2025

Employment Law Outlook

Provided by Troy Benefits Consulting

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Introduction

The 2025 Employment Law Outlook explores critical employment law trends and topics to deliver important insights and forecast trends and challenges employers will likely encounter in 2025. It offers employers a forward-looking perspective to enhance their preparedness and ensure sustained success in an increasingly complex regulatory environment. Understanding the important trends and themes from 2024 that help set the stage for the upcoming year is vital. Therefore, this Employment Law Outlook also provides a brief overview of 2024 for each of the key compliance trends discussed.

The information in the 2025 Employment Law Outlook is current as of December 2024. However, due to the anticipated executive and legislative actions on both the state and federal levels, some of the information may not be current beyond that date.

Provided by Troy Benefits Consulting. Reach out to discuss these topics or request additional resources.

Executive Summary

Employers faced many compliance challenges in 2024. For example, organizations had to respond to federal and state regulations expanding worker protections, critical court decisions addressing important employment-related issues and legal developments governing the use of artificial intelligence (AI) in the workplace. In addition to dealing with these complex compliance challenges, employers continued to struggle with attracting and retaining skilled workers who meet their needs and addressing workers' demands for remote and hybrid work. Although inflation fell in 2024, employers and employees continued to feel the pressure from years of price increases. Due to these challenges, employers struggled to prioritize workplace compliance and establish successful mitigation strategies because they lacked proper resources, trained personnel and sufficient time. Looking ahead to 2025, employers will likely continue to face similar as well as new compliance challenges.

To have a successful 2025, employers must prepare for and respond to new regulations, current legal trends and shifting enforcement priorities by federal government agencies. Employers must ensure their organizations are ready for any new compliance requirements that might apply to their organizations, such as paid medical and family leave laws, captive audience bans, expanded protected classes, AI-based discrimination legislation and pay transparency requirements. For example, many states adopted and passed pay transparency and paid leave laws in 2024, and more states and local governments are expected to enact similar legislation in 2025. As a result, more employers will be subject to these laws. Remote and flexible work arrangements have also created compliance and operational challenges for employers attempting to comply with pay transparency and paid leave requirements. Moreover, in response to the widespread adoption of AI in the workplace, states and localities have started to adopt legislation to prevent discrimination when employers use AI tools to make employment-related decisions, like hiring or termination.

Additionally, the outcome of the 2024 presidential election will have a significant impact on the employment law landscape. The Trump administration will likely change the direction of federal labor and employment law in the upcoming year and beyond. For example, the Trump administration will appoint leaders of various federal agencies that are responsible for administering federal law, including the National Labor Relations Board (NLRB), the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor (DOL). These leaders determine the direction and priorities of the agencies they oversee. While the new administration's policy aims are still unknown, employers can look to President-elect Donald Trump's campaign policies and the initiatives and actions from President Trump's first term in office as an indication of the potential changes to federal labor and employment laws, regulations and legal frameworks. These changes may include adjusting enforcement priorities, engaging in new rulemaking, and altering budget allocation for federal labor and employment agencies.

Organizations' ability to understand and respond to these challenges will be essential for employers' success in 2025 and beyond. In 2025, many employers will face the difficult task of addressing new compliance requirements and uncertainty as a new administration takes control. Such an endeavor may include finding ways to stay informed and respond in a timely manner to new and shifting compliance rules and regulations. Otherwise, employers may face with costly lawsuits and enforcement actions. Organizations must remain vigilant, monitor for updates and remain flexible as they implement changes.

As you consider the information presented in the Employment Law Outlook, evaluate which changes and trends you may be susceptible to in the upcoming year. Then, reach out to us to discuss next steps and request valuable resources to help evaluate potential solutions and meet 2025's compliance challenges. Together, we can rise to the challenges and identify opportunities presented in the new year.

The Presidential Election's Impact on Employment Laws

Trump won the presidential election that took place on Nov. 5, 2024. President-elect Trump will have a significant influence on the future of employment law policy. Most significantly, the Trump administration will be able to appoint leaders of various federal agencies, including the DOL and the NLRB, who are responsible for administering federal law. While employers must wait and see what changes will take place under Trump's presidency, Trump has indicated potential policy positions throughout his campaign. Employers may also look to the positions the Trump administration pursued during its prior term for signs of what to expect in the coming years.

In addition to the anticipated changes in approach to enforcement by the EEOC and DOL rules, as discussed in this 2025 Employment Law Outlook, the key employment law issues to watch under a Trump administration are the following:

- Taxation of overtime wages and earned tips;
- Minimum wage;
- OSHA regulations;
- NLRB changes;
- Diversity, equity and inclusion (DEI) initiatives;
- Restrictive covenants;
- AI regulation; and
- Immigration reform and enforcement.

Taxation of Overtime Wages and Earned Tips

On the campaign trail, Trump proposed exempting both overtime wages (i.e., wages paid at a rate of 1.5 times the regular rate of pay for all hours worked in excess of 40 in a given workweek) and tipped wages from federal income tax. In support of his proposal to eliminate income taxes on overtime wages, Trump argued that it would incentivize overtime work by employees and help with recruitment by companies that offer significant overtime opportunities. The Trump campaign also pointed to the financial benefits for service workers if earned tips were no longer taxed. However, these policies would need to pass through the legislature and could face resistance for various reasons, including the loss of federal tax revenue.

Minimum Wage

Minimum wage increases have been popular at the state and local levels in recent years. However, under the Fair Labor Standards Act (FLSA), the federal minimum wage has remained at $7.25 per hour since 2009. While Trump has historically opposed an increase in the federal minimum wage, including during his 2020 campaign, his 2024 platform showed potential support for an increase in wages. While it is possible that the Trump administration will pursue an increase in the minimum wage, it is unlikely to be a significant increase.

OSHA Regulations

OSHA is a regulatory agency of the DOL responsible for regulating safety and health conditions in most private industries. During President Joe Biden's administration, OSHA took steps to heighten workplace regulations. Such efforts, including the following, are likely to be repealed or modified significantly under the Trump administration, which has generally pushed for deregulation:

- Worker Walkaround Representative Designation Process Final Rule, which provided that employees could designate a nonemployee third party as their representative during an OSHA inspection; and
- Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings Notice of Proposed Rulemaking, which, if finalized, would provide required safeguards from heat injury and illness that employers in certain industries would be required to implement.

NLRB Changes

The NLRB is an independent federal agency that enforces the National Labor Relations Act (NLRA), which grants most private-sector workers the right to organize and collectively bargain and gives workers the right to engage in protected concerted activity. While changes can be expected under a Trump NLRB, they will probably not be immediate, as the NLRB currently has a Democratic majority and will retain that majority until 2026.

During his first term, Trump adopted employer-friendly policies and focused on limiting the influence of unions. Therefore, employers may expect to see a return to some of the NLRB positions in place during his first term and a reversal of Biden-era NLRB decisions. Some of the decisions that a Trump-era NLRB may seek to **overturn** include:

- *Cemex*, which held that when a union requests recognition on the basis that a majority of employees support such union, the employer must either recognize the union or promptly file for an election;
- *Stericycle Inc.*, which adopted a new standard for evaluating employer work rules challenged as facially unlawful under the NLRA, making it harder for employers to defend such rules;
- *McLaren Macomb*, which reversed a Trump-era decision and held that employers may not offer employees severance agreements that require employers to waive their rights under the NLRA; and
- *Fresh & Easy*, which increased the circumstances in which an employee acting alone is considered to be engaging in protected concerted activity.

Additionally, President-elect Trump will likely replace the NLRB's current general counsel with an employer-friendly attorney, who will likely reverse the Biden administration's pro-union initiatives. There is currently a vacancy on the NLRB's five-person board. If the Democrats are unsuccessful in filling the vacancy with a Democratic member before Inauguration Day, Republicans will most likely fill the vacancy soon thereafter with a pro-management appointee and secure a Republic majority on the NLRB for the near future.

DEI Initiatives

The Biden administration generally promoted DEI initiatives. Through Executive Order (EO) 13985, the administration established a policy of pursuing a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized and adversely affected by persistent poverty and inequality. This contrasts with the approach to DEI taken during Trump's first term and the approach to DEI efforts taken by other Republicans. For example, during his first term, the Trump administration issued EO 13950, which prohibited federal contractors and subcontractors from providing certain workplace diversity training and programs and discussing

divisive topics in workplace training. Additionally, in 2023, a group of 13 Republican attorneys general issued a letter to Fortune 100 companies threatening legal action for continuing DEI measures. In light of this continued tension regarding DEI initiatives, the Trump administration is expected to revoke Biden's EO and reinstate Trump's EO 13950.

Restrictive Covenants

During the Biden administration, the Democrat-led Federal Trade Commission (FTC) published a final rule prohibiting employers from entering into or enforcing noncompete clauses with most employees. The noncompete ban has faced numerous legal challenges and was ultimately blocked by a federal District Court in Texas before taking effect. The FTC appealed that ruling in October 2024.

It is unclear what the future of the noncompete ban is under the courts. However, Republicans have generally expressed opposition to regulations that may be considered anti-business, including federal restrictions on noncompete and other restrictive covenants. Therefore, a Republican-led FTC would likely rescind or abandon any efforts to regulate noncompete clauses at the federal level, regardless of the outcome of the case.

AI Regulation

Employers may also expect to see reduced federal regulation of AI under the Trump administration and a rollback of certain Biden-era policies. In 2023, Biden issued EO 14110, which established new standards for AI safety and security, including those that would reduce bias and discrimination with respect to employment decision-making. In response to Biden's EO, the DOL published a Field Assistance Bulletin in which it identified recommended best practices in using AI to perform various wage and hour tasks (such as generating timecards, setting schedules, monitoring performance, tracking employee hours and processing payroll), including exercising proper human oversight, to help ensure that the AI systems and tools do not violate the FLSA.

On the campaign trail, Trump stated that he would repeal Biden's EO 14110 and seek to eliminate restrictions on AI, which would likely include those that aim to reduce discrimination and bias in decision-making.

Immigration Reform and Enforcement

Immigration reform was a key component of the Trump campaign. If enacted, such initiatives could affect employers as well. For example, the Trump administration may place limits on the use of highly skilled foreign workers, such as those hired through the H-1B visa program. Moreover, the Trump campaign stated that it would seek to carry out mass deportation efforts and end certain immigration programs such as the Deferred Action for Childhood Arrivals and Temporary Protected Status for various countries. If Trump succeeds in these efforts, employers may see a substantial decrease in the available workforce.

Expansion of State Paid Sick Leave and Other Leave Laws

2024 was an active year for state paid leave laws from coast to coast. Some highlights included new leave developments in the upper Midwest, with Minnesota paid sick leave (PSL) taking effect and the state developing materials for its new paid family and medical leave (PFML) program. Generous new paid leave laws also took effect in Illinois, Chicago and Cook County. The Pacific Northwest saw leave law action when Oregon redesigned its Family Leave Act to align closely with the requirements of its new PFML program. In the Northeast, New York state passed the first leave law dedicated to prenatal care, Massachusetts amended its PSL law to cover reproductive loss, and Maine continued to build out its PFML program, providing rules, official guidance and webinars. Connecticut also significantly broadened its PSL law.

The expansion of employee leave entitlements continues across the country, with new laws scheduled to go into effect in 2025, along with the expected issuance of new rules and guidance for existing laws. State laws are also covering more qualifying reasons for taking leave. On the federal level, growth may come in the form of court decisions requiring leave under the Uniform Services Employment and Reemployment Rights Act (USERRA). Continued work on a national paid leave law is uncertain with the incoming administration and a Republican-controlled Congress.

State PFML and PSL

Several new state PFML laws are being implemented in 2025. Depending on the rollout schedule of the particular program, employers can expect to see new PFML regulations, frequently asked questions (FAQs), model notices and other guidance materials issued in the upcoming year. For some new programs, 2025 marks the start of payroll withholding and deadlines for providing employees with notice of the law. Employers should additionally pay attention to any deadlines for private plan approval that come up in the new year. As always, employers should ready their payroll systems for the new 2025 contribution rates for PFML. For most PFML programs, rate changes take effect in January.

The information contained in this map is current as of Jan. 1, 2025.

State PSL laws are also set to undergo changes in 2025. For a few states, PSL takes effect for the first time in 2025, while in others, significant changes to existing PSL laws go into effect during the year. Key state PSL and PFML developments for 2025 are discussed below.

Alaska

- On Nov. 5, 2024, voters passed a ballot measure requiring employers to provide 40-56 hours of PSL annually, depending on the employer's size. Leave begins accruing and becomes available on July 1, 2025. The measure imposes notice requirements on employers.

California

- Effective Jan. 1, 2025, California employers will no longer be able to require employees to use their earned but unused vacation leave before taking PFML. Currently, employers in California may require their employees to take up to two weeks of vacation leave before receiving PFML benefits under the state program;
- Also effective Jan. 1, 2025, agricultural workers in California will be allowed to use their PSL to avoid smoke, heat and flooding created by a local or state emergency; and
- California amended its laws providing protected employee leave for victims of domestic violence, sexual assault and other specified crimes. The changes expand the protections to a broader category of victims (including family members of victims) and allow leave for more purposes. The changes also allow employers to impose limits on the length of employee victim leave. The amendments go into effect on Jan. 1, 2025.

Connecticut

- Connecticut significantly expanded its PSL law, with changes to begin Jan. 1, 2025. More employers and employees will be covered by the law, but this will happen in stages, with the leave requirement applying to successively smaller employers year by year until all employers and employees are covered in 2027. The changes also increase PSL in other ways, including increasing the accrual rate to one hour of leave per 30 hours worked and adding to the law's reasons for taking leave. New notice, posting and recordkeeping provisions apply, beginning Jan. 1, 2025. The revisions bring the state PSL requirement—one of the country's oldest—more in line with recent state PSL laws; and
- Connecticut also amended its PFML program in 2024. Importantly, all employers now have to register with and submit reports to the program.

Delaware

- Employers must provide a notice of employee rights under the new PFML law at least 30 days before Jan. 1, 2025, when payroll deductions begin for the program. Employees may begin submitting applications for benefits on Jan. 1, 2026. The program covers employers with 10 or more employees working in Delaware, and it provides up to 12 weeks of partially compensated leave per year for eligible employees.

Maine

- Payroll withholding for the state's new PFML program begins Jan. 1, 2025, with benefits becoming available May 1, 2026. The Maine Department of Labor has created a workplace

notice for the program, which the department advises employers to post before the start of payroll deductions in January. The department has also adopted new regulations and created an employer fact sheet and made informational webinars for the program available on the website. Employers can expect to see a portal for the program in January 2025.

Maryland

- Maryland amended and once again delayed its PFML program. PFML contributions will now start July 1, 2025, and claims will be accepted from employees beginning July 1, 2026.

Michigan

- Following litigation, the Michigan Supreme Court ruled in July that the state's PSL law must be replaced with a significantly more employee-friendly version, effective Feb. 21, 2025. Among the changes in the law are that it covers all employers (the current law exempts employers with fewer than 50 employees), covers all employees (the current law contains employee exemptions), requires accrual of one hour of leave per every 30 hours worked (35 in the current law), allows employees to use 72 hours of leave annually (the current limit is 40 hours) and prohibits employers from taking retaliatory action against employees. The Michigan Department of Labor and Economic Opportunity has published FAQs, a brochure and a workplace poster about the changes on its website.

Minnesota

- Quarterly wage reporting for the state's new PFML program began in October 2024 and will continue in advance of the start of payroll deductions on Jan. 1, 2026, the same day benefits become available. Employers must have informed employees about their rights and benefits under the new program by Dec. 1, 2025. Employers should watch for model workplace posters and other informational PFML materials from the Minnesota Department of Employment and Economic Development.

Missouri

- In the November 2024 election, Missouri voters approved a ballot measure establishing PSL in the state. The requirement will apply to all private employers, but some employees are exempted. Larger employers will have to provide up to 56 hours of annual PSL, while smaller employers are only required to allow 40 hours of leave per year. Employees must begin accruing leave on May 1, 2025, and they may use the leave as it accrues. Notification requirements apply.

Nebraska

- Like Alaska and Missouri, Nebraska's voters passed a PSL ballot measure during the last election cycle. The new law applies to all private employers and employees who work in Nebraska for at least 80 hours in a calendar year, and it requires employers with 20 or more employees to provide up to 56 hours of annual leave, while employers with fewer employees are required to provide only 40 hours of leave per year.

New York

- New York's first-in-the-nation law solely dedicated to prenatal leave takes effect Jan. 1, 2025. It requires 20 hours of paid prenatal personal leave per year for health care services related to the employee's pregnancy. Leave does not accrue; all 20 hours must be made available on Jan. 1, 2025. No advance notification or documentation after the fact may be required from employees who use the leave; and
- One of the last remaining free-standing COVID-19 leave laws, New York's COVID-19 leave requirement is set to expire July 31, 2025. Employers should note that illness due to COVID-19 may be covered by other leave laws, such as the state PSL law.

Washington

- The state of Washington, following a trend in state leave laws nationally, expanded the definition of "family member" in its PSL law. The new definition includes, among other people, a child's spouse and individuals who regularly reside in the employee's home or where the relationship creates an expectation that the employee cares for the person (if the person depends on the employee for care). Following another trend, the state added closures related to the declaration of a public emergency as a qualified reason for taking PSL. The changes take effect Jan. 1, 2025.

Additional Leave Considerations for 2025

In addition to monitoring known state law developments scheduled for 2025, employers should also watch for the passage of new employee leave legislation and amendments to existing laws. There is no reason to think the growth in employee leave mandates will abate in 2025, especially in states that currently do not have employee leave laws on the books. However, employers should also be mindful of leave requirements in states that were in the vanguard in passing leave laws years ago. It is a trend among these states to update their PFML and PSL laws to stay current with the kinds of provisions the newer laws contain. Extrapolating from recent past state leave law activity, it is likely that new topics addressed by state PSL and PFML laws will include prenatal and pregnancy care, bereavement, organ donation, and public health and other emergencies. Additionally, with voters having approved three state ballot measures enacting PSL last November, it stands to reason that other states could follow suit.

Another state trend to watch in the new year is the growth of state insurance laws allowing carriers to sell PFML policies to employers. These policies cover the cost of PFML programs employers voluntarily offer their workforce. They typically include requirements the programs must satisfy to be eligible for policy coverage, such as minimum amounts of leave and specified reasons for leave. The laws offer a path for making PFML available to employees without creating a mandate for employers.

On the federal level, employers should be aware that federal courts are increasingly ruling that USERRA requires employers to provide paid leave for military service if they compensate employees for comparable leaves. There could be more court decisions in this vein in 2025, so employers should be alert to past and future court activity on this topic in their jurisdiction. Employers should also be aware that state laws often require paid leave for military absences. Finally, while 2024 saw work in Congress toward a national paid leave program, it is difficult to know whether it will continue following the November 2024 election. It is also unknown whether the incoming Trump administration will support a national paid leave effort, as Biden did.

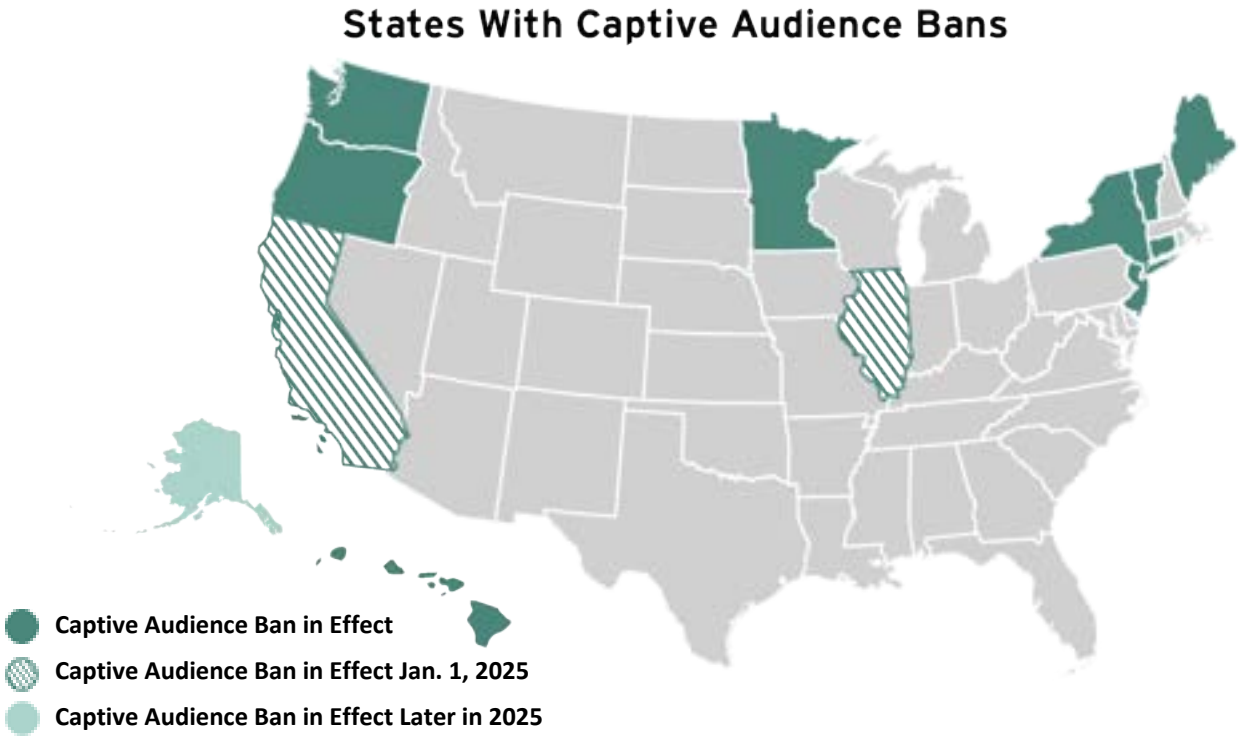
Employers will need to watch legislative and regulatory developments closely in their jurisdictions in 2025. This is likely to be particularly challenging for multistate employers, which will have to take note of features that are common to these laws, yet often conflict across states. Leave law characteristics to keep in mind in this regard include exempt versus covered employers and employees, discounted leave requirements for small or newly established employers, the availability of grants to help offset the cost of leave, the funding split between employers and employees, and whether the law at issue requires reinstatement of an employee to their former position upon returning from leave.

State Employment Law Trends

Throughout 2024, there have been significant changes in employment law at the state level. A review of recent and proposed legislation reveals several emerging trends that will continue to affect employers in 2025. Among these trends, employers have passed bans on captive audience meetings in which employers discuss religious or political matters, broadened protections from discrimination on the basis of hairstyles and hair textures historically associated with race, enacted pay transparency laws, and implemented protections for the use of AI in the workplace. Employers should ensure that they are apprised of significant legal developments and are either in compliance or prepared to comply with their requirements.

Captive Audience Bans

In 2024, a number of states have passed or introduced legislation to bar employers from requiring employees to attend "captive audience" meetings on religious or political matters. These laws prohibit employers from coercing employees into attending or participating in meetings that are sponsored by the employer and concern the employer's views on religious or political matters (including union organization). In general, the bans on captive audience meetings include exceptions for certain communications that employers are required by law to make.



The information contained in this map is current as of Jan. 1, 2025.

So far, 12 states have passed legislation allowing employees to opt out of such captive audience meetings—nine states have captive audience bans currently in effect, including **Connecticut**, **Hawaii** (bans political speech only), **Maine**, **Minnesota**, **New Jersey**, **New York**, **Oregon**, **Vermont** and **Washington**; **California** and **Illinois** have passed bans taking effect Jan. 1, 2025, and **Alaska** has passed a ban taking effective July 1, 2025. The trend is only expected to grow in 2025, as a handful of other state legislatures, including Maryland, Massachusetts, New Mexico and Rhode Island, have introduced similar

laws. Additionally, on Nov. 13, 2024, the NLRB ruled that an employer violates the NLRA by requiring employees, under the threat of discipline or discharge, to attend a meeting where the employer expresses its views on unionization. This decision overturns over 75 years of precedent. However, this ruling will likely face legal challenges and could be short-lived once the Trump administration takes over and establishes a more business-friendly NLRB.

In light of these new laws, employers should be mindful of avoiding discussions of political or religious matters during required meetings (including discussions related to unionization) and may consider a review of employer policies regarding workplace meetings. Finally, employers should continue to monitor for legal updates in the states where employees are located.

CROWN Acts

Creating a Respectful and Open Workplace for Natural Hair (CROWN Act) legislation has also gained traction across state and local legislatures in recent years. CROWN Act legislation is aimed at eliminating discrimination based on traits historically associated with race—specifically, hair textures and hairstyles. Subject to limited exceptions, such laws generally prohibit racially discriminatory workplace dress codes and hygiene policies that ban employees from maintaining certain hairstyles commonly or historically associated with race, such as afros, braids, twists, cornrows, locs and other similar hairstyles. To date, 27 states and more than 50 localities have passed a CROWN Act to protect employees from discrimination on the basis of an individual's hairstyle or hair texture.

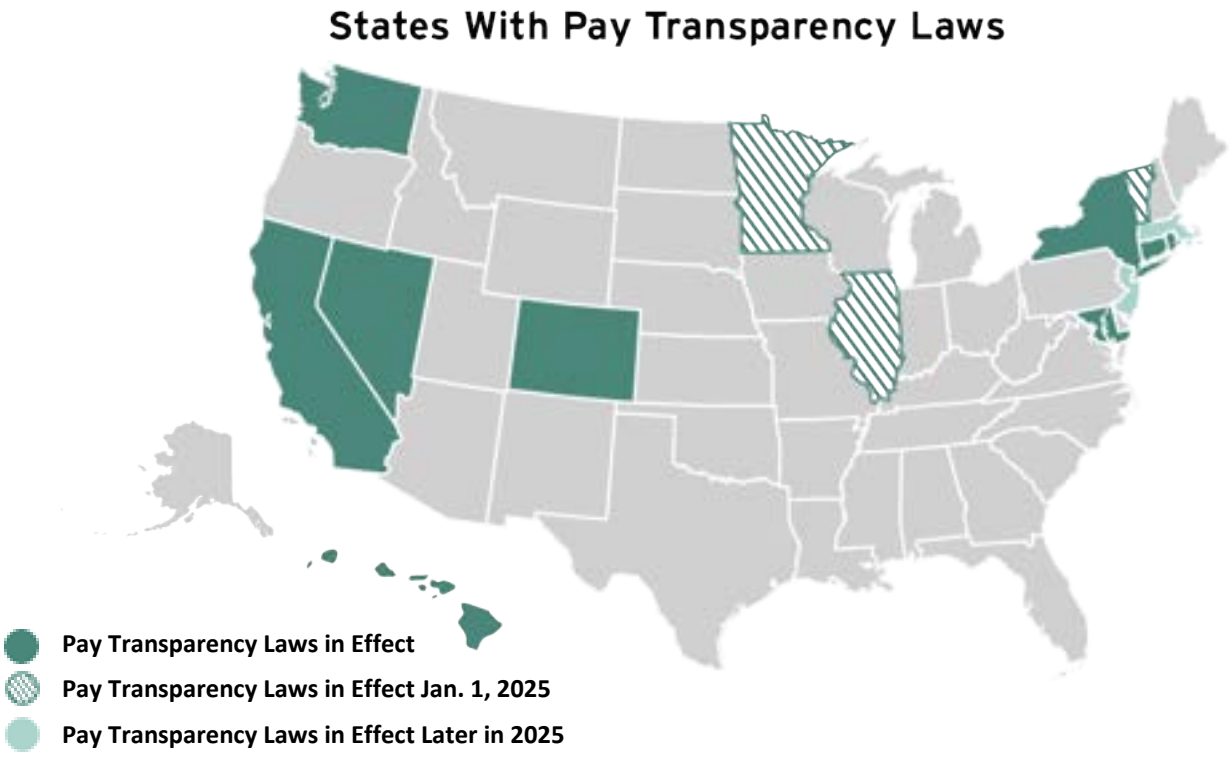
The information contained in this map is current as of Jan. 1, 2025.

In addition to the state law push for CROWN Act protections, the federal legislature introduced a nationwide CROWN Act in 2024. However, similar legislation was blocked in 2019 and 2022, so whether the 2024 bill will experience the same fate is unclear. Nonetheless, employers should continue to track

both state and federal legislation and take measures to ensure employees are protected from discrimination on the basis of such traits historically associated with race (for example, updating dress codes, grooming policies and related employee handbook provisions, and training workers and supervisors on their rights and responsibilities under the CROWN Act).

Pay Transparency Laws

Pay transparency laws have increased in recent years, and states have continued to pass and introduce pay transparency legislation in 2024. In general, pay transparency laws hope to address pay inequality and promote wage transparency by requiring employers to disclose compensation information and increasing employee access to salary data. These laws vary in their requirements but often require employers to post salary ranges in job postings or disclose salary information to existing employees and job applicants.



The information contained in this map is current as of Jan. 1, 2025.

Colorado started the trend of pay transparency laws when it enacted the first legislation of its kind in 2021. Between 2021 and 2024, additional pay transparency laws took effect in **Maryland**, **Connecticut**, **Nevada**, **Rhode Island**, **Washington**, **California**, **New York** and a number of municipalities. More states continued the trend in 2024, with new pay transparency legislation taking effect in **Hawaii** and the **District of Columbia**, along with expanded requirements in **Maryland**. Additional pay transparency laws will take effect on Jan. 1, 2025, in **Illinois**, **Minnesota** and **Vermont**, on June 1, 2025, in **New Jersey** and on July 31, 2025, in **Massachusetts**. As applicable laws and regulations related to pay transparency vary based on jurisdiction, employers must consider their legal obligations. This involves any jurisdiction where their employees physically work. Some jurisdictions' laws only require employers to provide pay

ranges if the candidate requests it; others, like California's pay transparency law, require employers to disclose this information upfront.

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

AI-based Discrimination Legislation

Advancements in AI have had a significant impact on the employment setting, with new tools that may be used for scheduling, tracking hours, processing payroll and assisting with employment decisions. These AI tools raise a number of legal concerns, including the fact that the use of AI tools in decision-making could result in employment discrimination. In response to these concerns, New York City passed the first law requiring employers to conduct annual bias audits of automated employment decision-making tools in 2023. Since then, comprehensive AI legislation has been passed in Colorado and Illinois, and additional laws have been introduced in a number of states, including California, New Jersey, New York, Virginia and Washington, as well as the District of Columbia. In general, such AI legislation regulates employer use of AI tools to make or to assist an employer in making employment decisions (such as hiring or termination), with the aim of mitigating the risk of "algorithmic discrimination." Algorithmic discrimination generally occurs when the use of an AI system leads to the differential treatment or impact of individuals based on a protected characteristic (e.g., age, race, disability, religion or sex).

In light of the various legal developments, employers should continue to monitor state restrictions on

the use of AI in the employment context, and employers that do use AI to make or assist in making employment decisions should ensure that appropriate safeguards are in place to prevent discrimination.

Employers Prepare for Employee Classification Challenges in 2024

Throughout 2024, federal agencies were extremely active, passing major regulations regarding overtime compensation, independent contractor classification and the use of noncompete agreements. A worker's coverage by a particular law or entitlement to a specific benefit often depends on whether they are an employee or an independent contractor. In general, employment laws, labor laws and related tax laws do not apply to independent contractors. For example, the FLSA establishes minimum wage, overtime pay and youth employment standards for covered employers but does not extend employee protections to independent contractors. Misclassifying employees as independent contractors has become an increasing concern for governments, courts and regulatory agencies. Employers that misclassify employees can be liable for expensive fines, criminal charges and civil penalties, including back wages, unpaid overtime, liquidated damages, and attorney fees and costs.

Additionally, the FLSA requires employers to compensate their employees for all hours employees are suffered or permitted to work. This means that an employer must compensate its employees for every hour the employee actually works and every hour during which employees are required to remain available for their next assignment. Employers must also pay employees at least the federal minimum wage for all hours worked and overtime for all hours worked over 40 hours in a workweek. An employer's obligation to pay employees the federal minimum wage and overtime pay depends on whether an employee is exempt or nonexempt under the FLSA. Typically, only employees in certain positions who meet certain salary and job duties criteria may qualify as exempt from FLSA minimum wage and overtime pay requirements. Employers that fail to classify their workers correctly may be subject to costly and time-consuming legal challenges and be liable for back pay, liquidated damages, and attorney fees and costs.

While ensuring employees are properly classified is an ongoing challenge for most employers, it will be particularly difficult and a point of focus in 2025 because of the following two final regulatory rules and an upcoming U.S. Supreme Court decision:

- The DOL's final rule for defining and delimiting the exemptions for executive, administrative, professional (EAP), outside sales and computer employees (the overtime exemption rule);
- The DOL's final rule for employee or independent contractor classification under the FLSA (the independent contractor classification rule); and
- *E.M.D. Sales Inc. v. Carrera*, which will decide the evidentiary standard an employer needs to meet to prove it correctly classified employees as exempt under the FLSA.

The DOL's Final Overtime Rule

On April 23, 2024, the DOL announced a final rule to amend the current requirements employees in white-collar occupations must satisfy to qualify for an overtime exemption under the FLSA. Under the FLSA, there are several exemptions from minimum wage and overtime pay requirements—the most common are "white-collar" exemptions. These exemptions mainly apply to individuals in EAP occupations but also include outside sales personnel, certain computer-related professionals and highly compensated employees (HCEs).

On July 1, 2024, the DOL's overtime rule took effect, increasing the standard salary from $684 to $844 per week ($35,568 to $43,888 per year) for EAP employees and $107,432 to $132,964 per year for HCEs. This salary increase had a significant impact, affecting nearly 1 million workers, according to DOL estimates. Starting on Jan. 1, 2025, the standard salary level was set to increase again from:

- $844 to $1,128 per week ($43,888 to $58,656 per year) for EAPs; and
- $132,964 to $151,164 per year for HCEs.

The final rule also included mechanisms allowing the DOL to automatically update the white-collar salary level thresholds without having to rely on the rulemaking process starting July 1, 2027, and every three years thereafter. This second salary level increase was expected to have an even greater impact (affecting approximately 3 million workers). However, on **Nov. 15, 2024**, the U.S. District Court for the Eastern District of Texas vacated the DOL's final rule, setting aside the rule's increases to the standard

salary level nationwide and returning the salary threshold to the pre-July 2024 standard.

The District Court ruled that the DOL exceeded its statutory authority by increasing the standard salary level too high and allowing for automatic adjustments every three years. The court vacated the salary increase that went into effect in July and the increase set for January, as well as the future automatic salary level increases for employers nationwide. As a result of the decision, the standard salary level for EAPs is **$684 per week** (or **$35,568 per year**) and **$107,432 per year** for HCEs. Consequently, employees who lost their exempt classification because of the July 1 salary level increase may potentially qualify again as exempt under the FLSA. On **Nov. 26, 2024**, the DOL filed a notice of appeal seeking to overturn the District Court's decision to vacate the salary increase that went into effect in July and the increase set for January, as well as the future automatic salary increases for employers nationwide.

The recent presidential election results will likely impact the future of the overtime rule, making the fate of the DOL's appeal uncertain. The incoming Trump administration may abandon the appeal, choose not to defend it or undertake new rulemaking in 2025. In 2017, the Trump administration took steps to ensure that a similar Obama-era rule that aimed to expand overtime coverage under the FLSA never went into effect. The Trump administration's DOL then issued a new overtime rule that expanded employers' overtime pay obligations but to fewer workers than the Obama rule. The new Trump administration may pursue similar action in 2025, and therefore, employers should continue monitoring the situation for updates.

The ultimate outcome of the DOL's overtime rule will likely significantly affect employers' operational and compliance costs and increase their litigation risks. As a result of the change in salary levels, more workers likely qualify as exempt under the FLSA and, therefore, are not entitled to overtime pay. Additionally, employers that were preparing to increase their employees' salaries to comply with the Jan. 1 increase may reevaluate doing so in light of the court's decision. At the very least, employers should take steps now to ensure that they comply with the current salary level. Some employers may decide to reduce workers' salaries if they increased them to comply with the July 1 increase; however, this decision will likely be extremely unpopular with employees, and employers may want to consider consulting with an employment attorney prior to rescinding any salary increases. Importantly, employers cannot recover the wages they have already paid employees if they increased them to comply with the July 1 increase. Lastly, employers should consider evaluating how the FLSA's overtime threshold interacts with any state and local overtime pay exemptions and revisiting their exemption determinations more broadly since many states have salary thresholds that exceed the FLSA's threshold.

The DOL's Final Independent Contractor Classification Rule

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

According to the DOL, the final rule aligns the department's analysis for determining worker classification with current judicial precedent and the FLSA's text and purpose. When determining a worker's status, the final rule equally weighs the following six factors:

1. The opportunity for profit or loss, depending on managerial skill;
2. Investments by the worker and the potential employer;
3. The degree of permanence of the work relationship;
4. The nature and degree of control;
5. The extent to which the work performed is an integral part of the potential employer's business; and
6. The worker's skill and initiative.

Workers determined to be economically dependent on an employer would most likely be considered employees. The DOL's final rule is more worker-friendly and will likely result in classifying a greater number of workers as employees, not independent contractors. This classification would be significant, particularly in the gig economy, as it would afford more individuals FLSA rights and protections (including minimum wage and overtime pay protections), workers' compensation and unemployment benefits.

Misclassification of workers remains a top workplace issue for employers. The consequences of misclassifying workers can be severe and may include jail time. Monetary penalties can add up quickly and may include back pay, unpaid overtime, liquidated damages, attorney fees, civil penalties, lost benefits and interest. Penalties can become even more severe if the agency or a court determines the misclassification was intentional. Therefore, compliance issues related to this rule may increase an

organization's operational costs and legal exposure. However, the DOL released guidance in 2024 to help employers comply with the final rule. As with the DOL's overtime rule, employers should consider reviewing their employee classification determinations and identifying which employees may be impacted by the final independent contractor rule.

The DOL's FLSA enforcement efforts have been on the rise for the last few years. While the agency seemed poised to place an even greater focus on this issue and potentially increase its enforcement efforts and actions in 2025 and beyond, the results of the 2024 presential election will likely affect the DOL's priorities in the upcoming year. It will also likely impact the future DOL's final independent contractor rule. The Trump administration will probably try to undo the Biden administration's efforts to make it more difficult for employers to classify workers as independent contractors. Before President Biden took office, the Trump administration's DOL adopted the 2021 Independent Contractor Rule, which weighed two "core" factors (the nature and degree of control, and the opportunity of profit or loss) more than the other ERT factors. This made it easier for employers to characterize some workers as independent contractors under the FLSA. After Biden took office, the DOL delayed implementing the 2021 rule and then withdrew the rule in May 2021. Upon taking office, the Trump administration will most likely undertake similar efforts to implement business-friendly employee classification standards.

Employers should also note that the independent contractor rule is also subject to multiple lawsuits alleging that the regulation is illegal. Depending on the outcome of these cases, the new rule could be modified or thrown out entirely. Therefore, while employers should take steps to ensure compliance with the current rule, they may also want to monitor for updates regarding these lawsuits.

Evidentiary Standard for FLSA Worker Classification

On Nov. 5, 2024, the Supreme Court heard oral arguments in *E.M.D. Sales Inc. v. Carrera*. In this case, the Supreme Court will decide what evidence an employer needs to show to prove it correctly classified employees as exempt from minimum wage and overtime pay under the FLSA. Under the preponderance of evidence standard, employers must show that it is more likely than not that an employee is exempt under the FLSA. This is a lower evidentiary standard than the "clear and convincing" evidence standard, which requires employers to show more substantive evidence (e.g., that is far more likely) to prove that an employee is exempt. In *E.M.D. Sales Inc.*, the employer argued that the "clear and convincing" standard is an unusually heavy burden reserved for weighty matters, such as civil commitment, termination of parental rights and deportation, and not for determining FLSA exemptions. However, the 4th Circuit applied the "clear and convincing" standard. In doing so, it is the sole federal appeals court to apply this standard. The 5th, 6th, 7th, 9th 10th and 11th Circuits have applied the "preponderance of evidence standard." The Supreme Court's ruling will address this disagreement among federal appeals courts on the issue.

The holding in *E.M.D. Sales Inc.* will likely have a significant impact on employers determining whether to classify their employees as exempt or nonexempt under the FLSA. If the Supreme Court adopts the higher "clear and convincing" evidence standard, employers will face a much higher bar when defending against FLSA misclassification claims. However, even if the Supreme Court decides to implement the preponderance of the evidence standard, making it easier for employers to prove FLSA exemptions, proper employee classification will likely remain a compliance burden for employers. Improper classification can result in significant penalties and costly litigation. To mitigate the risk of employee misclassification, covered employers can review the FLSA's duties tests for all exemptions to ensure

employees are properly classified, promptly correct any errors, and update job descriptions to reflect employees' roles and responsibilities accurately.

Significant Changes Are Likely for the EEOC in 2025

The EEOC was busy in 2024. The agency issued new workforce harassment guidance, published final regulations implementing the Pregnant Workers Fairness Act (PWFA), filed merit lawsuits focused on emerging employment-related issues, and provided technical guidance on algorithmic fairness and the use of AI in employment decisions. The EEOC looked like it would build upon those efforts heading into 2025. However, a second Trump administration is likely to alter the direction of the agency's recent efforts and shift its priorities.

The EEOC-related developments of the past year generally emphasized the importance of accommodating pregnancy, childbirth and related conditions, preventing workplace harassment, fostering inclusivity, and advancing the rights of underserved and vulnerable workers. Whether these topics remain central to the agency's enforcement efforts in 2025 is uncertain as the new administration takes over. For employers subject to federal fair employment laws, this uncertainty likely means enhanced vigilance against unlawful discrimination in employment decisions and workplace harassment will likely be warranted over the course of the new year.

Understanding the EEOC's current priorities and enforcement efforts is vital for employers to respond effectively to discrimination complaints, safeguard their employees' workplace rights and mitigate potential legal risks in the upcoming year. The following provides an overview of some of the most significant actions related to federal employment laws the agency took in 2024 as well as a preview of what employers may expect from the EEOC in the upcoming year.

The 2024 Presidential Election's Impact

The change in the executive branch will likely have a significant impact on the EEOC in 2025 and beyond. For example, the Trump administration will likely replace the EEOC's current general counsel with a more employer-friendly attorney. In addition, the new administration will similarly designate a new EEOC chair, who will likely establish a more business-friendly agenda for the agency. However, Democratic members of the commission will remain in the majority until 2026. As a result, the Trump administration's ability to adopt new policies or take action to dismantle Biden-era policies will likely be limited in the near term. Yet when the Republican members become the majority, the EEOC is likely to implement broad policy changes and reverse certain initiatives of the Biden administration. These actions may include abandoning attempts to revive equal employment opportunity workforce data (EEO-1) Component 2 pay data collection, deprioritizing enforcement of the PWFA and shelving workplace harassment enforcement guidance related to LGBTQI+ workers.

EEOC Merit Lawsuits

At the start of the 2020s, the EEOC filed fewer merit lawsuits than in years past. According to agency data, the EEOC filed 94 merit lawsuits in fiscal year (FY) 2020, 111 merit lawsuits in FY 2021 and 94 merit lawsuits in FY 2022. However, moving into FY 2023, the EEOC seemed ready to place greater emphasis on enforcing more worker-friendly policies through litigation. In 2023, the U.S. Senate confirmed Democrat Kalpana Kotagal as the commissioner of the EEOC, giving Democrats the majority on the agency's five-member panel, and the agency also received a substantial budget increase. This, among other factors, led to an increase in litigation activity in FY 2023, with the EEOC filing 143 merit lawsuits challenging unlawful employment discrimination. Many expected the EEOC litigation efforts to not only

continue into FY 2024 but also increase. However, according to litigation data released by the agency, the EEOC filed only 110 merit lawsuits.

One potential reason for the overall decrease in the EEOC's litigation efforts for FY 2024 was a lack of resources while being forced to deal with increased operation costs, including a 5.2% pay increase for employees. The EEOC requested a $26 million budget increase from Congress for FY 2024 but only received the same amount of funding as it had in FY 2023. Due to the increased filings from FY 2023, the agency also had to dedicate resources to its backlog of cases from FY 2023 and previous years without additional resources.

With its limited resources, the agency's litigation efforts in FY 2024 focused on emerging issues, such as pregnancy discrimination and advancing the rights of underserved and vulnerable workers. The area of lawsuits was consistent with the EEOC's Strategic Enforcement Plan for FY 2024-2028, which prioritizes persistent forms of employment discrimination, such as recruitment and hiring discrimination and systemic harassment. Of the lawsuits the EEOC filed, most lawsuits involved either violations of the Americans with Disabilities Act (48 cases) or retaliation under equal employment opportunity laws (over 40 cases). These actions focused on employers' inflexible workplace policies and failure to provide reasonable accommodation, among other things.

Employers should not take the decrease in merit lawsuits the EEOC filed in FY 2024 as an indication that the agency is deprioritizing enforcement actions in 2025. The agency has requested a budget increase of more than $33 million for FY 2025, which would allow the agency to hire additional personnel and file more merit lawsuits throughout the year. Additionally, the EEOC filed a significant number of lawsuits at the end of FY 2024. For example, on Oct. 2, 2024, the agency filed at least nine merit lawsuits—well above its daily average—most of which focused on gender discrimination. While the sudden increase in merit lawsuits could be an outlier, it also shows that the EEOC is still willing to utilize litigation as a powerful enforcement tool. In fact, the EEOC may prioritize its litigation efforts in 2025 to enforce federal employment laws in light of the U.S. Supreme Court's recent ruling in *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Department of Commerce*, which overturned the longstanding *Chevron* deference doctrine and allows courts to strike down federal agencies' rules more easily. If the EEOC's budget increase request is approved, it could lead to greater enforcement activity in 2025.

However, the EEOC's enforcement efforts and priorities may change in 2025 with the incoming Trump administration. The agency's budget request will likely either be denied or rescinded. Additionally, it's possible that the EEOC will stop prioritizing or decrease its enforcement actions. However, the agency's Democratic majority will continue until 2026, so the Trump administration will not have free reign to make widescale changes immediately. As a result, the agency's enforcement efforts in 2025 could mirror those of 2024. Additionally, the EEOC has filed a significant number of enforcement actions under previous Republican administrations. Therefore, it's unclear how the agency will operate under the Trump administration. Accordingly, employers should monitor this situation for any changes in the EEOC's enforcement efforts and priorities in 2025 and beyond.

With so much uncertainty heading into 2025, employers can reduce their potential legal risks by reviewing and revising workplace policies to align with federal employment laws and facilitating a culture of compliance. Employers can do this by implementing effective training programs and engaging in open dialogues with their employees to help foster inclusive environments.

EE0-1 Reports and Pay Data Collection

In addition to the 110 merit lawsuits filed in FY 2024, the EEOC filed an unprecedented 18 suits for noncompliance with mandatory EEO-1 reporting requirements, establishing EEO-1 reporting as a clear enforcement priority. This trend may continue in 2025, so savvy employers will prioritize complying with their reporting obligations in the upcoming year.

According to the agency's regulatory agenda, the EEOC may introduce a proposed rule in early 2025 that would revive EEO-1 Component 2 pay data collection as part of employers' annual EEO-1 submissions. The proposed rule would likely require employers to report pay data categorized by gender (including sexual orientation and gender identity), race, ethnicity and job category to better identify and close existing pay gaps in the workplace. The Obama administration implemented Component 2 pay data collection in 2016; however, the EEOC eventually voluntarily elected to stop collecting pay data in 2019 after it was initially halted by the Trump administration and then reinstated by the U.S. District Court for the District of Columbia. The agency cited the high burden the data collection placed on employers and the program's uncertain effectiveness as the reasons for halting pay data collection. However, the recent presidential election may change the EEOC's plan to issue a proposed rule in 2025. The Trump administration will likely attempt to end the initiative to revive EEO-1 Component 2 pay data collection upon taking office since the Trump administration blocked pay data reporting requirements in 2017.

If the EEOC implements Component 2 pay data collection in the upcoming year, it could impose a significant administrative burden on employers and potentially expose them to increased legal risks. However, the proposed rule will likely be challenged by employers and business groups, especially considering the U.S. Supreme Court's 2024 ruling in *Loper* and *Relentless*. Employers should monitor the agency's rulemaking efforts pertaining to pay data collection closely in 2025. Further, employers should continue to ensure compliance with all aspects of EEO laws and should pay particular attention to preventing disability and sex discrimination and ensuring timely filing of EEO-1 reports.

Workplace Harassment Enforcement Guidance

On April 29, 2024, the EEOC published its final guidance on workplace harassment, which is the first updated enforcement guidance issued by the agency in 25 years. The final guidance went into effect immediately upon issuance. This guidance explains how the EEOC may enforce equal employment opportunity (EEO) laws against an employer when workplace harassment is alleged or suspected. It also clarifies the agency's positions on the application of EEO laws and includes updates to reflect legal developments in key areas, such as protections regarding pregnancy, sexual orientation and gender identity, as well as online harassment considerations in an increasingly remote environment. The final guidance supersedes and consolidates earlier documents issued by the EEOC to guide agency staff members who investigate claims of harassment.

The purpose of the final guidance is to provide a legal analysis of standards for harassment and employer liability applicable to claims of harassment under agency-enforced EEO laws and to communicate the EEOC's position on important legal issues. The guidance serves as a resource for employers, employees and practitioners, as well as agency staff members investigating, adjudicating or litigating harassment claims and courts deciding harassment issues. The final guidance focuses on three main components of a harassment claim, each of which must be satisfied for harassment to be deemed unlawful under federal EEO laws: protected traits and causation; discrimination with respect to a term, condition or privilege of employment; and employer liability. In addition, the EEOC guidance included several notable updates from previous guidance, including broadening the definition of "sexual harassment" to include protections for LGBTQI+ workers, expanding protections for pregnancy-related conditions, outlining online harassment and other remote work considerations, and clarifying religious expression protections. Notably, on May 13, 2024, attorneys general from 18 states filed a lawsuit in the U.S. District Court for the Eastern District of Tennessee to block the enforcement of the EEOC's final guidance pertaining to transgender employees.

Although the final guidance is not legally binding, it provides insights into how the EEOC will investigate harassment claims. This guidance can be instructive as organizations train employees and supervisors on these issues and update their harassment policies in 2025 to better comply with federal employment laws.

PWFA Final Regulations

The PWFA, which went into effect on June 27, 2023, requires reasonable accommodations for a qualified individual's limitations related to pregnancy, childbirth or related medical conditions. The PWFA requires most employers with 15 or more employees to provide "reasonable accommodations," or changes at work, for a worker's known limitations related to pregnancy, childbirth or related medical conditions unless the accommodation will cause the employer an undue hardship.

On April 15, 2024, the EEOC issued its final rule to implement the PWFA, which clarifies definitions and limitations under the PWFA and seeks to help employers understand their duties under the law. The final regulation went into effect on June 18, 2024. The final rule includes the following information to help employers meet their responsibilities under the new law:

- Examples of reasonable accommodations, which include additional breaks to drink water, eat or use the restroom; a stool to sit on while working; time off for health care appointments; temporary reassignment; temporary suspension of certain job duties; telework; or time off to recover from childbirth or a miscarriage, among others;

- Guidance regarding limitations and medical conditions for which employees or applicants may seek reasonable accommodation, including miscarriage or stillbirth; migraines; lactation; and pregnancy-related conditions that are episodic, such as morning sickness;
- Guidance encouraging early and frequent communication between employers and workers to raise and resolve requests for reasonable accommodation in a timely manner;
- Clarification that an employer is not required to seek supporting documentation when an employee asks for a reasonable accommodation and should only do so when it is reasonable under the circumstances;
- Explanation of when an accommodation would impose an undue hardship on an employer and its business; and
- Information on how employers may assert defenses or exemptions, including those based on religion, as early as possible in charge processing.

The PWFA has significantly expanded workplace rights and protections for employees affected by pregnancy, childbirth and related conditions, and employers will likely continue to face increased compliance burdens and litigation risks. The EEOC has prioritized enforcing the PWFA, as evidenced by the agency filing five merit lawsuits under the law in FY 2024. While the agency looked to continue focusing on PWFA-related enforcement efforts in 2025 and beyond, this may change with the incoming Trump administration, which is likely to delay or deprioritize PWFA enforcement altogether.

Employers should anticipate experiencing a learning curve and other growing pains related to certain PWFA concepts and how they may interact with other applicable employment laws. For example, many states already have their own laws requiring accommodations for pregnancy, childbirth and related medical conditions, and an ongoing trend toward more expansive and enhanced protections for employees is expected to endure. These laws often provide greater employee protections than those granted under the PWFA and usually apply to smaller employers as well. Thus, many employers may expect to encounter differing standards when analyzing whether they can reasonably accommodate an employee's known limitation related to pregnancy or childbirth.

There are several legal challenges attempting to block the implementation of the PWFA's final rule, focusing on the inclusion of abortion-related accommodations. As a result, the future inclusion of abortion-related accommodations under the final rule is uncertain. However, the final rule currently remains in effect for covered employers. Therefore, employers should continue to comply with the final rule unless a court order directs otherwise. Employers should continue to monitor for updates while the legal challenges are ongoing.

Post-*Chevron*: Impact of *Loper Bright Enterprises* on Enforcement of Employment Laws

Congress has the authority to pass laws that govern employers, and federal agencies have the authority to enforce those laws. To fill in any gaps or to remedy any ambiguities, federal agencies may issue more detailed guidance on how the laws should be interpreted and applied. For example, agencies may publish informal guidance, issue opinions or publish formal regulations. On June 28, 2024, the U.S. Supreme Court decided two cases, *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Department of Commerce*. In doing so, it overturned its 1984 decision in *Chevron, U.S.A. Inc. v. Natural Resources Defense Council Inc.*, which held that courts should defer to federal agencies to interpret ambiguities and gaps in the laws that the agencies implement (known as *Chevron* deference).

Chevron Deference Background

In 1946, Congress passed the Administrative Procedure Act, which aimed to regulate federal agency action by establishing procedures for agency rulemaking and codifying the bases on which federal courts may set aside agency action. Federal courts were to defer to federal agencies unless their actions were arbitrary, capricious, an abuse of discretion or not in accordance with law. This changed when the Supreme Court issued its decision in *Chevron*. Under the doctrine of *Chevron* deference, courts were directed to defer to such agency guidance where the statute was ambiguous and the agency's interpretation was reasonable.

In a 6-3 decision, the Supreme Court overturned the longstanding *Chevron* deference doctrine in *Loper* and *Relentless*. The Supreme Court held that courts may not defer to a federal agency's interpretation of the law just because a law is ambiguous. Instead, courts must exercise independent judgment when deciding whether a federal agency has acted within its statutory authority. The Supreme Court reasoned that the *Chevron* holding was inconsistent with the requirements of the Administrative Procedure Act since it permitted federal agencies to change positions without Congress authorizing them to do so.

Impact on Employers

Chevron deference has had a meaningful influence on the interpretation and enforcement of labor and employment laws. Federal employment agencies, including the EEOC, OSHA, DOL and NLRB, have relied on *Chevron* deference in issuing and defending agency interpretations. However, by ending *Chevron* deference, courts are now required to exercise independent judgment when reviewing agency action. If a law is ambiguous, courts will decide whether an agency acted within its statutory authority. Federal agencies will no longer be able to rely on *Chevron* deference in existing litigation, including lawsuits that have been filed to challenge the DOL's independent contractor rule and overtime rule, because the Supreme Court overruled *Chevron*.

Federal agencies may be subject to additional legal challenges to existing rules. This may result in federal agencies issuing fewer regulations and taking more moderate positions in the regulations they issue. Federal agencies may also rely more heavily on issuing guidance, such as notices, bulletins, fact sheets, manuals and technical releases, than formal regulations. Agency guidance is not subject to the formal public notice-and-comment process and rarely received *Chevron* deference in the past.

As a result of the *Loper* and *Relentless* ruling, employers will likely need to prioritize staying informed of potential lawsuits addressing federal agencies' interpretations of labor and employment laws. These

lawsuits may result in a patchwork of compliance obligations for employers, as it's likely that judges in different jurisdictions will make different, even contradictory, rulings on the same issue. This will likely increase the compliance burden of multistate employers. To prepare for these anticipated lawsuits, employers can review their practices and policies that rely on administrative rules and guidance and prepare for potential changes to those rules and guidance. Moreover, in response to the *Loper* and *Relentless* ruling, federal agencies may prioritize enforcement actions. Therefore, employers may consider taking action now to ensure that they are complying with federal labor and employment laws.

Conclusion

Many of the employment law challenges employers faced in 2024 will likely continue through 2025 and beyond. However, due to the increasing complexity of employment regulations and uncertainty with the incoming administration, employers' compliance obligations are growing and becoming more burdensome. Employers must establish effective and efficient compliance practices to stay informed and address these challenges. Being able to respond effectively to the evolving employment law landscape is not only critical for employers to establish a strong compliance foundation but also vital for sustained growth and success in today's competitive business landscape.

In today's shifting regulatory landscape, remaining well-informed of employment-related compliance requirements can help employers reduce legal risks, improve operational efficiency and strengthen their bottom line. By understanding the challenges and opportunities presented in this Employment Law Outlook, employers can strengthen their compliance efforts, foster ethical cultures and navigate intricate legal frameworks in the upcoming year. In 2025, employers that can effectively meet their regulatory requirements and proactively create a compliance strategy that aligns with their organization's objectives will be better positioned for long-term success by remaining resilient and adaptable in an ever-changing environment. The best strategies will vary by workplace, but being aware of the trends and themes presented in this Employment Law Outlook can guide employers as they establish compliance strategies in 2025.

Contact us for more information about these trends and to request additional resources on these and other important workplace topics.