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TAKEAWAYS

SO YOU KNOW WHAT TO ASK TO AVOID EMPLOYER PITFALLS

Trump Administration Scale Down of Workplace Regulation Begins

A range of initiatives centered in the U.S. Department of Labor (DOL) are focused on reducing regulatory requirements for employers and lessening enforcement actions and penalties.

Lessened Financial Penalties Under Wage and Hour Laws

A Field Assistance Bulletin issued by the U.S. Department of Labor (DOL) on June 27, 2025, rescinds the Wage and Hour Division's authority to seek liquidated damages in any pre-litigation investigation or resolution. This change impacts the types of damages employers may be expected to pay at the administrative stage of a wage and hour claim. The Division may still seek liquidated damages when it files a lawsuit (which typically would be on behalf of a group of employees). The bulletin also does not affect employees' ability to seek liquidated damages in a private lawsuit based on claimed violations of the minimum wage and overtime laws.

Lessened Regulation of Workplace Health and Safety

The Occupational Safety and Health Administration (OSHA) has announced more than 25 initiatives over the past few months to reduce its regulation of the workplace. The most far-reaching change would be reducing the scope of the "general duty clause," which is employers' overarching obligation to provide employees with a safe workplace, by excluding inherently risky activities that are essential to the job. This would apply to professional sports, marine shows, stunt performances, and other entertainment activities. OSHA is soliciting comments on this proposal.

Other proposed changes would impact OSHA's heat injury and illness prevention, safety color coding, construction illumination, and medical clearance for certain types of masks and respirators and other respiratory protection requirements. They also would lessen recordkeeping requirements and penalty and debt collection procedures.

Emphasis on Employer Self-Audit and Advisory Programs

Shifting the focus from government oversight to self-policing, a centralized self-audit web page developed by the DOL highlights a range of new, reconstituted, and existing programs for employers to identify and correct compliance issues and obtain advice.

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LEVY EMPLOYMENT LAW, LLC

411 Theodore Fremd Avenue, Suite 206 South, Rye, NY 10580

Tel: 914-834-2837 Fax: 914-637-1909

www.levyemploymentlaw.com info@levyemploymentlaw.com

Trump Scale Down of Workplace Regs *cont'd*

The Payroll Audit Independent Determination program (PAID) enables employers not already under investigation or sued for violations of the federal wage and hour or leave laws to self-disclose and remedy violations of the Fair Labor Standards Act (FLSA) and/or Family Medical Leave Act (FMLA). The program offers employers the ability to resolve such violations through payment of back wages calculated by the DOL and other remedies for FMLA compliance issues and thereby avoid penalties or litigation.

The Voluntary Fiduciary Correction Program similarly enables employers and employee benefit plan officials to voluntarily correct violations of the Employee Retirement Income Security Act (ERISA) such as delinquent contributions and improper plan expenses. While this program has existed for several decades, the DOL has added a new self-correction feature for specific transactions.

The DOL's self-audit web page also highlights:

- a new Compliance Assistance Safety and Health Program to provide technical assistance on safety and health for mining operations based on an anticipated surge in that industry;
- OSHA's On-Site Consultation Program for small and mid-size businesses; and
- the SALUTE program to receive technical assistance on compliance with the Uniformed Services Employment and Reemployment Rights Act.

Resolution of Unfair Labor Practice Charges

A new memorandum issued by the Acting General Counsel to the National Labor Relations Board continues the scale back of the prior General Counsel's aggressive enforcement initiatives and directs a more moderate approach to negotiating the settlement of unfair labor practice charges. Among the changes is greater flexibility to deviate from default language in settlement agreements, permitting field offices to include a non-admission of liability clause in settlements with employers, and allowing settlements that provide less than a complete "make whole" remedy of 100 percent of the total amount that could be reasonably anticipated to be recoverable after full litigation.

Limited Affirmative Action Compliance for Veterans and Individuals with Disabilities

A new Order issued by the Secretary of Labor authorizes the Office of Federal Contract Compliance Programs (OFCCP) to resume activities related to Section 503 of the Rehabilitation Act (Section 503) and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), but only to a point. All such activities had been temporarily frozen in compliance with the Trump Executive Orders that we wrote about in past blog articles. The new Order lifts that freeze and allows for receipt of complaints for violations of Section 503 and VEVRAA. The new order also allows for the processing of prior complaints that had been received and were put on hold under the freeze.

The Order administratively closes all of OFCCP's pending and scheduled employer compliance reviews, stating the reviews were "significantly entangled" with the affirmative action program for women and minorities that was revoked earlier this year by the Trump administration. Employers remain obligated to comply with Section 503 and VEVRA, but as the OFCCP works to revise its processes and systems to reflect its recently limited scope, compliance reviews will remain closed.

NYS Raises Employer Pay for Jury Service

New York State has nearly doubled the amount that employers must pay to employees while absent for jury service. The state now requires employers with at least 10 employees to pay employees at least $72 for each of the first three days of jury service.

NYC Amends Sick Leave Rules to Include Prenatal Leave

The New York City Department of Consumer and Worker Protection amended its rules related to the city's paid sick leave law, effective July 2, 2025, to align with the state paid prenatal leave law. Key changes were clarification that:

- an employer cannot set a minimum increment for use of prenatal leave that is greater than one hour;
- an employer can only request medical documentation for paid prenatal leave that exceeds three consecutive days;
- employers must inform employees in writing or electronically each pay period of the amount of paid prenatal leave used during the relevant pay period and the total balance of paid prenatal leave available for use; and
- employers need to have a written policy on prenatal leave that clarifies it is a bank of 20 hours that is separate from employees' paid sick leave entitlement.

The rules further create a presumption that time off taken by an employee for health care services during or related to pregnancy should first be applied to the employee's prenatal leave entitlement, unless an employee specifically requests to use other leave in lieu of paid prenatal leave. Except if state or federal law provides otherwise, employers cannot dictate that employees use one type of qualifying leave over another.

NYS Increases Enforcement of Child Labor Law Protections

As a result of changes to the Labor Law embedded in New York State's new budget bill, employers in the state face significantly increased penalties for violating the child labor laws. Effective with the passage of the law on May 9, 2025, the penalties for a first violation can be up to $10,000, for a second violation can be $2,000 to $25,000, and for any violation thereafter between $10,000 to $55,000. The penalties increase on a scale that is multiples higher if a violation results in serious injury or death to a minor.

Additional changes transfer the responsibility for issuing working papers from the Department of Education to the Department of Labor (NYDOL) and direct the NYDOL to create over the next two years a new database for the employment of minors, with which every New York employer that hires a minor will be required to register. Employers will need to provide their contact information, the locations where minors will be working, the number and names of minors hired, and certification that all such minors have been hired in compliance with the child labor laws. Minors will also need to register with the database to obtain an employment permit and provide updated information each time they are hired by a new employer. The database will not be accessible to the public, but data can be shared with authorized school employees, and for civil or criminal law enforcement purposes. Once created, all permits for minors to work will be issued electronically through the database.

NYS Limits Damages for Late Wage Payment

As part of New York's most recent budget law, the state amended the New York Labor Law to eliminate manual workers' entitlement to liquidated damages from employers if the employer had paid its manual workers at least semi-monthly. The only damages available in those situations for a first offense are for the lost interest resulting from the delayed wage payment (manual workers are supposed to be paid on a weekly basis under state law). However, repeat offenders face a far more substantial penalty of liquidated damages equal to the amount of wages found to be due.

NYS Posts Model Materials for Retail Worker Safety Law

Employers in New York have resources available from the state to comply with the Retail Worker Safety Act that took effect June 2, 2025. The state has issued:

- a model policy;
- a model training; and
- frequently asked questions to guide employers on the state's expectations for legal compliance.

The training is required for all retail employees upon hire, and then once a year for retailers with 50 or more employees, and once every two years for retailers with fewer than 50 employees. Similar to the interactivity requirement for the state's sexual harassment prevention training, the workplace violence prevention training can be digital, and is considered interactive if it includes some mechanism for employee input and response.

While the law only applies to employers with 10 or more retail employees, the FAQs clarify that "retail" employees include all employees who work on-site at a store, regardless of whether they are working in a sales capacity, and the 10-employee threshold is measured across all an employer's retail locations in the state.

Federal Government Continues Attacks on Employer DEI Initiatives

Attorney General Pam Bondi issued a memo on July 29, 2205, declaring that entities receiving federal funds must ensure that their programs and activities do not discriminate on the basis of protected characteristics "no matter the program's labels, objectives, or intentions." The memo identified a series of "best practices" for entities that receive federal financial assistance or that are otherwise subject to federal anti-discrimination laws, and a warning as to what the Department of Justice (DOJ) will consider to be unlawful practices, which could result in revocation of grant funding and liability for discrimination if a grant recipient knowingly funds unlawful practices of others. Our recent blog posts break down the content of the memo, the key themes that seem to drive the "unlawful" moniker used by the Trump administration, and the potential expansiveness of a challenge to selection criteria that may be deemed "proxies" for protected characteristics.

Two months earlier, the DOJ had announced a new Civil Rights Fraud Initiative, whereby DOJ will use the False Claims Act to investigate and pursue claims against federal contractors and grant/funding recipients that "knowingly" violate federal civil rights laws, including through "divisive" DEI policies. The DOJ has further invited individuals to act essentially as private attorneys general and sue federal funding recipients for allegedly "unlawful" DEI under the False Claims Act.

OFCCP Changes for Veterans

OFCCP lowered the newest benchmark for hiring veterans to 5.1 percent. Under the DOL's new budget proposal, OFCCP would be eliminated and enforcement for veterans would shift to DOL's Veterans' Employment and Training Service.

CT Legislature Addresses State High Court Decision on Workers Compensation Benefits

Responding to a decision issued by the Connecticut Supreme Court several months ago related to disability payments for workers' compensation claims that employers feared would dramatically increase their costs, the Connecticut legislature amended the state's Workers' Compensation Act effective July 1, 2025, and retroactively applicable to claims filed on or after July 1, 1993, to effectively reverse the Court's decision. The amendments make several additional changes to the law, including with respect to when claimants can be awarded permanent partial disability benefits and for how long.

NJ Issues FAQs on New Pay Transparency Law

The New Jersey Department of Labor and Workforce Development has issued Frequently Asked Questions that reflect an expansive application of the state's new pay transparency law. As reported in the Winter 2025 issue of Takeaways, the law requires employers to state the pay, benefits, and other compensation being offered for each posted job. According to the FAQs, the law applies to all employers with 10 or more employees who do business in New Jersey or accept employment applications within the state, even if the organization has no employees working in New Jersey. While regulations implementing the law have not yet been published, the state's website states that employers need to include in their job postings a general description of the benefits and other compensation, in addition to a wage range.

COURT WATCH

Supreme Court Rejects Different Title VII Standards for Majority/Minority Plaintiffs

Title VII protections apply to those whose protected characteristics place them in the majority of workers to the same degree as for those workers who fall into a minority classification. That was the central holding of the U.S. Supreme Court in *Ames v. Department of Youth Services* (June 2025). The plaintiff employee, a white heterosexual woman, had asserted that she was denied a promotion in favor of a lesbian candidate, and then demoted to make room for a gay man who was hired to fill her former role. Ames's claim had originally been dismissed on the grounds that, as a member of the majority group of heterosexual individuals, she was required to show "'background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority.' "

The Supreme Court reasoned that nothing in the text of Title VII draws a distinction between majority and minority-group plaintiffs, nor have the Court's prior decisions varied based on whether the plaintiff was a member of a majority group. Rather, the Court held that Title VII establishes the same anti-discrimination protections, and imposes the same burden of proof, for every individual.

Supreme Court Holds Retirees Cannot Sue Under the ADA

The U.S. Supreme Court held in *Stanley v. City of Sanford, Florida* (June 2025), that a retired firefighter could not sue to challenge a change in the city's policy for providing health insurance to retirees because, as a retiree she was not a "qualified individual" covered by the Americans with Disabilities Act (ADA). Rather, the Court held, only job applicants and current employees who are able to perform the essential functions of the job, with or without a reasonable accommodation, fall within the ADA's protection.

CT Appellate Court Rules on Remote Work as an Accommodation

In *Castelino v. Whitman, Breed, Abbott & Morgan, LLC* (July 2025), the Connecticut Appellate Court held that where work in-person was an essential function of an employee's job, an employee's request to work entirely remotely was not a reasonable accommodation under the state Fair Employment Practices Act. The Court reasoned that it had to give considerable deference to an employer's judgment regarding what functions are essential for a particular job. The Court also cited prior decisions that have held that, where a particular job function is essential, an accommodation is not reasonable if it essentially requires an employer to eliminate that function of an employee's job.

Louisiana District Court Strikes Abortion Accommodation Requirement Nationwide

A federal district court in Louisiana vacated the portion of the EEEOC's regulations implementing the Pregnant Workers Fairness Act (PWFA) that required employers to provide employees with reasonable accommodations related to having an abortion. In the *State of Louisiana v. Equal Employment Opportunity Commission* (May 2025), the district court concluded that the EEOC exceeded its authority to interpret the PWFA by including an abortion accommodation mandate, as such an interpretation went beyond the language of the statute, interpretation of the law on that point was not clearly authorized by Congress, and the legislative history clearly reflected that Congress did not intend to include abortion within the scope of the law.

Texas Court Strikes Portions of EEOC Guidance Protecting Transgender Individuals

In *State of Texas v. Equal Employment Opportunity Commission* (May 15, 2025), a U.S. District Court judge in Texas invalidated a portion of guidance on Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity issued by the EEOC in 2024. The EEOC guidance had expansively construed the Supreme Court's decision in *Bostock v. Clayton County* (2020) (which we discussed in the Summer 2020 edition of Takeaways), and provided that the Title VII prohibition against sex discrimination included requiring transgender individuals access to the bathroom, locker room, or shower that corresponded to their gender identity. The guidance further stated that intentional and repeated misuse of the name and preferred pronouns of a transgender individual, or requiring a transgender individual to dress in clothing that aligns to that individual's sex at birth, could contribute to a claim of unlawful sexual harassment. The district court held that the Enforcement Guidance went beyond the plain language of Title VII's plain text by expanding the scope of "sex" "beyond the biological binary" and then defining unlawful harassment to include failing to accommodate a transgender employee's bathroom, pronoun, and dress preferences. The court therefore struck those portions of the EEOC's guidance. The EEOC subsequently edited its guidance to highlight the vacated portions.

Supreme Court Limits Nationwide Injunctions

As exemplified by the recent district court decisions in Louisiana and Texas striking portions of EEOC regulations and guidance that had been issued under the Biden administration, increasingly, federal district courts have been issuing injunctions with respect to federal laws and administrative actions that are nationwide in their scope. Such nationwide injunctions have been issued this past year by district courts in Washington, D.C., Illinois, New Jersey, and Massachusetts in response to executive orders and other actions under the Trump administration.

In *Trump v. Casa* (June 2025), the U.S. Supreme Court held that such nationwide or universal injunctions likely exceed the equitable authority that Congress has given to federal courts. Rather, the Court held that federal courts should issue injunctions that are no broader than necessary to provide complete relief to each plaintiff in the lawsuit who is found to have standing to sue.

What We Are Tracking:

- White House's AI Action Plan
- Federal Pronouncements and Enforcement Related to Religion in the Workplace
- DOL and DOJ Guidance and Initiatives on the ADA
- Dismantling of the OFCCP
- State Legislative Action Against Employer Promissory Notes and Noncompete Clauses