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LEGISLATIVE AND ADMINISTRATIVE ACTIONS

Shut Down of Federal Mediation and Conciliation Service. The Administration is moving to eliminate the Federal Mediation and Conciliation Service (FMCS). This is an independent agency that has been critical in resolving major private sector labor relations issues, nationwide strikes, and assisting employers and unions in contract negotiations. FMCS mediators have been especially helpful for smaller employers who do not have the same expertise or legal depth as do larger companies and national unions. The FMCS was created 80 years ago at the request of employers to be a neutral mediator and foster industrial peace, and its services are provided at no cost to the parties. President Trump has directed the FMCS to eliminate its staff to the minimum presence and function possible. Some FMCS employees who have lost their jobs have started their own mediation services to help fill the void. They do charge for their services, but do provide an option for parties who need assistance.

President Trump Issues Executive Order Directing Federal Agencies to Ignore Disparate Impact Discrimination. Disparate Impact, a long-established and important element in antidiscrimination law, is when an employment practice or policy results in harm to a disproportionate number of applicants or employees of a particular group. For example, a hiring practice that results in rejecting a large number of qualified female applicants has a disparate impact and then requires the employer to demonstrate "validity." Recently, computer/AI-based applicant screening systems have been found to have biases against women, the disabled, and some racial groups, resulting in unfair rejection of well-qualified applicants. Disparate Impact cases have been a major factor in enabling well-qualified women and people with disabilities to obtain jobs,

promotions, and equal pay for equal work. The Executive Order seeks to prevent the EEOC, Department of Labor, and other agencies from considering Disparate Impact as a form of discrimination or taking action regarding Disparate Impact. The Executive Order indicated that this was part of the president's campaign to remove Diversity, Equity, and Inclusion (DEI) from America. The theory is that DEI somehow has an adverse impact on White males, which must be corrected. The president's Order *cannot* eliminate Disparate Impact from the law. It is still a major component for discrimination cases. The EEOC and other agencies will just not be able to process these cases using this theory. Without the EEOC's efforts to screen and often resolve cases, many more will simply be filed in court, to the greater detriment of small employers who do not have the deep pockets to defend the resulting increase in litigation. With the federal government exiting, it is now more important for employers, especially smaller employers, to consider obtaining Employment Practices Liability Insurance to help protect against the increasing litigation and liabilities.

DOJ Issues Rule on Data Transfer to Countries of Concern. The Department of Justice issued new rules under the Protecting Americans' Data from Foreign Adversaries Act (PADFAA). The new Rules set restrictions involving vendor agreements, employment agreements, and investment data in which "US persons," including companies, must comply with specified cybersecurity and reporting and auditing requirements. These apply to transactions with persons or entities in a list of "Countries of Concern" that includes China and a growing list of other nations. The PADFAA imposes civil and criminal penalties for non-compliance.

U.S. Census Bureau – American Community Survey. The Census Bureau conducts periodic surveys between the 10-year national census cycles to stay more current in economic, housing, employment, employment mobility, wage levels, and other data in a rapidly changing environment. The current 2025 American Community Survey is out. The questionnaire was printed under the last administration. It has questions regarding whether one's spouse is opposite or same sex, and about race, ethnicity, etc. President Trump's new Executive Order forbids federal agencies from engaging in recognizing or using certain gender, racial, and ethnic data due to "Gender Ideology Extremism" and Diversity, Equity, Inclusion. Therefore, a question exists as to whether the Census Bureau can now even tabulate and use the information from this survey. Will that affect the economic/social usefulness and even the validity of its 2025 survey results?

LITIGATION

Theme of the Month — Celebrities Being Sued

All sorts of people can be employers. Fame does not insulate one from the standard requirements and liabilities of the various employment laws. Even the conflicts of private, personal relationships can flow over into employment cases.

Woody Allen Settles USERRA Case with Personal Chef. The personal chef of actor Woody Allen and his wife, Soon-Yi Previn, alleged that he was fired due to having taken leave for Army National Guard Service. He alleged that upon his return, he was met with hostility and resentment for having taken leave and was discharged. He sued for violating his job protection rights under the Uniformed Services Employment and Reemployment Rights Act. The parties have reached a confidential settlement of the case. *Fajardo v. Allen, et al.* (S.D. N.Y. 2025).

Wendy Williams' Ex-Spouse Has $7 Million Verdict Overturned. Kevin Hunter lost his job as Producer of the Wendy Williams Show when the couple divorced. He then sued Williams' production company under the New York Marital Bias law. Many states and municipalities have laws prohibiting employment discrimination on the basis of "marital status." He alleged his discharge was due solely to the change in his marital status rather than any performance issues. A jury awarded him $7 million. On appeal, however, the court voided the verdict. It found that the scope of the law was confined to the general status of being married, single, or divorced, but does not extend to the "spousal identity" of whom one is married to or divorced from. The law does not extend into the relationship or conflicts of a particular couple. *Hunter v. Debmar-Mercury, LLC* (2d Cir., 2025). The simplest example of this "status" vs. "identity" difference is that a company cannot refuse to hire a person because they are married. However, it can refuse to hire a specific person because they are married to (or divorced from) the person who would be their direct supervisor. This decision is based on the identity of the individuals rather than their generic marital status.

Jury Awards $1.68 Billion Against Movie Director James Toback in Serial Sexual Harassment Case. A jury awarded $1.68 billion against Oscar-nominated Hollywood director James Toback. Forty women, including a number of well-known movie actresses, alleged he engaged in sexual harassment and assault over several decades. The jury awarded approximately $4.2 million to each of the victims. *Monahan, et al. v. Toback* (S.Ct. of NY, County of NY 2025).

U.S. Supreme Court

Expanded Liability Under RICO. *Medical Marijuana, Inc. v. Horn*. The Racketeer Influenced and Corrupt Organization Act (RICO) covers various illegal activities, including wire and mail fraud. It allows individuals to sue for damage to a "business or property injury" by reason of a RICO violation. Horn purchased CBD products to help with a medical condition. They were advertised as containing 0% THC. He contacted the company to verify this claim and ordered the product. He then tested THC positive in a drug test and was fired from his job as a truck driver. He sued the Medical Marijuana company for its violation of RICO by wire and mail fraud for falsely advertising and shipping illegal marijuana across state lines in the mail. He sued for his lost income and related damages. The company objected, claiming the RICO law only covered "business and property" losses. Lost wages are a "personal injury" and are not covered. The U.S. Supreme Court clarified the issue, seeming to expand the coverage. It found that loss of employment is within damages to one's business. Thus, Mr. Horn can recover the damages he seeks. The Court acknowledged that the scope of RICO has expanded over the years from a focus on purely criminal organizations to increasing suits of standard businesses. This case is within that scope of logical extension of damages. It would be up to Congress to address whether the law has become too broad. With this allowance of employment-related damages, RICO may now become a significant employment law.

Safety and Health

PFAS Permeated Work Clothing. A group of firefighters and unions have sued over PFAS – forever chemicals in their firefighting gear. They allege these chemicals are shed onto their skin and can cause cancer and other severe, long-term health problems. The suits allege drastically increased cancer rates for firefighters since the clothing with PFAS has been used. The firefighters are suing 3M and Dupont Company for manufacturing the work gear containing PFAS and a Honeywell subsidiary for marketing the gear without disclosing it contained PFAS and a warning of the risks. The defendants claim the clothing does not pose a danger and thousands of commercial products from non-stick pans and cosmetics and stain-resistant clothing all contain PFAS and are within acceptable limits. The firefighters have asked for millions of dollars in damages. The cases are *Uniformed Professional Firefighters of Connecticut, et al. v. 3M, Dupont, et al.* (DC CT 2025) and a nationwide class action *City and County of Butte-Silver Bow v. 3M Company, et al.* (DC MT, 2025). In 2024, Dupont, 3M, and

other companies paid $11 billion to settle a case about PFAS in firefighting foam. If these cases are successful, will the next step be to sue employers who purchase uniforms or work garb for employees without first checking for PFAS?

Discrimination

Disability

High Heels and Missing Doctor Notes. Missing documents and missed steps resulted in the denial of an employer's request for summary judgment in an ADA case. A casino required cocktail waitresses to wear black high-heeled shoes. One waitress requested an accommodation of flat heels due to a foot condition. She submitted a doctor's verification of the condition and her need to wear flat heels. Nothing occurred. The casino claimed it had no record of the request. Again, she provided the medical information. The casino then provided a list of three flat-soled shoe styles it would approve. The employee wore a black Skechers-style shoe, which was not on the list. The casino told her this style was not an approved shoe. She then presented another doctor's opinion that none of the "approved" shoes were medically viable for her disability, and the soft Skecher style was necessary. The casino disciplined the employee for wearing the unapproved shoes. It again claimed it had no record of her doctor's opinion. She emailed Human Resources, claiming that she had submitted the doctor's information and been denied the accommodation required by her doctor. She then had additional medical procedures for her feet. The doctor sent yet another letter to the casino re-verifying the need for the Skechers-type shoes. Rather than pause and take the step to reconsider the accommodation, the casino fired the waitress two weeks later for continuing to wear the unapproved shoes. It claimed it did not receive the additional doctor's re-verification letter before the discharge. The waitress filed an ADA case. The casino moved for summary judgment to dismiss, arguing that the employee had not provided adequate information for the need of an accommodation after the initial request. It had granted one accommodation and had no obligation to alter its accommodation choice. The court saw the issue differently. The employee produced documentation of her doctors sending the four medical opinions regarding the need to wear the Sketcher-style shoes. It was implausible that the employer had no record of receiving three out of the four letters. The employee had clearly informed the company of the accommodation documentation following her disciplinary action; so, it was alerted to the existence of one of the doctor's letters it claimed to have no receipt of. Rather

than back down and explore the issue, the casino quickly proceeded with termination. This violated the ADA "Interactive Process" requirement. The ADA process often has a number of steps and cannot be rushed. It is also not a "one-and-done" process. Accommodation may require changes as the employee's condition or duties change. So, it can be an ongoing process. *Lopez-Duprey v. MGM National Harbor, LLC* (D. MD., 2025) Perhaps a lesson for ADA issues is regardless of what shoes you're wearing – take care to not skip any of the steps.

Sex

Department of Justice Drops Equal Pay Case. *U.S. Department of Justice v. Mississippi State Senate* (S.D. MS, 2025) The U.S. Dept. of Justice brought an Equal Pay and Title VII discrimination action on behalf of an attorney for the Mississippi Senate. The case alleged the attorney was paid far less than her male counterparts for the same or more skilled work. On April 15, 2025, the DOJ abruptly moved to dismiss the case. This seems part of the new administration's ideology to distance itself from "gender ideology extremism," which seems to translate into not taking action to address sex discrimination, withdrawing from efforts, or defunding programs to promote equality and job opportunities for women, and its anti-DEI stance.

DEI

Government Cannot Force Contractors to Abandon DEI Programs.
A government contractor sued when its contract funding was cut unless it abandoned any DEI programs. The federal court ordered the DOL to restore the contract because President Trump's anti-DEI Executive Order likely violates the First Amendment. The Constitution protects businesses' rights to expression as well as one's personal speech, including the right for a private business to decide how to legally operate without government dictating its internal policies. *Chicago Women in Trades v. Dept. of Labor* (N.D. IL, 2025)

Law Students' Sue the EEOC Due to Its Demand for Personal Identity Information. Several law students have sued the EEOC regarding the letters it issued to 20 large law firms demanding they produce detailed information about their Diversity, Equity, and Inclusion (DEI) programs, though the EEOC had no information that any programs violated the law. The EEOC demanded that the firms provide 10 years of information about all law students who had interned or applied for student internships at the law firms, including sensitive personal identity information such as name, sex, race, address, academic research, and

more. EEOC records can then become public. The students seek to prevent this information from being provided. The suit claims the EEOC has authority to commence an investigation only after a charge of discrimination has been filed by a complainant. There has been no such charge, and the EEOC demand letter had no allegations of specific facts of discrimination. It was a blanket inquiry devoid of any factual foundation, based upon pure conjecture and speculation. *Doe, et al. v. EEOC* (D.C. D.C. 2025)

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