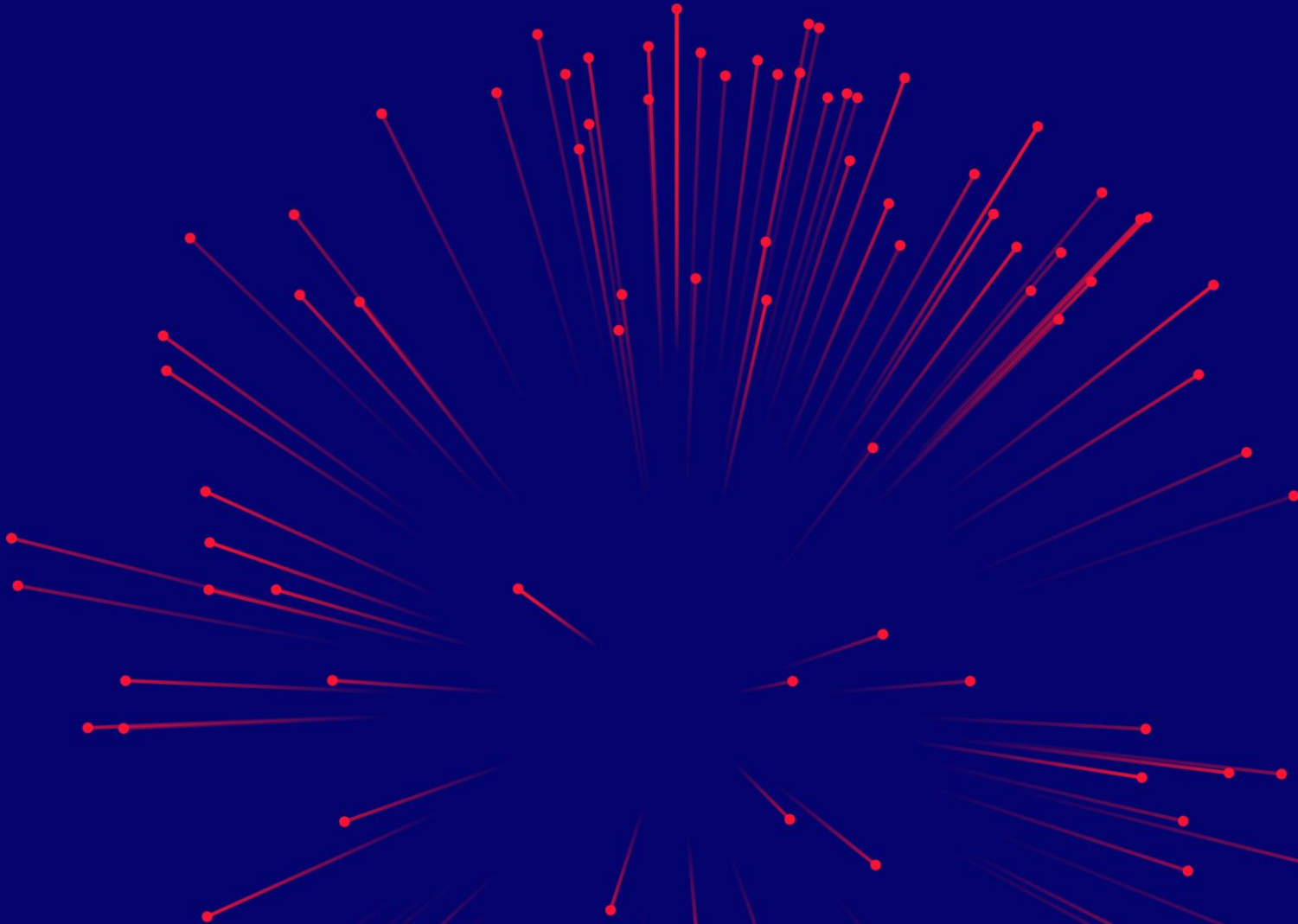


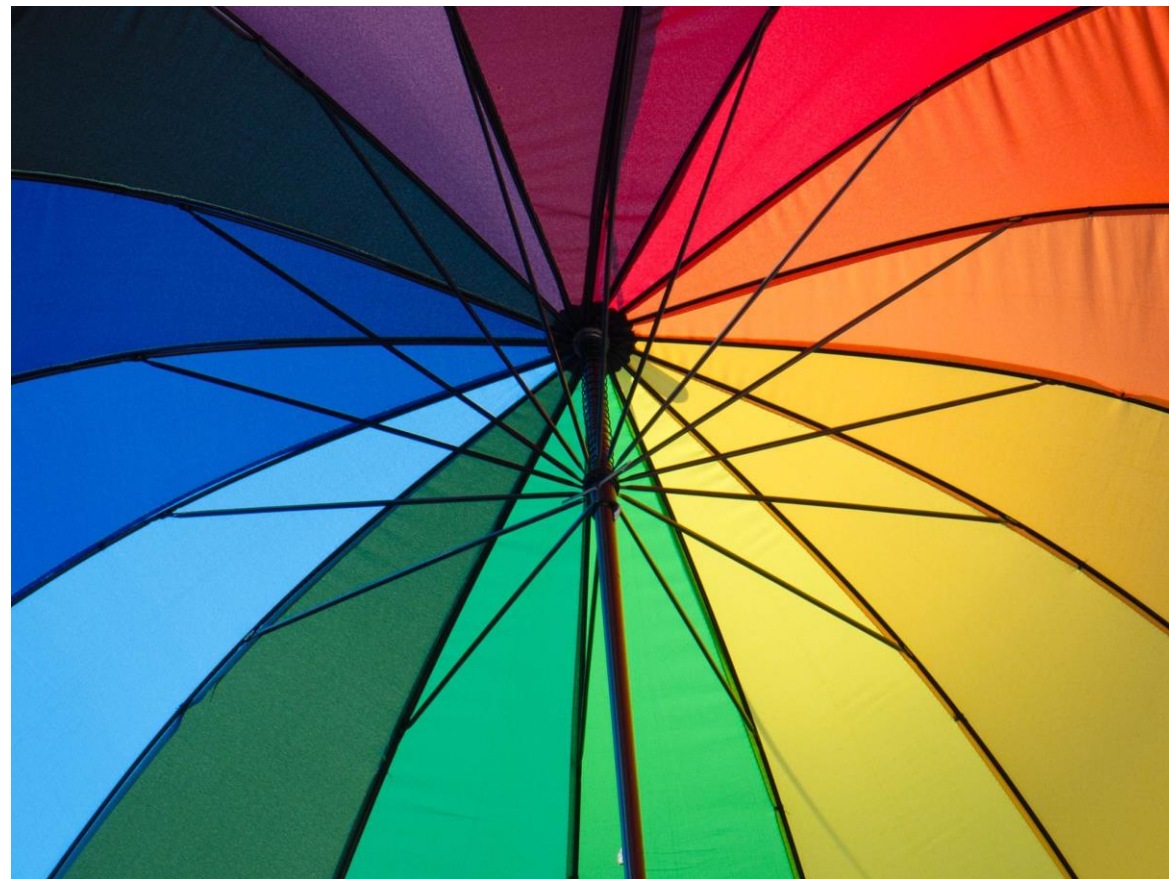
Legal Insights

New Employment Law Developments for 2026



New Employment Law Developments for 2026

- Employee Repayment Agreements
- Non-Competes
- Artificial Intelligence (AI)
- Diversity, Equity and Inclusion (DEI)
- Discrimination (Religious and Disparate Impact)
- New and Expanding Leave Laws
- Pay Transparency Developments
- RIFs and Mini-WARN Acts
- Arbitration Developments
- Miscellaneous



Employee Repayment Agreements/TRAPs



“Stay-or-Pay” Employment Contract Terms (CA AB 692)

Unlawful to include, or require as a condition of employment or a work relationship, contractual terms requiring a worker to pay an employer, training provider, or debt collector for a “debt” upon termination of the worker’s employment or work relationship with a specific employer.

- “**Debt**”: money due or owing for employment-related costs, education-related costs, regardless of whether the debt is certain, contingent, or incurred voluntarily
- Applies to contracts entered on or after Jan. 1, 2026
- Contracts not falling under any exception are void as against public policy
- Robust enforcement mechanisms, including a private right of action and statutory minimum damages

Narrow Exceptions:

- Government loan repayment or forgiveness programs operated by federal, state, or local agencies
- Tuition/credential repayment agreements for transferable credentials meeting certain criteria
- **Contracts for the receipt of a “discretionary or unearned monetary payment” including a financial bonus *at the outset of employment* that is not tied to specific job performance**
- Enrollment contracts in apprenticeship programs approved by the Division of Apprenticeship Standards
- Residential property transactions (lease, financing, purchase, including under the California Residential Mortgage Lending Act)

“Stay-or-Pay” Employment Contract Terms (CA AB 692): Sign-On/Retention Bonuses

- Clawbacks of sign-on/retention bonuses are permissible only if all conditions are met:
 - Set forth in a **separate agreement** from the primary employment contract
 - Employee notified of the **right to consult counsel and given at least 5 business days** to do so before signing
 - **Retention period capped at two years; no interest** accrues on any repayment
 - **Repayment prorated** based on remaining retention period
 - Employee has **option to defer payment** to end of fully served retention period without any repayment obligation
 - Repayment can be triggered only by **voluntary resignation or termination for misconduct (layoffs cannot trigger repayment)**
 - “Misconduct” tied to state unemployment insurance code

“Stay-or-Pay” Employment Contract Terms (CA AB 692): Remedies and Enforcement

- Private right of action for workers, including class claims
- Minimum statutory damages of \$5,000 per affected worker or actual damages, **whichever is greater**
- Injunctive relief available
- Attorneys’ fees and costs recoverable
- Terms that violate the statute are void and unenforceable

“Stay-or-Pay” Employment Contract Terms (CA AB 692): Practical Compliance Steps

- Review all agreements that impose repayment upon separation (sign-on, retention, training, tuition, relocation, etc.)
- For sign-on bonuses post 1/1/26, revise agreement forms
- Eliminate or redesign repayment provisions for retention bonuses for current employees (consider paying in periodic installments or at retention milestones instead of up front)
- Document separations to note voluntary resignation or terminations for misconduct
- Monitor updated developments and guidance

Recent TRAP State Enforcement and Legislative Activity

- **DC AG settlement with Preschool teachers at The Hill Preschool:** School required its preschool teachers to sign contracts containing TRAPs that would force them to repay bonuses they earned and money the school spent to train them or provide staff development if they resigned before the end of their year-long contract term. The school deducted these “repayments” from their final paychecks. Under settlement, the school will pay \$11k to impacted teachers, \$4k in penalties, stop using improper TRAP provisions, and provide notice to all current and former impacted employees.
- **CO AG settlement with PetSmart LLC:**
 - Alleged PetSmart LLC used deceptive training repayment agreements with groomers
 - Nov. 2025 settlement; PetSmart agreed to pay \$225k and stop enforcing agreements
- **CA, CO, and NV AG settlement with HCA Health Care, Inc.** for unlawful training repayment agreements with nurses; \$2.9 M settlement
- **Pending NY Bill AB A584C (“Trapped at Work Act”):**
 - Passed NY legislature, delivered to Gov. Hochul
 - Generally would prohibit promissory notes, which, as a condition of employment, require the repayment of the **cost of training related to jobs**. Bill permits promissory notes for **sums advanced to workers that are not used for training**.
 - No private right of action

Non-Competes



Federal Trade Commission (FTC) Rule and Recent Agency Activity

- The Federal Trade Commission's 2024 proposed nationwide ban on most postemployment non-competes **remains blocked**. On September 5, 2025, the FTC voluntarily dismissed its appeals in *Ryan, LLC v. FTC* (5th Cir.) and *Properties of the Villages, Inc. v. FTC* (11th Cir.).
- The FTC has dismissed its appeals but has not abandoned its enforcement focus
- A new "Joint Labor Task Force" has been formed by the FTC to investigate and prosecute:
 - No-poach agreements
 - Non-solicitation clauses
 - No-hire provisions
 - Wage-fixing arrangements
- The task force will also develop protocols for inter-agency information sharing and explore legislative advocacy to promote labor mobility

Recent FTC Activity

- **Public inquiry on employer practices**

- The FTC issued a request for information in November 2025 seeking details on non-compete use, including roles, salary ranges, enforcement and related harms; current/former employees and employers facing hiring challenges are encouraged to submit input.

- **FTC's stance on anticompetitive non-competes**

- FTC Chair Andrew Ferguson emphasized that non-competes lacking individualized justification, especially those applied to low-wage or nonexecutive roles, are viewed as anticompetitive and may be prohibited under federal law.

New State Laws

- **Virginia** expands noncompete ban for 'low-wage employees'
 - Effective July 1, 2025 (for agreements entered after that date), SB 1218 expands the state's noncompete ban to cover all employees entitled to overtime under the FLSA, regardless of income.
- **Wyoming** bans non-competes, but with exceptions.

States Going in the Other Direction – Pro Employer:

- **Kansas** enacts employer-friendly legislation that clarifies Kansas' restraint of trade statute does not apply to non-competes or franchise agreements.
 - Non-competes remain enforceable under Kansas case law if reasonable and not adverse to public welfare.
- **Florida** CHOICE Act (eff. 7/1/25)
 - Sweeping law bolstering non-competes

Non-Competes – Practical Steps

- Consider developing an approach to handling multistate jurisdictional issues
- Tailor agreements and internal guidance based on specific jurisdictions and company goals
- Pay attention to the location of all employees and candidates
- Continue monitoring guidance and developments

Artificial Intelligence (AI)



Federal Activity: AI Action Plan

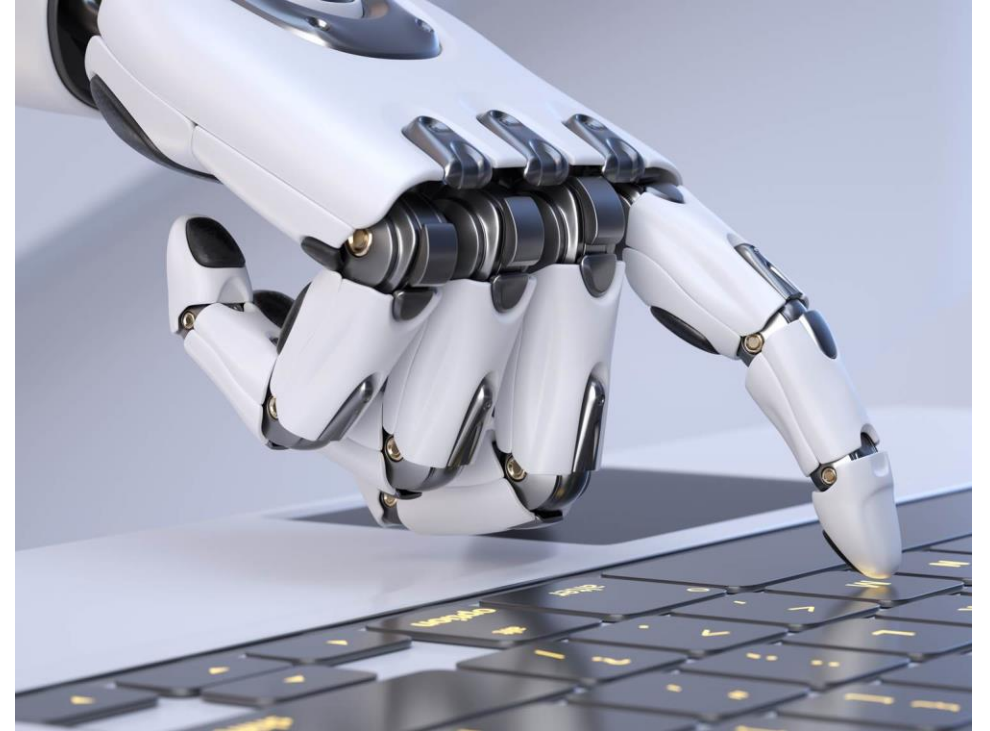
- **White House AI Action Plan – “Winning the Race”**
 - Policy roadmap anchored in EO 14179; key employment related provisions include:
 - **Workforce training:** Expansion of AI literacy across education, apprenticeships and retraining, with the Treasury Department considering tax-free treatment of employer-sponsored AI training; the Department of Labor (DOL) may use discretionary funds for displaced workers and to launch retraining pilots.
 - **Labor market monitoring:** Bureau of Labor Statistics, Census Bureau and Bureau of Economic Analysis must analyze AI’s impact on jobs and wages, supported by a new DOL Workforce Research Hub.
 - **Regulatory and fund levers:** Federal agencies may weigh a state’s AI regulatory climate when awarding funds; the plan directs a review of Federal Trade Commission enforcement to avoid hindering innovation and updates procurement rules requiring contracted AI systems to be objective and free from top-down ideological bias and social engineering agendas.

Federal Activity: Executive Order “Ensuring a National Policy Framework for Artificial Intelligence”

- Seeks to limit state AI regulation and to establish “a minimally burdensome national policy framework for AI”
- State laws increasingly embedding “ideological bias within models” (e.g., Colorado law) could “force AI models to produce false results in order to avoid a ‘differential treatment or impact’ on protected groups”
- State laws impinge on interstate commerce
- State laws create a “patchwork” of different regulatory regimes, increasing compliance challenges
- EO directs federal agencies to:
 - Create an AI litigation task force to challenge state AI laws
 - Review state AI laws to identify “onerous” state laws that conflict with the national AI policy outlined
 - Restrict federal funding, particularly for broadband from states with AI laws that conflict with the EO’s AI policy
 - Develop federal AI standards: FTC and FCC to review how statutory authorities preempt state AI laws
 - Propose federal legislation for “a uniform Federal policy framework for AI that preempts State AI laws that conflict with the policy set forth in this order.”

AI Regulation in the States

- Most regulations for AI remain with the states and most have established task forces
- 34 states are actively studying AI
- All but three of the 50 states introduced some type of AI-related legislation in 2025



New AI Laws Related to Employment

- **California (eff. 10/1/25):** Using an automated-decision system (ADS) can violate state anti-discrimination law if they negatively affect applicants or employees based on protected traits.
 - ADS: “a computational process that makes a decision or facilitates human decision making regarding an employment benefit ... [and] may be derived from and/or use artificial intelligence, machine-learning, algorithms, statistics, and/or other data processing techniques.”
 - Imposes requirements for using ADSs for employment-related decisions, including notification to workers if an ADS is used, informing job applicants if an ADS is used in hiring decisions, record-keeping requirements, etc.
- **Colorado (eff. 6/30/26, but being reconsidered):** Mandates “reasonable care” be taken when using any high-risk AI system to make consequential decisions, which includes those that make or are a substantial factor in making employment decisions; employers using these systems are required to **conduct annual impact assessments** and comply with certain **transparency obligations** designed to protect against algorithmic discrimination.

New AI Laws Related to Employment

- **Illinois (eff. 1/1/26):** Amends the state's Human Rights Act to prohibit using AI tools in a way that results in discrimination, which can include using AI tools to exclude applicants from certain zip codes, a practice often referred to as digital redlining. Forthcoming rules will clarify law.
- **Texas (eff. 1/1/26):** Employers who deploy AI systems are prohibited from using AI in a way that intends to unlawfully discriminate against a protected class (but not including disparate impact).

AI Litigation Updates

- ***Mobley v. Workday, Inc.* (N.D. Cal., May 2024)**: A 40+ Black male alleged Workday's AI-driven applicant screening tools screened him and other applicants out in violation of Title VII, Section 1981, ADEA and ADA, alleging both intentional discrimination and disparate impact discrimination.
 - Plaintiff claimed that despite having requisite experiential and educational qualifications, he was denied employment on every application almost immediately after submitting the application.
 - Litigation is ongoing, but motion to dismiss has been denied and nationwide class certified.

AI Litigation Updates

- ***Harper v. Sirius XM Radio* (E.D. Mich., August 2025)**: Job applicant filed a lawsuit against Sirius XM Radio alleging the company's AI-powered hiring tools violated federal anti-discrimination statutes by embedding historical biases into the evaluation process. Lawsuit alleges:
 - The iCIMS Applicant Tracking System used by Sirius XM disproportionately disadvantaged Black candidates
 - Plaintiff was rejected for 150 positions despite being qualified, receiving only one interview and no job offers.
 - Use of the AI tool violates Title VII under both disparate treatment and disparate impact liabilities in violation of Title VII and Section 1981.
 - Plaintiff also seeking class action status.

Artificial Intelligence (AI) – Practical Steps

- Understand what and how AI tools are being used (e.g., resume scanners, HR chatbots, live transcription, wearable technologies, etc.)
- Develop and review AI governance program to address issues such as bias mitigation, record retention, human review.
- Audit if third parties in the employment lifecycle (e.g., recruiters, vendors, service providers, etc.) are also using AI tools and assess related exposure.
- Train HR, legal, and management teams on acceptable AI use.

Diversity, Equity, and Inclusion (DEI)



Landscape after 2025

Executive Orders

Order	Summary
Ending Illegal Discrimination and Restoring Merit-Based Opportunity (Jan. 21, 2025)	<ul style="list-style-type: none">• Rescinds all DEI programs across all executive departments and agencies• Revokes Executive Order 11246 (signed in 1965 under President Johnson), which prohibits discrimination in federal contracting and requires federal contractors to develop affirmative action plans and ensure equal opportunity• Federal contracts and grants must include term requiring counterparty to agree it complies with federal anti-discrimination law for purposes of False Claims Act• Agencies to work to end DEI initiatives in the private sector in areas within their jurisdiction, including identifying up to nine potential civil investigations of publicly traded corporations, nonprofits, bar and medical associations, foundations, and higher ed institutions
Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (Jan. 20, 2025)	<ul style="list-style-type: none">• US government will recognize two sexes, male and female; seeks to exclude transgender, nonbinary, and intersex people from receiving certain protections• Agencies to eradicate use of term “gender identity” and remove term from all federal policies and documents

EEOC/DOJ March Technical Guidance

The EEOC and DOJ issued technical assistance documents on March 19, 2025:

1. Fact sheet for employees on “What to Do if You Experience Discrimination Related to DEI at Work”
2. FAQs clarifying that:
 - Title VII does not just apply to minorities but rather applies equally to all workers (recently reaffirmed by the US Supreme Court in *Ames v. Ohio Dep’t of Youth Services*)
 - Employees need only show “some injury or harm” affecting terms and conditions of employment (confirmed in recent US Supreme Court ruling in *Muldrow v. City of St. Louis*)
 - Employees should not be excluded from training, mentorship, sponsorship, networking, or other employer-sponsored programming or groups based in whole or part on a protected characteristic
 - DEI trainings can be discriminatory in content, application, or context, or separately create a hostile work environment
 - A general business interest in DEI, including perceived operational benefits or customer/client preference, is not a defense to an intentional discrimination claim

DEI Enforcement by Other Agencies

Department of Education: Widespread university investigations from Feb 2025 on

Federal Trade Commission: In February 2025 announced taskforce to prioritize investigations of unfair or deceptive practices, including DEI-related collusion

Department of Justice: In May 2025 launched the Civil Rights Fraud Initiative

- Goal is to enforce “certification requirement” in January 2025 executive order by pursuing False Claims Act claims against federal fund recipients
- Explicitly encourages private whistleblowers to come forward
- **Be on the lookout for “Civil Investigative Demands”**

Federal Communications Commission: Threatened to block mergers within its jurisdiction if companies involved engage in “DEI discrimination”; resulted in DEI-related concessions from large companies

“Reverse Discrimination”: *Ames v. Ohio Dep’t of Youth Service* (June 5, 2025)

Background

- A straight woman brought a claim on the basis of sex and sex orientation discrimination in violation of Title VII because she was denied a promotion. The district court held that under the “background circumstances” test, the plaintiff had to demonstrate that the defendant is the “unusual employer who discriminates against the majority” in order to establish a prima facie case of discrimination under Title VII of the Civil Rights Act of 1964 (also known as “reverse discrimination suits”).
- The Supreme Court held that the Sixth Circuit’s “background circumstances” rule could not be squared with the text of Title VII or the Court’s precedent. The rule required plaintiffs who are members of a majority group to bear an additional burden “at step one.” The Supreme Court explained: “the text of Title VII’s disparate-treatment provision draws no distinctions between majority-group plaintiffs and minority-group plaintiffs. The provision focuses on individuals rather than groups, barring discrimination against ‘any individual’ because of protected characteristics. Congress left no room for courts to impose special requirements on majority-group plaintiffs alone.”

Result

- Lowers bar for reverse discrimination suits

DOJ July Guidance

The DOJ issued guidance for federal funding recipients on July 30, 2025:

- Describes DEI-related practices that the DOJ considers unlawful and that could result in revocation of federal funding
- See detailed [Cooley client alert](#) – key guidance even for non-federal fund recipients
- Of particular note:
 - Improper to prioritize “underrepresented” groups over equally qualified candidates if underrepresentation is “**proxy**” for a protected group like race
 - Challenges “**diverse slate**” requirements, including mandating that a minimum number of candidates come from specific protected groups, setting demographic benchmarks, or requiring representation in candidate pools
 - Focus on **single-sex intimate spaces** (potential clash with state antidiscrimination obligations)

DEI Legal Landscape: Recent Legal Challenges

Employer diversity goals

- *Benecker v. CBS* – Challenges writer hiring goals; pending in 9th Cir.
- *Duvall v. Novant Health* – 4th Cir. upheld jury verdict finding white executive's termination motivated by desire to meet diversity targets

Grant programs for minority business owners

- *Bolduc v. Amazon* – Challenged race-based eligibility for delivery provider stipends; 5th Cir. dismissed for lack of standing
- *AAER v. Founders First* – Texas district court granted preliminary injunction finding grant program for minority, LGBTQ, veteran, and low-income applicants likely violates Section 1981; parties settled

Legal Challenges in the Wake of *SFFA v. Harvard*

Scholarship or fellowship programs for underrepresented students

- AAER settled McDonalds Hispanic scholarship case and law firm diversity fellowship cases after employers agreed to expand eligibility criteria

Racially hostile working environment

- *De Piero v. Penn. State Univ.* – Pennsylvania district court found racially hostile work environment where white professor told to factor in race when grading and to “feel terrible about [his] own internalized white supremacy”
- *Chislett v. New York City Department of Edu.* – Second Circuit found racially hostile work environment where white supervisor called a racist, labeled “white and fragile” and accused of “operating out of white privilege and supremacy” when she tried to perform her ordinary supervisory responsibilities

Religious objections in the workplace

- *Kluge v. Brownsburg* – Indiana district court upheld employer’s refusal to accommodate teacher’s religious objection to using transgender students’ names and pronouns

Equal Employment Opportunity Commission (EEOC) Updates & Evolving Priorities

Quorum as of October 7, 2025

Andrea Lucas – Acting Chair

- “As the head of the EEOC, I am committed to dismantling identity politics that have plagued our civil rights laws.”
- “The EEOC stands ready to help employers comply with their obligations not to discriminate. But, where necessary, the agency is also prepared to root out discrimination where it remains entrenched.”

The EEOC is no longer considering itself an “independent agency” but an “executive agency that must comply with the President’s orders.”

- In other words, the EEOC will now be moving to implement the executive’s goals.

EEOC agenda under Lucas

- Rooting 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
- Remedying other areas of recent under-enforcement
- Rescinding/amending Pregnant Workers Fairness Act (PWFA) rules

EEOC Technical Guidance "Discrimination Against American Workers Is Against The Law" (11/20/25)

Forms of “anti-American national origin discrimination”

- Discriminatory job ads (e.g., “H-1B preferred”)
- Making it more difficult for applicants from one national origin to apply for positions
- Harassment/retaliation based on national origin (e.g., unwelcome remarks/conduct based on national origin)
- Pay discrimination (paying visa guest workers less)
- Considerations like customer/client preference; lower cost of labor; or beliefs that workers from certain national origin groups are “more productive” or have “better work ethic” do not excuse decisions to hire foreign workers

Diversity, Equity, and Inclusion (DEI) – Practical Steps

- Review current DEI programs and initiatives (be overinclusive)
- Review public-facing statements and actions – websites, job postings, press releases, public company disclosures
- Carefully, intentionally and thoughtfully implement any desired and company-supported programs
- Monitor developments

Discrimination Law Developments

- Religious Discrimination and Accommodations
- Disparate Impact Theory of Discrimination



Religious Discrimination and Accommodations

- Changed Standard in 2023 – In ***Groff v. DeJoy***, the Supreme Court unanimously ruled that Title VII requires employers who deny religious accommodation requests to demonstrate that granting the request would result in “***substantial increased costs in relation to the conduct of its particular business.***”
 - Prior to *Groff*, courts allowed employers to deny employee religious accommodation requests that imposed more than a “de minimis cost.”
- The EEOC in 2025 has made religious discrimination and accommodations cases a major focus of its enforcement agenda.

Disparate Impact Under Fire

- **DOJ Final Rule Removes Title VI Disparate Impact Liability from its Regulations (12/10/25)**
 - DOJ will no longer pursue Title VI disparate impact liability against its Federal funding recipients
- **Disparate impact liability**
 - Legal doctrine where a facially neutral policy can cause unlawful discrimination even without conscious intent (e.g., through policies, hiring practices).
- **EO 14281: Restoring Equality of Opportunity and Meritocracy**
 - Eliminates the use of disparate impact liability in the federal government; instructs the EEOC to assess all pending investigations, civil suits or positions taken in ongoing matters and take “appropriate action” with respect to such matters consistent with the policy of the order.
- **Disparate impact is still a viable theory of employment discrimination under Title VII and state law.**
 - Experts predict that the theory will be brought up to the Supreme Court in the coming years.

New and Expanding Leaves



New Leaves

- **NICU:**
 - **Colorado** (eff. 1/1/26): Expands FAMILI law to provide up to an *additional* 12 weeks (in addition to already existing 12 weeks of FAMILI leave) of paid FAMILI for any parent who has a child receiving care in a NICU.
 - **Illinois** (eff. 6/1/26): job-protected leave for employees with a child admitted to a NICU
 - Employers with 16 to 50 employees: up to 10 days of unpaid leave for employees
 - Employers with 51 or more employees: up to 20 days
- **Military Funeral Honors Leave:**
 - **Illinois** (eff. 8/1/25): up to 40 hours of paid leave (up to 8 hours per month) per calendar year for eligible employees serving on a military funeral honors detail.

California Sick Leave Expanded Uses

- Eff. Jan. 1, 2026, paid sick leave may be used if the employee or a covered family member are victims of certain crimes (e.g., felonies, sexual assault) and need to attend related judicial proceedings.
- Covered proceedings include delinquency hearings, postconviction proceedings, pleas, sentencings or any other proceeding where a victim's rights are at issue.
- Eff. Oct. 1, 2025, employees may use paid sick leave for jury duty and to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

NYC Int. No. 0780-2024, NYC Earned Safe and Sick Time Act (ESSTA) Amendment (eff. 2/22/26)

ESSTA Expanded Uses:

- **Public Disaster** – closings of workplace, school, or childcare center relating to “fire, explosion, terrorist attack, severe weather conditions or other catastrophe that is declared a public emergency or disaster” by POTUS, NYS Governor, or NYC Mayor. Also includes direction by a public official to remain indoors or avoid travel during a public disaster that prevents an employee from reporting to their work location.
- **Caregiving Responsibilities** –to provide care to a minor child or care recipient where employee is a caregiver for the minor child or care recipient.
- **Subsistence Benefits/Housing** –initiate, attend or prepare for a legal proceeding or hearing related to subsistence benefits or housing to which the employee or the employee’s family member or care recipient is a party
- **Workplace Violence** –seeking legal or social services, related to when the employee or the employee’s family member has been the victim of workplace violence (“any act or threat of violence against an employee that occurs in a place of employment”); adds workplace violence to the “safe leave” provisions of the ESSTA.

32 hours bank of unpaid frontloaded leave

- Available upon hire, can use immediately for any ESSTA qualifying reason
- Unused time not required to be rolled over

Pay Transparency Developments



New Laws in Effect 2025

- **New Jersey (eff. 6/1/25):** Job postings from employers with 10+ employees must include a pay range; internal transfers are covered by the law.
 - Covered employers must disclose a pay range in each job posting for new jobs and transfer opportunities, as well as a general description of benefits and other “compensation programs.”
 - Civil penalty of up to \$300 for the first violation and \$600 for each subsequent violation.
- **Illinois (eff. 1/1/25):** Job advertisements from employer with 15+ employees must disclose the pay scale and benefits; statute expanded annual reporting.
 - Opportunity to cure, with civil penalties up to \$10,000

New Laws in Effect 2025

- **Massachusetts**

- **Eff. Feb. 1, 2025**, employers with at least 100 MA-based employees at any time during the prior calendar year to file an annual report that includes workforce demographic and pay data categorized by race, ethnicity, sex and job category.
 - Private employers are permitted to submit their annual federal EEO-1 report to satisfy the state reporting requirement.
 - Anonymized, aggregated data will be published by the state each year.
- **Eff. Oc. 29, 2025**, the MA law also will require employers with at least 25 MA-based employees to include a pay range with each new job posting and disclose the pay range to employees offered a promotion or transferred to another position.
 - Employers are not required to disclose bonuses or other benefits.
 - Upon request, employers also are required to provide the pay range to an employee who currently holds the position or to an applicant for the position.

Washington Pay Transparency Law Amendment

- Washington State Equal Pay and Opportunities Act (EPOA) (2023)
 - Applies to employers with 15+ employees.
 - Job postings must disclose salary or wage scale and benefits.
 - Penalties: Private right of action; damages, attorneys fees.
- EPOA amendment (eff. 7/27/2025)
 - Provide a five-day grace period for employers to correct non-compliant job postings after receiving written notice.
 - The cure period is only in effect until July 27, 2027.
 - Employers that are “scraped” or copied and published without the employer’s consent are now exempt from the EPOA requirements.

Reductions-in-force
(RIFs)
&
WARN Act
Developments



New State “Mini-WARN” Laws

Washington State (eff. 7/27/25):

- Requires employers with 50 or more full-time employees in Washington to provide at least 60 days’ notice to the state, any union and/or employees affected by a business site closing or mass reduction in force.
- Allows for a private right of action and civil penalties of up to \$500 per day for failure to notify the state (in addition to up to 60 days of back pay and the value of lost benefits).

Ohio (eff. 9/29/25):

- Largely tracks federal WARN but enhances notice requirements.

Cal-WARN Expanded Notice (eff. 1/1/26)

Notice must now include:

- whether the employer plans to coordinate services, such as a rapid response orientation, through the local workforce development board, a different entity, or not at all.
 - If coordinating services, coordination must be arranged within 30 days of the written notice.
- a functioning email and telephone number of the local workforce development board and the following description of the rapid response activities offered by the local workforce development board:
 - “Local Workforce Development Boards and their partners help laid off workers find new jobs. Visit an America’s Job Center of California location near you. You can get help with your resume, practice interviewing, search for jobs, and more. You can also learn about training programs to help start a new career.”
- a description of the statewide food assistance program (CalFresh), including the CalFresh benefits helpline, and a link to the CalFresh website.
- a functioning email and telephone number of the employer for contact.

Maryland Mini-WARN Final Regulations (eff. 10/13/25)

- The regulations make the entire state of Maryland a “single workplace” for any remote worker.
- Under the regulations, all remote workers in Maryland would seemingly need to be counted for purposes of determining whether Maryland’s mini-WARN is triggered.
- Maryland’s mini-WARN applies to employers with 50+ employees in Maryland and has a lower threshold than federal law for employment losses to require notice.

Arbitration Developments



Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA)

- Enacted in 2022
 - Invalidates pre-dispute arbitration agreements for claims of sexual assault/harassment
 - Employees may choose to opt out of pre-dispute arbitration agreements and choose to litigate in court
- Shifted away from presumption **in favor** of arbitration under the Federal Arbitration Act (FAA)
- Courts are now weighing what allegations are necessary to invoke the EFAA

Contours of the EFAA Continue to Develop

- Courts have disagreed on what it means for a claim to “plausibly” claim sexual harassment to determine whether the EFAA protections are triggered
 - **Strict standard:** Applying the Twombly/Iqbal standard to the EFAA to require that, where a party seeks to invoke the EFAA based on a claim of sexual harassment, such a claim must have been plausibly pled. *Yost v. Everyrealm* (S.D.N.Y. 2023); *Gonzales v. Carnival Corp* (S.D. Fla. 2024)
 - **Non-frivolous standard:** The plaintiff need only plead nonfrivolous claims relating to sexual assault or conduct alleged to constitute harassment, with sufficiency of these claims to be reserved for proper merits adjudication. *Diaz-Roa v. Hermes Law, P.C.* (S.D.N.Y. 2024); *Thomas v. Poo Bah Enterprises, Inc.* (N.D. Ill. July 24, 2025); *Anderson v. Louis Vuitton N. Am.* (C.D. Cal. June 5, 2025)
- Courts have also disagreed on whether the EFAA applies to the **entire case**, so long as one of the claims alleges sexual assault or harassment, or if just the sexual harassment claim cannot be compelled to arbitration
 - “The plain language of the EFAA supports the conclusion that *the arbitration agreement is not valid or enforceable with respect to the entirety of the case*, as the case relates to a sexual harassment dispute. Thus the court concludes the parties’ arbitration agreement is invalid and unenforceable.” *Van Meurs-Bradley v. AutoNation, Inc.* (Cal. App. July 14, 2025)
 - “Since Plaintiff’s wage and hour claims under the FLSA and the NYLL do not relate in any way to the sexual harassment dispute, they must be arbitrated, as the Arbitration Agreement requires.” *Mera v. SA Hosp. Grp., LLC* (S.D.N.Y. 2023)
- One court has determined that the sexual harassment or sexual assault **need not occur in the workplace or between the parties of an arbitration agreement**. *Polen v. API Grp. Life Safety USA, LLC*, No. 3:25-cv-01196 (D. Or. Nov. 21, 2025) (EFAA contains no limitation regarding who committed the sexual assault, where it was committed, or when it was committed).

Miscellaneous



Miscellaneous

- Minimum Wage Increases
- New Required Notices
- Personnel Records Requests
- Union Matters
- Lactation Accommodation Requirement



Minimum Wage Increases

Location	New minimum wage	Effective date
Federal contractors	\$13.30	March 2025 (revocation of Executive Order 14026)
California	\$16.90	January 1, 2026
Colorado	\$15.16	January 1, 2026
Connecticut	\$16.94	January 1, 2026
New York City	\$17.00	January 1, 2026
Virginia	\$12.77	January 1, 2026
Washington	\$17.13	January 1, 2026

Note: This table is not exhaustive, and it includes certain state minimum wages that are scheduled to adjust for inflation annually.

Know Your Rights Act (eff. 2/1/26) (CA)

- Employers to provide a **new notice of worker rights to employees** upon hire and annually thereafter **beginning February 1, 2026**. The labor commissioner has published the template notice on its website.
 - **Contents:** workers' compensation benefits; right to notice of immigration inspections; protections against unfair immigration practices; the right to organize and constitutional rights when interacting with law enforcement at work; info on "new legal developments" pertaining to laws enforced by the state's Labor and Workforce Development Agency and a list of enforcement agencies that may enforce underlying rights in the notice.
- By March 30, 2026 (or at hire for new employees after that date), must give employees the **opportunity to name an emergency contact** and to indicate whether the emergency contact should be notified when the employee is arrested or detained at work or during work hours if the employer has actual knowledge of the arrest or detention.
- Civil penalties of up to \$500 per employee for each violation, and violation of emergency contacts up to \$500 per employee for each day the violation occurs, up to a maximum of \$10,000 per employee.

Personnel Records: Training & Education (eff. 1/1/26) (CA)

- Expands personnel documents to include training and education records
- If employers maintain education or training records, they must include all of the following:
 - A. The name of the employee
 - B. The name of the training provider
 - C. The duration and date of the training
 - D. The core competencies of a training, including skills in equipment or software
 - E. The resulting certification or qualification

Union Matters



CA Transportation Network Company Drivers Labor Relations Act (eff. 1/1/26)

- Allows transportation network company (TNC) drivers to form, join and participate in driver organizations, bargain collectively and engage in concerted activities for mutual aid without being classified as employees.
- TNC: a company operating in California that provides prearranged transportation services for compensation, using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.
- TNCs must submit quarterly information to the PERB to identify “active” drivers eligible to unionize.
 - List of drivers with at least 20 rides in the past six months.
 - Driver names, license numbers, contact info, date joined, ride count
- Unionization thresholds:
 - 10% support from active drivers, to begin process and trigger PERB verification.
 - 30% support to trigger an election (remote voting).
 - 50%+ support results in automatic certification—no election
- The law outlines specific notice, process and timeline requirements for driver representation.

“Trigger” Laws Update

- **California**

- **AB 288:** amends the state’s labor law and significantly expands the power of its Public Employment Relations Board (PERB) to cover private-sector employees
- ***Nat’l Labor Relations Bd. v. State of Calif.***, E.D. Cal., No. 2:25-cv-2979 (preliminary injunction granted in part)

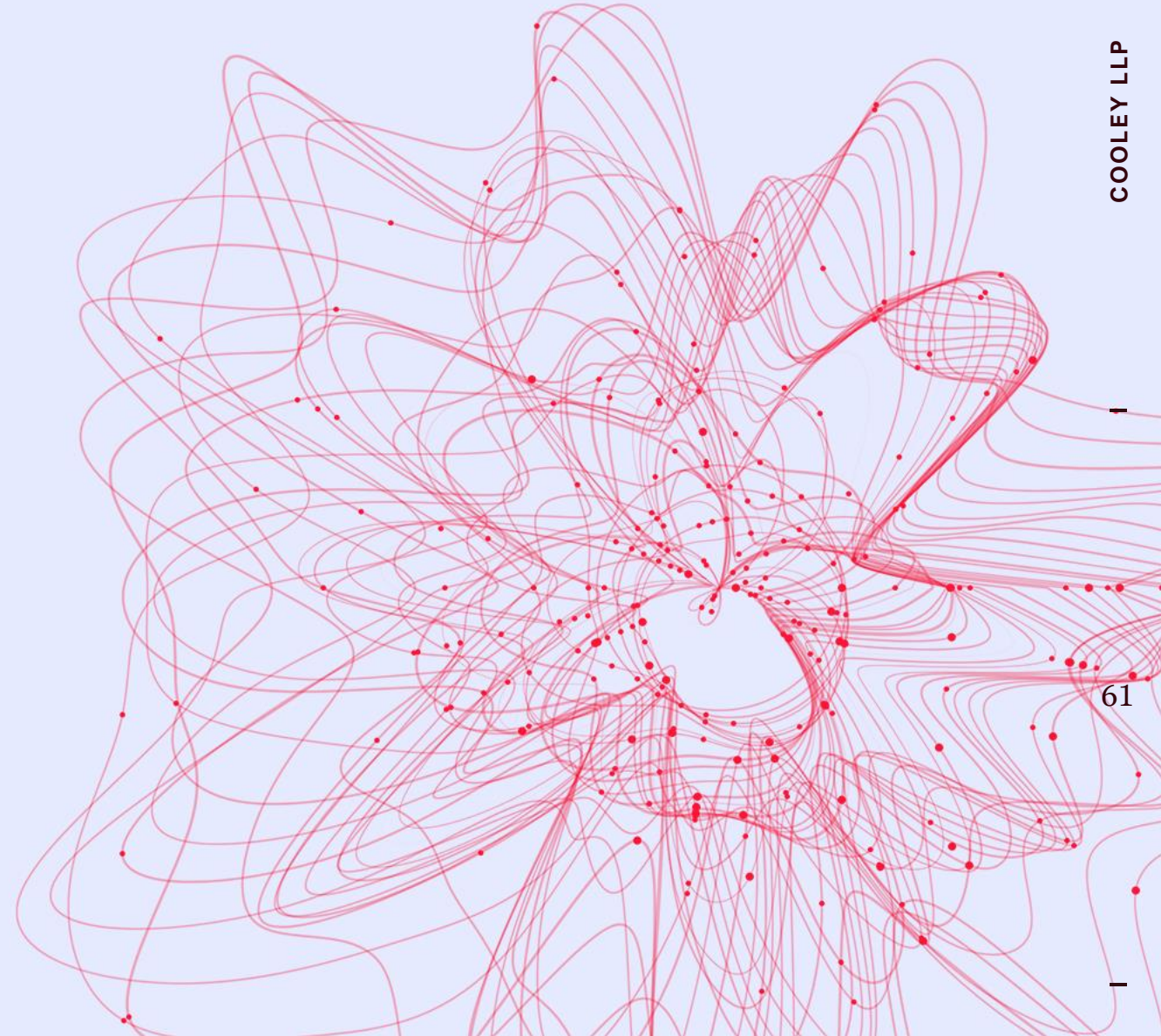
- **New York**

- **S8034A:** amended NYS Employment Relations Act to expanded power of PERB to cover private-sector labor matters
- ***Nat’l Labor Relations Bd. v. State of New York et al.***, N.D.N.Y, No. 1:25-cv-01283-GTS-ML
- ***Amazon.com Services LLC v. NY State Public Employment Relations Bd.***, No. 1:25-cv-05311, (preliminary injunction granted)
- If an activity is even “arguably” subject to the NLRA, both state and federal courts must defer to the NLRB’s exclusive jurisdiction.

Lactation Breaks

- **Washington:** Employers must provide paid lactation breaks for nursing employees and pay must include travel time to access lactation locations.
- **Illinois:** Employees taking lactation breaks must be paid their regular rate of compensation, unless doing so creates an “undue hardship” under the Illinois Human Rights Act.
- **New Hampshire:** Unpaid break of 30 minutes to pump for every three hours

Questions?



Joshua Elefant

Associate, Labor and Employment, Palo Alto

Josh's practice entails representing and advising employers on a broad range of employment and labor law matters, including counseling on day-to-day employment matters (such as hiring, separations, policies, investigations, whistleblower complaints, and wage and hour compliance), litigation and corporate transactions. He has represented clients in single-plaintiff and class action matters, where he is experienced in all phases of litigation, including taking depositions of plaintiffs and witnesses, defending depositions of company executives and board members, motion practice (including motions to compel arbitration, protective orders and motions for summary judgment/adjudication), trial and arbitration.

Josh has represented clients before multiple administrative agencies, including the California Labor Commissioner, the California Civil Rights Department and the US Equal Employment Opportunity Commission. With respect to corporate transactions, his experience includes pre-acquisition due diligence, preparation and negotiation of transaction agreements, and preparation of employment agreements and other ancillary documents, such as noncompetes and retention agreements.



jelefant@cooley.com
+1 650 843 5572

[Learn more >](#)

Joshua Mates

Partner, Labor and Employment, San Francisco

Joshua's practice includes both employment counseling and litigation. In the litigation context, he has handled cases in federal and California courts involving disputes including breach of contract, wage and hour statutory violations, leave of absence compliance matters, discrimination, harassment, retaliation, wrongful termination, trade secret misappropriation and unfair competition. He has also represented employers in mediations, arbitrations and other forms of alternative dispute resolution, as well as before the California Labor Commissioner, U.S. Equal Employment Opportunity Commission, California Department of Fair Employment and Housing, and other administrative agencies.

In the counseling arena, Joshua's expertise covers a broad spectrum of human resources matters, including internal investigations, personnel relations matters, employee raiding, misappropriation of trade secrets, contract negotiations, compliance with various wage and hour and other statutes, leave accommodations, employee allegations of discrimination, harassment and retaliation, developing and implementing personnel practices and procedures, due diligence for mergers and acquisitions, and structuring executive and incentive compensation. In addition, Joshua has served for multiple years as a contributing editor to a leading California employment litigation practice guide.



jmates@cooley.com
+1 415 693 2084

[Learn more >](#)

Amis Pan

Associate, Labor and Employment, Palo Alto

Amis advises clients on a wide range of employment and labor matters. She counsels on issues arising from all stages of the employment relationship, including employment agreement negotiation, performance management, accommodation, leaves of absence and separation. She also represents clients in litigation, defending individual claims as well as class and representative actions.

As part of her counseling practice, Amis regularly advises on compliance with wage and hour requirements and pay transparency legislation. She helps clients develop and implement personnel policies and procedures, and she is experienced in labor union relations and collective bargaining agreements.

In litigation, Amis has experience ranging from written discovery and depositions to dispositive motion practice through trial. She also has negotiated dispute resolution through mediation and represented clients before the US Equal Employment Opportunity Commission, the National Labor Relations Board, the California Civil Rights Department and other agencies.

Amis maintains an active pro bono practice advising nonprofit organizations in the San Francisco Bay Area and throughout the US on employment issues.

During law school, Amis served as productions editor for the Berkeley Journal of Gender, Law & Justice. She externed for Judge Kim McLane Wardlaw at the US Court of Appeals for the Ninth Circuit.

apan@cooley.com
+1 650 843 5024

[Learn more >](#)

Cooley

