NICU patient for a total of 24 weeks.

Delaware Paid Family and Medical Leave

Contributions began 01.01.25 | Claims applications may be submitted beginning 01.01.26

- Covers absences due to the employee's or a family member's serious health condition, a family member's overseas military deployment, and care for a new child.

Illinois HB 2488

Effective 06.30.26 | Enacted 06.30.25

- Amends the Equal Pay Act and the Prevailing Wage Act to remove references to the federal Annual Employer Information Report; changes certain references to the Office of Apprenticeship within the U.S. Department of Labor's Employment and Training Administration.
- Maintains state obligations despite removal of federal regulations.

Illinois HB 3773

Effective 01.01.26 | Enacted 08.09.24

- Provides that it is a civil rights violation for an employer:
  - To use artificial intelligence that has the effect of subjecting employees to discrimination on the basis of protected classes identified under the Article or to use zip codes as a proxy for protected classes identified under the Article with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment.
  - To fail to provide notice to an employee that the employer is using artificial intelligence.

Illinois SB 212

Effective 01.01.26 | Enacted 08.01.25

- Amends the Nursing Mothers in the Workplace Act to require employers to compensate a nursing employee during the break time provided under the Act at the employee's regular rate of compensation.

- Prohibits employers from requiring an employee to use paid leave during the break time or reducing an employee's compensation during the break time in any other manner, absent an undue hardship.

Illinois HB 2978

Effective 06.01.26 | Enacted 08.15.25

- Creates the Family Neonatal Intensive Care Leave Act.
  - *Employers with 16-50 employees:* Provides that an employee will be entitled to use up to 10 days of unpaid neonatal intensive care leave while any child of the employee is a patient in a neonatal intensive care unit.
  - *Employer with 51+ employees:* Provides that an employee will be entitled to use up to 20 days of unpaid neonatal intensive care leave while a child of the employee is a patient in a neonatal intensive care unit.
- Provides that, upon the conclusion of leave taken under the Act, an employee will be reinstated to their former position or a substantially equivalent one with no loss of benefits held or accrued prior to taking leave.

Iowa SF 418

Effective 07.01.26 | Enacted 02.28.25

- Removes gender identity from the list of protected classes.

Maine: Paid Family and Medical Leave

Contributions began 01.01.25 | Applications for benefits begin 05.01.26.

- Covers absences for an employee's: (1) own serious medical needs; (2) to bond with a child after birth, fostering or adoption; (3) to care for a family member with a serious health condition; (4) for emergencies related to a family member's military deployment; or (5) to find safety after abuse or violence.

Massachusetts: Boston Ordinance to Protect Workers from Heat-Related Illness and Injuries in Boston, File # 2025-0135

Effective 02.27.26 | Enacted 08.27.25

- Requires covered contractors and subcontractors whose employees perform work in a setting at risk of causing heat illness, as determined by the Office of Labor Compliance and Worker Protections, to provide a Heat Illness Prevention Plan Affidavit on the Office of Labor Compliance and Worker Protections form before they can begin work.

Minnesota Paid Family and Medical Leave

Contributions and benefits begin 01.01.26

- Covers absences for an employee's: (1) own serious health condition; (2) bonding with a child after birth, adoption or foster placement; (3) caring for a family member with a serious health condition; (4) family member's call to active duty; or (5) response to certain personal safety issues, including sexual assault and stalking.

Minnesota SF 17

Portions effective 07.01.25 and 01.01.26 | Enacted 06.14.25

- Omnibus bill that provides for: (1) amending rest break requirements from "adequate time" to a rest break of at least 15 minutes or enough time to utilize the nearest convenient restroom, whichever is longer, every four consecutive hours of work; (2) increasing unpaid meal break entitlement to each employee who is working at least six consecutive hours a meal break of at least 30 minutes; and (3) changing Earned Sick and Safe Time as follows: Employees can voluntarily trade shifts or seek replacements when on sick leave.
- Employers may advance sick time based on the number of hours the employer anticipates the employee will work for the rest of the accrual year, and the employer may require reasonable documentation after the employee missed two consecutive scheduled workdays.

New Hampshire HB 2

Effective 01.01.26 | Enacted 06.27.25

- Requires employers with at least 20 employees to allow workers up to 25 hours of unpaid leave to attend medical appointments related to childbirth, postpartum care or their child's pediatric visits during the first year after birth or adoption.
  - If both parents work for the same employer, they must share the 25-hour total.
- Employers are not obligated to pay for this time off, but employees can use accrued paid leave.
- Upon return, employees must be reinstated to their original job.
  - Reasonable notice and scheduling to avoid disruption are required, and employers may request documentation to verify the purpose of the leave.

New Jersey AB 4429/SB 3302

Effective 12.02.25 | Enacted 09.23.25

- Expands prohibitions on employers concerning requirements for employees to attend or listen to communications related to political matters.

New York AB 584/SB 4070

Effective 12.19.25 | Enacted 12.19.25

- Prohibits the use of employment promissory notes.
- Provides that no employer may require, as a condition of employment, any worker or prospective worker to execute an employment promissory note.
- Provides that the execution of an employment promissory note as a condition of employment is unenforceable, and any such note will be null and void.
- Provides that an employee who is sued by an employer seeking to enforce the provisions of such a note shall be able to recover attorney's fees upon a successful defense.

New York AB 8699/SB 8338

Effective 12.19.25 | Enacted 12.19.25

- Clarifies the standard for when a workplace practice has a discriminatory effect.
- Provides that an unlawful discriminatory practice may be established by such practice's discriminatory effect, even if it was not motivated by a discriminatory intent.

New York: New York City File #0780-2024

Effective 02.22.26 | Enacted 10.25.25

- Allows safe/sick time under the City's Earned Safe and Sick Time Act (ESSTA) to be used to provide care for a child or care recipient, to attend a legal proceeding for subsistence benefits or housing, to respond to a public disaster, or to respond to workplace violence.
- Provides an additional 32 hours of unpaid safe/sick time under ESSTA.

Oregon SB 906

Effective 01.01.26 | Enacted 05.28.25

- Provides that an employer must provide all employees at the time of hire with a written explanation of earnings and deductions shown on itemized statements.

  - The explanation must include general information on the employer's established regular pay period, benefit deductions and payroll codes, among other things.
- Provides that the Bureau of Labor and Industries will develop a model written guidance document and translations.
- Provides civil penalties for violations.
- Includes a requirement to update annually.

Pennsylvania: Philadelphia Fair Criminal Record Screening Standards Ordinance Philadelphia File #250373

Effective 01.01.26 | Enacted 10.08.25

- Updates the City's Ban the Box and Criminal Usage laws, among others.

Pennsylvania: Philadelphia File # 250849

Effective 01.01.27 | Enacted 11.20.25

- Explicitly protects employees from discrimination on the basis of menstruation, perimenopause and menopause, all under certain terms and conditions.

Pennsylvania: Pittsburgh Ordinance #11-2025

Effective 01.01.26| Enacted 06.10.25

- *Employers with at least 15 employees* must provide at least 72 hours of paid sick leave per year.
- *Employers with fewer than 15 employees* must provide 48 hours per year.
- Accelerates the rate at which employees accrue paid sick leave: Employees working within Pittsburgh city limits — regardless of employer size — must accrue a minimum of one hour of paid sick leave for every 30 hours worked (previously, every 35 hours worked).

Rhode Island HB 5184/SB 169

Effective 01.01.26 | Enacted 06.26.25

- Prohibits credit bureau reporting of a consumer's medical debt.
- States that "credit reports" (for employment and other purposes) do not include any report containing information solely as to transactions or experiences between the consumer and a healthcare provider for medical debt.
- Prohibits garnishment of wages based on medical debt.

Rhode Island HB 5679/SB 70

Effective 01.01.26 | Enacted 01.01.25

- Requires the employer to furnish to their employees a written notice containing employment information related to wages, rates of pay, allowances, benefits and deductions from pay, as well as the employer's identifying information at the start of employment.

Rhode Island HB 6161/SB 361

Effective 06.24.25 | Enacted 06.24.25

- Updates and expands the current law to include menopause and menopause-related conditions in the law on fair employment practices pertaining to pregnancy and pregnancy-related conditions.

Washington HB 1213

Effective 01.01.26 | Enacted 05.17.25

- Extends job restoration rights under Paid Family and Medical Leave program to employees who work for an employer with:
  - 25 or more employees from 01.01.26–12.31.26.
  - 15 or more employees from 01.01.27–12.31.27.
  - 8 or more employees from 01.01.28–12.31.28.
- Applies to any employee who has worked for a covered employer for at least 180 calendar days before taking leave.

Workplace Safety, Environmental + Industry-Specific Risks
Increased OSHA and State Mandates + the Impact of Other Business Challenges

From workplace violence and evolving heat illness concerns to the impact of transformational technologies and tariffs, employers in 2026 will be confronted with a range of regulatory concerns and compliance challenges.

Workplace Violence

States are increasingly mandating industry-specific workplace violence prevention requirements.

Retail

- New York's *Retail Worker Safety Act* requires retail employers with 10 or more employees to adopt a written workplace violence prevention policy and provide interactive training.
- Larger employers must provide silent response-button access beginning in 2027.

Healthcare

- New York, Oregon, and Virginia recently joined a growing list of states to address workplace violence prevention in the healthcare industry.
- Common requirements include written prevention plans or policies, risk assessments, training, reporting mechanisms, and anti-retaliation provisions.

Heat Injury and Illness Prevention

This area continues to develop, with new regulations continuing to take shape.

- OSHA's proposed federal heat standard is pending, following rulemaking and comment.
- OSHA's National Emphasis Program on outdoor and indoor workplace heat-related hazards was extended into April 2026.
- Employers should be aware of state requirements and continue to monitor developments.
- Common obligations include both indoor and outdoor protections, monitoring environmental conditions, risk assessments, rest breaks, shade and cool drinking water, training, and acclimatization plans.

Tariffs + AI: Industry Affects

Employers in many industries are seeing substantial shifts to their operations from outside and within their organizations. Tariff-driven cost volatility and supply chain disruption are leading employers to reevaluate staffing, scheduling and operational models — adjustments that carry significant labor and employment implications, including WARN Act exposure, wage and hour risks, scheduling compliance challenges and heightened union activity. At the same time, AI implementation is reshaping job duties; altering hiring, scheduling and performance management practices; and introducing significant compliance risks related to discrimination, privacy, surveillance, and job restructuring.

Significant Tariff Impacts: Industries

- Construction + Real Estate
  - Rising raw materials costs may have direct and indirect effects on budgets and, therefore, on construction employment.
  - Potential reduction in commercial and residential new construction would likely have downstream impacts on real estate industry.
- Healthcare
  - Hospital budgets may have reduced margins due to equipment and supply costs, increasing the need to assess staffing levels and manage overtime. Such assessments can exacerbate bargaining pressures in a unionized environment.
- Manufacturing
  - Increased cost of raw materials may lead to shifts in production and potential workforce reductions, triggering RIF and WARN Act concerns.
  - Supply chain disruptions could cause scheduling changes that require wage and hour compliance attention.
- Retail
  - Volatile cost of goods could create need to adjust staffing budgets, contributing to scheduling instability and triggering predictive scheduling compliance concerns in some states.
- Transportation + Logistics
  - Supply chain disruptions may require rapid schedule and route adjustments, thereby increasing overtime risks and forcing employers to navigate rest, meal break and hours-of-service requirements.

Significant AI Impacts: Industries

- Education + Collegiate Athletics
  - AI use in monitoring, grading and record-keeping must consider FERPA compliance for student data.
  - Rapid changes to education environment due to AI integration in student and faculty work may raise privacy, discrimination, and academic freedom concerns.
  - Athletics programs adopting AI for performance analytics should evaluate surveillance and consent requirements.
- Healthcare
  - AI in diagnostics raises questions about scope-of-practice, credentialing, and job displacement for technicians and support staff.
  - AI-based monitoring tools (patient flow, employee productivity) may raise privacy and NLRA surveillance risks.
- Manufacturing
  - Robotics and increased automation may reshape job duties or reduce workforce needs, issues that are particularly impactful in unionized environments.
  - AI-driven scheduling and monitoring can trigger conflict around surveillance concerns.

- Retail + Restaurants
  - Smart customer service tools can displace cashiers and servers or lead to schedule changes, causing predictive scheduling compliance concerns in some states.
  - Efficiency gains may lead to possible reductions in force, highlighting WARN Act analysis.
- Technology
  - Heavy AI adoption places this sector under heightened scrutiny for bias, discrimination, privacy, and algorithmic transparency.
  - Employers face expanding obligations as jurisdictions regulate AI in hiring, performance management, and workplace monitoring.
  - Rapid deployment also increases the likelihood of classification disputes and employee upskilling needs.

SCANNING THE FEDERAL LITIGATION + LEGISLATIVE LANDSCAPE

From evolving class action rules to regulatory updates and major U.S. Supreme Court cases, what happens at the federal level fuels a world of workplace decision-making. Here are the essential legal trends and developments that will inform planning and compliance across industries in 2026.

Class + Collective Action Developments
Tightened Standards + Jurisdictional Limitations

Recent legal developments significantly impacting nationwide collective actions under the FLSA — including several federal circuits now restricting where employees can file and join such actions and tightening standards for conditional certification — are leading to shifting litigation strategies. Other ongoing procedural questions (such as notice requirements for employees with arbitration agreements and the scope of Federal Arbitration Act exemptions) will also continue to shape the FLSA litigation landscape in 2026.

Where Can Employees Bring Nationwide Collective Actions?

Issue

Does *Bristol Myers Squibb v. Superior Ct* apply to collective actions under FLSA Sec. 216(b)? If so, would-be plaintiffs from out-of-state cannot join a collective action unless the court has general jurisdiction over the employer.

- The Sixth, Seventh, Eighth and Ninth Circuits say *Bristol-Myers* applies; First Circuit is the lone outlier.
- Pending: The Second Circuit; certiorari petition at SCOTUS.

Impact

- Forum shopping; size of collectives may be reined in.
- Plaintiffs are changing where they file suit to the employer's state of corporate HQ or incorporation.

Does Two-Stage "Conditional" Certification Still Apply?

Issue

- The Fifth, Sixth and Seventh Circuits have adopted more rigorous standards for deciding when to issue notice of a collective action to potential opt-in plaintiffs, bucking the long-held "*Lusardi*" approach, a modest burden for granting conditional certification.
- The Ninth Circuit recently rejected pleas to abandon its two-stage standard (as have district courts in other circuits).

Impact

- Under two-stage certification, courts are more likely to send notice to potential opt-in plaintiffs.
- Rejecting this approach imposes a higher burden on plaintiffs before notice goes out.

Other Procedural Issues in Flux

- Should employees with arbitration agreements get notice of a pending collective action?
- What is the breadth of the FAA's transportation workers exemption?
- Must courts approve FLSA settlements?

Changing Employment Litigation Landscape

Federal employment filings continue to climb, from 20,895 in 2022 to 25,367 in 2025. And trials of employment claims in federal courts increased by 15 percent, from 169 in 2024 to 194 in 2025. Plaintiffs' winning percentage at trial also increased, from 47 percent in 2024 to 60 percent in 2025. The significance behind these numbers suggests two trends:

- An increase in nuclear verdicts (>$10 million) and "policy-limits" settlement demands incentivizes plaintiffs' counsel to proceed to trial unless they obtain an inflated settlement.
- Resulting pushback from employers who more frequently turn to "bet-the-company" approaches to high-stakes litigation.

Legislation + Commission Activity

Three Labor Proposals in the House and Structural Shifts at OFCCP

The coming year is expected to bring significant changes to federal contractor compliance, including potential defunding and structural shifts within the Office of Federal Contract Compliance Programs and proposed transfers of veteran and disability affirmative action enforcement. Despite these transitions, statutory obligations remain in force, and increased state-level enforcement — coupled with new federal labor legislation — will require organizations to maintain robust compliance documentation and adapt to evolving workplace standards.

OFCCP Outlook for 2026

- **Potential Funding and Structural Changes:** The current administration's efforts to reduce OFCCP funding create uncertainty around future enforcement capacity.
- **Contractors Still Retain Statutory Obligations:** VEVRAA and Section 503 requirements remain in force for federal contractors. Enforcement of state contractor obligations is on the rise, and new state laws may emerge in 2026 to address existing gaps.

- **Uncertain Enforcement Landscape:** Transition planning, interagency coordination and unclear timelines make 2026 a year of regulatory instability.
- **High Need for Contractor Preparedness:** With rules in flux, contractors should continue maintaining robust affirmative action and compliance documentation.

New Federal Labor Legislation

1. Faster Labor Contracts Act (S 844 / HR 5408) | Introduced; in committee
   Purpose: Accelerate first-contract bargaining after a union wins an NLRB election.

   Key Requirements/Changes

   - Begin bargaining within 10 days of the union's request.
   - No agreement in 90 days → mandatory mediation (FMCS).
   - No agreement after 30 days of mediation → binding arbitration to set the first contract.
   - Government Accountability Office study one year after enactment on time-to-contract outcomes.

   Employer Takeaways

   - Signals growing push for time-bound, first-contract bargaining.
   - Sharply reduces employers' ability to delay negotiations post-certification.
   - Leads to increased scrutiny of bargaining conduct and documentation.

2. LET'S Protect Workers Act (HR 6597) | Introduced; in committee
   Purpose: Strengthen deterrence of wage theft, child labor violations, unsafe working conditions, farmworker exploitation and retaliation by substantially increasing federal civil penalties.

   Key Requirements/Changes

   - **Child labor violations:** Significant increases to minimum and maximum civil penalties.
   - **Wage & hour (FLSA):** Higher penalties for repeated or willful violations.
   - **OSHA:** Dramatic increases to maximum safety-violation penalties.
   - **Farmworker protections (AWPA):** Penalty levels raised across categories.
   - **Retaliation:** Expanded penalties for retaliatory conduct under multiple labor statutes.

   Employer Takeaways

   - Reflects a push toward stronger enforcement tools without changing underlying standards.
   - Higher penalty ceilings increase financial exposure for compliance failures.
   - If enacted, employers should reassess risk, documentation and training to mitigate penalty exposure.

3. Heat Workforce Standards Act of 2025 (HR 6213) | Introduced; in committee
   Purpose: Prevent the Department of Labor from finalizing, implementing or enforcing OSHA's proposed heat injury and illness prevention standard.

   Key Requirements/Changes

   - Prohibit enforcement of any OSHA standard specifically regulating occupational heat exposure.
   - Effectively halt OSHA's current rulemaking on heat-related workplace protections.

   Employer Takeaways

   - Would significantly limit OSHA's authority to regulate heat exposure.
   - If enacted, employers would not be subject to a federal heat illness prevention standard.
   - State plans or general-duty-clause enforcement could still influence heat-safety expectations.

SCOTUS Watch: Five Cases of Interest

Agency Authority, Arbitration Award Enforcement + More Are All on the Docket

The U.S. Supreme Court's 2026 docket features five cases with the potential to reshape key aspects of workplace law, agency authority and employment practices across industries. From the scope of presidential power over regulatory agencies to the rules governing arbitration and pension liability, these decisions could drive significant changes in compliance obligations, risk management and day-to-day operations for employers nationwide.

Trump v. Slaughter

Issue

Whether a U.S. president can remove members of independent federal agencies (FTC, EEOC, NLRB) without cause and whether *Humphrey's Executor* (1935) should be overruled.

> *Government position:* The president should have complete control over the executive branch (the "unitary executive theory"), including the ability to terminate any member of executive agencies (here, FTC commissioners). Any laws that restrict this ability violate the separation of powers.
>
> *Respondent:* Historically, Congress has created dozens of "multimember agencies whose members are protected from at-will removal." Presidents have signed legislation creating, funding and empowering these agencies, and the Supreme Court has upheld the legitimacy of these statutes repeatedly.

The Supreme Court previously addressed this issue in its 1935 decision in *Humphrey's Executor v. United States*. The Court in Humphrey's Executor found the FTC "is an administrative body created by Congress to carry into effect legislative policies embodied in the statute[.] Such a body cannot in any proper sense be characterized as an arm or an eye of the executive."

Impact on Employers

If removal protections are struck down, leadership at agencies like the EEOC and NLRB could change rapidly with each new administration, creating major regulatory uncertainty for labor law enforcement and workplace compliance. Potential expansion of *Humphrey's Executor* doctrine could lead to greater political swings in labor and employment enforcement priorities, affecting union elections, unfair labor practice cases and EEOC systemic investigations.

M & K Employee Solutions v. Trustees of the IAM National Pension Fund

Issue

Whether the statutory requirement that multiemployer pension plans calculate withdrawal liability "as of" the last day of the preceding plan year (called the Measurement Date) requires the use of actuarial assumptions (including the crucial interest rate assumption) that were in effect on such date.

Impact on Employers

The decision will address the limited discretion of multiemployer pension plan actuaries to change their interest rate assumptions after the Measurement Date.

- *A decision in favor of the Fund* will potentially increase employer exposure for withdrawal liability and disrupt long-standing methods of monitoring this contingent liability.
- *A decision in favor of the employer* will confirm well-established industry practices and avoid unnecessary instability and confusion regarding potential withdrawal liability.

Jules v. Andre Balazs Properties

Issue

Whether federal courts that exercise initial authority to adjudicate a case they stayed pending arbitration retain the power to confirm or vacate the resulting arbitration award.

Petition seeks to examine a Second Circuit's order to enforce an arbitrator's dismissal of employment discrimination claims against hotelier André Balazs, in addition to sanctions imposed on the plaintiff and his attorney for "beyond unusual" litigation misconduct.

Impact on Employers
Employers who utilize arbitration agreements will obtain clarity as to the appropriate forum for the enforcement of arbitration awards, potentially eliminating the need for litigation over a jurisdictional issue.

Flowers Foods Inc. v. Brock

Issue
Whether workers who locally deliver goods that travel in interstate commerce — but who do not transport the goods across borders nor interact with vehicles that cross borders — are "transportation workers" "engaged in foreign or interstate commerce" for purposes of the exemption in Section 1 of the Federal Arbitration Act.

The petitioner seeks review of a Tenth Circuit decision holding that "last mile" delivery drivers who do not cross state lines themselves, but who deliver products that have been transported in interstate commerce, are "transportation workers" covered by the exemption.

Impact on Employers

- If plaintiffs are "transportation workers" covered by the FAA exemption, they cannot be compelled under the FAA to arbitrate their claims pursuant to their arbitration agreements.
- This lack of compulsion makes it more difficult for companies to avoid court litigation — particularly class and collective actions — brought by local "last mile" delivery drivers who deliver goods from out of state to end customers and retail outlets.

Little v. Hecox/West Virginia v. BPJ

Issue
Whether state laws that seek to protect women's and girls' sports by limiting participation to "biological" women and girls (*i.e.*, not transgender women and girls) based on sex violate the Equal Protection Clause of the 14th Amendment and/or Title IX.

Impact on Employers
The decision is unlikely to have an immediate impact on employers. At oral argument on Jan. 13, 2026, the Supreme Court seemed poised to allow the state laws banning transgender athletes from participating in girls' and women's sports to remain in place. However, as posited by Justice Brett Kavanaugh during oral argument, given the "scientific uncertainty[,]" the "strong assertions of equality interest on both sides" and wide disagreement amongst the states on the issue, the Court appeared reluctant to issue a ruling that would have broad application beyond the issue before them. A ruling allowing the state bans to remain in place would be consistent with the administration's priorities as embodied in several executive orders issued in January 2025.

JacksonLewis

The Year Ahead 2026