

EMPLOYMENT LAW

INSIGHTS AND BEST PRACTICES



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AGENDA

- Employment Law Trends
- Recent Developments & Practical Tips
- Non-Competes & How To Protect Your Business
- Immigration & Workforce Compliance
- Questions

EMPLOYMENT LAW TRENDS IN THE U.S.

Non-Competition Agreement—Federal vs. State

What Changed: Federal court (in Texas) struck down the FTC's ban

What happened: FTC pivoted to case-by-case

State bans continue: California, Minnesota, North Dakota, Oklahoma, Washington.

- Many other states have tightened scope and added wage thresholds, garden-leave requirements, and notice obligations (Colorado, Illinois, Maryland, Virginia, and others).

Texas imposed limitations on the permissible scope of healthcare non-competes



Backlash Against Diversity, Equity, and Inclusion

- First, President Trump and the federal government targeted companies, law firms, universities, and others with DEI policies
- Now, federal agencies, including the EEOC and DOJ, are suing companies for reverse discrimination

Action items for employers:

- Diversity goals should be **unwritten** and **cannot include quotas**
- Audit DEI plans & published reports for race/sex-conscious language
- Document promotion decisions on **qualifications** — not demographic fit
- Consult counsel **before** publishing new diversity goals or reports



Direction Shifting Employer-Friendly

National Labor Relations Board	Equal Employment Opportunity Commission	Department of Labor	Federal Trade Commission
President Trump appoints Republican majority and appoints acting general counsel Acting GC rescinds Abruzzo memos (incl. non-compete-as-ULP) and reversing other Biden-era actions	President Trump appoints Republican majority EEOC brings high-profile lawsuit against the New York Times for reverse race discrimination	With help from the federal courts: • Reversed increase in exempt salary minimum • Vacated Biden-era joint-employer rule • Dropping EEO-1 reporting requirements	President Trump appoints Republican majority Drops appeal of non-compete ban

Action • Stericycle still governs handbooks today — keep policies narrow, conduct-focused. Audit staffing/franchise relationships under the restored joint-employer test.

Texas Leads the Way

- **Lawsuits** striking down FTC's non-compete ban, NLRB rulings, and Biden-era DEI and other Department of Labor rules started in Texas
- **Business Courts'** jurisdiction over commercial cases has been expanded
- Streamlining **civil procedure rules** to expedite lawsuits
- **BUT** wage-theft complaints at multi-year highs (15,000+ in FY 2024); \$10M+ in back-pay orders. AI driven?



Exceptions: Employer Unfriendly

- **Religious discrimination:** The Supreme Court continues to protect individuals' religious liberties, including raising the legal threshold for employers (i.e., “significant” burden)
- **Immigration:**
 - Raising fees for H-1B visas (\$100,000) and L-1 visas (tripled to \$1,385)
 - Just this week, USCIS issued policy requiring permanent resident (“green card”) applicants to return to their home country to apply (creates uncertainty for “dual intent” H-1B and L-1 visa holders)
 - Increasing **I-9 audits** (training and internal compliance controls are essential; use E-Verify)

RECENT DEVELOPMENTS & PRACTICAL TIPS

Overtime Threshold Reverted; IC Rule On The Way Back

FLSA SALARY THRESHOLD

\$684 / WEEK

\$35,568 / year — reverted after E.D. Tex. and N.D. Tex. vacated the 2024 rule (which would have hit \$1,128/wk). Trump DOL holding appeals in abeyance.

HCE THRESHOLD

\$107,432 / YEAR

Highly Compensated Employee exemption restored to 2019 level. 5th Cir. *Schlumberger*, July 2025, confirmed only one qualifying duty needed for HCE.

INDEPENDENT CONTRACTOR RULE

Biden 2024 rule (six factors): shelved for enforcement May 2025; DOL formally proposed rescission Feb. 26, 2026.

Proposed replacement: return to 2021-style two "core factors" — control + opportunity for profit/loss. Comments closed April 28, 2026; finalization expected later in 2026.

Texas overlay: TWC's 20-point common-law test still applies for unemployment tax. TWC guidance: "err on the side of employee." 15,000+ wage-theft complaints in FY2024.

Action · Don't roll back classifications based on federal posture alone — state-law tests govern. Confirm exempt duties tests, not just salary level.

The SCOTUS Trifecta — *Muldrow, Ames, Groff*

Muldrow v. St. Louis

S. Ct. 2024 (continuing fallout)

- Lowered "adverse action" bar to "some harm."
- Lateral transfers, schedule shifts, assignment changes may now sustain claims.
- Lower courts extending logic to ADA, ADEA, § 1981.
- **BUT** *Walsh v. HNTB Corp.* (1st Cir. 2026) – *Muldrow* requires concrete harm to t&cs, PIP not automatically enough

Bottom line · More employment actions are actionable, more plaintiffs can bring claims, and religious denials must be specifically justified.

The SCOTUS Trifecta — *Muldrow, Ames, Groff*

Ames v. Ohio

S. Ct. June 5, 2025 — unanimous

- Eliminated heightened "background circumstances" rule for majority-group plaintiffs.
- Same Title VII test for all plaintiffs.
- Powers reverse-discrimination wave + EEOC/DOJ posture.

Bottom line · More employment actions are actionable, more plaintiffs can bring claims, and religious denials must be specifically justified.

The SCOTUS Trifecta — *Muldrow, Ames, Groff*

Groff v. DeJoy

S. Ct. 2023 — applied 2025-26

- Religious accommodation denial requires "substantial increased cost" — not de minimis.
- Document interactive process and individualized cost analysis.
- EEOC Chair Lucas prioritizing religious bias enforcement.

Bottom line · More employment actions are actionable, more plaintiffs can bring claims, and religious denials must be specifically justified.

Work-From-Home Requests After COVID: Fact-Specific, Not Automatic

Challenge: post-pandemic telework experience gives employees new evidence that remote work can succeed, but courts still ask whether the employee can perform the **actual essential functions** of the job under the employer's current operating model

What changed

Courts are less willing to accept a categorical argument that in-office attendance is always essential.

Why it matters

COVID-era work history is now part of the evidentiary record.

But telework during the pandemic does **not** automatically prove full-time remote work is a reasonable accommodation; courts still weigh job description, employer judgment, time spent, consequences, and comparable work experience.

What to do now

For each role, identify the functions that genuinely require in-person work, explain why remote performance would fail, and test those reasons against what the employee and comparators actually did during and after COVID.

Do not rely on a per se attendance rule.

Action · Build the record around essential functions, not office preference · tie each required in-person task to business consequences · address pandemic telework history head-on

Political Speech, Antisemitism, and Social Media

THE NEW MINEFIELD

Civil-workplace policies must navigate political speech, NLRA-protected concerted activity, and Title VII harassment claims tied to Israel-Palestine and antisemitism.

Political speech

NLRA still protects "concerted activity" about wages/conditions. Several states (CA, CO, CT, MN, NY, ND, SC, WY) protect off-duty political speech.

Antisemitism & Title VII

Title VII covers antisemitism, anti-Muslim, anti-Arab harassment. Repeated threats and vandalism actionable; pure political coworker speech may not be actionable. EEOC Chair Lucas elevating these claims.

Social media

Don't categorically prohibit wage/working-condition discussion. Focus on confidentiality and trade secrets.

Action · Keep harassment policies conduct-based · Train on speech vs. hostile-environment line · Tighten social media policy

Artificial Intelligence & Cybersecurity

AI Statistics

- 44% of U.S. workers say their employer has no AI clear AI policy
- 60% of managers admitted to using AI to make decisions about employees
 - 20% admitted to letting AI make the decision without any human input
- Only 24% of managers said they received training on using AI
- Only 28% of companies have clear AI governance plans

Cybersecurity Statistics

- 320+ companies infiltrated in the last 12 months
- \$15 million in civil forfeitures by the U.S. Department of Justice
- 220% in year-over-year growth in cyberattacks
- Innovative hacks, such as employee/payroll deepfakes

Artificial Intelligence & Cybersecurity (Cont'd)

AI Checklist

- Have a **policy**
 - What is AI
 - Approved tools
 - **What data can be used**
 - Human oversight requirements
 - Special rules for employment decisions
 - How to report problems
 - Consequences for violations
 - Regular review
- **Train** on the policy
- **Designate** which executives in charge of AI governance and review

Cybersecurity Checklist

- **Assess** vulnerabilities
- **Harden systems** against attack
- **Test** systems and document
- **Train, train, train**

NON-COMPETES & HOW TO PROTECT YOUR BUSINESS

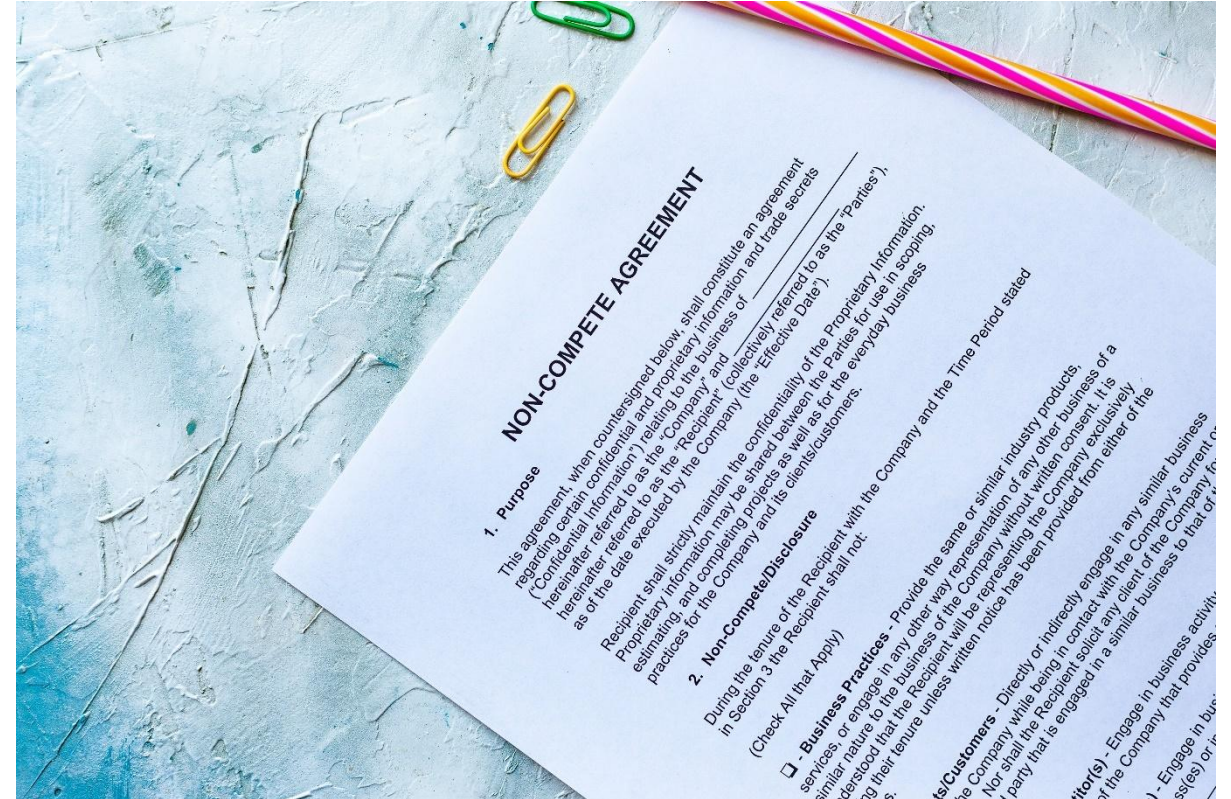
Non-Compete Basics

What is a “non-compete agreement?”

- Umbrella term for post-employment restrictive covenants, including:
 - Customer non-solicitation (recommended)
 - Employee non-solicitation (recommended)
 - Supplier/vendor non-solicitation (possible)
 - Non-competition (optional)

Where are non-compete covenants usually found?

- Employment contracts
- Standalone contracts (NDAs)
- Equity agreements/ERISA plans



Primer on Texas

Texas Uniform Trade Secrets Act (TUTSA)

- Identical to other states' uniform acts
- Nearly identical to DTSA

Purpose of Agreements

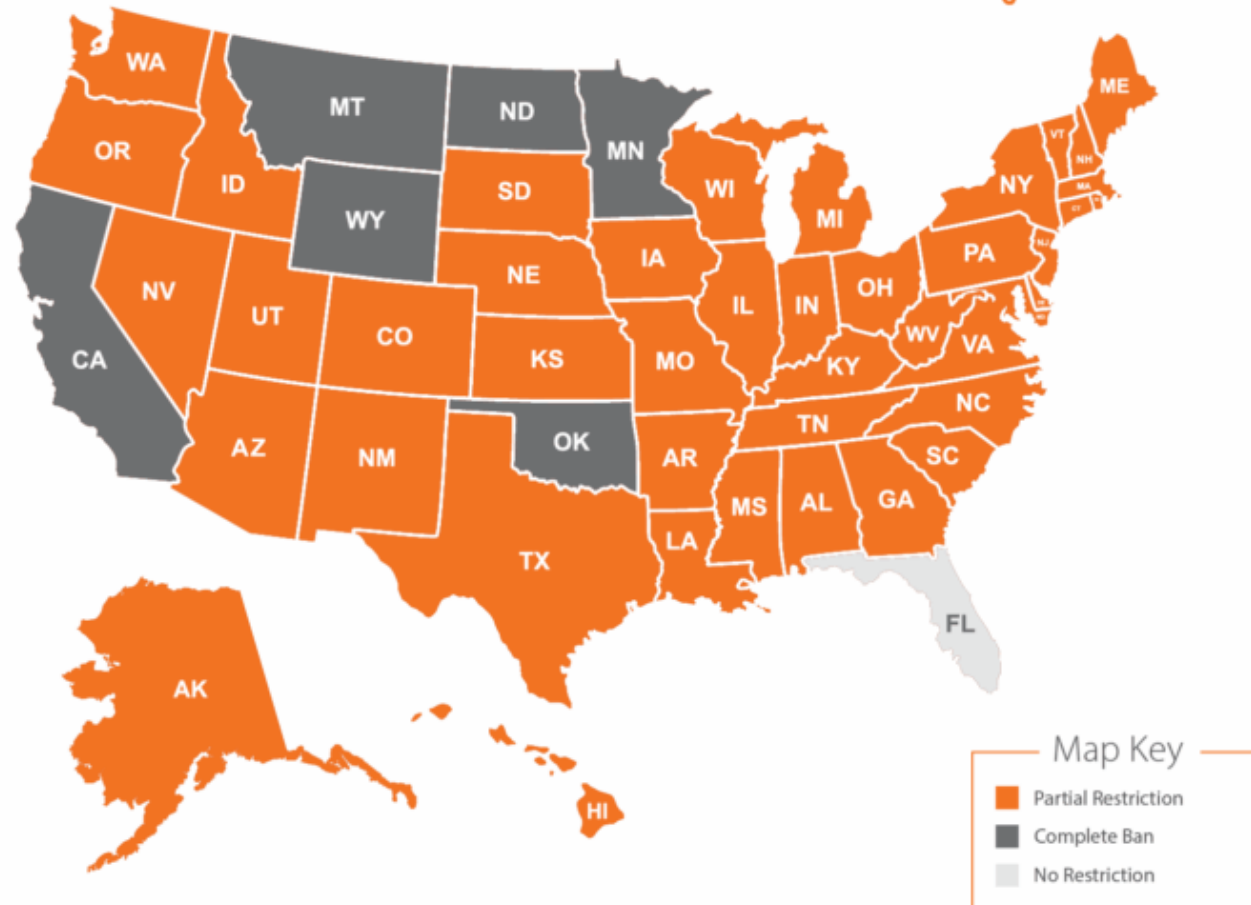
- Under the Covenants Not to Compete Act (CNC), covenants are meant to “to protect the goodwill or other business interest of the promisee”

Covenants Must be Reasonable

- Under CNC, covenants must be “reasonable” as to time, geographical area, and scope of activity to be restrained
- Translation: essentially “protectible interest,” i.e., restraints are necessary to protect the company’s confidentiality information or trade secrets from being used or disclosed against the company and/or to benefit a competitor



State Bans or Restrictions on Non-Competes



Action Items to Protect Business

- **Review** non-compete agreements for state-law compliance, suitability for industry and employees, and locations of remote employees
- **Secure** confidential information and trade secrets
- **Update** policies, procedures, and employee handbook



Non-Compete Practice Recommendations

- List the non-compete agreement in the offer letter as a condition of employment, send the agreement as part of the pre-employment packet, and ensure the employee returns a signed agreement
- (A) Include non-compete agreements as part of annual HR audit and (B) during due diligence or post-transaction audits after acquisitions/mergers
- Tailor covenants to employees' position, duties, and responsibilities
- For existing employee, ensure employee is given new confidential information after signing
- In mandatory venue clauses, choose business-friendly county or stay silent
- Ensure separation agreement reaffirms non-compete covenants
- Reevaluate and update non-compete agreements periodically
 - Remember: No actual damages until after reformation and potential fees claim by employee



Trade Secret Practice Recommendations

- Confidential information should be separated into buckets and access should be granted only to those who need to know
- Customer-facing employees should not have access to all customer information or lists of all customers, only those they service
- Employees should not be allowed to use personal devices, especially USBs, for company business
 - Agreement/policy
 - Easy IT fix to require encrypted company-issued USBs
- If employees are allowed to use personal devices, confidentiality agreement should include provision allowing access to devices
 - Or require app that allows company access to wipe device upon separation



Trade Secret Practice Recommendations (Cont'd)



- Use keystroke monitoring software to monitor employees' use and transmission of confidential information
- Retain and/or image employees' company devices and emails following separation
- Conduct exit interview
 - Ask about confidential information
 - Require employee to search for and return all physical and electronic files
 - Require employee certification that everything has been returned

Helpful Resources

- Call your friendly neighborhood non-compete attorneys
- *Complimentary evaluation of current agreements*
- *Complimentary 30-minute consultation with HR and IT to discuss policies and practices*



LIVING IN THE ICE AGE: IMMIGRATION & WORKFORCE COMPLIANCE

Current Executive Orders and Recent Actions

■ Mass Deportation Initiatives:

- Commencing with plans for large-scale deportations, aiming to remove millions of undocumented individuals from the country. Are building expansive detention facilities and deputizing local law enforcement to assist in federal immigration enforcement efforts. ICE has begun conducting raids and arrests on a wide scale. In February, Trump removed Acting ICE Director on the grounds that deportations were going too slowly.

■ Revocation of Parole:

- The Trump administration terminated the CHNV (Cuba, Haiti, Nicaragua, and Venezuela) parole programs and revoked the parole status of anyone who entered under this program. Any beneficiaries who do not have another status are no longer eligible to work or remain in the U.S. Although challenged and temporarily enjoined, the Supreme Court has allowed the revocation to move forward.

■ Revocation of Temporary Protected Status (TPS):

- DHS revoked the latest TPS designation for approximately 600,000 Venezuelans residing in the United States as well as the latest TPS designation for Haiti by publication in the Federal Register. DHS also allowed TPS for Honduras and El Salvador to expire among others.

Why Would ICE Be At The Worksite?

- ICE may come to the worksite to:
 - Start an **I-9 audit** (Document will be called “Notice of Inspection”);
 - **Workplace raid**
 - Detain a specific person

Penalties



- Paperwork violation fines now range between \$288 to \$2,861 per violation
- Knowingly hiring or employing unauthorized workers have fines ranging from \$716 – \$5,724 per employee for the first violation.
- Second- and third-violation of knowingly hiring/employing range between \$5,724 up to \$28,619 per employee.
- Arrests and criminal convictions for knowingly hiring or employing unauthorized workers are on the rise as well.

Form I-9 Basic Requirements

- For all Active Employees hired after November 6, 1986
- Section 1 - completed by employee no later than start date of employment.
- Section 2 - completed by employer by end of third business day after employee starts work.
- May complete form prior to start date if offer of employment is made and accepted.
- Use Form I-9 with revision date 8/1/2023 for new hires and reverifications
 - The previous version, dated "10/21/2019," was only valid until October 31, 2023.

Immigration Best Practices

- Train HR staff and managers/supervisors on I-9 compliance
- Conduct an internal I-9 audit
- Integrate a HRIS tool for I-9s
- Consider E-verify at all locations
- Put together a response team and protocols at each location
- Conduct training on protocols for an ICE review or visit

QUESTIONS?



- Scan the QR code
- Opt-in for Texas and other areas



THANK YOU