

Future Focus: Employment Law in 2025

Insights for In-House Counsel

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Welcome

Presented By



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Today's Topics

- Non-Compete Agreements
- Wage and Hour Law – The Overtime Exemption
- EEOC – The Pregnant Workers' Fairness Act
- Social Media Policies



New Political Landscape in 2025

**But what does that mean
for employment law?**

Immigration Compliance and Enforcement

What U.S. Employers Need to Know

With increased immigration enforcement with President Trump's return to the White House, it is important for employers to be proactive in their compliance efforts. To assist you in navigating these changes, we provide you with complimentary access to: (1) an Immigration Compliance and Enforcement Checklist that outlines key areas that may require your attention and action; and (2) an ICE Q&A with answers to your top 25 questions.

What rights do you have during an I-9 audit or ICE raid? What can you do to prepare for a worksite visit from ICE? Littler is here to help. Since state requirements may vary, including mandated employee notification requirements, reach out to your Littler attorney.

[DOWNLOAD CHECKLIST](#)

[DOWNLOAD ICE Q&A](#)

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Littler's Take on the First 100 Days of the Trump Administration

The first 100 days of a new administration can bring significant changes and challenges for employers.

Littler is dedicated to keeping the C-suite, GCs and senior level employment and HR executives informed so your organization can be prepared every step of the way. Our Workplace Policy Institute® and team of knowledgeable attorneys throughout the firm are closely monitoring all developments and policy changes from the Trump administration. We are tracking executive orders and other presidential actions that are available below.

Littler's thought leadership delivered via publications, podcasts and webinars can help you understand the implications and prepare accordingly. Stay informed and compliant, and be prepared with Littler's take on the First 100 Days of the Trump administration.

[EXECUTIVE ORDER TRACKER](#)

[RESCINDED ORDER TRACKER](#)

Upcoming Events

First 100 Days of Trump Administration: Practical Immigration Advice for Employers
Webinar – February 18, 2025

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The State of Non-Compete Agreements

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NLRB Approach to Non-Compete

- During the Biden administration, the NLRB adopted a hostile position to what it calls “non-competes,” which included employee and customer non-solicitation provisions.
- Memorandum 25-01: “[T]he proffer, maintenance, or enforcement of non-compete provisions violates the National Labor Relations Act”
- Opened the door for “make-whole” relief



NLRB Shake Ups Under Trump Administration

- General Counsel Abruzzo fired on January 28, 2025
- Commissioner Gwen Wilcox was fired the same day
- William Cowen tapped as interim General Counsel for the NLRB
- Board focus seemingly shifts away from curtailing non-competes



FTC Ban

- Covered all employees, except preexisting agreements with senior executives
- Exceptions
 - *Bona fide* Sale of Business
 - Actions accrued prior to effective date
 - Good faith
- Anticipated effective date: Sept. 4, 2024



Legal Challenges to FTC Ban

- Several legal challenges followed the FTC's approval of the final rule
- *Ryan, LLC v. FTC*: Texas federal issued a stay/preliminary injunction of the final rule
- The *Ryan* court granted summary judgment for plaintiffs setting aside rule



After Effects of *Ryan, LLC* Decision & Memo 25-01

- The Biden FTC appealed the *Ryan, LLC* decision to the Fifth Circuit
- Trump administration seems unlikely to pursue this appeal but further rule changes may follow
- NLRB approach will likely change



State Legislation Impacting Non-Competes

- States with Non-Compete Bans:
 - Minnesota, California, North Dakota, Oklahoma
- States with Presentment Requirements:
 - Illinois; Massachusetts; Colorado
- States with Pending Legislation Impacting Non-Competes:
 - Illinois, Maine, Massachusetts, Michigan, Rhode Island, Wisconsin

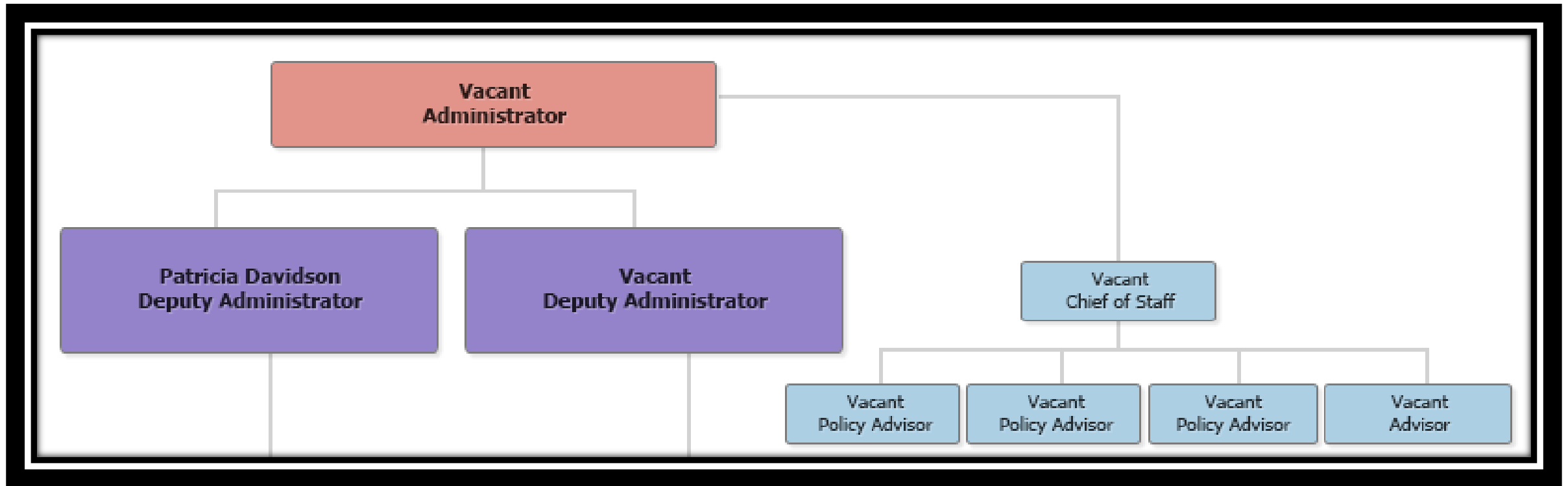
2025 Compensation Thresholds

Jurisdiction	2024 Compensation Threshold
Colorado	Colorado prohibits non-compete agreements with employees who earn less than a “highly compensated” threshold amount and prohibits non-solicitation agreements with employees who earn less than 60% of that same threshold. For 2025, the “highly compensated” employee threshold to <u>\$127,091</u> for non-compete agreements, which results in a cut-off of <u>\$76,254</u> for non-solicitation agreements.
D.C.	Washington D.C. bans non-compete agreements with workers who are not “highly compensated employees,” earning at least the specified minimum qualifying annual compensation. Based on the increase in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area published by the Bureau of Labor Statistics of the United States Department of Labor, the new threshold for highly compensated employees appears to be <u>\$154,200</u> and the threshold for medical professionals appears to be <u>\$257,000</u> .
Maine	Maine prohibits non-compete agreements with employees who earn wages less than 400% of the current federal poverty level. The 2025 threshold is <u>\$62,600</u> .
Maryland	Maryland law sets a compensation floor for non-compete agreements of 150% of the current minimum wage. Maryland’s minimum wage is \$15.00 per hour, so the compensation threshold for non-compete agreements is <u>\$22.50 per hour</u> .
Oregon	A non-compete agreement (without a garden leave provision) is void under Oregon law unless, among other criteria, the employee meets the criteria for a salaried exempt employee whose annual income at termination exceeds a minimum amount that is adjusted each year for inflation. For 2025, the minimum amount was <u>\$116,427</u> .
Rhode Island	Among Rhode Island’s non-compete prohibitions is a ban on agreements with employees who earn wages less than 250% of the current federal poverty level. The 2024 threshold is <u>\$39,125</u> .
Virginia	Virginia prohibits non-compete agreements with “low-wage employees,” defined as (1) employees whose average weekly earnings fall below Virginia’s average weekly wage and (2) independent contractors whose average hourly rate falls below Virginia’s median hourly wage for all occupations. Independent contractor information is not yet available, but the Virginia DOLI announced that the term “low-wage employee” will include all employees who earn an average of less than <u>\$1,463</u> per week for 2025.
Washington	Washington prohibits non-compete agreements with employees and independent contractors whose earnings fall below the statutory threshold, which is adjusted each year for inflation. The 2025 thresholds are <u>\$123,394.17</u> for employees and <u>\$308,485.943</u> for independent contractors.



Wage and Hour Law and the U.S. Department of Labor Wage and Hour Division

Wage and Hour Division Organization Chart



Overtime Rule – What Happened?

- April 2024: USDOL published Final Rule to raise salary threshold needed to qualify as exempt from overtime, from \$684/week to:
 - July 1, 2024: \$844/week
 - January 1, 2025: \$1,128/week
 - July 1, 2027: Automatic increases every three years
- November 15, 2024: District Court vacated the rule in its entirety.
 - State of Texas & Plano Chamber of Commerce et al. v. United States Department of Labor, No. 4:24-cv-499 (E.D. Tex.).
- November 26, 2024: DOL appealed. No. 24-40777 (5th Cir.).
- January 22, 2025: DOL secured extension to their briefing deadline.

Overtime Rule – What's Next?

- We expect the USDOL to withdraw the appeal.
 - UDSOL's opening brief is due March 7.
- It is less certain whether the USDOL will promulgate a new rule.
 - May continue to rely on \$684/week threshold dating to 2019.

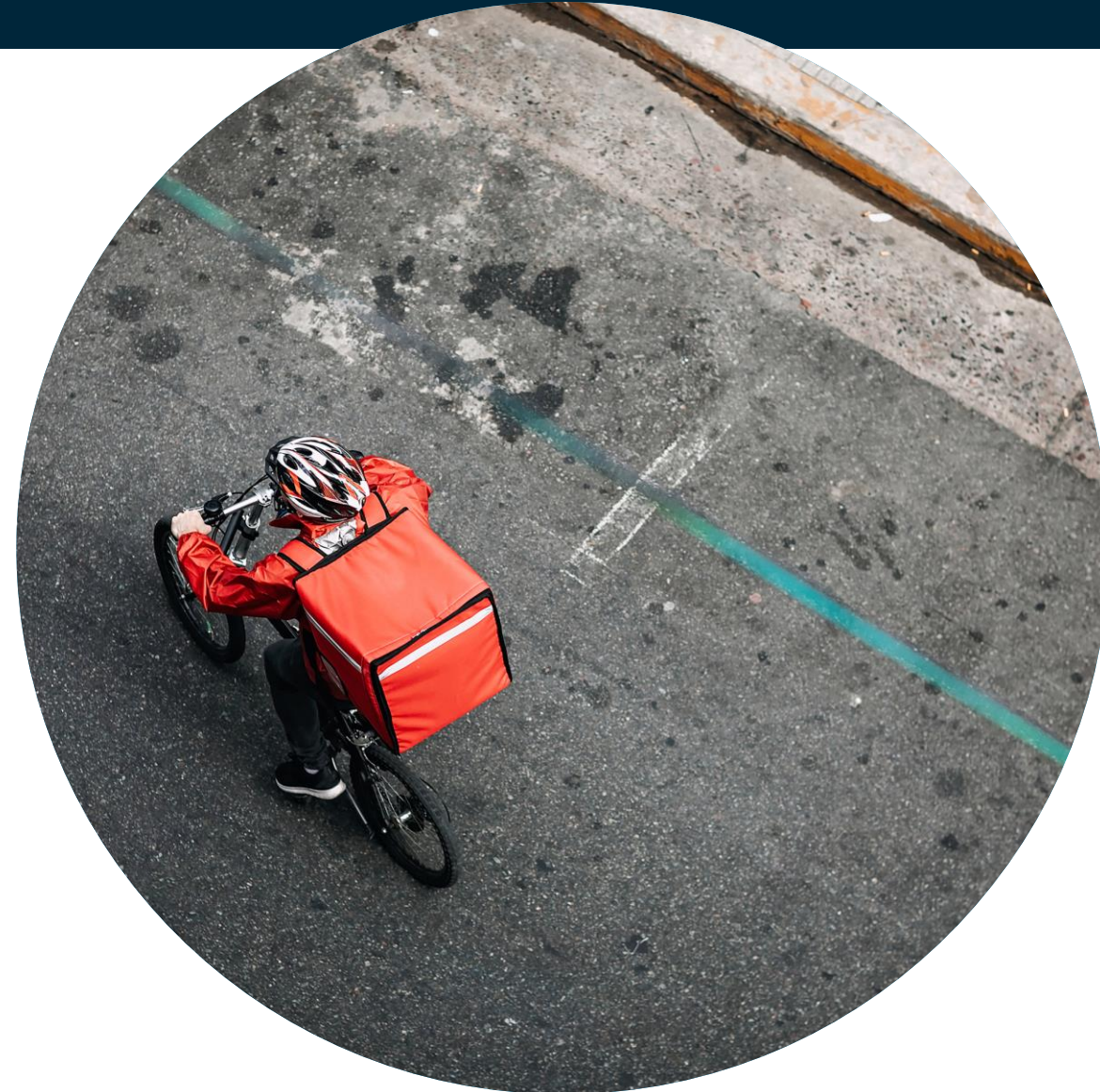


Independent Contractor Rule – What Happened?

- January 2021: Final Rule adopted a 5-factor test focusing on:
 - right to control
 - opportunity for profit/loss
- January 2024: Final Rule rescinded 2021 rule and replaced it with a “totality of the circumstances” test that considered:
 - opportunity for profit/loss
 - investments
 - permanence
 - right to control
 - whether work is “integral”
 - skill or initiative
- Court challenges remain pending.

Independent Contractor Rule – What's Next?

- USDOL may rescind the January 2024 Final Rule
 - rendering moot the pending matters
- USDOL may also consider issuing a new rule
 - restoring 2021 Final Rule
 - taking into account court rulings hostile to 2021 rule
 - promoting flexibility for “gig” economy



The Pregnant Workers' Fairness Act

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Equal Employment Opportunity Commission



Commissioner Charlotte A. Burrows (D)
Term ends July 1, 2028 *



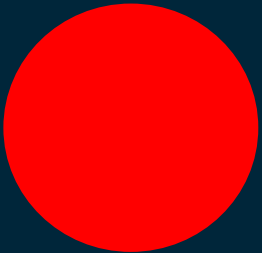
Commissioner Kalpana Kotagal (D)
Term ends July 1, 2027



Vice Chair Jocelyn Samuels (D)
Term ends July 1, 2026*



Acting Chair Andrea R. Lucas (R)
Term TBD



Vacancy (R)

EEOC's FY 2024-2028 Strategic Plan

- Pregnant Workers Fairness Act
- Discrimination Associated with the Long-Term Effects of COVID-19
- Addressing Discrimination Arising from Local, National, or Global Events
- Technology-Related Employment Discrimination



Democratic EEOC Members' Agenda

- Current Democratic Majority of the EEOC released a statement immediately upon President Trump's Orders:
 - All LGBTQ+ workers are protected by federal equal opportunity law. The agency will continue to hold employers accountable if they discriminate on the basis of an employee's protected identity.
 - Employers must proactively address barriers to equal opportunity for workers in order to comply with federal civil rights law, and monitoring hiring decisions for bias and focusing on skills-based hiring are lawful practices.
 - "These practices exclude none — they simply give all workers a fair shot to succeed."
 - "Barring adoption of these practices can only result in legal risk to employers and lost opportunities for vulnerable communities."

Lucas's Stated Agenda

- “Consistent with the President’s Executive Orders and priorities, my priorities will include rooting out unlawful DEI-motivated race and sex discrimination; protecting American workers from anti-American national origin discrimination; defending the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces at work; protecting workers from religious bias and harassment, including antisemitism; and remedying other areas of recent under-enforcement.”



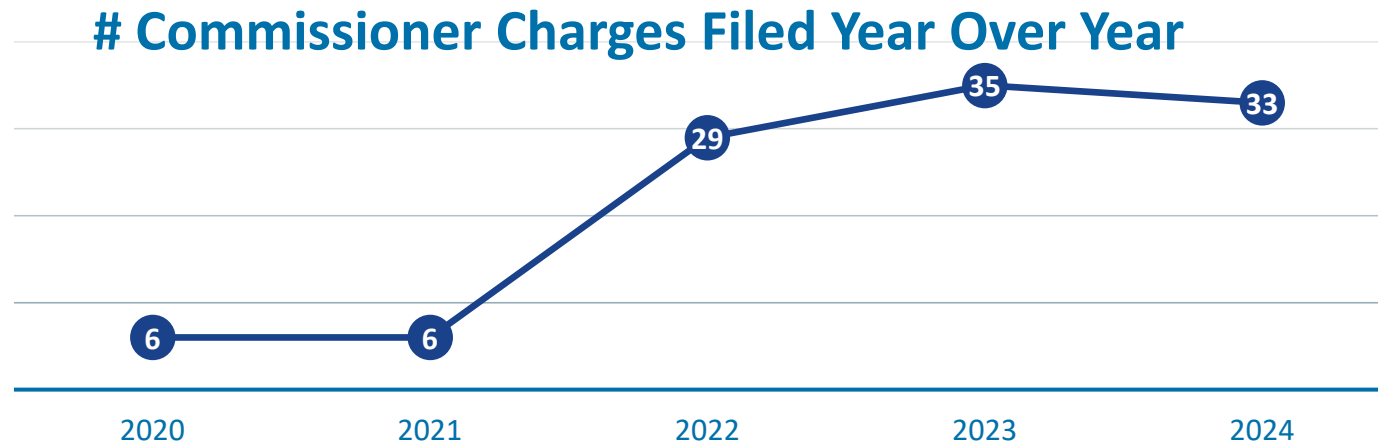
Future Equal Employment Opportunity Commission Initiatives

- “Reverse Discrimination” and DEI
- Employee compensation data collection
- LGBTQ+ protections under *Bostock v. Clayton County*
- Religious liberty in the workplace
- Pregnant Workers Fairness Act



Anticipated EEOC Enforcement

- We anticipate an uptick in commissioner charges.
- Substantial increase in commissioner charges since 2020:



- Lucas has filed 38 commissioner charges since joining the EEOC in 2020.



Social Media Policies

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It is unlawful for a person to assault or intimidate a citizen, discharge a citizen from employment or occupation, or eject a citizen from a rented house, land, or other property because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State.

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A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than two years, or both.

Case Study

- You receive an anonymous report through your company's hotline.
- An employee commented on a Facebook post about NASCAR driver Bubba Wallace painting “Black Lives Matter” on his racecar.



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*“Yes, f*** NASCAR, done with it ... if u had #whitelivesmatter, you are racist and bigot, etc. But them Mfers can use racist sh** all the time ... All races do it ... trying to erase and change history removing a historical flag now.”*

Your employee

“

“Everyone should by [sic] more ammo.”

Your employee

The company terminated the employee.

The employee then filed a lawsuit alleging he was wrongfully terminated for sharing his “political opinions” on Facebook, in violation of S.C. Code Ann. § 16-17-560.

**What would
you do?**

South Carolina Case Law

- Judge Lydon – The employee's Facebook comments did not constitute protected speech under the statute.
- The political opinion and expression covered by the statute extends only to matters directly related to the executive, legislative, and administrative branches of Government.
 - Political party affiliation
 - Political campaign contributions
 - The right to vote

Narrow Interpretation

- S.C. Code Ann. § 16-17-560 does NOT extend to all opinions and expressions protected under the First Amendment
- Only intended to cover matters directly related to the branches of government





Social Media Policy

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Use it in a print run of any size
Incorporate the image into your merchandise - as long as the image itself is not the merchandise!

Takeaways

- **Implement a policy**
- **Consistent application**
- **Assess state law**
- **Consider the NLRA**

Littler WPI's Election Report 2024

NEWS & ANALYSIS > WPI REPORT

Littler WPI's Election Report 2024

By Michael J. Lotito, Shannon Meade, Jim Paretti, Jorge Lopez, Deepti Orekondy, and
Carole Wilder on November 7, 2024

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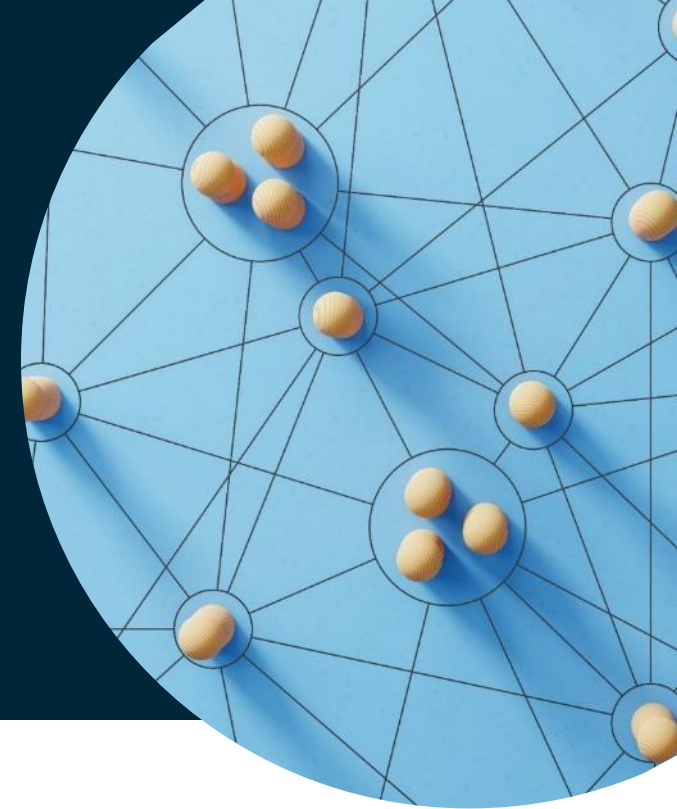
[Littler WPI's Election Report 2024 | Littler Mendelson P.C.](#)



Questions?

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.





Thank You

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