

Managing the Modern Workplace: AI, Political Speech, and the Legal Updates Shaping 2026

April 2026



U.S. Supreme Court and Fourth Circuit Updates: 2025-2026

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Ames v. Ohio Department of Youth Services, 605 U.S. 303 (2025)

- Facts: Plaintiff (heterosexual female) alleged failure to promote in favor of a lesbian female and then demotion in favor of a gay male.
- Question: To satisfy the prima facie burden under Title VII, must a plaintiff who is a member of a “majority group” show “background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority?”
- Holding (Unanimous Court): No. “Majority-member” plaintiffs are subject to the same Title VII disparate treatment standard of proof as “minority” plaintiffs, and there is no requirement to prove “background circumstances” further supporting discrimination.
- Takeaway: “Majority-member” employees (e.g., white, heterosexual males) have the same protection under Title VII as “minority” employees. Be careful about adverse action.
- Concurrence (Thomas and Gorsuch): McDonnell-Douglas (1973) should be overruled.

Stanley v. City of Sanford, 606 U.S. (2025)

- Facts: At hiring, plaintiff was offered health insurance coverage as retiree until 65 if she retired early due to disability. After hiring, employer changed policy to provide only 24 months of coverage for employees who retired early due to disability. Plaintiff later retired early due to disability.
- Question: Is a retired employee who does not hold or seek a job a “qualified individual” under Title I of the ADA?
- Holding: No. To prevail on discrimination claim under Title I of the ADA, employee must plead and prove that she held or desired a job and could perform essential functions at the time of employer’s alleged act of discrimination.
- Takeaway: The scope of ADA Title I’s anti-discrimination protection is limited to discrimination against current job holders and seekers.

Coming Up This Term:

Trump v. Slaughter

- Facts: In March 2025, President Trump fired two Democratic FTC Commissioners without specific cause.
- Issue: Do statutory protections for removal of FTC commissioners violate separation of powers and executive power?
- Significance: If presidents can remove commissioners of the FTC, EEOC, and NLRB without cause, agencies will become far more politicized and policies will shift far more with changing administrations.

Coming Up
This Term:
Flower Foods,
Inc. v. Brock

Scope of the Federal Arbitration Act

- Issue: Are drivers (local bread distributors) who handle only local deliveries (“last-mile” delivery drivers) and do not transport goods across state lines “transportation workers” within the scope of the exemption in Section 1 of the FAA.
- Section 1 of the FAA: “[N]othing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.” 9 U.S.C. § 1.
 - Local / intrastate versus “continuous interstate journey”
- Significance: If last-leg / local drivers fall within the exemption, FAA arbitration provisions are inapplicable to those drivers.

THE FOURTH CIRCUIT

Big Picture Historical Trends: The Pendulum

- 1990s – Late 2000s: Generally, one of the most conservative and pro-employer courts
 - Late 2000s – Late 2010s: Generally, shift to more liberal and pro-employee rulings
 - Late 2010s – Present: Gradual shift back to more conservative, pro-employer stance, but with noticeable split
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FOURTH CIRCUIT: PRESENT TRENDS

- Relatively evenly divided court
- Some inconsistency in rulings on employment issues
 - Rulings on Rule 12(b)(6) and summary judgment motions in discrimination and retaliation cases
- Takeaway: Look out for unsettled areas and inconsistent rulings

Contractual Shortening of Limitations Periods

Thomas v. Eotech, LLC, F.4th ,2026
U.S. App. LEXIS 6421 (4th Cir. 2026)

- Facts: At hiring, employee signed contract purporting to shorten the time to sue employer for any disputes “relating to [her] employment”—no more than 180 days after the event, action, or practice complained of.
- Question: Can employer and employee agree to prospectively shorten the time period to sue employers under Title VII and ADEA?
- Ruling: No. Enforcing such agreements would disrupt the carefully integrated and uniform statutory remedial schemes.
- Important Distinction: Ruling does not apply to agreements to arbitrate which implicate the “liberal federal policy in favor of arbitration agreements” under FAA.
- Takeaway: Employers who want to modify statutory procedures for federal discrimination and retaliation claims should use arbitration agreements.

JOINT EMPLOYMENT: TITLE VII & ADA

Hoffman v. Inova Health Care Services,
__ F. 4th __, 2026 U.S. App. LEXIS 6250
(4th Cir. 2026)

- Facts: Nurses were employed by North American Partners in Anesthesiology (“NAPA”). NAPA contracted for exclusive right to provide anesthesia services at Inova hospitals. Nurses sued Inova and NAPA under Title VII and ADA, claiming Inova was joint employer.
 - Question: Did plaintiffs plausibly allege Inova was joint employer?
 - Ruling: No. Under the nine-factor test for joint employment, Inova did not exercise actual control over nurses.
 - Inova did not have authority to hire and fire; mere discretion to deny access to facilities is insufficient.
 - No Inova employee supervised day-to-day work.
 - Inova did not keep employment records, provide training, or exercise any significant control.
 - Nurses did not subjectively intend to enter into employment relationship with Inova.
 - Takeaway: Joint employment depends on the exercise of significant control over day-to-day. To avoid joint employment claims, avoid indicia of control present in normal employment relationship
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Rule 12(b)(6)
Standard for
Discrimination
Claims: Similarly
Situated
Comparators

Seabrook v. Driscoll,
148 F.4th 264 (4th Cir. 2025)

- Facts: African-American employee claimed discriminatory discipline based on race compared to two white employees under Title VII.
- Ruling: Alleged comparators were “insufficient to provide a meaningful point of comparison” because they worked for different departments and plaintiff failed to allege facts regarding similarity of jobs and identity of supervisors.
- Takeaway: To plead discrimination based on comparators, plaintiff must identify comparators similarly-situated in all relevant respects, including job duties, supervisors, severity of offense, etc.
- See also: Katti v. Arden, 161 F. 4th 217 (4th Cir. 2025) (ruling complaint “falls well short of alleging similarly situated comparator” because it alleged no information about the quality of the comparators’ work)

Rule 12(b)(6)
Standard for
Discrimination
Claims: Similarly
Situated
Comparators

Johnson v. Baltimore City,
163 F.4th Cir. 808 (4th Cir. 2026)

- Facts: African American police officer alleged discriminatory discipline based on race under Title VII compared to multiple white or non-black officers who engaged in similar conduct (e.g., assault and false statements in investigation)
- Ruling: Plaintiff sufficiently pleaded similarly situated comparators—she identified 13 white or non-black officers who engaged in acts of assault or investigatory misconduct who were disciplined less severely.
 - District court improperly required “a perfect one-to-one comparison match” between alleged comparators and plaintiff.
 - Comparators must be similar in all **relevant** respects.
 - Plaintiff sufficiently alleged comparators’ position, race, conduct, and consequences.
- Takeaway: Employers must assess treatment of other employees carefully to guard against disparate treatment of similarly-situated employees, considering: job description, applicable standards, supervisor, qualifications, and other key variables.

Title VII Religious Accommodations: Scope of Protection and Undue Burden

SCOPE OF TITLE VII PROTECTION

- To claim protection, employee must show that her professed religious belief is: (1) sincerely held; and (2) religious in nature.
- To be religious, the belief must be: (1) essential part of religious faith; and (2) plausibly connected to request for accommodation.

Title VII Religious Accommodations: Scope of Protection and Undue Burden

UNDUE BURDEN

- Employer must provide religious accommodation unless doing so would impose “undue burden.”
- Groff v. DeJoy, 600 U.S. 447 (2023)
 - Overruled standard defining undue burden as costs and expenditures that are “de minimis”
 - To prove undue burden, employer must show accommodation would result in “substantial increased costs in relation to the conduct of its particular business.”
 - Determining whether employer has satisfied this test requires courts to consider “all relevant factors,” including the particular accommodation at issue and practical impact

COVID VACCINATION CASES

Fourth Circuit Rulings on Scope of Title VII Protection and Standard for Undue Burden

Barnett v. Inova HealthCare Services,
125 F. 4th Cir. 465 (4th Cir. 2025)

Finn v. Humane Society of United
States, 160 F.4th 92 (4th Cir. 2025)

- Facts: Employees requested exemption from vaccination requirements on the grounds that it would betray their “conscience,” based on prayer and Bible study, and because use of product containing fetal cells was against belief in sanctity of life.
 - Ruling: Plaintiffs sufficiently pleaded entitlement to Title VII protection.
-
- Courts give “great weight” to person’s assertion that their belief is an essential part of their religious faith.
 - Employee need not explain how any particular tenet or principle of her religion prohibited vaccination.
 - Employee need only plausibly allege that her refusal to be vaccinated “derives from an aspect of her religious belief practices or beliefs.”

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- Takeaway: Employers must give employee's professed religious beliefs great weight because the standard for claiming Title VII protection is a low bar.
 - Best Practice: Assume employee's professed religious belief is (1) sincerely held; and (2) religious in nature.

COVID VACCINATION CASES

Fourth Circuit Rulings on Scope of Title VII Protection and Standard for Undue Burden

Hall v. Sheppard Pratt Health Systems, Inc., 155 F. 4th 747 (4th Cir. 2025)

- Facts: Admissions coordinator at hospital unit treating eating disorders not granted accommodation to refuse COVID vaccine and terminated.
- Ruling: Request resulted in undue burden because exemption from vaccine requirement would have jeopardized patient safety and increased the risk of disruptive outbreaks in a sensitive environment.
 - Employer “puts its strongest foot forward when it considers not only the employee’s suggested accommodation but also other potential accommodations.”
 - Court considers the undue hardship the accommodation would have “in the aggregate if granted to all similarly situated employees.”
 - Undue hardship can result from both economic and non-economic costs (e.g., threats to health and safety of employees and people served)
- Takeaway: In assessing undue burden, employers should consider: (1) alternative potential accommodations; (2) aggregate effects of accommodation; (3) economic and non-economic costs, including health and safety concerns.

ADVERSE EMPLOYMENT ACTION: TITLE VII, ADEA, AND ADA

Muldrow v. City of St. Louis, 601 U.S. 346 (2024)

Employee challenging job transfer as discriminatory need not show “significant” change in working conditions to establish adverse employment action; rather, employee need only show “some disadvantageous change”

Herkert v. Bisignano, 151 F.4th 157 (4th Cir. 2025)

- Facts: Reassignment of disabled employee involved no reduction in pay grade, salary, or benefits, but it did eliminate supervisory authority and duties.
- Ruling: Under Muldrow, loss of supervisory authority can be adverse employment action depending on context-specific inquiry (i.e., employee preference).
 - Loss of supervisory also was “significant harm” for purposes of retaliation claim.
- Takeaway: Transfer or reassignment can be adverse employment action for discrimination or retaliation claims even if there is no change in economic terms.

ADA Accommodation and Discrimination

Tarquino v. Johns
Hopkins University
Applied Physics Lab,
141 F. 4th 568 (4th Cir.
2025)

Employee is not entitled to accommodation where she refuses to cooperate with employer in learning why her condition requires the requested accommodation.

Sigley v. ND
Fairmont LLC, 129
F. 4th 256 (4th Cir.
2025)

Employee dishonesty is a legitimate, non-discriminatory reason for termination, even if the dishonesty concerns the existence, nature, and scope of employee's alleged disability.

Herkert v. Bisignano,
151 F.4th 157 (4th
Cir. 2025)

Unilateral reassignment to a position employee does not want may not qualify as reasonable accommodation, even if the reassignment offers accommodation; involuntary transfers are strongly disfavored as accommodations.

FLSA Classification: Employee vs. Independent Contractor

Chavez-Deremer v. Medical Staffing of America, LLC, 147 F.4th 371 (4th 2026)

- Facts: Defendant provided medical staffing services, including nurses to multiple healthcare facilities. Nurses were included on registry which notified them of placements, and they could accept or decline shift opportunities. On duty, nurses were directed by supervising physicians.
- Ruling: Under the six-factor economic realities test, workers were properly classified as employees, and not as independent contractors.
 - Although the defendant lacked control over specific day-to-day aspects of the nurses' work, the defendant exercised extensive control over the work, including hourly wages, nurses' inability to negotiate prices for jobs, scheduling of shifts, tracking of hours, performance evaluation and discipline, etc.
- Takeaway: It is extremely difficult to properly classify a worker as an independent contractor under current FLSA standard, especially in the "gig economy."



The Rise of AI in the Workplace

A practical guide for navigating the realities of unmanaged AI adoption in today's workplace.

Britney R. Weaver | bweaver@morningstarlawgroup.com

AI in the Workplace: Governance Hasn't Caught Up to Usage

The Reality

AI is already embedded in daily work. Policies are lagging behind actual use.

Key Focus

Unmanaged, invisible adoption of AI in the workplace — happening now, with or without employer awareness.

📄 The gap between usage and governance is the central risk employers face today.

Reality Check

Your Employees Are Already Using AI With or Without Formal Approval

Common Uses

- Drafting emails and internal communications
- Summarizing meetings or investigations
- Refining performance feedback
- Organizing thoughts before decisions
- Editing policies and documents

The Pattern

These activities are occurring across every level of the organization in HR, legal, operations, and management, without centralized oversight or formal approval.

 **Key Takeaway:** Use is decentralized, informal, and often invisible.

The Shift


AI Has Shifted from Employer-Controlled to Employee-Driven

Then: Centralized Control

- Employer-selected tools
- Vendor-driven systems
- Hiring-focused use

Now: Decentralized Use

- Employee-selected tools
- Free / public platforms
- Embedded in daily workflow

 **Result:** Loss of visibility and reduced employer control = the foundation of every downstream risk.

Legal Impact

AI Is Now Touching Employment Decisions

AI-Assisted Work May Influence

Performance evaluations

Discipline and documentation


Termination rationale

Internal communications

Personnel records

Why It Matters

These outputs can become **evidence in employment disputes**. When AI shapes the language of a termination memo or a performance review, that document carries legal weight regardless of how it was produced.

 **Key Takeaway:** AI is shaping outcomes even when not making decisions.

Current State

Most Employers Are Not Fully Prepared

No Formal Policy

Many employers lack formal AI policies entirely.

Incomplete Guidance

Existing policies are often high-level and incomplete.

Limited Enforcement

Limited enforcement or monitoring in place.

Common Disconnect

Leadership assumptions ≠ actual employee behavior. What executives believe is happening and what employees are actually doing are often entirely different.

The Bottom Line

AI use is happening regardless of formal rollout. The absence of a policy is not the absence of use.

Why Policies Matter

AI Policies Are a Legal and Operational Necessity



Structure

Define when and how AI is used across the organization.



Boundaries

Establish limits on data and use.



Accountability

Clarify responsibility for outputs and designate who owns what AI produces.



Consistency

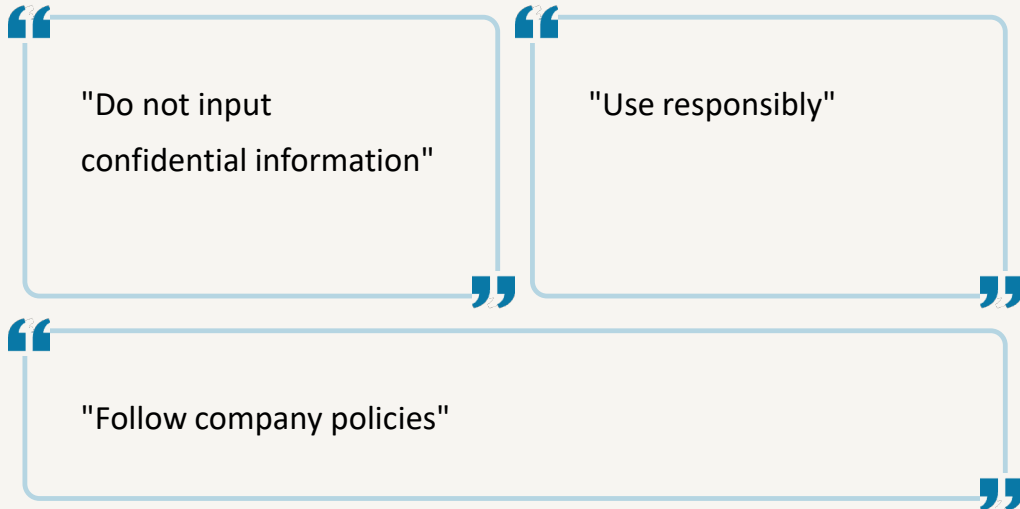
Reduce variation across teams and departments.

 **Key Point:** Policies should be in place *before* high-risk use... not after an incident occurs.

Where Policies Fall Short

High-Level Guidance Is Not Governance

Typical Policy Language



What's Missing

- Defined use cases
- Risk-based restrictions
- Review requirements
- Enforcement mechanisms

Bottom Line: Guidance does not control behavior.

Core Risk Areas

Where Employers Are Actually Exposed



No Use Case Clarity

No distinction between low- and high-risk uses across the organization.



No Human Review Standard

Outputs treated as reliable without verification or oversight.



No Data Governance

Sensitive information entered into uncontrolled tools and platforms.



No Decision Boundaries

AI influencing decisions without guardrails or defined limits.



Result: Inconsistent, unverified, and risky outputs with real legal and operational consequences.

Private vs. Enterprise AI

Not All AI Is Created Equal

Private AI is Uncontrolled

- Personal accounts
- No visibility to employer
- Data may be stored or reused

Enterprise AI is Controlled

- Approved tools
- Defined safeguards
- Monitoring capability

Current State

Most employers operate in a **hybrid environment** in which some enterprise tools exist, but employees are simultaneously using personal, uncontrolled platforms for work tasks.

Key Takeaway

You cannot manage risk you cannot see. The private AI environment is where most unmanaged risk lives today.

Governance Framework

A Practical Employer AI Framework

Employers should define each of the following dimensions as part of a comprehensive AI governance approach:



Tools

Approved vs. prohibited platforms with clear distinctions for employees.



Use Cases

Low-risk vs. high-risk activities — defined and communicated explicitly.



Human Review

When review is required before AI-assisted outputs are acted upon.



Data Rules

What can and cannot be entered into AI tools, especially sensitive data.



Documentation

Standards for AI-assisted outputs that may become part of the record.



Environment Control

Private vs. enterprise usage with clear expectations for each context.

Real-World Risk

How Issues Actually Arise

Common Failure Scenarios

AI-drafted discipline includes inaccuracies

AI summaries omit key facts

Sensitive data entered into public tools

Over-reliance on AI-generated content

What This Means

Decisions are influenced by unverified inputs. When those decisions are later scrutinized (in litigation, arbitration, or regulatory review) the process that produced them becomes the issue.

Key Insight

These are governance failures, not technology failures. The tool didn't fail. The oversight structure did.

Most Employers Are Behind And Don't Realize It

AI Use Is Widespread

Adoption is already embedded across teams and functions with or without formal approval.

Policies Lag Behavior

Most existing policies do not reflect how AI is actually being used on the ground today.

Visibility Is Limited

Employers often lack the tools and structures to see where and how AI is influencing work.

The key question: Do your policies reflect how AI is actually being used?

Final Takeaway — Effective Governance Requires:



Awareness

Know where and how AI is being used across your organization.



Structure

Build policies that reflect real use cases and risk levels.



Enforcement

Ensure policies are monitored, communicated, and consistently applied.

Equal Employment Opportunity Commission

CHANGING PRIORITIES: 2026

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Equal Employment Opportunity Commission

Changing Priorities:
2026

OVERVIEW

- 1) Challenging Discrimination against Majority Members
- 2) Challenging Diversity, Equity, and Inclusion Programs
- 3) Elimination of Disparate Impact Enforcement
- 4) Rescission of Workplace Harassment Guidance & Removal of Gender Ideology
- 5) Religious Accommodation

COMPOSITION AND PROCEDURAL CHANGES

Charlotte Burrows
EEOC Chair (2021-2025)

- October 2025: Shift to 2-1 Republican Trump-appointee majority and quorum of commissioners
 - Power to withdraw guidance
 - New Chair: Andrea Lucas
 - January 2026: Commissioners now will vote to decide whether to bring or join litigation
 - Shifts power away from general counsel and field offices
 - Promotes greater consistency in priorities
-

Andrea Lucas
EEOC Chair (2025-Present)

Discrimination Against Majority Group Members

EEOC will begin “attacking” and “eliminating”
discrimination against majority group members,
esp. white males



Discrimination Against Majority Group Members

KEY TAKEAWAYS

- Remember Ames v. Ohio Department of Youth Services, 605 U.S. 303 (2025)
- Neutral policies and practices are essential
- New scrutiny for adverse employment actions against majority employees (esp. white, male, heterosexual, cisgender)
- Consider carefully similarly situated employees

CHALLENGING DIVERSITY, EQUITY, AND INCLUSION

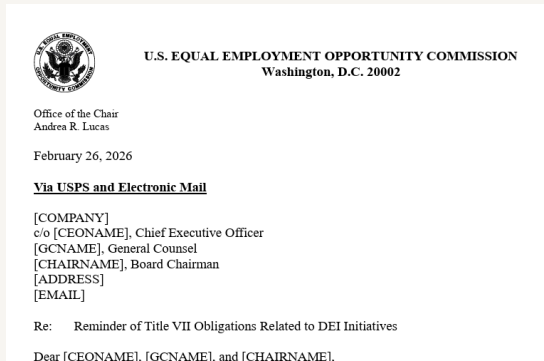
March 2025 DOJ and EEOC Technical Assistance Memos

- DEI involving employment action motivated “in whole or in part” by protected characteristic may be unlawful
- No business interest or justification in diversity
- Client or customer preference is no defense
- DEI training may create hostile work environment
- Unlawful to “limit[], segregate[], or classify[]” employees based on protected characteristics (Employee Resource Groups, networking events)
- Program labels (“belonging,” “EO,” etc.) provide no protection for DEI
- “What To Do If You Experience Discrimination Related to DEI at Work”

CHALLENGING DIVERSITY, EQUITY, AND INCLUSION

February 2026: Lucas Open Letter to Fortune 500 CEOs re “Reminder of Title VII Obligations Related to DEI Initiatives”

- Links to Technical Assistance Documents
- “[B]edrock American principles have been under attack by movements and ideologies that elevate group rights over individual rights; demand equal outcomes over equal treatment and equal opportunity; and, most absurdly, twist our nation’s civil rights laws to promote discrimination against certain races or groups, rather than protect all Americans equally and evenhandedly.”
- “[T]he widespread adoption of DEI in the Fortune 500 and elsewhere in our country does not change longstanding legal prohibitions against the use of race, sex, and other protected characteristics in employment.”



CHALLENGING DIVERSITY, EQUITY, AND INCLUSION

KEY TAKEAWAYS

- Avoid all iterations of DEI programs that evidence any discriminatory or preference
 - Ensure all training is neutral
 - Beware of web-based content
- Avoid classification-specific groups or events
- Neutral, job-related criteria for job hiring, screening, promotion, initiatives
- Avoid preferences, quotas, priorities, exclusions, reserved openings

Elimination of “Disparate Impact” Enforcement

- EEOC no longer will investigate or litigate claims based solely on disparate impact theory
- October 2025: EEOC field offices directed to close charges based solely on “disparate impact” theory
- Disparate impact: facially neutral employment practice falls more harshly on one group than another and that the practice is not justified by business necessity
- Examples: testing, background checks, educational requirements, AI tools
- **Takeaways:**
 - EEOC will focus on disparate treatment claims
 - Private litigants still may pursue disparate impact claims
 - Continue testing and monitoring for disparate impact
 - Exercise caution with testing, background checks, educational criteria, etc.

Rescission of 2024 Harassment Guidance

2024 Guidance

WORKPLACE HARASSMENT CAN INCLUDE:

- January 2026: EEOC rescinded 2024 Harassment Guidance
- EEOC cited concerns regarding gender identity issues
- Repeated and intentional misgendering or use of “dead name”
- Denial of access to bathroom or other sex-segregated facility consistent with gender identity
- Failure to accommodate preferences in dress
- Intended to implement Bostock v. Clayton County (2020)

EEOC Rescission

THE BOSTOCK DECISION:

- Protects against discrimination based on gender identity and sexual orientation but does not extend to actions such as misgendering
- 2024 Harassment Guidance was unauthorized rulemaking
- Shift in focus to disparate treatment in decisions related to hiring, firing, promotion, transfer, etc.

Rescission of 2024 Harassment Guidance

KEY TAKEAWAYS

- January 2026: EEOC rescinded 2024 Harassment Guidance
- EEOC cited concerns regarding gender identity issues
- Rescission does not change Title VII law
- EEOC reiterated ongoing commitment to preventing workplace harassment
- Continue policies, practices, and training consistent with Bostock
 - Respectful workplace
- Remember ongoing application of state and local laws
- Be prepared for increases private litigation

TITLE VII RELIGIOUS ACCOMMODATION

- No EEOC guidance yet
 - EEOC signaling increased scrutiny and enforcement
 - Follow guidance provided in SCOTUS and Fourth Circuit case law
 - Engage employees requesting accommodations in “interactive process”
 - Carefully consider and document “substantial burdens” resulting from accommodations
-



Political Speech in the Workplace

From Expression to Exposure: Managing Employer Risk in a Polarizing Environment

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Political Speech in the Workplace

In 2025, employee social media reactions to the killing of Charlie Kirk surfaced rapidly. Some reactions were critical, dismissive, or perceived as offensive. Employers were identified quickly. Hundreds of employees were reportedly disciplined or terminated.

What matters: Off-duty speech became visible. Employer visibility created pressure to act.

Why This Matters Now

Employers now have visibility into off-duty speech at scale. Current political polarization means more speech, more visibility, and more pressure.

This is not a future problem. Employers are already navigating it.

The Landscape Has Shifted

What's Changed

Political Speech Today Is



Immediate



Permanent



Widely Amplified

What Is New

Forced visibility for employers. Employers are being pulled in, not choosing when to engage.

Observed Trend

Online political expression increasingly leads to workplace discipline. Issues are often surfaced externally, not internally.

Response Environment

Fast. Public. High-pressure.

☐ The shift is not just in speech. It is in the conditions under which employers must respond.

Understanding the Sequence

The Pattern Employers Are Facing

Employers are not choosing to engage with political speech. They are being pulled into it. Understanding the typical sequence is the first step toward a disciplined response.



Important Shift

Focus moves from employee conduct alone. Focus shifts to **employer decision-making**.

Legal risk begins at the point of response.

The Stakes

Why This Matters

Reality of These Decisions

- Made under pressure
- Made with incomplete information
- Made on compressed timelines

Where Legal Mistakes Happen

- Inconsistency
- Speed
- Lack of structure

Core Insight

Exposure often comes from process, not just outcome.

Practical Value

The goal is not only understanding the law. The goal is **slowing the situation down enough to make a defensible decision.**

☐ Risk often comes from how the decision is made, not just what the decision is.

First Amendment

The First Instinct — But Not the End of the Analysis

Common Instinct

"This is a free speech issue."

Clarification

For **private employers**, the First Amendment generally does not apply.

Common Mistake


Employers stop the analysis there. "No constitutional issue means we are free to act."

What Actually Matters

Lack of First Amendment protection does not eliminate legal risk. **Other constraints still apply.**

The Deeper Point

The real takeaway is not just that the First Amendment does not apply. It is that **the analysis has to go deeper.**

 **The analysis has to go deeper.**

Legal Framework — The Full Picture

The Real Legal Framework



Federal Labor Law

National Labor Relations Board

May protect speech tied to workplace conditions



Anti-Discrimination Law

Equal Employment Opportunity Commission

Governs harassment and workplace conduct



State Law

Political activity protections

Off-duty conduct protections

Political affiliation protections

Important Point

These frameworks **overlap**. What appears straightforward can become legally complex quickly.

Speed without structure creates risk.

NLRB

Protected Concerted Activity

Common Employer Mistake

Assuming political speech is automatically unprotected.

Speech May Be Protected If It Relates To

- Workplace conditions
- Shared concerns
- Group activity

Important Context

Protection may apply **even on social media**.

The Core Question

Not just:

"Is this political?"

But:

"Does this connect to the workplace in a way that triggers protection?"

Political speech may still be protected if it is tied to workplace concerns.

Anti-Discrimination Law

EEO Overlay

When Political Expression Becomes a Workplace Compliance Issue

Political Expression Becomes a Workplace Issue When It

- Targets protected groups
- Creates division among employees
- Results in internal complaints

Shift in Employer Obligation

Employer is no longer just evaluating speech. Employer is **managing discrimination and harassment risk.**

New Urgency

Compliance-based, not just reputational.

📄 What begins as political expression can become discrimination or harassment exposure.

State Law Overlap

Some States Protect

- Political activity
- Lawful off-duty conduct
- Political affiliation

Others Do Not

The legal landscape is not uniform.
Jurisdiction determines the analysis.

Critical Discipline Point

Ask what jurisdiction applies. Identify what protections exist **before acting**.

Why It Matters

Jurisdiction can change the entire analysis.
Acting too quickly can create unnecessary exposure.

- ☐ **The legal answer can change depending on where the employee works.**

Employer Authority

What Employers Can Do

Important Balance

Employers are **not powerless**. Employers are **not constrained at every turn**.

Legitimate Employer Interests

Civility

Professionalism

Productivity

Employers May

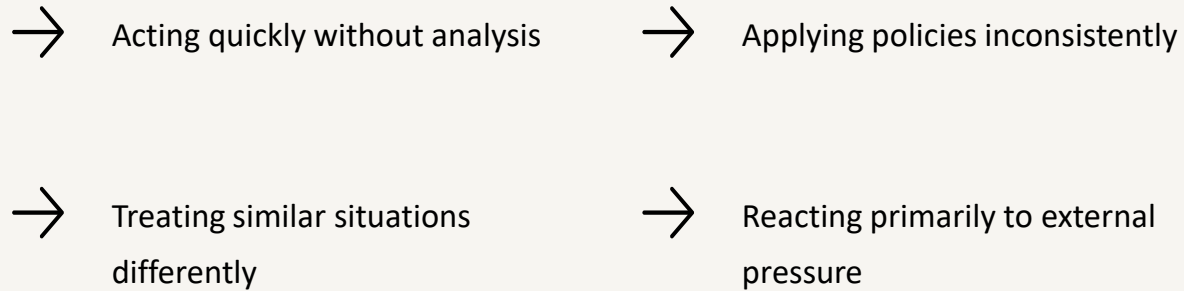
- Enforce workplace standards
- Address disruptive conduct
- Set expectations for behavior

The issue is not whether employers can act. It is whether their action is grounded in a defensible process.

Where Exposure Enters

When Risk Enters the Chat

Risk Usually Comes From the Response



What Scrutiny Focuses On

- Context
- Timing
- Consistency

Core Insight

Exposure often turns on **how and why** the employer acted.

📄 The process often creates the risk.

Structured Response

A Disciplined Process for Political Speech Issues

1

Pause Before Acting

Resist the pressure to respond immediately. Create space for analysis.

2

Identify the Applicable Legal Framework

NLRA, EEO, state law — determine which frameworks apply before proceeding.

3

Gather Facts

Conduct targeted review or investigation where appropriate.

4

Assess Workplace Impact

Not just external perception — evaluate actual impact on the workplace.

5

Apply Policies Consistently

Treat similar situations the same way, regardless of viewpoint.

6

Document the Reasoning

Record the basis for the decision at the time it is made.

Critical Principle

Maintain neutrality. Avoid viewpoint-based enforcement.

Consistency and neutrality create defensibility.

The Wrap Up

What Employers Can Do

Employers can respond to political speech. In many situations, **they should**.

What the Challenge Really Is

Responding with **discipline**. Responding with **consistency**. Responding with **sound judgment**.

Modern Reality

Political speech no longer stays personal. It becomes an employer issue **very quickly**.

Best-Performing Employers

Do not move fastest.

Move most deliberately.

The issue is not whether you act... it is whether your process holds up after you do.



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