



Jackson, Wyoming Employment Law Seminar

for corporate counsel, business owners & human resource professionals

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Presentations:

Navigating the Multi-State Minefield, From Hiring to Firing (and Everywhere in Between)

Christina M. Jepson

Termination Trepidation: Identifying and Avoiding the Risks Associated with Employee Terminations and Discipline

Leah C. Schwartz and Liz M. Mellem

2025 Employment Law Update

Michael Judd

A Different
**LEGAL
PERSPECTIVE**

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Jackson, Wyoming Employment Law Seminar

Navigating the Multi-State Minefield, From Hiring to Firing (and Everywhere in Between)

Christina M. Jepson

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For the past 30 years, Christina has partnered with large and small companies to solve their labor and employment issues. She assists clients with the full spectrum of employment matters, including daily management of employment issues as well as litigation.



Christina M. Jepson

Shareholder | Salt Lake City

Biography

Christina has dedicated her career to assisting employers in navigating the complex web of federal and state employment laws. Christina helps companies handle a variety of employment issues including conducting trainings, preparing agreements and policies, counseling regarding complicated employee issues, advising regarding terminations, and defending lawsuits. Christina brings creative approaches to difficult employee issues. Christina previously served as the chair of the firm's Employment & Labor Law department for 10 years and is the past chair of the Labor & Employment Section of the Utah State Bar. Christina is ranked as a top labor and employment lawyer by *Chambers and Partners USA* (Tier 1), *Utah Business Magazine* Legal Elite, *States Super Lawyers*, and *Best Lawyers in America*. Christina was named the 2023 Employment Lawyer of the Year (Defense Side) by the Utah State Bar Labor & Employment Section.

Christina regularly represents employers in lawsuits and counsels employers in a variety of areas including:

- Sex discrimination and sexual harassment
- Age discrimination
- Religious discrimination
- ADA, disability and employee medical issues
- Wrongful termination
- Employment contracts and compensation
- Non-compete, confidentiality, and non-solicitation agreements
- Handbooks
- Social media in the workplace

Contact information

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Capabilities

Employment & Labor
Employment Litigation
Trade Secret Litigation

Licensed/Admitted

Utah

U.S. Dist. Court, Dist. of Utah

U.S. Court of Appeals, 10th Circuit

U.S. Supreme Court

- Fair Labor Standards Act (FLSA), overtime, exemptions, collective actions and wage and hour issues
- Independent contractor issues
- Drug and alcohol testing
- FMLA and other leave issues
- Terminations and unemployment
- Union issues
- Investigations
- UALD and EEOC charges and audits
- Training for management and employees

Christina has been an adjunct professor of law at the University of Utah S.J. Quinney College of Law for over 15 years. She teaches Labor and Employment Law in the Master of Legal Studies program and a litigation skills class in the Juris Doctor program. She is the past president of the University of Utah S.J. Quinney College of Law Board of Trustees.

Prior to joining Parsons Behle & Latimer, Christina served as a judicial law clerk to the Honorable David K. Winder, then Chief Judge of the United States District Court for the District of Utah, and the Honorable Stephen H. Anderson at the Tenth Circuit Court of Appeals. She graduated first in her class from the University of Utah S.J. Quinney College of law, where she also served on the Utah Law Review and competed for the National Moot Court Team.

Christina is a member of the American Bar Foundation Fellows.

Experience

Wage and Hour Litigation

Christina has represented various companies (including a software company and call center) in wage and hour collective actions.

ERISA Health Care Defense

Christina has represented employer insurance plans in ERISA lawsuits regarding denial of coverage for healthcare claims.

Discrimination Litigation

Christina has represented numerous employers in defending charges of discrimination as well as lawsuits alleging discrimination including sex discrimination, race discrimination, religious discrimination and sexual harassment.

Investigations

Christina has conducted investigations for private employers, public employers and universities.

Employment Training

Christina has conducted employment training for private employers, public employers and universities.

Medical Practices

Christina has represented medical practices and physicians regarding non-competes and other issues.

Employment Contracts

Christina has represented a variety of companies with employment agreements across industries and sectors, including real estate and development, investment, mining, healthcare, dental, agriculture, medical device, tourism, entertainment, nutritional supplements, physician practices, call centers, bio health, manufacturing, software, consumer products and construction.

Accomplishments

Professional

Best Lawyers in America, Employment Law Management, 2014 - 2026

Intermountain States Super Lawyers: Ranked as one of the “Top 50 Women Lawyers,” 2019 - 2024; also ranked as a top attorney in Employment & Labor 2013-2014, 2016-2024

Utah Business Magazine, “Legal Elite,” Labor & Employment, 2012 - 2023

Defense Research Institute (DRI), Utah Contributor to Fifty State Compendium, 2019 – 2024

Chambers and Partners USA, Tier 1, Labor & Employment Law, 2019 – 2025

Parsons Behle & Latimer

- Chair, Employment & Labor Practice Group, 2011 - 2020
- Lateral Hiring Committee
- Web Design Committee
- Wellness Committee
- Opinion Letter Committee
- Recruiting Committee

Academic

University of Utah, S.J. Quinney College of Law (J.D., 1995)

- Graduated 1st in the class
- Order of the Coif
- Named the Outstanding Woman Law Graduate
- William H. Leary Scholar
- Winner of Law School Moot Court Competition
- Member of National Moot Court Team
- Best Brief and Best Oralist at Regional Moot Court Competition
- Member of Utah Law Review

University of Utah (B.S., 1992)

- Magna Cum Laude
- Phi Kappa Phi, Golden Key, and Pi Sigma Alpha Honor Societies.

Associations

Professional

Member, American Bar Foundation

Utah State Bar Labor and Employment Section

- Chair, 2014 - 2015
- Vice-Chair, 2013 - 2014
- Treasurer, 2012 - 2013
- Secretary, 2011 - 2012

Member, Utah State Bar Character and Fitness Committee, 2001 - 2010

Member, Utah State Bar Association Summer Convention Committee 2015

Member, Utah State Bar Association Spring Convention Committees 2013 - 2015

Society for Human Resource Management (SHRM)

Co-President, Utah Center for Legal Inclusion, 2023 to present

Pro Bono Attorney for Domestic Violence Victims, 2000 - 2010

Pre-Litigation Chairperson, Department of Professional Licensing, 2003 - 2005

Judge Pro Tempore, Third District Court Small Claims Court, 1997 - 2007

Community

University of Utah S.J. Quinney College of Law

- Past president, Board of Trustees, 2021 - 2022
- President, Board of Trustees, 2019 - 2021
- President-elect, Board of Trustees, 2017 - 2019
- Member, Board of Trustees, 2008 - present
- Chair, Alumni Relations Committee, 2015 - 2017
- University of Utah Law School Search Committee for Career Development Director
- University of Utah Law School Search Committee for Dean of Academic Affairs

Adjunct Professor of Law, University of Utah Law S.J. Quinney College of Law, 2007 to present

Labor and Employment Law in Master of Legal Studies Program, 2020 to present

Pre-Trial Practice in JD Program, 2007 - present

Adjunct Faculty Service Award 2022

University of Utah Alumni Association Board of Directors Member, 2005 - 2008

- Chairperson and Member, Community Service Committee, 2006 - 2008
- Member, Development Committee, 2007 - 2008
- Member, Scholarships and Awards Committee, 2006 - 2007
- Member, Legislative Affairs Committee, 2005 - 2006
- Member, Athletics Advisory Council, 2005

Member, Visit Salt Lake Human Resource & Compensation Committee, 2021 - present

Member, Board of Directors, LiveOn.org, currently

Member of Board of Trustees, Visit Salt Lake, 2014 - 2018

Member, Board of Directors, Ballet West, 2012 - 2015

Pro Bono Clients

Utah Film Center

Girls on the Run

Megan Blues Studios

Salt Lake City Arts Council

Political

Member Utah Trafficking in Persons Taskforce Legal Subcommittee, 2016 - 2020

Democratic Party Sexual Harassment Committee, 2018 – 2019

Articles

“Trump 2.0: How the second Trump administration has impacted employers,” *Utah Business*, March 12, 2025

“Background Check Laws: Utah,” *Practical Law*, July 2, 2024

“Independent Contractors: Utah,” *Practical Law*, August 4, 2023

“Leave Policy Language: Utah (2024),” *Thomson Reuters*, (March 20, 2024)

“Drug Testing Laws – Utah,” *Practical Law*, 2014 to present

“Employment Claims in Release Agreements: Utah,” *Practical Law*, 2014 to present

“Anti-Discrimination Laws Utah,” *Practical Law*, 2014 to present

“Unionization Trending,” *Employment Law Update*, Dec. 13, 2022

“Employee Privacy Laws: Utah,” *Practical Law*, 2014 to present

“Hiring Requirements: Utah,” *Practical Law*, 2014 to present

“Wage and Hour Laws: Utah,” *Practical Law*, July 28, 2022

“SCOTUS Rules States Can be Sued Under USERRA,” *Employment Law Update*, July 15, 2022

“The Impaired Mobile Employee: What are the CMD’s Options?” April 30, 2022

“Drug Testing Laws: Utah,” *Practical Law*, Feb. 7, 2022

“Tenth Circuit Court of Appeals Rules that Computer Log-in Time for Certain In-Office Workers is Compensable Under Fair Labor Standards Act,” *Employment Law Update*, Jan. 11, 2022

“Workers’ Compensation Laws: Utah,” *Practical Law* 2021

“DRI Employment Law Compendium, Utah Section,” DRI Employment and Labor Law Committee, February 17, 2021

“SCOTUS Rules States Can Be Sued under USERRA Leave Policy Language: Utah,” *Practical Law*, November 2020

“Leave Policy Language: Utah,” *Practical Law*, Nov. 2020

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Presentations

Religion in the Workplace: Back in the Spotlight, April 8, 2025

Parsons Behle & Latimer/SHRM 2025 Salt Lake City Employment Law Symposium

Wage and Hour: Hot Topics and Real-Life Examples of Employers Running Afoul of the Fair Labor Standards Act, April 8, 2025

Parsons Behle & Latimer/SHRM 2025 Salt Lake City Employment Law Symposium

FMLA in Real Life: a Caselaw Discussion, Oct. 23, 2024

Parsons Behle & Latimer 2024 Idaho Employment Law Seminar

The Current Status of DEI and What it Means for Your Business, Sept. 25, 2024

Parsons Behle & Latimer 2024 Montana Employment Law Seminar

“What is Going on with DEI”, ACG, June 3, 2024

“Navigating the ADA: Case Studies on Reasonable Accommodation,” Public Sector Human Resources Association - Utah Chapter, Feb. 7, 2024

“Navigating the ADA: Case Studies on Reasonable Accommodation,” Parsons Behle & Latimer 35th Annual Employment Law Seminar with SL SHRM, May 9, 2023

“Hot Employment Law Topics for 2023,” University of Utah S.J. Quinney College of Law, Jan. 13, 2023

“Privacy In the Workplace: How Much Snooping is Legal and Proper?” Parsons Behle & Latimer Annual Employment seminar, Oct. 5, 2022

“Common Mistakes and Horror Stories,” WECon Utah SHRM Conference, Aug. 31, 2022

“Independent Contractors or Employees?” 34th Annual Parsons Behle & Latimer Employment Law Seminar, June 16, 2022

“The Impaired Mobile Employee: What are the CMD’s Options?” International Corporate Health Leadership Council, April 30, 2022

“Political Speech in the Workplace,” 33rd Annual Parsons Behle & Latimer Employment Law Seminar, Oct. 27, 2021

“Onboarding Talent Through Wellbeing and Inclusive Practices,” Utah State Bar, May 26, 2021

“Trends in Diversity, Equity & Inclusion Programs,” 32nd Annual Parsons Behle & Latimer Employment Law Seminar – Virtual, Nov. 10, 2020

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Navigating the Multi-State Minefield, From Hiring to Firing (and Everywhere in Between)

Christina Jepson
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Sept. 26, 2025 | Teton County Library, Ordway Auditorium

Presenter



Christina M. Jepson
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Legal Disclaimer

This presentation is based on available information as of Sept. 26, 2025, but everyone must understand that the information provided is not a substitute for legal advice. This presentation is not intended and will not serve as a substitute for legal counsel on these issues.

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What part of the employee life cycle might be affected by multi-state considerations?

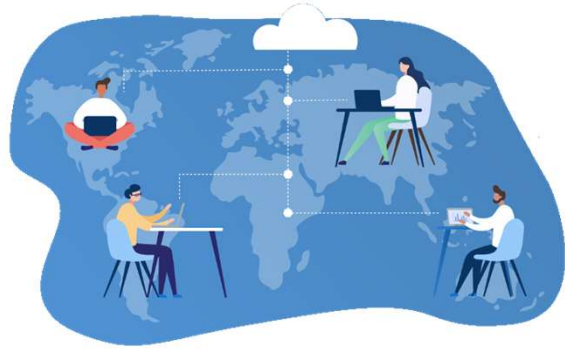


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Today's Agenda and Take-Away Topics

- How do you become a multi-state employer?
- How can multi-state considerations change your hiring process?
- How will multi-state issues affect your policies and procedures during an individual's employment?
- What may look different about the employment separation process?



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Becoming a Multi-State Employer

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How do you become a multi-state employer?



Workers Are Moving First, Asking Questions Later. What Happens When Offices Reopen?

March 9, 2021 - 8:28 AM ET
Heard on All Things Considered

LAUREL WAMSLEY

3-Minute Listen



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Now what?

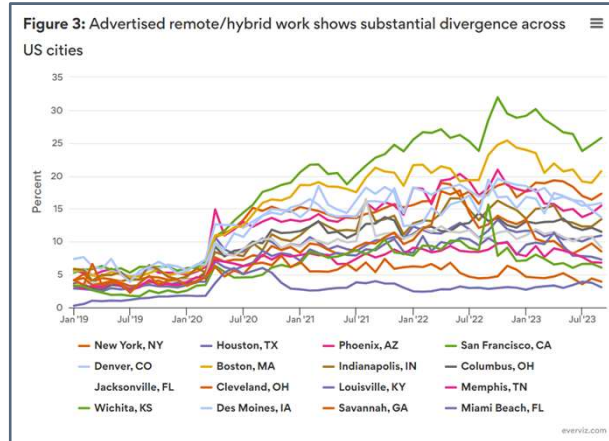
- The US has federal, state, and local governments. They each have powers over employers and make laws that typically apply to and protect people subject to their jurisdictions. And these laws are not always uniform.
- Minnesota employment laws likely now apply to the NPR couple.
- Minnesota tax issues arise, such as state employment and business taxes.
- Minnesota business license may be required.
- Worker's compensation and health insurance policies may be different in Minnesota . . .
- And the list goes on.



Remote work is an entrenched expectation

Practices vary widely by region, industry, and education level

Remote-work expectations are highest on the coasts, but cities like Denver and Des Moines don't lag far behind.



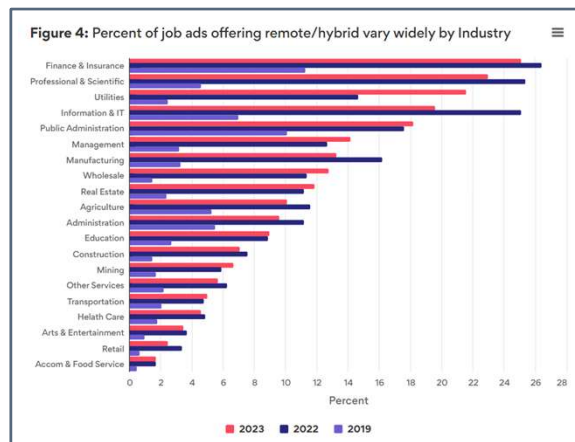
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And that's only becoming more the case

Practices vary widely by region, industry, and education level

While remote work is more prevalent in certain industries, the trend towards remote work appears in virtually every sector—and is proving sticky



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Here's a thought: can you avoid the problem altogether?

- Some employers try to avoid the consequence of the multi-state minefield by classifying workers as independent contractors
 - Serious risks associated with misclassification:
 - Lawsuits (including collective actions under the FLSA)
 - Audits (by the IRS and the DOL)
 - Multi-factor test:
 - Control
 - Opportunity for profit/loss
 - Permanency of relationship
 - Integral to business
 - Investment by the parties
 - Skill and initiative

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Let's start at the very beginning . . .

- Find out where your existing employees work
- This may sound simple . . . but fair warning:

Harder than it looks!

$$\frac{2x - 3}{x + 1} \leq 1$$

- A) $(-\infty, 4]$
- B) $(-\infty, -1) \cup (-1, 4]$
- C) $(-1, 4]$
- D) No solution



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Where do my employees work?

- You can look at permanent addresses, but . . .
 - What if an employee who works remotely does not self-disclose that they moved across state lines a few months ago?
 - You may be bound by employment laws in the new state!
 - What if an employee lives in Wyoming, but regularly goes to California to sell product on behalf of your company? Are they now a California employee? Well, let's work through an example . . .
 - To analyze whether you have to pay California unemployment insurance, employment training tax, and state disability insurance, you have to apply FOUR tests.

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Four tests:

(1) Localization An employee's services are "localized" in California, and, therefore, considered subject to employment taxes if all or most of the employee's services are performed in California with only incidental services performed elsewhere (for example, where the out-of-state service is temporary or transient in nature or consists of isolated transactions).

- So if your Wyoming-based employee always or mostly works in California, you have to purchase California unemployment insurance and disability insurance, and pay employment training tax. If not, apply the next test:

(2) Base of Operations If test (1) does not apply in any state, services are considered subject to these taxes if some of the services are performed in California and the employee's one and only base of operations for all of his or her services is in California.

- So if the "base of operations"—i.e., a more or less permanent place from which the employee starts work and customarily returns to receive employer's instructions, to receive communications from customers or others, to replenish stocks or supplies, to repair equipment is in California for that employee—then you have to purchase California unemployment insurance and disability insurance, and pay employment training tax. If not, apply the next test:

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Four tests, continued:

(3) Place of Direction and Control If tests (1) and (2) do not apply in any state, an employee's services are considered subject to these taxes if some of the services are performed in California and the place from which the employer exercises basic and general direction and control over all the employee's services is in California.

- Does your Wyoming employee not meet the other two tests, but receive "basic and general direction and control" from California? If so, you have to purchase California unemployment insurance and disability insurance, and pay employment training tax. If not, apply the next test.

(4) Residence of Employee If tests (1), (2), and (3) do not apply in any state, an employee's services are considered subject to California employment taxes if some services are performed in California and the employee's residence is in California. Residence means having a more or less permanent place of abode. It is more than a mere transient stopover but does not require the intent necessary to establish a permanent residence in the domiciliary sense.

- So . . . If you're a Wyoming-based employer who's hiring a California resident to work in California, you have to purchase California unemployment insurance and disability insurance, and pay employment training tax.

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But wait! There's more

What about personal income tax?

- In California, the Personal Income Tax (PIT) withholding and wage reporting requirements differ from those shown on the last slide for California unemployment insurance, employment training tax, and state disability insurance.
- Wages paid to a resident employee for services performed within or without California, or to a nonresident employee for services performed within this state, are subject to California PIT withholding and reportable as PIT wages.
- For PIT purposes only, an employer is an individual or organization that pays wages to employees for services performed within California and meets one or more of the following criteria:
 - Does business in California.
 - Derives income from sources within California.
 - Is subject in any manner whatsoever to the laws of California.
- An employer that meets the above definition must withhold California PIT and report PIT wages paid to resident employees for services performed within and/ or without this state and for nonresident employees for services performed within this state.
- Does this apply to your Wyoming-based employee? For work done within California, yes!

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Get organized

- Institute a policy requiring notice of a move out of state before it occurs . . .
- Because ignorance is *not* a defense against violating local law
 - Be aware that some states have provisions that preempt other states' laws—i.e., they say that if an employee works or lives there, their state laws trump any conflicting provisions in other states' laws
 - If you have an employee who lives and works in Colorado, Colorado's state laws about non-solicitation and non-competition agreements will govern, *not Wyoming's*
- Establish an assessment and approval process
 - Document the process to evaluate requests to ensure consistent treatment

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Register to do business

- If you've already decided to be a multi-state employer (or have now found out you are), check to see local registration requirements
- In conjunction with that registration, research:
 - New hire reporting requirements
 - Mandatory postings in the workplace
 - State and local (i.e., municipal) ordinances, laws, regulations

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Register to do business

- If you've already decided to be a multi-state employer (or have now found out you are), check to see local registration requirements
 - Think about costs:
 - A business license in Alaska costs \$50 for a one- or two-year license, and another \$50 to renew.
 - But a similar business license costs \$500 a year plus filing fees in Nevada.
- In conjunction with that registration, research:
 - New hire reporting requirements (ask the licensing agencies)
 - Mandatory postings in the workplace (the posters vary widely by states)
 - State and local (i.e., municipal) ordinances, laws, regulations

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Check your job posting

- Think about designating state of hire—even if remote
- Think about required disclosures in job postings: pay transparency
 - In Massachusetts, applies to employers with 25+ employees
 - In Vermont, applies to employers with 5+ employees
 - In Minnesota, applies to employers with 30+ employees



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As you're sorting resumes . . .

- What kind of checks can you run?
 - Different background check laws
 - Ban the box legislation
 - Does not exist in Wyoming, but in nearby states, including, for example, Washington, it applies to private employers.

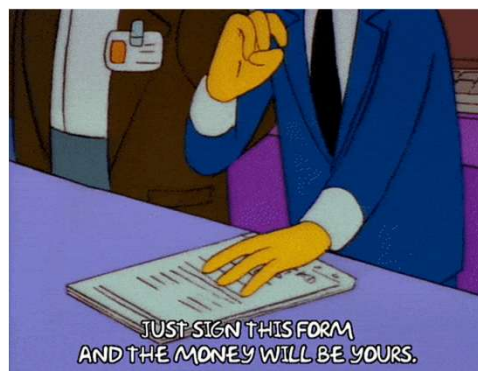


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Make a decision, and put it in the offer letter

- Include authorized location/state in the offer letter (e.g., “You are being hired to work in Wyoming”)
- Require disclosure of a move prior to the move
- Also, at this point: think about restrictive covenants you may want to include . . .



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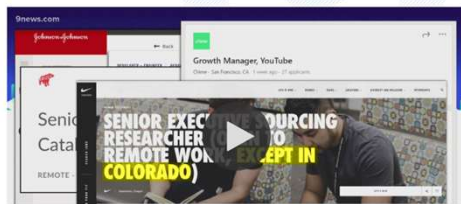
And here's one more idea . . .

. . . consider no hire states!

INVESTIGATIONS

Companies post jobs where you can work anywhere - except for Colorado

A 9Wants to Know investigation found at least 10 companies may be avoiding hiring Coloradans to get around a new labor law.



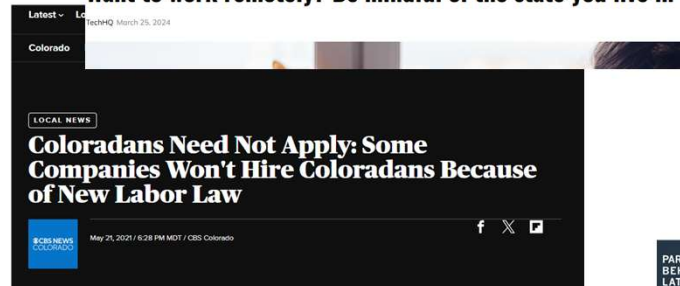
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T_HQ

Latest News Topics Podcasts Events Resources

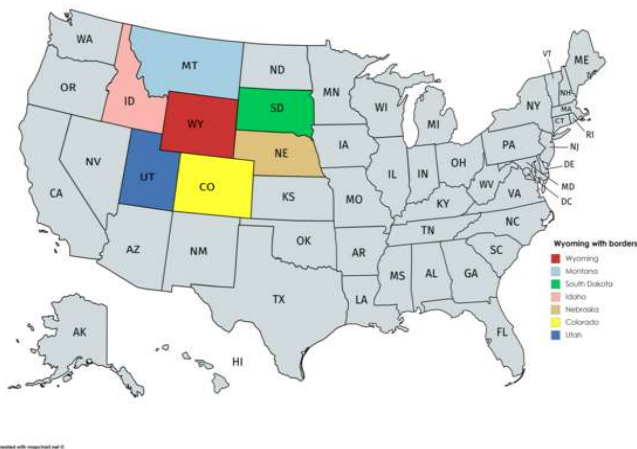
DATA CENTRES

Want to work remotely? Be mindful of the state you live in



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State laws differ . . .



Created with mapbox.com

- It's illegal to ride a horse while under the influence in Colorado
- You can't fall asleep in a cheese factory in South Dakota
- Nebraska law allows a parent to be arrested if their child burps during church
- It's against the law to hunt elephants in Utah (not that they're easy to find in the wild)
- In Idaho, you can't ride a merry-go-round on a Sunday
- In Montana, you can't ride a lasso (who does this?)
- And it's illegal to wear a hat that blocks someone's view in a theater in Wyoming

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Do employment laws differ, too?

- California employment laws...enough said
- Lots of variation in state laws related to medical leave, protected classes, vaccines, etc.
- Arizona law requires certain types of paid leave
- Montana law prohibits age discrimination against any age, not just 40 and above, and prohibits termination without “good cause” as defined by the statute



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And some more . . .

- Nevada law requires daily overtime (for more than 8 hours in a day)
- Colorado law strictly limits the use of non-competes and makes violation of that law a crime
- . . . and that's just the beginning

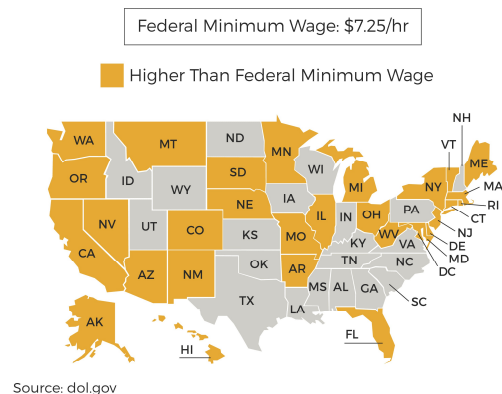


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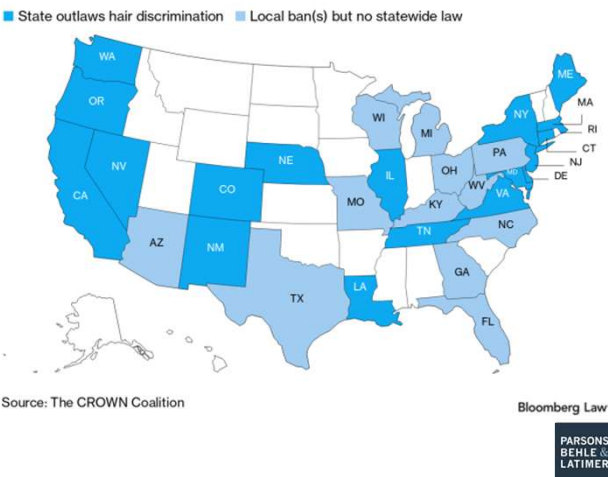
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And some more . . .

Minimum Wage



Bans on Race-Related Hair Bias



Policies and Practices for Multi-State Employers

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Handbooks, handbooks, handbooks

- Of course we are going to tell you to update your handbooks and potentially create different handbooks for different states
- But that's not all
 - You may need to provide additional training
 - Certainly for managers
 - Most likely for HR and leaders, too
 - Different required postings in the workplace or on the intranet
 - You may think about how different policies for different employees affects company culture
 - You may even want to think about potential perceived discriminatory impact

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Pay and wages

- Different states and even municipalities can impose different minimum wage standards
- Check on differences in overtime calculations (is it weekly or daily?)
- Pay frequency requirements change state by state
- Meal break requirements (and pay for them) can vary state by state
 - Federal law provides no paid breaks
 - California employees get a 30-minute paid meal break during a shift that is longer than five consecutive hours

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Protected Classes

You likely know the federal protected classes and Wyoming's protected classes by heart.

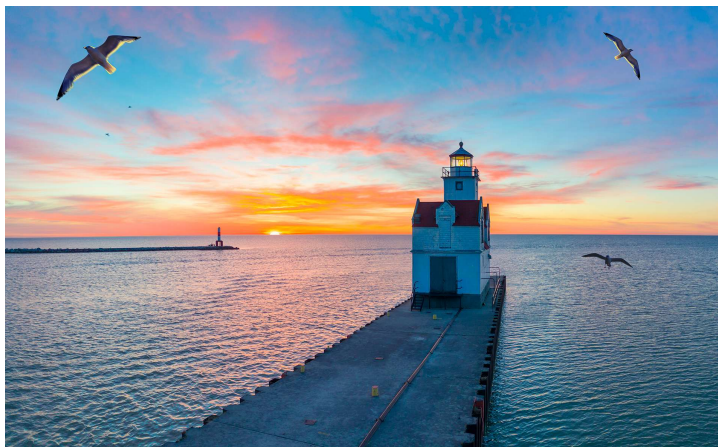
In Wyoming, employers may not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, age, disability, and political affiliation and belief.

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But let's say an employee moves to Michigan

What protected classes do they gain from living in Michigan?



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What if they move to San Francisco?



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And how about Chicago?



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So to avoid feeling like this . . .



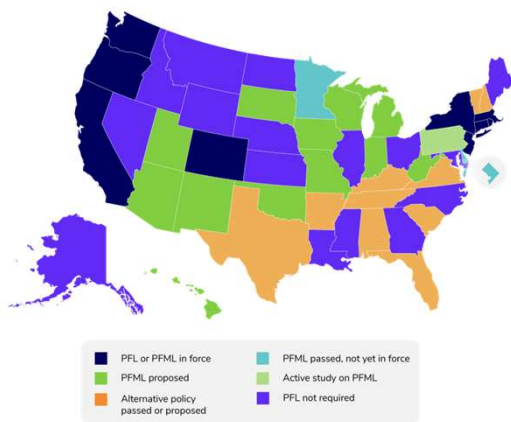
. . . you've got to stay informed and organized.

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What other laws change state by state?

State Paid Family Leave



And remember, this information is subject to (yearly) change . . .

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Other types of paid leave

This can include things like:

- Paid jury duty time
 - Alabama, Tennessee, Georgia (and others)
- Bereavement leave
 - California, Illinois, Maryland, Washington, Oregon
- Domestic violence leave
 - Arizona (and others)



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Are there more things to think about?

Of course!

- Workers' compensation programs
- Tax issues
- Unemployment insurance



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Employee Termination Issues for Multi-State Employers

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How should you pay out the last check?

- You may know this answer for your home state, but what about other states?
 - What's the required timing?
 - Colorado: Next scheduled pay date
 - Maryland: On or before next scheduled pay date
 - Alabama: no timing requirement!
 - Some jurisdictions differentiate between fired employees and resigning employees:
 - In Texas, if an employee is laid off, final pay is due within six calendar days. If the employee quits, retires, resigns, or otherwise leaves employment voluntarily, the final pay is due on the next regularly-scheduled pay date.



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Review severance agreements

- You'll want to ensure legal compliance with state laws for any state where they're being used
- Update the waiver of claims sections
 - Don't want to waive California claims for a Colorado employee (or vice-versa)!



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Can you even have restrictive covenants?

State laws differ greatly on scope and enforceability of non-competition, non-solicitation, and non-disclosure agreements.

[Home](#) > [Non-Competes And Protection Of Corporate Assets](#) > Florida On Verge Of Enacting Employer-Friendly Non-Compete Law

Florida on Verge of Enacting Employer-Friendly Non-Compete Law

By Guy Brenner, Jurate Schwartz, Anielle E. Kobetz & Justin Chuang on June 30, 2025

UPDATED July 7, 2025

COLORADO NEWSLINE

GOVERNMENT ENVIRONMENT JUSTICE HEALTH ECONOMY COMMENTARY

LEGISLATION

These bills on labor issues passed the Colorado Legislature in 2025

Gov. Polis expected to veto legislation that would ease union formation

BY: CHASE WOODRUFF - MAY 16, 2025 4:00 AM



Minnesota Reformer

WORK & MONEY CIVIL RIGHTS HEALTH CARE SCHOOLS HOUSING & TRANSPORTATION

GOVERNMENT & POLITICS WORK & MONEY

Democrats protect ban on noncompete agreements from carve-outs sought by big businesses

BY: MAX NESTERAK - JUNE 10, 2025 9:51 AM



Attorney General Bonta Issues Consumer Alert Reminding California Workers of Their Rights

Press Release / Attorney General Bonta Issues Consumer Alert Reminding Calif...

Tuesday, October 15, 2024

Contact: (916) 210-6000, agpressoffice@doj.ca.gov

No-poach, non-compete, and others anti-competitive agreements that restrict employee mobility are generally unlawful in California

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How long do you keep employment records?

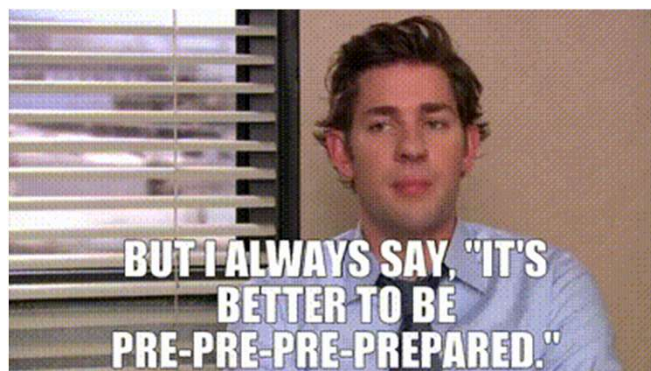
Your general policy may be three years, but . . .

- California requires four years
- Montana requires five years
- Connecticut requires seven years
- And different municipalities may impose different requirements, too

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Remember, this is a non-exhaustive list



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Questions?

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Thank You



Christina M. Jepson
cjepson@parsonsbehle.com

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Thank you for attending

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Jackson, Wyoming Employment Law Seminar

Termination Trepidation: Identifying and Avoiding the Risks Associated with Employee Terminations and Discipline

Leah C. Schwartz

307.403.0421 | lschwartz@parsonsbehle.com

Liz M. Mellem

406.317.7240 | amellem@parsonsbehle.com

Leah Schwartz is the managing shareholder of Parsons' offices in Jackson, Wyoming. She is a litigator and problem solver practicing in several areas including business litigation, land use, real property disputes, fiduciary and trust matters and employment. Leah also maintains an active appellate practice.



Contact information

307.403.0421

lschwartz@parsonsbehle.com

Capabilities

Business & Commercial Litigation

Real Estate Litigation

Employment Litigation

Employment & Labor

Appeals

Licensed/Admitted

Wyoming

Colorado

U.S. District Court, District of Wyoming

U.S. Court of Appeals, Tenth Circuit

Leah C. Schwartz

Office Managing Shareholder | Jackson

Biography

Leah works with a broad range of corporate and individual clients to resolve civil disputes inside and outside the courtroom. She has extensive experience appearing before federal and state courts and administrative agencies at both the trial and appellate levels. Her clients include for- and non-profit businesses, landowners, employers and professionals. Leah's work extends across Wyoming and beyond.

Leah practiced with the Wyoming law firm of Davis & Cannon, LLP for several years before returning to her hometown of Jackson to manage her family's law firm Ranck & Schwartz, LLC until joining Parsons in January 2024. Leah is a fourth-generation Wyomingite.

Experience

In the Matter of the Estate of Gibson S. Peterson, Probate No. 21978A (Wyoming State Ct., Natrona County)

Defended client beneficiary's interests in probate dispute as lead and first-chair trial counsel.

Kittleson et al v. Star Valley Ranch Ass'n, Civil Action No. 2018-115-DC (Wyoming State Ct., Lincoln County)

Achieved merits ruling in favor of HOA client as lead and first-chair trial counsel.

Tozzi v. Moffett, 430 P.3d 754 (Wyo. 2018)

Co-counsel in trial proceedings on summary judgment and subsequent appeal resolved in favor of client facing claims for breach of fiduciary duty.

HB Family Ltd. Partnership et al v. Teton County and Teton Raptor Center, 468 P.3d 1081 (Wyo. 2020)

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Defended variance permit challenge on behalf of non-profit client as co-counsel on appeal before Wyoming Supreme Court.

Four B Properties, LLC v. The Nature Conservancy, 458 P.3d 832 (Wyo. 2020)

Argued successful dispositive motion and defended ruling upholding conservation easement as co-counsel on appeal before Wyoming Supreme Court.

HRH, LLC v. Teton County et al., Case No. 18-cv-00104-SWS (U.S. Dist. Ct., Wyoming)

Achieved merits ruling in favor of client (a local unincorporated non-profit) following multi-day bench trial.

Accomplishments

Professional

Law Clerk, U.S. District Court for the District of Wyoming (Hon. Nancy D. Freudenthal)

Law Clerk, U.S. Court of Appeals for the Tenth Circuit (Hon. Gregory A. Phillips)

Academic

University of Wyoming College of Law, J.D. (2012)

- Order of the Coif (Class Rank 1 of 74)
- Inaugural Clarence A. Brimmer Scholar
- Recipient of Public Service and Lloyd N. Hagood Scholarships
- Student Director of John M. Burman's Legal Services Clinic / Named 3L Outstanding Clinical Student
- High "A" grade in Constitutional Law I, Constitutional Law II, Civil Procedure, and Professional Responsibility
- Published case note with the Wyoming Law Review

Stanford University, B.A., English (2007)

Associations

Professional

Tenth Circuit Historical Society

- VP Elect, Past Wyoming State VP

Pro bono panel for the U.S. Court of Appeals for the Tenth Circuit

Honorary member of the Wyoming Access to Justice Commission

Wyoming State Bar Federal Practice Section (2018-present; past chair)

Wyoming Civil Jury Instruction Committee (2016-2021)

Ewing T. Kerr American Inns of Court (2015-2018; leadership 2015-2016)

Wyoming State Bar Association (member)

American Bar Association (member)

Community

Equal Justice Wyoming Foundation

- Board member (past President)

Presentations

“Presentation to local non-profits regarding employment, contract and other legal issues that can lead to litigation in Wyoming state and federal courts,” Community Foundation of Jackson Hole, Legal 101 for Nonprofits, May 2025

“Tales from the Tenth Podcast” (host)

Liz Mellem is a skilled litigator and an experienced neutral investigator regarding employment claims. Her experience with an array of complex commercial issues, including significant employment counseling and litigation, helps guide her clients toward effective and satisfactory resolutions both in and out of court.



Liz M. Mellem

Director and Vice President | Shareholder
Missoula | Helena | Salt Lake City

Biography

Liz Mellem represents companies in a wide range of employment and commercial issues including:

- Neutral investigations of internal claims of harassment, discrimination, and ethical violations
- Harassment and discrimination defense
- Wrongful termination defense
- Handbook review and revision
- Employment practices training including harassment and discrimination training of management and non-management employees
- General commercial litigation including breach of contract, trade secret misappropriation, and ownership disputes
- Pre-litigation negotiation and resolution of disputes

Liz focuses on creating innovative business solutions for her clients and zealously advocates for their interests from the beginning of a matter through resolution, including through trial.

Liz has spent much of her career representing clients in both Utah and Montana by traveling between the two states. She is active in the local running and biking communities in Missoula.

Contact information

406.317.7240

amellem@parsonsbehle.com

Capabilities

Employment & Labor Counseling

Employment Litigation

Business & Commercial Litigation

Licensed/Admitted

Utah

U.S. Dist. Court, Dist. of Utah

Montana

U.S. Dist. Court, Dist. of Montana

Experience

Racial Discrimination Defense

Defending client against claims of race discrimination and national origin discrimination under Title VII, Section 1981 and breach of contract, breach of duty of good faith and fair dealing.

Nonsolicitation or Noncompete Contracts

Successfully resolved numerous cases alleging violations of non-solicitation and non-competition contract provisions.

Employee Handbooks

Worked with both large and small companies to revise and improve employee handbooks.

Wrongful Termination

Successfully defended company in alleged wrongful termination case.

Defending Client in FLSA Claims

Defending call center client against claims of violation of the Fair Labor Standards Act, Utah Wage Payment Act and Montana Wage Payment Act.

Provide Counsel in Copper and Molybdenum Mining Activities

Representing client on matters related to ongoing copper and molybdenum mining activities, including cleanup of legacy impacts and future water treatment process.

Defending a Large Gold Mine Against Royalty Claims

Representing an international gold mining company's mine against royalty claims by another world-class gold mine.

Fiduciary Duty Trial

Obtained six-figure jury verdict for plaintiff in breach of fiduciary duty case.

Fraudulent Misrepresentation

Obtained defense verdict in fraudulent misrepresentation case involving allegedly hidden assets.

UCC Product Dispute

Successfully resolved UCC “battle of the forms” dispute in pre-litigation, saving client time and expenses of litigation.

Accomplishments

Professional

Parsons Behle & Latimer, Director, Vice President and Secretary 2024 – 2026

Admissions:

Utah State Bar, 2010

United States District Court, District of Utah, 2010

State Bar of Montana, 2013

United States District Court, District of Montana, 2014

Mountain States Super Lawyers Rising Star: 2014, 2018, 2019, 2020

Academic

University of Utah, S.J. Quinney College of Law (2010, J.D.)

Montana State University (2004, B.S.) Major: Sociology

Associations

Professional

Utah State Bar Labor & Employment Section, Chairperson, 2017 – 2018

American Bar Association, Member, (2010 - Present)

Community

Missoula Economic Partnership, Board of Directors member, 2023 – present

Humane Society of Western Montana

- Board of Directors (2017 - 2023)
- President of Board (2020 - 2023)

Run Wild Missoula, member (2013 - present)

Articles

“New COVID Relief Statute: Second Round of PPP Loans, Extension of FFCRA Leave Rights, and Tax Code Changes,” December 23, 2020

“Montana Face Coverings Mandates,” July 21, 2020

“Montana Civil Cases Can Resume, But With Significant Restrictions,” May 18, 2020

“Strategies on aching the SBA’s new PPP Loan Forgiveness Application,” May 18, 2020

“Beware the Whistleblower: Avoiding Fraud Liability under the PPP,” May 12, 2020

“Montana’s Employers Can Open for Business – Sort Of,” April 28, 2020

“Re-opening for Business: Employers Should Begin Planning Now,” April 14, 2020

“Top Nine Takeaways from New FFCRA Regulations,” April 3, 2020

Additional Guidance from the Department of Labor Including the Frequently Asked Question: “What is the ‘small business exemption’ under the Families First Coronavirus Response Act? March 30, 2020

“Montana’s ‘Stay at Home’ Directive from Governor Bullock” March 30, 2020

“CARES ACT: Emergency Appropriations,” March 27, 2020

“Emerging Questions for Employers Under The Families First Coronavirus Response Act And Other Coronavirus Employment Issues,” March 24, 2020

Presentations

The Next Right Thing: Choosing Your Path Through the ADA Mine Field, April 8, 2025

Parsons Behle & Latimer/SHRM 2025 Salt Lake City Employment Law Symposium

Winning the Case Before it Starts: Investigations, Documents and Lawyers, April 8, 2025

Parsons Behle & Latimer/SHRM 2025 Salt Lake City Employment Law Symposium

Handbook Updates – 2024 Policy Pointers and Pitfalls, September 25, 2024

Parsons Behle & Latimer 2024 Montana Employment Law Seminar

Documents are an Employer's Best Friend: How to Properly Document Employee Interactions with HR, May 14, 2024

Parsons Behle & Latimer/SHRM 2024 Salt Lake City Employment Law Seminar

Regulatory Hot Topics, May 9, 2023

Parsons Behle & Latimer 35th Annual Employment Law Seminar in partnership with Salt Lake SHRM

Preventing and Responding to Workplace Violence and new HB 324, May 9, 2023

Parsons Behle & Latimer 35th Annual Employment Law Seminar in partnership with Salt Lake SHRM

Hiring and Firing Employees, January 23, 2023

National Business Institute (NBI) Seminar – Montana Employment Law 2023

Employee Discipline and Termination: Avoiding Problems with Effective Communication and Documentation, October 5, 2022

Parsons Behle & Latimer 10th Annual Idaho Employment Law Seminar

Hot Employment Topics Sessions #1 and #2, October 28, 2021

33rd Annual Parsons Behle & Latimer Employment Law Seminar

Hot Employment Topics Session #1 and #2, September 22, 2021

Parsons Behle & Latimer Ninth Annual Boise Employment Law Seminar

COVID-19 Vaccinations in the Workplace: Mandatory, Voluntary or None at All, February 10, 2021

Remote Working Considerations in the ERA of COVID-19, November 10, 2020

Strategies on Acing the SBA's New PPP Loan Forgiveness Application, May 20, 2020

Back in Business: Information Every Idaho Employer Should Know, May 13, 2020

Moving Forward: Resuming Business in a Changed Environment, May 7, 2020

**To view additional insights and related news items, visit parsonsbehle.com/people/liz-m-mellem#insights*

Jackson, Wyoming Employment Law Seminar

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A Professional
Law Corporation

Termination Trepidation: Identifying and Avoiding the Risks Associated with Employee Terminations and Discipline

Leah C. Schwartz

lschwartz@parsonsbehle.com

Liz M. Mellem

amellem@parsonsbehle.com

Sept. 26, 2025 | Teton County Library, Ordway Auditorium

Presenters



Leah C. Schwartz

lschwartz@parsonsbehle.com



Liz M. Mellem

amellem@parsonsbehle.com

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Legal Disclaimer

This presentation is based on available information as of Sept. 26, 2025, but everyone must understand that the information provided is not a substitute for legal advice. This presentation is not intended and will not serve as a substitute for legal counsel on these issues.

3



Wyoming “At Will” Employment



Basics of At-Will Employment

- Presumption of “at will” employment in Wyoming
 - “either the employer or the employee may terminate the relationship at any time, for any reason or for no reason at all.” Sabatka v. Bd. of Trs. of Fremont Cnty. Pub. Libr. Sys., 2015 WY 8, ¶ 15.
- Presumption may be rebutted
 - Question: Is there an express or implied agreement which prohibits discharge without just cause or that employment would last for set term? Kuhl v. Wells Fargo Bank, N.A., 2012 WY 85, ¶ 24.
 - Employee handbook or personnel manual may supply terms for implied contract of employment (but proper disclaimer sustains at-will presumption)

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Other Exceptions to At-Will Employment



Other federal laws limit employer rights to terminate employees too, including:

- Section 7 of the National Labor Relations Act
- A framework of whistleblower laws (e.g., the Occupational Safety and Health Act and the Sarbanes-Oxley Act).
- For a full list of federal whistleblower laws, go to www.whistleblowers.gov/statutes

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Protected Characteristics

- In addition, federal laws prohibit employment discrimination on the basis of certain protected characteristics, including:
- race, color, religion, age (40 and over), pregnancy, sex, gender, disability, national origin, ethnic background, sexual orientation, gender identity, genetic information (including of a family member), military service, and citizenship.
- **Wyoming** protects many of the same characteristics:
 - “...age, sex, race, creed, color, national origin, ancestry or pregnancy, or a qualified disabled person;”
 - WY Fair Employment Practices Act, W.S. § 27-9-101 *et seq.*

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Retaliation Claims

- Be mindful of timing issues to avoid a **retaliation** claim.
- Courts will infer a retaliatory intent when an employer takes adverse employment action soon after (e.g., within about 3 months) an engages in protected activity (e.g., complaining about discrimination or harassment).
- In such cases, the burden will shift to the employer to rebut the retaliatory presumption with evidence of its legitimate, non-retaliatory intent.

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How Do You Get To Termination?

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Communication and Documentation

- Two pillars of good employee performance management and risk management
- Communication = oral and written
 - Conveys information regarding job duties, expectations, performance feedback, corrective actions, etc.
 - Frequent and early communication and intervention will help avoid employment claims and protect an employer when claims are brought
- Documentation can be a form of communication AND evidence of communication

“Golden Rule” of Documentation

IF IT IS NOT IN WRITING,
IT DIDN'T HAPPEN!

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How will documentation help limit risk?

- In a case that goes to a jury trial, we never want to rely on testimony alone because the jury gets to pick who to believe
 - Spoiler Alert: They tend to believe the employee more often than the employer!
- Documents help to establish **intent** and show:
 - Decisions were performance or business based
 - Decisions were not motivated by discriminatory, retaliatory, or other unlawful intent

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Who Else Cares About Documentation?

- Documentation also really matters to the agencies that enforce anti-discrimination and anti-retaliation employment laws:
 - State Agencies (e.g. Wyoming Department of Workforce Services)
 - EEOC
 - DOL
- Service of a Charge or Complaint is always accompanied by a Request for Information

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Excerpt from Agency Request for Information

REQUEST FOR INFORMATION FROM RESPONDENT UALD No. CG-0xx & EEOC No. 35C-2020-00xxx

This form contains a request for specific information the Division requires to complete its investigation. Failure to provide this information may affect the outcome of the Division's findings.

Within 30 days of the date of this Request For Information (the "Request"), provide Waiva Charlesworth responses via e-mail at wroberts@utah.gov or you may send a hardcopy of the documents and information requested below by U.S. mail. The Division prefers and strongly encourages parties to communicate with the Division using email and to provide any documents or other evidence in an electronic format. Provide your answers and any supporting documentation or documents specifically requested by the Division organized by number to correspond with the specific Request to which it is responsive. The answers to this Request must be provided to the Division in addition to the Response/Position Statement to the Charge, as described on the first page of this letter.

Provide the following:

1. Verify whether the correct Respondent has been named in the Charge, and provide any necessary corrections to the name of the company or its address.
2. The name and contact information (including email) of the individual from Respondent the Division can contact to schedule interviews of witnesses and parties that are or have been employed by you.
3. All documents relating to any disciplinary actions taken by Respondent against Charging Party in the past five years.
4. All documents related to the Charge.
5. A copy of Charging Party's job description at the time he/she left their employment or at the time you received this charge of discrimination as well as any minimum requirements of the position.
6. A copy of any employee handbook, specifying any policies therein which Charging Party is alleged to have violated.
7. Proof that Charging Party received the employee handbook.
8. Name, position and contact information for all individuals, known to Respondent, to have any information regarding the underlying facts of the Charge.
9. All documents that explain the reason(s) why Charging Party is no longer employed by Respondent. (If Charging Party is still employed by Respondent you do not need to answer this question.)

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Provide the following:

1. Verify whether the correct Respondent has been named in the Charge, and provide any necessary corrections to the name of the company or its address.
2. The name and contact information (including email) of the individual from Respondent the Division can contact to schedule interviews of witnesses and parties that are or have been employed by you.
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7. Proof that Charging Party received the employee handbook.
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9. All documents that explain the reason(s) why Charging Party is no longer employed by Respondent. (If Charging Party is still employed by Respondent you do not need to answer this question.)

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Documents Relevant to Investigations

- All documents relating to any disciplinary actions taken by Respondent against Charging Party
- All documents related to the Charge.
 - Note may relate to other employees holding similar positions
- A copy of Charging Party's job description at the time he/she left their employment or at the time you received this charge of discrimination as well as any minimum requirements of the position.
- All documents that explain the reason(s) why Charging Party is no longer employed by Respondent.

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Good Documentation Is Critical at 3 points:

- Performance Evaluations and Appraisals
- Discipline
- Termination

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AVOIDING LEGAL TROUBLE

- Performance Evaluations, Reviews, and Appraisals
 - Should address: C.A.P.
 - **C**ONDUCT
 - **A**TTENDANCE
 - **P**ERFORMANCE
- Be Courageously Honest
- But Not About Non C.A.P. Issues!

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BAD Excerpts from Federal Employee Evals

- “Since my last report, this employee has reached rock-bottom and has started to dig.”
- “I would not allow this employee to breed.”
- “Works well when under constant supervision and cornered like a rat in a trap.”
- “When she opens her mouth, it seems that it is only to change feet.”
- “This young lady has delusions of adequacy.”
- “He sets low personal standards and then consistently fails to achieve them.”
- “This employee should go far, and the sooner he starts, the better.”
- “He would argue with a signpost.”
- “He brings a lot of joy whenever he leaves the room.”
- “If you give him a penny for his thoughts, you’d get change.”

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Be Smart About Documentation

Terms used in a female employee’s evaluation:

- “macho”
- “overcompensated for being a woman”
- “needs a course in charm school”
- “matured from a masculine manager to an appealing lady partner candidate”
- “should walk, talk and dress more femininely, wear makeup, get her hair styled and wear jewelry”

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) (gender stereotyping)

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Characteristics of Bad Evaluation Ratings

Central Tendency – supervisor avoids rating employees either very high or very low. Reviews are clustered in the middle of the rating scale for all employees.

Leniency – supervisor gives high ratings to all employees.

Strictness – supervisor gives low ratings to all employees.

Similar-to-Me – supervisor gives high ratings only to employees who share similar thinking, personality, background.

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Characteristics of Good Evaluation Ratings

- Addresses C.A.P. (Conduct, Attendance, Performance)
- Provides same or similar review/ratings to same or similar Conduct, Attendance, Performance
- Connected to Job Duties and Description
- Looks at entire performance period; notes trends
- Supports employment decisions
 - Ask: Should this person be promoted? Should this person be on a PIP?
- Avoids stereotypes and personal attacks

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Best Practices For Documenting Termination Timeline

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How Terminations Often Go



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Best Practices

- Outline the lifecycle of an employee and identify all communication possibilities:
 - Hiring
 - Training
 - Day-to-day Feedback/Daily Meetings
 - Biannual Reviews
 - Write Ups/Performance Improvement Plans
- Outline the ideal way to communicate performance expectations and document C.A.P. along the way

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Event – Documentation Outline

HIRE / EVENT	WHAT A SUPERVISOR SHOULD BE DOING
HIRE DATE ↓	Employee gets a written job description giving fair notice of his/her job duties and performance expectations and goals.

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Event – Documentation Outline

HIRE / EVENT	DOCUMENTATION/ COMMUNICATION
<p>90 Days Later</p> 	<p>Supervisor checks in with employee after “orientation” period to verify adequate performance and good job fit. Thereafter, supervisor provides regular oversight, coaching, etc.</p>

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Event – Documentation Outline

HIRE / EVENT	DOCUMENTATION/ COMMUNICATION
<p>First Sign of Serious Problem</p> 	<p>Apart from regular coaching, at this point there should be a discussion with the employee. Document the discussion with a note to file or email. Depending on seriousness, escalate to HR and perhaps discipline. Early HR involvement can hasten a resolution and minimize risks.</p>

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Event – Documentation Outline

HIRE / EVENT	DOCUMENTATION/ COMMUNICATION
<p>Additional Problems</p> 	<p>Further discussions and coaching, HR involvement and perhaps discipline, maybe written warnings—depending on how serious the problem is. Repeat clear objectives and measurements of the same.</p>

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Event – Documentation Outline

HIRE / EVENT	DOCUMENTATION/ COMMUNICATION
<p>Performance Reviews</p> 	<p>Conduct a truthful and accurate review of employee's performance during full relevant period (e.g., one year). Note if problems exist and include discussion of relevant job actions (e.g., warnings or discipline, successes, etc.).</p>

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Event – Documentation Outline

HIRE / EVENT	DOCUMENTATION/ COMMUNICATION
<p>Ongoing Discipline</p> 	<p>Escalate discipline (last chance notice). Document these <u>FOUR</u> things:</p> <ol style="list-style-type: none"> 1) nature of the problem; 2) how it can be fixed; 3) clear timetable for doing so; and 4) consequences of failure to do so (such as discharge).

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Event – Documentation Outline

HIRE / EVENT	DOCUMENTATION/ COMMUNICATION
<p>Trigger for Discharge</p> 	<p>There should be some event that moves the situation towards termination.</p> <p>Examples include:</p> <ol style="list-style-type: none"> 1) Expiration of a last chance time period without needed improvement; 2) Additional major mistake or misconduct.

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Event – Documentation Outline

HIRE / EVENT	DOCUMENTATION/ COMMUNICATION
<p>Discharge</p> 	<p>Here is the main goal of the whole process: anyone who might try to second guess you should conclude there was clear explanation of expectations, notice of problems and a documented chance to improve before discharge.</p> <p>HR involvement should ensure company-wide consistency and that the written record supports the termination decision.</p>

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Event – Documentation Outline

HIRE / EVENT	DOCUMENTATION/ COMMUNICATION
 <p>Discharge Letter or Memo to File</p>	<p>Document what happened and why, in clear terms but with as few words as possible. List all reasons for discharge, but don't overstate your case. Remember this will be "Exhibit A" in any post-termination dispute, so do it properly.</p>

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Thank You



Leah C. Schwartz
lschwartz@parsonsbehle.com



Liz M. Mellem
amellem@parsonsbehle.com

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Thank you



Jackson, Wyoming Employment Law Seminar

2025 Employment Law Update

Michael Judd

801.536.6648 | mjudd@parsonsbehle.com

Michael Judd's practice centers on competition and information. He guides clients through complex litigation in varied industries, including disputes related to employee mobility, antitrust and trade secrets. He also maintains a vigorous First Amendment practice in which he represents media organizations in their news-gathering efforts.



Michael Judd

Shareholder | Salt Lake City

Biography

Michael is a commercial litigator focused on competitive issues. His work includes employment litigation where he represents employers in cases related to employee movement, compensation and compliance with state and federal law, including the ADA, FLSA, and FMLA.

Michael's practice also includes complex business and intellectual-property matters, including trade-secret disputes, enforcement of restrictive covenants and anti-competitive business practices.

In his First Amendment practice, Michael also represents clients, including news media organizations, in matters that enable reporting and public oversight through access to government records, defense of defamation claims and similar legal issues.

Experience

Represented client against antitrust complaints (Sherman Act)

Parsons represented Ute Conference against anti-trust (Sherman Act Section 1 & 2) complaints regarding boundary rules for a youth football team. The plaintiffs also asked the federal court to enjoin the Ute Conference from enforcing boundary rules through a temporary restraining order (TRO). Parsons obtained a complete victory for the client. The judge declined to enter any aspect of the requested TRO and found for the client on likelihood of success on the merits, on irreparable harm and on the balance of harms.

Contact information

801.536.6648

mjudd@parsonsbehle.com

Capabilities

Antitrust & Competition

Appeals

Business & Commercial Litigation

Employment & Labor

Employment Litigation

Trade Secret Litigation

Licensed/Admitted

Utah

Defended Client in Competitive Misconduct with Antitrust Issues

Defended a pharmacy services client in allegations of competitive misconduct with antitrust issues.

Nondisclosure, Nonsolicitation, Noncompetition Defense of Solar Sales Company

Defending a solar sales company in several lawsuits in Utah state and federal courts and Texas state court for competitive claims including nonsolicitation, nondisclosure and noncompetition claims.

Public Records Access Motion for Summary Judgment

Parsons' client The Salt Lake Tribune asked for copies of officer interviews from the City of West Jordan, as part of a project assembling a database of Utah police involved shootings. The city refused to release the records, and The Tribune challenged that access denial in an appeal to the district court. The court issued a ruling granting the Tribune's Motion for Summary Judgment and ordered West Jordan to turn over those records, with minimal redactions.

Accomplishments

Professional

"Utah Legal Elite," *Utah Business Magazine*, Civil Litigation 2022

Mountain States Super Lawyers, Rising Stars, 2019–2023

Academic

University of Iowa, J.D.

- Editor in Chief of the Iowa Law Review
- Captained the Jessup Moot Court team
- Received the Dean's Award for Constitutional Law
- Earned a joint MBA at Iowa's Tippie College of Business

Princeton University & Brigham Young University, B.A, English, Economics

Associations

Professional

Advisory Committee, Utah Rules of Appellate Procedure, Recording Secretary, 2019–present

Board Member, Utah Chapter, Federal Bar Association, 2020–present

Community

President, Alumni Association, The Waterford School, 2013 – present

Articles

"Federal Court Sides with Whole Foods in Dress-Code Dispute Over Black Lives Matter Masks," *Employment Law Update* (Jan. 30, 2023)

Presentations

I Have Seen This Movie Before . . . But I Am Not Sure How it Ends This Time (April 8, 2025)

Parsons Behle & Latimer/SHRM 2025 Salt Lake City Employment Law Symposium

Policy Evolution: Changing Your Company's Policies to Keep Up With Changing Times (April 8, 2025)
Parsons Behle & Latimer/SHRM 2025 Salt Lake City Employment Law Symposium

Remote Work — Managing the Perk That's Become a Presumption (October 23, 2024)
Parsons Behle & Latimer 2024 Idaho Employment Law Seminar

Remote Work: Managing the Perk That's Become a Presumption (May 14, 2024)
Parsons Behle & Latimer/SHRM 2024 Salt Lake City Employment Law Seminar

Salt Lake SHRM's Annual Chapter Meeting (February 13, 2024)

"Every Case Really is a Story: Four State and Federal Caselaw Stories and Lessons," Parsons Behle & Latimer 10th Annual Idaho Employment Law Seminar (Oct. 5, 2022)

Jackson, Wyoming Employment Law Seminar

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2025 Employment Law Update

Michael Judd

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Sept. 26, 2025 | Teton County Library, Ordway Auditorium

Presenters



Michael Judd

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Legal Disclaimer

This presentation is based on available information as of Sept. 26, 2025, but everyone must understand that the information provided is not a substitute for legal advice. This presentation is not intended and will not serve as a substitute for legal counsel on these issues.

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**Trump 2.0: does it feel like we've
seen this movie before?**

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What to expect from President Trump's Second Administration

- 1) Prepare for ICE Raids and I-9 Audits
- 2) "No" Taxes on Tips or Overtime
- 3) DEI under attack

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Detaining Jackson Hole immigrants, ICE agents target western Wyoming

Federal agents arrested at least 9 people in a recent Equality State operation, spurring fear and uncertainty.



by Jeannette Boner, Jackson Hole News&Guide, Andrew Graham, Cali O'Hare, The Pinedale Roundup and Joy Ufford
July 30, 2025



ICE Grabs Illegal Immigrants In Western Wyoming As Agency Eyes Massive Expansion

ICE officers arrested multiple foreign nationals in a coordinated early-morning operation across Western Wyoming this week. They also discussed implanting teams and offices across Wyoming with a massive new funding increase.



Clair McFarland

July 28, 2025 • 10 min read

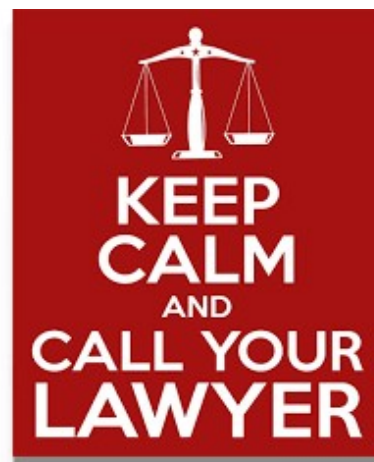


ICE Raids and I-9 Audits

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Preparing for ICE Audits -- Call your Lawyer!

- When ICE arrives at the worksite, direct the receptionist/managers to contact legal counsel.
- The receptionist should state "Our company policy is to call our lawyer, and I am doing that now."



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What Can ICE Do?



- ICE can mill about public areas (lobbies/parking lots/common areas) etc. without any kind of warrant.
- But to access an area normally reserved for employees or otherwise not accessible to the public, they must have a warrant signed by a judge.
- ICE may demand that equipment be shut down and that no one leave the premises without permission. You should comply.
- ICE may move employees into a contained area for questioning.

Employer's Best Practices

- Company representatives should not give any statements to ICE or allow themselves to be interrogated before consulting with an attorney.
- You may inform employees that they may choose whether to talk with ICE during the raid, but **do not** direct them to refuse to speak to agents when questioned.
- Do not hide employees or assist them in leaving the premises without permission.

Employer's Best Practices

- Object to a search outside the scope of the warrant. However, do not engage in a debate or argument with the agent about the scope of the warrant. Simply state your objection to the agent and make note of it.
- Ask for a copy of the list of items seized during the search. The agents are required to provide an inventory.

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No taxes on tips or overtime? Really?
Payroll Tax Implications of the OB BB

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New Temporary Deductions for Tips and OT

■ New Temporary Deduction

- The OBBB creates a new deduction for certain tip and overtime income.
- Name is misleading – there is some tax on tips and OT.
- Effective only for calendar years 2025 through 2028.
- It's a deduction—must be claimed on tax return.



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“No” Tax on Tips – Deduction Amount & Eligibility

■ Deduction Amount

- Up to **\$25,000 annually** of qualified tips may be deducted.
- Deduction phases out by \$100 for every \$1,000 of modified adjusted gross income above \$150,000 (\$300,000 for joint filers).
- **But who is eligible?**

■ Qualified Tips

- “The term ‘qualified tips’ means cash tips received by an individual in an occupation which customarily and regularly received tips on or before December 31, 2024”
- IRS must publish the official occupation list by October 2, 2025.

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“No” Tax on Overtime – Deduction Amount



- Up to **\$12,500 annually (\$25,000 for joint filers)** of qualified overtime compensation may be deducted.
- Deduction phases out by \$100 for every \$1,000 of modified adjusted gross income above \$150,000 (\$300,000 for joint filers).
- Deduction only applies to FLSA OT (i.e., 40+ hours in a workweek). Any heightened state overtime requirements are not eligible for deduction.



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“No” Tax on Tips or Overtime – Payroll Practices

Current Year

- For 2025, tips and OT remain subject to federal income tax withholding, FICA and FUTA.
- Deduction is claimed by the employee on their federal income tax return, not through payroll.
- Employers should use reasonable methods to track qualified overtime.

Future Years

- Although tips and OT may be excluded for federal income tax withholding purposes, this income will remain subject to FICA and FUTA.
- Employees still must claim the deduction on their income tax return.
- IRS will likely revise payroll forms to include a specific box or code for tips and OT.



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DEI Under Attack



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Let's look at those Executive Orders



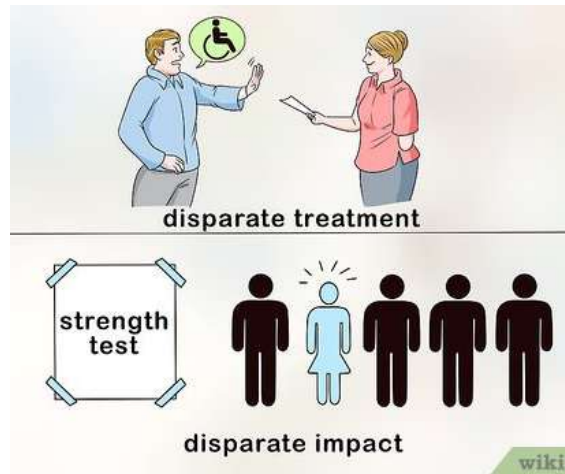
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Executive Order 12250

On April 23, 2025, President Trump issued an Executive Order entitled “**Restoring Equality of Opportunity and Meritocracy**”

The Purpose: “eliminate the use of **disparate-impact liability** in all contexts to the maximum degree possible.”

The Rationale: Disparate-impact liability “all but requires individuals and businesses **to consider race** and engage in racial balancing to avoid potentially crippling legal liability.”



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Executive Order 14173

EO (14173), titled “**Ending Illegal Discrimination and Restoring Merit-Based Opportunity**,” rescinds a six-decade old EO that required **federal contractors** to adopt affirmative action practices for hiring/promoting women and minorities.

Requires federal contractors to end “illegal DEI” practices and to certify that their DEI programs do not violate anti-discrimination law.

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Executive Order 14168

EO (14168), titled “**Defending Women from Gender Ideology Extremism**,” defines “sex” as an individual’s “immutable biological classification as either male or female,” removing any concept of “gender identity.”

Directs federal agencies to “remove all statements, policies, regulations,” etc., that “inculcate **gender ideology**” and prohibits the use of federal funds to promote gender ideology.

The order instructs the attorney general to (i) clarify that Title VII does not require gender identity-based access to single-sex spaces and (ii) ensure the “freedom to express the binary nature of sex” and right to single-sex spaces.

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EEOC follows the White House’s EO.

Discrimination claims that might conflict with Trump’s executive orders, including his executive order declaring that “sexes are not changeable,” will now be sent to the EEOC for review, rather than follow the normal investigatory process.

The EEOC also filed motions to dismiss six lawsuits it had filed on behalf of transgender or gender nonconforming employees, citing the executive order declaring that the government would recognize only two “immutable” sexes.

POLITICS

EEOC seeks to drop transgender discrimination cases, citing Trump's executive order

February 15, 2025 / 7:00 PM EST / AP



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Timeout: What about *Bostock*?

Though the Trump administration has retreated from EEOC positions regarding treatment of LGBTQ employees, *Bostock* remains good law.

Under *Bostock*, discrimination based on sexual orientation or gender identity constitutes sex discrimination under Title VII.

Bostock therefore protects employees from adverse action based on those characteristics.

Open issue: Sex-segregated bathrooms, locker rooms, dress codes.

SUPREME COURT OF THE UNITED STATES

Syllabus

BOSTOCK v. CLAYTON COUNTY, GEORGIA

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

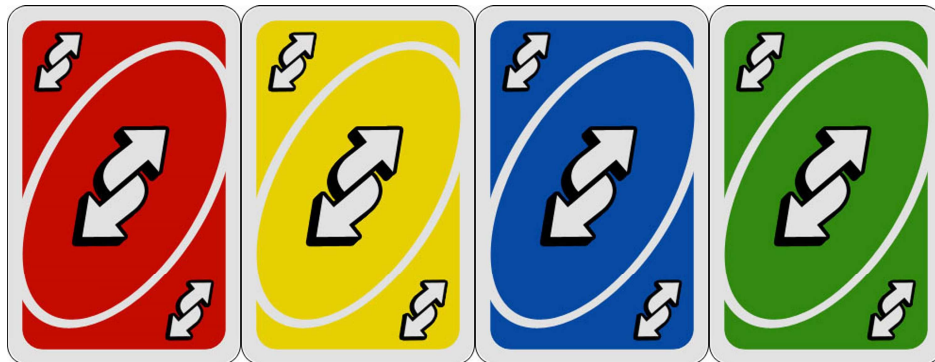
No. 17–1618. Argued October 8, 2019—Decided June 15, 2020*

In each of these cases, an employer allegedly fired a long-time employee simply for being homosexual or transgender. Clayton County, Georgia, fired Gerald Bostock for conduct “unbecoming” a county employee shortly after he began participating in a gay recreational softball league. Altitude Express fired Donald Zarda days after he mentioned being gay. And R. G. & G. R. Harris Funeral Homes fired Aimee Stephens, who presented as a male when she was hired, after she informed her employer that she planned to “live and work full-time as a woman.” Each employee sued, alleging sex discrimination under Title VII of the Civil Rights Act of 1964. The Eleventh Circuit held that Title VII does not prohibit employers from firing employees for being gay and so Mr. Bostock’s suit could be dismissed as a matter of law. The Second and Sixth Circuits, however, allowed the claims of Mr. Zarda and Ms. Stephens, respectively, to proceed.

Held: An employer who fires an individual merely for being gay or transgender violates Title VII. Pp. 4–33.

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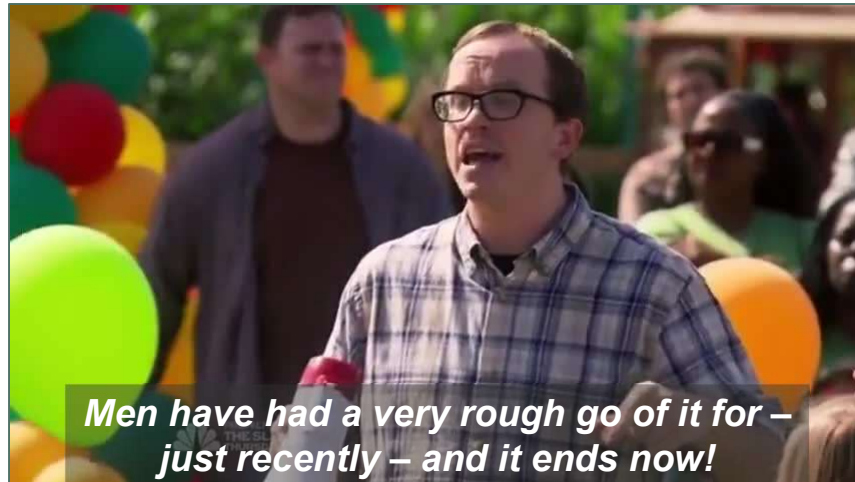
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Rise of “Reverse Discrimination” Claims

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The Rise of “Reverse Discrimination” Claims



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Reverse Discrimination—Circuit Split

■ The Majority (7 Circuits)

- The test to show “reverse discrimination” is the same as any other discrimination
- Circuits: 1st 2nd 3rd 4th 5th 9th 11th

■ The Minority (5 Circuits – applicable in Wyoming)

- Majority-group plaintiffs had to show something more:
- “Evidence that there is something ‘fishy’ going on”— “indirect evidence to support the probability that **but for** the plaintiff’s status he would not have suffered the challenged employment decision”
- Circuits: D.C. 6th 7th 8th **10th**

**On June 5, 2025, the U.S. Supreme court resolved the split in
Ames v. Ohio Department of Youth Services.**

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Ames v. Ohio Department of Youth Services

In *Ames*, a district court applied the heightened standard and dismissed a majority-group plaintiff's sexual-orientation-discrimination case

- Marlean Ames is a heterosexual woman with 30 years of public service.
- Ames applied for promotions, but did not get them.
- Instead, the promotions were given to a gay woman and a gay man.



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Ames v. Ohio Department of Youth Services



In a unanimous U.S. Supreme Court decision, authored by Justice Ketanji Brown Jackson, the background circumstances test for majority-group plaintiffs was rejected.

“Congress left no room for courts to impose special requirements on majority-group plaintiffs alone.”

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Strategies to avoid *reverse* discrimination claims:

- Be clear in all communications that all employment decisions are merit-based.
- Take allegations of discrimination and harassment by *all* employees seriously.
- As you would with any employee, thoroughly investigate allegations of misconduct against majority-group employees before moving to discharge, including by ***interviewing accused majority-group employees***.

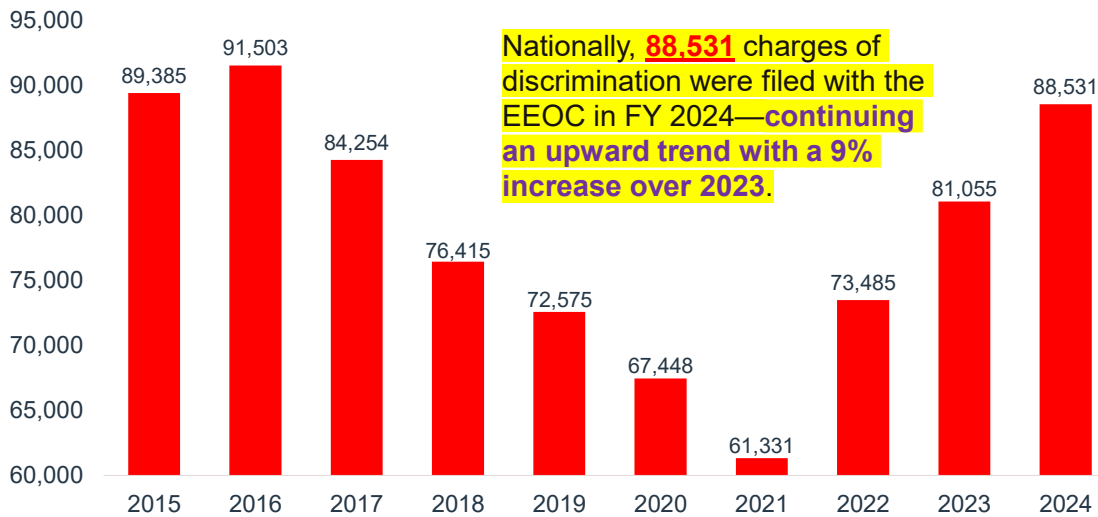
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2024 EEOC Charge Data



2024 EEOC CHARGE DATA



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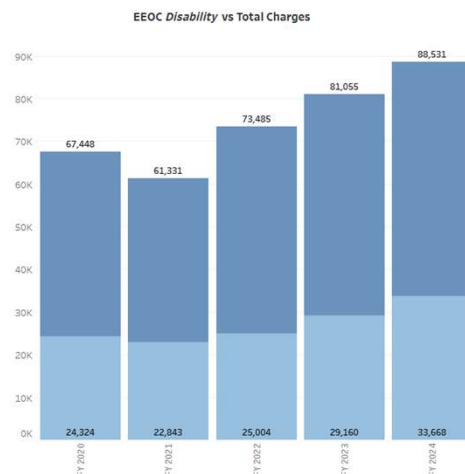
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ADA (disability) claims are on the rise.

The EEOC received more claims for disability discrimination, including failure to accommodate, than any other form of discrimination (although retaliation number one overall).

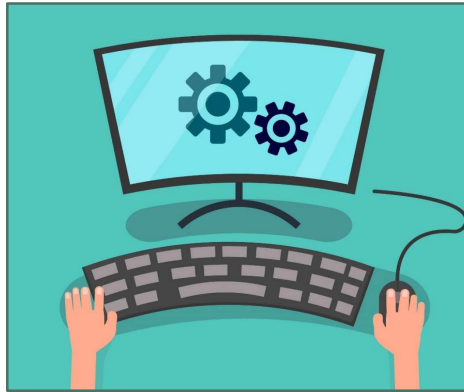
In 2024, of the 88,531 total charges of discrimination, 33,668 alleged disability discrimination—about 38% of all charges filed nationally. (No current data for WY but as of 2022 approx. 26% of charges).

That's a record number of disability discrimination claims!



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Remember *Peterson v. Nelnet* from 2021?

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Peterson v. Nelnet

On October 8, 2021, the Tenth Circuit held that employees of a call center who spent 2-3 minutes per day booting up their computer needed to be paid for that time.

In other words, these employees had to **log in before they could clock in.**

The court found that bootup time must be paid because: (1) Nelnet failed to establish that it could not estimate the boot up time and (2) the size of the aggregate claim was not so small to be considered *de minimis*, even though the total claim was only \$32,000.

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Lead Attorneys for Plaintiff
**Pro Hac Vice forthcoming*

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

NICOLE FITZGERALD, individually and on behalf of all similarly situated individuals,

Plaintiff,

UNIVERSITY OF UTAH d/b/a
UNIVERSITY OF UTAH HEALTH.

Defendant.

Case No.:

COLLECTIVE AND CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

COMES NOW Plaintiff Nicole Fitzgerald, by and through her undersigned attorneys, and hereby brings this Collective and Class Action Complaint against Defendant, University of Utah d/b/a University of Utah Health, and states as follows:

INTRODUCTION

1. This is a collective and class action brought by Plaintiff on behalf of herself and all similarly situated current and/or former Customer Advocate Specialist, Communications Services Specialist, and/or other job titles performing the same or similar job duties (collectively "Specialists"), employees of Defendant to recover for Defendant's willful violations of the Fair



Liability for harassment that takes place online, outside work and after hours?

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Okonowsky v. Garland (9th Cir. 2024)

Lindsay Okonowsky worked as a psychologist for a federal prison.

Steven Hellman was a corrections Lieutenant in the same facility.

Instagram “suggested” that Lindsay follow Steven’s page, “8_and_hitthe_gate.”



Steven's posts were awful



Steven's hundreds of posts were "overtly sexist, racist, anti-Semitic, homophobic, and transphobic memes" that expressly or impliedly referred to the prison's employees and inmates.

Yet, Steven's page was followed by more than 100 prison employees, including supervisors and even the HR Manager!

Lindsay was shocked to see several posts that vaguely referred to her, the "psychologist," including one post where Steven implied that he wanted to shoot Lindsay and an inmate.

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When Lindsay complained, the prison was dismissive.



Lindsay complained to Robert Grice, Acting Safety Manager.

Robert dismissed Lindsay's concerns, telling her that he was:

"Sorry, not sorry."



Making matters worse, the HR Manager dismissed Lindsay's concerns too, concluding that her complaint did not involve the workplace. He also said the memes were "funny."

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As a result, Steven's behavior got worse.

Steven's posts became "sexually debasing" toward Lindsay.

He threatened Lindsay. And he posted a meme, with the caption: "Tomorrow's forecast, hot enough to melt a snowflake."

Lindsay was eventually transferred to another prison. And she filed a sexual harassment claim against the prison.



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Ninth Circuit drops the gavel.

A district court sided with the prison, concluding that all the conduct "occurred entirely outside of the workplace."

But the Ninth Court reversed, holding that "even if discriminatory or intimidating conduct occurs wholly offsite, it remains relevant to the extent it affects the employee's working environment."



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In a less controversial part of its 2024 harassment guidance, the EEOC instructed:

Harassment by a supervisor may heighten severity due to supervisory power. Due to this power, **a supervisor's harassment outside the workplace may be actionable!**



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Bonus post-script: *what happened at trial?*

7		
8		UNITED STATES DISTRICT COURT
9		CENTRAL DISTRICT OF CALIFORNIA
10	LINDSAY OKONOWSKY,	Case No. 2:21-cv-07581-MCS-AS
11	Plaintiff,	VERDICT FORM
12		
13	v.	
14	MERRICK GARLAND,	
15	Defendant.	
16		
17		

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Bonus post-script: *what happened at trial?*

1 **VERDICT**
2 We, the jury in the above-entitled action, unanimously answer the following
3 questions submitted to us:
4
5 **QUESTION NO. 1:**
6 Was Plaintiff Lindsay Okonowsky subjected to sexual advances, requests for sexual
7 conduct, or other verbal or physical conduct of a sexual nature?
8 ☒ Yes
9 ☐ No
10 *If your answer to Question No. 1 is yes, then answer Question No. 2. If your answer*
11 *to Question No. 1 is no, stop here and have the presiding juror sign and date this form*
12 *below.*
13
14 **QUESTION NO. 2:**
15 Was the conduct unwelcome to Plaintiff Lindsay Okonowsky?
16 ☒ Yes
17 ☐ No
18 *If your answer to Question No. 2 is yes, then answer Question No. 3. If your answer*
19 *to Question No. 2 is no, stop here and have the presiding juror sign and date this form*
20 *below.*
21 ///

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Bonus post-script: *what happened at trial?*

1 **QUESTION NO. 3:**
2 Was the conduct sufficiently severe or pervasive to alter the conditions of Plaintiff
3 Lindsay Okonowsky's employment and create a sexually abusive or hostile work
4 environment?
5 ☐ Yes
6 ☒ No
7 *If your answer to Question No. 3 is yes, then answer Question No. 4. If your answer*
8 *to Question No. 3 is no, stop here and have the presiding juror sign and date this form*
9 *below.*
10

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Wyoming Legislative Updates

- **W.S. § 1-23-108.** Makes any covenant not to compete that restricts the right of any person to receive compensation for performance of labor *void*.
 - Prospective in application. [Effective July 1, 2025]
 - Silent as to non-solicitation agreements
 - Certain exceptions:
 - Executive/management personnel and professional staff
 - Business/asset sale; protection of trade secrets
 - Special rules for physicians

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Wyoming Legislative Updates Cont'd

- Same statute establishes limits as to expense repayment (e.g. relocation, training, housing stipend)
 - Agreements for repayment OK but subject to limitations:
 - Recovery of not more than 100% of expense for employee serving less than 2 years
 - Recovery of not more than 66% of expense for an employee serving btwn 2-3 years;
 - Recovery of not more 33% of expense for an employee serving btwn 3-4 years.
 - Though not stated, Act would appear to invalid contractual recoupment of expenses from employee serving more than 4 years.

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Wyoming Legislative Updates Cont'd

▪ New rules for public employers

- **W.S. § 6-8-105.** WY Repeal Gun Free Zones Act
- **W.S. § 9-14-601.** No “compelled” pronouns (public employers)
- **W.S. § 9-25-101.** Prohibition on “immigration sanctuaries”
- **W.S. § 9-25-101.** Restroom and changing area requirements
- **W.S. § 9-25-101.** No DEI activities
- **W.S. § 9-25-101.** Religious Freedom Restoration Act
- **W.S. § 9-25-101.** Religious Freedom Restoration Act

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Thank You



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Thank you for attending

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