

Employment Law at the High Court: Essential Takeaways for In-House Counsel

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Overview of Cases

Terms & Conditions of Employment:

- **EMD Sales v. Carrera** The clarified standard of proof for FLSA exemptions
- Stanley v. City of Sanford, Fla. ADA protections and retired employees
- Medical Marijuana, Inc. v. Horn Impacts on employer drug-testing programs

102 Litigation Related:

- Lackey v. Stinnie Redefining "prevailing party" in employment litigation
- Trump v. CASA, Inc. Limits on nationwide injunctions in employment cases

O3 Employee Rights:

- AFGE v. Trump Key decisions on federal workforce reductions
- Ames v. Ohio Department of Youth Services The latest on reverse-discrimination claims





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Terms & Conditions of Employment

The Clarified Standard of Proof for FLSA Exemptions

Snapshot of the Decision

Central Holding: EMD Sales v. Carrera (604 U.S. 45 (2025))

Unanimous Court: Preponderance of the evidence is the default standard for employers to prove FLSA exemptions.

- Reverses Fourth Circuit's "clear and convincing" requirement.
- Aligns all federal circuits under a single, lower evidentiary threshold.
- Leaves substantive exemption tests unchanged (duties, salary basis, etc.).



Facts of the Case

DC-area food distributor E.M.D. Sales, Inc. employed sales representatives who managed inventory and took orders in grocery stores.

Sales reps worked over 40 hours/week without overtime pay.

Sales reps sued under the FLSA for unpaid overtime.

E.M.D. claimed the sales reps were exempt under the FLSA's "outside sales" exemption.



Procedural History

District Court (Md.)

E.M.D. failed to prove that the sales rep role qualified for exemption by "clearand-convincing evidence".

Fourth Circuit

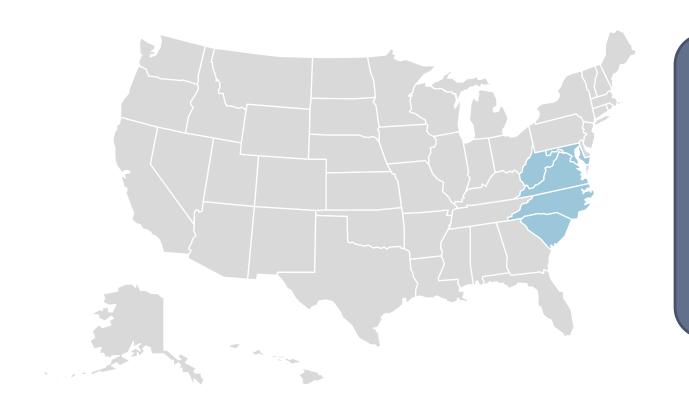
Affirmed under Fourth Circuit precedent requiring employers to prove applicability of FLSA exemptions by "clear and convincing evidence".

Supreme Court

Reversed and remanded, holding that "preponderance of the evidence" is the proper standard of proof for FLSA exemptions.



Where Does This Change the Law?



Maryland
Virginia
West Virginia
North Carolina
South Carolina



How Does This Change the Law?

Practical Impact:

- Active & Future Litigation Employers no longer need "clear & convincing" proof; existing cases likely remanded for reevaluation.
- Settlement Posture Lower evidentiary bar may improve defense leverage in ongoing disputes.
- Compliance Audits Historical self-audits based on the higher standard should be refreshed; policies can be re-calibrated with reduced litigation risk.

Why the Standard of Proof Matters Internally

Preponderance = "More Likely Than Not"

- Documentation Threshold Needs credible evidence, not near-certainty.
- Audit Efficiency Internal reviews can close sooner; perfection not required to defend an exemption.
- Budget Allocation Compliance dollars shift from over-collecting proof to higher-value preventive work (e.g., training, policy updates).
- Decision-Making Culture Principled, timely calls, not analysis paralysis.

Balancing Risks When Classifying Employees



Practical Tips for In-House Counsel

Building Defensible Exemption Decisions

Update Job Descriptions – Align with actual duties; avoid aspirational language.

Contemporaneous Narratives – Ask managers to write down real examples of exempt tasks quarterly.

Two-Person Sign-Off – Require HR + Legal concurrence on each exemption decision.

Annual Spot Audits – Select random exempt roles to ensure employees are doing exempt work.

Train Supervisors – They are key to good records and compliance.

"When in Doubt, Overtime Out" Rule – If you're not sure, it's safer to classify the employee as non-exempt and pay overtime.



Key Takeaways



Carrera makes preponderance the nationwide rule.



<u>Immediate</u> impact is greatest in the Fourth **Circuit states**



Internal audits can be leaner but must remain stru<u>ctured</u>



Apply a riskbalanced framework—legal merit, proof, damages, operations, culture.



Good documentation is still the best protection against lawsuits.



ADA Protections and Retired Employees

Stanley v. City of Sanford, Fla. (June 20, 2025)

The Supreme Court held that under the Americans with Disabilities Act (ADA) a plaintiff must plead and prove that they held or desired a job and could perform the job's essential functions with or without reasonable accommodation at the time of the employer's disabilitybased discrimination.

A retired employee who does not hold or seek a job is not a "qualified individual" under the ADA.



Facts of the Case

Karyn Stanley worked as a firefighter for the City of Sanford, Florida, starting in 1999, and the City offered health insurance until age 65 for two categories of retirees: those with 25 years of service and those who retired earlier due to disability.

In 2003, the City changed its policy to provide health insurance up to age 65 only for retirees with 25 years of service, while those who retired earlier due to disability would receive just 24 months of coverage.

Ms. Stanley later developed a disability that forced her to retire in 2018, entitling her to only 24 months of health insurance under the revised policy.

Ms. Stanley sued, claiming the City violated the Americans with Disabilities Act by providing different health-insurance benefits to those who retire with 25 years of service and those who retire due to disability.



Procedural History

- The district court dismissed her ADA claim, reasoning that the alleged discrimination occurred after she retired, when she was not a "qualified individual" under Title I of the ADA, 42 U.S.C. § 12112(a), because she no longer held or sought a job with the defendant. The Eleventh Circuit affirmed.
- The Supreme Court resolved a circuit split.



Supreme Court **Holding and Analysis**

Section 12112(a) of the ADA makes it unlawful for a covered employer to discriminate against a qualified individual on the basis of disability in regard to compensation.

The question presented is whether § 12112(a) addresses discrimination against retirees.

A "qualified individual" is someone "who, with or without reasonable accommodation, can perform the essential functions of the employment position that [she] holds or desires." § 12111(8).

Congress's use of present-tense verbs ("holds," "desires," "can perform") signals that § 12112(a) protects individuals able to do the job they hold or seek at the time they suffer discrimination, not retirees who neither hold nor desire a job.

Practical Implications

- Narrows the scope of the ADA
- Gives some greater flexibility in designing retiree benefits
- If a person can plead and prove that they are both disabled and qualified when their employer adopted a discriminatory retirement benefits policy, the ADA could be available



Impacts on Employer Drug-Testing Programs

Medical Marijuana, Inc. v. Horn (2025)

Supreme Court Decision & Implications for Employers

Facts of the Case

Medical Marijuana, Inc. v. Horn (2025)

- Douglas Horn, a commercial truck driver, used a CBD product called "Dixie X," which was advertised as being THC-free.
- Horn testified positive for THC during a random drug screening at his job and his employment was terminated.
- Horn sued the manufacturer, Medical Marijuana, Inc., bringing a civil RICO (Racketeer Influenced and Corrupt Organizations Act) claim based on allegations of a pattern of racketeering through mail and wire fraud by falsely advertising its product. He sought to recover for lost employment, including lost wages.

Procedural History

Medical Marijuana, Inc. v. Horn (2025)

- The district court dismissed the RICO claim, arguing that Horn's economic loss was derivative of a personal injury (THC ingestion) and therefore not recoverable under RICO. On appeal, the Second Circuit reversed this decision, finding such economic loss recoverable.
- The Supreme Court was then prompted to hear the case given a split among federal appeals courts. Some circuits held that plaintiffs could not recover for business or property loss that stemmed from a personal injury, while others, like the Second Circuit, did allow such claims.

Supreme Court **Holding and Analysis**

Holding: In a 5-4 opinion, authored by Justice Amy Coney Barrett, the Court held that Horn can recover for economic damages, even if the harm is tied to a personal injury.

Focus on the kind of harm: The majority opinion concluded that the civil RICO statute focuses on the type or "kinds of harm" for which a plaintiff can recover, not the "cause of the harm." Therefore, the scope of civil RICO can extend to business and property losses even if they result from a personal injury.

Distinction between types of damages: The Court affirmed that RICO still implicitly bars claims for personal injuries, such as pain and suffering. However, if a personal injury leads to an economic loss, such as lost business or wages, those economic losses can be recovered.

General Implications

This decision broadens the scope of civil RICO lawsuits, especially against drug manufacturers, medical device companies, and other consumer product manufacturers.

Limitations:

- While the decision makes it potentially easier for plaintiffs to seek significant financial damages (i.e., treble damages under RICO), the Court affirmed that plaintiffs must still prove a manufacturer's pattern of racketeering activity and then prove a direct causal relationship between the fraud and the economic loss.
- In terms of other limitations, the Court noted that "business" may not encompass every aspect of the impacted employment, and "property" may not include every penny in the plaintiff's pocketbook. In short, not every monetary harm necessarily implicates RICO.
- In response to concerns that the expanded scope will lead to a proliferation of meritless RICO suits, the Court noted it is up to Congress to make any necessary corrections to limit scope of liability.

Open questions:

- The Court expressed no view on whether the plaintiff had actually suffered any personal injury, which has been remanded to the lower court
- The Court did not decide the types of financial loss included in an "injury to property." Justice Kavanaugh's dissent noted the lack of clarity around whether lost wages and other employment losses are recoverable losses of business or property.
- The Court noted that the Second Circuit's interpretation that injury in "business" under RICO encompasses "employment" may or may not be correct.



Potential Implications/Risk for Employers

Scope of RICO – The open questions and significant financial incentives leave room for attempts by plaintiffs' attorneys to test the expanded scope of civil RICO claims.

Third-party entanglements in Increased RICO lawsuits – While the ruling targets manufacturers and does not implicate employers directly, a wave of RICO claims involving lost wages would likely pull the employer into the litigation.

- Witness or co-defendant: The employer may be subpoenaed as a key witness to establish "business or property" harm— i.e., the job loss and extent of lost wages.
- **Information requests and discovery:** Employers can expect to receive subpoenas and discovery requests for the employee's drug-testing records, employment history, and internal communications related to the termination.
- **Scrutiny of policies:** The ruling creates a powerful incentive for plaintiffs' attorneys to investigate all circumstances surrounding a termination based on drug testing. Therefore, employers will likely be subpoenaed for employment policy records or called to testify about their drug testing policy. Inconsistent application of policies and related adverse employment actions, particularly for nonsafety sensitive roles, may invite state-level claims.

No change to state law protections related to drug testing and marijuana use

 While the employee in this case was subject to federal Department of Transportation (DOT) drugtesting rules, in non-DOT regulated settings, an employees' rights under state laws that may permit medical or recreational cannabis remain intact.



Recommendations for Multi-state Employers

- Re-evaluate drug-testing policies and procedures: Many employers have zero-tolerance drug policies, including in non-DOT industries. However, companies that rely on such policies may be at greater risk of being pulled into a manufacturer's RICO case. Further, as more states legalize cannabis and the CBD market grows, this case serves as another data point pushing employers to re-evaluate those policies.
- Mere use of THC vs. Current Impairment: Some drug-testing policies are rooted in federal regulations that test for the presence of THC metabolites, but do not prove current impairment given it can remain in a user's system for weeks. As societal and legal views shift, employers may need to reconsider whether such tests align with their actual business needs for safety and performance.
- Consider alternative approaches to drug testing: Non-DOT employers using zero-tolerance could consider alternatives, such as incorporating drug screening into broader fitness-for-duty evaluations or only where there are safety issues, to mitigate risk. Be mindful that such changes carry their own legal and practical complexities.
- Monitor State and Local Law Updates: Establish a system to track regulatory changes and court decisions in each jurisdiction where the company hires and employs its employees.
- Engage External Legal Counsel: Seek legal counsel with employer drug-testing expertise to understand the evolving legal landscape, especially for companies operating in multiple states with varying laws. When developing or shifting a policy approach that considers state variances, obtain advice to support compliance and minimize litigation risks as the law evolves and as RICO liabilities possibly expand to increasingly place employers' policies under scrutiny by plaintiffs' attorneys.



01

Terms & Conditions of Employment

Questions & Discussion



Litigation Related

Lackey v. Stinnie, 604 U.S. ____(2025)

Redefining "Prevailing Party" in Employment Litigation

Facts of the Case and Procedural History

- Plaintiffs, including Damian Stinnie, challenged a Virginia statute suspending drivers' licenses for unpaid court fines without due process, claiming it was unconstitutional.
- District Court (2018): The Western District of Virginia granted plaintiffs a preliminary injunction blocking enforcement of the Virginia law.
- Legislative Repeal (2020): Before the case reached final judgment the Virginia General Assembly repealed the law and ordered reinstatement of suspended licenses, effectively mooting the lawsuit.
- Plaintiffs sought attorney's fees under 42 U.S.C. § 1988(b) as prevailing parties based on the preliminary injunction and legislative repeal. The district court declined to award fees, reasoning no final judgment was entered.
- Fourth Circuit Court of Appeals (2023): The Fourth Circuit reversed, holding plaintiffs were prevailing parties eligible for attorney's fees despite the absence of a final merits judgment, relying on the preliminary injunction and the enduring effects of the law's repeal.
- On February 25, 2025, the Supreme Court reversed the 4th Circuit and denied fees (7-2), overturning 11 US. Courts of
 Appeals.



What is the Civil Rights Attorney's Fees Award Act, 42 U.S.C. § 1988(b)?

- Enacted in 1976, "Section 1988" ensures that prevailing plaintiffs in civil rights cases have access to attorney's fees. Congress recognized that the financial burden of pursuing constitutional claims can be a substantial barrier, especially for individuals and groups with limited means.
- This is a departure from the "American Rule," under which parties pay their own fees.
- The Court noted that a different body of case law addressed when a defendant is a "prevailing party" for the purposes of other fee-shifting statutes.

Key Issue and Holding

Key Issue: When can plaintiffs recover attorney's fees as "prevailing parties" under civil rights statutes?

Holding: A plaintiff is a "prevailing party" under the Civil Rights Attorney's Fees Awards Act, 42 U.S.C. §1988(b), only when a court grants conclusive, enduring relief on the merits. Preliminary injunctions alone do not confer prevailing party status necessary to recover attorneys' fees.

This is now a bright line rule for the purposes of judicial economy.

But: The Court observed that "a plaintiff may quality as a "prevailing party" based on an award of nominal damages... or a final victory on a material even if not predominant claim."

Which Employment Statutes Allow Fee Recovery under Section 1988 or Similar **Provisions?**

- Section 1981
- Title VII of the Civil Rights Act of 1964
- Americans with Disabilities Act (ADA)
- Age Discrimination in Employment Act (ADEA)
- Equal Pay Act (EPA)
- Fair Labor Standards Act (FLSA)
- Federal and state whistleblower protection laws
- State anti-discrimination laws

What type of injunctive relief do plaintiffs seek?

• Reinstatement, promotion, reasonable accommodations, policy changes, training, cease and desist orders or other equitable remedies to prevent or correct discrimination



What Scenarios Still Allow for a Plaintiff's Fee Recovery?

- Final Judgment on the Merits
- Permanent Injunction (not just a preliminary order)
- Court-Ordered Consent Decree
- Summary Judgment or Other Dispositive Motions
- Appellate Rulings Affirming Final Relief

Impact on Employer Liability

What has changed?

- Less Risk from Interim Relief: Without the risk of fees based solely on a preliminary injunction or policy change, employers face less financial exposure in cases resolved prior to a final judgment.
- Deterrent on Plaintiff Litigation: Fee-shifting encourages attorneys to represent plaintiffs lacking resources. The ruling could deter some employment and civil rights litigation (noted in Dissent by Justices Jackson and Sotomayor).

But:

- **Prolonged Litigation:** Plaintiffs may avoid seeking injunctions or other early-stage resolutions and prolong litigation to final judgment to secure fee awards, increasing litigation duration and costs for employers.
- "Kitchen Sink" Effect: Lackey states: "a plaintiff may quality as a "prevailing party" based on an award of nominal damages... or a final victory on a material even if not predominant claim." Plaintiffs may add claims to increase the chances of a win and prevailing party status.

Impact on Settlement Posture:

- **Improved leverage for employers early on**: Plaintiffs have reduced bargaining power before a final merits-based order, since employers know early-stage litigation is unlikely to trigger prevailing-party status and fee awards.
- Reduced leverage for employers later on: Some plaintiffs may be incentivized to litigate beyond preliminary relief or add claims to secure final adjudication and fees, increasing defense costs and plaintiff bargaining power.
- <u>Continued Pressure from Other Risks</u>: Settlement pressure for employers remains from other factors including potential damages, adverse publicity, management time, and reputational harm, even if the risk of statutory fee awards is reduced at interim stages.

Practical Guide for In House Counsel

- Evaluate litigation and settlement decisions with awareness of fee award limitations post-*Lackey*.
- If a claim seeks injunctive relief such as policy changes, training or reinstatement, consider if meeting the demand could end the case early and avoid fee-shifting questions.
- Review employment contracts and separation agreements for fee-shifting clauses and understand their enforceability in this new context.
- Prepare for potentially longer litigation cycles as plaintiffs may push for final merits adjudication or add claims.
- Stay informed on evolving case law interpreting "prevailing party" in employment statutes with fee-shifting provisions.



Trump v. Casa, Inc. 606 U.S. 831 (2025)

Limits on Nationwide Injunctions in Employment Cases

Trump v. Casa, Inc. 606 U.S. 831 (2025)

Snapshot of the Case

- President Trump issued Executive Order 14160 to limit birthright citizenship for children born to undocumented or temporary-status immigrants.
- Multiple lawsuits filed: individuals, states and immigrant rights groups challenged the Order.
- Three district courts (Washington, Maryland, New Jersey) issued "universal injunctions" blocking the order nationwide.
- Trump appealed and all three circuit courts the Ninth, Fourth and First, affirmed the universal injunctions.
- Supreme Court consolidated the cases and expedited review via "shadow docket" process without full merits briefing.

Supreme Court **Holding and Analysis**

Supreme Court ruled 6-3 that federal district courts may not issue universal (nationwide) injunctions unless necessary to provide "complete relief" to the specific plaintiffs.

"Universal injunctions likely exceed the equitable authority that Congress has given to federal courts."

Injunctions should be limited to parties involved, not extending protections to all potential plaintiffs nationwide.

The Court did not rule on the constitutionality of the Executive Order; decision was purely about judicial authority to issue relief.

Holding grounded in historic "equitable relief" doctrine emphasizing narrow, case-specific injunctions over broad injunctions.



Practical Implications for Employers

Trump v. CASA complicates compliance for multi-state employers. Before this decision, multistate employers could implement uniform practices across their organizations in response to nationwide injunctions.

For example, courts have halted many labor and employment related Executive Orders and agency regulations, including the following:

- Federal Trade Commission's ban on non-compete agreements
- Changes to the Department of Labor's joint-employer rule
- EEO-1 reporting requirements
- Changes to eligibility for work visas and green cards
- Changes to union election rules
- COVID-19 vaccine mandates
- Updated salary thresholds for workers under the Fair Labor Standards Act



Practical Implications for Employers

- Universal injunctions blocking workplace or regulatory rules may no longer be issued; **enforcement is likely to vary by jurisdiction** or parties sued.
- Multi-state employers face **patchwork of federal workplace rules**, including wage/hour, health mandates, and labor protections.
- Increased **litigation complexity** as broader relief requires **class actions** or multi-plaintiff suits. Universal injunctions against federal agencies under the **Administrative Procedure Act (APA)**, such as vacating a national employment rule, were left unresolved.
- Multi-state employers must **monitor overlapping enforcement landscapes** for compliance risks.



Practical Guide for In House Counsel

Conduct a Compliance Audit of HR Policies:

- Identify policies subject to conflicting injunctions or regional enforcement differences.
- Where feasible, customize policies to reflect state and regional variations rather than relying on uniform national policies.
- For uniform policies, meet the strictest standards to reduce the risk of inadvertent noncompliance.

Enhance Employee Communication and Training:

- Inform HR and managers of the variable legal environment. Train them on how policies may differ regionally and the importance of compliance in every jurisdiction.
- Inform employees that policies may differ based on their work location. Employee handbooks and policies should be clear that different standards may apply based on an employee's primary work location.

Managing employee expectations is key to managing employment litigation risk.

Monitor Litigation and Regulatory Updates:

- Track ongoing court decisions and regulatory changes in each key jurisdiction where the company operates. This includes federal district court rulings, agency rule changes, and class action developments.
- Engage Legal Counsel. Work closely with external and in-house counsel to understand the evolving legal landscape, especially related to new injunction limits and patchwork enforcement risks. Obtain advice on litigation risks and appropriate policy adaptations.





02

Litigation Related

Questions & Discussion



03 Employee Rights

Key Decisions on Federal Workforce Reductions

OPM v. AFGE Trump v. AFGE McMahon v. New York

Three Supreme Court Decisions Affecting Federal Workforce Reductions

- Office of Personnel Management v. American Federation of Government Employees, 145 S. Ct. 1914 (Apr. 8, 2025)
- Trump v. American Federation of Government Employees, 145 S. Ct. 2635 (July 8, 2025)
- *McMahon v. New York*, 145 S. Ct. 2643 (July 14, 2025)

Multiple other cases are winding their way through U.S. District and Circuit Courts.



Trump Administration Action (February 2025):

- Office of Personnel Management (OPM) directed the termination of thousands of probationary employees in all federal agencies.
- OPM disseminated a template termination letter stating that termination was "based on . . . performance".

Procedural History:

- 2/27/25 N.D. Cal (J. Alsup) issues TRO
- 3/4/25 OPM clarifies that "not directing agencies to take any specific performance-based actions regarding probationary employees."
- 3/14/25 N.D. Cal. issues PI requiring reinstatement of 16,000+ probationary employees: "The Office of Personnel Management has no authority to hire and fire employees in another agency."
- 3/15/25 N.D. Cal. denies Administration's motion for stay pending appeal.
- 3/17/25 Ninth Cir. denies Administration's motion for immediate administrative stay of Pl.
- 3/26/25 Ninth Cir. denies Administration's motion to stay Pl.
- 4/8/25 U.S. Supreme Court (7-2) stays PI pending Ninth Cir. appeal
- 4/18/25 N.D. Cal. issues PI on motions by parties not subject to PI stayed by Supreme Court



Scope of New (4/18/25) Preliminary Injunction

- OPM may not direct any other federal agency to terminate the employment of any federal employee.
- Agencies may not follow OPM's directives or use OPM's template termination letter.
- Agencies that used the template letter must issue a written correction.
- Terminations based on individualized assessments by an agency may proceed (with a reasoned declaration under oath and seal).
- The court noted a reduced need for an order reinstating probationary employees, citing agencies' rehiring efforts in response to since-stayed TROs and revised OPM memo.

Appeal of 4/18 PI is pending before the Ninth Circuit.



Affected Departments of U.S. Government:

- Department of Veterans Affairs
- Department of Agriculture
- Department of Defense
- Department of Energy
- Department of the Interior
- Department of the Treasury

Trump v. American Federation of Government Employees, 145 S. Ct. 2635 (July 8, 2025)

Trump Administration **Action:**

Trump v. American Federation of Government Employees, 145 S. Ct. 2635 (July 8, 2025)

2/11/25

President issues EO 14210:

Mandates "large-scale reductions in force" and consolidations across most civilian agencies

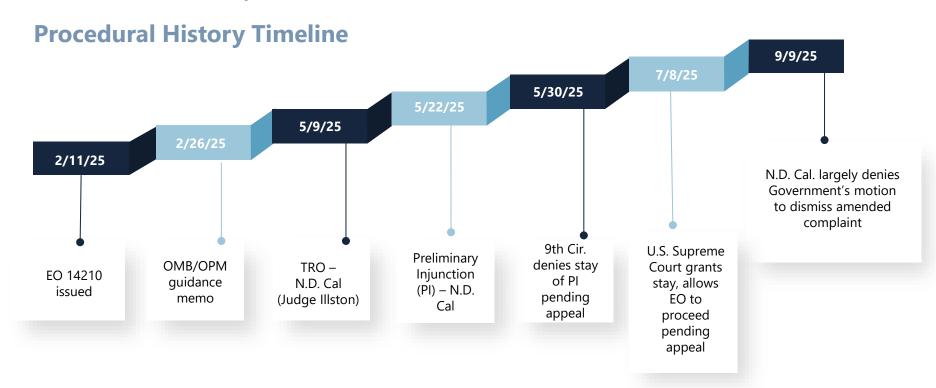
2/26/25

OMB/OPM Memorandum directs agency and department heads to submit a "RIF & Reorganization Plan" (ARRP) on an aggressive schedule



Trump v. American Federation of Government Employees,

145 S. Ct. 2635 (July 8, 2025)



Trump v. American Federation of Government Employees, 145 S. Ct. 2635 (July 8, 2025)

Upshot of Supreme Court Stay:

- Lifts PI for most agencies
- Does not decide legality of any ARRP
- Agencies may proceed with submitted ARRPs while litigation continues; some targeted injunctions remain (e.g., certain HHS components, CFPB)

Trump v. American Federation of Government Employees,

145 S. Ct. 2635 (July 8, 2025)

Affected Departments of U.S. Government:

- Department of Agriculture
- Department of Commerce
- Department of Energy
- Department of Health and HumanServices (portions)
- Department of Housing and UrbanDevelopment
- Department of the Interior
- Department of Labor
- Department of State
- Department of the Treasury

- Department of Transportation
- Department of Veterans'Administration
- AmeriCorps
- Peace Corps
- Environmental Protection Agency
- General Services Administration
- National Labor Relations Board
- National Science Foundation
- Small Business Administration
- Social Security Administration



McMahon v. New York, 145 S. Ct. 2643 (July 14, 2025)

Trump Administration **Action:**

McMahon v. New York, 145 S. Ct. 2643 (July 14, 2025)

3/11/25

The Government announced a mass RIF of Department of Education (DOE), cutting staff approximately by half

3/20/25

President issued EO directing the Secretary to "take all necessary steps to facilitate the closure of the Department of Education"

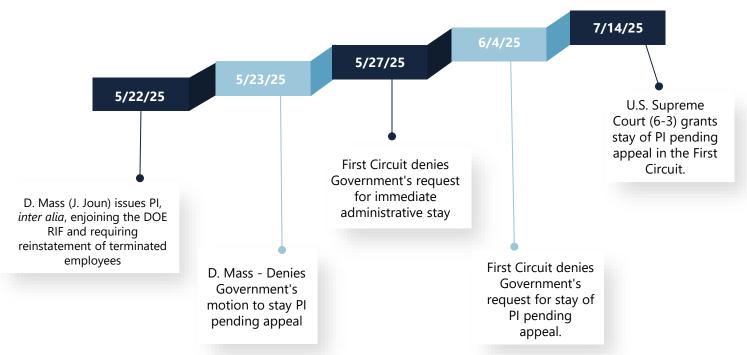
3/21/25

President announced that federal student loan portfolio and special needs programs would be transferred out of DOE



McMahon v. New York, 145 S. Ct. 2643 (July 14, 2025)

Procedural History Timeline





McMahon v. New York, 145 S. Ct. 2643 (July 14, 2025)

Affected Agency: Department of Education

Central Dispute:

- Administration said the RIF was implemented to improve efficiency and accountability at DOE.
- Lower court found that RIF rendered DOE unable to perform its statutory functions, effectively dismantling it. Only Congress may authorize an agency closure.
- SCOTUS did not rule on the merits; merely stayed the PI

Takeaways

Takeaways

Impact of These Cases on Federal Contractors

- Appeals are pending
- Uncertainty persists
- Scope of RIFs remain unknown
- Prepare for persistent delays, potential early terminations for convenience, and possible budget realignments

Employment Counsel Considerations

- Staffing Flexibility evaluate temporary vs. core positions tied to at-risk federal programs
- WARN/Mini-WARN triggers if contractor must downsize after loss of federal funding
- Separation Costs severance obligations, prudent advance agreement strategy
- Labor-Hour & Service Contract Act (SCA) Implications re-price labor categories if federal counterparts disappear
- Unionized Workforces effects on bargaining duties when workshare or location changes
- Security Clearances anticipate delays, adjust onboarding timelines
- Whistleblower & Retaliation heightened activity during RIF turbulence; reinforce reporting channels



Action Plan for In-House Counsel





Final **Thoughts**

SCOTUS stays ≠ final rulings; watch for decisions on merits

Contractor risk is indirect but tangible—funding, schedules, workforce composition

Employment counsel should lead integrated risk reviews now, not after contract disruptions

Stay agile—agency-by-agency outcomes will vary as litigation and politics evolve



The Latest Reverse-Discrimination Claims

Ames v. Ohio Department of Youth Services (June 5, 2025)



The Supreme Court, unanimously, held that a plaintiff member of a majority group need not satisfy a heightened evidentiary standard to make a prima facie case of disparate treatment discrimination under Title VII.



The "background circumstances" rule applied by the US Court of Appeals for the Sixth Circuit, which required majority group members to prove, in addition to the standard elements of a Title VII claim, that "background circumstances support their suspicion that the defendant is that unusual employer who discriminates against the majority," does not comport with the text of Title VII's disparate treatment provision or Supreme Court precedents.



Title VII's disparate treatment provision sets the same protections for every individual without regard to that individual's membership in a majority or minority group.



Facts of the Case

Marlean Ames, a heterosexual woman, worked for the Ohio Department of Youth Services in various roles since 2004.

In 2019, the agency interviewed Ames for a new management position but ultimately hired another candidate—a lesbian woman.

The agency subsequently demoted Ames from her role as a program administrator and later hired a gay man to fill that role.

Ames then filed this lawsuit against the agency under Title VII, alleging that she was denied the management promotion and demoted because of her sexual orientation.



Procedural History

- The District Court granted summary judgment to the agency, and the Sixth Circuit affirmed.
- The courts below analyzed Ames's claims under McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668, which sets forth the traditional framework for evaluating disparatetreatment claims that rest on circumstantial evidence.
- At the first step of that framework, the plaintiff must make a prima facie showing that the defendant acted with a discriminatory motive.
- Like the District Court, the Sixth Circuit held that Ames had failed to meet her prima facie burden because she had not shown "' background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority." 87 F.4th 822, 825. The court reasoned that Ames, as a straight woman, was required to make this showing "in addition to the usual ones for establishing a prima-facie case."



Holding & **Analysis**

The Sixth Circuit's "background circumstances" rule—which requires members of a majority group to satisfy a heightened evidentiary standard to prevail on a Title VII claim—cannot be squared with the text of Title VII or the Court's precedents.

The Sixth Circuit's "background circumstances" rule requires plaintiffs who are members of a majority group to bear an additional burden at step one.

The text of Title VII's disparate-treatment provision draws no distinctions between majority-group plaintiffs and minoritygroup plaintiffs.

The provision focuses on individuals rather than groups, barring discrimination against "any individual" because of protected characteristics.



Justice Thomas's Concurrence



"American employers have long been 'obsessed' with 'diversity, equity, and inclusion' initiatives and affirmative action plans. Initiatives of this kind have often led to overt discrimination against those perceived to be in the majority."



Practical Implications

- All employees are protected under Title VII.
- Simplifies the path for majority-group plaintiffs to file claims under Title VII.
- With last year's unanimous Supreme Court decision in Muldrow v. City of St. Louis, which lowered the threshold of harm necessary to state a claim of discrimination under Title VII, the Ames decision may lead to an increase in claims.
- Employers may continue to pursue carefully designed, lawful practices in furtherance of inclusivity.
- The legal landscape continues to evolve.





03

Employee Rights

Questions & Discussion



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