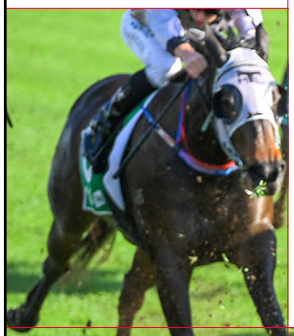
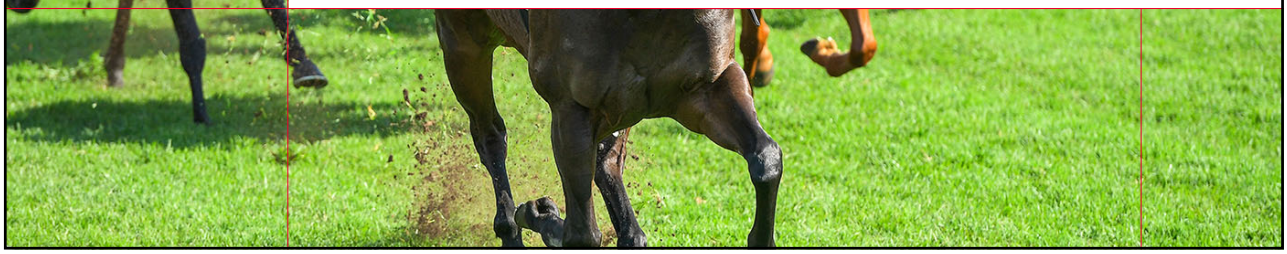
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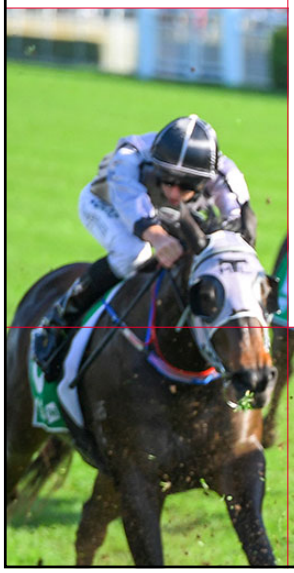
2026

LABOR AND EMPLOYMENT LAW SEMINAR

October 28, 2026 | Churchill Downs

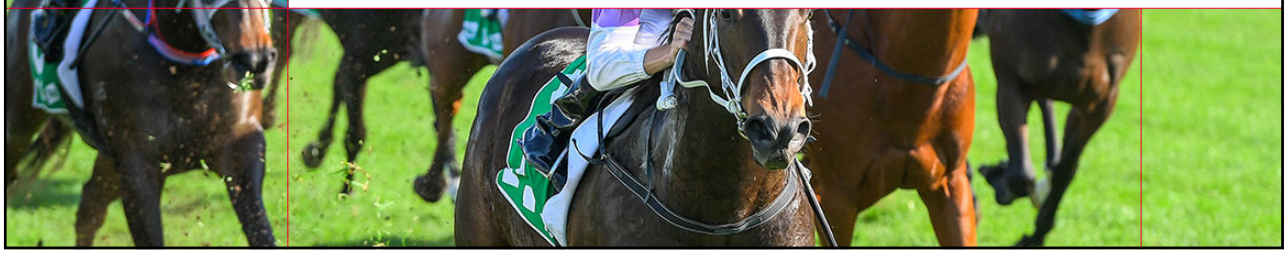


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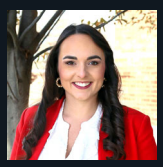
FROM FRANKFORT TO THE COURTHOUSE

Legislative, Regulatory, and Judicial Developments to Watch



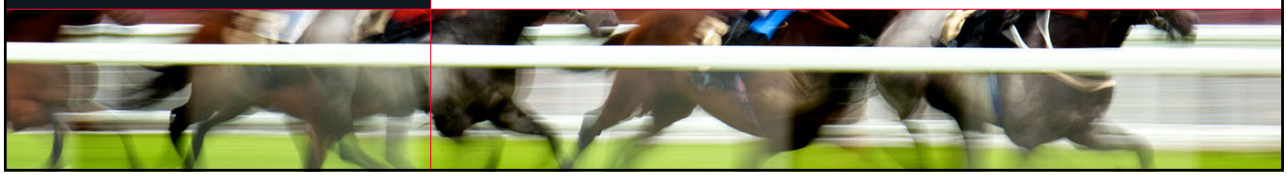
PRESENTED BY

ANNIE SANTOS



Labor and Employment Policy Update

Kentucky Chamber of Commerce



TOTAL SAVINGS FOR BUSINESS IN 2026

$1.564 Billion

$911 per employee

WHAT PASSED. WHAT DIDN'T. AND WHAT IT MEANS TO YOUR BOTTOM LINE.

What Passed

- Workplace Safety
  - HB 306/HB 521
- Unemployment Insurance
  - SB 129
  - SB 136
- Employment
  - HB 185
  - HB 6-ECCAP



What Didn't

- Employee Rights
  - Right to Disconnect
  - Wrongful Discharge
  - Right to Work
- Workers Compensation



PRESENTED BY

TIM WEATHERHOLT

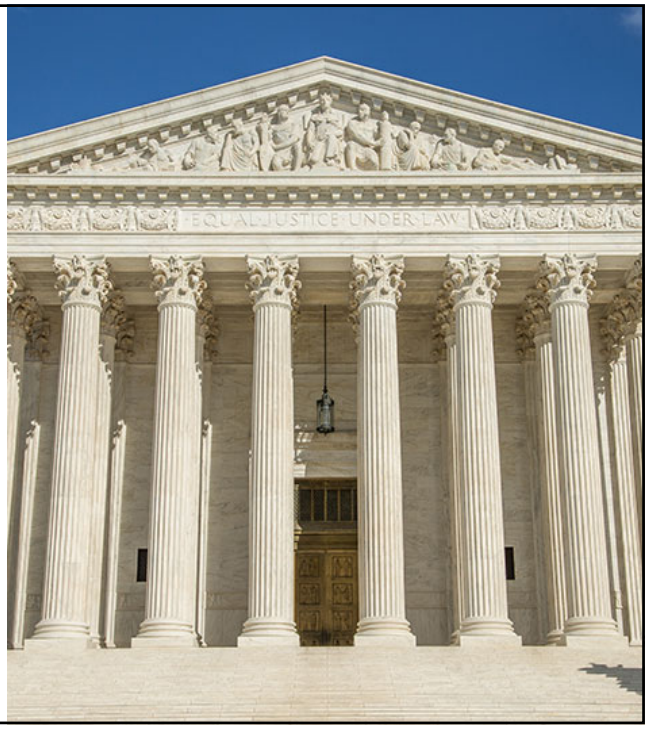


Legal and Legislative Updates



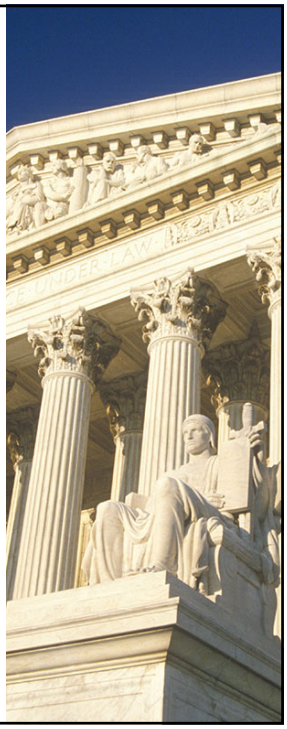
What We Are Going to Discuss

- Supreme Court Cases
- Federal Appellate Cases
  - Emphasis on Sixth Circuit
- Kentucky Supreme Court case and legislative change
- State Law Trends
- DSA Agenda
- Federal Agency Activity



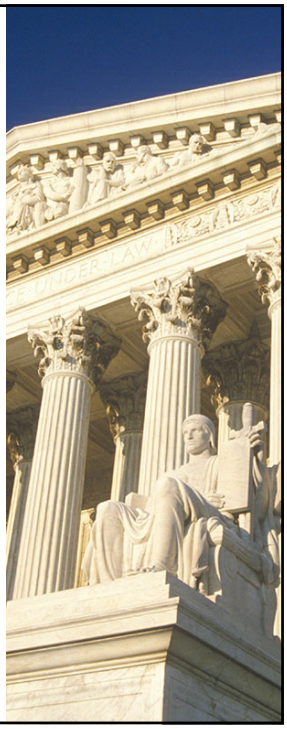
Ames v. Ohio Dep't of Youth Servs., 605 U.S. 303 (2025)

- Ames, a straight female, worked for the Ohio Department of Youth Services as an administrator
- Sought a promotion that went to a gay female
- Was demoted in favor of a gay male
- Brought a reverse discrimination claim under Title VII based on sexual orientation discrimination



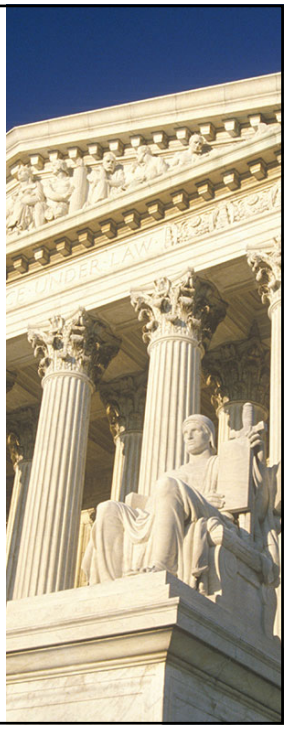
Ames v. Ohio Dep't of Youth Servs. (cont'd)

- Reverse discrimination occurs when someone from a majority group is discriminated against because of their status as a member of that group
- Had been more difficult for those in the majority to make out a case of discrimination
- Must prove "background circumstances" supporting the suspicion that their employer was that "unusual employer who discriminates against the majority"



Ames v. Ohio Dep't of Youth Servs. (cont'd)

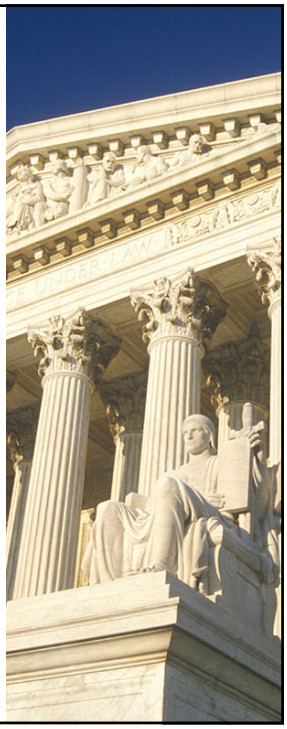
- Under this judge-made rule, these plaintiffs had to show both a discriminatory motive **and** this additional evidence to establish a *prima facie* case
- The Sixth Circuit affirmed the District Court's grant of summary judgment against Ames because she had not presented evidence of "background circumstances"
- Supreme Court granted *certiorari*



Ames v. Ohio Dep't of Youth Servs. (cont'd)

Issue:

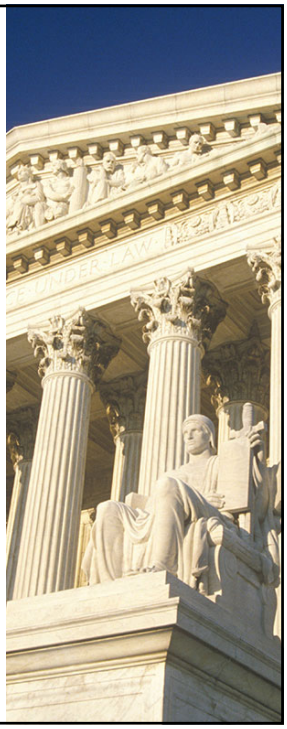
- Does a plaintiff need to meet the heightened evidentiary standard of showing "background circumstances" to support a claim that the employer discriminates against the majority?



Ames v. Ohio Dep't of Youth Servs. (cont'd)

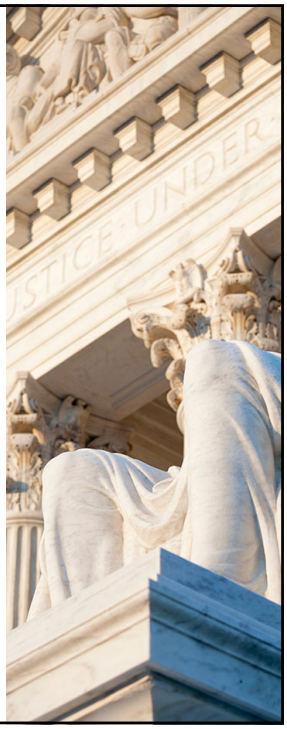
Holding:

- Background circumstances" rule conflicts with Title VII
- No heightened prima facie burden for majority-group plaintiffs



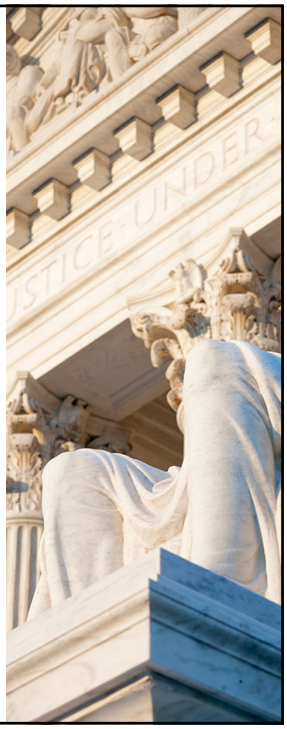
Trump v. Slaughter, 146 S. Ct. 2283 (2026)

- President's power to remove members of independent agencies
- Federal Trade Commission
- FTC commissioner challenged her termination as unlawful



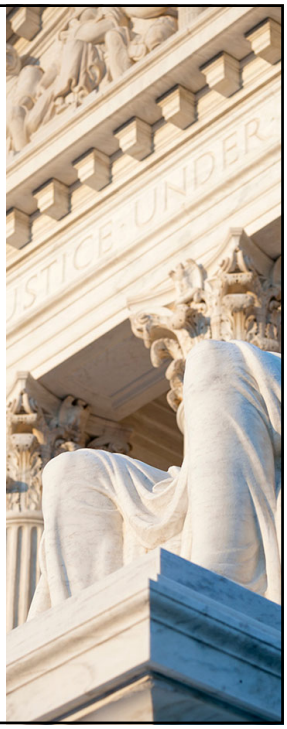
Trump v. Slaughter **(cont'd)**

- Reinstated by Federal District Court
- Trump administration appealed.
- Supreme Court considered the FTC Act and a 90-year old case



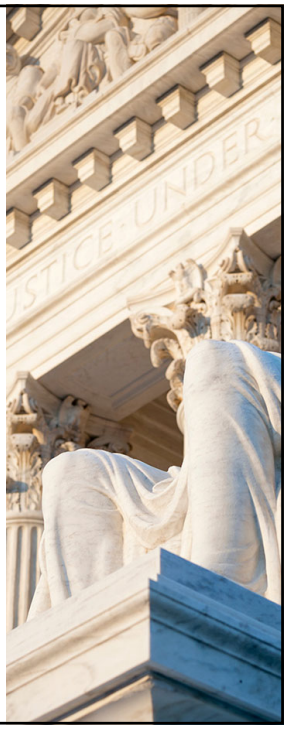
Trump v. Slaughter **(cont'd)**

- The **FTC Act** establishes the agency's powers and provides that commissioners may be removed by the President for "inefficiency, neglect of duty, or malfeasance."
- In ***Humphrey's Executor v. United States***, the Supreme Court applied this language to FDR's attempt to remove a commissioner.



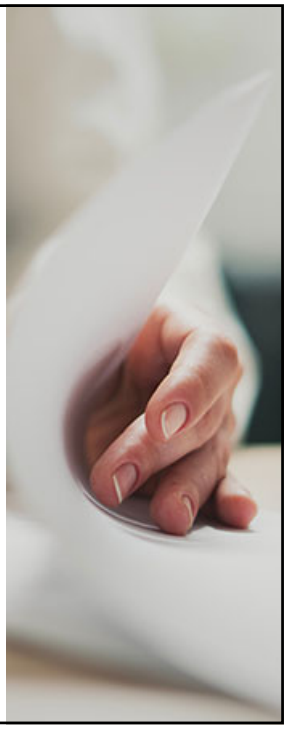
Trump v. Slaughter (cont'd)

- Supreme Court reversed this precedent and also found the FTC's Act statutory removal protections violate the separation of powers
- Thus, the President may remove some agency leaders at will
- Likely impact on EEOC and NLRB



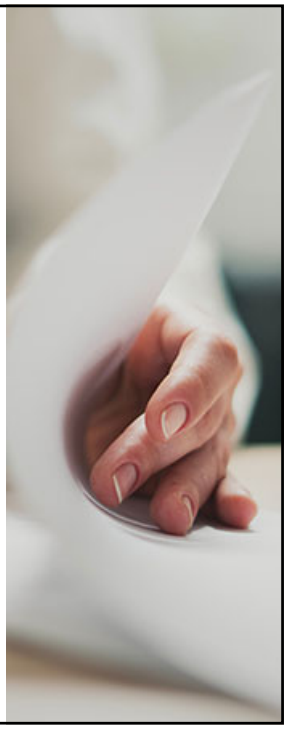
Bruce v. Adams & Reese, LLP, 168 F.4th 367 (6th Cir. 2026)

- Plaintiff was a paralegal
- Brought a case against her law firm
- Law firm partner had made some explicit sexual references
- Plaintiff alleged both a sexual harassment claim and a disability claim



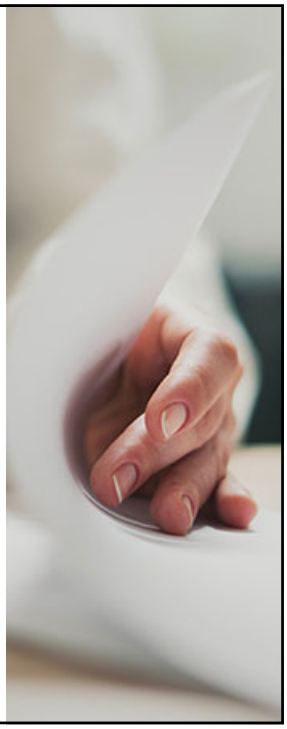
Bruce v. Adams & Reese, LLP (cont'd)

- Plaintiff had signed an arbitration agreement
- But…
- Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021
- Clear the law firm could not force the sexual harassment claim into arbitration
- But what about the entire case?



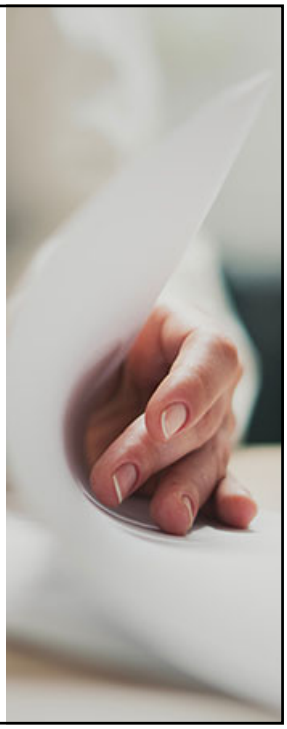
Bruce v. Adams & Reese, LLP (cont'd)

- The EFAA provides that, "at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute … no predispute arbitration agreement … shall be valid or enforceable with respect to **a case** which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute."



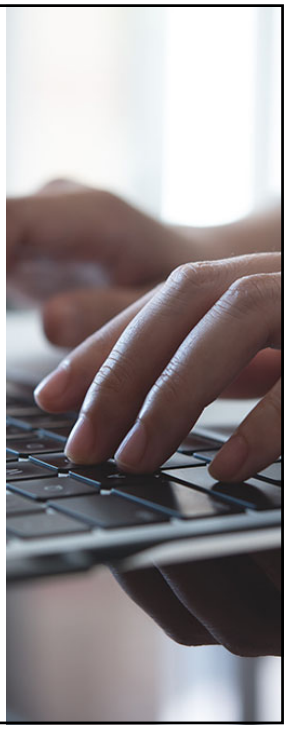
Bruce v. Adams & Reese, LLP (cont'd)

- The Sixth Circuit held, as a matter of first impression, that this language applies to the **entire case**—not just the sexual harassment claim itself
- Plain text
- Case vs. Claim
- Congress knows how to limit arbitration to certain disputes and has done so in the Whistleblower protection context



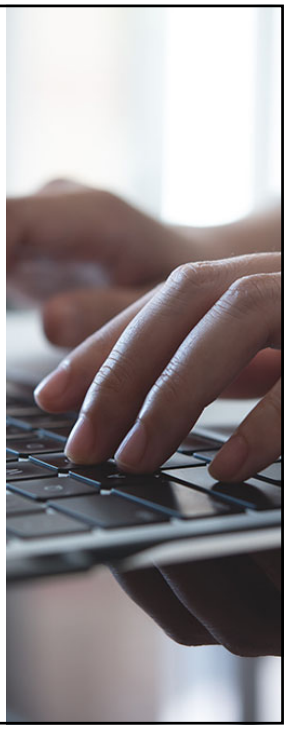
Hayes v. GStek, Inc., 175 F.4th 603 (5th Cir. 2026)

- Hayes was an IT systems administrator for GStek, a government contractor to the Army
- Worked remotely during Covid but was required to return
- After returning to the office, Hayes was diagnosed with autism, major depressive disorder, and social anxiety disorder
- He requested permission to work remotely full time as a reasonable accommodation under the ADA



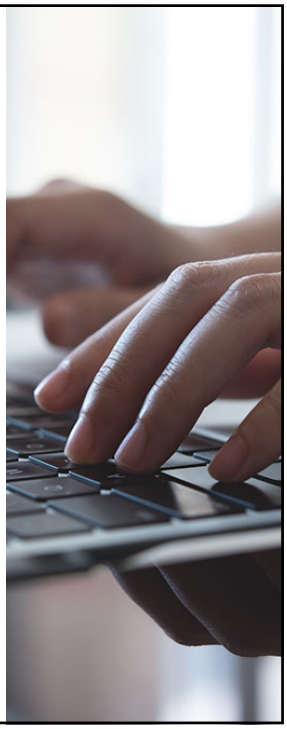
Hayes v. GStek, Inc. (cont'd)

- Army did not want him to work remotely
- GStek instead voluntarily allowed Hayes to work from home two to three days per week
- After Hayes experienced a "mental breakdown" and worked from home from January 16 until January 19, he insisted he needed to work remotely full time
- On January 24, GStek terminated his employment for absenteeism and other concerns



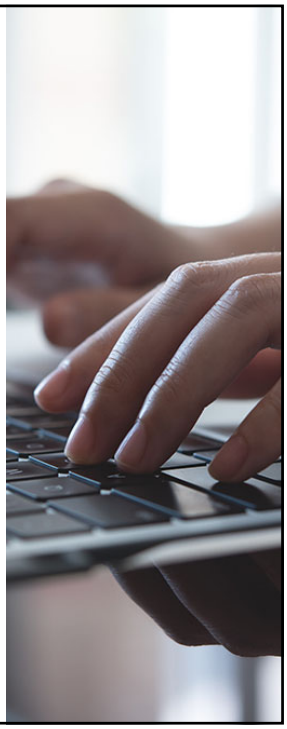
Hayes v. GStek, Inc. (cont'd)

- The 5th Circuit held that regular in-person attendance is an essential job function
- The Court stated, "the COVID pandemic did not change the reality that in-person work is presumed to be an essential function of most jobs"
- Case-by-case analysis with relevant issues being supervision, precedent, and effective communication



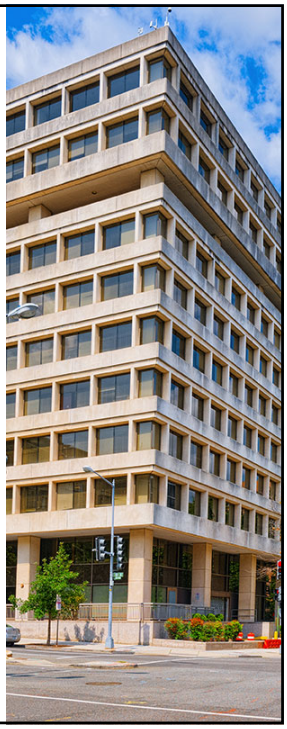
Hayes v. GStek, Inc. (cont'd)

- Defendant pointed to evidence that supervision was not effective; everyone was required to return to work
- Plaintiff admitted communication had not been ideal
- Court focused on the fact that he was not qualified
- Could not perform the essential function of attendance
- "Without being a qualified individual, his request for accommodation was doomed, and that failed request cannot be the basis for a retaliation claim"



Secretary of the United States Department of Labor v. Comprehensive Healthcare Mgmt. Servs LLC, 2026 WL 1582064 (3d Cir. 2026)

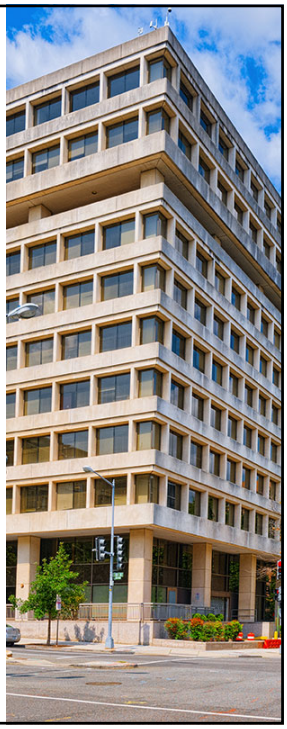
- Misclassification, meal breaks, and other claims
- Significant DOL investigation and case
- Sought damages on behalf of nearly 6,000 employees
- Bench trial awarded the DOL $35,000,000
- FLSA's focus: minimum wage and overtime



Secretary of the United States Department of Labor v. Comprehensive Healthcare Mgmt. Servs LLC **(cont'd)**

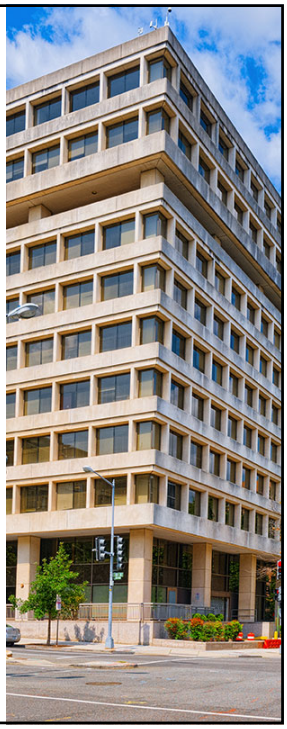
Gap Time in Overtime Weeks

- Unpaid time that is neither overtime nor a minimum-wage violation
- Applies when average pay still meets minimum wage
- Example: 43 hours worked; paid for 38 regular hours plus 3 overtime hours



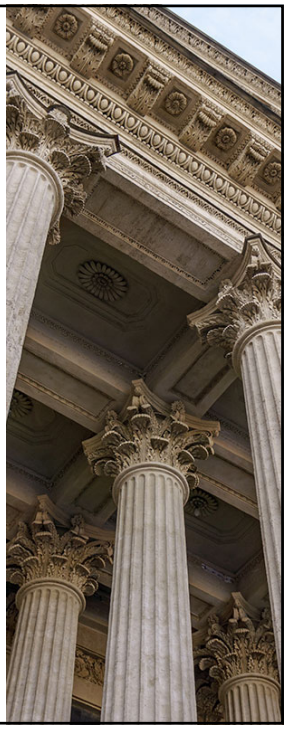
Secretary of the United States Department of Labor v. Comprehensive Healthcare Mgmt. Servs LLC **(cont'd)**

- Only two other appellate cases.
- Court found statutory text clear
  - Limited remedy for two distinct types of violations
  - Nothing in the text contemplates overtime gap time
- Declined to defer to interpretative guidance



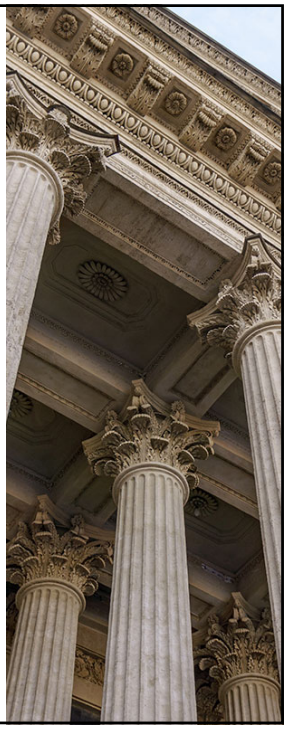
Barnett-Morgan v. Inverness Technologies, Inc., 2026 WL 1651178 (6th Cir. June 8, 2026)

- Race and retaliation case
- Retaliation claim based on complaining about co-worker's alleged hostile behavior
- Employee walked out and said "F**k You, I am tired of you mother**kers"
- Employee focused on race discrimination in her EEOC Charge



Barnett-Morgan v. Inverness Technologies, Inc. (cont'd)

- Lawsuit is limited to the scope of the Charge
- Retaliation box not checked
- Plaintiff tried to save her retaliation claim by pointing to subsequent communications referencing retaliation
- Sixth Circuit not persuaded
- Termination justified regardless



Paris v. MacAllister Mach. Co, Inc. 175 F.4th 787 (6th Cir. 2026)

- Plaintiff claimed he experienced anxiety after alleged harassment at work
- Inquired about FMLA
- Plaintiff terminated a month later
- District court granted summary judgment for the Company
- Difference between requesting information and beginning the process of obtaining leave



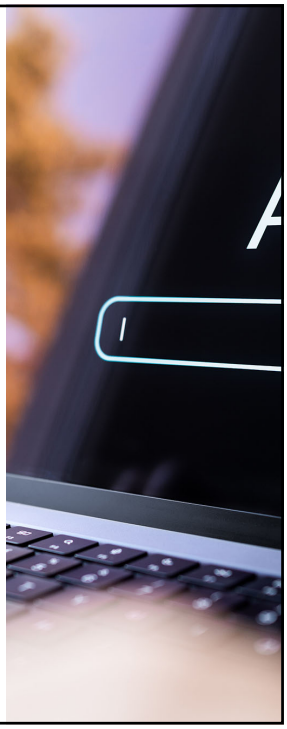
Paris v. MacAllister Mach. Co, Inc. (cont'd)

- Sixth Circuit disagreed
- First step of requesting is a protected activity
- Otherwise, an employer could fire an employee for even raising the issue
- Employer still won the case because its legitimate non-retaliatory reason for termination was not pretextual
- Lesson: informal inquiries are likely protected activity



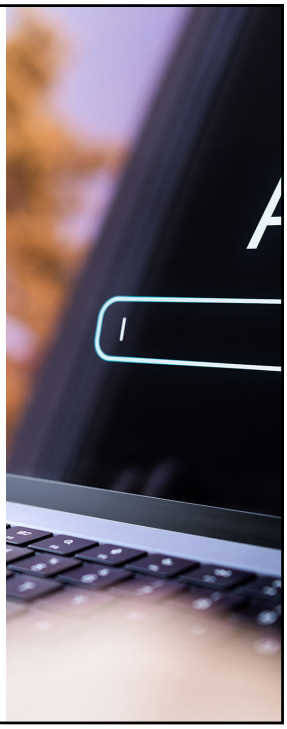
Whiting v. City of Athens, Tennessee, 170 F.4th 455 (6th Cir. 2026)

- Fake citations, real consequences
- Attorneys for the Plaintiff submitted a brief with over two dozen fake legal citations
- $15,000 fine for each attorney
- Prior disciplinary history; disrespectful



Whiting v. City of Athens, Tennessee (cont'd)

- Attorneys tried to argue that the Court asking whether and how briefs were cite-checked implicates attorney-client privilege or work-product
- Sixth Circuit rejected that argument
- AI concerns



Hamm v. Pullman SST, Inc.
167 F.4th 382 (6th Cir. 2026)

- Coworkers learned Plaintiff was bisexual and used homophobic slurs
- Plaintiff complained to HR
- HR investigated and conducted 10 interviews
- Could not corroborate the accusations
- Additional training, issued one warning, transferred Plaintiff



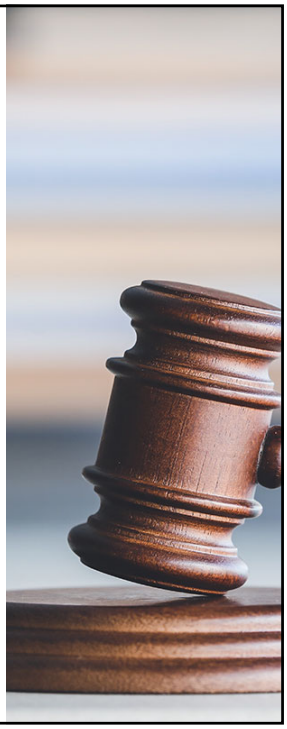
Hamm v. Pullman SST, Inc. (cont'd)

- Plaintiff then refused available work and was terminated
- Summary judgment for employer affirmed
- Co-workers v. Supervisor
- Good faith investigation
- Honest Belief rule



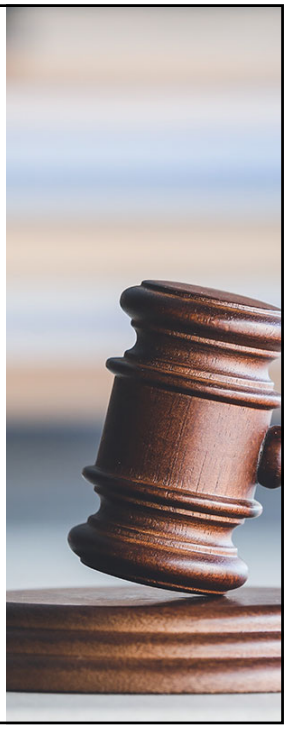
Bivens v. Zep, Inc., 147 F.4th 635 (6th Cir. 2025)

- Standard for nonemployee harassment
- Employer was a cleaning products manufacturer
- Employee, who had previously complained of harassment, was part of a reduction-in-force



Bivens v. Zep, Inc.

- Negligence standard vs. evidence the employer intended for the harassment to occur
- Sixth Circuit departed from other circuits.



Hitachi v. Held (Kentucky Supreme Court)

- Kentucky Wages and Hours Act
- Class of over 200 Supervisors at Hitachi's Berea Plant
- Sought back pay for alleged misclassification under Kentucky law



Hitachi v. Held (Kentucky Supreme Court)

- Salary Basis
- Salary + extra pay by the hour
- Agreements, offer letters, spreadsheets
- Expert testimony
- Owning Mistakes
- Emphasizing no reduction for less than 40 hours



Kentucky Shortens Statute of Limitations for KCRA and KWHA

- Time to bring a lawsuit under those statutes
- Was 5 years
- Now 3 years
- Effective July 15, 2024



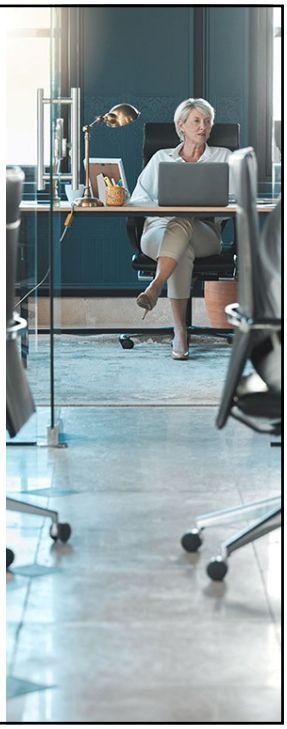
Kentucky Shortens Statute of Limitations for KCRA and KWHA

- Limits recovery to 3 years too
- Faster case resolutions
- Reduced document retention
- Could attract businesses
- Major potential savings in a wage and hour class action in terms of damages



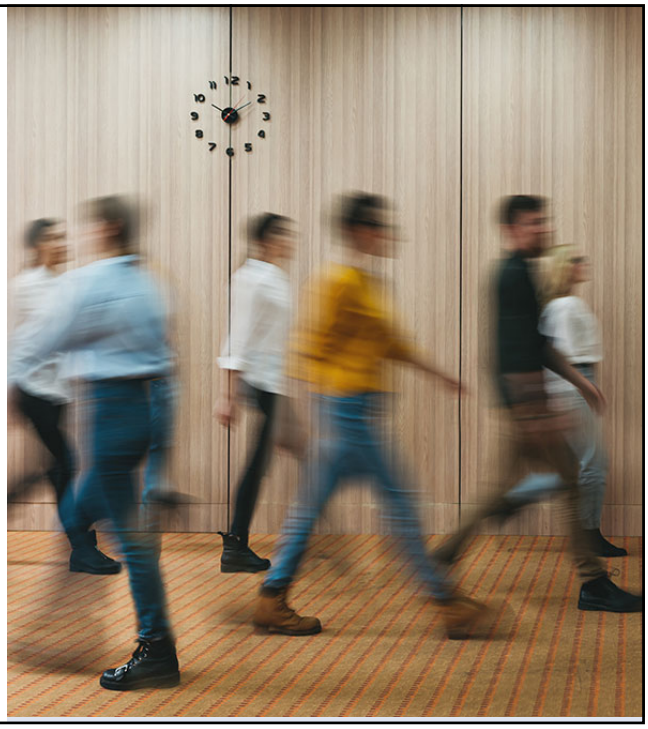
State Law Trends

- Minimum Wage Increases
- New Paid Leave Requirements
- AI Guardrails
- Stricter Workplace Standards
- State-level labor protections



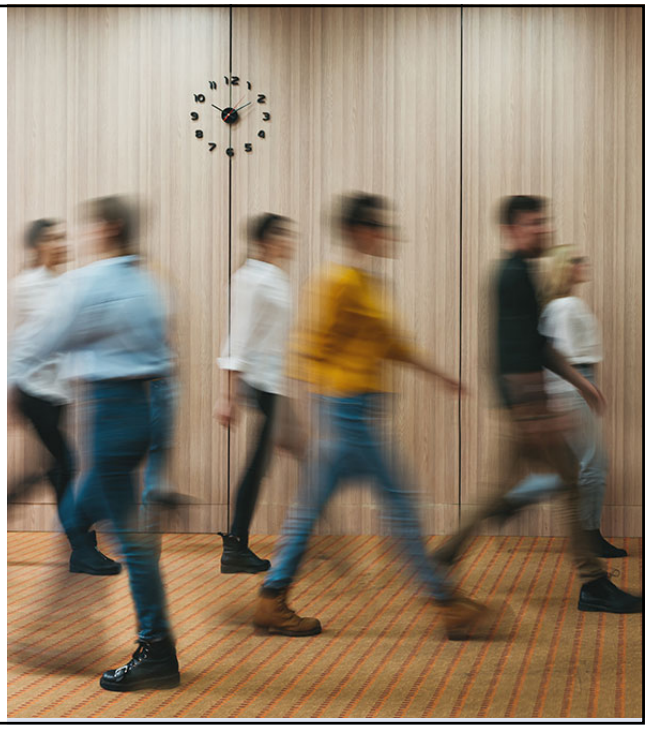
DSA Agenda

- Healthcare
- Minimum Wage Escalation
- Shorter Standard Workweek
- Paid Family Leave



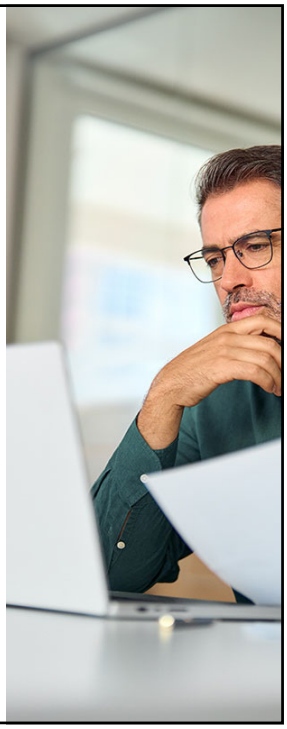
DSA Agenda (cont'd)

- Worker Classification and Gig Work
- Faster and Easier Union Organizing
- Noncompetes
- Heavier enforcement funding



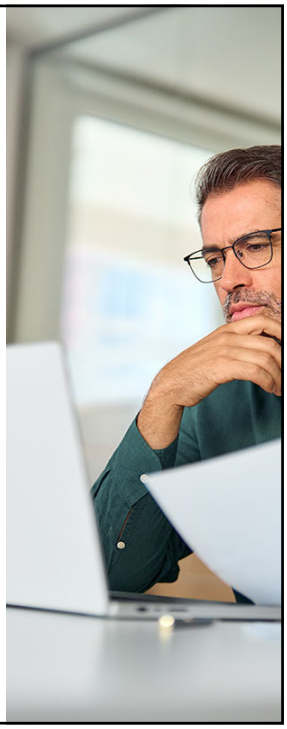
EEO-1 Reports

- Annual workforce-demographic report
- Private employers with 100+ employees
- Covered federal contractors with 50+ employees
- Reports job category, sex, race, and ethnicity



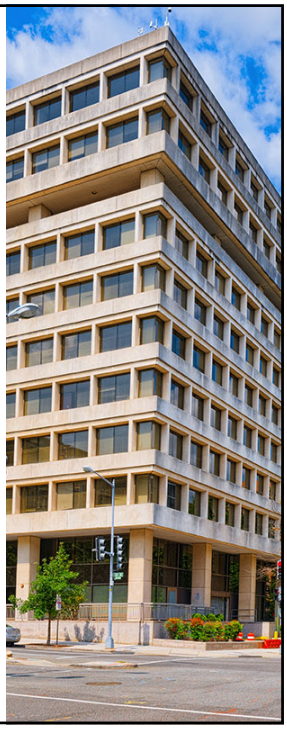
Proposed Change

- EEOC proposal would eliminate the reporting requirement
- Comments are closed; the current rule remains in effect
- EEOC would retain enforcement and subpoena authority



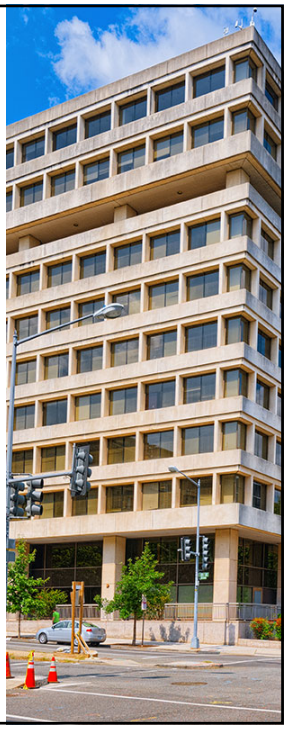
DOL Opinion Letters

- Employees can clock in up to 7 minutes early
- Pre-shift work activities
- Touchstone: integral and indispensable
- Waiting time and walking time
- De minimis



DOL Opinion Letters (cont'd)

- Employee question on meal breaks
- Can leave premises or remain at work site
- Only 30 minutes but 5 to 10 minutes to even walk from job site to parking lot
- Coercive dynamic
- DOL said no; not restricted
- Touchstone is freed from duties



Fisher Phillips

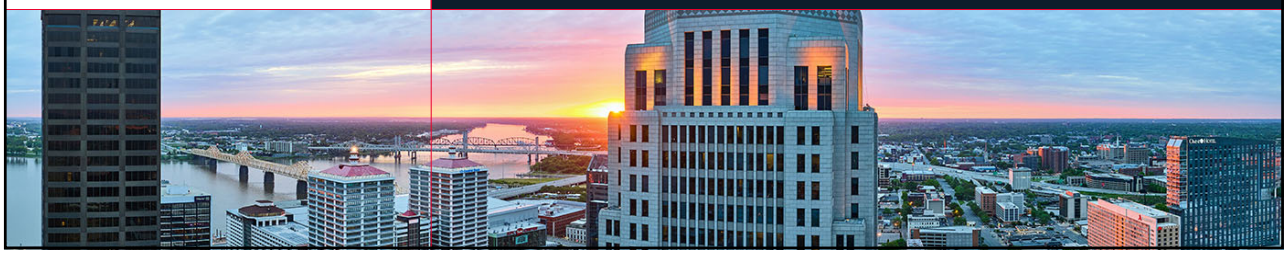


TIM WEATHERHOLT
Partner
Fisher Phillips | Louisville



ANNIE SANTOS, JD
Public Affairs Manager
Kentucky Chamber of Commerce

Questions?

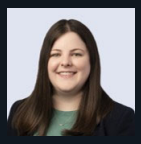


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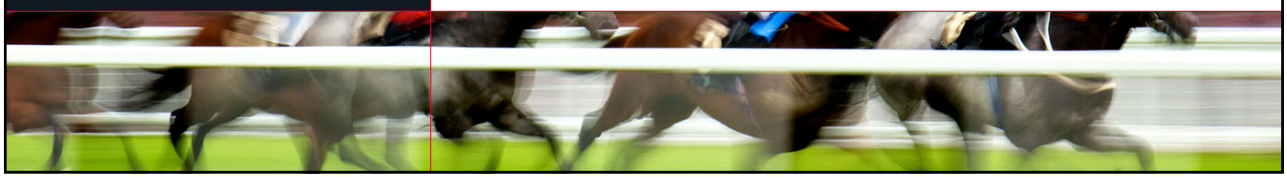


ERIN SHAUGHNESSY



THE WORKPLACE INVESTIGATION PLAYBOOK

From Complaint to Resolution





INVESTIGATIONS

Do not edit
How to change the design



Why do we investigate?

ⓘ The Slido app must be installed on every computer you're presenting from slido

Why Do We Investigate?



Avoid or Minimize Legal Liability



Maintain or Improve Morale



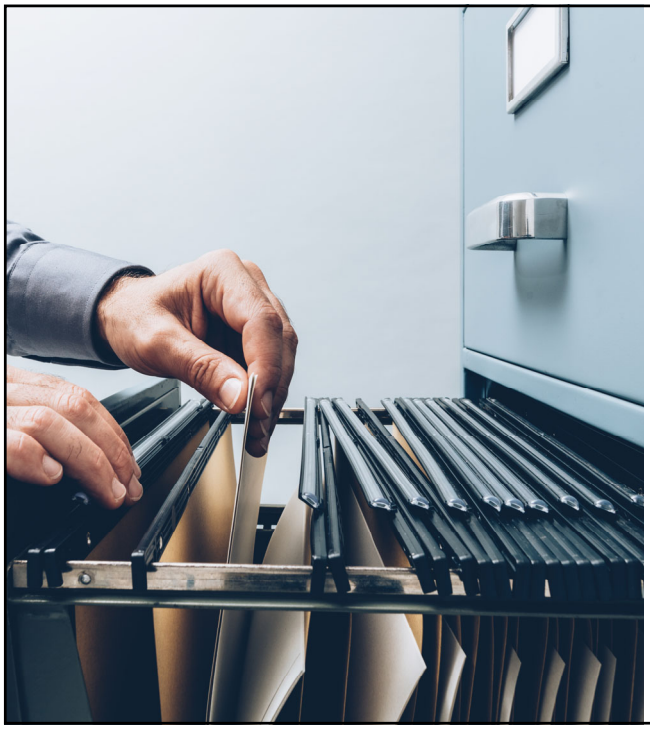
Improve Factual Basis for Decisions



Set Example



Demonstrate Commitment to Policies



Characteristics of a Good Investigation

- Prompt
- Sufficient for the circumstances
- Unbiased
- Well-documented
- Inspires confidence in the resulting decision
- ***Doesn't make matters worse**

When to Conduct an Investigation

- Assess whether a formal investigation is warranted
- Act before concerns escalate
- No magic words are required to trigger action





INVESTIGATION TECHNIQUES & PROCEDURES

General Overview of the Investigation Process



Involve Legal Early

Best practice for future discrimination, harassment, & retaliation complaints (and possibly others):

- Notify legal, immediately, via e-mail:

  "Andrew, Suzie has alleged that John sexually harassed her. Please advise."

- Provides basis for invoking the attorney-client privilege and work product doctrine for all actions that follow.
- Alerts legal to potentially significant legal liability.



CASE STUDY

Maya and Daniel

- **Monday:** Maya reports repeated appearance comments by Daniel
- **Friday:** Daniel allegedly touched her and linked a lead role to being "nicer"
- She also reports a schedule change after declining dinner
- Key evidence: video may erase in seven days; messages and nearby coworkers may help

CASE STUDY

Maya and Daniel

Before reaching a conclusion:

- What must HR do today?
- What can it promise about confidentiality?
- What interim steps reduce contact or retaliation?

Conducting the Investigation

Precautions

- Consider interim measures
- Protect against retaliation
- Document why each measure is necessary
- Tell the complainant an investigation will occur
- Keep affected parties informed

Conducting the Investigation

Gather & Review Documents

- Identify what supports a good-faith decision
- Preserve relevant records immediately
  - Review personnel records, policies, and prior complaints
  - Collect messages, notes, video, and access data
  - *Use documents to guide interviews

CASE STUDY

What Documents Should HR Collect?

- Maya's personnel file
- Daniel's personnel file
- Security footage from hallway security camera
- Messaging between Maya and Daniel
- Schedule change documentation



Conducting the Investigation

What an investigator should do

- Think critically
- Remain neutral
- Follow the facts
- Create a clear, sufficient record
- Support a good-faith decision



Conducting the Investigation

What an investigator should not do

- Show bias or personal interest
- Rely on assumptions or speculation
- Ignore relevant information
- Lose sight of the investigation's purpose
- Forget that the record may be reviewed



Conducting the Investigation

Plan for Interviews

- Sequence: complainant, witnesses, accused, then accused's witnesses
- Allow adequate time and support
- Document any refusal to cooperate
- Capture the reason for the refusal

Questioning the Complainant

- Take every complaint seriously
- Clarify who, what, when, where, and why
- Separate facts from beliefs
- Test inconsistencies and identify evidence
- Explain that no conclusion comes before the review is complete
- Reinforce anti-retaliation protections



Questioning the Witnesses

- Start broad, then narrow
- Ask what the witness observed firsthand
- Explore relevant relationship and context
- Identify documents and additional witnesses
- Invite corrections or additional information



Questioning the Accused

- Start broad, then move to the specific allegation
- Confirm policy awareness and working relationship
- Establish the timeline, location, and potential witnesses
- Ask open questions before confronting details
- Ask for a complete account
- Describe the allegations and allow a response
- Test denials against available facts
- Identify supporting witnesses and evidence
- Reinforce anti-retaliation expectations





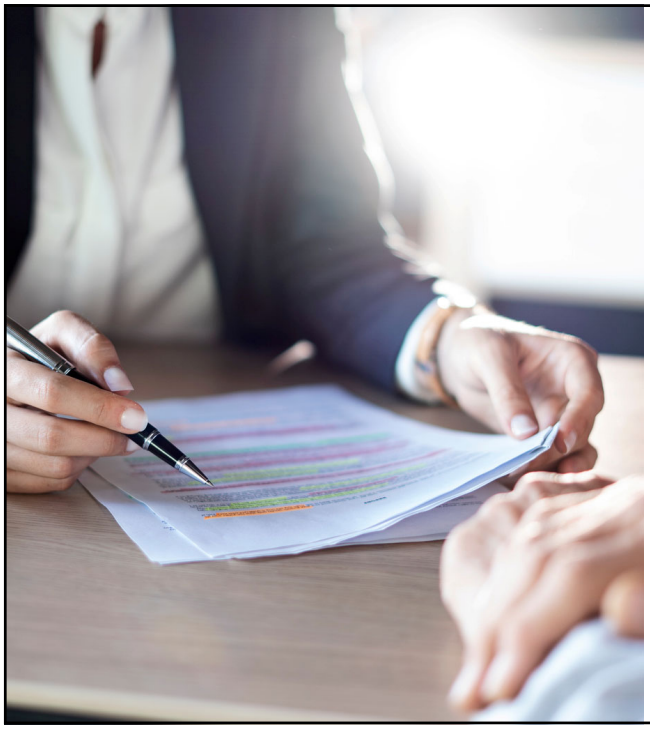
Interviewing Guidelines

DO

- Listen
- Acknowledge
- Get the 5W's
- Maintain confidentiality

DO NOT

- Agree/Sympathize
- Promise confidentiality
- Promise to fix
- Ignore



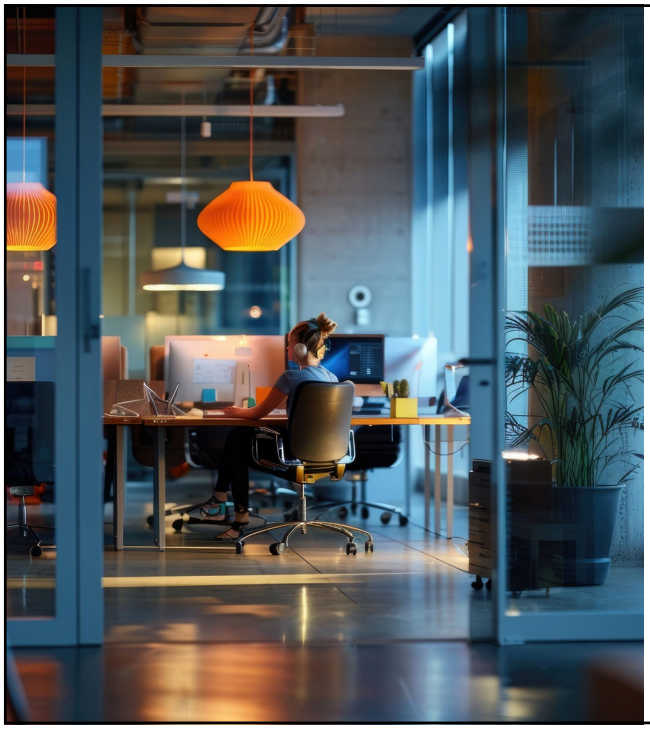
Basic Interviewing Techniques

- Let the witness tell the story
- Avoid leading questions too early
- Ask "what else?" more than once
- Ask who else may know
- Invite follow-up information



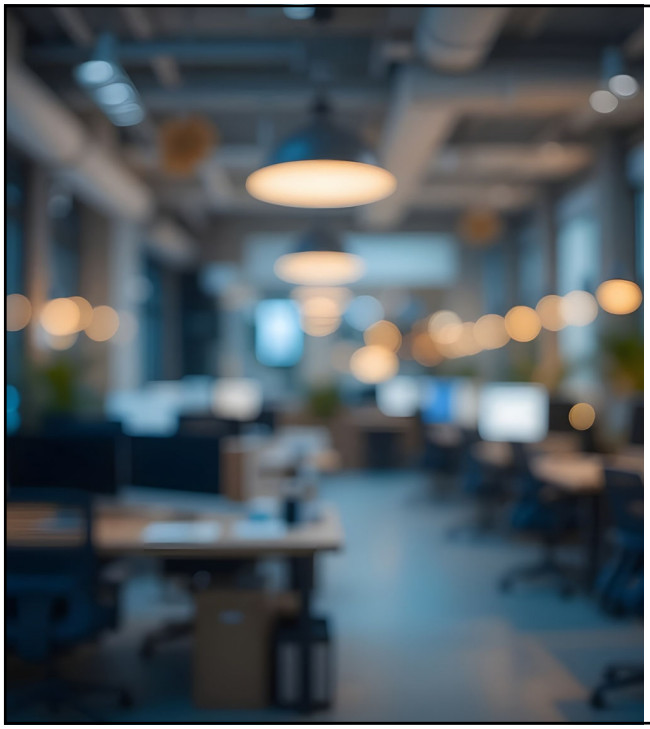
Conducting the Investigation

- Confirm key answers
- Clarify vague or inconsistent statements
- Separate firsthand knowledge from hearsay
- Use summary questions to close gaps



Conducting the Investigation

- Create a record another reader can follow
- Document date, time, location, and participants
- Capture key quotes, denials, and uncertainty
- List exhibits and additional leads
- Preserve relevant records



Conducting the Investigation

Note, *but don't opine regarding,* credibility factors:

- Body language, eye contact
- Evasiveness or defensiveness
- Consistency with others' stories
- Acceptable: *"Sam wouldn't look me in the eye at all."*
- Unacceptable: "Sam was as shifty as usual and never looked me in the eye."



Conducting the Investigation

- Close each interview deliberately
- Reinforce anti-retaliation expectations
- Decide whether a statement is needed
- Use notes or a statement to preserve the account
- Consult Legal before finalizing documentation

CASE STUDY

Analysis of Interview

- Maya gives an approximate time and a contemporaneous message
- Witnesses did not see or hear inside the supply room
- Daniel admits appearance comments but disputes details
- The staffing manager confirms schedule changes were requested that week



CASE STUDY

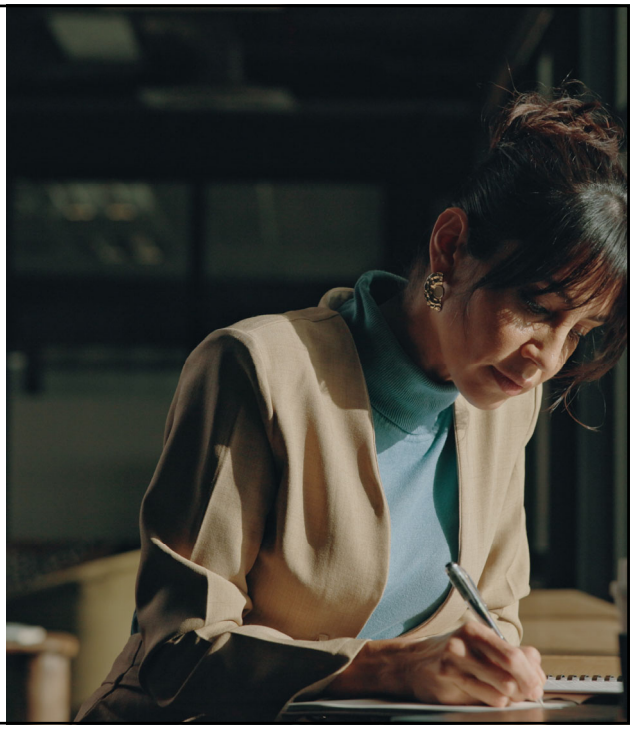
Analysis of Documentation

- Video places both employees near the supply room, but has no audio
- Schedule records confirm a change
- Maya's message supports a promotion-related remark
- The evidence does not establish exact words or physical contact



Analysis & Reporting

- Sufficient facts first
- Analyze, then report findings
- Show the investigation was reasonable under the circumstances
- Tie the decision to the facts gathered



Analysis & Reporting

- Prepare a concise, objective report
- State facts, not assumptions
- Separate evidence from conclusions
- Do not stretch facts to support a preferred outcome
- Write as if others may read it



CASE STUDY

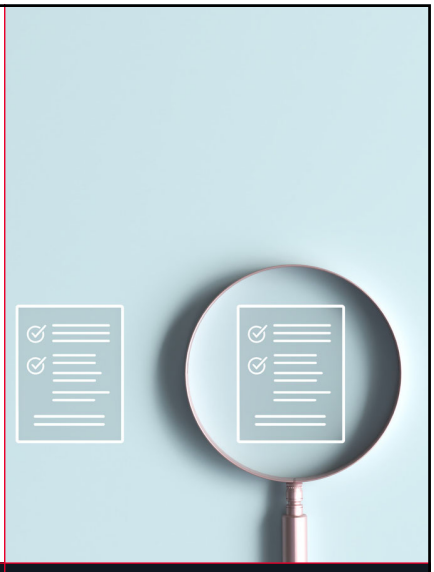
Investigation Conclusions and Findings

- There need not be one all-or-nothing finding.
- For example, HR should distinguish:
  - the **confirmed schedule change** from its **unconfirmed alleged motive**,
  - the **acknowledged appearance comments** from their disputed details, and
  - the **partially corroborated encounter** from conduct the camera cannot show.
- The final report should explain those distinctions without overstating certainty.

Analysis & Reporting

Investigator's Report

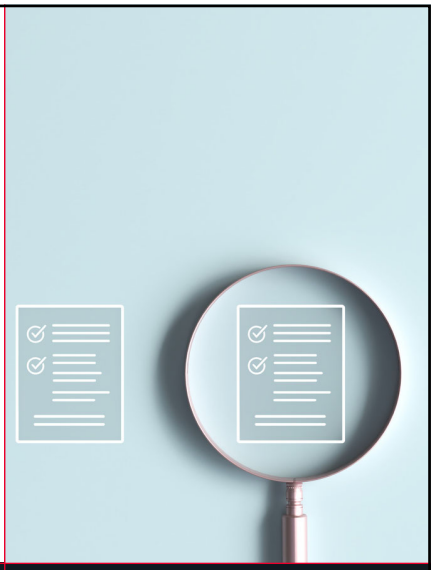
- Report structure
- Complaint and scope
- Steps taken
- Undisputed and disputed facts
- Key evidence and analysis
- Recommendations, if requested



Analysis & Reporting

Investigator's Report

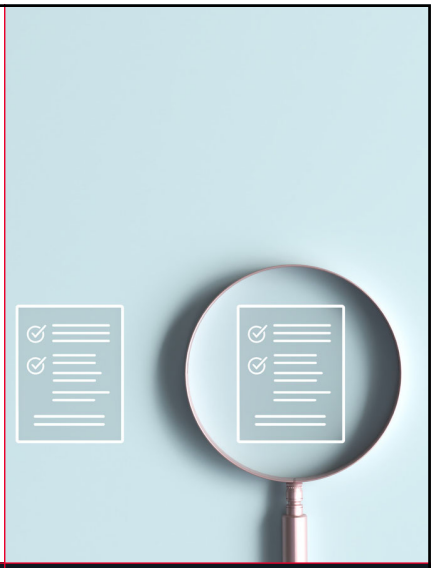
- Connect the decision to the record
- Identify corroborated and uncorroborated information
- Address evidence that supports or refutes the claim
- Explain relevant credibility factors
- Note possible motives only when supported

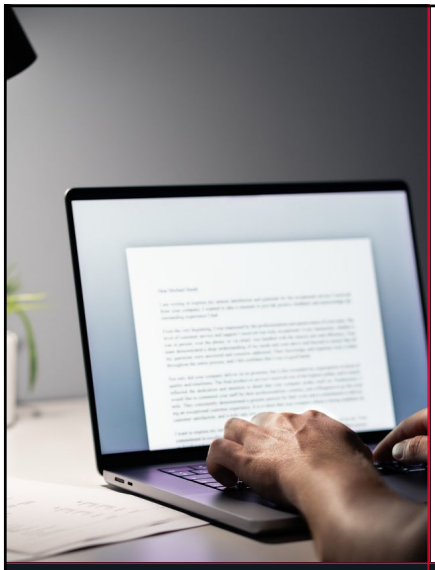


Analysis & Reporting

Investigator's Report

- State the conclusion carefully
- Available information supports a policy violation
- Available information did not substantiate the allegation
- Evidence is inconclusive
- Avoid legal conclusions, advocacy, or commentary

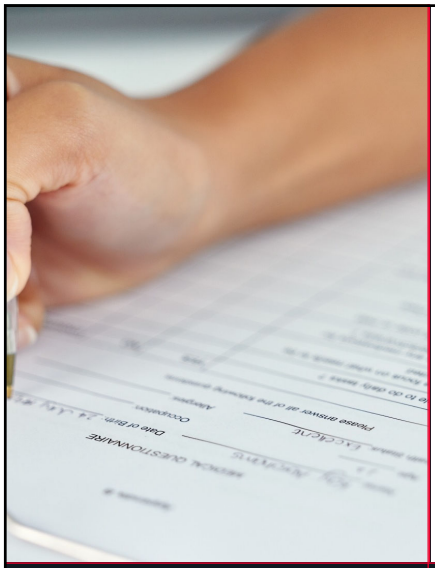




Document the Investigation

Think Before You Write

- Record allegations as allegations
- Avoid legal conclusions or admissions
- Focus on whether conduct violated company policy
- Use precise, factual wording



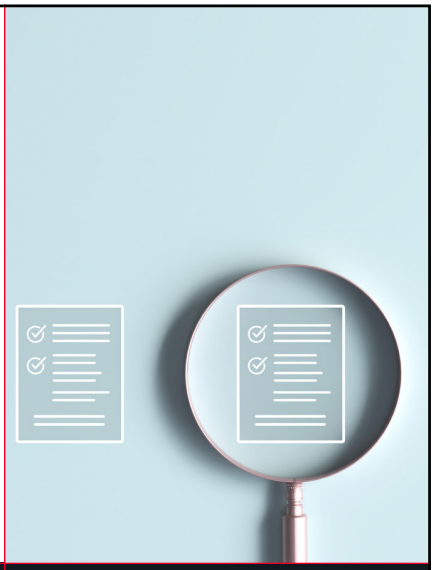
Document the Investigation

Think Before You Write

- *Documents shape credibility*
- *Write as if a neutral reviewer will see it*
- *Be precise*
- *Avoid careless shorthand*

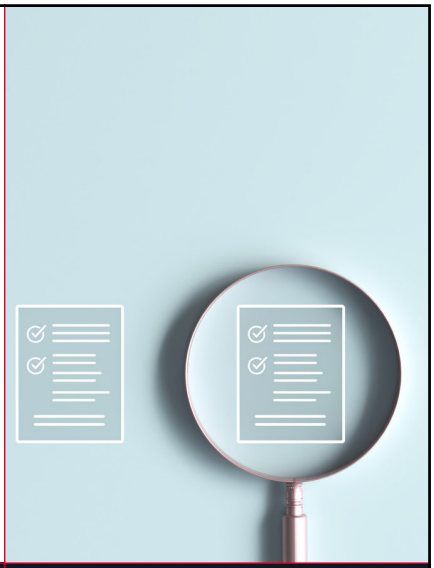
Analysis & Reporting
Recommendations

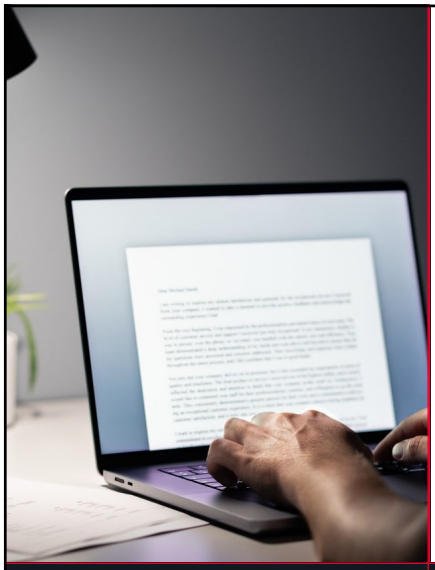
- Legal liability
- Applicable company policies
- Seriousness of conduct
- Evidence and certainty
- Consistency with prior cases
- Prior discipline and its effectiveness
- Separate the investigator from the final decision-maker when possible



Analysis & Reporting
Need to Know

- Share information on a need-to-know basis
- Limit access to the report, recommendations, and decision
- Witnesses usually need no outcome details
- Supervisors may need enough information to prevent retaliation

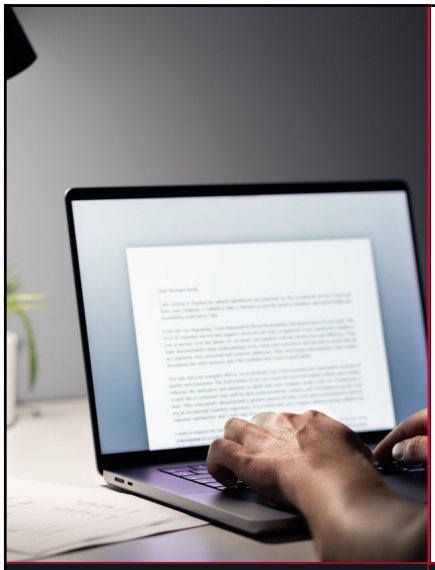




Document the Investigation

The "File": What It Should Contain

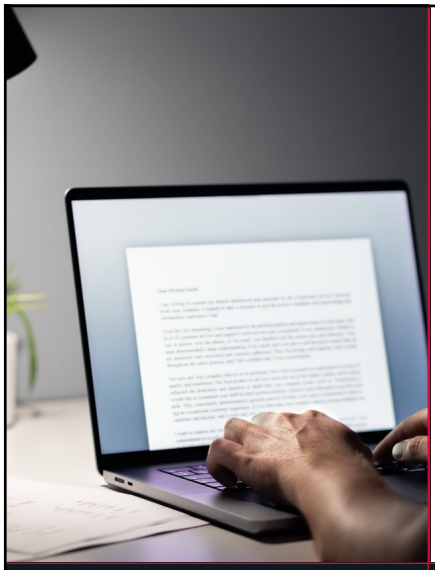
- Complaint or initiating facts
- Purpose and scope
- Relevant documents and interview notes
- Support or refutation of key allegations
- Notice of results and any action
- Final report



Document the Investigation

The "File": What It Should Not Contain

- Bias or gratuitous comments
- Unrelated notes or documents
- To-do lists and informal commentary
- Unnecessary admissions or legal conclusions
- Consult Legal on privileged communications



Document the Investigation

The "Record" Includes More Than You May Think

- Treat the record as broadly discoverable
- Emails, notes, and discipline records can matter
- Apply the same care to every channel
- Avoid casual comments that suggest bias or inaction

Follow Up

- Close the loop
- Confirm tentative findings and remaining leads
- Inform those with a need to know
- Address side issues and prevention steps
- Monitor for retaliation



Follow Up
Complainant

- Follow up with the complainant
- Confirm the company investigated
- Share the appropriate high-level outcome
- Explain that remedial action may have been taken without discussing details
- Reinforce reporting and anti-retaliation protections



Follow Up
Accused and Others

- Inform the accused of the decision
- Frame any action as a policy decision
- Document the conversation and action
- Notify others only as needed
- Reinforce anti-retaliation expectations





INVESTIGATION PITFALLS

Common Investigation Pitfalls

- Failure to perform a thorough investigation
- Jumping to conclusions
- Delaying the investigation
- Failing to preserve evidence
- Making conclusion of law in Investigation Report or any related document
- Promising confidentiality
- Allowing influence or bias
- Missing allegations or witnesses
- Failing to take remedial action
- Failing to watch for retaliation

Summary

- Investigate promptly and sufficiently
- Make a reasonable, good-faith decision
- Stay objective and document carefully
- Follow through and monitor for retaliation

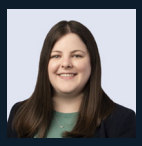


Fisher Phillips

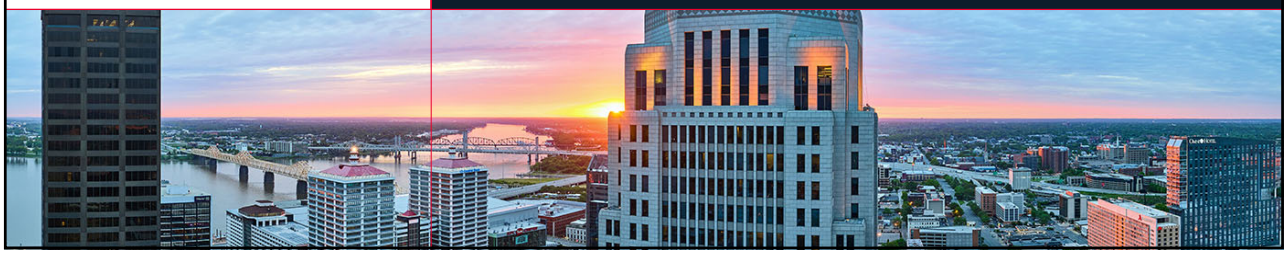
QUESTIONS?



MEGAN U'SELLIS

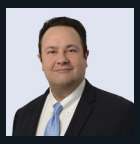


ERIN SHAUGHNESSY



PRESENTED BY

GEORGE ADAMS



MARTHA VÁZQUEZ



SELF-INFLICTED WOUNDS

Learning From Others' Mistakes



How Today's Scenarios Work

Real-world scenarios—to learn from

- The misstep, the exposure, and what could have been
- Practical ways to manage issues consistently, promptly, and defensibly





SCENARIO 1
THE STANDARD HANDBOOK

Policies Need Local Review

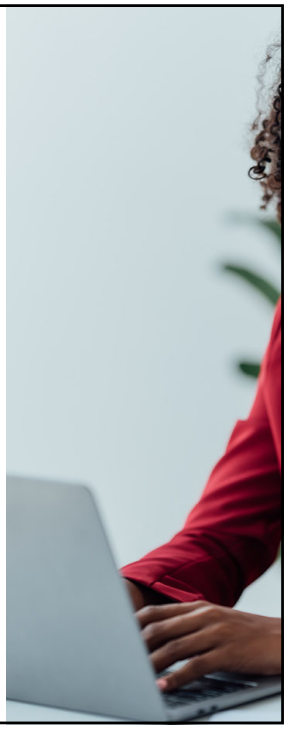
MULTI-STATE POLICIES

OMG, Ltd. has facilities in 20 states and has employees working remotely in 8 more states.

OMG aims to maintain certain standards across the entire business and, accordingly, every location uses the same corporate handbook and policies, and all new employees go through the same onboarding, which includes training on company policies.

OMG saved a few bucks by not having an outside attorney review its handbook and policies, which have been thoroughly vetted by it's human resources department.

What could possibly go wrong?



Policies Need Local Review

MULTI-STATE POLICIES

WHAT WENT WRONG

The single handbook was convenient but was not tailored to comply with the state and local laws of all 28 states in which OMG has employees.

Additionally, by having a common handbook and a corporate HR department that largely controls “local” HR matters, OMG exposed itself to liability as a single integrated enterprise under Title VII and other laws.



Policies Need Local Review

MULTI-STATE POLICIES

WHY IT MATTERS

Missing or unlawful provisions can create legal exposure even when a policy is consistent.

States and municipalities often have specific laws regarding wages and hours, training, restrictive covenants, taxes, firearms, etc.

Convenience and short-term cost savings can lead to substantial legal exposure.



Policies Need Local Review

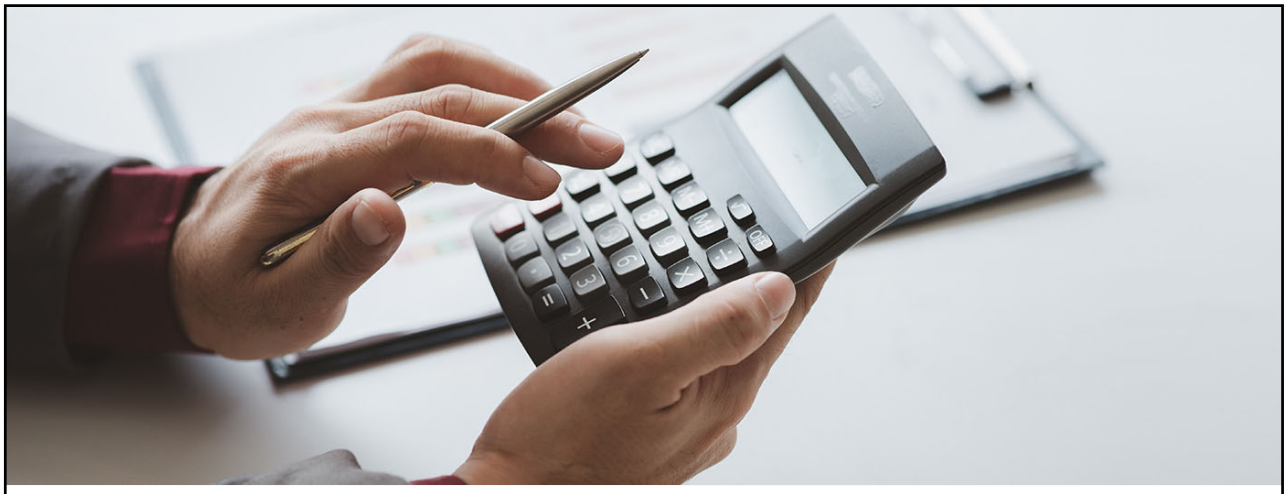
MULTI-STATE POLICIES

WHAT COULD HAVE BEEN

OMG could have drafted general policies it wanted to implement throughout the company and then had them vetted by experienced labor and employment attorneys.

Those attorneys could have identified and resolved potential legal issues and helped OMG create a single handbook that could easily be rebranded and tailored to fit each of the company's facilities.

If OMG really wanted to save money and minimize exposure, it could have let the lawyers plug OMG's specific provisions into a template handbook.



SCENARIO 2
THE STANDARD RAISE

Equal Raises Can Preserve Inequity

PAY EQUITY

Widgets R Us hires Sarah in 2010 as a widget picker. She is one of only a few female pickers and she does a great job. She receives the standard Widgets 3% raise year after year. By 2025, she is making $22/hour.

The widget picker market has become very competitive. When Widgets hired two young widget pickers in 2025, Adam and Bob, it had to start them at $26/hour. On January 1, 2026, all three got the standard 3% raise.

In February 2026, Sarah complained to her manager that Adam and Bob are making more money than she, despite her long tenure. Her manager responded, “Too bad, everyone is treated the same at Widgets R’ Us and 3% is what everyone gets.”

What could possibly go wrong?

Equal Raises Can Preserve Inequity

PAY EQUITY

WHAT WENT WRONG

The company gave everyone the same percentage increase while leaving a substantial pay gap in place.

From one perspective, this appears fair. Widgets was merely paying market rate when it hired Adam and Bob, why should it have to bring anyone else up to market rate?

Sarah feels it is not fair and she may have grounds to support discrimination claims under some civil rights laws.

Even if there were no legal exposure, which there is, Widgets now has a morale problem (it also should address the manager’s “people” skills).

Equal Raises Can Preserve Inequity

PAY EQUITY

WHY IT MATTERS

The pay disparity can support Equal Pay Act and/or sex/age discrimination claims. This is especially true when the employer lacks a documented legitimate explanation.

Employers generally must give equal pay for equal work. That means, sometimes, you must “catch people up.”



Equal Raises Can Preserve Inequity

PAY EQUITY

WHAT COULD HAVE BEEN

Widgets should have regularly audited its pay practices, made adjustments if/when conditions warranted, and documented the business reasons behind all compensation decisions.

It also should have trained all managers to recognize potential wage discrimination exposure. Well trained managers probably would have recognized that paying two new, young, men $4 more per hour might be a problem. They probably would at least have realized they needed to “run this past legal.”

If they’d had positive employee relations training, they also probably would have been more sensitive when responding to Sarah’s question.



SCENARIO 3
THE WELL-INTENDED DIRECTIVE

Good Intentions Do Not Eliminate Risk

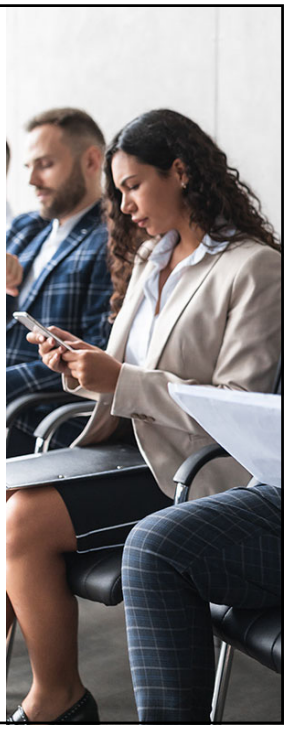
HIRING DECISIONS

"Damn the torpedoes" Dave owns a large business. Last weekend he went to a seminar with his daughter, called "Breaking the Glass Ceiling."

There, he learned about the challenges women face in the workplace. Dave is ready to go "full steam ahead" to help.

On Monday, Dave tells his whole team they are going to hire only women from now on, to correct the historic injustice. Dave has the best of intentions, and he feels great about his contribution to "the cause."

What could possibly go wrong!?



Good Intentions Do Not Eliminate Risk

HIRING DECISIONS

WHAT WENT WRONG

Dave openly declared his unequivocal intention to unlawfully discriminate against men.

No one would have any trouble recognizing this as unlawful if he had decided to hire only men.



Good Intentions Do Not Eliminate Risk

HIRING DECISIONS

WHY IT MATTERS

Employers cannot make employment decisions based on immutable characteristics, such as sex.

Even if they do so to for what they believe are morally righteous reasons.



Good Intentions Do Not Eliminate Risk

HIRING DECISIONS

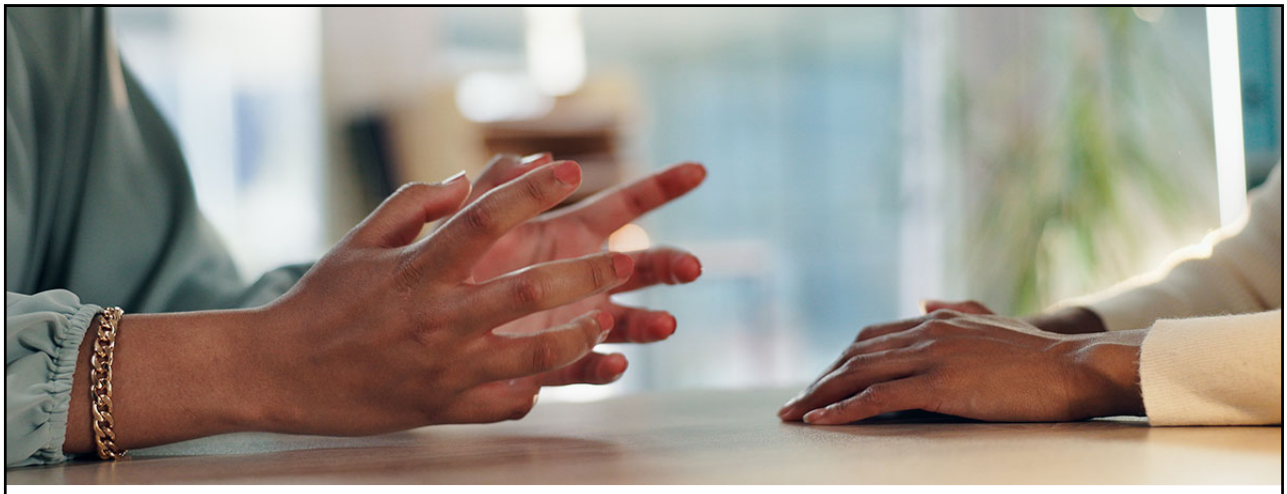
WHAT COULD HAVE BEEN

Dave should have consulted an experienced employment attorney or, at least, consulted HR.

Even a first-year employment attorney could have told him this was a terrible idea.

Employers must use lawful, non-discriminatory recruiting methods and job-related, non-discriminatory selection criteria, all supported by thorough documentation.

The workplace is no place for crusaders.



SCENARIO 4
THE INFORMAL ACCOMMODATION

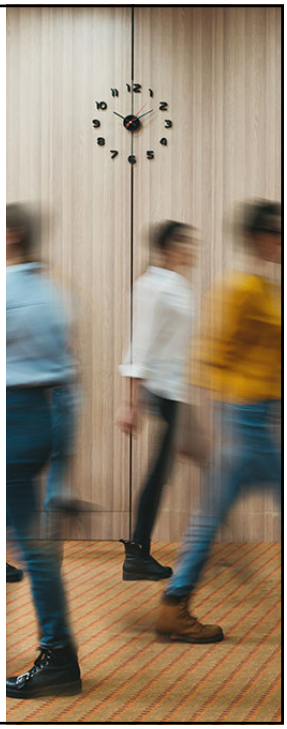
Accommodation Requests Need a Process

ACCOMMODATION REQUESTS

In June, Tina, an operator at the Super Turkey Helpline, asks her supervisor, Michael, if she can come in late when she has headaches. June is a slow month, so Michael tells Tina that's fine, she can come in late if she needs to.

This arrangement works well until November, when call volume balloons. Tina's late arrivals begin impacting the business, so Michael tells her she cannot come in late anymore.

What could go wrong?



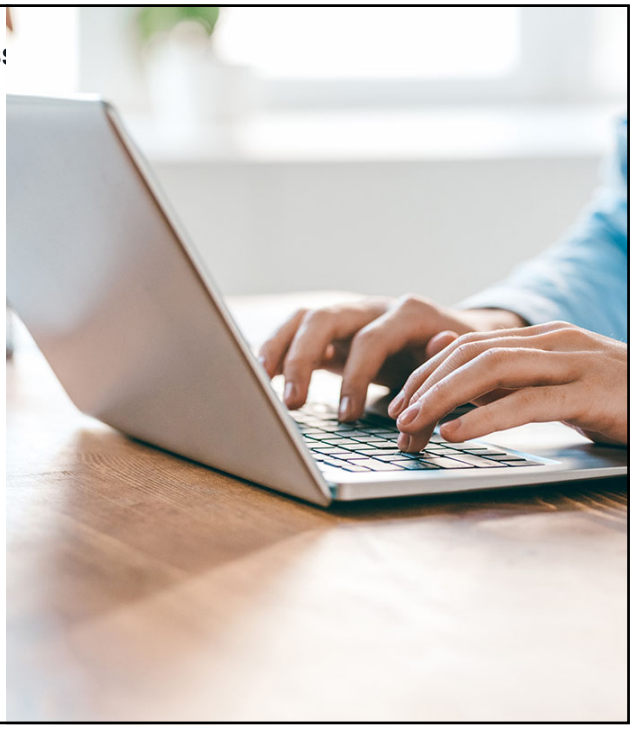
Accommodation Requests Need a Proces

ACCOMMODATION REQUESTS

WHAT WENT WRONG

A manager deviated from policy and unwittingly provided an accommodation in response to an ADA request.

He approved a schedule change without using the interactive process, obtaining any supporting documentation, or--perish the thought--consulting HR.



Accommodation Requests Need a Process

ACCOMMODATION REQUESTS

WHY IT MATTERS

When she stopped getting her way, Tina claimed ADA discrimination and failure to accommodate.

Because Michael allowed Tina to come in late for nearly 6 months, it will be hard for the company to argue continued accommodation would be an undue hardship.

Worse, Michael created an exception to the attendance rule and future employees may claim discrimination if they don't receive similar accommodation.

Accommodation Requests Need a Proces

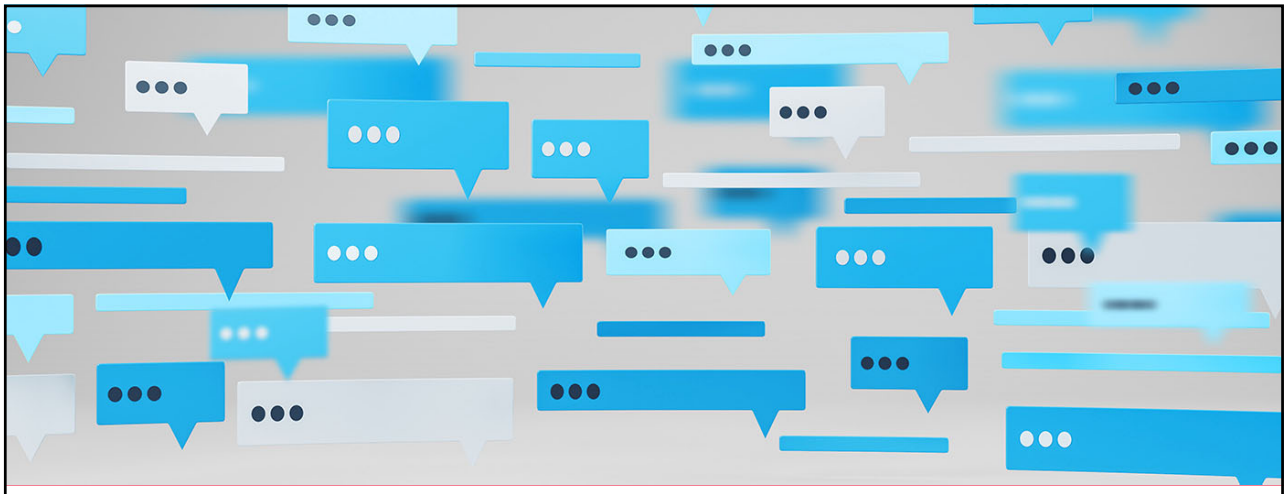
ACCOMMODATION REQUESTS

WHAT COULD HAVE BEEN

Managers should have been trained annually on all employment policies and given notice they would receive serious discipline for deviations.

Michael, having been properly trained and motivated, would have recognized Tina's ADA accommodation request and directed her to HR in June.





SCENARIO 5
THE TEAMS/TEXT VENT

Write Like It May Be Exhibit A

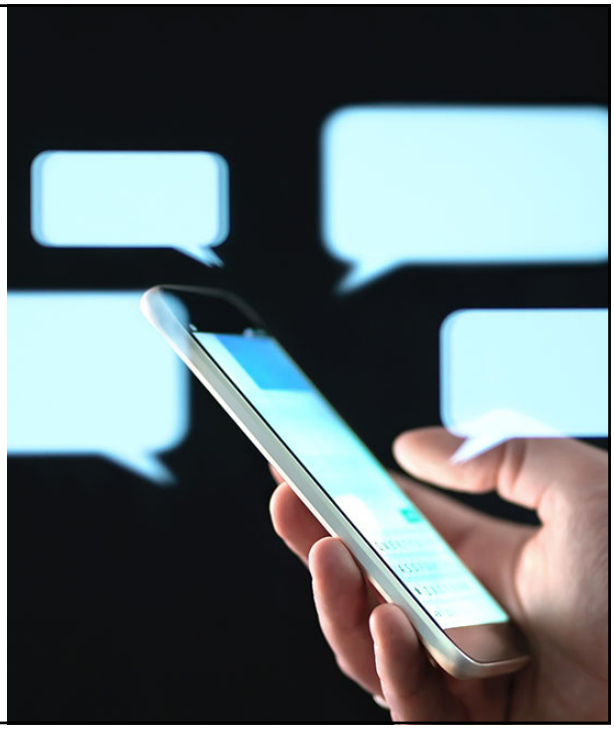
WORKPLACE COMMUNICATIONS

Ernie and Bert have worked together at the Rubber Ducky plant for ten years and are great friends.

Ernie and Bert frequently communicate over Teams and text on their company phones about work, as they should.

They also vent to one another about troublesome employees, sometimes joking around, although they would never say anything that would violate the company policy.

So, what could possibly go wrong?



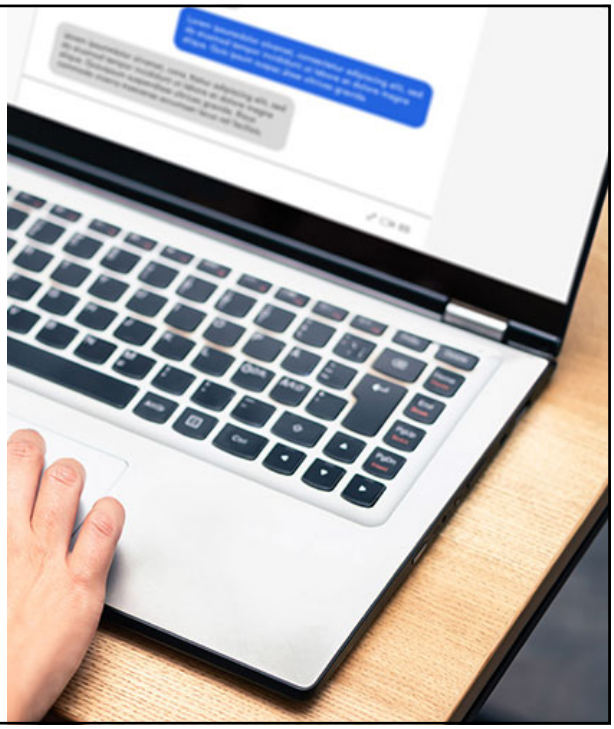
Write Like It May Be Exhibit A

WORKPLACE COMMUNICATIONS

WHAT WENT WRONG

Supervisors treated Teams chats and text messages as an informal means of expressing negative thoughts about employees.

They created a discoverable record that could be used against the company in administrative actions and lawsuits.



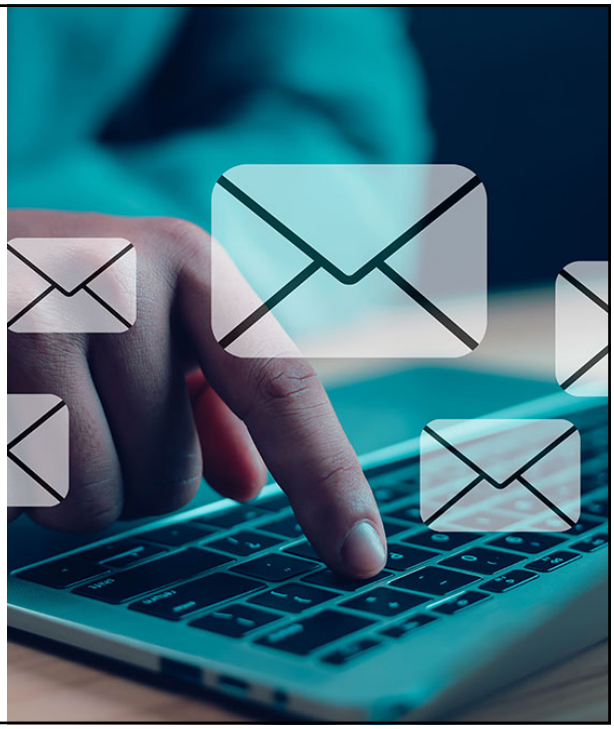
Write Like It May Be Exhibit A

WORKPLACE COMMUNICATIONS

WHY IT MATTERS

Most communications on company systems can be discovered in litigation. Demanding “all relevant communications” regarding the employee is common.

Negative comments regarding an employee, even if intended as jokes or shorthand can weaken the company’s defense.



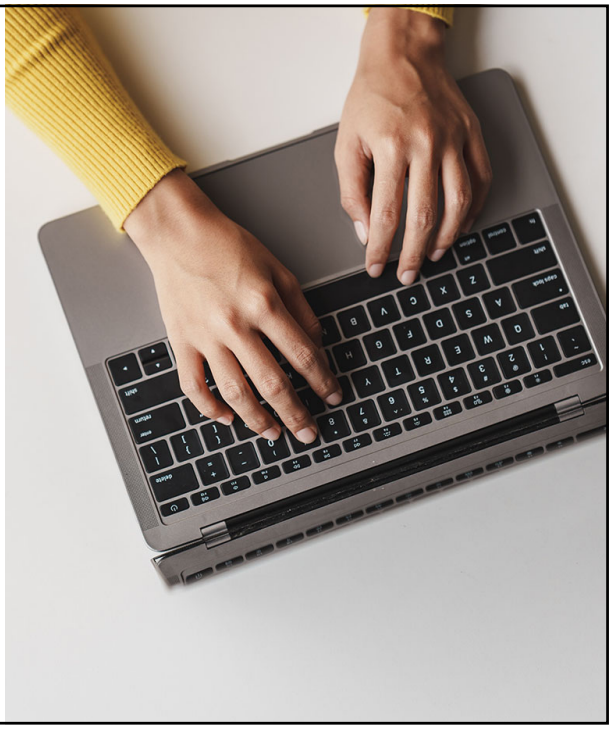
Write Like It May Be Exhibit A

WORKPLACE COMMUNICATIONS

WHAT COULD HAVE BEEN

Again, training and the threat of strong discipline may have prevented this.

Supervisors should have been trained to use the same care in Teams, Slack, texts, email, and AI prompts as they would use in a formal written record.





SCENARIO 6
THE BUDDY-TO-BOSS PROMOTION

A Promotion to Supervisor Needs Onboarding

NEW SUPERVISORS

Doug started with Not Again LLC ten years ago. When he started, he went through a full week of onboarding, learning not only how to do the job, but also all the company policies and procedures.

He has been an exceptional employee and is friends with everyone in his group. Given his great work and general popularity, Not Again promotes him to supervisor of the group.

Conveniently, he has been with the company so long, he already knows what to do.

So, what could possibly go wrong?

A Promotion to Supervisor Needs Onboarding

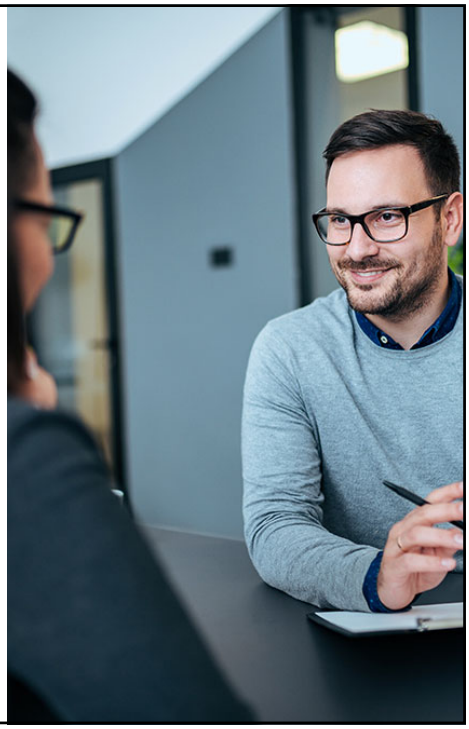
NEW SUPERVISORS

WHAT WENT WRONG

The company assumed a strong employee already understood manager responsibilities.

They didn't retrain him on company policies from a management perspective.

They didn't consider how his relationship with co-workers could be a liability.



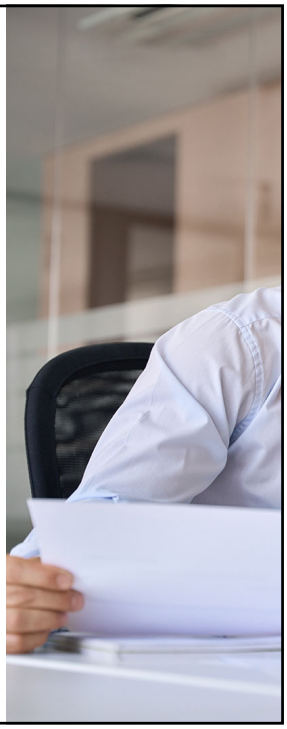
A Promotion to Supervisor Needs Onboarding

NEW SUPERVISORS

WHY IT MATTERS

Former peers, new authority, and limited training can lead to inconsistent enforcement, missed complaints, and weak documentation.

Any or all of these can lead to legal liability or, at least, morale problems.



A Promotion to Supervisor Needs Onboarding

NEW SUPERVISORS

WHAT COULD HAVE BEEN

Not Again should have treated Doug the same as it would have treated a supervisor hired “off the street.”

Promotion to supervisor is a new role that should come with training on workplace laws, PER training, complaint handling, accommodations, documentation, and escalation.

The Pattern Behind the Wounds

MANY PROBLEMS START SMALL

Good intentions can lead to informal decisions. Informal decisions can create inconsistent process. Inconsistent process can lead to poor documentation. Any or all of these can lead to expensive claims.

THE COMMON THREAD

An ordinary shortcut, assumption, missed follow-up, or message that cannot be defended later.



Practical Prevention Checklist

Review and tailor policies for each location.

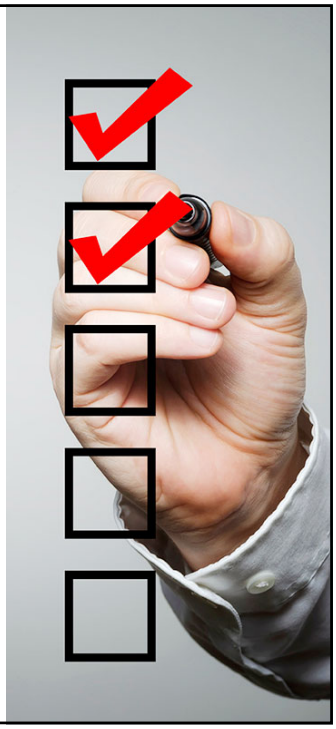
Regularly audit pay practices and document compensation decisions.

Use only job-related hiring and promotion criteria.

Route disability and pregnancy accommodation requests through a formal process.

Train (and retrain) supervisors on PER, policies, complaints, documentation, and workplace communications.

Pause. Document. Escalate. Follow up.



Discussion Prompts

Are we relying on, “we have always done it this way”?

Which decisions are front-line managers making informally?

What would our texts, chats, and notes look like if they were exhibits?

When did we last train supervisors on basic labor and employment law responsibilities?



Fisher Phillips

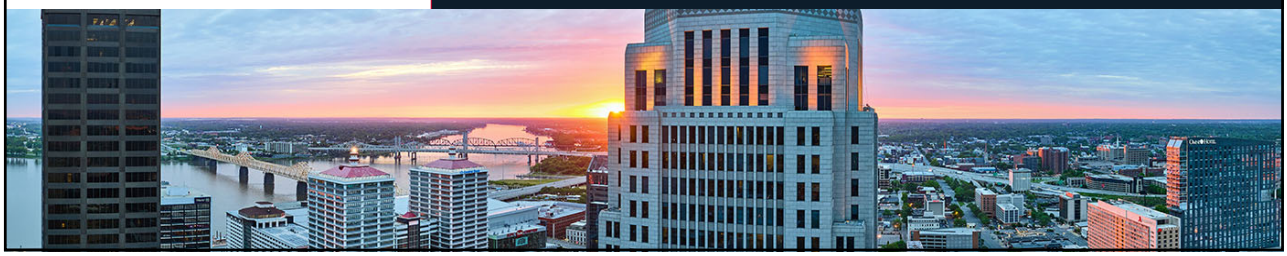
GEORGE ADAMS



MARTHA VAZQUEZ



QUESTIONS?



PRESENTED BY

Laurel Cornell



Kristina Leonhardt



REMOTE WORK RECONSIDERED

Pitfalls, Best Practices, and the Future of Flexibility



One “Workcation” Can Become a Multi-State Fire Drill

CASE 01

The “Two-Week” Stay

A Kentucky employee logs in from California “for two weeks.” Six months later, payroll still shows Louisville—and the manager has been scheduling around Pacific time.

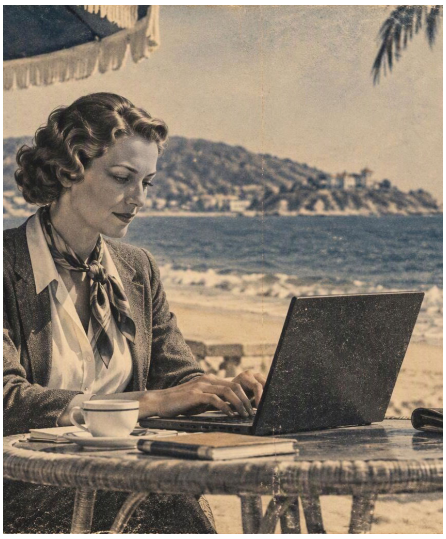
Possible wake: registration and tax, notices, daily overtime, meal and rest break rules, reimbursement, withholding, registration, leave rules.

CASE 02

The Silent Relocation

An employee keeps a Kentucky mailing address, moves to Colorado, submits Denver expenses, then reports an injury in the home office.

Possible wake: what about workers’ compensation issues?



The Field



01 The Lay of the Land: Emerging Trends in Remote Work

02 Playing the Odds: Why Companies Allow Remote Work

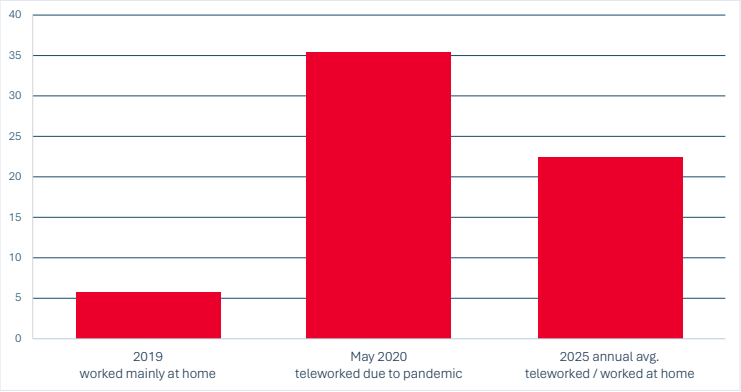
03 The Tote Board: General Considerations for Wherever Remote Work Happens

04 Handicapping: Special Considerations for When Remote Work Crosses State Lines

05 Going Wire-to-Wire: Examples and Key Take Aways

The Lay of the Land: Emerging Trends in Remote Work

Remote Work Held at 22.4% in 2025 - far Above 2019



Directional only: 2019, 2020, and 2025 use different survey questions and denominators.

THE DURABLE SHIFT

35.4M people teleworked in 2025—53% for some hours and 47% for all hours.

The average teleworker worked remotely 26.5 hours per week.

Sources: U.S. Census Bureau ACS (2019); BLS supplemental CPS (May 2020); BLS CPS Tables 59 & 63 (2025).

The Lay of the Land: Emerging Trends in Remote Work

State of Hybrid Work Report: Key Findings

28% of US workers have one or more additional jobs (aka side hustles)

40% of hybrid workers are still coffee badging (going to the office to show their face for a few hours)

If workers had the choice, nearly 1 in 2 (46%) would choose to work hybrid

Over 1 in 3 workers (36%) say work-related stress has increased since last year

38% of workers experience meeting fatigue

74% of workers report doing work on Sundays

41% of US workers say their employer's or colleagues' political opinions have made them not want to go into the office

2 out of 3 workers (67%) say younger leaders tend to be more supportive of flexible work than older leaders

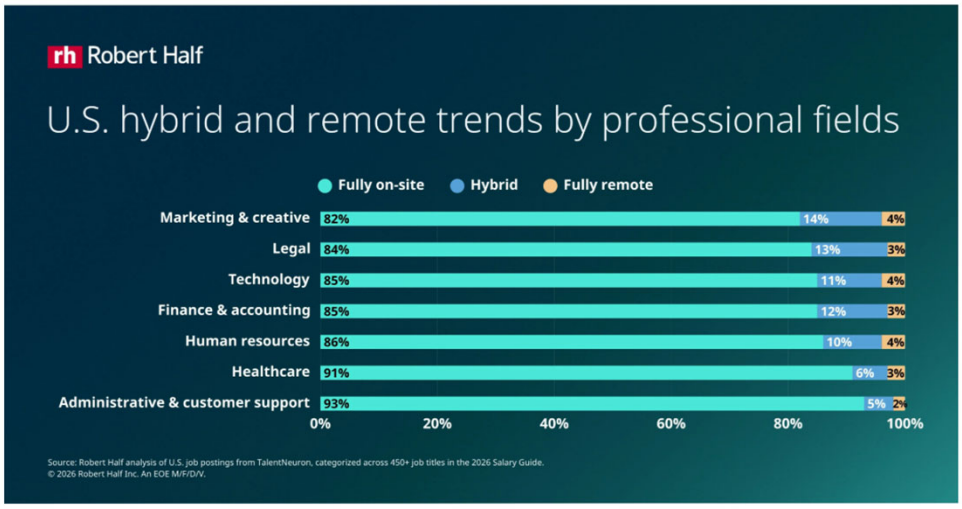
Almost one in two workers (47%) would take a 10% pay cut - or more - for flexible working hours

6% of workers would quit their job if they could no longer work hybrid or remote; an additional 41% would start to look for another job that offered more flexibility in when or where they work

Owl Labs' 2026 State of Hybrid Work Report: www.owllabs.com/state-of-hybrid-work/2026

The Lay of the Land: Emerging Trends in Remote Work

2026 Remote Work by Field



Robert Half – Remote work statistics and trends for 2026: www.roberthalf.com/us/en/insights/research/remote-work-statistics-and-trends

Playing the Odds: Why Companies Allow Remote Work

Key Drivers for Remote and Hybrid Work in 2026



- Talent Attraction and Retention: 6% of workers say they would quit if they lost remote/hybrid option, and 41% would look for a new job.*
- Competitive Differentiation: Employers that still offer structured hybrid setups use them to stand out and recruit.
- Outcome-Based Performance Models: “Butts-in-seats” time tracking gives way to AI measurable output metrics.
- Real Estate and Cost Optimization: Trend away from rigid, long-term office leases in favor of flexible real estate portfolios and shared spaces, prioritizing collaborative infrastructure.
- Intentional Collaboration Design: Modern hybrid models (averaging 2 to 3 days in-office per week) are designed specifically for high-value team interaction, mentoring, and cross-discipline planning.

**Owl Labs' 2026 State of Hybrid Work Report — https://owllabs.com/state-of-hybrid-work/2026

The Tote Board: General Considerations for Wherever Remote Work Happens

What Employers Should Prepare for With Every Remote Worker Engagement

- Off-the-clock
- Security + privacy
- Training + employee engagement
- Productivity + performance management
- Employee remote-work hours fraud + scams
- EEO considerations + remote work as an accommodation



Off-the-Clock

Off-the-Clock Work for Remote Employees

POSSIBLE ISSUES FOR NON-EXEMPT EMPLOYEES

1. Working before clocking in
2. Continuing to work after clocking out
3. Working during weekends
4. Checking emails outside of work hours
5. Working or answering phone calls or emails during meal or rest breaks

COMPENSABILITY RULES

- Off-the-clock work is compensable—even when it is not approved.
- Different states apply different rules to what counts as compensable time.

NOT APPROVED ≠ NOT COMPENSABLE

Off-the-Clock

Best Practices to Prevent Off-the-Clock Issues

SET CLEAR EXPECTATIONS

- Remote hours may differ from the physical workplace (e.g., 6 a.m.–3 p.m.) and should be state in writing
- Meal and rest breaks should be observed
- Timekeeping policies should be clear and state consequences for working off the clock

Clear rules establish the schedule—and the basis for discipline.

DOCUMENT + ENFORCE

- Signed acknowledgment: received, read, and will abide by off-the-clock and work-time policies
- Accurate time recordkeeping systems
- No personal or non-company work during scheduled hours
- Regular training and attestations

The record also supports disciplinary action for violations.



Security + Privacy

Security Control Flow

01
PEOPLE
- Training
- Household privacy
- Confidential calls

02
DEVICE
- Managed hardware
- MFA
- Encryption patching

03
NETWORK
- VPN
- Secure Wi-Fi
- Travel restrictions

04
DOCUMENTS
- Clean desk
- Printing limits
- Secure disposal

05
RESPONSE
- Rapid reporting
- Containment
- Breach assessment

Monitoring must be proportionate, disclosed, and reviewed under applicable privacy and communications laws.

Security + Privacy

Security Considerations to Close Remote-Work Gaps

01	SECURE CONNECTION	VPN + MFA for every remote login; block unsecured home networks.
02	MANAGED DEVICES	Keep antivirus, patching, and strong passwords current on every device.
03	REMOTE-WORK POLICY AND NDA	Protect confidential data; prohibit shared logins and non-employee access.
04	SECURE MEETINGS	Use passwords, waiting rooms, locked rooms, and organizer-controlled sharing.
05	ENCRYPT DATA	Encrypt sensitive information both at rest and in transit.
06	SCAN EMAIL	Aggressively detect phishing and malware aimed at remote workers.
07	TRAIN + ESCALATE	Refresh managers and employees; report suspected threats to IT quickly.

Training + Employee Engagement

Issues With Remote Training and Onboarding



Scattered Knowledge Resources	Training files, SOPs, and guides often live in fragmented email chains or unorganized cloud folders rather than a central hub, forcing new hires to waste time searching for answers.
Loss of Informal "Unwritten" Learning	Remote workers miss out on casual, shoulder-to-shoulder instruction, shadowing senior colleagues, and picking up office culture through passive observation.
Passive Virtual Training	"Talking head" video lectures and text-heavy slide decks lead to low participation, poor information retention, and difficulty tracking who is actually paying attention.
One-Size-Fits-All Digital Content	Many remote programs fail to personalize learning paths for different experience levels, technical skills, or learning styles.

Training + Employee Engagement

Pitfalls With Remote Engagement and Loyalty

Employees want flexibility, but also need connection, visibility, and culture.

Employers should watch for friction points.

Isolation and Lack of Social Bonding
The absence of daily office small talk and shared meals reduces natural social connections, leaving employees feeling lonely or disconnected from team progress.

Blurring Boundaries and Burnout
Without a physical separation between home and office, remote staff often overwork, struggle to unplug, and face higher rates of emotional exhaustion.

Localized Social Roots
Remote workers tend to form their strongest social bonds and support systems where they live rather than with their remote employer.

Transactional Relationships
When engagement drops into a purely transactional exchange of tasks for a salary, company loyalty drops sharply compared to on-site peers.

Communication Gaps and Misunderstanding
Relying purely on chat platforms and delayed video calls can cause missed context, blurred priorities, and frustration with collaborative workflows.

Out of Sight, Out of Mind
Remote employees frequently worry that physical absence hurts their visibility, making career progression and promotion opportunities feel out of reach.

Weakened Workplace Attachment
Without deep emotional ties to a physical team or shared company culture, workers feel fewer barriers to jumping ship for a higher paycheck elsewhere.

Training + Employee Engagement

Current Trends in Remote Training and Engagement

Mix synchronous + asynchronous learning	Blend live virtual workshops via Zoom, Microsoft Teams, or Google Meet for Q&A and collaboration with self-paced e-learning, pre-recorded modules, and microlearning videos.
Implement digital co-working sessions	Pair junior staff or new hires with senior colleagues in a shared virtual room to facilitate availability, connection, and question resolution similar to in-person office setting.
Leverage a Learning Management System (LMS)	Use platforms to assign structured, color-coded training schedules that sync directly with employee calendars and track progress.
Provide clear technical guides	Send advance onboarding cheat sheets covering how to log into software, mute microphones properly, and who to contact if tech issues arise.
Focus on outcomes over outputs	Design training goals around mastered skills and completed projects rather than hours logged sitting in front of a webcam.

Productivity + Performance Management

Challenges to Remote Performance Management

Visibility Gap

- Difficulty observing daily work habits
- Limited informal interaction and context
- Proximity bias favoring in-office staff
- Reduced awareness of individual contributions

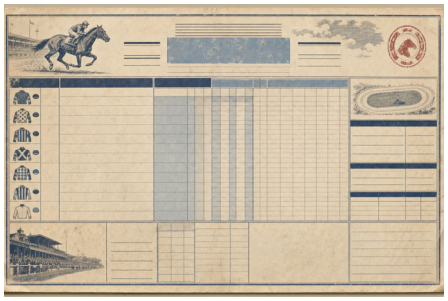
Communication Barriers

- Loss of nonverbal cues in virtual settings
- Timezone coordination challenges
- Information silos across remote teams
- Delayed feedback and response times

**PRS: Remote Performance Management Guide 2026: www.performancereviewssoftware.com/resources/guides/remote-performance-management-guide/

Productivity + Performance Management

Remote Work Performance Stats



77%
of remote workers report higher productivity than in-office

68%
of managers struggle to assess remote employee contributions

2.4×
more engaged: remote employees with weekly 1:1s

21%
higher performance scores for teams using continuous feedback

29%
of companies have formal remote performance frameworks

76%
more likely to stay when remote workers feel trusted

**PRS: Remote Performance Management Guide 2026: www.performancereviewssoftware.com/resources/guides/remote-performance-management-guide/

Productivity + Performance Management

Remote Performance Management Best Practices

❑ **Document everything**
Expectations, feedback, agreements, and decisions in writing for clarity and reference.

❑ **Prioritize communication**
Respect different schedules and reduce meeting fatigue.

❑ **Create dedicated virtual spaces**
Incorporate informal social interaction and relationship building.

❑ **Equalize growth opportunities**
Ensure remote employees have equal access to promotions, projects, and training.

❑ **Combat proximity bias**
Base important decisions on employee performance and documented outcomes—not visibility.

❑ **Train managers for remote leadership**
Treat remote leadership as a distinct competency from in-person management.

❑ **Gather and act on feedback**
Ask remote employees regularly what is working—and how you can improve the experience.

❑ **Celebrate wins publicly**
Recognition matters.

**PRS: Remote Performance Management Guide 2026: www.performancereviewssoftware.com/resources/guides/remote-performance-management-guide/

Productivity + Performance Management

When Does Remote Work *Work*?



Outcome-Based Metrics
Shift from tracking hours to measuring results. Track project completion, quality of work, and adherence to deadlines rather than time spent online or visible activity.

Clear Expectations
Define measurable goals, KPIs, and deliverables from the start. Employees should know what success looks like; how their performance will be evaluated.

Trust and Autonomy
Build mutual trust: good intentions and avoid micromanagement. Remote employees perform best when given flexibility in how/when they complete tasks.

Regular Feedback and Communication
Schedule structured check-ins—weekly for new employees, bi-weekly for experienced staff—to provide guidance, recognize achievements, address challenges.

Psychological Safety
Encourage open communication, peer feedback, and recognition to maintain engagement and motivation.

Productivity + Performance Management

The Need For Employee Trust

Employee Trust and Accountability Gaps

Trust is a particularly fragile element of remote work.

54% Only 54% of managers who supervise remote employees strongly agree they trust their teams to be productive when they are working remotely.

57% Similarly, only 57% of employees strongly agree they feel trusted by their manager when working remotely.

Trust increases when managers:

- communicate consistently
- clarify performance expectations
- hold employees accountable for outcomes
- provide equal feedback and development opportunities

Gallup finds that reinforcing these fundamentals can raise trust by nearly 30 percentage points.

Trust is foundational to psychological safety in distributed teams. Employees must feel safe to speak up, ask questions and admit mistakes without fear of penalty.

**Gallup Workplace Strategy Guide: www.gallup.com/workplace/316313/understanding-and-managing-remote-workers.aspx

Employee Remote-Work Hours Fraud + Scams

When Remote Work Does Not Work

Moonlighting / Overemployment	Employee holds multiple full-time jobs without disclosure. For example, an HR investigation found an employee was simultaneously employed by several companies over years.
Outsourcing Work to Unauthorized Third Parties	Remote workers may subcontract tasks to others, sometimes via remote desktop tools, without company approval.
Identity Misuse and Proxy Interviews	Fraudsters may use stolen or synthetic identities to pose as legitimate employees – in AZ a woman was charged with fraud for helping foreign IT workers use stolen U.S. identities to gain employment; another case involved "proxy interviews" where a friend attended interviews and worked under the employee's name.
Time Theft and Payroll Fraud	Employees log in but engage in personal activities or falsify timesheets to claim more pay than earned.
Data Theft and Insider Threats	Remote access can allow unauthorized data extraction.

Arizona identity-fraud example: www.justice.gov/opa/pr/arizona-woman-sentenced-17m-information-technology-worker-fraud-scheme-generated-revenue

EEOC Telework Guidance Points Employers Toward Case-by-Case Accommodation Reviews

What Happened

Joint Technical Assistance

Feb. 2026: EEOC and OPM issued FAQs addressing telework as a disability-related accommodation for federal workers.

Why Private Employers Should Care

The document is not binding, but it signals the EEOC's current enforcement position. Its principles draw from ADA case law and existing EEOC guidance.

Bottom Line

Employers must engage in a good-faith, individualized assessments under the interactive process.

Source: Fisher Phillips, "EEOC's New Telework Guidance for Federal Agencies Offers Roadmap for Private Employers" (summarizing EEOC/OPM technical assistance issued February 11).

EEO Considerations + Remote Work as an Accommodation

EEOC Telework Guidance Points Employers Toward Case-by-Case Accommodation Reviews

5 KEY TAKEAWAYS

01 When Telework May Qualify

Three categories: participating in the application process, performing essential job functions, and enjoying equal benefits and privileges.

02 Presence Can Be Essential

Some roles require in-person work because of non-remote functions, interaction, supervision, or teamwork.

03 Reassess Over Time

Review annually or when conditions change, including job needs, employee circumstances, or the end of COVID-era assumptions.

04 Navigate Carefully

Consider inconsistent medical documentation, social posts, refusal of in-office alternatives, anxiety-based requests, and commute arguments.

05 Accommodation Is Not A Cure-all

Telework need not be granted solely to manage symptoms, improve quality of life, or mitigate a condition.

Source: Fisher Phillips, "EEOC's New Telework Guidance for Federal Agencies Offers Roadmap for Private Employers" (summarizing EEOC/OPM technical assistance issued February 11).

EEO Considerations + Remote Work as an Accommodation

EEOC Telework Guidance Points Employers Toward Case-by-Case Accommodation Reviews

5 COMPLIANCE MOVES

01 Review Existing Arrangements

Reevaluate significant telework accommodations when circumstances change.

02 Individualize the Assessment

Do not use blanket rules; evaluate requests in good faith and case by case.

03 Document the Process

Put requests, provider inquiries, alternatives, and decisions in writing.

04 Check State-Law

State disability laws may be stricter than federal requirements.

05 Consult Counsel Before Denial

Get experienced legal advice before denying significant requests.

GUARDRAIL:
Employees should have a chance to explain why an in-office option would be ineffective and support that explanation with evidence. Anti-retaliation rules still apply.

Source: Fisher Phillips, "EEOC's New Telework Guidance for Federal Agencies Offers Roadmap for Private Employers" (summarizing EEOC/OPM technical assistance issued February 11).

Handicapping: Special Considerations for When Remote Work Crosses State Lines

The Law Gets More Complicated

01 FEDERAL FLOOR

FLSA • FMLA • Title VII • ADA • ADEA • OSHA • Federal Tax

02 KENTUCKY HOME BASE

KRS Wage/Hour • KCRA • Kentucky Withholding/UI • Kentucky Workers' Comp

03 WORK-STATE + LOCAL OVERLAY

Business Registration • Local Taxation Issues • Wage/Hour • Leaves/Accommodations • Notices • Reimbursement Issues • Recordkeeping Requirements • Workers' Comp

The employer's address does not displace the law where the work is performed.

Handicapping: Special Considerations for When Remote Work Crosses State Lines

Ten Pressure Points

CORPORATE + PAY

1. Business registration
2. Tax implications
3. Wage and hour laws
4. Paid sick/leave laws
5. Business expense reimbursement requirements

PEOPLE + PROTECTION

6. Mandatory notices/postings/training
7. EEO/civil rights protections
8. Personnel file access and recordkeeping requirement
9. Workers' Compensation
10. Security and privacy concerns

Handicapping: Special Considerations for When Remote Work Crosses State Lines

Hours Travel With the Worker

KENTUCKY + FEDERAL BASELINE

1. Overtime generally only after 40 hours in a workweek
2. Record all hours the employer knows or should know
3. Use a reasonable procedure for unscheduled time
4. Kentucky meal period: generally, between 3rd and 5th hour
5. Kentucky paid rest: generally, 10 minutes per 4 hours

POSSIBLE WORK-STATE ADDITIONS

- Daily overtime and double-time rules
- Meal/rest timing, waivers, and premium pay
- Reporting-time, split-shift, or scheduling rules
- Different exemptions, wage statements, or pay frequency
- Stricter treatment of small or "off-the-clock" increments

Example: California adds daily overtime and meal-period remedies.

Handicapping: Special Considerations for When Remote Work Crosses State Lines

Leave, Reimbursement, Notices, and Records Change at the Border

TOPIC	KENTUCKY / FEDERAL START	POSSIBLE WORK-STATE OVERLAY
Paid Sick / Leave	No general KY paid-sick mandate; FMLA and policy may apply	Accrual, carryover, notice, payout, local ordinances
Expenses	No broad KY private-sector reimbursement statute; FLSA floor	Necessary-business-expense reimbursement; timing/itemization
Required Notices	Federal + Kentucky postings; electronic rules are limited	State/local posters, wage notices, leave notices
Personnel Files	No broad KY private-sector inspection statute	Inspection/copy deadlines and permitted exclusions

Going Wire-to-Wire: Examples and Key Take Aways

Build the Policy as a Permission System, Not a Promise

THE CORE RULE

Remote work is approved for a defined role, person, location, and duration—subject to law and business need.

Not a permanent entitlement.
Not permission to work anywhere.

01	APPROVED ADDRESS	Physical worksite, not merely mailing address
02	CHANGE NOTICE	Advance written notice + approval before another state/country
03	DURATION CAP	Limit days away from established home office
04	OPERATING TERMS	Hours, time, expense, equipment, injury, security
05	CONTROL RIGHTS	Modify, suspend, inspect where lawful, or revoke
06	ACCURACY	Duty to keep location information current; consequences for misstatement

Going Wire-to-Wire: Examples and Key Take Aways

An Effective Remote-Work Policy Covers Ten Essentials

TERMS + WORKPLACE

1. Discretionary language and at-will disclaimer
2. Designated, suitable and safe remote work location
3. Hours of work and related expectations, including productivity and flexibility
4. Work area and equipment
5. Application of and compliance with all other company policies

RISK + CLOSEOUT

6. Accidents and injuries
7. Expenses
8. No expectation of privacy
9. Return of company property
10. Acknowledgment of receipt

Going Wire-to-Wire: Examples and Key Take Aways

Consider This...

Remote-Work Attendance Scenario

Justin, a non-exempt remote worker, has been frequently showing up late to mandatory virtual meetings and training sessions.

When questioned about this, Justin discloses that he has been working out in CA for the last several months while he has been participating in a substance abuse treatment program at a renowned rehabilitation center.

Justin says the time difference has made it difficult for him to report to meetings on time. He also mentions that he may need a modified work schedule due to his treatment program.

Going Wire-to-Wire: Examples and Key Take Aways

Or This...



PTO Accrual and Work-location Scenario

Carolyn contacts the company and advises that, although her legal residency is in KY, she has been physically working in CA for the past 2 years due to her husband's military assignment.

She wants to know how the Company handles PTO accrual under these circumstances.

She says she has reviewed general guidance from the CA Department of Industrial Relations which says that earned PTO is typically treated as wages once accrued in CA and she wants to confirm if that is accurate.

Going Wire-to-Wire: Examples and Key Take Aways

Take Aways

01	**The Lay of the Land**	Emerging trends in remote work are reshaping where employees work, how teams collaborate, and what employers must monitor.
02	**Playing the Odds**	Companies allow remote work to compete for talent, improve flexibility, and support business continuity—while balancing new compliance risks.
03	**The Tote Board**	Wherever remote work happens, employers need clear expectations for timekeeping, performance, communication, and accountability.
04	**Handicapping**	When remote work crosses state lines, payroll, wage-and-hour, leave, tax, and accommodation rules may change with the work location.
05	**Going Wire-to-Wire**	Create effective remote work policies and monitor compliance.

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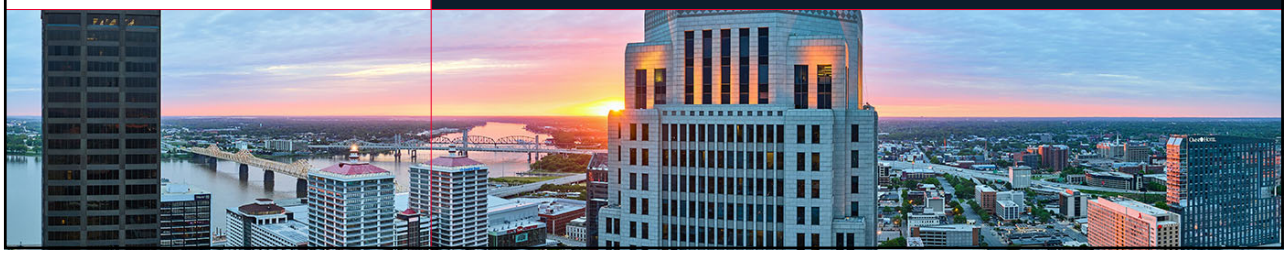
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QUESTIONS?



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