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An Employer's Guide to Navigating Equal Employment Opportunity Commission Priorities, Leave Laws, and Artificial Intelligence in the Workplace

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Employers are facing new challenges as federal employment discrimination objectives shift, state leave laws continue to develop and intersect with federal leave law and artificial intelligence use in the workplace becomes more widespread, in light of developing state AI law and regulations. Here, the authors address these three developing areas and provide practical steps forward to help to ensure employer compliance.

Employers are operating amid shifting enforcement priorities, evolving federal guidance, and increasingly active state regulation. The discussion that follows addresses three recurring areas of risk and operational complexity.

First, discrimination and harassment law remains anchored in long-standing principles while federal agency guidance and court challenges reshape expectations, especially around sex discrimination and developments therein relating to gender identity.

Second, leave administration requires disciplined coordination among various regulatory perspectives, including the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA) and state paid-leave programs, as well as occasionally workers' compensation laws if there were an injury arising out of the course and scope of employment. In this arena, employers must pay careful attention to eligibility, concurrent counting, documentation and the need to engage in the interactive process.

Third, the increasing use of artificial intelligence (AI) in the workplace heightens confidentiality concerns and introduces new compliance

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obligations in hiring and HR, particularly under emerging state laws targeting automated decision-making tools.

Across these areas, compliance turns on clear policies, timely notices, documentation, consistent application of procedures and alignment of business needs with legal requirements. The sections below provide detail on the evolving regulatory and litigation landscape as it relates to each of these areas as well as provide practical frameworks for ensuring compliance in investigations, leave coordination and AI use, particularly as it relates to risk management.

HANDLING HARASSMENT CLAIMS

1. EEOC Agenda

Employers now face a dynamic enforcement and litigation landscape for harassment claims, shaped by recent federal guidance, shifting agency priorities, and emerging conflicts between federal and state-law protections.

In April 2024, the Equal Employment Opportunity Commission (EEOC) issued Enforcement Guidance on Harassment in the Workplace. The Enforcement Guidance addresses covered bases and causation, conditions of employment and employer liability. The Enforcement Guidance reaffirmed core legal principles as they relate to workplace discrimination and harassment. Namely, an employee must establish he/she is a member of a protected class, the complained-of conduct was based on a protected characteristic, the conduct was unwelcome and the conduct meets the additional elements related to whether the conduct was from a supervisor/manager and whether it resulted in a tangible job action (what was formerly known as the for either quid pro quo versus hostile work environment analysis).

The Enforcement Guidance then expanded the definition of protected class of sex to include sexual orientation and gender identity. Thus, prohibited harassment conduct could include misgendering, outing and denial of access to sex-segregated facilities consistent with a person's gender identity. In response, in May 2025, a Texas federal district court vacated on a nationwide basis those portions of the Enforcement Guidance that addressed misgendering, dress codes and bathroom access, concluding that the EEOC had exceeded its statutory authority with respect to expanding Title VII's definition of sex.

With the new administration, enforcement priorities at the federal level have changed dramatically. For example, under Executive Order 14168, federal agencies are directed to enforce laws in a manner that recognizes biological distinctions and rescind prior guidance promoting gender identity frameworks, including rescission of the 2024 EEOC Enforcement Guidance. The EEOC rescinded the 2024 Enforcement Guidance in January 2026. EEOC Chair Andrea Lucas stated that

"[r]escinding this guidance does not give employers license to engage in unlawful harassment," and that "[f]ederal employment laws against discrimination, harassment, and retaliation, and Supreme Court precedent interpreting those laws, remain firmly in place." Additionally, Ms. Lucas has affirmed that the EEOC's current priorities include "returning to its mission of protecting women from sexual harassment and sex-based discrimination in the workplace by rolling back the Biden administration's gender identity agenda." For EEOC compliance, investigations and litigation this means defending the "biological and binary reality of sex and related rights, including women's rights to single-sex spaces at work."

These developments, on the federal level, have prompted some states to venture into this area, prohibiting under state law some of the conduct that the Enforcement Guidance focused on and imposing on employers in those states a broader concept of the legally protected category of sex. Wise employers will recognize that this patchwork of state laws warrants a close analysis of an employer's responsibility in this area. Employers should continue to review policies in light of applicable federal and state law, as well as, on occasion, laws at the county or city level, especially for those employers in states that explicitly prohibit discrimination based on sexual orientation and gender identity, where there are likely to be challenges to pronoun, dress code and facility-access workplace policies under state and local rules.

2. Practical Steps Forward

As noted, the core legal standards for discrimination and harassment in the workplace remain the same. To establish a claim for workplace discrimination or harassment, an employee is required to provide proof of the following:

(1) The employee is a member of a protected class.

(2) That the complained-of conduct was based on a protected characteristic.

(3) That the conduct was unwelcome.

(4) The complained-of conduct meets the additional elements for either quid pro quo or hostile work environment theories.

Effective compliance hinges on understanding these elements, implementing reasonable investigation protocols and crafting policies to comply with evolving federal and state frameworks.

The protected classes recognized by federal law include race, color, religion, sex (including pregnancy), national origin, age (40 and over),

disability and veteran status. Employer policies that align training and compliance procedures with these categories remain essential safeguards. At the same time, employers should continue to reinforce the distinction between (1) unlawful harassment and policies designed to steer far clear of any such unlawful conduct in the workplace, which should be addressed by prompt and effective remedial action, and (2) non-actionable conduct such as performance management, reasonable work assignments and disciplinary actions, such as routine coaching and counseling, and other escalating disciplinary measures, which do not constitute unlawful harassment but are sometimes projected as offensive by employees trying to use legal jargon to avoid being held accountable. Of course, in the ordinary exercise of managerial authority, employers would be wise to train their management teams in the proper exercise of management authority to avoid even the appearance that their non-actionable conduct has crossed the line in a case in which such management exercise was used to diminish or belittle rather than constructively build-up to improve performance.

Employer liability turns on both prevention and correction. A viable defense depends on reasonable care to prevent and promptly correct illegal harassment. That standard is driven by managerial accountability because management is the company and, therefore, a manager's knowledge is imputed on the company. All complaints, whether formal or informal, should be reported and investigated at some level. Managers also should be cautioned not to promise absolute confidentiality but instead communicate that the company will protect against retaliation and will maintain confidentiality to the extent possible in pursuit of an effective investigation.

A well-structured investigative/review process and prompt remedial action, if and as needed, improve legal defensibility, and, more importantly, inform employees that the complaint process has integrity and can be trusted. A best practice approach includes documenting the initial report and assembling an investigation team; identifying witnesses; collecting and reviewing documents; conducting and, if necessary, repeating interviews; reaching findings; imposing corrective action proportionate to the findings; and closing the matter with appropriate communications. Having and abiding by a robust process, rather than the outcome of that process in individual situations, is key to both meeting the reasonable care legal defense standard and promoting confidence among the workforce in the integrity of the process.

Thus, the practical imperative today is to anchor compliance in the settled elements of harassment law, maintain thorough and fair investigations and adjust policies to a complex and sometimes conflicting framework of federal guidance, court decisions and state and local protections. In this environment, periodic legal review of policies, training and investigation protocols is prudent, with documentation practices aligned to demonstrate reasonable prevention and prompt corrective

action. Employers should continue to monitor the interplay of agency guidance, federal court rulings and state-law protections when updating policies and training.

NAVIGATING THE INTERSECTION OF FEDERAL AND STATE LEAVE LAWS

Leave administration now requires coordinated management of the federal Family and Medical Leave Act (FMLA); the Americans with Disabilities Act (ADA); state paid-leave programs; and, on occasion, state workers' compensation laws, with precise attention to eligibility, documentation, concurrent counting and post-FMLA accommodations. Employers that integrate these rules through a unified process, spanning eligibility determinations, designation timing and ADA pivots, are better positioned to avoid missteps such as late FMLA designations, conflating wage replacement with job protection or bypassing the interactive process at the end of FMLA or state-protected leave.

FMLA provides up to 12 weeks of job-protected leave for eligible employees with a qualifying serious health condition. Administrators should ensure timely eligibility and rights notices and should request and track certifications with intentionality, including accurate accounting of intermittent and reduced-schedule absences. Proper and timely designation is important because it starts the 12-week "clock," influences coordination with state leave laws and their benefits and sets expectations for medical updates and return-to-work planning.

Workers' compensation and some state paid-leave programs often provide wage replacement but do not always, by themselves, provide job protection. However, even when such laws do provide job protection, those state laws allow for concurrent counting with the federal leave protection laws, mainly the FMLA. Thus, employers should designate any such protected leave as running concurrently with both FMLA and any applicable state leave program, with written notice clarifying the leave available, whether such time is job-protected and whether such time is paid. Coordination extends to aligning medical restrictions, return-to-work milestones and any light-duty offers, while observing special rules that may apply when FMLA time remains available.

It is important to note that when an employee on FMLA receives payments under a state leave law, or some disability plan or for a workers' compensation injury, the employer cannot unilaterally require the employee to use accrued employer-provided paid time off. When an employee takes job-protected leave under the FMLA, the FMLA regulations state that an employee may elect, or an employer may require an employee, to "substitute" accrued paid leave provided by the employer for any part of the *unpaid* FMLA entitlement period. On January 14, 2025, the Wage and Hour Division (WHD) of the U.S. Department of

Labor (DOL) issued an opinion letter stating that employers cannot require employees to use their employer-provided paid time off, such as vacation time, while the employee is taking FMLA leave and receiving pay under a state or local paid FMLA-adjacent program.

Wise employers also know that, under the ADA, temporary, job-protected leave can be considered a reasonable accommodation when it enables a qualified individual to return to work in the near future and perform essential job functions. Continuous leave may be required if there is a defined end point or return date; however, the ADA does not require intermittent leave as an ADA accommodation. To ensure compliance, employers should engage in the interactive process with employees who are not able to return at the conclusion of job-protected leave, such as under the FMLA, and use appropriate and targeted medical inquiries to serve such discussions, as well as appropriate authorizations for provider contact, and individualized accommodation analysis based on the role, essential functions, business needs and the feasibility of alternative accommodations.

When state-provided benefits are approved, it should not be treated as dispositive of federal eligibility or obligations. A state agency's approval of paid benefits does not determine FMLA eligibility, and the denial or exhaustion of FMLA should trigger a disciplined pivot to an ADA analysis and the interactive process. Clear documentation of decision points, timelines and communications provides transparency and supports defensibility.

A practical checklist typically includes confirming FMLA eligibility, obtaining and evaluating certifications, issuing timely notices, counting leave concurrently with state programs and pivoting to ADA before, in anticipation of, or immediately upon FMLA exhaustion. Across jurisdictions, many state programs mirror federal usage concepts, but administrators should memorialize not just when the leave is paid, but also when the time off counts as job-protected leave and when it expires, and the next steps upon expiration, in order to reduce employee confusion and legal risk. A consolidated calendar tracking FMLA usage, ADA accommodation periods and state benefit timelines mitigate administrative errors and can assist in providing proper notices. Common compliance pitfalls include late FMLA designations, assuming that state wage replacement equates to job protection, failing to provide proper communication regarding employee leave and failing to engage in the ADA interactive process after FMLA exhaustion.

Employers that marry leave tracking and integrate return-to-work planning with accommodation analysis are better positioned to balance operational needs with legal obligations. The goal now should be disciplined coordination, which includes front-end accuracy on eligibility and designation, synchronization with state programs and back-end ADA engagement, supported by timely and clear communication, written records, consistent notices and documented reasoning.

MAINTAINING CONFIDENTIALITY AND ACCOUNTABILITY WITH AI

1. Enterprise and Non-Enterprise AI Models

As AI use becomes more widespread in the workplace, confidentiality and accountability related compliance issues are of the utmost importance. The most consequential distinction is between enterprise AI tools, which offer heightened privacy, security and administrative controls and public (or consumer-grade) AI tools. Enterprise versions such as ChatGPT Enterprise, Microsoft Copilot for Microsoft 365 and Google Gemini for Workplace typically include contractual assurances that prompts and outputs are not stored or logged, not used in training models and that the tools themselves are kept separate from other entities. In contrast, public tools are accessible by anyone, may store inputs, use data for training and lack enterprise-grade confidentiality protections.

Non-enterprise AI tools present a heightened risk of inadvertent disclosure of trade secrets, client information, personal data or internal financials. Employees often use non-enterprise AI tools to complete daily tasks such as summarizing contracts, rewriting proposals, preparing board meeting materials, compiling client lists and more. Using non-enterprise AI tools to perform these tasks leads to the ingestion of sensitive content into third-party systems with uncertain retention, access and processing parameters. Even anonymized text may still reveal corporate identities through context or patterns that can be reconstructed. Once sensitive data enters a public AI model, control over storage location, retention period and access is lost. In terms of best practices, employers should treat non-enterprise AI like any third-party processor and assume inputs are public absent contrary, verifiable assurances.

Legal exposure arises under trade secret law and privilege-related doctrines. The federal Defend Trade Secrets Act and state adopted Uniform Trade Secrets Act, require reasonable measures to maintain secrecy; thus, disclosures into public AI tools can undermine that requirement. Relatedly, for attorney-client privileged communications to remain privileged, the communications may not be voluntarily disclosed to third parties, at least not without the risk of waiver. While some courts have recognized that cloud storage does not waive privilege when reasonable safeguards, such as encryption and contractual confidentiality, are in place, non-enterprise AI tools rarely offer privilege-preserving frameworks like enterprise AI tools do.

Reasonable measures employers may take to maintain confidentiality include establishing an AI usage policy that prohibits entering confidential, trade secret or privileged information into public platforms; providing training that distinguishes enterprise from non-enterprise tools; monitoring or disabling access to non-enterprise AI where justified; restricting access to trade secret materials; and negotiating contract terms

addressing confidentiality, no-training assurances, data deletion rights, and encryption guarantees. These steps both mitigate risk and help preserve trade secret status.

2. Use of AI in Hiring

AI use in hiring and HR requires particular scrutiny given anti-discrimination laws and developing state regulations. Recent litigation has targeted AI screening tools as having disparate impact on legally protected minorities. For example, iTutor, a group of integrated companies that provides English tutoring services to students in China, recently entered a settlement agreement with the EEOC for $365,000 after the EEOC filed suit based on this theory. The EEOC alleged that iTutor violated the Age Discrimination in Employment Act (ADEA) when it programmed a hiring application software to automatically reject female applicants who were 55 years old or older and male applicants who were 60 years old or older. Notably, although iTutor operates in China, the attorney representing the EEOC stated that "[p]rohibitions on age and gender discrimination do not stop at the border" and that "[e]ven companies doing business abroad will face serious consequences if they discriminate against U.S-based employees" with their use of AI. This statement reinforces that U.S. anti-discrimination laws can reach employment decisions that affect U.S.-based workers, regardless of where an employer's AI tools are utilized. Therefore, employers need to ensure they have enterprise-wide policies and controls in place, including documented human oversight of the application and hiring process.

In another federal case involving alleged disparate impact against protected groups in applicant screening, a plaintiff alleged unlawful discrimination based on age, race and disability after his applications for over 100 positions, for which he allegedly was qualified, had been rejected. Each application was rejected by the AI applicant screening software. In particular, the plaintiff alleged that the AI applicant screening software relied on biased training data and information obtained from personality tests, which resulted in discrimination. This case has since been certified as a collective action. In sum, while AI may be a helpful tool in the application and hiring process, it may also present significant risk for discrimination and bias. HR functions that may implicate this risk include resume screening, interview analysis and sentiment evaluation. Human oversight, review and bias testing are critical for ensuring compliance and creating defensible positions, in the event that litigation is to occur.

State legislative activity regarding AI use in the workplace has also increased. California, for example, has civil rights regulations that prohibit California businesses from using automated decision-making systems (ADS) that discriminate against applicants or employees based on protected statuses and impose record-keeping duties related to use of ADS systems. Colorado has adopted a law focused on preventing

"algorithmic discrimination" in making hiring, firing and promotion decisions. The law imposes requirements for risk management policies and programs, regular impact assessments and applicant notice regarding use of these AI tools in the hiring process. Illinois prohibits AI use that causes a discriminatory effect on any protected characteristic and similarly requires employers to provide notice of AI use. Similar legislation has been enacted or proposed in various jurisdictions, including but not limited to Connecticut, Massachusetts, New Jersey and New York.

On December 11, 2025, President Trump signed Executive Order 14179, outlining the Trump administration's view on AI use across industries and addressing the current patchwork of state law in this area. The order urges Congress to establish a "minimally burdensome national standard" to help ensure "the United States wins the AI race." In the absence of a federal framework governing the matter, the Trump administration will take action by establishing an AI Litigation Task Force that will challenge state AI laws deemed inconsistent with the policies set forth in the order. While the order provides insight into the Trump administration's priorities related to AI use and development in the United States, it does not presently impact existing state AI laws. Thus, employers should continue developing and maintaining compliance programs tailored to current state law. Compliance programs should track effective dates, record-keeping obligations, impact assessment requirements, transparency duties and applicability to any remote workers.

Practical controls combine policy, process and documentation. Employers should conduct regular audits of AI tools and their use for potential disparate impact, review contracts for potential indemnity language, research information provided by vendors for anti-bias protocols and data-use practices. Employers should also confirm record-keeping and notice requirements under potential state laws, including applicability to remote workers. In essence, human review remains vital in decision-making processes, especially in HR.

The intersection of confidentiality, privilege, trade secret protection, anti-discrimination principles, state privacy and AI statutes create the accountability and compliance standard for employers now. Employers that differentiate enterprise-grade tools from non-enterprise grade alternatives, enforce disciplined input controls and pair technical safeguards with clear policies and contractual protections will better preserve confidentiality. Those that layer bias testing, explainability and human oversight into hiring and HR will better satisfy anti-discrimination expectations amidst rapidly evolving state requirements.

CONCLUSION

Employers navigating today's legal environment should root their harassment prevention in reasonable care; align leave administration through integrated FMLA, state and ADA coordination; and implement

AI policies that preserve confidentiality and ensure accountability. Across all three areas, clear policies, disciplined processes and thorough documentation remain the most reliable tools for legal compliance and risk mitigation.

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