Southeast Idaho SHRM Employment Law Conference

OCTOBER 16, 2025 | HOLIDAY INN & SUITES | IDAHO FALLS

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Presentations:

Winning the Case Before it Starts: Investigations, Documents and Lawyers
8:35 – 9:35 a.m. | Sean A. Monson and Kristyn B. Escalante

The Uses, Risks, and Benefits of AI for HR Managers
9:45 – 10:15 a.m. | Garrett M. Kitamura

Employment Impacts of the One Big Beautiful Bill
10:15– 10:45 a.m. | Emily Marie Hill

2025 Employment Law Update
11 a.m. – Noon | Mark D. Tolman

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

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Agenda

- Conduct needing documentation or an investigation
  - Non-protected class
  - Protected class
- Documentation of misconduct – practical tips
- Nuts and bolts of conducting investigation
- When to bring in outside investigator

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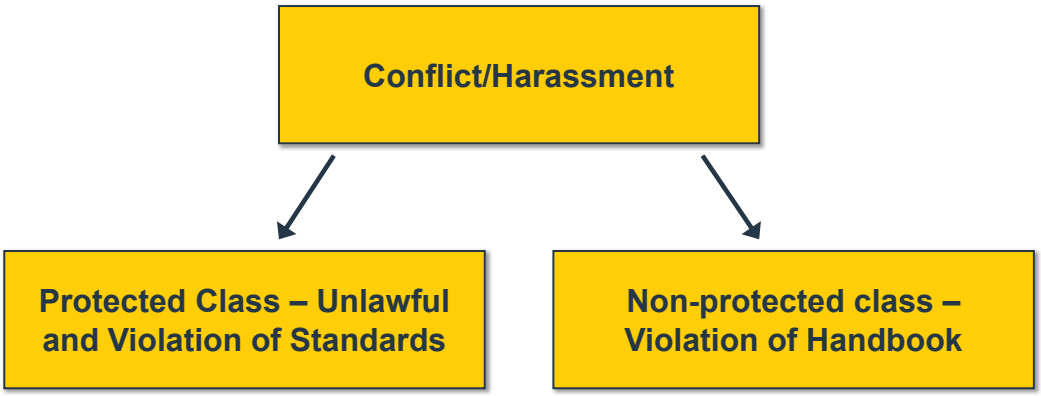
Conflict/Harassment -- Categories



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Protected Categories

- Race, color, ethnicity, or national origin
- Religion
- Sex/gender (reverse discrimination)
- Sexual orientation (perceived or actual)
- Transgender status
- Pregnancy, childbirth, breastfeeding, and related conditions
- Age (40 and over)
- Physical or mental disability
- Veteran status
- Genetic information

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Workplace Conflict/Bullying

- Prohibit Bullying/Hazing even if it does not constitute unlawful harassment
  - Boss is a jerk v. boss is a racist or sexist
  - Approximately two-thirds of all harassment is "status-blind," and poses an occupational health hazard
  - Non-protected class harassment destroys employee morale as well

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Examples – Non-Protected Class Bullying?

- "I don't give a s--t about what you have going on at home, get this done NOW"
- "You are so d--n stupid. Why would ever think doing that would be ok?"
- "You have got to be one of the dumbest employees I have ever had in the past 20 years"
- "Get your lazy a-- in here right now, and do some work for a f---ing change"

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Handling Conflict/Bullying Issues

- You must build employee trust
- You must encourage voicing of complaints – environment where employees can voice concerns
- If there is conflict between two workers
  - Assess whether there has been a violation of your anti-bullying policy or anti-discrimination statute
  - If yes, move to investigation
  - If no, meet with employees – individually or together – out of site of other workers—explain what you observed – ask to understand the conflict – negotiate solutions

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Best Practices for Employers

Documentation!

Documentation!

Documentation!

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Why Document?

- Improved communications
- Uniformity in business decisions
- Lawsuit defense aids:
  - Faded memories
  - Credibility battles
  - Binding admissions

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Documenting Misconduct: Nuts/Bolts

Sam Supervisor observed an incident. His report is as follows:

"There was something on the floor in the hall. I told Jerry Janitor to take care of it. He mouthed off and blew me off."

Is this helpful documentation?

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Documenting Misconduct: Nuts/Bolts

A proper signed write-up might look like this:

"On 9/15/2021, I, Sam Supervisor, saw a puddle of grease on the floor in the west service hall. I told Jerry Janitor of the puddle, where it was, and to please clean it up immediately. He said, 'I'm busy right now. I'll get to that when I get around to it. If you need it sooner than then, you can $@&% well do it yourself.' I verbally warned him that his response was unacceptable, that his behavior would be noted in his file, and that further disciplinary action might be taken. Angie Assistant witnessed this exchange, and I asked her to write up a statement."

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Guidelines for Corrective Actions

- What does proper documentation look like for a corrective action?
  - Objective goals
  - Detailed plan to meet goals
    - Employee's part
    - Supervisor's needed contribution
  - Ways to measure improvement/goals
  - Timeframe for improvement (keep an eye on the clock)
  - Employee or joint creation

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Corrective Action Documentation

- What does proper documentation for a corrective action look like (cont.)?
  - Contains employee acknowledgements:
    - Of the performance problem
    - Of the employee's agreement to the plan
    - Of the employee's knowledge that failure to perform may result in additional disciplinary action
  - If acknowledgment is refused – document it

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Corrective Action Documentation

- What does proper documentation look like for a corrective action (cont.)?
  - Contains disclaimer:
    - Plan is not a contract
    - Employer does not have to facilitate improvement

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Documenting Misconduct

- How does the misconduct documentation help the employer avoid liability?
  - Encourages adequate investigation
  - Permits review
  - Promotes uniformity
  - Provides contemporaneous evidence of facts for use in lawsuits

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Common Mistakes in Disciplining

- Vague communication of the expectations and consequences going forward
- Inconsistent discipline for similar infractions across the company
- Inappropriately light discipline or giving too many chances to improve
- Bringing unrelated or irrelevant issues into the documentation

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Common Mistakes in Disciplining

- LYING in a performance review – Number One Problem
- Don't lie in a performance review to save someone's feelings or avoid confrontation
  - Will bite you like a rabid dog with 6-inch incisors
  - Not fair to employee – deprives them of chance to improve

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Cautionary Tale: *LaCasse v. Owen*

- Plaintiff was fired by Fountain Plaza, LLC. Plaintiff alleged the termination was retaliatory and motivated by his involvement in a complaint of sexual harassment at a different company with common ownership interests
- Plaintiff was presented with a "conference report" referring to a meeting two weeks earlier where his poor performance was addressed
  - Plaintiff refused to sign the report and objected that he had never received a performance review or been told he was not performing well
- Plaintiff objected to the executive director and he was fired the next day

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Cautionary Tale continued

- Fountain Plaza moved for summary judgment asserting Plaintiff could not prove causation – that his involvement in the sexual harassment complaint (rather than his poor performance) was the reason for his discharge
- Lower court granted summary judgment in favor of Fountain Plaza **despite ongoing dispute between the parties about whether the "conference report" (performance review) was fabricated and backdated**
- Appellate Court reversed and held that issue of fact was created by Plaintiff's allegation (and retention of a computer forensic expert) that performance review was fabricated

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Why Should You Take the Time to Conduct an Effective, Thorough Investigation?

Evidence of a flawed or cursory investigation can support a finding of pretext to support a discrimination/retaliation case.

A jury may infer discriminatory intent when an employer "fail[s] to conduct what appeared to be a fair investigation…."

-- *Trujillo v. Pacificorp*, 524 F.3d 1149 (10th Cir. 2008)

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Investigations

- Workers should be instructed to bring harassment/bullying concerns to management
- Workers do not have to approach the bully/hazer/harasser before complaining to management
- Complaints from workers who change their minds about complaining still are complaints and must be handled
- "I don't want to make a big deal about this. I just wanted to let you know. Please don't do anything about this. I don't want [name of harasser/bully] to get in trouble"

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Investigations

- Respond to all complaints—harassment, retaliation, violation of public policy, OSHA, etc.
- Explain the process, and emphasize retaliation is prohibited
- Set expectations
- Start by showing willingness to believe and then listen
- Separate alleged victim and harasser/bully pending investigation – different shifts, administrative leave.
- DOCUMENT, DOCUMENT, DOCUMENT
- First document – investigation plan
  - What is the scope of the investigation
  - What documents do you need to review before interviews/after interviews
  - Outside investigator or no
  - How handle confidentiality issues
  - Timeline for completing investigation

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Investigations

- No retaliation
- Who you are working for
- 5Ws – who, what, when, where, witnesses
  - Step one – Get the victim's story
    - Ask the victim -- what happened, who did it, where did it happen, and when did it happen.
    - Were there any witnesses? If yes, who?
    - Have the victim sign a statement – you do not want the story to change
- Step two – Get the witnesses' story
  - Ask the witness – 5Ws -- what did you see or hear, when and where did you see or hear it, who else was present
  - Have the witness sign a statement

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Investigations

- Step Three – Confront the harasser/bully
  - Confront the harasser with the allegations
  - Give him or her a chance to respond
- Step Four – Make a decision
  - Make a decision regarding the extent to which you believe that the victim was subject to unlawful harassment/bullying
  - You will have to decide whose testimony is more credible – the victim and witnesses or the alleged harasser/bully
  - Don't make legal conclusions – "Employee X was the victim of sexual harassment"
  - Instead "I find that Employee Y said _____ to Employee X"

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Investigations

- Step Four (cont.)
  - The alleged harasser is not going to admit the behavior that he or she is accused of committing
  - Decide on discipline for the harasser, if any – write up, suspension (with or without pay depending on any applicable policies), termination
  - Document why you took action the action you did (who you interviewed, who you believed, why, and why the discipline is appropriate)
  - Disciplinary action goes in personnel file of accused
  - The interview summaries should go in a separate investigation file – not the files of the victim or the witnesses (future lawsuit)

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Investigations

- Report
  - List documents reviewed and summary of what they contain
  - List witnesses interviewed and summary of testimony – note dates interviewed
  - Summarize complaint/allegations
  - Factual findings (with supporting evidence references)
  - Any evidence discounted? Why?
  - Summary of who you believed and why
  - Conclusions
    - Again, not legal conclusions – try not to say “Employee X was the victim of unlawful harassment under Title VII”
    - Can make conclusions that certain behavior violated company policies
  - Recommended actions

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EEOC Enforcement Guidance

In 1999, the EEOC issued "Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors," which contains guidance on "credibility determinations":

> "If there are conflicting versions of relevant events, the employer will have to weigh each party's credibility. Credibility assessments can be critical in determining whether the alleged harassment in fact occurred.

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EEOC Enforcement Guidance (cont'd.)

- "Factors to consider include:
- Inherent plausibility: Is the testimony believable on its face? Does it make sense?
- Demeanor: Did the person seem to be telling the truth or lying?
- Motive to Falsify: Did the person have a reason to lie?

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EEOC Enforcement Guidance (cont'd.)

- Corroboration: Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or physical evidence (such as written documentation) that corroborates the party's testimony?
- Past record: Did the alleged harasser have a history of similar behavior in the past

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Common Handbook Provision

Investigation Confidentiality Policies

All complaints will be promptly investigated. All parties involved in the investigation will keep complaints and the terms of their resolution confidential to the fullest extent practicable.

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EEOC Guidance

- This is based on EEOC guidance – “need to know” basis only
- An employer should make clear to employees that it will protect the confidentiality of harassment allegations to the extent possible. An employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. However, information about the allegation of harassment should be shared only with those **who need to know** about it. Records relating to harassment complaints should be kept confidential on the same basis.

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EEOC Guidance

- A conflict between an employee’s desire for confidentiality and the employer’s duty to investigate may arise if an employee informs a supervisor about alleged harassment, but asks him or her to keep the matter confidential and take no action. **Inaction** by the supervisor in such circumstances could lead to **employer liability**. While it may seem reasonable to let the employee determine whether to pursue a complaint, the **employer** must discharge its **duty** to prevent and correct harassment.

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NLRB Disagrees?

- In 2019, the NLRB ruled that employer rules requiring employee confidentiality during open investigations are lawful. But you needed to apply "individualized scrutiny" in each case to maintain confidentiality post-investigation, e.g., to protect the integrity of the investigation, or to protect the complainant against mistreatment or retaliation.
- In *Stericycle*, the NLRB overruled their 2019 decision with respect to confidentiality instructions during the pendency of the investigation. Now, you need a specific reason—during and after the investigation—to maintain confidentiality with non-supervisors.

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NLRB Disagrees

- For supervisors, there's no change. Recall that supervisors don't have Section 7 rights. Feel free to tell them to keep it secret.

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Investigation Confidentiality Policy Example

Instead of: All parties involved in an investigation will keep complaints and the terms of their resolution confidential.

Consider: All supervisors involved in an investigation will keep complaints and the terms of their resolution confidential. The Company may require that non-supervisors maintain confidentiality during an investigation when confidentiality is needed, e.g., to protect the integrity of the investigation, or to protect complainants or witnesses against tampering or mistreatment.

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Investigations – When to Call In the Cavalry?

- It depends:
  - Complaint involves alleged sexual harassment between two entry level employees. Something that potentially can be handled in house.
  - Advantages –
    - institutional knowledge of the Human Resource department
    - likely comfort the parties will have when they are interviewed by a friendly face.
  - Disadvantages –
    - level of involvement Human Resources has in promoting, demoting, and/or terminating employees as the greater the involvement the more likely a conflict of interest exists.

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Investigations – When to Call In the Cavalry?

- It depends:
  - Complaint is made by a lower level employee against the owner/president of the company.
  - Investigation would likely need to be conducted by an outside investigator.
  - Avoids the inference of impropriety.
  - Even if Human Resources vows to be neutral and fair, the owner/president controls that individual's employment – obvious potential bias.
  - If the investigator has a prior relationship with any potential witness, inference that the witnesses' statements may be given more weight than other witnesses.

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Investigations – When to Call In the Cavalry?

- It depends:
  - The investigation must be fair, impartial, and timely if you are to use the outcome of the investigation as a defense to potential civil liability.
  - If you have any doubts that the standard can be met, call in an outside investigator.

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Consider Splitting the Cavalry In Two

- One person to investigate
- One person to advise
- Why?
- Attorney-Client Privilege/Work Product Doctrine
  - Investigator could potentially be deposed/called as a witness

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Lessons Learned Vandegrift v. City of Philadelphia (2017)

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Investigations – Lessons Learned

- The story
  - Two police officers allege sexual harassment and sexual assault by their boss
  - One officer claims that she was sexually assaulted in boss' car
  - Inspection results in a finding of physical evidence that something was going on in that car
  - The boss says, "Oh yeah, I have had sex a couple of times in the car" with a civilian woman
  - What is the next question?

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Investigations – Lessons Learned

- The story
  - City did NOT do that
  - The investigators did not ask for the name of the civilian or for her description
  - Boss did not provide investigators any contact information for the civilian
  - Although victim had two witnesses who corroborated her account of the events (he had been hitting on her at a bar before the alleged assault), the investigation resulted in a finding of "not sustained"
  - Lesson One – Ask the follow up question!!

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Investigations – Lessons Learned

- The story
  - The second officer complained about a litany of inappropriate, sexual comments and sexual assault by the same guy (this time in his office)
  - First response when the complaint was filed?
  - Shortly after Ms. Vandegrift made her internal EEO complaint, Captain Derbyshire spoke with his superior and told him he would transfer Ms. Vandegrift from 3 Squad to 2 Squad. The superior, an Inspector, responded, “that would be a good move.” Captain Derbyshire then told Lieutenant Morton—who is responsible for 2 Squad—he would transfer Ms. Vandegrift to 2 Squad because she filed the internal EEO complaint. Ms. Vandegrift did not want to leave 3 Squad, where she worked the night shift, because she needed the night shift schedule. Ms. Vandegrift's mother normally watched her son, but at the time her mother could not because she was hospitalized.

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Investigations – Lessons Learned

- The story
  - Doubling down
    - “Inspector Washington told Captain Derbyshire Ms. Vandegrift would be reassigned to the Southwest Division.
    - The Southwest Division is an extremely busy and hectic place to work. There is a perception within the Philadelphia Police Department assignment to the Southwest Division is a punishment. The Southwest Division is also a longer commute for Ms. Vandegrift than the South Division. Captain Derbyshire told Ms. Vandegrift the City reassigned her to the Southwest Division for her protection. When she asked what he meant, Captain Derbyshire said they could not move all the male detectives at once, so they were going to move her for her protection. Captain Derbyshire never spoke with Ms. Vandegrift about whether she wanted to move out of the South Division before he talked with Inspector Washington. Captain Derbyshire never considered moving the male detectives who engaged in the conduct Ms. Vandegrift had complained about.”
  - Lesson Two–Don’t reassign the claimant to make the problem go away!!

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Investigations – Lessons Learned

- The story
  - Plaintiff submitted expert testimony and court agreed:
    - The investigators improperly applied a criminal law standard to some of Det. Vandegrift's complaints;
    - The investigators failed to investigate all claims, including no investigation of Det. Vandegrift's retaliation complaints;
    - The investigators failed to interview or investigate, or attempt to interview or investigate anyone not currently employed by the Philadelphia Police Department;
    - The investigators' questioning methods were unreasonably brief and shallow;

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Investigations – Lessons Learned

- The story
  - Plaintiff submitted expert testimony and court agreed:
    - The investigations should have been conducted by a single investigator;
    - The investigators failed to review or consider background information about the alleged harassers;
    - The investigators failed to judge the credibility of the complainant, witnesses and alleged harassers.
  - Lesson Three—Apply the correct standard of “fact finding”!!
  - Lesson Four—Interview all the witnesses; ask the 5Ws, persistently!!
  - Lesson Five—Consider and explain credibility decisions

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Investigations – Lessons Learned

- The story (not the most helpful investigator)
  - Lieutenant Raymond Saggese has been an investigator in the internal affairs division for sixteen years
  - During Lieutenant Saggese's interview of Ms. Vandegrift during the investigation, Lieutenant Saggese told Ms. Vandegrift certain employees have “carte blanche” to act the way they do, and he had “run into a brick wall” regarding other investigations
  - He also told Ms. Vandegrift other sexual allegations against “higher-ups” are swept under the rug
  - Lesson Six – Choose your investigator wisely!!

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Investigations – Lessons Learned

- The story—
  - On July 29, 2014, Ms. Vandegrift sent a Facebook message to four of her male colleagues in her squad which included a picture of a baby whose facial expression reminded her of Detective Ruth and included quotes from Detective Ruth:

    John Ruth at 6 months. He's saying—‘yo Jim this job won't make me money’ ‘My payroll number is ...’ ‘Get off my Dick’ ‘a good detective is knowing when to work hard on a job and when to put the crap aside’ ‘this is silly’ ‘you alright buddy?’ Yep, 30 years later and not much has changed lol.
  - Vandegrift is disciplined for this even though, in violation of Police Department policy, no one asks her about the message – i.e. there was no investigation, just discipline
  - Lesson Seven—Follow your policies!! (In all things, not just investigations)

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Investigations – Lessons Learned

- The story--
  - Chief Inspector Christopher Flacco testified the City disciplined Ms. Vandegrift for the Facebook message because she complained about similar conduct:
    - Q. So do you agree with me, then, that the reason why Vandegrift is being written up for the Facebook message is because she made the complaint about similar conduct herself?
    - A. You can make that assumption, yeah, that's part of it.
  - Lesson Eight—Prepare for your deposition!! With your lawyer!!

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Common Mistakes in Terminating Employees

- NO DOCUMENTATION
- Not giving a complete, written reason for the termination to employee
- Terminating without having exhausted the ADA reasonable accommodation process
- Termination for retaliatory reasons (known to the decision maker, but not to HR)
- Overlooking procedural requirements
- Bringing unrelated or irrelevant issues into the documentation
- Sugar-coating or leaving out some reasons for termination – if it is not noted in a contemporaneous document, it did not happen
- Getting HR or counsel involved too late – after a bad decision has been made or bad documentation has been created

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Thank You

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The Uses, Risks, and Benefits of AI for HR Managers

Half-day Employment Law Conference
October 16, 2025

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AI Trends in Human Resources

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AI Trends: 2024 SHRM Survey

- In January 2024, 2,366 HR professionals answered a SHRM survey on AI
  - 26% of respondents say they use AI to support HR-related activities
- Of HR professionals who use AI, the most common uses were:

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AI Trends: 2024 SHRM Survey (cont.)

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AI Trends: 2024 SHRM Survey (cont.)

- Of respondents who use AI (approximate percentages):
  - 90% say AI saves time or increases efficiency in recruiting, interviewing, or hiring
  - 67% use AI to help generate job descriptions
  - 32% find AI enables “somewhat better” or “much better” recruiting, interviewing, or hiring of diverse candidates
  - 10% say AI allows them to access underrepresented pools of talent they weren’t previously reaching

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AI Trends: 2024 SHRM Survey (cont.)

- Of respondents who use AI (approximate percentages):
  - 40% have concerns about security and privacy of data used by AI tools
  - Only 34% say the vendor(s) they purchase AI from are **very transparent** about the steps taken to ensure the tools prevent or protect against discrimination/bias
- Reasons why organizations do not use AI (approximate percentages):
  - 42% lack knowledge about what AI tools would best fit their needs
  - 29% have concerns that AI may accidentally overlook/exclude qualified applicants/employees
  - 20% are concerned that AI can repeat/exacerbate patterns of bias because it learns from past data

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Uses & Benefits of AI in HR

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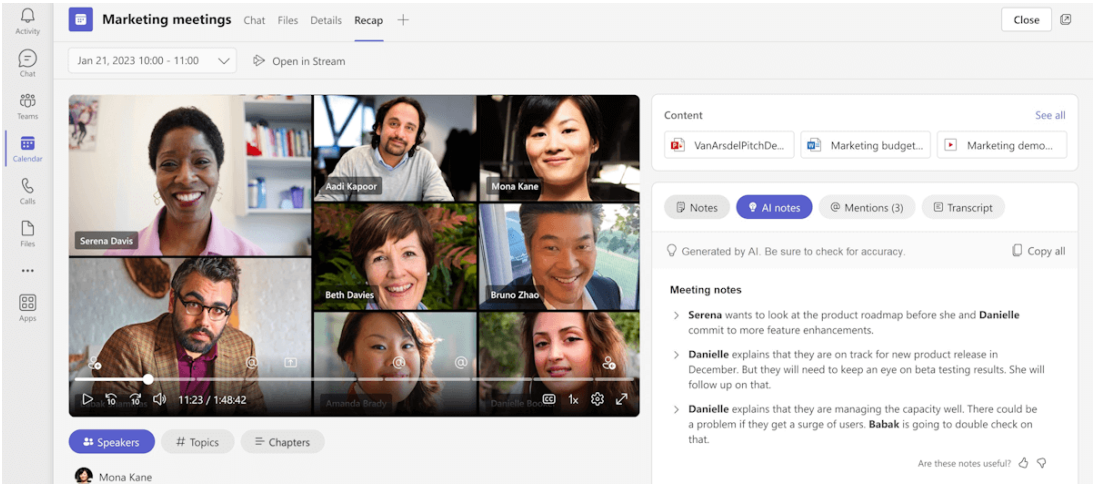
Meeting Assistant (e.g., Teams' Intelligent Recap)



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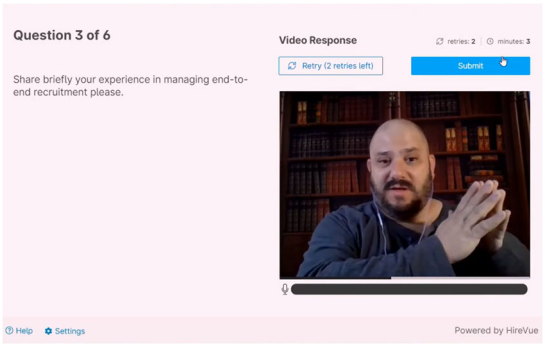
Virtual Interviews (e.g., HireVue)

- Candidates can participate in on-demand interviews outside traditional business hours
- AI "scores" candidates interview responses
- AI considers physical and vocal responses to questions
- HireVue: "We've learned a lot by conducting over 70 million interviews. With this data, our models focus on skills, behaviors, and competencies specific to the job and not on irrelevant information like how someone was dressed, which university they attended, or which keywords are in their resume."



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AI and Employment Law

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AI Use in HR Can Implicate Federal Employment Laws

- Title I of the Americans with Disabilities Act of 1990
  - Prohibits employment discrimination against qualified individuals with disabilities who can perform essential functions of the job with or without accommodation
  - Requires the employer to provide reasonable accommodations to qualified individuals with disabilities unless doing so would cause the employer an undue hardship

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Implicated Federal Employment Laws (cont.)

- Title VII of the Civil Rights Act of 1964
  - Prohibits employment discrimination based on race, color, religion, sex, or national origin
- Age Discrimination in Employment Act of 1967
  - Prohibits employment discrimination against anyone age 40 years of age or older
  - Among other nuances, ADEA requires waiver agreement in severance package must clearly note that the employee is waiving ADEA rights and must provide said employee 21 days to consider the agreement

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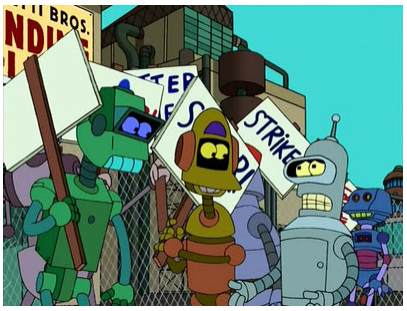
Implicated Federal Employment Laws (cont.)

- National Labor Relations Act of 1935
  - Prohibits employers from interfering with union activity or inferring with employees making concerted efforts to improve working conditions
- Family Medical Leave Act of 1993
  - Requires employers to provide eligible employees with job-protected leave for certain family or medical reasons



- Genetic Information Nondiscrimination Act of 2008
  - Prohibits discrimination against employees or applicants because of genetic information

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And Then There's State and Local Laws

- State Human Rights Laws
  - State-level civil rights acts that can provide even broader discrimination protection
- State-specific Wage and Hour Laws
  - Does your payroll AI know about tip credit laws in Oregon?
- Polygraph Tests
  - Many states have laws prohibiting or heavily restricting the use of lie detector tests in hiring and employment
  - These state laws can be more stringent than the federal Employee Polygraph Protection Act

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Risks and Liabilities

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Cautionary Tale: *Baker v. CVS Health*

- Brendan Baker applied to work at CVS in Massachusetts
  - Part of his application included a virtual HireVue interview
  - According to Baker, HireVue claims it can detect whether an applicant "has an innate sense of integrity and honor" and can screen out "embellishers"
- Federal law and Massachusetts law prohibit lie-detector tests in pre-employment screenings
  - Baker filed suit against CVS in early 2023, seeking to certify a class-action lawsuit
  - Federal judge denied CVS's motion to dismiss
  - CVS settled in July 2024

HireVue

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Cautionary Tale: *ACLU v. HireVue*

- March 2025, ACLU submitted complaint of discrimination to Colorado Civil Rights Division and EEOC, alleging…
  - HireVue AI tool discriminated against deaf and Indigenous employee at Intuit seeking a promotion
  - Audible portions of HireVue interview video lacked subtitles
  - Employee's request for human-generated captioning as an accommodation was denied
  - AI-generated suggested feedback told a hearing-disabled employee to "practice active listening"

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Emerging Laws

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Federal Action on AI in Employment: Past and Present

- Biden-era agency actions and guidance focused on the risk of employment discrimination stemming from AI
  - Brought action against companies and supported employee lawsuits
- Trump-era agencies have rescinded guidance for use of AI in employment
  - Agencies appear less poised to bring action against employers or implement stringent regulation/guidance
- It is a question of when, not if, federal agencies will return to scrutinizing the use of AI in employment

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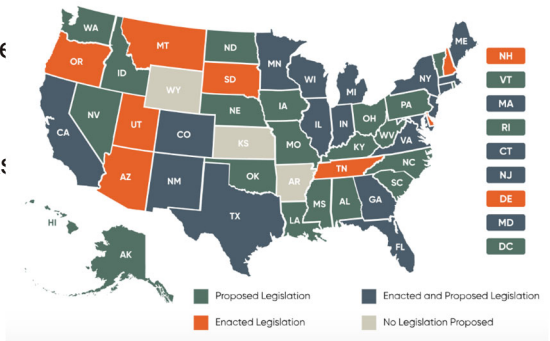
Current and Forecasted AI Laws

- States and Cities
  - Private-sector AI governance bills have been proposed or passed in nearly all state legislatures
  - Utah, Colorado, and California (among others) currently have AI laws on the books
  - Existing and proposed state legislation generally focused on consumer protection
  - Idaho has three AI laws all focused on deepfakes
  - New York City passed "first-of-its-kind plan" to address use of AI in employment decisions



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Federal Agency Guidance

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2022 Dep't of Justice Guidance: AI Hiring & Disability Discrimination

- How to avoid screening out (ADA violation)
- Be prepared to give reasonable accommodations
  - Employers should provide enough information about the technology, activities, and evaluation standards that will be in the interview so applicant can determine if they need an accommodation
  - Employers should provide and implement clear procedures for applicants to request reasonable accommodations for interviews

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2024 Dep't of Labor's AI Best Practices (Rescinded)

- Employers should establish AI governance and human oversight
  - Provide appropriate training about AI to as broad a range of employees as possible (e.g., how to use AI, what AI should or should not be used for, information to not share with AI)
  - Do not rely solely on AI (or information collected through electronic monitoring) to make significant employment decisions

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Dep't of Labor's AI Best Practices (cont.)

- Employers should establish AI governance and human oversight
  - Identify and document significant employment decisions informed by AI and automated systems: let employees and applicants know the role these systems are playing
  - Document and implement procedures for appealing (to a human) significant employment decisions made by AI
  - Ensure worker-impacting AI systems are independently audited

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Dep't of Labor's AI Best Practices (cont.)

- Employers should provide transparency about AI use
  - Provide employees and their representatives advanced notice and disclosure of worker-impacting AI
  - Provide clear disclosures about what information will be collected, how long it will be stored, and what it will be used for
  - Where feasible, allow workers to request, view, and submit corrections for individually-identifiable data used to make significant employment decisions

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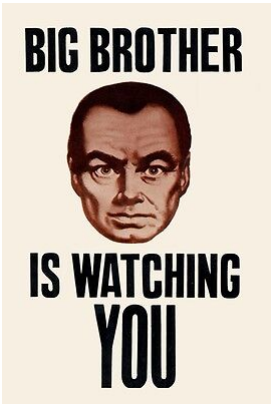
Dep't of Labor's AI Best Practices (cont.)

- Employers should protect labor and employment rights
  - Do not use AI systems that interfere with or have a chilling effect on protected activities like improving working conditions
  - Worker-impacting AI should not be used to reduce employees' wages, break time, or benefits



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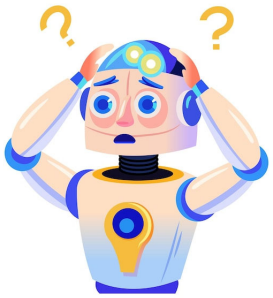
Dep't of Labor's AI Best Practices (cont.)

- Employers should protect labor and employment rights
  - Ensure AI used to prioritize or schedule work is helping to implement fair and predictable scheduling practices (as opposed to creating unpredictable or erratic schedules)
  - Avoid collecting, retaining, or otherwise handling employee data that is not necessary for a legitimate and defined business purpose



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Closing Thoughts

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Closing Thoughts

- Treat AI for what it is: a helpful tool that (like any tool) needs monitoring and upkeep
- AI-driven decisions in HR should always be subject to human oversight
  - Especially true for major decisions
- Scrutinize the AI and its developer
  - Test the AI internally before implementation
  - Audit the AI during use
  - Get employee feedback on AI
  - Check on the about the developer's credibility (e.g., reputation, mission statement, past liabilities)

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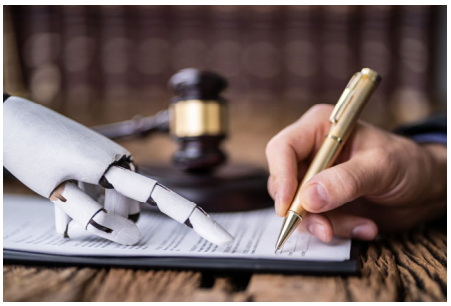
Closing Thoughts (cont.)

- Apply best practices
  - Promotes efficiency
  - Reduces liability
  - Prepares your company for future government regulation/oversight
- When in doubt, consult with an employment and labor attorney



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Employment Impacts of the One Big Beautiful Bill

Half-day Employment Law Conference
October 16, 2025

Emily Marie Hill
ehill@parsonsbehle.com

OBBB—Employment Provisions

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Overview

1. “No” Tax on Tips
2. “No” Tax on Overtime
3. Extension and Enhancement of Paid Family and Medical Leave Credit
4. Enhancement of Employer-Provided Child Care Credit
5. Increased Dependent Care Assistance Program Limit
6. Enhanced Enforcement for COVID-Related Employee Retention Credits
7. Elimination of Qualified Bicycle Commuting Reimbursement
8. Permanent Exclusion for Employer Student Loan Payments

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“No” Tax on Tips – Cheat Sheet

New deduction for certain tip income

Available Tax Years	2025-2028
Deduction Amount	Up to $25,000/year Above the line deduction
Phase Out	Begins phasing out at $150k for SF; $300k for MFJ Full phase out at $400k for SF; $550k for MFJ
Qualified Tips	“Cash tips (includes credit transactions) received by an individual in an occupation which **customarily and regularly received tips** on or before December 31, 2024, as provided by the Secretary.”

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"No" Tax on Tips – Deeper Dive

- **New above-the-line deduction** for certain tip income
  - There *is* some tax on tips—name is misleading
  - Service providers must claim deduction
  - Available tax years 2025 through 2028
  - Married taxpayers must file jointly
  - SSN required
- Max deduction = **$25,000/year of qualified tips**
  - Beware of phase out thresholds: $150,000 for SFs; $300,000 for MFJ
- "Qualified tips" means cash tips received by an individual in an occupation which "**customarily and regularly received tips**" on or before December 31, 2024

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Proposed Regulations—Occupations List

*Proposed Treasury Regulations published September 22, 2025

Beverage / Food	Bartenders; Wait Staff; Food Servers; Dining Room Attendants; Chefs; Dishwashers; Host Staff; Bakers
Entertainment / Events	Gambling Dealers, Change Persons, Cage Workers; Dancers (Club Dancer, Dance Artist); Musician; Singers; Disc Jockeys; Entertainers (Comedian, Clown, Magician); Content Creators; Ushers; Locker Room Attendant; Dressing Room Attendant
Hospitality	Bellhops; Concierges; Hotel Clerk; Housekeeping
Home Services	Home Maintenance/Repair Workers; Landscaping/Groundskeeping Workers; Electricians; Plumbers; Heating and Air Mechanics; Appliance Installers; Home Cleaners; Locksmiths; Roadside Assistance Workers
Personal Services	Personal Care Workers (Butler, House Sitter), Private Event Planners; Private Photographers, Videographers; Event Officiants (Wedding Officiant); Pet Caretakers; Tutors; Nannies / Babysitters

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Proposed Regulations—Occupations List

Personal Appearance / Wellness	Skincare Specialists; Massage Therapists; Hairdressers; Manicurist / Pedicurist; Makeup Artists; Personal Trainer / Group Fitness Instructors; Tattoo Artists; Tailors; Shoe Repairers
Recreation / Instruction	Golf Caddies; Self-Enrichment Teachers (Piano Teacher, Dance Teacher, Knitting Instructors); Recreational / Tour Pilots; Tour Guides; Travel Guides; Sports / Recreation Instructors
Transportation / Delivery	Valet Attendants; Rideshare Drivers; Goods Delivery Drivers; Personal Vehicle / Equipment Cleaners; Private / Charter Bus Drivers; Charter Boat Workers; Home Movers

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"No" Tax on Tips—Ineligible Workers

- Excludes workers in "specified trades or businesses" under IRC 1202(e)(3)(A), except engineers and architects
- Specified trades or businesses:

Health	Legal
Accounting	Actuarial Science
Performing Arts	Consulting
Athletics	Financial Services
Brokerage Services	Any trade or business where the principal asset is the reputation or skill of 1+ employees

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“No” Tax on Tips – FICA Tip Credit Expansion

Pre-OBBB	OBBB
Federal income tax credit available to employers on their share of FICA (social security and Medicare taxes) on employee tips but **only in food/beverage businesses**	Federal income tax credit available to employers on their share of FICA (social security and Medicare taxes) on employee tips **in food/beverage businesses and beauty and personal care businesses where tipping is customary** E.g., hair care, nail care, esthetics, body/spa treatments

“No” Tax on Tips – Payroll Practices

2025

- Tips remain subject to income tax withholding and FICA and FUTA where applicable
- Deduction claimed on employee’s tax return, not via payroll
- Withholding tables will not be updated this year

2026-2028

- Tips will likely be excluded for income tax withholding purposes, but remain subject to FICA and FUTA
- Deduction claimed on employee’s tax return, not via payroll
- IRS will update withholding tables in 2026 to account for deduction

“No” Tax on Tips – Payroll Reporting

- **2025**
  - Employers/payors must report tips as wages on Forms W-2, 941, and 940, and as nonemployee compensation on Form 1099
    - Forms not updated until 2026
    - Employers should use reasonable methods to track qualified tips and the service provider’s occupation
    - Provide separate accounting/supplemental materials tracking qualified tips to service provider with W-2 or Form 1099; service providers need this to claim deduction

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“No” Tax on Tips – Payroll Reporting

- **2026-2028**
  - IRS will likely revise forms to include specific box or code for qualified tips
  - Employers and service recipients should begin updating records and processes to comply with altered forms

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"No" Tax on Overtime – Cheat Sheet

New deduction on certain overtime pay

Available Tax Years	2025-2028
Deduction Amount	Up to $12,500/year ($25,000/year for MFJ) Above the line deduction
Phase Out	Begins phasing out at $150k for SF; $300k for MFJ Full phase out at $400k for SF; $550k for MFJ
Qualified Overtime Compensation	Portion of pay that exceeds the employee's regular rate of pay, as required under the Fair Labor Standards Act, excluding any amounts already treated as "qualified tips."

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"No" Tax on Overtime – Deeper Dive

New above-the-line deduction for qualified overtime compensation

- Name is misleading—there *is* some tax on overtime
- Available for tax years 2025 through 2028
- Employees must claim deduction on their return
- Married taxpayers must file jointly
- SSN required

Max deduction = **$12,500/year** ($25,000 for joint filers) of **qualified overtime compensation**

- Beware of phaseout thresholds: $150,000 for SFs; $300,000 for MFJ

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“No” Tax on Overtime – Qualified Overtime

- “Qualified overtime compensation” means the portion of pay that **exceeds the employee’s regular rate of pay** as required under the FLSA, excluding any amounts already treated as qualified tips
  - Deduction limited to FLSA overtime (40+ hours/week)
  - State or local overtime rules are not covered

“No” Tax on Overtime – Payroll Practices

2025

- Qualified overtime remains subject to federal income tax withholding, FICA, and FUTA
- Deduction is claimed by employee on tax return, not via payroll
- Federal income tax withholding tables not updated for 2025

2026-2028

- Qualified overtime likely excluded for federal income tax withholding but remains subject to FICA and FUTA
- Deduction is claimed by employee on tax return, not via payroll
- IRS will likely update withholding tables in 2026 to account for deduction

“No” Tax on Overtime – Payroll Reporting

- **2025**
  - Employers must continue reporting all overtime as wages on Forms W-2, 941, and 940
    - Forms will not be updated until 2026
    - Employers should use reasonable methods to track qualified overtime and maintain supporting documentation
    - Provide separate accounting/supplemental materials tracking qualified overtime to employees with W-2; employees need this to claim deduction

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“No” Tax on Overtime – Payroll Reporting

- **2026-2028**
  - IRS will likely update payroll forms to include specific box or code for qualified overtime
  - Employers should begin updating records and processes to comply with updated forms

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Paid FMLA Credit – Mechanics

- IRC 45S: general business credit on wages paid to qualifying employees during (up to) 12 weeks of family and medical leave **provided under the employer's written policy**
  - Credit starts at **12.5%** when employer pays 50% of normal wages
  - Credit **increases by 0.25% for each 1% above the 50% wage replacement**, up to a **maximum of 25%**
  - Employer must provide at least 2 weeks of leave and at least 50% wage replacement

Paid FMLA Credit – OBBB Changes

- OBBB makes credit permanent
- OBBB expands the credit by—
  - Extending credit base;
  - Broadening employee eligibility;
  - Allowing state and local mandated leave to count toward minimum threshold; and
  - Revising aggregation rules to align with IRC 414(b) and 414(c).

Paid FMLA Credit – Base Expansion & Employee Eligibility

Base Expansion	Employee Eligibility
Pre-OBBB: credit available only if employer paid wages directly to employee OBBB: credit is available for **either**— • Wages paid directly by employer to employee; or • Employer-paid premiums to an insurer or similar provider that pays the employee for qualifying leave	OBBB: eligible employees include those working at least **20 hours/week** OBBB: employers may elect a **6-month employment requirement** (rather than 1 year)

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Paid FMLA Credit – State or Local Paid Leave

- Employer's written leave policy must provide at least—
  - Two weeks of leave (pro-rated for part time); and
  - 50% wage replacement.
- Pre-OBBB, state/local mandates did not count towards credit thresholds
  - Post-OBBB, state/local mandated leave counts toward credit thresholds
    - But state/local mandated leave is not taken into account in determining the amount of the credit
    - **Only employer-provided benefits beyond the state/local mandate qualify**

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Paid FMLA Credit – State or Local Paid Leave Example

- **State requires eight weeks leave at 60% wage replacement**
  - This satisfies the federal credit eligibility requirements but **no credit applies to those eight weeks**
- If employer adds four extra weeks at 60% wage replacement—or increases the eight weeks from 60% to 100% wage replacement—**only those additions qualify for the credit**

Employer-Provided Child Care Credit

- IRC 45F: credit available to employers for costs incurred in building/operating a qualified childcare facility, contracting with licensed providers, or childcare referral services
  - Credit = 40% of qualifying expenses; 50% for eligible small businesses
    - Up from 25% pre-OBBB
  - Annual cap on qualifying expenses = $500,000; $600,000 for eligible small businesses
    - Indexed for inflation beginning in 2027
    - Referral services qualify at lower 25% rate but all expenses go toward the same cap
- Effective date: changes apply to costs incurred after December 31, 2025

Dependent Care Assistance Program

- Effective Date: January 1, 2026
- Taxpayers can contribute up to **$7,500/year** ($3,750 for MFS) of pre-tax dollars towards eligible dependent care expenses
  - Compare to pre-OBBB amounts of $5,000/year ($2,500 for MFS)

Employer-Provided Child Care Credit

- "Eligible small business" means a business with **less than $25 million in gross receipts/year on average**
  - Based on a **5-year average** (was 3-year average pre-OBBB)
- Expanded eligibility for qualified expenses
  - Third-party intermediary arrangements: payments to **outside organizations** for securing and managing childcare spaces with licensed providers now qualify
  - Jointly owned/operated facilities: **multiple employers can share a facility**; each may claim the credit for its proportionate share of the expenses

Employee Retention Credits – Background

- CARES Act (March 2020): provided a **refundable payroll tax credit** for certain wages paid during COVID-19
  - Enhanced for most employers in Q3 2021 but amended payroll tax returns could generally be filed into 2024 and 2025
  - As program wound down, IRS saw a surge in questionable claims from "ERC mills"—i.e., businesses promoting the credit without properly verifying eligibility

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Employee Retention Credits – Claims and Audits

- Hard claim deadline: no new ERC claim may be filed after January 31, 2024
  - Any filed later are automatically denied
- Extended audit period: IRS has 6 years (previously 5) to assess ERC-related employment taxes
  - Measured from the latest of (i) the return filing date, (ii) deemed filing date, or (iii) claim date
- Expanded erroneous refund policy: 20% penalty for "excessive" refund claims applies to employment tax refunds, unless reasonable cause is shown

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Employee Retention Credits – Promoter Penalties

- ERC Promoters who fail to meet certain due diligence standards face a $1,000 penalty/failure
  - A “promoter” is defined by revenue thresholds (e.g., ERC revenue > 20% of gross receipts and $500,000 total); aggregation rules apply across related entities
  - Certified Professional Employer Organizations are excluded

Employee Retention Credits – Action Items

- Effective Date: July 4, 2025
- **What does all of this mean?**
  - Conduct self-audit of ERC claims already filed to ensure eligibility was properly documented
  - If weaknesses are discovered, consider voluntary disclosure or corrective amendments to mitigate penalties
  - Keep a clear audit trail of third-party advisor’s involvement (especially where contingency fees were paid)
  - Model potential repayment and interest exposure, including penalties under IRC 6676 (erroneous refund claim)
  - Consider insurance coverage or reserves for contingent liabilities

Elimination of Qualified Bicycle Commuting Reimbursement

Pre-OBBB

- IRC 132(f): employees could exclude up to $20/month from income for employer reimbursements of substantiated bicycle commuting expenses (purchase, repair, storage, etc.)
- Exclusion suspended 2018-2025; was set to return in 2026
- IRC 274(l) temporarily allowed an employer deduction for reimbursements

Post-OBBB (Effective 2026)

- Exclusion permanently repealed
- **Reimbursements now treated as taxable wages to the employee** (subject to income tax withholding, FICA, and FUTA)
- Employers cannot deduct costs (except as necessary for employee safety)

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Employer Payments of Student Loans

- Effective Date: January 1, 2026
- Employers can exclude up to **$5,250/year per employee**
  - Amount adjusted for inflation
- Action item: consider building policies around this exclusion

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Thank You

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2025 Employment Law Update

Half-day Employment Law Conference
October 16, 2025

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

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Trump 2.0: Significant Changes for Employers

- OBBB including “No” Taxes on Tips and Overtime.
- I-9 Audits.
- ICE Raids.
- DEI Under Attack.

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ICE arrests and detentions rise steeply in Idaho

Immigration agent arrests across state increased 797% in 2025, data review shows

BY: LAURA GUIDO - AUGUST 4, 2025 4:30 AM

Hundreds gather on Broadway Bridge in Idaho Falls to protest possible immigration raids

Published at 6:29 pm, February 1, 2025 | Updated at 8:52 am, February 2, 2025

David Pace, EastIdahoNews.com

ICE Raids

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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.

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ICE Raids: 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.

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ICE Raids: 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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DEI Under Attack

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Let's look at those Executive Orders

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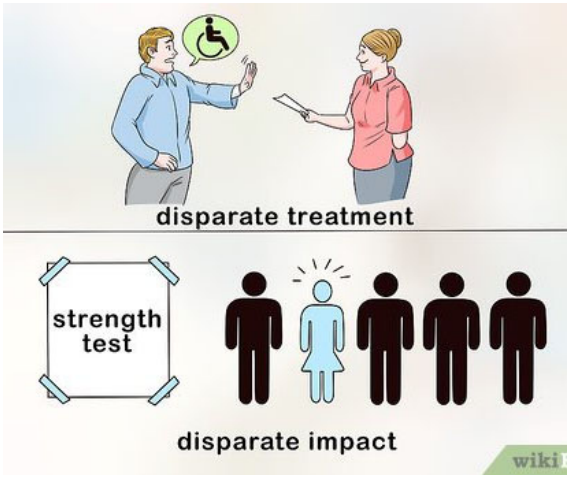
Executive Order 12250

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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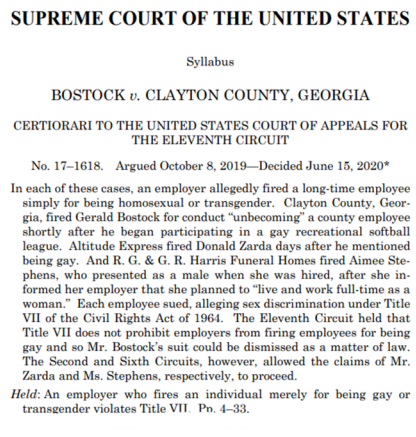
Timeout: What about *Bostock*?

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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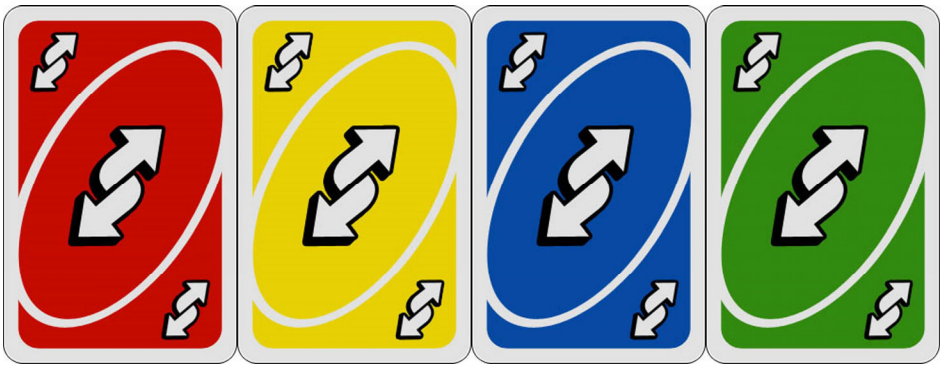

Rise of "Reverse Discrimination" Claims

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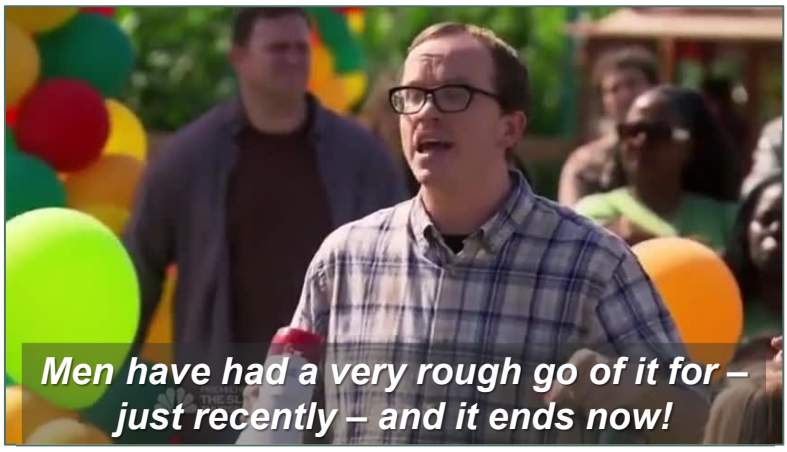
The Rise of "Reverse Discrimination" Claims



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Reverse Discrimination—Circuit Split

- **The Majority (7 Circuits – applicable in Idaho)**
  - 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 CO, UT, and WY)**
  - 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 Kentanji 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 seriously all allegations*** of discrimination and harassment by *all* employees.
- 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

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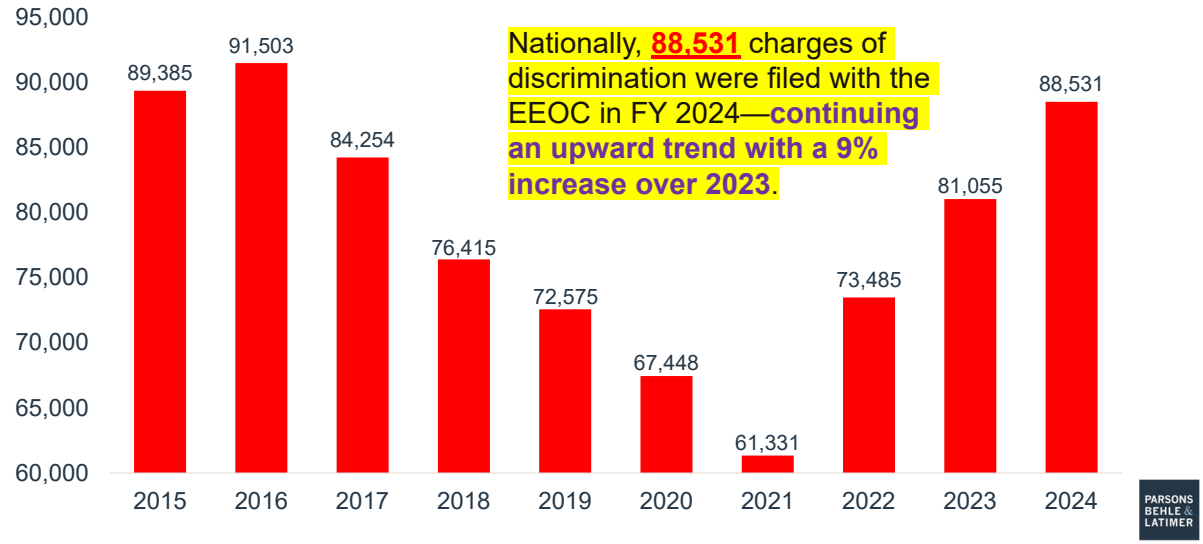
2024 EEOC CHARGE DATA



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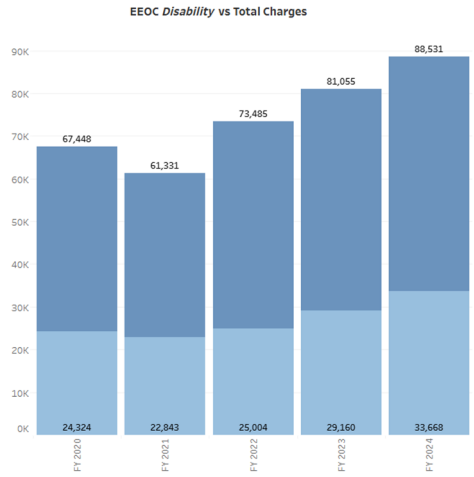
ADA (disability) claims are on the rise.

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.

That's a record number of disability discrimination claims!



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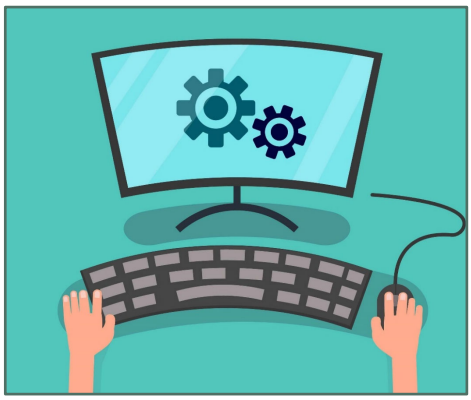

Remember *Peterson v. Nelnet* from 2021?

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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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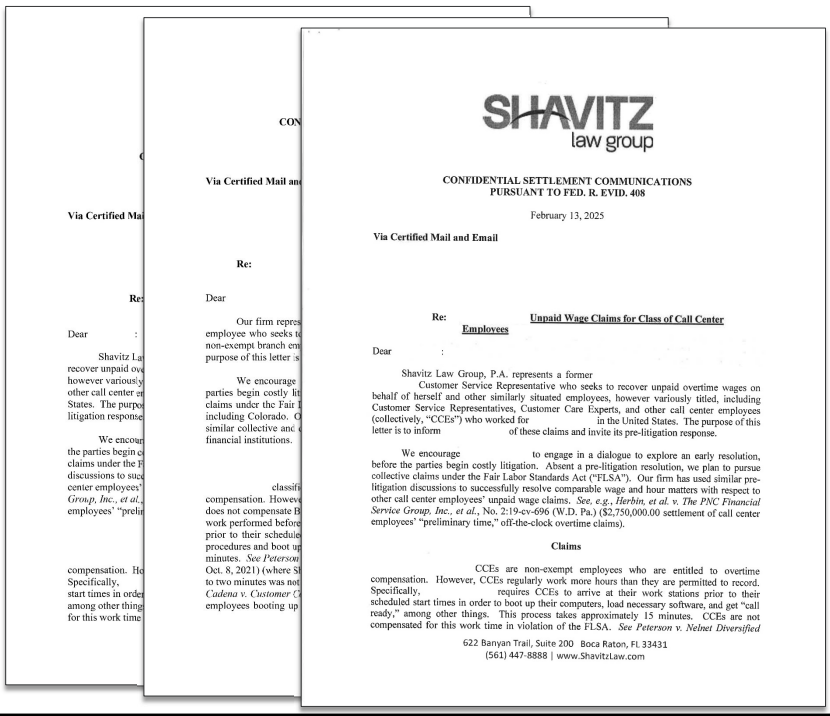

SHAVITZ law group

CONFIDENTIAL SETTLEMENT COMMUNICATIONS
PURSUANT TO FED. R. EVID. 408

February 13, 2025

Via Certified Mail and Email

Re: Unpaid Wage Claims for Class of Call Center Employees

Dear :

Shavitz Law Group, P.A. represents a former Customer Service Representative who seeks to recover unpaid overtime wages on behalf of herself and other similarly situated employees, however variously titled, including Customer Service Representatives, Customer Care Experts, and other call center employees (collectively, "CCEs") who worked for in the United States. The purpose of this letter is to inform of these claims and invite its pre-litigation response.

We encourage to engage in a dialogue to explore an early resolution, before the parties begin costly litigation. Absent a pre-litigation resolution, we plan to pursue collective claims under the Fair Labor Standards Act ("FLSA"). Our firm has used similar pre-litigation discussions to successfully resolve comparable wage and hour matters with respect to other call center employees' unpaid wage claims. *See, e.g., Herbin, et al. v. The PNC Financial Service Group, Inc., et al.*, No. 2:19-cv-696 (W.D. Pa.) ($2,750,000.00 settlement of call center employees' "preliminary time," off-the-clock overtime claims).

Claims

CCEs are non-exempt employees who are entitled to overtime compensation. However, CCEs regularly work more hours than they are permitted to record. Specifically, requires CCEs to arrive at their work stations prior to their scheduled start times in order to boot up their computers, load necessary software, and get "call ready," among other things. This process takes approximately 15 minutes. CCEs are not compensated for this work time in violation of the FLSA. *See Peterson v. Nelnet Diversified*

622 Banyan Trail, Suite 200 Boca Raton, FL 33431
(561) 447-8888 | www.ShavitzLaw.com

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Key Ninth Circuit Cases

What is a bona fide religious belief?

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Detwiler v. Mid-Columbia Medical Center (9th Cir. Sept. 23, 2025)

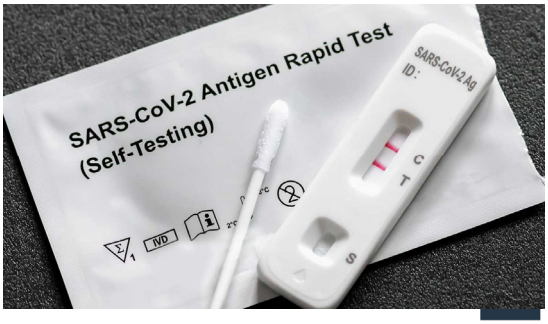
Sherry Detwiler worked as a Privacy Officer for MCMC in Oregon.

In 2021, Detwiler sought a religious exemption to MCMC's requirement that employees be vaccinated against COVID-19.

Detwiler believed that COVID vaccines are created from fetal cells. She objected to receiving a vaccine based on her Christian beliefs against abortion.

MCMC exempted her from the vaccine requirement, but required that she wear PPE and submit to weekly antigen testing for COVID.

MCMC
MID-COLUMBIA MEDICAL CENTER



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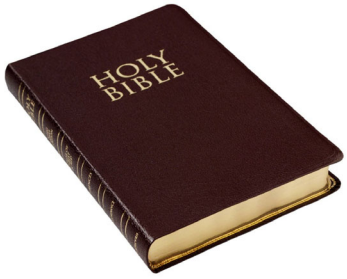
Detwiler v. Mid-Columbia Medical Center



Detwiler objected to the antigen testing too.

She told HR that she found "multiple sources" that the antigen test contained a "carcinogenic substance."

Citing her belief that her body is a "temple of God," she wrote to HR:

"It is against my faith and my conscience to commit sin. Sin is anything that violates the will of God, as set forth in the Bible, and as impressed upon the heart of the believer by the Holy Spirit. . . . As I have prayed about what I should do, the Holy Spirit has moved on my heart and conscience that I must not participate in Covid testing . . . . I find testing with carcinogens . . . to be in direct conflict with my Christian duty to protect my body as the temple of the Holy Spirit."

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Detwiler v. Mid-Columbia Medical Center

Detwiler asked that she be allowed to work from home as an alternative accommodation.

HR denied her work from home request because it would cause a hardship on her team. HR offered an alternative accommodation of reassignment to a position that could be performed remotely. HR provided Detwiller a deadline to accept reassignment or be terminated. Detwiller did not respond, so MCMC terminated her employment

Detwiller sued, alleging that MCMC failed to accommodate her religious belief in violation of Title VII of the Civil Rights Act (and related Oregon law).

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Detwiler v. Mid-Columbia Medical Center

A plaintiff must allege these basic elements for a claim of failure to accommodate a religious belief:

(1) A bona fide religious belief;

(2) Disclosure to an employer about a belief that conflicts with a job requirement (i.e., a request for accommodation to resolve conflict between a belief and workplace rule); and

(3) Employer subjected the employee to discrimination because of their inability to fulfill job requirements (i.e., the employer failed to grant a reasonable accommodation or an exemption from the workplace rule).

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Detwiler v. Mid-Columbia Medical Center

The Ninth Circuit affirmed a trial court's dismissal of Detwiler's complaint because she had not alleged a ***bona fide religious belief***.

What is a bona fide religious belief?

Plaintiffs are **not** required to establish that their religious belief is "consistent, widely held, or even rational."

Still, plaintiffs must "**connect the requested exemption with a truly religious principle**. Invocations of broad, religious tenants cannot, on their own, convert a secular preference into a religious conviction."

Detwiller's belief that the antigen testing swab was carcinogenic was "personal and secular, premised on the interpretation of medical research" not religious belief.

"Detwiller, by asserting a general religious principle and linking that principle to her personal, medical judgment via prayer alone, did not state a claim for religious accommodation."

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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."

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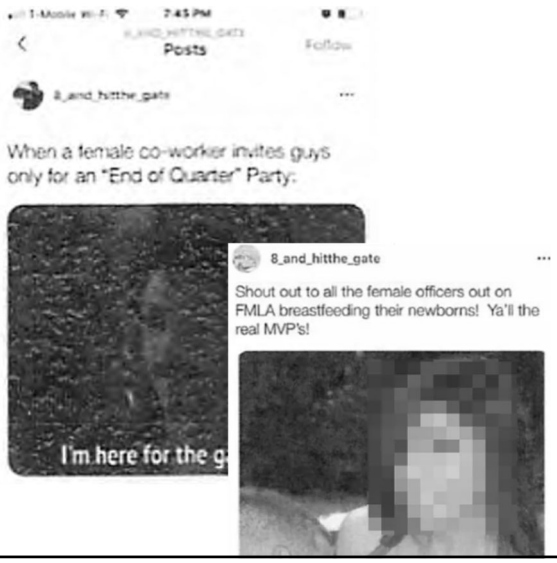
Steven's posts were awful



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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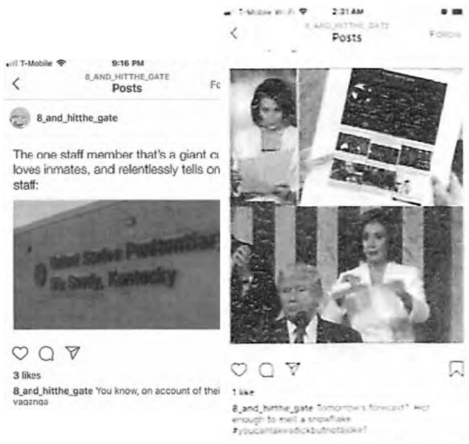
As a result, Steven's behavior got worse.

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LINDSAY OKONOWSKY, Plaintiff, v. MERRICK GARLAND, Defendant.	Case No. 2:21-cv-07581-MCS-AS **VERDICT FORM**

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

VERDICT

We, the jury in the above-entitled action, unanimously answer the following questions submitted to us:

QUESTION NO. 1:

Was Plaintiff Lindsay Okonowsky subjected to sexual advances, requests for sexual conduct, or other verbal or physical conduct of a sexual nature?

✓ Yes

___ No

If your answer to Question No. 1 is yes, then answer Question No. 2. If your answer to Question No. 1 is no, stop here and have the presiding juror sign and date this form below.

QUESTION NO. 2:

Was the conduct unwelcome to Plaintiff Lindsay Okonowsky?

✓ Yes

___ No

If your answer to Question No. 2 is yes, then answer Question No. 3. If your answer to Question No. 2 is no, stop here and have the presiding juror sign and date this form below.

///

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

QUESTION NO. 3:

Was the conduct sufficiently severe or pervasive to alter the conditions of Plaintiff Lindsay Okonowsky's employment and create a sexually abusive or hostile work environment?

___ Yes

✓ No

If your answer to Question No. 3 is yes, then answer Question No. 4. If your answer to Question No. 3 is no, stop here and have the presiding juror sign and date this form below.

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Thank You

Mark D. Tolman
mtolman@parsonsbehle.com

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SHRM Southeast Idaho

Thank You for Attending

PARSONS BEHLE & LATIMER

SHRM CREDIT ACTIVITY 25-Z3QJU

We want your feedback!
Please take a moment to complete a survey for this event.

Attorney Profiles

PARSONS
BEHLE &
LATIMER

Sean Monson is the chairperson of the firm's Employment, Labor & Immigration Law practice teams. He defends employers against discrimination and wrongful termination claims, represents clients in non-compete cases and advises clients regarding best practices to avoid litigation in the future.

Sean A. Monson

Employment & Labor Practice Area Co-Chairperson | Shareholder | Salt Lake City | Lehi

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Capabilities

Business & Commercial Litigation
Banking & Financial Services
Employment & Labor
Employment Litigation
Real Estate
Real Estate Litigation

Licensed/Admitted

Utah

Biography

Sean A. Monson focuses his practice in employment counseling and litigation and real estate litigation and transactions. He has represented several large and small Utah businesses in litigation matters involving claims for wrongful termination, discrimination, covenants not to compete, WARN Act disputes, OSHA infractions, and labor disputes. He has represented title companies, businesses and individuals in real property transactions and litigation matters involving boundary, ownership, title insurance and priority of interest lawsuits. He has also represented companies in multimillion dollar real estate purchase and sale transactions as wells as lending, development and leasing agreements. He has appeared before planning commissions and city councils on behalf of real estate developers regarding entitlement and zoning disputes throughout the Wasatch Front. He is the current chair of the Bountiful City planning commission.

Experience

Representing Software Company in Collective Action
Representing a dental software company in a collective action brought by independent contractors.

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.

Representing Dental Client in Collective Action
Representing a dental software company in a collective action brought by independent contractors.

Accomplishments

Professional
Recognized in *Best Lawyers in America*

Recognized as member of Utah's Legal Elite by *Utah Business* magazine for multiple years in both employment and real estate.

Academic
University of Michigan Law School (J.D., 1995)

Brigham Young University (B.A., summa cum laude, 1992)

Associations

Professional
Chair, Real Estate Section of the Utah State Bar

Member, Executive Committee, Litigation Section of the Utah State Bar

On the Board of the Northern Utah Human Resource Association

Community
Member of Board of Directors, Davis County Citizens Committee Against Violence

Volunteer, Davis County Attorney's Office Protective Order Project

Articles

Employment Law Update, March 16, 2023

Black Lives Matter, My Body My Choice, Make America Great Again: The Thorny Path of Navigating Political Speech at Work September 6, 2022
Utah Business Magazine

Employment Law Update May 2022, May 19, 2022

Is COVID-19 a Disability Under the ADA? It Depends, February 8, 2022

U.S. Court of Appeals for the Sixth Circuit Lifts Stay of Vaccine Mandate; OSHA Extends Compliance Deadline, December 20, 2021

Utah Responds to the Federal Vaccine Mandate: The New State Rule, November 12, 2021

New Federal Mandates Regarding COVID-19 Vaccination and Testing Are Coming, September 10, 2021

See the Latest EEOC Guidance For Employee Covid-19 Vaccinations In A "Utah Business Magazine" Article by Labor And Employment Department Chair Sean Monson, July 29, 2021

EEOC Issues Updated Guidance Regarding COVID-19 Vaccinations and the Workplace, May 28, 2021

Vaccines: Mandatory or Voluntary for Employees?, February 4, 2021

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

Dealing With "Remote" Teleworking Employees: Best Practices for Teleworking, September 15, 2020

Treasury Department Clarifies Payroll Tax Deferral Executive Order, September 9, 2020

A Portion of Payroll Taxes May Be Deferred for the Vast Majority of Workers Beginning Sept. 1, 2020, and Continuing Through Dec. 31, 2020, August 29, 2020

Supreme Court Limits Protections for Employees Working for Religious Schools, July 14, 2020

Salt Lake County Extends Face Covering Order to Aug. 20, 2020, July 7, 2020

Salt Lake County and Summit County Require Individuals to Wear Face Coverings, July 1, 2020

Looking Forward: How to Manage Your Workforce In 2020 and Beyond, June 30, 2020

Title VII Covers LGBQT Employees, June 30, 2020

PPP Loan Program Modified – More Time to Spend, Fewer Restrictions on Spending, June 5, 2020

Strategies on acing the SBA's new PPP Loan Forgiveness Application, May 18, 2020

What to Do with Employees at High Risk for Serious COVID 19 Illness: The ADA and Return to Work, May 12, 2020

Liabilities When Re-Opening: Steps to Minimizing the Risks, April 28, 2020

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

You've Had a Chance to Catch Your Breath, Now What? Five Things Employers Should be Thinking About Right Now, April 9, 2020

CARES Act PPP Loans Interim Final Rule Released, 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

Response Act Poster, Leave Policies and Shelter in Place Notices, March 30, 2020

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

Presentations

Winning the Case Before it Starts: Investigations, Documents and Lawyers, April 8, 2025
Parsons Behle & Latimer/SHRM 2025 Salt Lake City Employment Law Symposium

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

What's Not to Like About Social Media in the Workplace?, October 23, 2024
Parsons Behle & Latimer 2024 Idaho Employment Law Seminar

The Current Status of DEI and What it Means for Your Business, October 23, 2024
Parsons Behle & Latimer 2024 Idaho Employment Law Seminar

No Non-Competes for Exempt Independent Contractors, May 14, 2024
Parsons Behle & Latimer/SHRM 2024 Salt Lake City Employment Law Seminar

SE Idaho SHRM Half-Day Employment Law Conference, Oct. 19, 2023

Parsons Attorneys Present at SHRM Annual Employment Update, February 14, 2023

Remote Work in the Post-Pandemic Era, December 9, 2022
American Bar Association Event

New Sharks in the Water: FLSA Collective Actions, October 5, 2022
Parsons Behle & Latimer 10th Annual Idaho Employment Law Seminar

Everything You Want to Ask Your Lawyer But Are Afraid to Ask, October 5, 2022
Parsons Behle & Latimer 10th Annual Idaho Employment Law Seminar

Common Mistakes and Horror Stories, August 31, 2022
WECon Utah SHRM Conference

Everything You Want to Ask Your Lawyer But Are Afraid to Ask, June 16, 2022
34th Annual Parsons Behle & Latimer Employment Law Seminar

Employment Arbitration Agreements: What Are The Good For?, June 16, 2022
34th Annual Parsons Behle & Latimer Employment Law Seminar

Webinar -- New Vaccination Rule: What Does it Mean for Employers with More Than 100 Employees? A Lot!, November 10, 2021

Hot Employment Topics Session #2, October 28, 2021
33rd Annual Parsons Behle & Latimer Employment Law Seminar

Hot Employment Topics Session #1, October 28, 2021
33rd Annual Parsons Behle & Latimer Employment Law Seminar

Hot Employment Topics Session #2, September 22, 2021
Parsons Behle & Latimer Ninth Annual Boise Employment Law Seminar

Hot Employment Topics Session #1, September 22, 2021
Parsons Behle & Latimer Ninth Annual Boise Employment Law Seminar

Hot Employment Topics, August 25, 2021
Parsons Behle & Latimer Utah County Employment Law Seminar

The Coronavirus “Response Act” – COVID-19 Relief and Tax Benefit Opportunities in 2021, January 14, 2021
Parsons Behle & Latimer Virtual CLE

Independent Contractor vs. Employee: The Devil's Bargain, November 10, 2020
32nd Annual Parsons Behle & Latimer Employment Law Seminar

Trends in Employment Law Cases Related to COVID-19, November 10, 2020
32nd Annual Parsons Behle & Latimer Employment Law Seminar

PPP Loans: The CARES Act & Flexibility Act - What we Know to Date About Loan Forgiveness, July 14, 2020

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

COVID-19: Returning to Work, May 13, 2020

Back in Business: Information Every Idaho Employer Should Know, May 13, 2020
Human Resource Association of Treasure Valley

What Every Employer Should Know Before Resuming Business in Utah, May 12, 2020
Visit Salt Lake

Back in Business: Information Every Idaho Employer Should Know, May 11, 2020
Idaho Technology Council

Reopening Utah's Restaurants: What Owners Need to Know, May 7, 2020
Salt Lake Area Restaurant Association

Employer Considerations To Successfully Reopen A Business, May 5, 2020
South Valley Chamber

Reopening Your Business: Meeting Opportunities and Challenges To Come Back Stronger, April 28, 2020

Families First Coronavirus Response Act: What It Does and How To Respond, March 23, 2020

News

Breaking: Vaccine and Testing Emergency Temporary Standard (ETS) is Stayed by the Supreme Court, January 13, 2022

COVID-19 Response Resource: New Relief Statute - Important Information Concerning the Supplemental Response Act, December 22, 2020

A Portion Of Payroll Taxes May Be Deferred For The Vast Majority Of Workers Currently Through Dec. 31, 2020, August 28, 2020

Supreme Court Limits Protections For Employees Working For Religious Schools, July 14, 2020

View Parsons Behle & Latimer's Family First Coronavirus Response Act Webinar Recording. Learn More About How This Act May Affect Your Business, March 23, 2020

Kristyn Escalante is a member of the firms Healthcare, Appeals and Litigation practice groups. She is a trusted attorney who represents professionals in a broad variety of legal matters such as litigation, investigations, regulatory compliance and licensure discipline.

Kristyn B. Escalante

Associate | Boise

Contact information

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Capabilities

Business & Commercial Litigation
Appeals
Healthcare
Real Estate Litigation
Employment Litigation
Employment & Labor

Licensed/Admitted

Idaho
U.S. Dist. Court, District of Idaho

Biography

Kristyn B. Escalante joined Parsons Behle & Latimer after completing a two-year clerkship with the Honorable Chief Justice G. Richard Bevan of the Idaho Supreme Court.

Kristyn earned her Juris Doctorate from the University of Idaho College of Law. While in law school, Kristyn served as a symposium editor on the Idaho Law Review, interned for the Ada County Prosecutor and completed a semester in practice as a judicial extern for the former Idaho Supreme Court Chief Justice, Roger S. Burdick.

A graduate of Boise State University, Kristyn received a bachelor's degree in Political Science. During her undergraduate studies, Kristyn served as a legislative intern at a law and policy firm and was a member of the Boise State Women's Volleyball team.

Experience

Breach of Contract Litigation

Assisted trial team in successful defense and counterclaim of a breach of contract dispute. A subcontractor sued our client, a general contractor, after our client terminated a subcontract agreement. Due to the subcontractor's wholly deficient work, we pursued a breach of contract counterclaim against the subcontractor. In litigation we were able to summarily dismiss a claim for unjust enrichment and were also successful in moving the court for sanctions against the opposing party due to the opposing party's failure to comply with certain court orders. The case ultimately went to trial. After a five-day jury trial, the jury returned a verdict in favor of our client finding that our client did not breach the subcontract agreement,

that the subcontractor did breach the subcontract agreement, and, as a result, our client was entitled to damages.

Medical Malpractice Settlement

A medical malpractice lawsuit was brought against our client, a podiatrist in Twin Falls, Idaho. In the course of litigation, it was determined that plaintiff's expert witness disclosures were deficient under Idaho law. We prepared materials to summarily dismiss plaintiff's medical malpractice claims because plaintiff could not establish his case through direct expert testimony. Rather than facing our summary judgment motion, plaintiff agreed to dismiss his lawsuit with prejudice.

Breach of Contract Dispute
Drafted summary judgment motion arguing no breach of contract because purchase and sale agreement was timely terminated. District court denied, finding a factual dispute as to whether an oral agreement prior to execution of the contract redefined due diligence period. Filed reconsideration motion arguing Idaho law does not permit oral modification of a nonexecuted contract. District court ruled in our favor on reconsideration and judgment ultimately entered for our client.

Accomplishments

Academic
University of Idaho, College of Law (J.D., 2018)

- Idaho Law Review, Symposium Editor
- Dean's List, all applicable semesters
- CALI Excellence for the Future Award: Civil Procedure II

Boise State University (B.S. degree, *cum laude*, 2014)

- Boise State Women's Volleyball

Associations

Professional
Idaho State Bar, Member
American Bar Association, Member
Idaho Women Lawyers, Retreat Planning Committee and Gala Planning Committee
University of Idaho College of Law 2L Mentor Program, Mentor

Community
Boise State University Varsity B, Member
Jannus, Inc., Board of Directors

Articles

"Commencing an Action: Idaho," Practical Law, November 17, 2023

"Rebutting Negative Online Reviews Can Land Healthcare Providers in HIPPA Hot Water," *Employment Law Update,* Aug. 2, 2022

"Statutes of Limitations: Idaho," Practical Law, April 19, 2022

Presentations

Drugs and Alcohol in the Workplace, Parsons Behle & Latimer 2024 Idaho Employment Law Seminar
October 23, 2024

Garrett M. Kitamura is a member of Parsons Behle & Latimer's litigation practice group. His sophisticated litigation practice focuses on representation of industry leaders in the corporate and agricultural sectors.

Garrett M. Kitamura

Associate | Boise

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Capabilities

Agriculture
Business & Commercial Litigation
Employment Litigation
Water Rights, Quality & Infrastructure
Government Relations & Lobbying
Employment & Labor

Licensed/Admitted

Idaho
U.S. Dist. Court, Dist. of Idaho
U.S. Court of Appeals, 9th Circuit
Oregon
U.S. Dist. Court, Dist. of Oregon
Utah
U.S. Dist. Court, Dist. Of Utah
Washington
U.S. Dist. Court, Eastern. Dist. Of Wash.
U.S. Dist. Court, Western. Dist. of Wash.
U.S. Court of Federal Claims

Biography

Garrett M. Kitamura is a member of the litigation and employment law practice groups at Parsons Behle & Latimer. He previously worked alongside Parsons' attorneys in the firm's Summer Associate Internship program.

Garrett received his Juris Doctor from the University of Virginia School of Law. While in law school, he participated in the Child Advocacy Clinic, where he argued on behalf of juvenile clients in review hearings before the state circuit courts of Virginia. He served as Articles Editor for the Virginia Environmental Law Journal and as President of Street Law, a program where law students facilitate legal workshops for local high school students. Between his semesters in law school, Garrett performed pro bono services for Immigrant Justice Idaho.

Prior to law school, Garrett graduated from Oregon State University, where he was elected to Phi Beta Kappa and earned dual bachelor's degrees in Education and English. During his undergraduate studies, Garrett was a member of the Honors College and served as a legislative intern in the Oregon House of Representatives.

Garrett previously served as a state officer for the Oregon Future Farmers of America (FFA) Association and continues to be involved with the FFA in Idaho.

Accomplishments

Professional
Idaho Business Review Leaders in Law Honoree, 2024

Academic
University of Virginia School of Law (J.D., 2021)

- Virginia Environmental Law Journal, Junior Managing Board
- Recipient of the Pro Bono Challenge award

Oregon State University (B.A., Summa Cum Laude, 2018)

- Phi Beta Kappa
- Romeo and Juliet: Textbook Edition, Undergraduate Editor
- Honors Thesis: The Auteur Perspective of David Fincher

Associations

Community
Recognized by Oregon Future Farmers of America in a Past Member Spotlight, 2024

Friends of Public Television, board of directors (2023 - present)

Nampa FFA Alumni and Friends, past Vice President and current member (2021 – present)

Foundation for Idaho History, board member (2022 - 2024)

Professional
Idaho State Bar

Oregon State Bar

Washington State Bar

American Bar Association

Articles

Ask the Expert: Could Bereavement Leave Be Covered by the FMLA? HR Daily Advisor, Jan. 17, 2025

Impacts of WOTUS Rule on the Arid West, ABA's Natural Resource & Environment Magazine, May 6, 2024

Responding to a Complaint: Idaho, Practical Law, Sept. 6, 2023

Case Study: Non-Compete Agreements Remain Subject to Judicial Review for Reasonableness, Nov. 17, 2022

Idaho Employers May Be Liable for Harm Stemming from Workplace Injuries Aggravated by Employee Conduct, July 28, 2022

Presentations

"The Uses, Risks, and Benefits of AI for HR Managers," (April 8, 2025)
Parsons Behle & Latimer/SHRM 2025 Salt Lake City Employment Law Symposium

"I Have a Note From My Doctor" – Engaging with Employees' Medical Providers on ADA Accommodation and Fitness for Duty Issues (Oct. 23, 2024)
Parsons Behle & Latimer 2024 Idaho Employment Law Seminar

"It's the Law: Recent Court & Administrative Decisions of Interest" (June 11, 2024)
Idaho Water Law & Resource Issues Seminar

"The Federal Government's Role in Washington State Water," (May 15, 2024)
1st Annual Eastern Washington Water Law Conference

The Major Questions Doctrine – The Supreme Court Decision West Virginia v. EPA, January 19, 2023
Idaho Water Users Association

Emily is a member of Parsons Behle & Latimer's corporate team. In her practice, she assists a variety of clients with strategic business and tax planning, as well as estate planning and administration matters.

Emily Marie Hill

Associate | Boise

Contact information

208.562.4891
ehill@parsonsbehle.com

Capabilities

Corporate

Tax

Trusts, Wills & Estates

Banking & Financial Services

Licensed/Admitted

Idaho

Biography

Emily earned her Juris Doctorate degree from the University of Oregon School of Law. While in law school, Emily served as Managing Editor of the Oregon Law Review and worked for a Seattle-based nonprofit creating financial literacy materials for high school students. Before law school, Emily attended Brigham Young University where she studied business.

Accomplishments

Professional

Summary of awards, honors, recognition

Academic

University of Oregon School of Law, 2023

- Order of the Coif
- Managing Editor, Oregon Law Review
- Excellence in Written Advocacy Award Recipient, 2021

Brigham Young University, 2020

Associations

Professional

Idaho State Bar

Articles

"Idaho-Based Businesses and Residents Stand to Benefit from Recent Idaho Tax Cuts," July 10, 2025

"Tax in the Trump 2.0 administration: Known knowns, known unknowns and unknown unknowns," Utah Business, Jan. 9, 2025

Mark is co-chairperson of the firm's Employment and Labor practice team. Mark helps his employer clients avoid disputes through preventative practices, policies and training, and advocates for them in litigation when disputes cannot be avoided.

Mark D. Tolman

Employment & Labor Practice Area Co-chairperson | Shareholder | Salt Lake City

Contact information

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mtolman@parsonsbehle.com

Capabilities

Appeals
Healthcare
Employment & Labor
Trade Secret Litigation
Employment Litigation

Licensed/Admitted

Utah
Idaho
Wyoming

Biography

Mark practices employment law and commercial litigation in matters before state and federal courts, the Utah Labor Commission and Equal Employment Opportunity Commission. He was recognized by the Utah State Bar as the 2018 Labor & Employment Attorney of the Year. Mark litigates cases involving complex factual and legal matters, including employment discrimination, harassment and retaliation, breach of fiduciary duty, covenants not to compete, solicit, or disclose confidential information, interference with contract, trade secrets and defamation. Mark has tried cases before state and federal courts and before the Adjudication Division of the Utah Labor Commission. He has also argued cases to the Utah Supreme Court, the Utah Court of Appeals and to the United States Tenth Circuit Court of Appeals. Most importantly, Mark helps his clients avoid litigation by daily counseling on employment law problems, developing preventative practices and policies and providing regular inhouse training.

Mark is an experienced independent investigator. He has conducted dozens of fact investigations involving matters of alleged harassment and abuse, discrimination and retaliation. Mark regularly trains HR professionals and others on how to conduct effective investigations.

Mark also volunteers as the Director of Legal Affairs for the Utah SHRM State Council and as Co-Director of Legal Affairs for Salt Lake SHRM. Mark is a regular presenter at SHRM events and provides a monthly *Ask a Lawyer* webinar for members of Salt Lake SHRM.

Experience

Utah's Workplace Violence Protective Order Law
Mark lobbied on behalf of Salt Lake SHRM and Utah SHRM for passage of House Bill 324, Workplace Violence Protective Order Amendments. This bill allows an employer to seek a protective order against individuals who harm, or threaten to harm, its employees or property. The bill passed and took effect July 1, 2023. For additional information on how to obtain a Workplace Violence Protective Order, please contact Mark or visit the Utah Court's website here: Protective Orders (utcourts.gov)

Independent Investigation of Sexual Harassment
Conducted an independent investigation of sexual harassment claims against Senator Gene Davis by a legislative intern.

ADA Discrimination Defense
Represented a Utah city regarding discrimination charges under the ADA and in retaliation for filing worker's compensation claims.

FMLA and ADA Discrimination Defense
Represented a large Intermountain region bank in two discrimination claims in U.S. District Court concerning FMLA and ADA.

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.

Accomplishments

Professional

Recognized in *Best Lawyers in America*

Utah Business Magazine's Legal Elite, Labor and Employment

Recognized in *Chambers USA*, Labor & Employment – Utah, 2017 - 2025

Mountain States Super Lawyers (Employment & Labor)
2015 "Outstanding Mentor Award," Utah State Bar

Academic

University of North Carolina at Chapel Hill (J.D., with honors, 2004)

Weber State University (B.S., *summa cum laude*, Economics, 2001)

Associations

Professional

Member, Society for Human Resource Management (SHRM)

Director of Legal Affairs, Utah State SHRM Council

Co-Director of Legal Affairs, Salt Lake Chapter of the Society for Human Resource Management (SHRM)

Community

Weber State University Business Advisory Council

Articles

"Congress Passes the Speak Out Act, Outlawing the Use of NDAs to Silence Victims of Sexual Harassment and Assault," (November 30, 2022)

"*Employment Law Update*," (June 29, 2022)

Presentations

Ask Us Anything (About Employment Law), (April 8, 2025)
Parsons Behle & Latimer/SHRM 2025 Salt Lake City Employment Law Symposium

One Unlikely Rise, One Potential Demise: The Realities of Reverse Discrimination Claims and DE&I Initiatives in 2025, (April 8, 2025)
Parsons Behle & Latimer/SHRM 2025 Salt Lake City Employment Law Symposium

Quiz Game: Test Your Knowledge of Recent Legal Developments (October 23, 2024)
Parsons Behle & Latimer 2024 Idaho Employment Law Seminar

Handbook Updates – 2024 Policy Pointers and Pitfalls (September 25, 2024)
Parsons Behle & Latimer 2024 Montana Employment Law Seminar

Handbook Updates: 2024 Policy Pointers and Pitfalls (May 14, 2024)
Parsons Behle & Latimer/SHRM 2024 Salt Lake City Employment Law Seminar

SE Idaho SHRM Half-Day Employment Law Conference (October 19, 2023)
Southeast Idaho SHRM Chapter

Conducting Effective Workplace Investigations (May 9, 2023)
Parsons Behle & Latimer 35th Annual Employment Law Seminar with SL SHRM

"Parsons Attorneys to Present at SHRM Annual Employment Update," (February 14, 2023)
Salt Lake SHRM

"Everything You Want to Ask Your Lawyer But Are Afraid to Ask," (October 5, 2022)
Parsons Behle & Latimer 10th Annual Idaho Employment Law Seminar

"Common Mistakes and Horror Stories," (August 31, 2022)
WECon Utah SHRM Conference

"2022 Legislative and Regulatory Update," (June 16, 2022)
34th Annual Parsons Behle & Latimer Employment Law Seminar

"Key Employment Laws Every New HR Professional Must Know," (August 30, 2022)
WECon Utah SHRM Conference

"Everything You Want to Ask Your Lawyer But Are Afraid to Ask," (June 16, 2022)
34th Annual Parsons Behle & Latimer Employment Law Seminar

"The ADA, FMLA and Other Leave Essentials," (June 16, 2022)
34th Annual Parsons Behle & Latimer Employment Law Seminar

"Emerging Employment Law Issues and Trends for Municipal Employers," (June 3, 2022)
Utah Municipal Attorneys Association