



# So, It's 2026... What Now?

2025 Recap and What to Expect in 2026



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Date: March 3, 2026


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## National Update

- State Legislative Trends
- Trump's Key Actions
- Federal Minimum Wage
- DOL Practical Guidance
- Immigration
- Artificial Intelligence
- EEOC
- OSHA
- FTC
- Key SCOTUS Cases
- CA Update



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## State Legislative Trends

### Other Key State Issues —

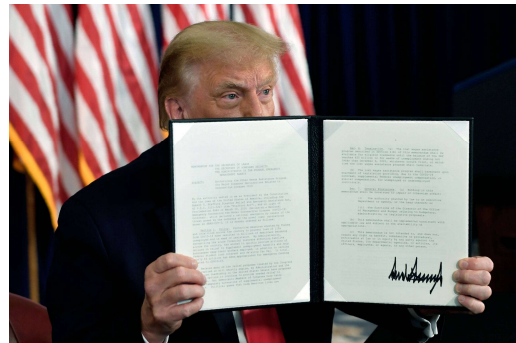
- Immigration
- Statute budget shortfalls and funding cuts
- Abortion Rights and Restrictions
- Gun Policy and Firearms Legislation
- LGBTQ+ Rights and Gender-Related Legislation
- Education Policy and Parental Rights

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## First 365 Days Back in Office

- **President Trump's key actions included:**
  - **Initiating mass deportations**
  - **Implementing broad tariffs**
  - **Restricting transgender rights in federal policies**
    - Directed civil rights agencies (DOL & EEOC) to recognize only two sexes—male and female—when enforcing anti-discrimination laws
  - **Initiating massive tax restructuring**
    - One Big Beautiful Bill Act (OBBBA)



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## The Federal Minimum Wage

- Federal minimum wage remains **\$7.25 per hour**.
- For remote workers, remember: The applicable minimum wage is determined by the employee's location, not the employer's office.
- Several states will increase their minimum wages in 2026, particularly in the Midwest. Washington D.C.'s minimum will be more than double the federal requirement at \$18.00, and California's minimum wage will go up to \$16.90.
- Increases will likely remain local and at the state level rather than from the federal government.

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## Practical Guidance from DOL

- Under the Biden administration, the Department of Labor's Wage and Hour Division largely stopped issuing opinion letters, leaving employers with less clarity and more risk when interpreting complex wage and hour laws. But the Trump administration reversed course in January, publishing **six new opinion letters**.
- The key takeaways are...

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## Practical Guidance from DOL

1. The “learned professional” exemption applies to licensed clinical social workers based on licensure and job duties, not just degree. However, employers must still meet the salary requirement to take advantage of the exemption.
2. Nondiscretionary bonuses (e.g., safety, attendance, performance) must be included in the regular rate for overtime.
3. Mandatory pre-shift “roll call” time is compensable and must be included in overtime calculations, except where a collective bargaining agreement structures the time to qualify for a Section 7(b)(1) or Section 7(b)(2) exemption.

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## Practical Guidance from DOL (cont.)

4. Commissioned employees must meet federal minimum wage standards, even if state rates are higher, and tip credits must be factored into wage calculations for employees earning commissions who are classified as exempt under Section 7(i).
5. When an employee is approved to take FMLA leave for less than a full workweek and the employer is closed for less than a week, the closure period cannot be deducted from the employee’s FMLA entitlement. However, when the employee uses FMLA for a full workweek, the employer’s closure for a portion of that week has no impact on the employee’s FMLA usage.
6. FMLA leave covers travel time for medical appointments if the employee provides certification confirming the necessity of the appointment. The medical certification need not estimate the employee’s travel time.

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## Immigration

- 2025 brought heightened immigration enforcement, which has persisted into 2026.
  - ICE dramatically expanded work-site audits, launched more coordinated raids, and increased pressure on employers to tighten verification practices.
- 2025 also brought intense scrutiny of work authorization and visa programs.
  - We predict that DHS will replace the current random H-1B cap lottery with a weighted selection system that gives higher-wage positions better odds of being chosen. The change will heavily favor employers able to offer Level III-IV wages, making it harder for startups, non-profits, and entry-level roles to secure visas.
  - Employers that rely on global talent should prepare for workforce disruptions, as the Trump administration paused immigration visa processing for people from 75 countries, beginning Jan. 21.

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## Artificial Intelligence

- Congress didn't pass any substantive AI regulation in 2025, and this will likely remain true for 2026 as well.
- Instead, employers will face a growing patchwork of state and local laws, as discussed earlier.
- Bias audits will become a must-have for employers in 2026.
  - Even without a federal AI law, plaintiffs' attorneys are already using the absence of any audit as evidence of negligence or discriminatory design.

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## Less EEOC Litigation Going Forward?

- Fiscal Year 2025 EEOC Litigation Trends
  - 93 lawsuits filed for the year ending September 30, 2025, marking a 10-year low in EEOC litigation activity. This included:
    - 51 cases under Title VII
      - 37 cases alleging claims on the basis of either sex or pregnancy
      - 22 cases alleging claims on the basis of religion
      - 3 cases alleging claims on the basis of race or national origin
    - 34 cases under the Americans with Disability Act (ADA)
    - 10 cases under the Pregnancy Discrimination Act (PDA) and/or the newly enacted Pregnant Workers' Fairness Act (PWFA)
    - 9 cases under the Age Discrimination in Employment Act (ADEA)
    - 0 cases under the Equal Pay Act (EPA)

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## EEOC Cases in the News

- **Religious Accommodations**
  - *Augustine V. v. Dep't of Veterans Affairs*
  - *Andy B. v. Federal Reserve Board of Governors*
  - Employers must provide meaningful religious accommodations following the *Groff v. Dejoy* Supreme Court standard.
  - It is the employer's ultimate responsibility—not the employee's—to persuasively demonstrate that an accommodation would impose an undue hardship.
- **Pregnancy Discrimination**
  - *Kasie L. v. U.S. Postal Service*
  - USPS found liable for discriminatorily requiring a new mother to use the employee bathroom for her lactation needs when other clean private spaces were readily available.

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## OSHA / Workplace Safety Updates



### Increased Penalties as of January 15, 2025

Type of Violation	Penalty
Serious Other-Than-Serious Posting Requirements	\$16,550 per violation
Failure to Abate	\$16,550 per day beyond the abatement date
Willful or Repeated	\$165,514 per violation

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## OSHA Updates (continued)

**Properly Fitting Personal Protective Equipment (PPE):** As of January 13, 2025, OSHA mandates that all PPE in construction must “properly fit” each affected employee. This change addresses long-standing concerns, particularly among women and workers with diverse body types, about the inadequacy of standard-sized PPE.

**Stricter Lead Exposure Regulations:** As of January 1, 2025, states like California will enforce stricter regulations to protect workers from lead exposure. The permissible exposure limit (PEL) will decrease from 50 micrograms per cubic meter to 10, and the action level (AL) will be reduced to 2 micrograms per cubic meter. These changes aim to lower the risk of lead poisoning among workers involved in renovation, demolition, and steel welding activities.

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## OSHA Updates (continued)

**Proposed Heat Safety Rule (still under review):** OSHA's proposed standard would apply to all employers conducting outdoor and indoor work in all general industry, construction, maritime, and agricultural sectors where OSHA has jurisdiction over workplace safety.

- New Rule Requirements
  - Heat hazard identification and assessment (regular heat risk assessments and monitoring workplace temperatures)
  - Preventive measures (hydration, rest breaks, shade and cooling areas)
  - Training and education
  - Emergency planning and response (Heat Illness Prevention Plan and Emergency Medical Response)
  - Recordkeeping and reporting
  - Additional requirements for high-risk industries
    - Enhanced protections and special considerations for vulnerable workers

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## OSHA Updates (continued)

Regardless of what happens with the new proposed heat stress rule, OSHA is **focusing on heat-related inspections** through its National Emphasis Program (NEP) related to heat illnesses and injuries for indoor and outdoor workers.

- NEPs are **temporary programs** that focus resources on particular hazards and high-hazard industries.
- The **heat stress NEP** is effective until April 2025, meaning OSHA will continue to target workplaces with a prevalence in these injuries.

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## OSHA Updates (continued)

### Current Workplace Safety Environment

- Very aggressive enforcement - SVEP (Severe Violator Enforcement Program), Penalty Grouping, Instance-by-Instance Penalty Adjustments policy, use of Emphasis Programs.
  - Expect the new administration to rein in OSHA's exercise of discretion as to enforcement tools.
- Expect fewer new OSHA rules to go forward during Trump's second term.

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## FTC Non-Compete Rule Status

- In April 2024, the FTC issued a Non-Compete Clause Rule, which would have barred most post-employment non-compete agreements nationwide.
- The rule was set to go into effect in early September but on August 20, 2024, the US District Court for the Northern District of Texas issued an Order in the *Ryan LLC. v. FTC* case, that said the FTC's ban exceeded its legal authority.
- In other preliminary rulings, a Pennsylvania court sided with the FTC and a Florida court sided with the challengers to the ban
- The FTC initially appealed the Texas ruling but in September 2025 withdrew its appeal and agreed to vacate the rule.
- State law controls: The regulatory landscape returns to the pre-rule status quo, with state law governing the enforceability of non-competes; dozens of states continue to enact and enforce stringent statutes prohibiting non-competes.

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## **Trump v. CASA 606 U.S. \_ (2025)**

### **Major Limit on District Courts' Injunctive Power**

The underlying question was the validity of an executive order issued by President Trump directing that the citizenship be denied to children born in the U.S. to individuals not citizens and not legally in the country. The Supreme Court did not reach the merits of the dispute, ruling instead that district courts' imposition of injunctions that applied universally was statutorily improper.

The Supreme Court held 6-3 on June 27, 2025: Federal district court judges may not issue injunctions that are broader than necessary to provide complete relief to each plaintiff with standing to sue.

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## **EMD Sales, Inc. v. Carrera 604 U.S. \_ (2025)**

### **Good News for Employers Defending FLSA-Exempt Classifications**

Three EMD sales reps sued EMD for allegedly violating the Fair Labor Standards Act (FLSA) by denying them overtime wages. The plaintiffs claimed they worked about 60hrs per week, paid on commission without overtime compensation. EMD argued that the sales reps were outside salesmen and therefore exempt from the FLSA's overtime-pay requirement.

Question presented: Is the burden of proof that employers must satisfy to demonstrate the applicability of a Fair Labor Standards Act exemption a mere preponderance of the evidence or clear and convincing evidence?

The Supreme Court unanimously held on Jan. 15, 2025: The preponderance-of-the-evidence standard applies when an employer seeks to demonstrate that an employee is exempt from the minimum-wage and overtime-pay provisions of the FLSA.

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## Ames v. Ohio Dept. of Youth Servs. 605 U.S. \_ (2025)

### One Evidentiary Standard for All Title VII Plaintiffs

Ames, a heterosexual woman and employee of the Ohio Department of Youth Services, applied for a new management position, but the position ultimately went to another candidate—a lesbian woman. Ames was subsequently demoted, and a gay man was hired to fill her prior role. Ames filed a discrimination charge against her employer with the EEOC then sued under Title VII, asserting claims of discrimination based on sexual orientation and sex.

Question presented: Does a plaintiff who belongs to a majority group need to demonstrate “background circumstances suggesting that the defendant is the unusual employer who discriminates against the majority” in order to establish a prima facie case of discrimination under Title VII of the Civil Rights Act of 1964?

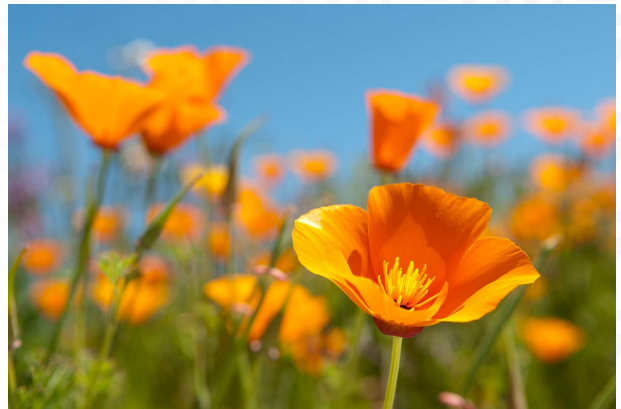
The Supreme Court unanimously held on June 5, 2025: Employers violate Title VII of the Civil Rights Act when they intentionally discriminate against any individual—regardless of that person’s membership in a majority or minority group—on the basis of protected characteristics such as race, color, religion, sex, or national origin. The statute does not impose a higher evidentiary burden on plaintiffs who belong to majority groups.

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## California Employment Law Update



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## AB 692 — No Stay or Pay

- Prior to AB 692, some employers used contracts commonly called "stay-or-pay" or Training Repayment Agreement Provisions (TRAPs), which obligated workers to repay the employer for costs such as training, tuition, or other fees if the worker left the job before a specified time.
- Under this bill, employers would be prohibited from entering into contracts that require an employee to repay the employer (or a training provider) for certain expenses when ending employment.
- This applies to employment contracts entered into on or after January 1, 2026 and does not apply retroactively.

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## AB 692 - No Stay or Pay

- Key exceptions include: government loan repayment programs, tuition repayment for a transferable credential, contracts related to government approved apprenticeship programs, and sign-on bonuses with a built-in "stay" incentive which would be required to be paid back all or in part.
- There is a private right of action by a worker or worker representative effected by a violation, either individually or as a class action.
  - Employers found liable for violation will be subject to monetary damages in the amount of the worker's actual damages or \$5,000, whichever is greater.

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## SB 464 – Pay Data Reporting

- Previously, a private employer with 100 or more employees had to submit an annual pay data report to the Civil Rights Department (CRD) that includes the number of employees by race, ethnicity, and sex in 10 specified job categories.
  - This also includes employees whose pay falls within federal pay bands, within each job category the median and mean hourly rate for employees, and the total number of hours worked by each employee counted in each pay band.

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## SB 464 – Pay Data Reporting

- Changes to the law requires an employer to collect and store demographic information gathered for the pay data report separately from employees' personnel records. This means that voluntary identification forms, for example, must be kept independent from personnel files similar to I-9 documentation.
- Beginning January 1, 2027, reporting requirements increase the number of job categories from 10 to 23.
- Additionally, courts are required to impose civil penalties on employers who fail to submit a report when requested by the CRD.



The deadline for California pay data reporting (covering 2025 data) is **May 13, 2026**.



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## Minimum Wage Increase

- Effective January 1, 2026, California's statewide minimum wage increased to **\$16.90** for all employees.
- Industry specific and local minimum wages (higher) will still control.
  - **Industries:** Fast food, healthcare, hotels
  - **40 cities and counties currently have higher minimum wage:** San Diego, Oakland, Santa Clara, Los Angeles, West Hollywood (among others)

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## Minimum Wage Increase

- What is the impact of the \$16.90 state minimum wage?
  - Minimum salary for exempt employees raised from \$68,640 to **\$70,304**.
  - Minimum hourly rate for inside sales exemption raised from \$24.75 per hour to **\$25.35** per hour.
  - Tool rate increases from \$33 per hour to **\$33.80** per hour.
  - Impact on employees currently making between \$16.90 and \$18.00 an hour may ask for rate increase.
  - If you have employees with Collective Bargaining Agreements and you are relying on Labor Code section 514 for OT rules - ensure their pay is increased to **\$21.97** per hour.

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## PAGA Reform

- PAGA Reform Legislation, passed last summer, provided significant reduced penalties for employers who engaged in “all reasonable steps” to ensure compliance with California law. Penalties can be reduced up to 85%
- **“All reasonable steps” include:**
  - Disseminated lawful written **policies**
  - **Trained** supervisors on legal compliance
  - Conducted periodic **payroll audits** and took action in response
  - Took **appropriate action** with regard to supervisors

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## PAGA Reform — Training

- Every employee should receive some form of training on wage-hour matters similar to harassment, discrimination and retaliation prevention.
- The training can be live, web-based or through alternative learning management tools.
- Consider the best way to do it and “refresher” courses throughout the year.
- One of the key trends for HR professionals in 2026 will be leveraging AI based training modules for compliance, cost reduction and efficiency.

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## PAGA Reform — Audits

Think of it as the “100-point checkup” that you may get when taking your car in for service.

1. Review all policies and procedures.
2. Review past four pay periods of time and payroll records.
3. Review pay code legend.
4. Review supplemental compensation.
5. Review reimbursements, timekeeping, exemption and other related issues.

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## Hot Topic: *Kistler and Bhaumik v. Eightfold AI Inc.*

- Two job applications filed a class action lawsuit against an AI recruiting platform in California state court on Jan. 20, 2026, alleging that the company violated federal and state **consumer protection laws** by creating “hidden credit reports” on job seekers without complying with statutory requirements imposed on consumer reporting agencies. Plaintiffs claim they were never told that a consumer report would be created, never authorized its creation, and never had an opportunity to review or dispute the information before being rejected.
- This could be the first lawsuit to take the position that an AI tool could lead to a FCRA violation. If the court agrees that AI screening tools like Eightfold’s create “consumer reports,” then the companies providing these tools (and the employers using them) would need to comply with FCRA procedures.

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## Hot Topic: *Williams et al. v. Sysco Riverside, Inc.*

- In February, a California jury delivered another massive verdict in an employment case, awarding \$52 million to five former employees following a whistleblower retaliation trial in Los Angeles.
  - Los Angeles jury awarded \$103 million in age discrimination, harassment, and retaliation case in Dec. 2025.
  - California jury awarded \$32.2 million in case involving disability discrimination, retaliation, failure to accommodate, and failure to engage in interactive process in Nov. 2025.
- Verdicts like these are a reminder of the significant exposure employers face when juries weigh in on employment-related claims.

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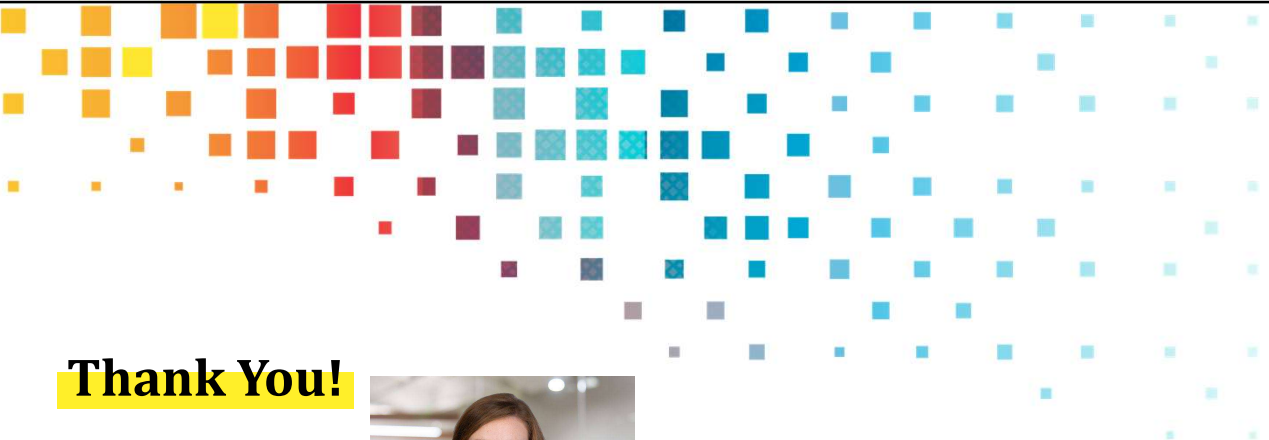
## Questions?

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