MPLOYCO USA
The Power to Compete

HR COMPLIANCE BULLETIN

2025 Midyear Employment Law Compliance Trends

Throughout 2025, there have been significant changes in employment law at the federal and state levels. A review of agency guidance, presidential executive orders, litigation and recent and proposed legislation reveals a number of emerging trends that will affect employers for the remainder of the year. Employers should ensure that they are apprised of significant legal developments and are either in compliance or prepared to comply with their requirements.

The current administration and federal agencies have signaled several shifting priorities in 2025, including a focus on combating diversity, equity and inclusion (DEI) initiatives, rescinding sexual orientation and gender identity discrimination protections, altering enforcement of the U.S. Department of Labor's (DOL) independent contractor rule, clarifying wages for tipped workers and updating Form I-9 and E-Verify procedures. In 2025, we've also seen the emergence and continuation of a number of state legislation trends. In particular, states have continued to increase minimum wage rates, pass pay transparency laws, expand family and medical leave protections, broaden restrictions on employee noncompete agreements, pass earned wage access laws, restrict captive audience meetings in which employers discuss religious or political matters and expand paid family and medical leave protections.

Action Steps

The mid-year point is a great time for employers to evaluate their compliance with recent and upcoming employment laws. Understanding and responding to these trends will be essential for employers' success for the remainder of 2025 and beyond. This Compliance Bulletin highlights some key employment law trends and challenges employers will continue to face in 2025 and beyond.

Provided to you by **Employco USA, Inc.**

Highlights

Some of the most significant employment law trends in 2025 include:

- Shifting federal priorities regarding equal employment opportunity discrimination;
- Changes in the enforcement of the DOL's independent contractor rule;
- Clarification with respect to wages for tipped workers;
- State minimum wage increases;
- More state "captive audience" bans;
- Expansion of pay transparency laws;
- More state regulation of noncompete agreements;
- Continued legislation regarding earned wage access; and
- Increased state paid family and medical leave laws.

2025 Employment Law Trends

Federal Equal Employment Opportunity Discrimination

There have been significant shifts in priorities regarding the enforcement of employment discrimination and harassment laws under both the current presidential administration and federal agencies responsible for enforcing federal equal employment opportunity (EEO) laws, such as the Equal Employment Opportunity Commission (EEOC), in 2025. Key updates in priorities and related litigation are outlined below.

DEI

On **Jan. 21, 2025**, President Donald Trump issued an executive order (EO) aimed at combating illegal DEI programs. The EO orders all federal agencies to combat illegal private-sector DEI preferences, mandates, policies, programs and activities. The EO does not define "illegal DEI" but indicates that illegal DEI programs are those that violate civil rights laws protecting individuals from discrimination based on federally protected traits (including those traits protected from discrimination under Title VII of the Civil Rights Act (Title VII)—race, color, religion, sex or national origin).

Following Trump's EO, the EEOC and U.S. Department of Justice (DOJ), on **March 19, 2025**, issued joint guidance on illegal and discriminatory DEI practices. The EEOC also issued frequently asked questions (FAQs) regarding DEI-related discrimination. The guidance identifies instances of potential DEI-related discrimination in the workplace, including:

- **Disparate treatment** in employment actions (e.g., hiring; firing; compensation; access to training, mentoring or workplace networking; and selection for interviews, including inclusion in a candidate pool) that is motivated by a protected trait;
- **Limiting**, **segregating** or **classifying** employees based on a protected trait in a way that deprives them of employment opportunities (e.g., limiting membership in workplace groups, such as employee resource groups or affinity groups, to members of a particular protected class);
- Engaging in workplace **harassment** based on a protected trait (e.g., DEI training may constitute illegal harassment if it is so severe or frequent as to be intimidating, hostile or abusive); and
- **Retaliating** against employees who engage in protected activity (e.g., objecting to DEI-related discrimination, participating in an investigation or filing a charge).

Although the EO and EEOC and DOJ guidance do not alter existing law, which has always banned consideration of an individual's protected trait in employment decisions, they provide insight into how DEI-related discrimination claims may be evaluated and how employers may prevent such claims. In light of the guidance, employers may consider reviewing existing DEI practices to ensure they do not discriminate on the basis of a federally protected trait. For example, employers may wish to review existing hiring and interview selection practices, employee resource and affinity group or training program membership guidelines, and workplace trainings to confirm they do not discriminate against any protected class.

EVIDENTIARY STANDARD FOR REVERSE DISCRIMINATION

The traditional framework for analyzing Title VII discrimination claims generally requires an initial showing that the employer acted with a discriminatory motive based on the individual's protected trait. However, circuit courts historically disagreed on whether individuals alleging discrimination based on their membership in a majority group (e.g., status as white, heterosexual or male) must also show "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority."

On **June 5, 2025**, in *Ames v. Ohio Department of Youth Services*, the Supreme Court unanimously held that the requirement for additional background circumstances is inconsistent with Title VII's text and Supreme Court case law. The Supreme Court explained that Title VII prohibits discrimination based on an individual's protected trait and does not distinguish between minority-group plaintiffs and majority-group plaintiffs. Instead, all discrimination claims are subject to the same evidentiary standard, regardless of whether the plaintiff is a member of a majority or minority group.

While the Supreme Court's ruling does not impose new obligations on employers, it establishes a uniform standard for individuals alleging any claim of employment discrimination, including reverse discrimination. In some jurisdictions, reverse discrimination claims were subject to a heightened evidentiary standard, making it harder for majority group members to bring reverse discrimination claims. Following the Supreme Court decision, it will be easier for such individuals to allege reverse discrimination, which may increase the volume of such claims.

SEXUAL ORIENTATION AND GENDER IDENTITY

Both the Trump administration and the EEOC have signaled a shift away from gender identity and sexual orientation. On **Jan. 20, 2025**, President Donald Trump issued an EO to revoke EO 13988, signed by former President Joe Biden on Jan. 20, 2021. EO 13988 aimed to prevent and combat discrimination on the basis of an individual's gender identity or sexual orientation, including in the workplace. Moreover, in a statement on the EEOC's webpage, EEOC Acting Chair Andrea Lucas stated that one of the agency's priorities is "defending the biological and binary reality of sex and related rights, including women's rights to single-sex spaces."

Relatedly, on Apr. 29, 2024, the EEOC issued an updated Enforcement Guidance on Harassment in the Workplace (Enforcement Guidance). Among the updates, the EEOC added protections for gender identity and sexual orientation harassment to incorporate case law, including the Supreme Court's 2020 decision in *Bostock v. Clayton County*, that holds discrimination on the basis of sexual orientation constitutes sex discrimination under Title VII. On **May 15, 2025**, the U.S. District Court for the Northern District of Texas ruled that the EEOC exceeded its authority in expanding the definition of "sex" to include "sexual orientation" and "gender identity" and that neither Title VII nor the ruling in *Bostock* define "sex" accordingly. In its ruling, the Texas District Court vacated related elements of the Enforcement Guidance.

Although the Texas ruling affects how the EEOC may evaluate claims of harassment at the federal level, *Bostock* still prohibits employment discrimination based on sexual orientation and gender identity. Employers may also be subject to state or local laws that prohibit sexual orientation and gender identity harassment and discrimination. Therefore, employers should continue to ensure compliance with all relevant discrimination and harassment laws and guidance.

The DOL's Independent Contractor Rule

On March 11, 2024, the DOL's final independent contractor rule took effect. The rule revised the agency's guidance on how to analyze who an employee or independent contractor is under the Fair Labor Standards Act (FLSA). The final rule rescinded the 2021 Independent Contractor Rule and returned to the pre-2021 rule precedent. In doing so, the final rule restored the multifactor, totality-of-the-circumstances analysis to assess whether a worker is an employee or an independent contractor under the FLSA. The final rule ensures that all economic realities test factors are analyzed equally without assigning a predetermined weight to a particular factor or set of factors.

Several lawsuits are pending in federal courts challenging the 2024 final rule. In those lawsuits, the DOL has taken the position that it is reconsidering the final rule, including whether to rescind it. The DOL's Wage and Hour Division (WHD) is also developing a standard for determining employee versus independent contractor status under the FLSA. Consequently, on **May 1, 2025**, the DOL issued Field Assistance Bulletin (FAB) 2025-1 on how to determine employee or independent contractor status when enforcing the FLSA. Per the FAB, while the DOL reviews the 2024 final rule, the WHD will no longer apply the rule's analysis when determining employee versus independent contractor status in FLSA investigations. Instead, the WHD will rely on principles outlined in Fact Sheet #13 and the reinstated Opinion Letter FLSA2019-6.

Fact Sheet #13 provides a broader perspective regarding the meaning of "employment relationship." It specifically asserts that an employee under the FLSA is "one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves," and that an employer-employee relationship under the law is tested by "economic reality." It also lists seven factors the Supreme Court considers significant in determining employee classification under the FLSA. These factors are:

- The extent to which the services rendered are an integral part of the principal's business;
- The permanency of the relationship;
- The amount of the alleged contractor's investment in facilities and equipment;
- The nature and degree of control by the principal;
- The alleged contractor's opportunities for profit and loss;
- The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor; and
- The degree of independent business organization and operation.

The DOL's guidance does not change existing regulations but reflects how the department is allocating enforcement resources during the review of the 2024 final rule. The FAB supersedes any prior or conflicting guidance provided to the WHD staff on enforcement related to independent contractor misclassification. Until further action is taken, the 2024 final rule remains in effect for purposes of private litigation, and the FAB does not change the rights of employees or the responsibilities of employers under the FLSA. Employers should continue to monitor the situation for updates.

The DOL's 80/20/30 Rule

The FLSA allows employers to claim a tip credit when compensating tipped employees for tipped work. This credit allows employers to pay their tipped employees as little as $2.13 per hour as long as they make at least the federal minimum wage when tips are factored in. Tipped employees are those engaged in occupations in which they customarily and regularly receive more than $30 a month in tips. The DOL recognizes that some employees routinely engage in both tipped and nontipped occupations. These are known as dual-job situations. However, there is a difference between employees with dual jobs and employees who incidentally engage in nontipped occupations, such as maintenance work and preparatory or closing activities.

On Oct. 29, 2021, the DOL issued a final rule (80/20/30 Rule) that addressed the circumstances under which an employer can take a partial credit against its minimum wage obligations based on employee tips. This rule limited the time an employee could spend on work that was not tip-producing to 20% of the employee's hours in a given workweek while still allowing the employer to claim a tip credit. The final rule distinguished between tip-producing work (e.g., waiting tables) and work that supports tip-producing work (e.g., bussing tables). The final rule also imposed a new "30-minute" restriction, limiting the continuous time during a shift that a tipped employee could spend performing tip-supporting work.

On Aug. 23, 2024, the 5th Circuit vacated the 80/20/30 Rule, holding that it was inconsistent with the text of the FLSA and arbitrary and capricious under the Administrative Procedure Act (APA). On **Dec. 17, 2024**, the DOL published a final rule to remove the 80/20/30 Rule from its regulations and restore the dual jobs regulatory text that existed before the

80/20/30 Rule's effective date. Now, the DOL's regulations and guidelines note that an employer may pay an employee a tipped wage when the employee performs duties related to the tipped occupation without any time limitation. However, that employee may not be paid a tipped wage for time spent working in a different nontipped job.

Form I-9 and E-Verify Updates

The Immigration Reform and Control Act of 1986 requires all employers, regardless of size, to hire only individuals who may legally work in the United States. To comply with the law, employers must verify each individual's identity and employment authorization by completing and retaining the Form I-9. On **April 2, 2025**, the U.S. Citizenship and Immigration Services (USCIS) updated its Employment Eligibility Verification form (Form I-9) and the Department of Homeland Security (DHS) Privacy Notice in the form's instructions to align with statutory language. The revised Form I-9 is dated "01/20/25" and has an expiration date of "05/31/2027." Key updates to the Form I-9 include:

- Renaming the fourth checkbox in Section 1 to "An alien authorized to work";
- Changing "gender" to "sex" in the description of two List B documents in the Lists of Acceptable Documents; and
- Adding statutory language and a revised DHS Privacy Notice to the instructions.

Starting **April 3, 2025**, the Citizenship Status selection during case creation in E-Verify and E-Verify+ will change from "A noncitizen authorized to work" to "An alien authorized to work." However, employers should note that if an employee attests on Form I-9 as "A noncitizen authorized to work," the employer must select "An alien authorized to work" in E-Verify. E-Verify cases will display "An alien authorized to work," while employees and employers may continue to see "A noncitizen authorized to work" on Form I-9, depending on the form edition being used.

The updated Form I-9 is currently available for employers to use. Additionally, employers may continue to use prior editions of the form until their respective expiration dates, as follows:

- Form I-9 (08/01/23 edition) is valid until May 31, 2027; and
- Form I-9 (08/01/23 edition) is valid until July 31, 2026 (employers using this form must update their electronic systems with the May 31, 2027, expiration date by July 31, 2026).

Employers should ensure that the updated Form I-9 is incorporated into their employment verification process by July 31, 2026. Employers can find more information and additional resources by visiting the USCIS's I-9 Central.

Minimum Wage Increases

The FLSA requires all employers to pay covered employees a minimum wage of at least $7.25 per hour; however, states and municipalities may impose a minimum wage rate greater than the federal minimum. While the federal minimum wage has remained stagnant since 2009, a significant number of states and municipalities have imposed higher minimum wage rates over the years. In 2025 alone, over 20 states have or are scheduled to increase their minimum wages. While some of these increases have not substantially outpaced the federal minimum wage, there is a growing trend among states to increase the minimum wage to **at least $15 per hour**. Currently, 12 states (including the District of Columbia) have adopted a minimum wage of $15 per hour or more, including California, Connecticut, Delaware, Illinois, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Washington state and the District of Columbia. Employers can expect this trend to continue, with four more states (Florida, Hawaii, Missouri and Nebraska) scheduled to increase their minimum wage to at least $15 per hour in 2026 and two states (Alaska and Michigan) scheduled to do so in 2027.

As always, employers should pay close attention to both their federal minimum wage obligations and the minimum wage requirements for each state where they have employees. Because these wage rates change frequently and at different intervals, employers may wish to conduct regular payroll audits to ensure they remain in compliance. Failure to comply with minimum wage requirements can result in costly legal challenges and significant monetary penalties, so it is important that employers comply with their legal obligations.

Noncompete Legislation

In recent years, state restrictions on noncompete agreements (i.e., contractual term between an employer and a worker that blocks the worker from working for a competing employer or starting a competing business) have increased. The restrictions vary in severity and form, but some of the common ways in which states restrict noncompetes are near total bans (subject to limited exceptions), restrictions on noncompetes with employees who are below a certain rank or earning below a certain income threshold, noncompete bans for certain professions (e.g., lawyers or health care workers), and requirements that noncompete agreements must meet in order to be enforceable.

So far, four states (California, Minnesota, North Dakota and Oklahoma) have enacted legislation that bans noncompete agreements in nearly all circumstances. An additional 12 states (Colorado, the District of Columbia, Washington, Oregon, Idaho, Illinois, Virginia, Maryland, Rhode Island, Maine, New Hampshire and Wyoming) have enacted legislation restricting noncompete agreements based on employee income or rank, with Wyoming's ban and expanded restrictions in Virginia taking effect most recently, on July 1, 2025. Additional states have proposed legislation seeking to restrict noncompetes.

Employers in states with noncompete bans or restrictions may consider reviewing existing employee agreements or form agreements (such as new hire paperwork) to determine whether any contain noncompete provisions that are unenforceable. Employers may also prepare revisions to such agreements and consider whether to use alternatives to noncompete provisions (e.g., nondisclosure provisions) to protect competitive business information.

Captive Audience Bans

In 2025, a number of states have passed or introduced legislation to bar employers from requiring employees to attend "captive audience" meetings on religious or political matters. These laws prohibit employers from coercing employees into attending or participating in meetings sponsored by the employer and are concerned with the employer's views on religious or political matters (including union organization). In general, the bans on captive audience meetings include exceptions for certain communications that employers are required by law to make.

So far, 12 states have passed legislation allowing employees to opt out of such captive audience meetings, including Alaska, California, Connecticut, Hawaii, Illinois, Maine, Minnesota, New Jersey, New York, Oregon, Vermont and Washington. In light of these new laws, employers should be mindful of avoiding discussions of political or religious matters during required meetings (including discussions related to unionization) and may consider a review of employer policies regarding workplace meetings. Finally, employers should continue to monitor legal updates in the states where employees are located.

Pay Transparency Laws

Pay transparency laws have increased in recent years, and states have continued to pass and introduce pay transparency legislation in 2025. In general, pay transparency laws aim to address pay inequality and promote wage transparency by requiring employers to disclose compensation information and increasing employee access to salary data. These laws vary in their requirements but often require employers to post salary ranges in job postings or disclose salary information to existing employees and job applicants.

Colorado started the trend of pay transparency laws when it enacted the first legislation of its kind in 2021. Between 2021 and the end of 2024, additional pay transparency laws took effect in California, Connecticut, the District of Columbia, Hawaii, Maryland, Nevada, New York, Rhode Island, Washington, and a number of municipalities. More states continued the trend in 2025, with new pay transparency legislation taking effect in Illinois, Minnesota, New Jersey and Vermont. An additional pay transparency law will take effect in Massachusetts on Oct. 29, 2025.

Given the rapid spread of pay transparency laws, even if employers are currently unaffected by pay transparency mandates, they should consider developing strategies to address this issue, as pay transparency likely already impacts them directly or indirectly. Additionally, employers hiring remote employees may be subject to pay transparency laws in other states even if the employer does not have a physical presence in such location. Employers can protect themselves and help ensure compliance with applicable laws by understanding applicable pay transparency requirements and regularly reviewing job postings.

Earned Wage Access Laws

Earned wage access is a service, also known as an on-demand pay service, which allows workers to access earned but unpaid income before receiving a paycheck. Through financial technology, employees can access a portion of their paychecks ("earned income") before payday through an earned wage access service provider. Since 2022, several states have enacted earned wage access laws, including Arkansas, Indiana, Kansas, Maryland, Missouri, Nevada, South Carolina, Utah and Wisconsin. California has also adopted regulations for earned wage access services, but not laws. In 2025, nearly 20 states have proposed legislation to regulate earned wage access.

These laws vary in form, but broadly speaking, earned wage access laws aim to regulate providers of direct-to-consumer or employer-integrated wage access services. While earned wage access is generally defined as advances based on a consumer's earned but unpaid wages, these laws lack consistency, creating a patchwork legal landscape across different states. For example, some states consider earned wage access services a "loan" while other states expressly exclude them from their state's definition of "loan." The services also vary in treatment of common fees, such as voluntary tipping and expedited transfer fees.

Employers are not required to offer earned wage access, but they may choose to do so as a financial wellness employee benefit that may lead to improved employee productivity, recruitment and retention. Employers that offer these services must consider their compliance obligations, especially related to pay cards, paystubs, wage deductions, wage assignments and garnishments.

Paid Family and Medical Leave

In recent years, state legislatures have started to pass laws entitling workers to paid family and medical leave in certain circumstances. Currently, nearly one-third of states (and the District of Columbia) have passed their own paid family and medical leave laws. In general, paid family and medical leave programs provide employees partial wage replacement during time off to care for an ill family member or their own medical conditions. The programs differ regarding features like the amount of leave compensated, the compensation rate, and, importantly, whether they provide employees with a right to job-protected leave. The laws also vary on whether leave is funded by employers, employees or both, and whether insurance programs are voluntary or mandatory. This trend continued in 2025, as paid family and medical leave laws were expanded in a number of states, including California, Connecticut, Rhode Island, Vermont and Washington. In addition, new paid family and medical leave programs began in 2025 in Delaware and Maine, with additional programs scheduled to begin in Minnesota in 2026 and Maryland in 2027. In light of the continued push for paid family and medical leave entitlements, employers should continue to monitor paid family and medical leave updates and may wish to review existing policies and procedures to ensure compliance. Further, while paid family and medical leave laws become more widespread, employers may consider embracing this trend and offering employees paid leave even if they are not legally required to do so. While paid leave may seem like a costly burden for some employers, it can be advantageous for both employers and employees. Offering paid leave can be an effective way to attract and retain key talent, reduce burnout, improve employee productivity and strengthen employee wellness by allowing for greater work-life balance.

Conclusion

Many of the compliance challenges employers faced in early 2025 will continue through the rest of the year and beyond. Additionally, organizations' compliance obligations are growing and becoming more complex. As a result, employers will need to find ways to establish effective and efficient compliance practices. Proactively embracing and effectively responding to the evolving regulatory landscape can help employers establish a strong compliance foundation, which is vital for sustained growth and success in today's competitive business landscape. The best strategies will vary by workplace, but being aware of the trends and themes presented in this Compliance Bulletin can guide employers as they establish compliance strategies.