

Navigating Employment Law: Executive Power, Agency Shifts, and AI in the Workplace

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2025 has brought many rapid changes, which has rippled to workers in small businesses



Overview

- **Legal Overview**
- **Workplace Executive Orders**
- **Agency Changes**
- **Artificial Intelligence in the Workplace**

Legal Overview

- Executive Orders
- Presidential Regulatory Freezes
- Agency Rule Making and Policy Shifts

Executive Orders

- Signed by the President, published in the Federal Register, and binding on administrative agencies.
- Generally permissible where:
 - Congress delegated authority to the President; and
 - The President acted within the scope of that delegation.

Executive Orders can:

- Implement or clarify existing federal law or policies;
- Direct and manage how agencies interact with private entities; and
- Revoke or modify previous executive orders.

Executive orders may not rescind, modify, or override statutes or regulations.

Presidential Regulatory Freezes

- Orders all executive departments and agencies to not propose or issue any rule in any matter, until the new administration's department or agency head reviews and approves the rule.
- Ordered the immediate withdrawal of any rules that have been set to the Office of Federal Register but not published in the Federal Register, so that they could be reviewed and approved.

Agency Rulemaking and Policy Shifts

Administrative Procedure Act (APA) (5 U.S.C. 553)

- Requires administrative agencies to satisfy procedural requirements when developing and issuing regulations (notice-and-comment rulemaking), including:
 - Publishing a general notice of proposed rulemaking in the Federal Register;
 - Allowing interested parties to submit data, views, or arguments; and
 - Providing a general statement of each regulation's basis and purpose
- Also applies when an agency repeals a regulation
- If an agency fails to follow the APA, any resulting regulation is subject to legal challenge.

Agency Rulemaking and Policy Shifts

Congressional Review Act (CRA) (5 U.S.C. 801 et seq.)

- Requires federal agencies to:
 - Submit rules and regulatory actions to Congress for review. Congress may overturn these rules by adopting a “joint resolution of disapproval;” and
 - Coordinate with the Office of Information and Regulatory Affairs regarding “major rules”, with a delayed effective date pending congressional review.
- Authorizes Congress to use a “fast track” procedure to overturn rules issued or approved by federal agencies in the last 60 days of the last session of the previous Congress if a joint resolution of disapproval is passed by both chambers and signed by the President.

Judicial Review of Agency Rulemaking

Loper Bright Enterprises v. Raimondo, 603 U.S. 639 (2024)

- Courts must exercise their independent judgment in deciding whether an agency acted within its statutory authority.
- Courts may not defer to an agency interpretation of the law simply because a statute is ambiguous.

Judicial Review of Agency Rulemaking

- **Administrative agencies**
 - Any regulation viewed as unfavorable or taking an approach that strays too far from statutory text is open to challenge in court.
 - Potential for more stability in administrative law, given increased difficulty for agencies to change interpretation of a statute.
- **Judicial review**
 - No change in cases where the statute's meaning is plain.
 - Increased incentive to challenge agency interpretations of statutes.
 - Potential for forum shopping in courts more willing to strike agency actions (or in circuits where a regulation remains open to challenge).
 - Stare decisis doesn't mean older agency interpretations are immune from challenge.

Workplace Executive Orders Rescinded

EO Initial Recissions of Harmful Executive Orders and Actions (EO 14148) (Jan. 20, 2025)

- EO 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government)
- EO 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation)
- EO 14004 of January 25, 2021 (Enabling All Qualified Americans to Serve Their Country in Uniform) (re transgender service members and allowing transitioning during service)
- EO 14020 of March 8, 2021 (Establishment of the White House Gender Policy Council)
- EO 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce)
- EO 14069 of March 15, 2022 (Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency)
- EO 14075 of June 15, 2022 (Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals)
- EO 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government)
- EO 14110 of October 30, 2023 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence)

Workplace Executive Orders Rescinded

AND (by separate orders)

- EO 11246 of September 24, 1965 (Nondiscrimination in Employment by Government Contractors and Subcontractors)
- EO 14042 of September 9, 2021 (Ensuring Adequate COVID Safety Protocols for Federal Contractors)
- EO 14043 of September 9, 2021 (Requiring Coronavirus Disease 2019 Vaccination for Federal Employees)

New Executive Orders

- Ending Illegal Discrimination and Restoring Merit-Based Opportunity (EO 14173) (rescinding EO 11246)
- Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government (EO 14168)
- Reforming the Federal Hiring Process and Restoring Merit to Government Service (EO 14170)
- Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce (EO 14171)
- Prioritizing Military Excellence and Readiness (EO 14183)
- Reinstating Service Members Discharged Under the Military's COVID-19 Vaccination Mandate (EO 14184)
- Restoring America's Fighting Force (EO 14185)
- Keeping the Americans Safe in Aviation (Pres. Memorandum)

Plus the Immigration Orders

- Protecting the Meaning and Value of American Citizenship (EO 14160) (limiting birthright citizenship)
- Declaring a National Emergency at the Southern Border of the US (Proclamation 10886)
- Guaranteeing the States Protection Against Invasion (Proclamation 10888)

Impact of Changes

Federal government contractors

- Revokes EO 11246 (undoing 60-year practice requiring affirmative action programs)
- Requires contract language confirming no DEI programs and that compliance with that term is “essential”.
- **NOTE:** VEVRAA and Rehab Act Section 503 statutory requirements remain intact....but investigations “held in abeyance”.

Private sector employers

- Fear of enforcement actions (9 to be “selected” by each agency for enforcement) against “illegal” DEI programs (EO 14173).
- Transgender/gender identity rights (bathrooms, pronouns).
- Already push-back against DEI from shareholder actions, demand letters, state attorneys generals
- Anticipate more reverse discrimination claims
- **NOTE:** Standard for reverse discrimination claims pending SCOTUS review (*Ames v. Ohio Dep’t of Youth Servs.*)

Federal Firings Ripple Effect

“The economic consequences of layoffs are like a domino effect that spread across local economies to businesses that seem to have no connection whatsoever to the federal government.”

-Ernie Tedeschi
Director of Economics
Yale University Budget Lab

Return to In-Person Work

[90 Fed. Reg. 8251 \(Jan. 20, 2025\) \(Pres. Mem.\)](#)

[Return to In-Person Work](#), which directs heads of all departments and agencies in the executive branch of government to, as soon as practicable, take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis, provided that the department and agency heads shall make exemptions they deem necessary.

Return to In-Person Work Ripple Effect

Major companies, such as AT&T, Amazon, JP Morgan, Goldman Sachs, are also moving back to in-person work

What does the future hold?

Ramp up in HR policies and practices again such as wage and hour issues, health and safety, leave laws and the like.

EEOC Agency Changes

Trump fires General Counsel (expected) and two Democratic commissioners (unexpected).

- EEOC lacks a quorum (need at least 3 of 5)
- Title VII, which created the EEOC, states that no more than three Commissioners can be from the same political party ([42 U.S.C. § 2000e-4\(a\)](#)).
- New appointments would create Republican majority
- Acting Chair Andrea Lucas “priorities” align with Trump’s agenda

EEOC Agency Changes Gender Discrimination Issues

- [EEOC Press Release, EEOC Acting Chair Vows to Protect American Workers from Anti-American Bias](#) (Feb. 19, 2025).)
- **January 28, 2025** Acting EEOC Chair Andrea Lucas:
 - removed the option for EEOC employees to identify pronouns in email and Microsoft Teams profiles;
 - eliminated the option to select a "X" gender marker during the intake process for filing a charge of discrimination;
 - directed the agency to remove "Mx." from the list of prefix options on the charge form and related forms;
 - is reviewing the content of the EEOC's "Know Your Rights" poster, which covered employers are required to post in workplaces;
 - removed materials "promoting gender ideology" from the EEOC's internal and external websites, documents, and social media platforms; and
 - acknowledged that she lacks the authority to remove or modify documents that were passed by majority vote, including the Enforcement Guidance on Harassment in the Workplace, the EEOC Strategic Plan 2022-2026, and the EEOC Strategic Enforcement Plan Fiscal Years 2024-2028.

EEOC Agency Changes: Pregnant Worker Fairness Act

- Pregnant Worker Fairness Act, effective June 27, 2023:
 - Requires covered employers to grant [reasonable accommodations](#) to qualified applicants and employees with known limitations related to pregnancy, childbirth, and related medical conditions.
 - Prohibits discrimination against qualified job applicants or employees because of their need for a pregnancy-related accommodation. ([42 U.S.C. §§ 2000gg-2000gg-6](#))
- EEOC Final Rule, which included terms involving contraception and abortion, is currently in litigation.
- While it is unclear whether the EEOC under the current administration will continue to defend the Final Rule, but it currently lacks a quorum needed to engage in rulemaking to change the Final Rule.

FTC Agency Changes

- Democratic Chair Khan resigned, leaving open seat
- Ferguson confirmed as chair
- Republican majority expected soon

Employment Contracts

- **January 16, 2025:** The FTC and Department of Justice (DOJ) adopted [Antitrust Guidelines for Business Activities Affecting Workers](#) (2025)
- Guidelines provide that certain agreements and employment practices may violate the antitrust laws, including:
 - "[e]mployment agreements that restrict workers' freedom to leave their job;" and
 - "[o]ther restrictive, exclusionary, or predatory employment conditions that harm competition.... [including] overly broad non-disclosure agreements, training repayment agreement provisions [TRAPs], non-solicitation agreements, and exit fee or liquidated damages provisions."
 - Noncompete ban will probably be permanently dead.

DOL Agency Changes

- Trump nominates pro-labor(ish) Secretary of Labor Chavez-DeRemer
- Keith Sonderling (former EEOC) as Deputy Secretary

DOL Wage and Hour

DOL Final Rule to increase minimum salary threshold and overtime issues were supposed to be effective 1/1/2025 are now halted.

FTC Ban on Noncompetes

- Rule finalized April 23, 2024
- Scheduled effective date September 4, 2024
- Blocked by court order August 20, 2024
- FTC appealed on March 17, 2025, and is re-evaluating the rule

DOL Independent Contractor Test

- In 2021, Trump Administration changed test to 5-factor test to determine worker classification, with two being “core” factors: the nature and degree of the worker’s control over the work, and the worker’s opportunity for profit or loss.
- In 2024, Biden Trump 1.0 test to a 6-factor test “totality of the circumstances” effective March 11, 2024.

DOL Independent Contractor Test

- Multiple court cases have challenged the implementation of the 2024 DOL test.
- On May 1, 2025, the DOL issued a Field Bulletin stating that Wage and Hour Division workers should **NOT** apply the 2024 test.
- DOL has stated that a July 2008 Fact Sheet and a 2019 Letter Opinion should be used for enforcement.

DOL Independent Contractor Test

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Targets of Enforcement

Industries particularly susceptible to regulatory enforcement for independent contractor misclassification include:

- Construction.
- Transportation and trucking.
- Cable companies.
- Janitorial services.
- Landscaping and nurseries.
- Security services.
- Nursing.
- Delivery drivers.
- Child care.
- Home health care.
- Internet services.
- Restaurant and catering services.
- Staffing services.
- Hotels and motels.
- Oil and gas.

What is Independent Contractor?

Generally, an independent contractor is a worker who:

- Offers their services to the public for a fee.
- Is not economically dependent on any single company.
- Is **not** an employee.

What is Independent Contractor?

An independent contractor typically:

- Charges a fee for their services.
- Is engaged only for the time required to perform a specified service or task.
- Retains control over the method and manner of work.
- Retains economic independence and is free to offer their services to more than one company.
- Is responsible for paying their own income, social security, and Medicare taxes.
- Is not covered by most federal, state, or local laws designed to protect employees.

What is Independent Contractor?

An independent contractor typically does ***not***:

- Receive company-sponsored benefits, such as paid vacation, health insurance, or retirement benefits.
- Perform the same work as the company's employees.
- Have the “indicia” of an employee, such as using the client company's uniforms, name badges, or business cards.

Benefits of Independent Contractors

Because independent contractors are not employees, companies that use them can generally avoid certain obligations and expenses, including:

- Tax and insurance obligations (federal, state, local).
- Employment law compliance.
- Employee benefits.
- Immigration law compliance.
- Affordable Care Act (ACA) compliance.

Independent Contractor vs Employee

An employee, by comparison, is subject to significant oversight and control by the company and:

- Is paid wages and receives company-sponsored benefits.
- Is employed for a continuous period and performs whatever tasks the company requires.
- Generally pays their income, social security, and Medicare taxes through the amounts their employer is obligated to withhold from their wages.
- Is economically dependent on the employer.
- Is protected by applicable federal, state, and local employment laws.

Penalties for Misclassification

The penalties for misclassification can be serious. If a company misclassifies an employee as an independent contractor, it must ensure compliance going forward and may be liable for:

- Back wages and overtime pay.
- Employee benefits, including stock options, retirement benefits, and health plan coverage (or the value of those benefits).
- Disability payments and workers' compensation.
- Tax and insurance obligations.
- Liquidated damages.
- Civil monetary penalties.

Penalties for Misclassification

Improperly classifying an employee as an independent contractor could lead to claims for:

- Unpaid overtime compensation and reimbursement of work-related expenses.
- Reasonable accommodation and return to work benefits under the ADA and its state equivalents.
- Leaves of absence under the FMLA and its state equivalents.
- Plant closure and mass layoff notice and penalties under WARN and its state equivalents.
- Discrimination under Title VII, ADEA, and other federal, state, and local anti-discrimination laws.

Penalties for Misclassification

Misclassification of employees as independent contractors directly impacts both:

- A company's compliance obligations under the Affordable Care Act.
- Its exposure to related penalties.

Penalties for Misclassification

The tax and insurance liabilities for misclassification are significant and can include:

- Years of unpaid federal, state, and local income tax withholdings.
- Social security and Medicare contributions.
- Workers' compensation and unemployment insurance premiums, including federal unemployment taxes.
- Interest and penalties.

Tests for Independent Contractors

- Do not rely on generalizations or labels to determine employee or independent contractor status.
- Simply referring to a worker as an independent contractor, **even if they agree to that designation**, is not enough.
- Classification depends on:
 - The facts of each case.
 - Application of the appropriate independent contractor tests.
 - Differences in how courts and government agencies interpret those tests.

Tests for Independent Contractors

- There is no single test to determine independent contractor status for all purposes.
- The various tests include:
 - DOL Test.
 - The Control Test.
 - Common law and other federal law tests.
 - State and local tests.
- **Familiarize yourself with the different federal, state, and local tests that may apply.**

May 1, 2025 DOL Test

An employment relationship under the FLSA must be distinguished from a strictly contractual one. Such a relationship must exist for any provision of the FLSA to apply to any person engaged in work which may otherwise be subject to the Act. In the application of the FLSA an employee, as distinguished from a person who is engaged in a business of his or her own, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves. The employer-employee relationship under the FLSA is tested by "economic reality" rather than "technical concepts." It is not determined by the common law standards relating to master and servant.

May 1, 2025 DOL Test

The U.S. Supreme Court has on a number of occasions indicated that there is no single rule or test for determining whether an individual is an independent contractor or an employee for purposes of the FLSA. The Court has held that it is the total activity or situation which controls. Among the factors which the Court has considered significant are:

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

May 1, 2025 DOL Test

There are certain factors which are immaterial in determining whether there is an employment relationship. Such facts as the place where work is performed, the absence of a formal employment agreement, or whether an alleged independent contractor is licensed by State/local government are not considered to have a bearing on determinations as to whether there is an employment relationship. Additionally, the Supreme Court has held that the time or mode of pay does not control the determination of employee status.

May 1, 2025 DOL Test

(1) One of the most common problems is in the construction industry where contractors hire so-called independent contractors, who in reality should be considered employees because they do not meet the tests for independence, as stated above. (2) Franchise arrangements can pose problems in this area as well. Depending on the level of control the franchisor has over the franchisee, employees of the latter may be considered to be employed by the franchisor. (3) A situation involving a person volunteering his or her services for another may also result in an employment relationship. For example, a person who is an employee cannot "volunteer" his/her services to the employer to perform the same type service performed as an employee. Of course, individuals may volunteer or donate their services to religious, public service, and non-profit organizations, without contemplation of pay, and not be considered employees of such organization. (4) Trainees or students may also be employees, depending on the circumstances of their activities for the employer. (5) People who perform work at their own home are often improperly considered as independent contractors. The Act covers such homeworkers as employees and they are entitled to all benefits of the law.

IRS Independent Contractor Test

- Used to determine whether a worker is an employee for federal tax purposes.
- Analyzes three aspects of the worker's control or independence:
 - Behavioral control.
 - Financial control.
 - The type of relationship.

Common Law Darden Test

Commonly used in the context of Title VII of the Civil Rights Act (Title VII), the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Affordable Care Act (ACA), and the Employee Retirement Income Security Act (ERISA).

Common Law Darden Test

The test considers the following factors:

- Skill required.
- Source of supplies and tools.
- Location of the work.
- Duration of the relationship between the parties.
- The company's right to assign additional projects to the worker.
- Extent of the worker's discretion over when and how long to work.
- Method of payment.
- The worker's role in hiring and paying assistants.
- Regular business of the company and whether the work performed is part of that business.
- The company's status as "in business."

Common Law 20-Factor Test

- Previously used by the IRS, this test is used by some states for independent contractor classification purposes.
- The 20 factors are:
 - Instructions.
 - Training.
 - Integration with the company's operations.
 - Services rendered personally.
 - Hiring, supervising, and paying helpers.
 - Continuing relationship.
 - Set hours of work.
 - Full time or exclusive work.

Common Law 20-Factor Test

- Location where services are performed.
- Specifying the order or sequence of work.
- Oral or written reports.
- Payments.
- Business or travel expenses.
- Tools and materials.
- Investment.
- Profit and loss.
- Number of companies with whom the independent contractor works.
- Advertising services to the general public.
- Right to fire.
- Right to quit.

Special IRS Classifications

The IRS has determined that three categories of workers are classified as independent contractors for all federal tax purposes:

- Direct sellers.
- Licensed real estate agents.
- Companion sitters.

State & Local Law Tests (ABC Test)

- State and local independent contractor tests can impose a more narrow definition than the federal equivalent.
- The most common state test is the ABC test.
- The ABC test presumes an employment relationship unless the client company can show:
 - **Absence of control.** The worker has been and will continue to be free from control or direction over the performance of their work.
 - **Business of the worker.** The work is either outside of the normal course of business for the client company or performed outside of any of that company's places of business.
 - **Customarily engaged.** The worker is customarily engaged in an independently established trade, occupation, profession, or business.

☆ 🏠 🔗 **State Q&A Comparison Tool**

Select a Topic ▾ Select Questions ▾ Select Jurisdictions ▾ Compare

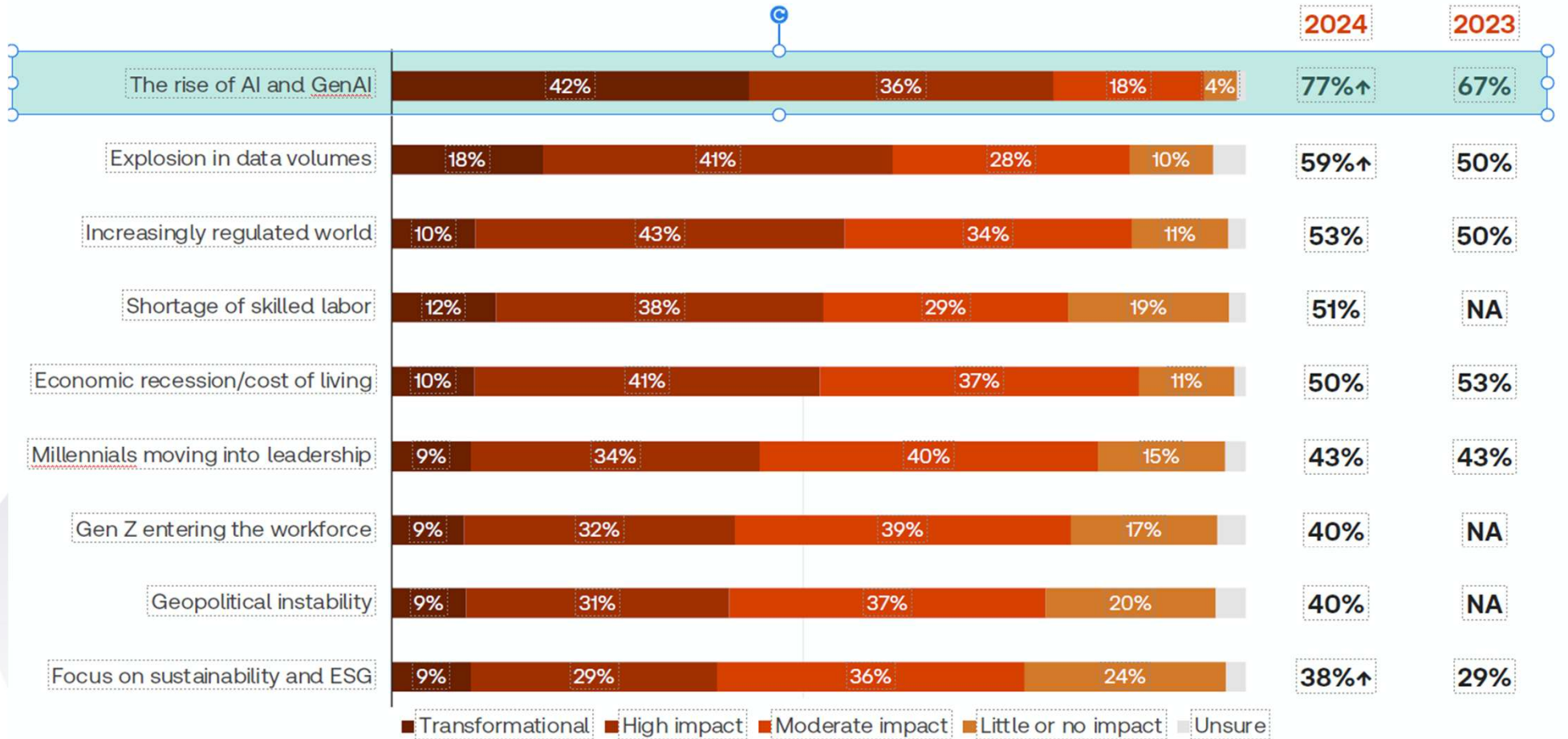
Topic: Independent Contractors

- Select All
- 1. Summarize how the issue of independent contractors is analyzed under state law.
- 2. Is the term independent contractor defined by statute, regulation, or case law; if so provide the definition and cite relevant authority.
- 3. For each type of independent contractor, please describe the benefits of using an independent contractor instead of an employee to perform work.
- 4. What tests are used to evaluate whether a worker is an independent contractor? Please describe each test and explain when each is used.
- 5. For each independent contractor type, what entity administers and enforces independent contractor classification?
- 6. How are independent contractor classifications selected for misclassification evaluation by each enforcement agency?
- 7. Please describe how aggressively independent contractor classification is enforced by each agency.
- 8. For each independent contractor type, is there a safe harbor available for employers that unintentionally misclassify workers as independent contractors? If so, please describe.
- 9. For each independent contractor type, can employers request a determination of worker status, and if so, describe the process and possible benefits/risks.
- 10. Please describe the penalties for improper classification for each independent contractor type.
- 11. Must independent contractor agreements include any particular language that is not required under federal law? If so, please insert that language and explain the requirements.
- 12. Please describe any other variance in how independent contractors in your jurisdiction are treated compared to under federal law.
- 13. Is there a state law specific to gig economies, including marketplace platforms and transportation network companies? If so, please summarize that law's requirements regarding classification of gig economy workers.

Artificial Intelligence in the Workplace



AI and GenAI seen as the biggest trend of the future




High/transformational impact

Executive Order on AI

- Removing Barriers to American Leadership in Artificial Intelligence EO
- "to sustain and enhance America's global AI dominance in order to promote human flourishing, economic competitiveness, and national security."
- Plan to be developed 180 days after EO = July 22, 2025

Dept of Labor


10-Step Plan to Avoid AI Discrimination

 **Please note:** As of 01/20/2025, information in some news releases may be out of date or not reflect current policies.

News Release

US DEPARTMENT OF LABOR ANNOUNCES FRAMEWORK TO HELP EMPLOYERS PROMOTE INCLUSIVE HIRING AS AI-POWERED RECRUITMENT TOOLS' USE GROWS

Seeks to reduce risks of discrimination, yield benefits for disabled job seekers

WASHINGTON – The U.S. Department of Labor today announced the publication of the [AI & Inclusive Hiring Framework](#) , a new tool designed to support the inclusive use of artificial intelligence in employers' hiring technology and increase benefits to disabled job seekers.

Automation, AI, and Job Displacement

- **Legal Challenge:** The increasing use of automation and AI in various industries could lead to widespread job displacement.
- **Issue:** How will society address the legal and economic consequences of widespread job loss, especially in lower-skill, manual labor sectors? Issues include potential unemployment, retraining requirements, and access to new forms of income like universal basic income (UBI).
- **Potential Solution:** Laws and policies around worker retraining, social safety nets, and perhaps regulations around the development and deployment of AI and automation technologies will need to evolve.

Generative AI-Employees are using AI for:

- Analyzing data.
- Conducting research.
- Drafting emails, letters, memoranda, contracts, presentations, and other routine documents.
- Responding to basic customer service queries.
- Performing human resources (HR) and employee management functions.

Generative AI- How improper use could cause liability for an employer:

- Bias in employment decisions and other violations of employment laws. For information about the legal issues raised when employers use AI tools for HR and related functions.
- Intellectual property (IP) violations.
- Breach of contract.
- Inadvertent use or disclosure of confidential, proprietary, or personal information (including protected health information (PHI) subject to HIPAA.
- Creating and disseminating misinformation, which can lead to claims of consumer fraud in the advertising and marketing context.
- Errors and inaccuracies in work product, which can lead to reputational harm and loss of stakeholder trust

Generative AI in the Workplace Policy

This is a basic template that applies to private companies.

Please be aware that your state or local laws may impose additional or different requirements.

Purpose

Generative AI (GenAI) is a type of AI that uses computer algorithms to generate text, images, and other content, typically in response to a user's prompt or question. The Company recognizes that the use of GenAI tools [like ChatGPT] ("**GenAI Tools**") can increase employee productivity and foster innovation, and we support the use of GenAI Tools in a safe, ethical, and secure manner. At the same time, we recognize that the use of GenAI Tools can pose risks to our operations [and customers] related to data security, confidentiality, accuracy, and ethical considerations.]

The purpose of this Generative AI Use in the Workplace Policy (this "**Policy**") is to provide employees with guidelines for the responsible use of GenAI Tools while protecting the Company and mitigating the risk of misuse, unethical outcomes, potential biases, inaccuracy, and information security breaches. All employees are responsible for using GenAI Tools in a productive, ethical, and lawful manner.

Scope of Policy

This Policy applies to all [EMPLOYER NAME] employees in the course of their employment when using GenAI Tools [like ChatGPT][, ChatSonic/Jasper AI/Bing AI/Google Gemini (formerly Google Bard)/Copilot/[OTHER GENAI TOOL]] for authorized business purposes, including in their dealings with third-party agents and vendors, and when using an employee's personal devices for authorized business purposes.

[A list of permitted and prohibited GenAI Tools is annexed to this Policy as Exhibit A.]

Compliance with Related Policies and Agreements

This Policy is intended to add to, not contradict, limit, or replace, applicable mandatory rules, policies, legal requirements, legal prohibitions, and contractual obligations, all of which remain in full force and effect. Any use of GenAI Tools under this Policy must comply with the relevant policies, internal controls, and guidelines of the Company, including the Company's:

- [Code of Ethics and Business Conduct.]
- [AI Ethics Principles.]
- [Anti-Harassment/Anti-Discrimination Policy.]
- [Information Security Policy.]
- [Confidential Information Policy.]
- [Privacy by Design Policy.]
- [HIPAA Notice of Privacy Practices and related HIPAA Compliance Policies and Procedures.]
- [External Privacy Notices and Personal Information Processing Policies and Agreements.]
- [Competitive Intelligence Policy.]
- [Copyright Protection and Use Policy.]
- [Corporate Patent Policy.]
- [IT Resources and Communications Systems Policy.]
- [Open Source Software Policy.]
- [Vendor Due Diligence Procedures and Preferred Provider Programs.]
- [OTHER POLICY OR AGREEMENT NAME.]

GenAI Tool Mandatory Training

- [EMPLOYER NAME] recognizes that an informed workforce is the best line of defense. We will provide training opportunities and expert resources to help employees understand their obligations under this Policy and avoid creating undue risks. Employees must complete GenAI use training within [a reasonable time/[SET TIME FRAME]] after initial hire. All employees must complete GenAI use training on at least an annual basis. Managers must ensure that their employees complete all required training.
- [EMPLOYER NAME] may deem failure to participate in required training a violation of this Policy. [EMPLOYER NAME] will retain attendance records and copies of GenAI training materials provided to employees.

Guidelines for Using GenAI Tools

When using GenAI Tools in the workplace, all employees must:

Use them only for the following authorized purposes:

- [analyzing data][; and]
- [drafting emails, letters, memoranda, and presentations][; and]
- [creating outlines and checklists][; and]
- [conducting research][; and]
- [OTHER AUTHORIZED PURPOSE].

[All other purposes must be authorized in advance in writing by [[POSITION]/[DEPARTMENT NAME] Department].] [The Company retains the right to monitor all employee use of GenAI Tools.]

- [Use a Company-provided email address for log-in purposes.]
- Not enter any Company, employee, customer, or third-party confidential, trade secret, or other personal or proprietary information into a prompt for a GenAI Tool [unless authorized in advance in writing by [[POSITION]/[DEPARTMENT NAME] Department]].
- Avoid using offensive, discriminatory, or inappropriate content.
- Thoroughly review all GenAI Tool outputs before using them or forwarding them to others inside or outside the Company to:
 - ensure that they do not contain biased, offensive, or discriminatory content;
 - ensure that they do not improperly use or disclose personal or confidential information; and
 - verify accuracy or reported facts with other trusted sources[, especially when using LLM-based GenAI Tools like ChatGPT].
- [Track and document their use of GenAI Tools for business purposes [using the [GenAI Tool Use Log/[NAME OF FORM]].] [This includes saving all chats, queries, and prompts.]
- Understand to a reasonable degree how the GenAI Tool works, its limitations, and the applicable terms of use and other policies governing the use of Company data by the GenAI Tool.

Guidelines for Using GenAI Tools

[Employees are prohibited from using GenAI Tools to:

- Conduct or solicit illegal activities;
- Engage in or promote discriminatory, biased, or unethical practices;
- Infringe the rights of others, including privacy and intellectual property rights; [or]
- Interfere with the performance of their jobs or of other employees' jobs[./; or]
- [Perform the following workplace tasks:]
 - [PROHIBITED USES OF GENAI TOOLS].]

GenAI Tool Audits

[[POSITION]/[DEPARTMENT NAME] Department] shall perform the following duties to facilitate [EMPLOYER NAME]'s compliant use of GenAI Tools:

- Implement an audit system to carefully monitor and document all GenAI Tool inputs and outputs to identify potential issues, biases, or errors. This includes identifying the source of all data sets used with GenAI Tools and labelling GenAI Tool outputs to indicate that they were produced in whole or in part using GenAI technology.
- Keep accurate records of audits, determinations, and decisions and any communications of these to employees and third parties.
- Consult with [EMPLOYER NAME]'s [Law Department/legal counsel] regarding any legal issues raised by or during any activities referred to in this Policy section and escalate these issues to executive management, when necessary.
- Regularly review and update this Policy to reflect changes in technology, legal requirements, ethical norms, and best practices.]

Reporting Noncompliance with This Policy

If you become aware of an actual or potential violation of this Policy, or have reason to believe that any of the following has been downloaded to or installed on [EMPLOYER NAME]'s networks, systems, or devices, you must promptly disclose this fact to the [[POSITION]/[DEPARTMENT NAME] Department] together with all relevant documents and information:

- An unlicensed GenAI Tool, if usage requires a license.
- A GenAI Tool that has not been approved for use according to this Policy.
- A GenAI Tool that is used outside of the approved manner or scope.
- A GenAI Tool that poses an identified, unaddressed security risk or contains any material defects or malicious code.

The Company prohibits any form of discipline, reprisal, intimidation, or retaliation for reporting a violation of this Policy.

Violations of This Policy

If [[POSITION]/[DEPARTMENT NAME] Department] determines any employee, regardless of position or title, has engaged in conduct in violation of this Policy, they will be subject to discipline, up to and including termination of employment.

Administration of This Policy

The Company expressly reserves the right to change, modify, or delete the provisions of this Policy without notice.

The [DEPARTMENT NAME] is responsible for the administration of this Policy. If you have any questions regarding this Policy or questions about using GenAI Tools in the workplace that are not addressed in this Policy, please contact the [DEPARTMENT NAME].

- **Effective Date**
- This Policy is effective as of [DATE].
- Policy Review Date: [DATE].
- Revision History: [DATE AND DESCRIPTION OF LATER REVISIONS].

Union and Other Rights

[Employees Covered Under a Collective Bargaining Agreement

- The employment terms set out in this Policy work in conjunction with, and do not replace, amend, or supplement any terms or conditions of employment stated in any collective bargaining agreement that a union has with [EMPLOYER NAME]. [Employees should consult the terms of their collective bargaining agreement/Wherever employment terms in this Policy differ from the terms expressed in the applicable collective bargaining agreement with [EMPLOYER NAME], employees should refer to the specific terms of the collective bargaining agreement, which control].]

[Conduct Not Prohibited by This Policy

[This Policy is not intended to preclude or dissuade employees from engaging in [legally protected activities,/activities protected by state or federal law,][including the National Labor Relations Act,] such as discussing wages, benefits, or terms and conditions of employment[, forming, joining, or supporting labor unions][, bargaining collectively through representatives of their choosing][, raising complaints about working conditions for their and their fellow employees' mutual aid or protection], or legally required activities.

OR

This Policy is not intended to restrict communications or actions protected or required by state or federal law.]]

Exhibit A

This Exhibit A is not an exhaustive list of GenAI Tools that the Company permits or prohibits, but merely a guide to assist employees in complying with this Policy. The Company expressly reserves the right to change, modify, or delete the items in this exhibit without notice.]

- [Permitted GenAI Tools]
- [GENAI TOOL]
- [GENAI TOOL]
- [Prohibited GenAI Tools]
- [GENAI TOOL]
- [GENAI TOOL]

Acknowledgement

[I, _____ (employee name), acknowledge that, on _____ (date), I received a copy of [EMPLOYER NAME]'s [POLICY NAME] ("**Policy**") and that I read it, understood it, and agree to comply with it. I understand that [EMPLOYER NAME] has the maximum discretion permitted by law to interpret, administer, change, modify, or delete this Policy at any time[with or without notice]. No statement or representation by a supervisor or manager or any other employee, whether oral or written, can supplement or modify this Policy. Changes to this Policy can only be made if approved in writing by the [POSITION] of [EMPLOYER NAME]. I also understand that any delay or failure by [EMPLOYER NAME] to enforce any work policy or rule will not constitute a waiver of [EMPLOYER NAME]'s right to do so in the future. I understand that neither this policy nor any other communication by a management representative or any other employee, whether oral or written, is intended in any way to create a contract of employment. I understand that, unless I have a written employment agreement signed by an authorized [EMPLOYER NAME] representative, **I am employed at will and this policy does not modify my at-will employment status.** If I have a written employment agreement signed by an authorized [EMPLOYER NAME] representative and this policy conflicts with the terms of my employment agreement, I understand that the terms of my employment agreement will control.

OR

I, _____ (employee name), acknowledge that on _____ (date), I received and read a copy of [EMPLOYER NAME]'s [POLICY NAME][, dated [EDITION DATE]] ("**Policy**") and understand that it is my responsibility to be familiar with and abide by its terms. [I understand that the information in this Policy is intended to help [EMPLOYER NAME]'s employees to work together effectively on assigned job responsibilities.] This Policy is not promissory and does not set the terms or conditions of employment or create an employment contract.]

Conclusion

As the nature of work continues to evolve, legal systems will need to adapt rapidly to address these challenges.

It will require an ongoing dialogue between lawmakers, employers, workers, and other stakeholders to create fair, sustainable, and legally sound frameworks for the future of work.



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AND CREATES LASTING, POSITIVE CHANGE IN YOUR COMMUNITY.**



SESSION 2

FOUNDER'S WORKSHOP: CREATE AND LAUNCH YOUR BUSINESS DREAM

Monday, September 15, 2025, at 12:00pm

Live at 1515 Commerce Street, Fort Worth, Texas 76102

In this hands-on workshop, you'll learn the essential legal steps to properly form and file your Social Enterprise. From understanding state requirements to preparing key documents, this session will walk you through the process with clarity and confidence. Learn ways to protect your business assets. This workshop empowers you to navigate the legal side of launching your business the right way.



SESSION 3

CELEBRATE & STRATEGIZE: BUILDING A BUSINESS THAT LASTS

Monday, October 27, 2025, at 12:00pm

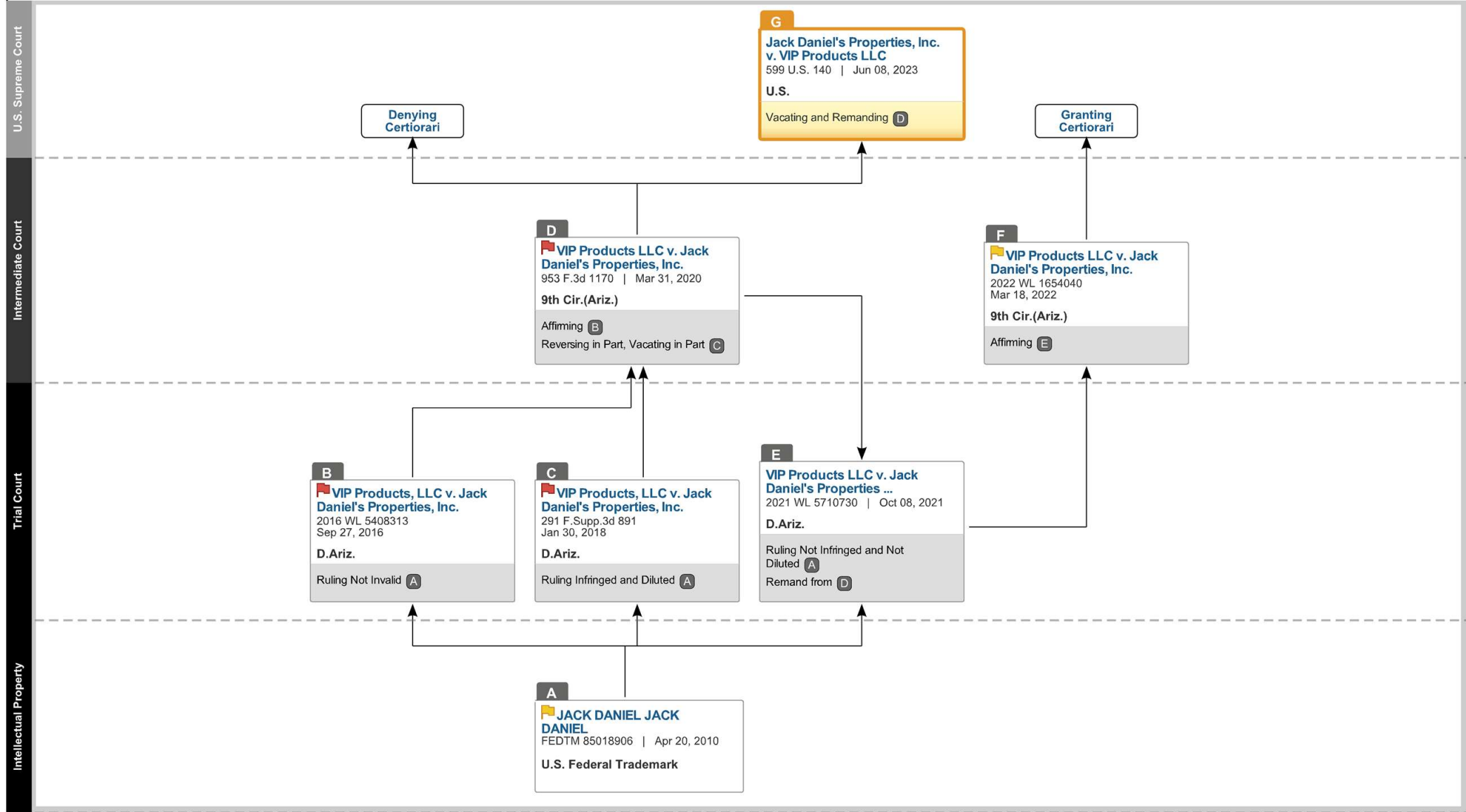
Live at 1515 Commerce Street, Fort Worth, Texas 76102

We'll wrap up with a celebration and set you up for success with practical strategies to keep your business moving forward—consistently and sustainably.



Cease and Desist Letter

We are certainly flattered by your affection for the brand, but while we can appreciate the pop culture appeal of Jack Daniel's, we also have to be diligent to ensure that the Jack Daniel's trademarks are used correctly. Given the brand's popularity, it will probably come as no surprise that we come across designs like this on a regular basis. What may not be so apparent, however, is that if we allow uses like this one, we run the very real risk that our trademark will be weakened. As a fan of the brand, I'm sure that is not something you intended or would want to see happen.



Trademark Case Example

Bad Spaniels v. Jack Daniels

VIP Products v. Jack Daniels Props



Trademark Case Example
Bad Spaniels v. Jack Daniels
(from 2023 ASBDC Conference)



