



HR Specialist Summit

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Current Trends and What's Coming in 2026

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HR Specialist Summit

Top Employment Law Trends 2025

1. New EEOC emphasis on religion and reverse discrimination, less on gender identity
2. Pregnancy accommodations lawsuits pile up
3. The state of DEI
4. States continue to push leave, AI and pay equity legislation
5. Changes at the NLRB

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New EEOC emphasis on religion and reverse discrimination, less on gender identity

- EEOC under Andrea Lucas' leadership has clearly moved away from the embrace of gender identity/status as transgender discrimination as sex discrimination. That's despite the agency being largely responsible for the win before the Supreme Court in 2020 that declared gender identity and sexual orientation discrimination and harassment as sex discrimination under Title VII. *Boston v. Clayton County* was a 6/3 decision declaring sexual orientation and gender identity discrimination illegal sex discrimination.

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New EEOC emphasis on religion and reverse discrimination, less on gender identity

- Lucas came out shortly after the Trump inauguration and executive order on sex discrimination and stated that the agency's priorities for "compliance, investigations, and litigation—is to defend the biological and binary reality of sex and related rights, including women's rights to single-sex spaces at work."
- This was followed by sidelining and withdrawing from cases the EEOC had already filed asserting alleging gender identity discrimination and harassment.

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New EEOC emphasis on religion and reverse discrimination, less on gender identity

- Agency attorneys were then told that before initiating litigation, any case involving gender identity discrimination would have to be limited to cases involving hiring, firing or promotions. Special permission to file suit would have to come from the Chair.
- In other words, when the EEOC resumed processing cases involving gender identity, those cases would not be brought if they involved harassment tied to gender identity.

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New EEOC emphasis on religion and reverse discrimination, less on gender identity

- Many of the cases the EEOC withdrew from have been picked up by other attorneys or groups.
- One such case quietly settled recently. EEOC initially filed the lawsuit against Sis-Bro, alleging an employee who went by female pronouns had been frequently called by her previous male name and had been harassed about using the company's health plan to transition. Fast forward to 2025, and the EEOC withdrew from the case. Another firm stepped in and now the case has settled for an undisclosed amount.

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New EEOC emphasis on religion and reverse discrimination, less on gender identity

- The EEOC has continued to file lawsuits alleging religious discrimination and failure to reasonably accommodate religious beliefs and practices in light of the decision in *Groff v. DeJoy*. That case made it harder to turn down a request for reasonable accommodations unless the employer can show substantial harm. For decades earlier, all an employer had to show was that the requested accommodation would create more than a *de minimis* harm to the employer's operations.

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New EEOC emphasis on religion and reverse discrimination, less on gender identity

- Settled 8/26/25 for \$47,500 - A server candidate, who wore long skirts in public because of her sincerely held religious beliefs, asked the general manager of Buffalo Wild Wings' Douglasville, Georgia location about a job opening. The general manager confirmed the restaurant was hiring but then mocked the candidate's religious beliefs.

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- Settled 8/20/25 The EEOC settled a with Logic Staffing for \$217,500, which failed to hire a Muslim job applicant after he asked for an accommodation to attend Friday prayer.
- 7/2/25 EEOC Sued Rock Snowpark after it fired an employee over faith-based social media posts, which made no mention of the workplace or coworkers.

Note that these lawsuits cover a wide variety of religious beliefs and practices

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Pregnancy accommodations lawsuits pile up

- The PWFA lawsuits are gaining steam. These are being filed by both the EEOC and private attorneys.
- One recent EEOC lawsuit claimed that an employer simply refused to acknowledge that a newly hired pregnant employee was entitled to any accommodation for pregnancy restrictions and fired her.
- Many others have settled or are still being litigated.
- This is an area to watch carefully as we discover how broad the coverage is.

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The State of DEI

- Diversity, Equity and Inclusion (DEI) policies and programs have undergone a huge shift since January.
- At the federal level, programs need to be non-discriminatory in the sense that employers can't close mentoring programs, recruit exclusively from targeted populations or set aside promotions or hiring to some protected classes while excluding others.
- Nor can they tie bonuses to meeting corporate diversity recruiting goals.

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The State of DEI

- Employers should revise any training they provide to remain neutral, avoid ascribing motivations to specific protected classes and emphasize neutral factors that encourage a respectful workplace for everyone, including employees, customers and others.
- Review any programs for legal compliance, particularly if you are a federal contractor or federal grant recipient.
- If you operate in other countries, be aware that policies we refer to as DEI may actually be mandatory there and get expert counsel involved.

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States continue to push leave, AI and pay equity legislation

- The biggest trend in 2025 is the continuation of the push by individual states to regulate employers through state and local laws.
- The pace of state regulation has accelerated, particularly in three areas.
- These are paid and unpaid leave, AI regulation and pay equity legislation



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Paid and Unpaid Leave

- With little paid or unpaid leave required at the federal level, states have stepped up.
- At least 13 states plus the District of Columbia provide paid family and medical leave for workers.
- Some states go further, adding multiple reasons for paid leave, including for domestic violence, sexual violence and stalking.
- The requirements for each type of leave differ from state to state and even city to city.

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Paid and Unpaid Leave

- Employers must familiarize themselves with the rules in each jurisdiction where they operate.
- Employers must also coordinate some leave entitlements with the FMLA, especially as it applies to wage replacement and running FMLA concurrent with paid leave. This requires determining whether the paid leave is for an FMLA-covered reason or some other state-covered reason.

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State AI regulation

- Artificial intelligence regulation, including its use in employment decision-making, is one of the big stories in 2025.
- Some states have strict rules for everything from auditing programs that use AI to holding employers liable for AI decision-making, even if they purchase from a vendor.
- The White House has called for a single, overriding federal law.

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State AI regulation

- Current state patchwork creates problems, especially for employers that use AI to recruit and hire from multiple jurisdictions.
- Some states are mired in AI legislation implementation, making multiple revisions even before effective dates. Why? The technology may be changing faster than legislators can legislate.

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State pay equity legislation

- The push for pay equity has spurred much state legislation, spanning from banning using past pay to set initial salary to requiring posting pay with all recruiting materials.
- A recent survey indicates that 82% of U.S. companies are either communicating, planning or considering communicating individual pay ranges with employees and 79% are doing the same with external candidates, regardless of legal mandates.

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State pay equity legislation

- Employers recruiting in states with strict pay equity laws that require disclosure must make sure they understand the requirements or avoid recruiting in those states – a virtually impossible task given the online nature of most modern hiring.

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Changes at the NLRB

- Clear indications that the NLRB is loosening handbook rules to allow employers more control over employee behavior.
- Banning all non-compete agreements now looks far less likely.
- After turmoil over an NLRB decision banning most captive audience meetings, that's likely to be reversed soon.

What About 2026?

1. Case law will develop further on PWFA, religious accommodations
2. DEI limits will clarify – especially for federal contractors and grant recipients
3. Supreme Court may enter fray over limits to gender identity protections as cases rejected by EEOC go to trial.
4. States will further fine-tune their employment laws with an ideological split

What About 2026?

Case law will develop further on PWFA, religious accommodations

- As cases are decided, it's becoming clear that the administration takes a broad view of religious accommodations, indicating that this will remain an important policy moving forward – that is, that employers will have to make more accommodations than in the past.
- It's also clear that employers will be expected to make almost all requested pregnancy accommodations, with little or no paperwork required.

What About 2026?

DEI limits will clarify – especially for federal contractors and grant recipients

- As federal agencies like the EEOC regain quorums and can again move forward with regulatory changes, we will get clarity on what employers can and cannot do to establish a diverse workforce.
- Litigation will also clarify whether the federal government can place severe restrictions on how contractors and grant recipients train their employees and recruit them.

What About 2026?

Supreme Court may enter fray over limits to gender identity protections as cases rejected by EEOC go to trial.

- Should the Supreme Court wish to revisit or further explain their thinking on gender identity, trans status and sexual orientation as sex discrimination, there will be plenty of opportunities for them to select a case or several to do so. One likely source will be one of the many lawsuits the EEOC filed and then withdrew from back in early 2025.

What About 2026?

States will further fine-tune their employment laws with an ideological split

- Already, it is clear that some states are legislating with an eye to provide greater employee protections while others are doing with the aim to regulate less.
- Example – some states have strengthened their child labor and worker safety regulations while other states have moved in the opposite direction, allowing younger children to work longer hours or in more hazardous occupations than in the past. The same is true of worker safety protections like heat standards.

Thank you!

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