

CONSTANGY
BROOKS, SMITH &
PROPHETE LLP

MID-YEAR LABOR AND EMPLOYMENT LAW UPDATE

Kim Seten

kseten@constangy.com

@kimseten



Agenda



1. Recent Court Decisions
2. Executive Orders & Legislation
3. Agency Updates & Actions
4. State Law Updates





SUPREME COURT DECISIONS



NO HEIGHTENED BURDEN FOR REVERSE DISCRIMINATION CLAIMS



Ames v. Ohio Dept. of Youth Services

- No heightened evidentiary burden on majority-group plaintiffs bringing claims for discrimination under Title VII of the Civil Rights Act
- Such plaintiffs are not required to demonstrate “background circumstances” to establish a prima facie case of discrimination





KEY TAKEAWAYS

- Employers may see more “reverse discrimination” claims
- Take complaints seriously and conduct the same investigation you would conduct for any other complaint
- Ensure policies and procedures are applied consistently and neutrally
- Ensure documentation of legitimate, non-discriminatory reasons for actions



ADA DOES NOT APPLY TO RETIREES

Stanley v. City of Sanford

- The ADA does not protect retirees who are no longer employed and who no longer want to seek employment
- The employment provisions of the ADA apply only to “qualified individuals” who currently hold or want a position and can perform its essential functions with or without accommodation



LIMITATIONS ON NATIONWIDE INJUNCTIONS



Trump v. CASA, Inc.

- An injunction should be no broader than necessary to provide "complete relief" to the parties directly involved in the lawsuit
- Does not limit class actions under Rule 23 or challenges to agency actions under the Administrative Procedures Act



RECENT COURTS OF APPEAL DECISIONS



DECISION MAKERS ARE CRUCIAL

Kean v. Chili's, Inc., et al.



KEY TAKEAWAYS

- Adverse actions don't just "happen"
- Claims of discrimination turn on motivations – the decision maker is often the individual who has to explain that decision
- Documents can tell a great story, but they must be preserved



SOME HARM – *MULDROW'S* IMPACT CONTINUES TO BE FELT



Scheer v. Sisters of Charity of Leavenworth Health System, Inc.

- Supreme Court's decision in *Muldrow v. City of St. Louis* is applicable to the ADA
- Mandatory referral to an EAP may constitute an adverse employment action



EXECUTIVE ORDERS & LEGISLATION



EXECUTIVE ORDERS

“Restoring Equality of Opportunity and Meritocracy”

- Directs federal agencies to shift their enforcement priorities and resources away from disparate impact claims
- Calls for technical assistance to be issued by the EEOC
- Questions disparate impact regulations under Title VII of the Civil Rights Act of 1964 and other laws that implicate disparate impact causes of action and liability.



EXECUTIVE ORDERS



KEY TAKEAWAYS

Employers should understand this reflects a change in federal enforcement priorities, not state or local laws or enforcement

Private litigants still can pursue claims for disparate impact

Employers using AI-based tools or other selection procedures should continue to closely monitor developments



LEGISLATION - TAXES ON TIPS AND OVERTIME

- On July 4, 2025, President Trump signed the “One Big Beautiful Bill” into law.
- The law contains “no-tax-on-tips” and “no-tax-on-overtime” provisions, which are effective through December 31, 2028.
- Employees who customarily and regularly receive tips can deduct up to \$25,000 in tips from their income subject to federal income tax starting January 1, 2025
- Employees can deduct up to \$12,500 in overtime pay from their income subject to federal income tax



TAXES ON TIPS AND OVERTIME

What do employers need to do?

- Report total of cash and non-cash tips and occupation on Form W-2 for employees and on Form 1099 for nonemployees.
 - Treasury will publish a list of occupations that have customarily and regularly received tips
- Report qualified overtime compensation on Form W-2 for employees and on Form 1099 for tipped nonemployees.
- Be on the lookout for IRS regulations. The IRS has not yet provided guidance in light of the new law.
- Review changes with tax counsel



**KEY
TAKEAWAYS**



AGENCY UPDATES & ACTIONS



EEOC



EEOC

- Brittany Panuccio has been nominated to be a member of the U.S. Equal Employment Opportunity Commission
- Panuccio's confirmation would give the five-member commission a quorum with two Republican commissioners and one Democratic commissioner



EEOC

- EEO-1 Reports were **due June 24, 2025**
- New technical assistance document: **“What To Do If You Experience Discrimination Related to DEI at Work”**
- The document identifies actions that may be “DEI-related discrimination”
 - Implementing “quotas” or “otherwise ‘balancing’ a workforce by race, sex, or other protected traits;”
 - Excluding individuals from training, fellowships, mentoring or sponsorship programs on the basis of their protected characteristics;
 - Selecting candidates for interviews, including placement on candidate slates, based on their protected characteristics;
 - Limiting membership in workplace groups, such as employee resource groups to certain protected groups; and
 - Separating employees into groups based on protected characteristics when “administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.”



EEOC

- Corresponding FAQs: **“What You Should Know About DEI-Related Discrimination at Work,”** which provide examples of “DEI initiatives, policies, programs or practices” that may be unlawful under Title VII, including disparate treatment in:
 - hiring, firing, promotion, demotion, compensation, fringe benefits, job duties, and/or work assignments;
 - access to or exclusion from training, including training characterized as leadership development programs;
 - access to mentoring, sponsorship, or workplace networking;
 - internships, including those labeled as “fellowships” or “summer associate” programs; and
 - selection for interviews, including placement or exclusion from a candidate “slate” or pool.

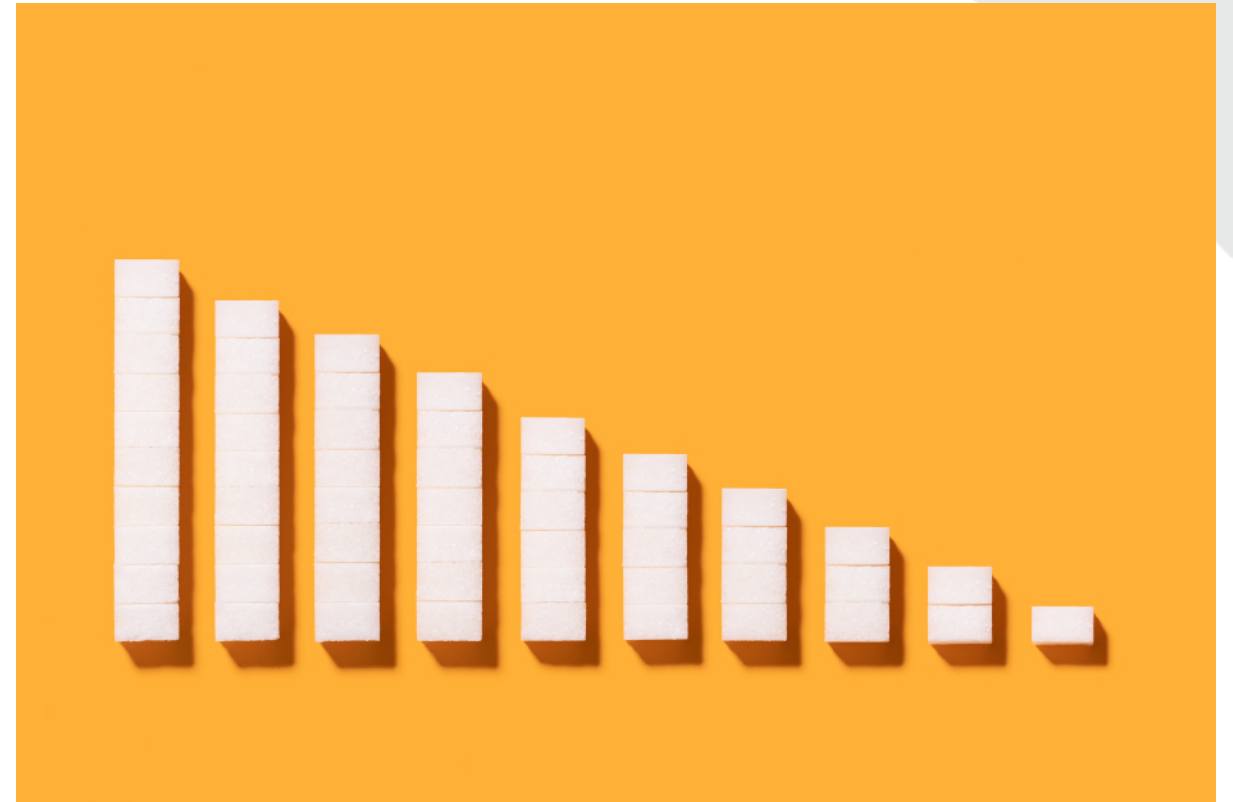


 OSHA[®]



OSHA

- New guidelines offer small employers up to a 25 percent penalty reduction for effective safety management systems.
- The agency also has significantly expanded the definition of small businesses that are eligible for penalty reductions. Now employers with twenty-five employees qualify, up from employers with ten employees.
- The agency entered 2025 understaffed and further headcount reductions are expected.



NLRB



NLRB

- The NLRB currently does not have a quorum
- President has nominated individuals to serve as new Board members and NLRB General Counsel:
 - Scott Mayer, chief labor counsel at Boeing
 - James Murphy, career attorney at NLRB
 - Crystal Carey, an attorney at Morgan, Lewis & Bockius



NLRB



In February, Acting General Counsel William B. Cowen revoked **29** General Counsel guidance memorandum





DOL



DOL

- On May 1, 2025, the DOL's Wage and Hour Division announced it was working to reformulate the test as to how independent contractor status is determined under the FLSA.
- The DOL will no longer enforce the 2024 rule established under the Biden administration. Instead, DOL has reverted to the “economic reality” framework:
 1. The extent to which the services rendered are an integral part of the principal's business.
 2. The permanency of the relationship.
 3. The amount of the alleged contractor's investment in facilities and equipment.
 4. The nature and degree of control by the principal.
 5. The alleged contractor's opportunities for profit and loss.
 6. The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
 7. The degree of independent business organization and operation.



DOL

- Even under the economic reality test, often employees are misclassified as independent contractors
- Keep in mind that state law may apply and may have stricter classification requirements with respect to independent contractors.
- For purposes of private litigation, the 2024 rule will remain in effect. The WH Division is considering whether to rescind it, but until the agency does, plaintiff's can file suit.
- The IC test is one that frequently changes with administrations, so be mindful it could change again in the future.



**KEY
TAKEAWAYS**



NEW STATE LAWS

Fifty Nifty United States



ALASKA

- Minimum Wage increased to \$13 effective July 1, 2025
- Paid sick leave accrual begins. For covered employers, employees accrue one hour of paid sick leave for every 30 hours worked
- Employers cannot hold captive audience meetings for the purpose of sharing political or religious views



COLORADO

- **Colorado Privacy Act expansion – effective July 1, 2025**
 - Employers must obtain written or electronic consent from Colorado employees before collecting biometric data.
 - Employers must get a new consent if the data will be used for a new purpose or involves additional types of biometric identifiers.



DISTRICT OF COLUMBIA

- Effective July 1, 2025, minimum wage for workers other than tipped workers increased to \$17.95
- Effective October 1, 2025, minimum wage for tipped employees will increase to \$12/hour



FLORIDA – CHOICE ACT

A non-compete agreement will be fully enforceable provided that:

- Employee has 7 days to sign and is advised in writing to seek counsel before signing;
- Employee acknowledges, in writing, that employee will receive confidential information or information about customer relationships during employment;
- Employee agrees not to assume a role with or for another business in which the employee would provide services similar to the services provided to the covered employer during the three years preceding the non-compete period, or in which it is reasonably likely the employee would use confidential information or customer relationships; and
- The non-compete period does not exceed four years.



INDIANA

- **Effective July 1, 2025 - new leave for employees to attend an attendance conference or case conference committee meeting at their child's school.**
 - One meeting per year
 - Unpaid time off
 - Can request documentation from the employee and the school
 - Employee must make reasonable effort to schedule as an electronic meeting



KANSAS

- **Amendments to Kansas Restraint of Trade Act**
 - Creates conclusive presumption for enforceability for non-solicitation agreements
 - Mandates reformation of overbroad protective covenants



MAINE

- **Effective September 24, 2025- accrual and carry over changes under the state's Earned Paid Leave**

- Maximum accrual cap increases to 80 hours
- Employees accrue full 40 hours annually



- **Update policies and handbooks**
- **Communicate changes**
- **Review payroll and HR systems to ensure accurate accrual and rollover**



MISSOURI

- **Earned Paid Sick Leave Law– repealed as of August 28, 2025**
 - Until that date, covered employees still must accrue leave.
 - Job protections when using covered leave apply until that date
 - Consider the impact that a takeaway may have on morale
 - The Missouri Department of Labor has not published any guidance on the repeal or interim compliance



NEW JERSEY

- **Pay Transparency Law – effective June 1, 2025**

- Applies to employers which have at least 10 employees over a span of 20 calendar weeks; and do business, employ individuals, or accept employment applications in New Jersey.
- Must disclose pay ranges and a description of all benefits and compensation in any job posting, including internal transfers.
- Must make reasonable efforts to make current employees aware of promotional opportunities.
- NJ Dept. of Labor & Workforce Development has not yet published formal regulation



TENNESSEE

- **Tennessee Human Rights Commission dissolved effective July 1, 2025**
 - Enforcement power over state anti-discrimination laws now rests with attorney general's office
 - Any charge pending as of June 30, 2025, will be investigated by the EEOC



VERMONT

- **Pay Transparency Law – effective June 1, 2025**
 - Applies to employers with at least five employees—including at least one based in Vermont.
 - Must disclose salary and compensation details in job postings for both new hires and internal promotions.
 - Covered employers' current employees must also be provided the salary range of their present positions upon request.
- **Changes to Parental Leave Act**
 - Expands definition of family member
 - Parental leave now covers recovery from childbirth or miscarriage or to care for foster child
 - Covered employees now entitled to safe leave, bereavement leave, and qualifying exigency leave



VIRGINIA

- **Expansion of non-compete prohibition – effective July 1, 2025**
 - Employers cannot enter into or renew non-compete agreements with employees who earn overtime under the FLSA



WASHINGTON

- **Expansion of Equal Pay and Opportunities Act—effective July 1, 2025**
 - New protected classes include age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability



WYOMING

- **Non-Compete Ban – effective July 1, 2025**
 - The law voids any restrictive covenant except:
 - Where a non-compete clause is part of a contract for the purchase and sale of a business, or the assets of a business;
 - Where a non-compete clause provides for the protection of trade secrets (as defined by Wyoming law);
 - Contractual provisions that provide for the recovery of all or a portion of the cost of relocating, educating, and training an employee, with the percentage of expense recovery based upon the amount of time an employee has served; and
 - For executive and management personnel and officers and employees who are professional staff to executive and management personnel.





CONSTANGY
BROOKS, SMITH &
PROPHETE LLP

QUESTIONS?

KSETEN@CONSTANGY.COM