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Workplace Legal Updates 2026 and Beyond

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ILLINOIS

On a Local & State Level

- State Run Paid Leave/Disability Benefits (***still on hold in IL for now)
- Diminishing the Use of Non-Compete/Non-Solicitation Agreements (***trend has been to focus on specific occupations vs. total, complete outright bans --- continues to "chip away")
- Increasing Wage & Hour Penalties
- Expanding IL Human Rights Act Protections
- Workplace Safety Regulations
- E-Verification & Other Immigration Focus Legislation
- A Host of Laws Impacting the Workplace (notable example, the IL Transparency in the Workplace Act)
- Zero Legislative Gridlock (what BIG Labor and Plaintiff's Bar wants, they are getting)

What’s on the Horizon in IL --- Trying to “TRUMP PROOF” Illinois…

- Paid Leave Expansion
- Union Only Contracting
- Expansion of Whistleblower and Anti-Retaliation Protections
- Expansion of Employer Penalties, Fines under Wage/Hour laws
- Expansion of Statute of Limitations
- Expansion of Controls on Employer Speech
- Expansion of Prevailing Wage/Union Only Construction Projects
- Expansion of State Regulation into Labor Relations

SB 2339 –
IL Right to Privacy in the Workplace Act
Advanced in Fall Veto Session – 12/12/25

If an employer receives a written notification from any federal agency or other outside vendor not responsible for the enforcement of immigration law, including, but not limited to, the Social Security Administration, the Internal Revenue Service, or an insurance company, of a discrepancy as it relates to an employee's individual taxpayer identification number or other identifying documents, the following rights and protections are granted to the employee:

(1) The employer shall not take any adverse action against the employee solely based on the receipt of the notification.

(2) The employer shall provide a notice to the employee and to the employee's authorized representative, if any, as soon as practicable, but not more than 5 business days after the date of receipt of the notification or after the employer makes the determination that an employee must respond to the notification in any manner, whichever is longer, unless a shorter timeline is provided for under federal law or a collective bargaining agreement. The employer shall notify the employee in person and deliver the notification by hand, if possible. If hand delivery is not possible, then the employer shall notify the employee by mail and email, if the email address of the employee is known, and shall notify the employee's authorized representative. Upon request by the employee or the employee's authorized representative, the employer shall give to the employee the original notification.

SB 2339 –
IL Right to Privacy in the Workplace Act

The notice to the employee shall include, but shall not be limited to: (i) an explanation that the federal agency or outside vendor not responsible for the enforcement of immigration law has notified the employer that the identification documents presented by the employee do not appear to match; (ii) the time period the employee has to contest the disputed information, if such a time period is required by federal law; and (iii) any action the employer is requiring the employee to take.

The employee may have a representative of the employee's choosing in any meetings, discussions, or proceedings with the employers.

Non-compliance = penalties, private rights of action for aggrieved or interested parties and authority for the Attorney General to initiate or intervene in civil actions on behalf of the State.

There is a prohibition on duplicative enforcement actions, ensuring employers cannot be penalized under multiple sections of the law for the same alleged violation.

There are safe harbor provisions shielding employers from penalties if they act in good faith reliance on official guidance from the Illinois Department of Labor or the U.S. Department of Homeland Security, or if a violation results from a bona fide administrative error.

IL HB3773 – Signed Into Law Aug. 12, 2024

- Amends the IL Human Rights Act; effective **1/1/2026**
- IL ERs could face civil rights claims for using artificial intelligence tools in hiring and other employment decisions, if they have a **discriminatory effect**.
- It requires ERS to **notify EES and applicants** whenever they are using AI with respect to “recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment.”
- Discrimination based on all of the protected classes under IL law – as well as using “zip codes as a proxy for protected classes.”

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IL HB3773 – Continued

LIMIT PREDICTIVE ANALYTICS USE

Amends the Illinois Human Rights Act prohibiting an employer that uses predictive data analytics in its employment decisions to consider the applicant's race or zip code when used as a proxy for race to reject an applicant in the context of recruiting, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges, or conditions of employment. Allows the use of predictive data analytics to support the inclusion of diverse candidates in making employment decisions. Makes a civil rights violation: (1) with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or the terms, privileges, or conditions of employment, for an employer to use artificial intelligence that has the effect of subjecting employees to discrimination on the basis of protected classes identified under the Article or to use zip codes as a proxy for protected classes identified under the Article; and (2) for an employer to fail to provide notice to an employee that the employer is using artificial intelligence. Defines "artificial intelligence" and "generative artificial intelligence".

HB2978 Family Neonatal Intensive Care Leave Act

Creates the **Family Neonatal Intensive Care Leave Act**. Provides that an employee of an employer with 16 or more employees and no more than 50 employees shall be entitled to use a maximum of 10 days of unpaid neonatal intensive care leave while any child of the employee is a patient in a neonatal intensive care unit. Provides that an employee of an employer with 51 or more employees shall be entitled to use 20 days of unpaid neonatal intensive care leave while a child of the employee is a patient in a neonatal intensive care unit. Provides that, upon the conclusion of leave taken under the Act, an employee shall be reinstated to his or her former position or a substantially equivalent one with no loss of benefits held or accrued prior to taking leave. Intermittent use is allowed. Sets forth provisions concerning unlawful employer practices; Department of Labor responsibilities; and enforcement. Amends the State Finance Act to create the Neonatal Intensive Care Leave Fund.

NOTE: Leave is intended to be in addition to any FMLA available.

6/1/26

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IL Prevailing Wage Amendment

- IL PWA requires the payment of "full journeyman annualized fringe benefits" to apprentices working on prevailing wage projects in Illinois, regardless of the terms in the underlying prevailing area-wide union contract. **7/1/26**

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REMINDER:
Brief Summary of Key Points (IDTLSA)

1. After 720 hours of work for a temporary agency's client (within a 12-month period beginning from April 1, 2024 forward), the temporary worker must:
   - Be paid at least the rate of the client's lowest paid FLSA non-exempt similarly situated regular employee with same or substantially similar seniority (and, if that person doesn't exist – then the lowest paid FLSA non-exempt employee at the user client with the closest level of seniority); <u>and</u> NOTE: a third-party client can elect to go the US DOL BLS route (tbe)
   - Receive the same benefits or the equivalent cash benefit of the client's comparator employee
2. Agency must inform temporary workers (in writing) that they do not have to accept an assignment requiring that they cross a picket line or work where there is a "labor dispute."
3. A client must timely provide an agency with their direct employees' job duties, pay and benefits upon request.
4. Substantial new safety and hazard assessments and training requirements for both the employer and client – to be implemented prior to the temporary worker beginning work.
5. Higher penalties for violations.
6. Third party rights to file complaints with the IDOL and ultimately file private lawsuits regardless of the outcome at the IDOL – with the ability to recover 10% of any and all penalties/damages recovered – plus attorneys' fees and costs incurred.
7. IL AG's Office can also get involved on its own.
8. New Employment Notice changes & Application Receipt mandates.

SB807 – UI Act Amended

- **Amends the Unemployment Insurance Act.**
- Provides that changes in specified benefit and contribution rates begin on or after January 1, 2029.
- Provides for an increase in the benefit and contribution rates.
- Provides that, when an employer employing 75 or more employees in the State conducts a layoff or separation that results in 50 or more employees being separated at a single site of employment, the employer shall submit specified information concerning the employees to the Department of Employment Security in a secure manner prescribed by the Department. Excludes from the provision any employer with respect to employees working in the construction industry who are covered by a bona fide collective bargaining agreement with a labor organization.
- Effective immediately.

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Federal Direction and Executive Orders

On the Federal Level-Trump's 2nd Term Agenda

- Deregulation
- Employer Flexibility
- Eliminating DEI Initiatives
- Revocation of Affirmative Action on Federal Level
- Increase Focus on "Reverse" Discrimination Claims
- Form I-9 Audits (with stiffer penalties)
- Focus on Religious Discrimination
- Administrative Agency Shifts --- EEOC, DOL, NLRB, OSHA
- Legislative Gridlock – it's all about Administrative Agencies and the Courts these days…

DE……what should "I" do?

- The Administration is signaling that DEI initiatives based on demographic quotas or preferences are under increased scrutiny.
  - The message: employment decisions should focus on individual merit and initiative, not demographic characteristics.
- For federal contractors – the recission of EO 11246 means AA plan obligations tied to race/sex no longer apply (on a federal level).
- For private employers – the directive to agencies to "combat illegal private-sector DEI preferences" means your DEI programs should be reviewed for legal risk (e.g., reverse discrimination liability).
- Employers should shift how they fame their diversity and inclusion efforts from quota-based representation to opportunity-based, performance-based frameworks (i.e., leveling the field vs. preferential treatment).

USDOL Wage & Hour and Regulatory Priorities

Deregulation and Employer-Friendly Regulatory Reform

- DOL's regulatory agenda emphasizes reducing "red tape" and creating "flexibility" for 'employers
- Key areas of focus:
  - Joint-employer definitions focusing on ACTUAL control.
  - Broadening independent contractor definitions.
  - Broadening the interpretation of OT/minimum wage exemptions.
  - DOL no longer seeking liquidated damages in the administrative investigation stage into wage/hour laws.

Budget Changes and Enforcement Capacity

- DOL is operating under tighter budgets, proposed significant cuts (35%), and large-scale reorganization efforts.
- Decline in staffing/investigative capacity at the DOL.
  - Reports suggest that roughly 20% of DOL's workforce has taken some form of retirement or buyout since Trump took office.
  - Wage & Hour Division has the lowest number of investigators in years.
- Reduced enforcement capacity + regulatory rollback = degraded workers' rights and weak enforcement.
- Nevertheless, employers must still ensure compliance with wage and hour laws because risk of liability remains, and slower enforcement does not mean zero enforcement.

What Should Employers Do in Light of What's Happening at the US DOL?

- Nothing different than before
- Wage & Hour Laws = Class Action Waivers through Arbitration Agreements
- Wage & Hour Laws = IL was/is more Employee Friendly

*****But, it's probably an opportunity to push back on enforcement initiatives/investigations a little bit more than under the Biden Administration --- at this time.**

OSHA Deregulation and Narrowing Enforcement

OSHA – Enforcement Activity

- Early executive actions include halting most federal hiring.
- Budget calls for an 8% reduction in OSHA funding.
- Staffing levels to decrease by 12%.
- Projected inspections expected to decrease (appx. 35k to 24k; 42k in 2018).
- These efforts shift OSHA away from an enforcement-heavy model to a model that focuses on compliance assistance and voluntary participation programs.

OSHA – Enforcement Activity

- Administration has shifted focus toward voluntary compliance programs, emphasizing employer self-audits and advisory services over punitive measures.
- This approach aims to encourage employers to proactively address safety concerns without the need for federal intervention.

National Emphasis Program on Heat-Related Hazards in Place

- OSHA will continue enforcing heat safety through inspections rather than the rollout of a new federal heat standard.
- An updated NEP continues through April 10, 2031.
- Refines how OSHA targets employers for heat-related inspections when the heat index is expected to be 80 degrees or higher.

OSHA's Criteria for Evaluating a Heat Program

- Is there a heat program (written or verbal) that is effectively communicated to employees?
- How did the employer monitor ambient temperature(s) and levels of work exertion at the worksite?
- Were there sufficient amounts of cool water easily accessible to the employees?
- Did the employer allow additional breaks for hydration?
- Were there scheduled rest breaks?
- Was there access to a shaded area?
- Did the employer provide time for acclimatization of new and returning workers?
- Were administrative controls used (earlier start times, workload adjustments, and employee/job rotation) to limit heat exposures?
- Did the employer provide training on heat illness signs, how to report signs and symptoms, first aid, how to contact emergency personnel, prevention, and the importance of hydration?
- Do employees and supervisors understand the heat program?
- Is the heat program properly implemented and managed by a designated heat safety representative?

Immigration-Related Enforcement

Immigration-Related Enforcement

Presidential Proclamation – New Restrictions and $100,000 H-1B Fee

- A September 2025 proclamation restricts entry for certain H-1B workers and was accompanied by an administrative directive that effectively adds a very large fee to H-1B petitions.
- Expect high direct costs for sponsoring H-1Bs and narrower eligibility in practice.
- Note: DHS has proposed/issued rulemaking to move the H-1B selection toward higher-paid or higher-skilled registrants.
- Currently in place and being enforced.

Immigration-Related Enforcement

ICE Raids and Warrants

- Employers should recognize that a criminal warrant issued through ICE will likely be focused on and targeting a specific individual and not the employer. Additionally, ICE has authority to deliver a warrant upon an organization for specific records and documents. Such a warrant should be handled no differently than any other type of warrant from a governmental agency (i.e., the U.S. Department of Labor, the Department of Justice, etc.).
- While there is not a “one size fits all” approach here, any warrant should be carefully reviewed to identify exactly what the warrant is seeking and developing a responsible plan to appropriately respond to the warrant and cooperate with government officials.
- Management and all personnel for the employer should not panic, lie, mislead or interfere with the process. Employers should have a designated point person who is able to speak to the officer and immediately contact other appropriate members of management, if any, along with competent legal counsel. If there is a valid warrant, the employer must cooperate. Such cooperation requires an intimate understanding of exactly what is being sought and should involve competent legal counsel to appropriately interact with the government officials.

Immigration-Related Enforcement

Form I-9 Audits

- Obviously, the more common practice of the DHS/HSI is to issue an employer a notice of audit and/or issuing a subpoena for Form I-9 documents.
- HSI has ramped up nationwide I-9 audits and worksite inspections in 2025.
  - Delivered more than 5,200 I-9 audit notices to businesses across the US.
- In response to any such notice, employers should not turn over their forms until they have talked to an experienced attorney that is intimately familiar with work authorization issues.
- Of course, employers striving to be more proactive may want to conduct their own internal Form I-9 audit. Obviously, conducting any internal review requires experienced and knowledgeable personnel to ensure compliance issues are properly identified and remedied where possible.
- Engaging legal counsel to assist can also help to not only identify potential legal issues but also help ensure findings and remedial measures remain confidential and protected from disclosure to the extent greatest possible.

Some Form I-9 Errors are now SUBSTANTIVE

- ICE reclassified many Form I-9 errors from “technical” to “substantive.” The impact is that clerical mistakes that employers formerly could correct during a Form I-9 audit are no longer correctable and instead are subject to immediate fines during a Form I-9 audit.
- Fines range from $288–$2,861 per form!!!

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EEOC Enforcement and Policy Shifts

Closure and Dismissal of Disparate Impact Cases

- April 23, 2025, EA 14281 “Restoring Equality of Opportunity and Meritocracy”.
- Directed federal agencies to roll back the use of the disparate impact standard in “all contexts” including employment.
- In September, the EEOC directed its office to discharge all cases grounded in disparate impact and issue RTS notices (this was challenged recently in the DC Circuit – unsuccessfully).

Key Developments…

- More litigation on reverse discrimination claims, pregnancy-related claims, religious discrimination claims, and a reduction in sexual orientation/gender/LGBTQ claims.
- No more disparate impact claims to be investigated and enforced by EEOC.
- Much of these initiatives have already started to play out in the courts.

NOTE: The EEOC still has to issue a Right to Sue. An employee or former employee still has the right to seek alleged redress in court under federal law, as well as pursue local/state actions that may apply.

NEW EEOC National Enforcement Plan

EEOC Continues to Deprioritizes Disparate Impact

- Where the SEP prioritized adverse/disproportionate impact, the NEP (using Executive Order 14281) builds its priorities around disparate treatment and commits to eliminating disparate-impact theories in investigations “to the maximum degree possible.” This effort includes not commencing, developing, or continuing litigation that advances the SEP’s prioritized disparate-impact claims.

EEOC Targets DEI Programs as Potential Discrimination

- The EEOC was directed to support lawful DEI and accessibility practices under the SEP. The NEP essentially makes existing DEI programs primary enforcement targets and will treat many as intentional discrimination. Quotas are effectively eliminated—race/sex quotas, required diversity statements/panels/policies, sharing of demographic data, and evaluation mechanisms that utilize protected traits and demographics are all set to become tools of the past.

Shift in National Origin Enforcement Priorities

- Unsurprisingly, the SEP’s protection of migrants and visa workers is no longer in place and any “vulnerable-worker priority” ceases to exist. The NEP adds a chair priority on “anti-American national origin discrimination,” flagging preferences for “guest worker visa holders” or PERM applicants. Language in job ads, such as “diverse candidates,” will now be treated as functionally race-based.

NEW EEOC NEP (cont'd)

EEOC Narrows Sex and Gender Identity Protections

- The SEP expressly read Title VII "sex" to include sexual orientation and gender identity and listed LGBTQ+ individuals as a vulnerable-worker priority. The NEP reframes around "single-sex intimate spaces," "the binary nature of sex," and religious objections, and limits (or tries to limit) the scope of *Bostock v. Clayton County*, which held that discrimination based on sex encompasses discrimination based on an individual's sexual orientation. The NEP drops LGBTQ+-identifying individuals, mental health disabilities, arrest/conviction records, and Native Americans/Alaska natives from the vulnerable-worker list, and "survivors of gender-based violence" is expanded to "survivors of sexual assault."

Religious Accommodation Enforcement Expands

- While religion was a protected basis under the SEP, the changes prioritize religious accommodations and signal that the EEOC will weigh in on cases involving religious organizations and employers, including by filing briefs in lawsuits that it isn't even a party to. Essentially, the accommodation emphasis reflects the Supreme Court decision in *Groff v. DeJoy*, which raised the bar for employers seeking to deny a religious accommodation: an employer must now show that granting it will impose a substantial burden, not just a minor cost or inconvenience.

NEW EEOC NEP (cont'd)

EEOC Drops Key Workplace Enforcement Priorities

- Gone are many standalone priorities, including equal pay; pay equity; long COVID and other pandemic-related discrimination; plaintiff-attorney referrals; and preserving access to the legal system through scrutiny of overbroad waivers, NDAs, and mandatory arbitration. The NEP takes a much more agency-protective stance in its "enforcement process integrity" guideline.

Centralized EEOC Enforcement Reshapes Employer Risk

- The NEP was constructed through a process that included public sessions, a comment period, a commission vote, and local district discretion to set local priorities. The NEP does away with all of the above, withdraws any district plans and local priorities, and centralizes staffing, with its HQ able to reassign matters across districts. The agency is expressly committed to advancing "the [a]dministration's policy objectives" and executive orders.

EEOC Rescinds Affirmative Action Guidance

- On June 29, 2026 the EEOC voted 2-1 to rescind its 1979 interpretive guidance, *Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964*, and the related Section 607 of the EEOC Compliance Manual. The EEOC concluded the guidance was inconsistent with the text of Title VII and Supreme Court precedent in ***Ames v. Ohio Department of Youth Services*,** pointing to the holding that Title VII provides the "same protections for every 'individual.'"
- For employers, the practical impact is significant. Although U.S. Supreme Court caselaw remains unchanged, the rescission narrows federal enforcement posture. As a result, **employers with voluntary affirmative action plans, diversity initiatives, or other programs tied to protected characteristics should review those programs now to ensure they are justifiable under existing law.**

What Should Employers Do in Light of What's Happening at the EEOC?

- Reexamine all EEO Policies and Practices (do not necessarily change them, but reexamine and consider the tone and language used);
- Give thought to more aggressive "push back" in investigatory requests for information and subpoenas;
- Be mindful of disparate impact issues --- with an eye on "reverse discrimination" themes/statistics; BUT…
- This is not a reset of law or precedent --- this is simply a shift in priorities at the agency level --- for now; PLUS…
- We need to be mindful of local/state workplace regulation and laws.

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And, yes… IL Already Has Passed Law to Codify DISPARATE IMPACT Claims under the IL Human Rights Act

- SB3777: It is a civil rights violation for any employer, employment agency, or labor organization **to use criteria or methods that have the effect of subjecting individuals to discrimination on the basis of…**

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NLRB Labor Relations Landscape

What’s Happening at the NLRB?

- Trump fired General Counsel Jennifer Abruzzo—a move that mirrors former President Biden’s unprecedented removal of the board’s general counsel four years ago. ***He then fired her “successor” immediately.
- Trump also fired NLRB member Gwynne Wilcox, an unprecedented removal that leaves the five-seat board with only two members, depriving it of a quorum and therefore currently unable to decide cases (similar to the EEOC).
- Crystal Carey = New GC
- Scott Mayer and James Murphy just filled two vacant Board positions. Board now has a quorum ---things are now happening.

Shift to a Partisan Majority

- With approval of recent Trump nominees, the NLRB will move to a Republican-led majority, signaling changes to federal labor law.
- NLRB expected to reexamine joint-employer standards, independent contractor classifications and union election rules.
- *Thryv* remains in force…for now. In 2022, the NLRB's *Thryv, Inc*. decision broadened employer liability by requiring compensation/damages for all "direct or foreseeable harms." HOWEVER, federal courts are splintering on whether this is lawful. It continues to be litigated. **(3rd, 5th and 6th Circuits reject it. 9th Circuit has affirmed it.)**

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What Should Employers Do in Light of What's Happening at the NLRB?

- Resist agreeing to punitive settlement terms tendered by the GC or regional offices, and
- Continue defensive litigation efforts, especially of matters related to the current GC office's enforcement agenda.
- **NOTE: The Board's CEMEX decision is in flux. Let me explain…**

U.S. House Bill to WATCH!!!

- PASSED BY THE U.S. HOUSE…. If the parties (union and employer) have not reached a full collective bargaining agreement within 90 days of commencement of bargaining of a first contract, a federal mediator would be appointed to assist the parties toward reaching a negotiated agreement.
- And… If no such full CBA is reached within 30 additional days, a panel of three **arbitrators would be authorized to decide the terms of the CBA, which would remain in place for a period of two years.**

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IL Regulates Rideshare Drivers & Unionization

- HB5090: Creates the Transportation Network Driver Labor Relations Act.
- Defines “transportation network driver” as an individual who operates a motor vehicle that: (i) is owned, leased, or otherwise authorized for use by the individual; (ii) is not a taxicab or for-hire public passenger vehicle; (iii) is used to provide transportation network company services; and (iv) operates under the license of a transportation network company.
- Provides that transportation network drivers have the right of self-organization, to form, join, or assist transportation network driver organizations, and to bargain collectively.
- Requires the Illinois Labor Relations Board to certify a transportation network driver organization as the exclusive bargaining representative for the bargaining unit of transportation network drivers and notify all covered transportation network companies.

Recent Noteworthy Case Law

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PIPs and Adverse Action

- The First Circuit's recent decision in *Walsh v. HNTB Corp.*, offers an important clarification that should hopefully serve as a blueprint for other courts dealing with this influx of questionable lawsuits.
- In *Walsh*, the Court made clear that even under the US Supreme Court's decision in *Muldrow* that ushered in a broader standard for what qualifies as an "adverse employment action," not every uncomfortable workplace decision, including one tied to alleged bias, creates employer liability. The decision also serves as a reminder that while difficult management decisions are not risk-free, the specific facts and context surrounding them matter.
- *Walsh* addressed a situation that is all too common for some employers: a 26-year veteran employee was placed on a three-month performance improvement plan ("PIP") following consistent and documented criticisms of her work. She sued for Age Discrimination --- claiming the PIP was an adverse employment action. She lost!

FMLA Retaliation…

- In _Shirk v. Trustees of Indiana University_ (7th Cir. Feb. 12, 2026), the Seventh Circuit confirmed that employers can and should act decisively on documented misconduct, even when timing appears suspicious, and successfully defend against retaliation claims. Protected activity does not create a free pass for workplace misconduct. **When the record reflects that discipline targeted workplace misconduct rather than an employee's complaint or FMLA request, suspicious timing alone—even if on the same day—will not defeat the lawfulness of the employer's decision.**

Transportation Industry Exemption to Private Arbitration Agreements Expanded

- On May 28, 2026, in *Flowers Foods v. Brock,* the U.S. Supreme Court ruled that **"last mile" local delivery drivers qualify for the Federal Arbitration Act's exemption for "transportation workers** engaged in interstate commerce," even if the drivers do not cross state lines and never interacts with vehicles that do.
- A driver for the company believed he was misclassified and underpaid. So, he filed suit against the company in court. The company, relying on the parties' private arbitration agreement, tried moving the dispute to arbitration. The driver balked and argued that he could pursue his claims in a court of law.
- As a result of the decision, some transportation workers and gig drivers now have the green light to pursue their disputes in a court of law, even if they signed a private arbitration agreement with their employer/company.

Thank you for joining us!

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