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# A Look at Employment Law Shifts in 2025 and Beyond

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The year 2025 has been an eventful one for employment law, and 2026 may well bring further important changes in this space.

**US Government Signals Major Shift in Its Approach to Discrimination Laws**

In January, the Trump administration signaled a major shift in its approach to enforcing discrimination laws, particularly diversity, equity and inclusion (DEI) and reverse discrimination. President Donald J. Trump issued an executive order titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.” The order focuses on government agencies and contractors. It directs the Office of Federal Contract Compliance Programs (in the Department of Labor) to stop promoting diversity, hold contractors responsible for taking affirmative action and discourage so-called “workforce balancing” based on race, color, sex, sexual preference, religion or national origin.

The order did not ban all DEI—just “illegal” DEI—but it does not define that term. It suggests the Trump administration wants “merit-based” hiring, firing, promotion and compensation programs that provide equal access to opportunities and skills development and do not give special advantages to one person or group over another.

Moreover, although a president’s legal authority to mandate that the private sector abandon DEI practices is questionable, the order does signal the Trump administration’s interpretation that certain DEI practices are themselves discriminatory and unlawful. According to the order, illegal DEI likely includes:

- **Quotas.** For example, a policy that says 30% of new hires must be women.

Courtesy photos

**L-R: Neil C. Schur, Bennett Pine and Dona S. Kahn of Anderson Kill.**

- Set-asides. For instance, reserving a vacant position for someone other than a white male.
- **Preferences.** This would include giving a “plus” to a female or person of color because of their protected characteristic, even if the plus is given to break a tie.

The U.S. Equal Employment Opportunity Commission has also issued guidance, which states:

- Title VII bars discrimination against applicants or employees in hiring, firing, compensation, or any term, condition or privilege of employment. This prohibition includes disparate treatment in hiring, firing, promotion, demotion, compensation, fringe benefits, access to or exclusion from training, mentoring, sponsorship or workplace networking, internships, selection for interviews or job duties or work assignments.
- Title VII prohibits employers from limiting, segregating, or classifying employees or applicants based on race, sex, or other protected

characteristics in a way that affects their status or deprives them of employment opportunities.

- Unlawful limiting, segregating, or classifying workers related to DEI can arise when employers separate workers into groups based on race, sex, or another protected characteristic, even if the separate groups receive the same programming content or amount of employer resources.

In the courts, however, both before and after the issuance of the January 2025 executive order, individual plaintiffs' claims that mandatory DEI training was discriminatory have generally been rejected. See, for example:

- *Vavra v. Honeywell* (7th Cir. 2024) (concluding that Charles Vavra's opposition to the training did not constitute protected activity under Title VII or the Illinois Human Rights Act because he did not have an objectively reasonable belief that the training violated the law);
- *Young v. Colorado Department of Corrections* (10th Cir. 2024) (concluding that while Joshua Young had plausibly alleged he was subjected to unwelcome harassment by the mandatory training, he failed to adequately allege that the harassment was so severe or pervasive that it altered the terms of his employment and created an abusive working environment); and
- *Diemert v. City of Seattle* (W.D. Wash. 2024) ("Joshua Diemert does not present that rare and unusual case of discrimination against the majority] here. Contrary tohis claims, DEI programs aimed at addressing racial inequalities against Black people and other minorities are not by their very nature discriminatory against whites.")

But see *Norgren v. Minnesota Department of Human Services* (8th Cir. 2024) (denying motion to dismiss where the plaintiff claimed he was denied a promotion due to his protected activities in seeking religious exemption to workplace trainings on racism and gender identity).

### US Federal Trade Commission Abandons Its Push for a Nationwide Noncompete Ban

The U.S. Federal Trade Commission officially withdrew its appeals of two federal courts' orders enjoining enforcement of its previously proposed nationwide ban on covenants not to compete, widely known as "noncompetes." Noncompetes are agreements between employees and employers in which the employee promises not to compete with the employer for a specific period of time and within a particular geographic area should the employment relationship terminate.

FTC Chair Andrew N. Ferguson has concerns about the anticompetitive effects of noncompetes and signaled he might choose to prosecute the FTC's appeals initiated by his predecessor Lina Khan. The FTC had appealed two August 2024 rulings: one from a federal district court in Texas permanently enjoining the FTC 's enforcement of the rule nationwide and one from a federal district court in Florida permanently enjoining the FTC 's enforcement of the rule as to the plaintiffs in those cases only.

On Sept. 5, 2025, however, the FTC withdrew its appeals in the U.S Courts of Appeals for the Fifth and Eleventh Circuits. That withdrawal returns the law to its status prior to the FTC's introduction of its proposed ban: the enforceability of noncompetes remains governed by state law. Employers with questions should research the law of the state or states where the employee works.

Some states have recently revised their laws on non-competes or enacted new laws, particularly with regard to lower-income employees. Noncompetes for employees earning less than a threshold amount are currently banned in some states and Washington, D.C.

- In Colorado, noncompete clauses are void except where they apply to a "highly compensated worker," currently defined as a worker earning at least $101,250 annually. See Colo. Rev. Stat. Ann. Section 8-2-113(2)(a)-(b), as amended by H.B. 22-1317; Colo. Code Regs. Section 1103-14:1.2.
- In Illinois, noncompetes are banned unless the worker's actual or expected earnings exceed $75,000/year. See 820 Ill. Comp. Stat. 90/10(a) (effective Jan. 1, 2017).
- In Maryland, noncompetes are null and void as against public policy unless the employee earns greater than 150% of the minimum wage, which rose to $15/hour on Jan. 1 for employees who are at least 18 years old. See MD Code, Labor and Employment Sections 3-413(c)(1) & (d), 3-716(a)(1)(i) & (b).
- In Massachusetts, noncompete clauses shall not be enforceable against employees paid on an hourly basis or below a given salary threshold, currently $35,568, among others. See Mass. Gen. Laws Ann. ch. 149, sec. 24L(c).
- In Virginia, employers cannot "enter into, enforce, or threaten to enforce a covenant not to compete"

- with any "low-wage employee," defined as an employee whose average weekly wage is less than the average weekly wage of the commonwealth. See VA ST Section 40.1-28.7:8.
- In Washington, D.C., noncompetes are prohibited if an employee earns less than $150,000 annually (or $250,000 for medical specialists). See DC CODE Sections 32-581.01, 32-581.02.

A similar bill is pending in New York.

Please also note that noncompetes are already unenforceable in California (and have been for decades), subject to a handful of limited exceptions related to the sale of a business, partnership or LLC or if the noncompete is necessary to protect an employer's trade secrets. See Cal. Bus. & Prof. Code, Sections 16600-16602. Two bills in 2025 beefed up California's law by: providing for a private right of action; requiring that by Feb. 14, employers notify all employees who are subject to a noncompete clause that it is void; and prohibiting employers from enforcing in California noncompetes signed in another state.

Minnesota and North Dakota have similar laws. See MN ST Section 181.988; ND ST Section 9-08-06; OK ST T. 15 Section 219A.

The FTC still plans to challenge some noncompetes in investigations and has targeted noncompetes that it deems anticompetitive. For example, in September, the FTC challenged the use of noncompetes by Gateway Services, a pet cremation services company, because they covered all 1800 employees, including lower-income workers.

**Heterosexual Women: Reverse Discrimination**

In June, the U.S. Supreme Court reversed an appellate court's ruling that a heterosexual woman claiming she was the victim of reverse discrimination in favor of a homosexual woman has a higher burden of proof than a plaintiff who claims discrimination against a member of a minority group. See *Ames v. Ohio Department of Youth Services*. The decision rejected some appellate courts' previous holdings requiring an additional burden of proof showing "special background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority."

The court held that there is no special test for reverse discrimination claims. The U.S. Court of Appeals for the Sixth Circuit's rule, Justice Ketanji Brown Jackson wrote, is inconsistent with the text of the federal employment discrimination law, which bars discrimination against everyone—without distinguishing between members of a minority group and members of a majority group. "By establishing the same protections for every 'individual'—without regard to that individual's membership in a minority or majority group—Congress left no room for courts to impose special requirements on majority-group plaintiffs alone."

**Significant Employment Law Changes Are Coming in 2026**

Significant changes to employment laws are on the way in 2026:

- **Minimum Wage Increases:** Several states and major localities will see new higher minimum wage rates taking effect.
- **No Tax on FLSA-Mandated Overtime:** The "No Tax on Overtime" provision, part of the "One Big Beautiful Bill" enacted last July, will take effect in 2026. "Double-time" or holiday pay that is not strictly based on the 40-hour threshold does not qualify.
- **Gig Worker Protections:** New rules will strengthen protections for independent workers, requiring platforms like Uber, Lyft, and DoorDash to provide transparent pay structures and limited insurance coverage for on-the-job injuries.
- **Workplace Discrimination Protections:** Harassment laws will cover both in-office and remote/virtual workplaces, with stronger penalties for employers discriminating on the basis of race, religion, gender or immigration status.
- **Paid Family and Medical Leave:** Thirteen states plus Washington, D.C. now offer paid leave funded through payroll taxes, and several states have expanded unpaid family and medical leave.

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