



1

---

---

---

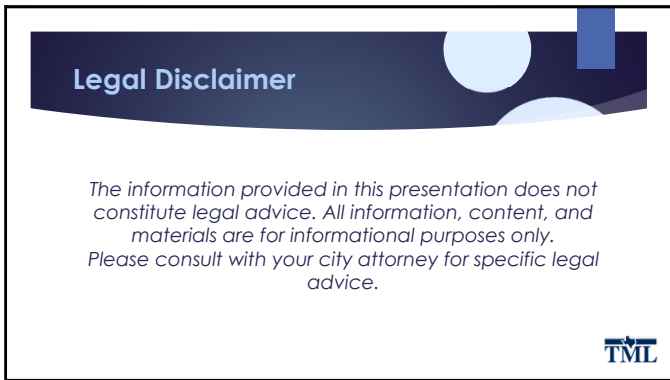
---

---

---

---

---



2

---

---

---

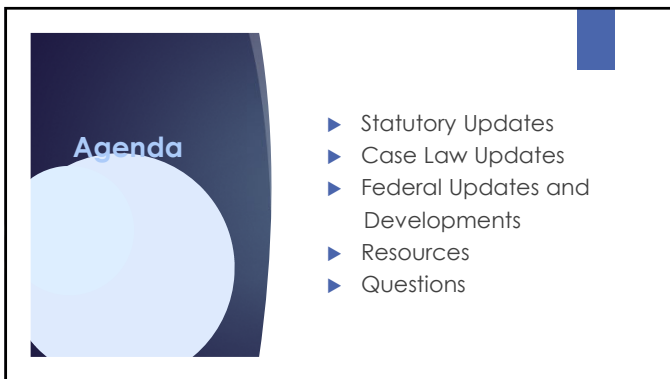
---

---

---

---

---



3

---

---

---

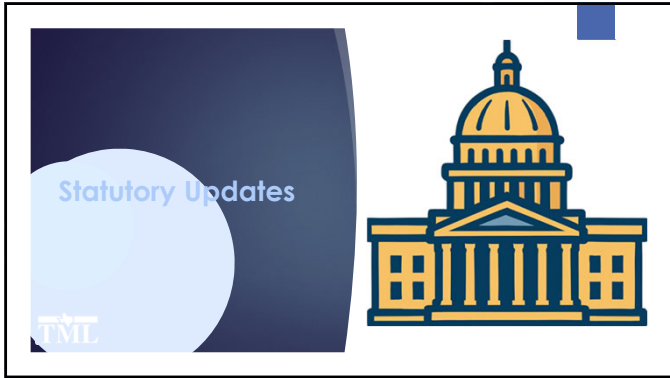
---

---

---

---

---



4

---

---

---

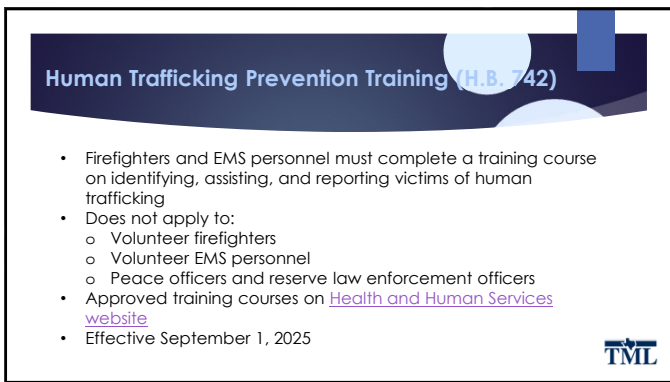
---

---

---

---

---



5

---

---

---

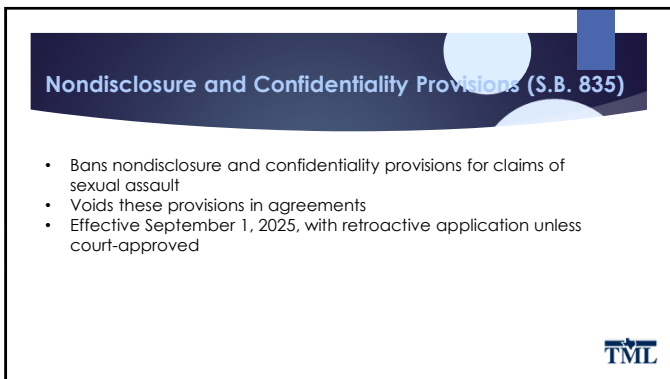
---

---

---

---

---



6

---

---

---

---

---


---

---

---

**Texas Responsible AI Governance Act (H.B. 149)**

- Prohibits government employers from:
  - Using AI with the intent to unlawfully discriminate against a protected class (intentionally – disparate impact insufficient)
  - Manipulation of human behavior
  - Infringement of federal constitutional rights
  - Using social scoring systems
  - Biometric surveillance
- Attorney General enforcement only (no private cause of action)
- Employers can continue to use AI for recruiting and hiring, and other employment-related processes
- Law requires governmental entities (not private employers) to disclose that they are using AI to evaluate applicants and interact with any consumers (not in employment context)
- Effective January 1, 2026



7

---

---

---

---

---

---

---

---

**Study from February 2026**

- Language Learning Models (LLMs) preferred their own generated content in resumes over that produced by humans or alternative LLMs
  - Bias highest in sales, accountant, business development, finance, teacher, advocate, HR (almost 50%)
  - Candidates using the evaluator LLM are 23% to 60% more likely to be shortlisted than those submitting human-written resumes
- Two mitigation strategies (system prompting and majority voting) substantially reduce bias, cutting self-preference by more than half

<https://arxiv.org/abs/2509.00462>

**AI Issues in Screening Applicants**

8

---

---

---

---

---

---

---

---

**Amazon's usage from 2014-2018**

- Tool systemically downgraded resumes submitted by female candidates
  - Discriminated because of the data it trained on
  - If data input is biased, the output will likely be biased
  - Recruitment has historically been plagued by human bias

**AI Issues in Screening Applicants**

9

---

---

---

---

---

---

---

---

Brookings Study (April 2025)

- Out of 27 tests for discrimination across three LLMs and nine occupations, gender bias was evident: Men's and women's names were selected at equal rates in only 37% of cases
  - In the rest, resumes with men's names were favored 51.9% of the time, while women's names were favored just 11.1% of the time
- Resumes with Black- and white-associated names were selected at equal rates in only 6.3% of tests
  - White-associated names were preferred in 85.1% of cases, while Black-associated names led in just 8.6%

AI Issues in Screening Applicants

---

---

---

---

---

---

---


---

---

---

10

Case Law Update



TML

---

---

---

---

---

---

---

---

---

---

11

Federal Courts

---

---

---

---

---

---

---

---

---


---

12

**ADA**

**Vasquez v. Union Pac. R.R. Co., No. 24-50852, 2025 WL 3034706 (5th Cir. Oct. 30, 2025)**

- Vasquez suffered off-duty TBI, and employer required him to undergo a fitness-for-duty evaluation; four doctors evaluated Vasquez's case during process
- Employer imposed 5-year waiting period and work restrictions due to risk of seizure
- Vasquez sued under ADA for discrimination
- Employer made "direct threat" defense – employee's return poses a significant risk to health and safety of employee and others that can't be eliminated by a reasonable accommodation
- **Court:** Employer made individualized assessment of Vasquez's ability to safely perform the essential functions of job by showing it made reasonable medical judgment based on most current medical knowledge or best available objective evidence.



13

---

---

---

---

---

---


---

---

**ADA**

**Carrillo v. Union Pac. R.R. Co., No. 22-50782, 2024 WL 3861374 (5th Cir. Aug. 19, 2024)**

- Carrillo was diesel electrician for Union Pacific
  - Before work, suddenly went unconscious and bit his tongue
- He met with series of doctors who gave opinions on what it could be
  - UP sent records to specialist in Nebraska and other UP doctors, who said it was a seizure and likely to happen again within 5 years
  - Based on UP's fitness-for-duty program to avoid safety risks, he was terminated because reasonable accommodation could not be provided without removing essential functions
- **No ADA violation:** UP made a reasonable medical judgment that relied on the best available objective evidence, did individualized assessment, and properly accounted for duration of risk



14

---

---

---

---

---

---


---

---

**ADA**

**Strife v. Aldine Independent School District, 138 F.4th 237 (5th Cir. 2025)**

- Strife suffered from PTSD and physical disabilities and asked for her service dog as an accommodation under ADA
- "Interactive process" took over 6 months: Did AISD fail to accommodate?
  - YES
  - "[The facts] do not merely concern delay; they intimate a lack of good faith from AISD to meaningfully evaluate her request in an appropriate and timely manner. . . . Strife claims that she repeatedly provided AISD with information that confirmed her disabilities and need for accommodation."
- **Optics Matter: Don't put requests for accommodations on the backburner.**



15

---

---

---

---

---

---


---

---

**ADA**

**Kakoolaki v. Galveston Indep. Sch. Dist., No. 24-40710, 2025 WL 985929 (5th Cir. Apr. 2, 2025)**

- Kakoolaki suffers from cone dystrophy, which limits her vision to making out silhouettes but little else
- GISD didn't hire her to be a 6<sup>th</sup> grade teacher because major responsibility was "managing student behavior" and to "protect students, equipment, materials, and facilities"
- **Ability to supervise students was "fundamental" to the job. Suggested accommodations of an aide permanently in classroom or help from another teacher were unreasonable—reassignment of primary duties.**



16

---

---

---

---

---

---


---

---

**ADA & FMLA**

**Way v. City of Missouri City, 133 F.4th 509 (5th Cir. 2025)**

- Way was First Assistant City Attorney; had multiple surgeries on FMLA leave; claimed she requested an accommodation for her anxiety and fibroids
- Terminated days after returning from FMLA leave with letter that said First Assistant City Attorney position was not a practical application of city resources
- **Anxiety was protected and Way asked for specific accommodation, which was ignored and City didn't engage in interactive process.**
- **City's justification for eliminating the position could be pretextual and show retaliation under FMLA.**



17

---

---

---

---

---

---


---

---

**Title VII – Discrimination**

**Ames v. Ohio Dep't of Youth Servs., 605 U.S. 303 (2025)**

- Ames was a heterosexual woman who lost promotion to lesbian woman then demoted and former position filled by gay man
- Because Ames was in majority class, lower courts required additional "background circumstances"
- **SCOTUS: No additional layer of proof for all majority groups in classification protected by Title VII.**
  - "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 [employees] alone."



18

---

---

---

---

---

---


---

---

**Title VII – Discrimination**

**Carter v. Loc. 556, Transp. Workers Union of Am., 156 F.4th 459 (5th Cir. 2025)**

- Carter, who identifies as a conservative Christian, terminated after sending graphic anti-abortion messages to union president and posting similar content on social media
- Jury found in favor of Carter, determining that Southwest discriminated against her based on her religious **practices** and **beliefs**, and failed to accommodate her religious practices.
- **Court:**
  - Carter didn't show religious **beliefs** were motivating factor in her termination, but
  - SW failed to prove that accommodating Carter's religious **practices** would impose an undue hardship, even under the new legal standard established by the Supreme Court in *Groff v. DeJoy*, which requires showing substantial increased costs
- **Southwest still liable under Title VII for religious discrimination**



19

---

---

---

---

---

---

---

---


---

---

**Title VII – Retaliation**

**Phillips v. Enterprise Prods. Co., No. 25-30222, 2026 WL 75904 (5th Cir. Jan. 9, 2026)**

- Phillips accused supervisor of racial favoritism, claiming white drivers were not disciplined for similar infractions
- **Facts:**
  - Manager "absolutely offended" by employee's report
  - Employer terminated one month later
  - **"Fishing expedition"**
    - Supervisor sent upper management new information about old violations, and manager's email response, "Perfect! Exactly what I needed!" response
- **Court:** Fishing expedition is what provided the additional evidence necessary for the employee to proceed with the case.



20

---

---

---

---

---

---

---

---


---

---

**Title VII – Hostile Work Environment**

**Dike v. Columbia Hosp. Corp. of Bay Area, No. 24-40058, 2025 WL 315126 (5th Cir. Jan. 28, 2025)**

- Dike had many allegations of race-based actions taken by employer
- Employer had also documented performance issues and terminated him
- Fifth Circuit said no discrimination or retaliation, but there was enough for a hostile-work environment claim
- **Takeaway:** Take claims that an employee is experiencing discriminatory conduct seriously to the extent the city can correct the other individuals' behavior



21

---

---

---

---

---

---

---

---


---

---

**Title VII – Hostile Work Environment**

**EEOC v. SkyWest Airlines, Inc., (Case No. 3:22-CV-1807 – D) (N.D. Tex.)**

- Budd worked at DFW Airport for SkyWest; complained almost immediately that she felt singled out as a young woman and didn't feel "safe;" continued harassment and ongoing comments about rape and sexual jokes about a candy jar dressed as a woman
- Jury awarded \$2.2 million for sexually hostile work environment
- **Takeaway: HR investigation was deficient:**
  - Supervisors didn't let HR know about issues right away
  - HR interviewed some but not all of the employees Budd named
    - Only asked about the candy jar incident
  - HR didn't ask follow up questions when employees suggested they heard inappropriate comments or saw inappropriate conduct
  - HR recommended formal discipline for some employees and mandatory sexual harassment training for all employees
    - One "disciplined" employee testified he was never disciplined
  - HR didn't keep Budd informed of progress



22

---

---

---

---

---

---

---

---


---

---

**FLSA – Exemption Pay**

**Alvarez v. NES Glob., L.L.C., No. 24-20480, 2026 WL 458219, (5th Cir. Feb. 18, 2026)**

- Exempt employees were paid as follows:
  - Payment of a one-day or eight-hour guarantee
  - Payment of a set amount if an employee did any work in a particular week—if they exceeded a predetermined number of hours or days, they were paid their normal hourly or daily rate for all hours/days worked
- **Court:** Must be paid on weekly basis, so payment for 8-hour day violates salary test



23

---

---

---

---

---

---


---

---

---

---

**State Courts**



24

---

---

---

---

---

---

---

---


---

---

**Discrimination**

**Tarrant County College District v. Chavez, No. 02-25-00176-CV, 2025 WL 2884214 (Tex. App.—Fort Worth Oct. 9, 2025) (mem. op.)**

- Two employees having a personal dispute about sex discrimination met privately to discuss their differences of opinion. Each employee secretly recorded the conversation without telling the other in violation of the employer's policies.
- At first, the employer discharged only the male employee for violating the rule against secretly recording a fellow employee. Several months later, the employer discharged the female employee.
- **Court:** The difference in treatment—a delay of several months in discharging the female employee—constituted a difference in treatment between two similarly situated employees.
- **Remember:** Ensure policies are applied consistently; treat employees the same.



25

---

---

---

---

---

---


---

---

**Discrimination**

**Univ. of Tex. at El Paso v. Aranda, 725 S.W.3d 757, 761 (Tex. App.—El Paso 2025, no pet.)**

- Aranda applied for telecommunications operator and revealed to investigator he didn't have a driver's license because he had a "mental issue" with driving and experienced a lot of anxiety
- Investigator mistakenly noted DL was required and couldn't continue with hiring process
- Aranda believed he was disqualified because of a perceived disability, amaxophobia
- Fact issues in case, but because driving was not essential function of job, court allowed case to proceed on the issue of whether disqualification was because of perceived disability
- **Remember:** If an employer treats an applicant as if they have an impairment, the applicant can bring a "regarded as" discrimination claim.



26

---

---

---

---

---

---


---

---

**Discrimination**

**Tex. Dep't of Pub. Safety v. Turner, 729 S.W.3d 93 (Tex. App.—Houston [14th Dist.] 2025, no pet.)**

- To overcome an employer's proof of a legitimate, nondiscriminatory reason for favoring a different candidate for promotion, an individual can rebut the explanation or show she was **clearly** better qualified than the favored candidate.
  - Court held that Turner's greater seniority and experience in some areas were not enough to show she was **clearly** better qualified.
  - The favored candidate had more experience in certain work the employer valued for the promotion in question.
- **Court:** Tenure and seniority alone do not make one the best candidate; no retaliation for adverse action (failure to promote) for complaints made over 5 months before the hiring of other candidate.



27

---

---

---

---

---

---


---

---

**Discrimination**

**South Texas College v. Fuentes, 2026 WL 111223 (Tex. App.—Corpus Christi-Edinburg Jan. 1, 2026) (mem. op.)**

- After being terminated, Fuentes claimed it was due to age discrimination after he was replaced by someone one or two years younger
- For an inference of age discrimination in discharge, an individual must show replacement by someone "significantly" younger
- The minimum threshold for when a replacement qualifies as "significantly younger" remains an open question
- **Court:** Two-year difference between Fuentes and his replacement was not significant enough to support an inference of discrimination



28

---

---

---

---

---

---


---

---

**Discrimination**

**Tex. Dep't of Pub. Safety v. Callaway, No. 24-0966, 2026 WL 969173 (Tex. Apr. 10, 2026)**

- Trooper diagnosed with PTSD went on medical leave
  - While on medical leave, issue with his daughter at the school
- Terminated after investigation
- Claimed disability discrimination and lost
- **Takeaway:** Still need objectiveness in whether the individual can perform the job; Callaway made choices
- **Reason for termination:** Callaway used poor judgment and acted unprofessionally



29

---

---

---

---

---

---


---

---

**Whistleblower Act**

**City of Montgomery v. McCorquodale, 2025 WL 3101347 (Tex. App.—Beaumont Nov. 6, 2025) (mem. op.)**

- City's grievance procedure said an employee "may" (not must) file a grievance.
- Permissive tone of the policy did not excuse the alleged whistleblower's requirement to file a grievance to preserve his rights under the Whistleblower Act.
- **Takeaway:** Even though permissive, not required language, in city policy, employee's claim dismissed because he didn't file a grievance as required by the Whistleblower Act.



30

---

---

---

---

---

---


---

---

**Whistleblower Act**

**El Paso County Juvenile Board v. Mena, No. 08-24-00128-CV, 2025 WL 3212051 (Tex. App.—El Paso Nov. 17, 2025)**

- An alleged whistleblower failed to show she reported a violation of the law regarding a release of confidential information about juveniles under the supervision of a county juvenile board.
- Alleged incident involved the employee's own consent to police officers to view some files of juveniles on her laptop after she was the subject of a traffic stop.
- Although the employee believed the release of confidential information violated state law, the only release she cited was her own.
- **Court:** The facts that her supervisors did not believe the incident violated state law, and that they instructed her to answer any questions police officers asked, did not show any violation of the law by any other public employee.



31

---

---

---

---

---

---


---

---

**Whistleblower Act**

**Harris County v. Noriega, No. 14-24-00359-CV, 2025 WL 3458627 (Tex. App.—Houston [14th Dist.] Dec. 2, 2025)**

- The Whistleblower Act prohibits retaliation against a report of a violation of a "law."
- Is an internal agency policy a "law"?
- It might be, if the agency's adoption of the policy was required by statute.
- In this case, an allegedly violated rule against false sexual harassment reporting was one part of a set of policies, some of which were required by law and some of which were not.
- **Court:** The rule in question was not required by "law." Therefore, Noriega's report of another employee's false sexual harassment complaint was not protected under the Whistleblower Act.



32

---

---

---

---

---

---


---

---

**Police Officer Term of Probation**

**City of Edinburg v. Campos, 2025 WL 3171064 (Tex. App.—Corpus Christi-Edinburg Nov.13, 2025) (mem. op.)**

- Campos was hired as a non-certified police officer by the city but was terminated one year and nine days later
- City's Civil Service Commission Rule 6.01 extended entry-level police officers' probationary period to 18 months
- Civil Service Act (Tex. Local Gov't Code § 143.027) limits the probationary period to 12 months but may be extended only "for a person who ... is not employed by a department in which a collective bargaining agreement or a meet-and-confer agreement currently exists or previously existed"
- City's meet-and-confer agreement gave it authority to extend the period of probation
- **Court:** Because the city had a meet-and-confer agreement, the Civil Service Commission rule could not extend probationary period beyond 12 months. Clause in meet-and-confer agreement did not trump state law.



33

---

---

---

---

---

---

---

---



34

---

---

---

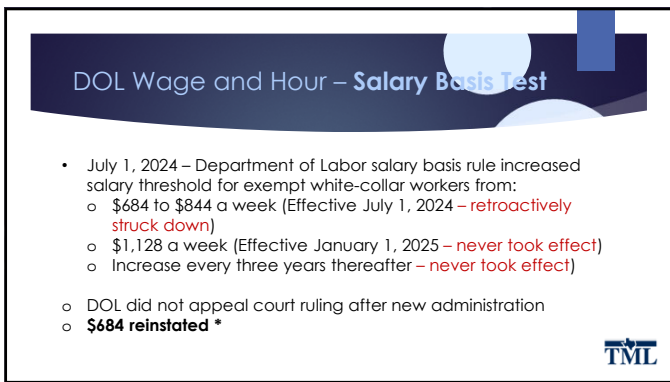
---

---

---

---

---



35

---

---

---

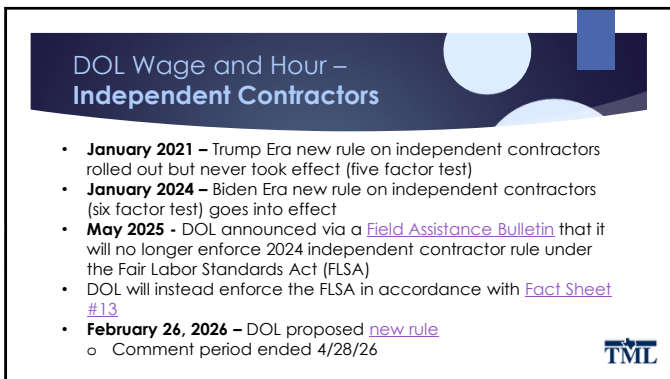
---

---

---

---

---



36

---

---

---

---

---

---


---

---

### DOL Wage and Hour – Independent Contractors

**Proposed rule:**

- Applies an "economic reality" test to determine whether a worker is in business for himself or herself as an independent contractor or is an employee **economically dependent** on an employer for work.
- Identifies five factors, but first **two "core factors"** carry more weight in analysis:
  1. **Nature and degree of control over the work;**
  2. **Worker's opportunity for profit or loss based on initiative and/or investment;**
  3. Amount of skill required for the work
  4. degree of permanence of the working relationship; and
  5. whether the work is part of an integrated unit of production.
- Provides eight fact-specific examples applying the factors to real-life circumstances.



37

---

---

---

---

---

---

---


---

---

---

### DOL Wage and Hour – Emergency Pay

- Texas Firefighter/Paramedic requested DOL opinion - [FLSA2025-04](#)
- City policy – non-exempt employees paid a premium payment of one half the employee's regular hourly rate of pay for every hour worked during an "emergency period"
- Should emergency pay be included in regular rate of pay used to calculate overtime premiums under FLSA?
  - o **Yes, emergency pay not considered an excludable overtime premium under the FLSA. Must include it in the regular rate of pay.**
- See opinion for calculation (linked above)



38

---

---

---

---

---

---

---


---

---

---

### DOL Wage and Hour – FMLA Calculations

- DOL issued opinion – [FMLA2025-02-A](#)
- Employees who work 12-hour shifts over a 2-week cycle that includes mandatory overtime – "Pitman Schedule"
- Employers commonly convert 12 workweeks of leave per year to 480 hours of FMLA leave based on a 40-hour workweek, **but the specific employee's actual schedule (including mandatory overtime) determines the conversion calculation**
- Employer seeking to calculate the hourly equivalent of FMLA leave and entitlement should do so based on the employee's actual, normally scheduled workweek
- **Example:**
  - o Officer works 84 hours every two weeks (includes mandatory overtime)
  - o His 12-workweek FMLA entitlement equivalent to 504 hours (not 480)
  - o He takes 2.5 hours off for appointment for treatment of his qualifying condition
  - o He has 501.5 hours left of FMLA leave



39

---

---

---

---

---

---

---


---

---

---

**EEOC – Guidance on Harassment**

- Jan. 2026, EEOC fully rescinded its **2024 Enforcement Guidance on Harassment in the Workplace**
- 2024 guidance specifically addressed sexual orientation and gender identity following Supreme Court decision, *Bostock v. Clayton County*
- State of Texas sued to enjoin 2024 guidance; court held EEOC guidance redefined "core definition of 'sex'"
- EEOC Chair: Guidance made legislative rules; EEOC overstepped its authority.
- **Doesn't change the law. Employers should still:**
  - Maintain a clear, written anti-harassment policy prohibiting any behavior that could constitute harassment
  - Provide regular anti-harassment training for all employees and managers
  - Upon receipt of a harassment complaint, conduct a prompt and thorough investigation



40

---

---

---

---

---


---

---

---

**EEOC – Diversity, Equity, & Inclusion**

- "DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action **motivated**—in whole or in part—by an employee's race, sex, or another protected characteristic"
- Title VII still supports voluntary diversity programs if they provide equal opportunity to all. Make sure any programs do not exclude any groups because there will be increased scrutiny on these programs.
- Ensure job screening, hiring, promotion, mentorship, and pipeline initiatives are grounded in neutral, job-related criteria; avoid racial and gender preferences, as well as any other quotas, reserved slots, priorities, or categorical exclusions; and document business purposes
- <https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work>



41

---

---

---

---

---


---

---

---

**EEOC – Guidance on Disparate Impact**

- Internal memo reports agency will no longer pursue complaints based on disparate impact
  - Impact: Individuals will get Right to Sue letter
- The US Department of Justice issued final rule on December 10, 2025, that makes clear Department Federal-funding recipients that the Department's Title VI regulations only prohibit intentional discrimination and the Department will not pursue disparate-impact liability against its Federal-funding recipients



42

---

---

---

---

---


---

---

---

**OBBBA – Overtime Tax**

- Enacted July 2025 (Effective for tax years 2025-2028)
- Federal income tax deduction for qualified overtime pay
- Employees may deduct the premium portion of their overtime
  - "Half" in time-and-a-half pay required under FLSA
  - Max of \$12,500 for single filers
  - Max of \$25,000 for married filing jointly
  - Phases out for higher earners around \$150,000 (single) and \$300,000 (joint)
- **Takeaways:**
  - Overtime wages continue to be reported on W-2s and are still subject to Social Security and Medicare taxes during the year
  - Deduction applies when employee files their federal tax return
  - Tax year 2026 – there will be a new code (IT) for qualified overtime in Box 12 of the W-2
- [IRS Fact Sheet](#)



43

---

---

---

---

---

---

---

---

**Resources**

- [TML Legal Resources](#)  
(Q&As, Handbooks, etc.)
- [TML Legislative Updates](#)  
(Federal rules updates, compliance deadlines, etc.)
- [TWC Resources](#)
- [DOL Resources](#)
- [EEOC Resources](#)



44

---

---

---

---

---

---

---

---

**Questions?**

Or come talk to a TML attorney at our booth!

45

---

---

---

---

---

---

---

---

**Contact Information**

TML Legal Department  
512-231-7400  
[legalinfo@tml.org](mailto:legalinfo@tml.org)

Amber McKeon-Mueller  
[amber@tml.org](mailto:amber@tml.org)

Stephanie Huser  
[stephanie@tml.org](mailto:stephanie@tml.org)

---

---

---

---

---

---

---

---