



COVERING ALL BASES: HOT TOPICS IN LABOR & EMPLOYMENT LAW

MAY 7, 2026



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AI IN HR: WHERE BIAS HIDES





Presented by



David Walton, AIGP, CIPP/US

Partner, Chair of the firm's Artificial Intelligence Team
Fisher Phillips

Agenda

- What AI Bias is – and why it matters
- How bias arises in HR Technologies
- Legal & Regulatory landscape
- Mitigating Bias & Managing Risk
- Practical takeaways for Employers



UNDERSTANDING BIAS

What is Bias?

- **Bias** — is a systematic preference or prejudice for or against certain individuals or groups — often resulting in outcomes that are unfair or discriminatory.
- **Human Bias** — Every human decision involves some level of cognitive bias (e.g., confirmation bias, affinity bias, halo effect). These biases often become embedded in hiring, evaluation, and promotion data.
- **AI Bias** — AI systems learn from historical data — which can reflect past human bias or societal inequities.
- **AI doesn't invent bias** — it inherits and amplifies it unless monitored and corrected.

AI AMPLIFIES HUMAN BIAS

From data to decisions. Smarter predictions, better outcomes

■ Training Data

- Historical data used to teach the model

■ Train Model

- The model learns patterns and relationships

■ Predictive Model

- The model makes predictions on new, unseen data

Algorithmic Bias

- Training data bias
- Labeling bias
- Measurement bias
- Deployment bias



USE OF AI IN HR AND POTENTIAL BIAS RISKS

Resume Screeners

- 99% of Fortune 500 companies use algorithms as part of the hiring process
- 75%–100% of resumes are read by an algorithm
- (estimate by Zip Recruiter)
- Google and IBM get an estimated 3,000,000 resumes per year
- Delta gets 300,000+ resumes per year for flight attendants

What a Resume Screening Model Looks For

- Resumes and applications
- AI model
- Features and weights
 - Education (0.35)
 - Experience length (0.25)
 - Skills (0.20)
 - Keywords (0.10)
 - Other factors (0.10)
- Candidate Scores
- AI models evaluate resumes using multiple weighted factors to generate a candidate score

Best Practices for Resume Screeners

- Don't confuse correlation with qualification
- Understand the model's "Features" and filters
- Validate with bias audits and testing
- Conduct regular bias and disparate-impact audits.
- Monitor outcomes over time
- Run Pilot Programs and Train Your Employees

Avoid Bloated Job Descriptions

- Many employers include every possible skill — mixing "must-haves" with "nice-to-haves."
- The result: job postings become data-dense and vague, making it harder for AI to identify what truly matters.
- Candidates — and now GenAI tools — tailor résumés to match keywords in job descriptions.
- This creates nearly identical résumé matches, making all applicants look equally qualified on paper.
- When the model can't distinguish applicants based on job-related factors, it begins weighing secondary features — such as education pedigree, extracurricular activities word choice, or formatting patterns.
- These non-job-related signals can amplify bias and undermine fairness in screening.
- Bloated job descriptions distort both human and algorithmic judgment — leading AI systems to optimize for noise, not talent.

AI Interviewers

■ Chatbots for Initial Interactions

- Handle early candidate engagement — answering FAQs, explaining roles, or collecting application info.
- May use natural language processing (NLP) to understand responses.
- Risk: Inconsistent responses or tone may create perceived bias or miscommunication.

■ Robocalls and AI Voice Screeners

- Conduct short automated phone interviews using scripted questions.
- Capture and analyze voice patterns and responses.
- Risk: Accent or speech pattern bias; potential ADA concerns for speech impairments.

■ Automated Interview Scheduling

- AI tools coordinate times with candidates, often integrated with Outlook or Calendly.
- Reduces administrative work but can reveal data privacy concerns if integrated with personal calendars.

Video Interview Tools

- Some AI interview tools use video recordings to infer an applicant's personality traits, emotional state, and behavioral tendencies.
- These systems analyze:
 - **Facial biometrics:** Micro-expressions, eye movement, gaze, and facial symmetry.
 - **Tone of voice:** Pitch, pace, and speech energy to gauge confidence or enthusiasm.
 - **Sentiment and language:** Word choice and tone analyzed for "positivity," "team orientation," or "leadership potential."
- The results are often presented as personality scores or behavioral fit ratings — sometimes mapped to frameworks like the Big Five Personality Traits (e.g., openness, conscientiousness, extraversion, agreeableness, neuroticism).

AI for Employee Performance

- Employee upskilling and skills-based hiring
- Identifying applicants with transferable skill sets, skill adjacencies, and ability to learn different skills
- Ensure employees are on the right career track
- Evaluations
- Develop better pay-for-performance metrics
- Availability of promotions and transfers
- Suggested internal trainings

Gamification

- Theory: We all have fundamental predispositions that lead us to be successful versus less successful
- As technology advances, soft skills become more important; experience and hard skills have a shorter shelf life
- Digital games are designed to find personality traits (e.g., emotional IQ) and behavioral characteristics
- Harder to fake answers/more enjoyable
- But do they really find the traits you are looking for?

How Does Gamification Work?

- One company that creates a lot of the interview games uses this process:
 - The employer selects 50 successful employees
 - These 50 employees play the games
 - This generates training data for the AI model
 - Out of a universal set of 2M test takers, they randomly select 10,000
 - They compare the training data from the 50 employees to the 10,000 random results
 - Find pattern and criteria points
 - Build and test the model

Risks & Mitigation

■ Risks

- Bias & False Inference
- Privacy, Transparency & Consent
- Job-Relatedness & Validation (EEOC)
- Accuracy, Authenticity & Context
- Protected-Status Exposure
- Labor/Employment Law Traps
- FCRA & Vendor Use
- Security & Retention

■ Mitigation

- Define a Clear and Lawful Purpose
- Use Third-Party or Firewall Reviewers
- Ensure Compliance with Privacy and AI Laws
- Validate and Document Job-Relatedness
- Train HR and Decision-Makers
- Provide Transparency and Due Process
- Follow FCRA procedures (disclosure, authorization, pre-adverse/adverse action notice) if a third party conducts the review.
- Limit Data Collection and Retention

Retention

- Use analytics to identify factors affecting resignations
- Correlations between resignations and factors like:
 - Pay increases
 - Training opportunities
 - Promotion wait times
 - Benefits
 - Changes to management structure
- Identify quiet-quitters
- Flight-risk predictor

AI to Detect Employee Burnout/Quiet Quitting

- Software can detect burnout over time
- Looks at changes in employee behavior
- Identify quit quitting behavior
- Analyzes people data
 - Benefits
 - Annual reviews
 - Semantic analysis of email/communications
 - Calendars/meetings
 - Contacts
 - Resumes
 - Work activity

Employee Surveillance

- Pre-Covid: not practical to have a supervisor sitting at your desk watching your every move
- Post-Covid: AI tools are used to monitor employees
- 8/10 if the largest employers in US track some form of employee productivity in real time
- Analyze websites visited, keystrokes, emails, mouse movements, phone calls, meetings (Teams), monitoring length of breaks,
- Greatly increases productivity but at what cost

Risks & Mitigation

■ Risks

- Primary factors for retention and flight risk are outside the datasets controlled by HR
- False positives and bias
- Employee privacy concerns
- Over-reliance on automated decisions
- Lack of vendor transparency of model data and data quality issues

■ Mitigation

- Pre-deployment and ongoing bias testing
- Human-in-the Loop decision-making/ proper training
- Strengthen Privacy, Monitoring, and Notice Protocols
- Vendor Due Diligence and Contractual Controls
- Improve Data Quality and Data Governance



LEGAL AND REGULATORY RISKS

AI Bias Laws – Federal Guidance

- **EEOC (Title VII & ADA)**
 - Employers are liable for discriminatory outcomes even from vendor AI tools.
 - Must offer reasonable accommodations for AI tools.
- **FTC**
 - Enforces against unfair or deceptive AI practices (e.g., misrepresenting how AI works).
- **CFPB**
 - AI used in credit/employment decisions must allow for adverse action explanations.
- **DOJ/EEOC Technical Assistance (2022)**
 - Employers must ensure AI tools don't violate disability rights or discriminate based on protected class.
- **Note:** These regulations were formally rescinded by the current administration; however, the Supreme Court's disparate-impact precedent still stands.

What is “Disparate Impact?”

- **Definition:** Occurs when a neutral policy or algorithm disproportionately affects members of a protected group, even without intent to discriminate. Example: An AI hiring tool that screens out older applicants at a higher rate than younger ones.
- **Title VII Framework**
 - Plaintiffs must show that a policy or practice causes a statistically significant adverse impact on a protected class.
 - The burden then shifts to the employer to demonstrate a business necessity — that the practice is job-related and consistent with business needs.
 - Even then, the plaintiff may prevail by showing less discriminatory alternatives exist.
- **State Equivalents** Several states have codified or recognized similar disparate impact standards, including: California, New York, Illinois, Colorado, and Minnesota.

How is Bias Determined?

- **80% (Four-Fifths) Rule – EEOC (1978)**

- Selection rate for one group < 80% of highest group → possible adverse impact
- Screening tool, not proof of discrimination

- **NIST AI Risk Management Framework (RMF)**

- Identify → Measure → Mitigate bias across the AI lifecycle
- Use quantitative metrics (statistical parity, equalized odds, predictive parity) Combine with contextual, qualitative analysis

- **EEOC AI Guidance (2023)**

- AI tools must not cause disparate impact
- Tools must be job-related and tied to business necessity

The 80/20 Rule

- **Example: AI Résumé Screener Outcomes**
 - 100 male applicants → 60 selected (60%)
 - 100 female applicants → 45 selected (45%)
- **Selection Rate Comparison**
 - $45\% \div 60\% = 75\%$
- **Result**
 - $75\% < 80\%$ → Potential adverse impact flagged
- **Key Point:** The 80% Rule is a warning indicator, not proof of discrimination.

Workplace AI Tools Under Attack

- Three major lawsuits. Far-reaching implications for employers.
- **STATE FARM**
 - Venue: USDC N. Illinois
 - Date Filed: December 2022
 - Claims: Race
 - Status: Ongoing
- **SIRIUS XM**
 - Venue: USDC E. Michigan
 - Date Filed: August 2025
 - Claims: Race
 - Status: Ongoing
- **WORKDAY**
 - Venue: USDC N. California
 - Date Filed: February 2023
 - Claims: Disability + Race + Age
 - Status: Class Certified
- **THE BOTTOM LINE:** Employers are facing increased legal scrutiny over AI hiring tools. The outcome of these cases could reshape how organizations develop, vet, and use AI.

NYC LL 144

- California
- Colorado
- Illinois
- New York

EU AI Act (for Multinational Employers)

- **Comprehensive, risk-based regulation** The EU AI Act regulates AI systems based on the level of risk, including employment-related tools.
- **Extra-territorial impact** It applies to providers and deployers of AI systems established in the EU—and to non-EU companies whose systems affect people in the EU.
- **Key requirements for high-risk AI systems**
 - Risk classification and documentation
 - Conformity assessments before deployment
 - Transparency and human oversight
 - Data governance, accuracy, and robustness
 - Record-keeping and monitoring
- Compliance starts now. Understand the risks. Build responsible AI.



AI FAIRNESS & BIAS AUDITING SOLUTIONS

Service Spotlight: AI Bias Audits & Risk Assessments

■ WHAT WE DO

- Statistical adverse impact analysis across protected classes
- Algorithmic fairness testing (disparate impact, proxy discrimination)
- NYC Local Law 144 and state-specific compliance audits
- Vendor tool evaluation
- Pre-deployment and ongoing validation protocols

■ WHY IT MATTERS

- 80% of AI hiring tools have never been independently audited
- Higher litigation risk without documented bias testing

Vendor Bias Audit Review Process

7 Steps to Evaluate and Validate Third-Party AI Tool Compliance

- **STEP 1 — DEFINE USE & RISK**
 - Identify how the AI tool is used (hiring, promotion, termination)
 - Determine legal exposure
 - Assess if it qualifies as regulated AEDT
 - Key Question: What is the tool doing in your workplace?
- **STEP 2 — COLLECT VENDOR MATERIALS**
 - Gather bias audit reports from vendor
 - Review methodology and data summaries
 - Collect validation studies and disclosures
 - Key Question: What has the vendor actually provided?
- **STEP 3 — REVIEW THE BIAS AUDIT**
 - Verify proper populations and datasets
 - Check relevant time period
 - Assess comparison groups and metrics clarity
 - Key Question: Is the audit credible and complete?
- **STEP 4 — TEST LEGAL ALIGNMENT**
 - Compliance with Title VII and other laws
 - Notice and disclosure obligations
 - Verification of compliance
 - Key Question: Does it meet applicable legal requirements?
- **STEP 5 — IDENTIFY GAPS & RISKS**
 - Flag missing or weak analysis
 - Note incomplete documentation
 - Identify if not tailored to your actual use
 - Key Question: Where are the problems?
- **STEP 6 — PROVIDE ACTION PLAN**
 - Approve use with safeguards, OR
 - Require vendor remediation, OR
 - Modify tool usage or add controls
 - Key Question: What should you do next?
- **STEP 7 — OPTIONAL INDEPENDENT AUDIT**
 - Test using your own employment data
 - Validate vendor conclusions independently
 - Create defensible backup analysis
 - Key Question: Do you need verification?
- **OUTCOME: A clearer, more defensible path for using AI tools while reducing legal and reputational risk. | Reduced Legal Exposure | Stronger Compliance | Better Business Outcomes**

Internal Tool Audit Process

7 Steps to Audit and Certify Custom-Built AI Systems

- **STEP 1 — SCOPING CALL**
 - Understand how the AI tool works
 - Document decision logic and data inputs
 - Identify employment decision types affected
 - Key Question: How does your AI system make decisions?
- **STEP 2 — DATA COLLECTION & PREPARATION**
 - Create plan for data testing
 - Ensure data completeness and quality
 - Prepare datasets for bias testing
 - Key Question: What data does your system use?
- **STEP 3 — STATISTICAL BIAS ANALYSIS**
 - Test across protected classes
 - Conduct disparate impact analysis
 - Evaluate model performance by demographic groups
 - Key Question: Does the tool produce biased outcomes?
- **STEP 4 — ROOT-CAUSE ANALYSIS**
 - Use explainable AI methods
 - Identify sources of bias in the model
 - Analyze feature importance and decision patterns
 - Key Question: Why is bias occurring?
- **STEP 5 — LEGAL COMPLIANCE ASSESSMENT**
 - Test for compliance with Title VII and other laws
 - Assess notice and disclosure obligations
 - Create privileged attorney-client legal report
 - Key Question: Does it meet legal requirements?
- **STEP 6 — DEVELOP MITIGATION STRATEGIES**
 - Recommend model adjustments
 - Propose process improvements
 - Design safeguards and controls
 - Key Question: How can we fix the problems?
- **STEP 7 — DOCUMENTATION & MONITORING**
 - Prepare comprehensive audit report (privileged)
 - Create public summary (if required)
 - Establish continuous monitoring plan
 - Key Question: How do we maintain compliance?
- **OUTCOME:** A defensible, privilege-protected audit with clear remediation roadmap and ongoing governance.



Questions?



CRISIS MANAGEMENT: DEALING WITH THE UNEXPECTED





Moderator



Angelica Ochoa

Partner
Fisher Phillips

Panelists



Jennifer Jaskolka

Chief Legal Officer
Wells



Jocelyn Campanaro

Partner
Fisher Phillips



Kristin White

Partner
Fisher Phillips



Vance Knapp

Partner
Fisher Phillips

Corporate Threat Management and Workplace Violence

- Prevention:
 - Threat assessment and risk mitigation
- Compliance:
 - Legal and regulatory obligations concerning workplace violence and corporate personal security
- Response:
 - Civil protection orders/TROs
 - Crisis Communications/Reputational Risk
 - Incident response management
 - Workplace violence investigations
- Recovery:
 - Post-incident assistance with stabilizing business operations, addressing ongoing risks, and comprehensive after-incident reports



WORKPLACE ACCIDENTS

Emergency Response Plans

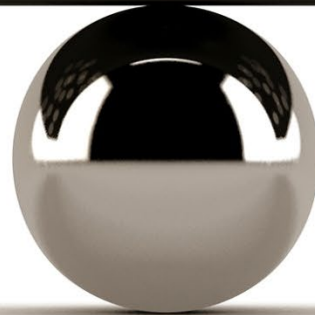
- Evacuation, rescue, and recovery
- Notifications and compliance
- Secure scene and preserve evidence
- Family/survivor assistance
- Notification to carriers
- Media interface
- Legal liability assessment
- Appropriate backup or contingency plans
- Internal investigation
- Document control



Strategic Balancing Act

**Fulfilling Employer
Responsibilities**

**Asserting
Employer Rights**



**Professionalism
And Experience**

Media Coverage

- Local news coverage
- The Blame Game and other public fascination with tragedy
- Interaction with families
- Control the message
- Social media





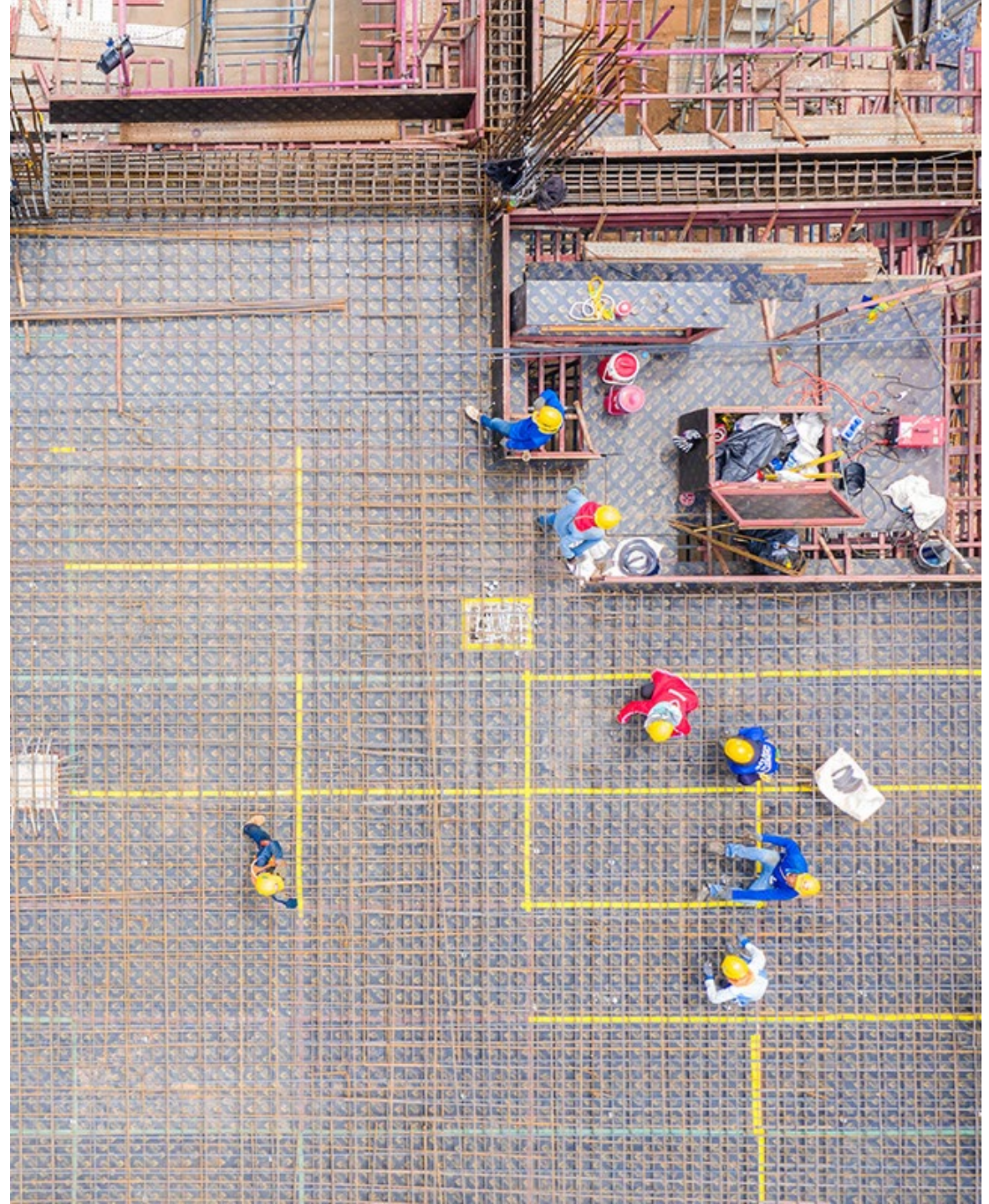
IMMIGRATION COMPLIANCE AND CRISIS MANAGEMENT

Preparing for ICE Raids and DHS Action

Why Would ICE Be At The Worksite?

Raids vs. Audits

- ICE may come to the worksite to:
 - Start an I-9 audit (Document will be called “Notice of Inspection”)
 - Workplace raid – must have a **judicial warrant**
 - Detain a specific person – must have a **judicial warrant**





PREPAREDNESS PLANS

Preparation

Immigration Point Person

- Assign a staff member as the primary contact for all DHS/ICE/CBP correspondence.
- Ensure all employees are aware of who this person is and how to contact them.

Employee Awareness and Communication

- Train employees to immediately notify the Immigration Point Person in case of any contact from DHS/ICE/CBP.
- Provide clear instructions on workplace rights and responsibilities in case of a raid.

Workplace Signage and Access Control

- Ensure proper signage is displayed on all private and non-public workspaces.
- Restrict unauthorized access to non-public areas unless legally required.

ICE or CBP Arrival

Handling



- Handling ICE or CBP Agent Arrival
 - Ask agents if they have a warrant.
 - If no warrant is presented, deny access to employees, documents, and non-public areas.
 - If a warrant is presented, carefully review its details.

Validating



- Validating the Warrant
 - Confirm it is a judicial warrant, issued by a federal court and signed by a judge.
 - If it is an administrative warrant (issued by DHS/ICE/CBP), it does not grant access to non-public areas.

Managing

- Managing the Search and Seizure Process
 - Cooperate within limits of warrant.
 - Do not interfere with officers' search and seizure within scope of the warrant.
 - Record details of search, including items taken and persons spoken to or detained.

Documenting the Activity

Documentation and Evidence Collection

Keep detailed records of all interactions, searches, and seizures.
Request a copy of the warrant and any inventory of seized items.


Protecting Business-Critical and Confidential Documents

If agents attempt to seize confidential or critical business documents, request an accommodation to retain or copy them.
Consult legal counsel immediately for guidance.

Post-Raid Review and Next Steps

Conduct a debriefing with key personnel to document the event.
Consult an immigration attorney to assess the situation and respond appropriately.
Provide necessary support to affected employees.
Revise and update this action plan based on new developments or legal requirements.

ICE Audits and Internal I-9 Audits

 Employment Eligibility Verification Department of Homeland Security U.S. Citizenship and Immigration Services		USCIS Form I-9 OMB No. 1615-0047 Expires 08/31/2026
<p>START HERE: Employers must ensure the form instructions are available to employees when completing this form. Employers are liable for failing to comply with the requirements for completing this form. See below and the Instructions.</p> <p>ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in Section 1, or specify which acceptable documentation employees must present for Section 2 or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.</p>		
<p>Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.</p>		
Last Name (Family Name)		Other Last Names Used (if any)
First Name (Given Name)		Middle Initial (if any)
Address (Street Number and Name)		State
Apt. Number (if any)	City or Town	ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number	Employee's Telephone Number
Employee's Email Address		
<p>I am aware that federal law provides for imprisonment and/or fines for false statements, or the use of false documents, in connection with the completion of this form. I attest, under penalty of perjury, that this information, including my selection of the box attesting to my citizenship or immigration status, is true and correct.</p>		
<p>Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.):</p> <p><input type="checkbox"/> 1. A citizen of the United States</p> <p><input type="checkbox"/> 2. A noncitizen national of the United States (See instructions.)</p> <p><input type="checkbox"/> 3. A lawful permanent resident (Enter USCIS or A-Number.)</p> <p><input type="checkbox"/> 4. A noncitizen (other than Item Numbers 2. and 3. above) authorized to work until (exp. date, if any)</p>		
<p>If you check item Number 4., enter one of these:</p> <p>USCIS A-Number OR Form I-94 Admission Number OR Foreign Passport Number and Country of Issuance</p>		
Signature of Employee		Today's Date (mm/dd/yyyy)
<p>If a preparer and/or translator assisted you in completing Section 1, that person MUST complete the Preparer and/or Translator Certification on Page 3.</p>		
<p>Section 2. Employer Review and Verification: Employers or their authorized representative must complete and sign Section 2 within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see instructions.</p>		
	List A	List B
	OR	AND
		List C
Document Title 1		
Issuing Authority		
Document Number (if any)		
Expiration Date (if any)		
Document Title 2 (if any)	Additional Information	
Issuing Authority		
Document Number (if any)		
Expiration Date (if any)		
Document Title 3 (if any)		
Issuing Authority		
Document Number (if any)		
Expiration Date (if any)		
<p><input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.</p>		
<p>Certification: I attest, under penalty of perjury, that (1) I have examined the documentation presented by the above-named employee, (2) the above-listed documentation appears to be genuine and to relate to the employee named, and (3) to the best of my knowledge, the employee is authorized to work in the United States.</p>		First Day of Employment (mm/dd/yyyy):
Last Name, First Name and Title of Employer or Authorized Representative		Today's Date (mm/dd/yyyy)
Signature of Employer or Authorized Representative		
Employer's Business or Organization Name	Employer's Business or Organization Address, City or Town, State, ZIP Code	
<p>For reverification or rehire, complete Supplement B, Reverification and Rehire on Page 4.</p>		
Form I-9 Edition 08/01/23		Page 1 of 4

ICE I-9 Audits

An I-9 audit (Notice of Inspection) may arrive by mail or hand delivered by an ICE officer

The company will have 3 days to produce the requested I-9s and other documents

Do not waive the 3 days – take the time to prepare the submission with legal counsel

Extensions may be requested though are not often given for more than a few days

Arrange with requesting officer where to produce the documents – either onsite at the workplace, via hand delivery to the officer or electronic submission

If onsite inspection is required, provide the officer a place to review the documents that is separate from major areas of operations or other documents/items

Self-Audit: Form I-9 Basic Requirements



For all Active Employees hired after November 6, 1986



Section 1 - completed by employee no later than start date of employment.



Section 2 - completed by employer by end of third business day after employee starts work.



May complete form prior to start date if offer of employment is made and accepted.



Use Form I-9 with revision date 8/1/2023 for new hires and reverifications.

Self-Audit: Getting Started

Generate a list of all current employees and terminated employees for the last 3 years.

- Include name, date of hire, date of rehire, date of termination and distinguishing fact (SSN or DOB).

Pull I-9 forms for all current employees first.

Make sure that you have an I-9 form for each employee on the list.

For current employees with missing I-9s, complete new I-9 on current version of the Form I-9 and current dates.

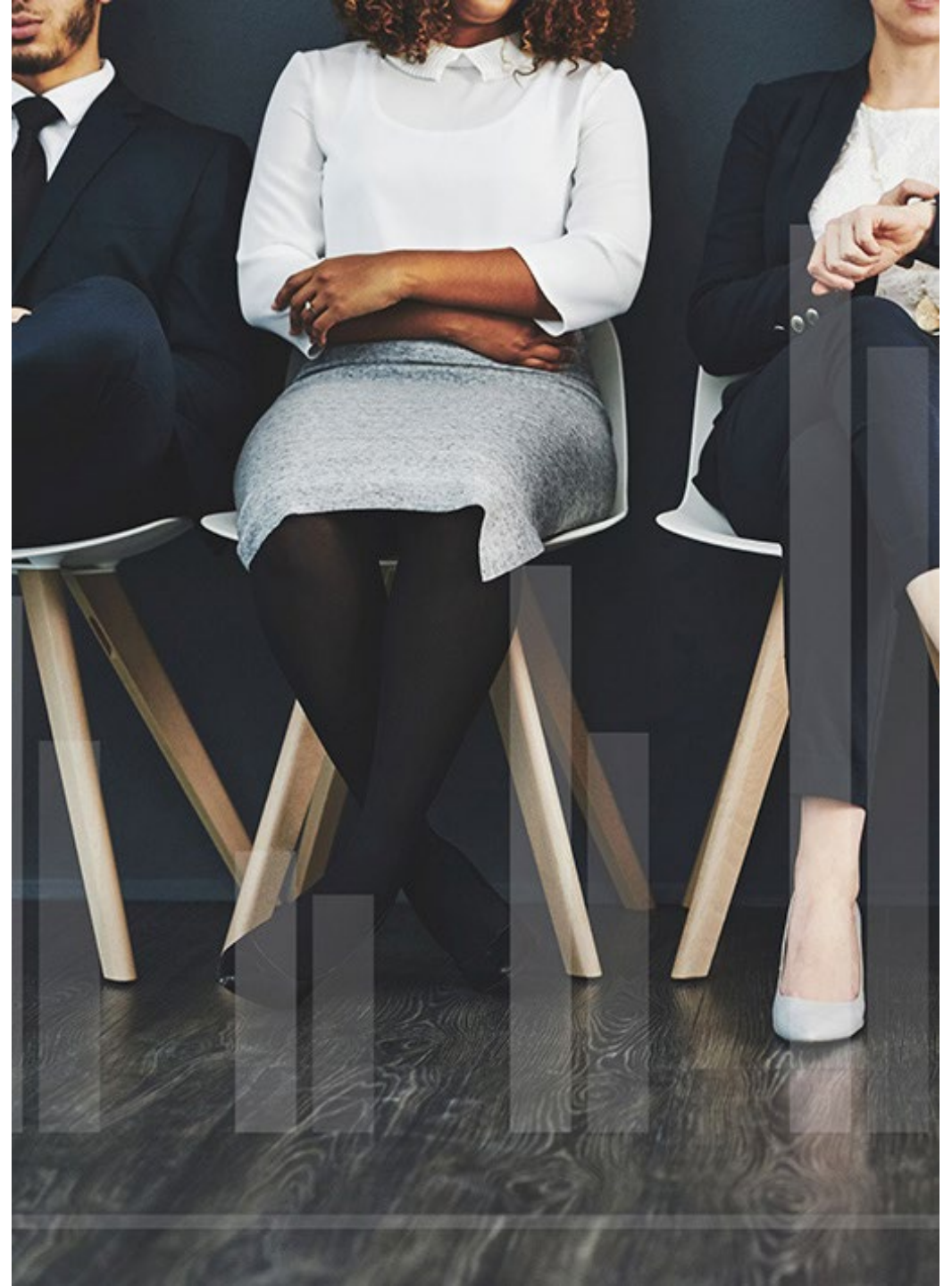
Make corrections – section 1 by employee / section 2 by employer.

Re-verify anyone with expired work authorization.



Form I-9 Resources

- It is unlawful for employers to *knowingly* hire or continue employing individuals who are not authorized to work in the United States.
 - I-9 M-274 Manual:
<https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274>
 - USCIS I-9 Central:
<https://www.uscis.gov/i-9-central>





Questions?



**RESUME AT
11:15**



BEST-IN-CLASS BENEFITS: LEARNING FROM HIGH PERFORMING EMPLOYERS



Best-in-Class Benefits: Learning from High Performing Employers



Sarah Darley
Area Vice President
Employee Benefits Consultant



Gallagher

Insurance | Risk Management | Consulting

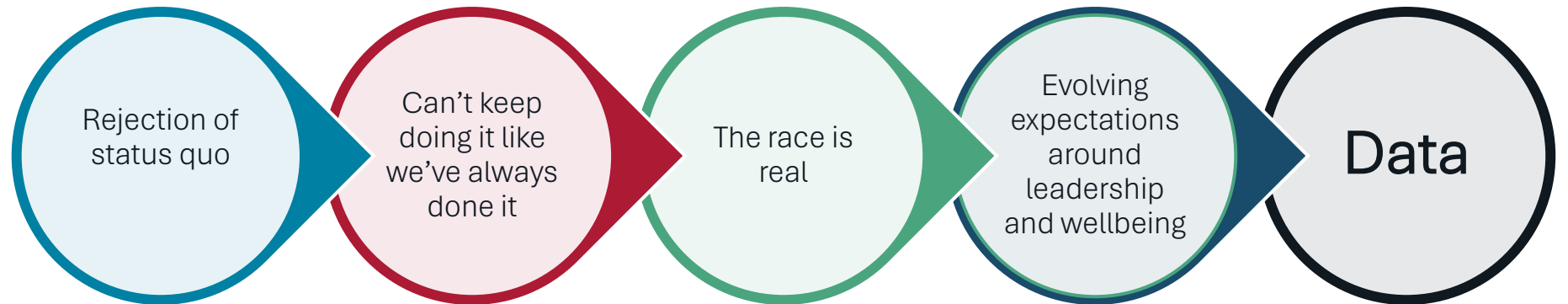
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We've Changed

- New priorities are changing how we feel about work

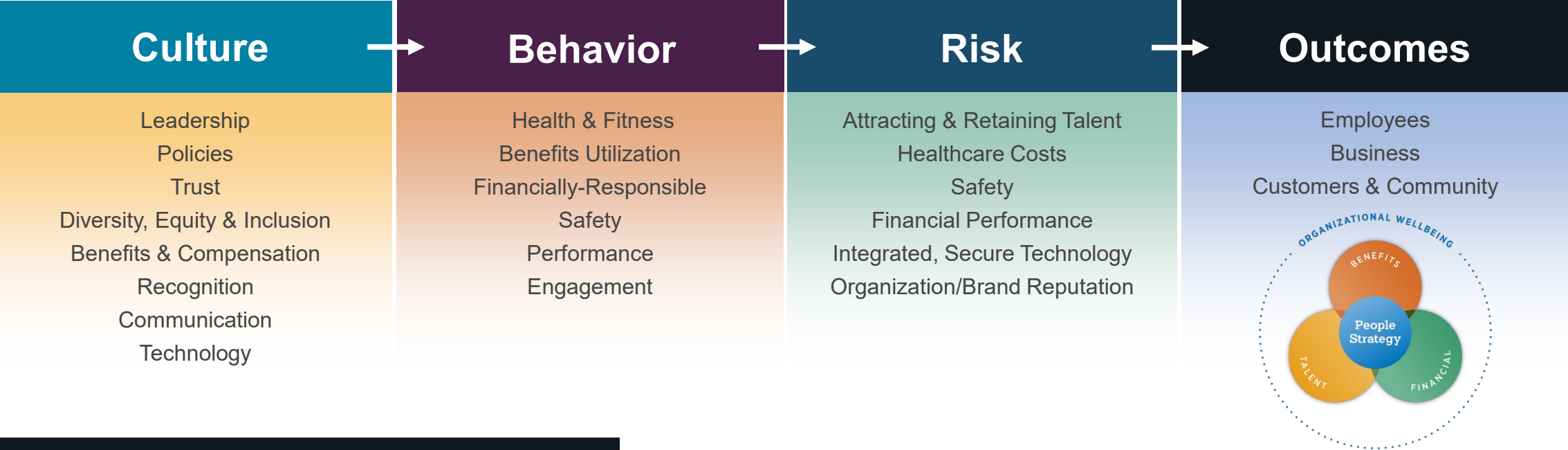
Great
Resignation
Quiet Quitting
Loud Quitting
Rage Quitting
Rusting Out
Quiet Cracking



Organizational Wellbeing

We help people and organizations secure a confident future through our proactive people strategies.

When your people thrive, so does your organization's wellbeing



How we do it:

<p>Data & insights</p> <p>We'll help you prioritize your people investments based on your organization's demographics, cost drivers, culture and goals</p>	<p>Technology</p> <p>Our digital solutions and technology infrastructure will meet the needs of you and your people</p>	<p>Trust</p> <p>With empathy and a client-centric approach, we foster long-term relationships and evolve our solutions to address your changing needs</p>
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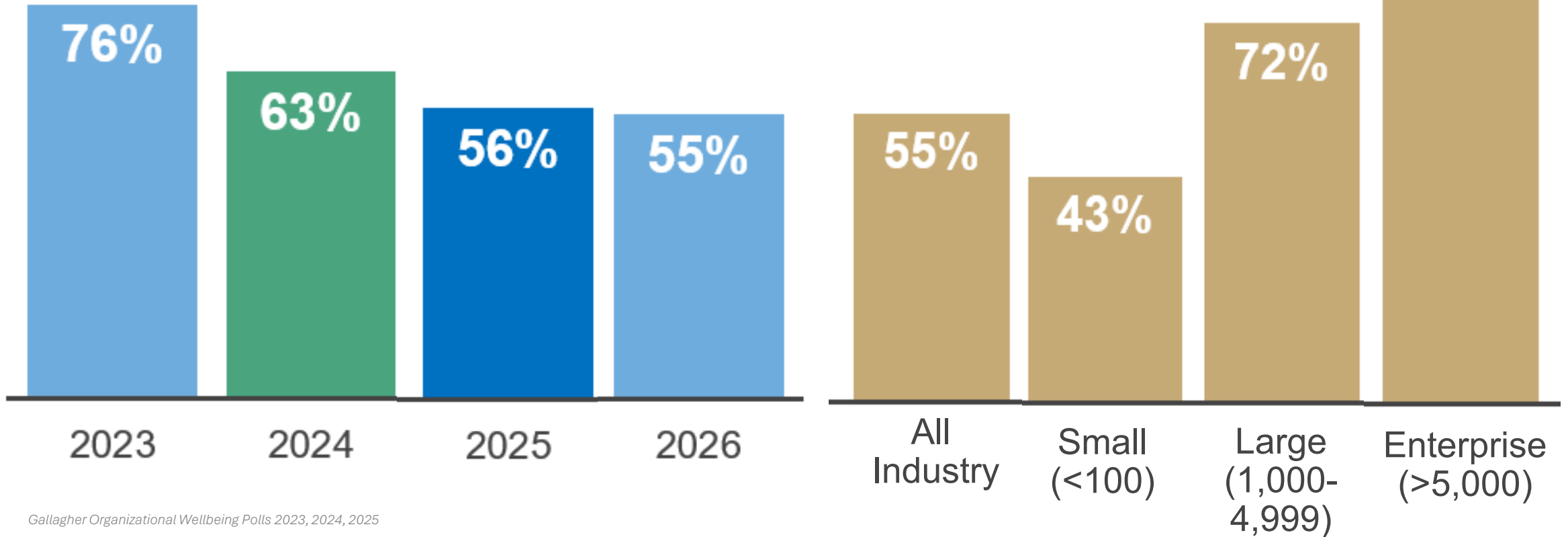
It's all connected.

HR Capacity

Making progress but still over half of HR teams have capacity issues

% of responders stating their HR teams have very little to no capacity

2026 very little to no capacity by segment



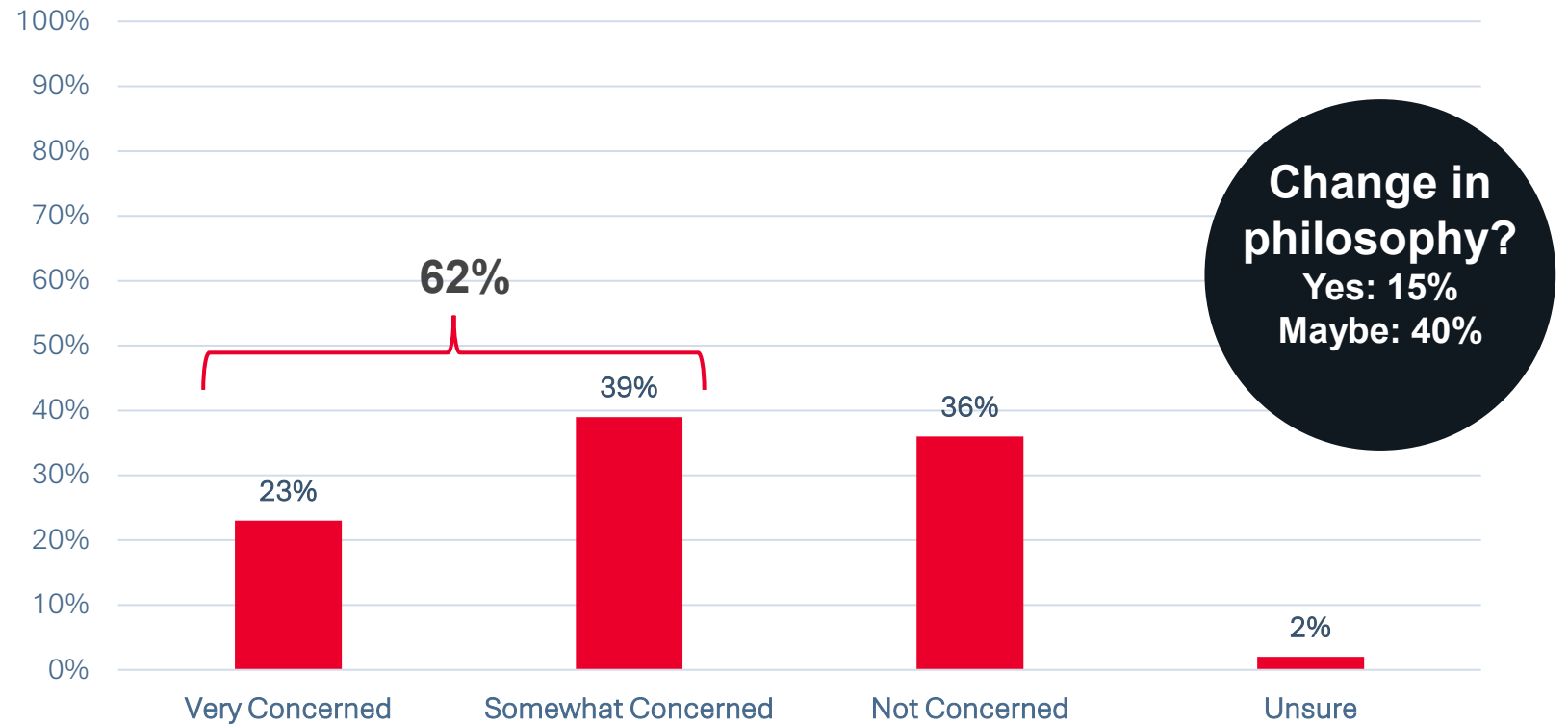
Managing Risk

Benefit Strategy Priorities

What are the primary areas of focus for your 2026 Benefits Strategy?

Addressing Affordability
is the #1
Benefits
Strategy
Priority

How concerned are you about your organizations ability to maintain current health plan affordability over the next 12 months?



Gallagher Organizational Wellbeing Poll: January 2026
Gallagher Organizational Wellbeing Poll: September, 2025

Closing the gap between workforce needs and organizational reality

Employees are seeking greater financial security through total rewards, but delivery is constrained by budgets and enterprise-level challenges



What employees want

- Total rewards is the #1 priority (42%)
- Financial security pressures driven by inflation
- 98% say they need a cost-of-living adjustment



What organizations face

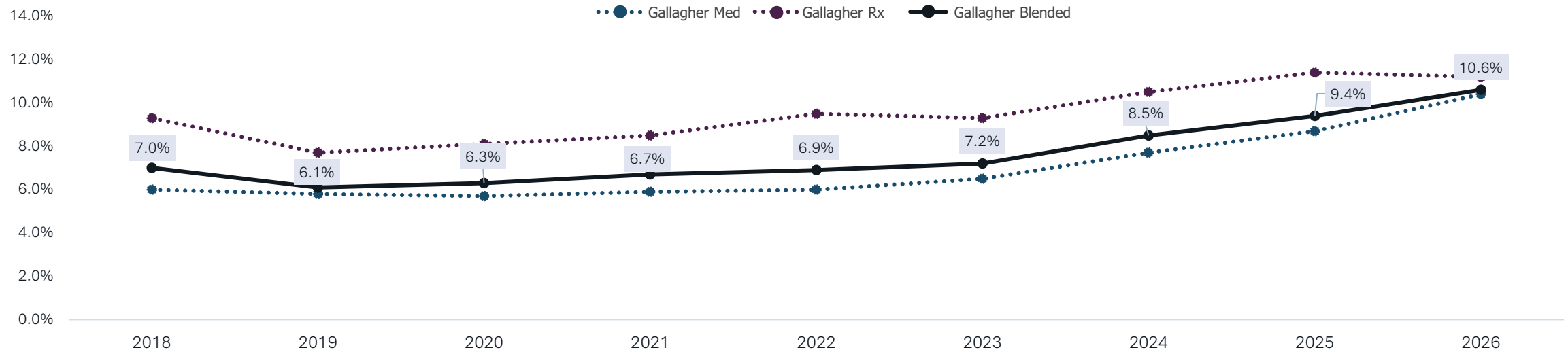
- Tight budgets limiting compensation increases
- Overall organizational-level challenges (excluding talent-related issues) are the #1 barrier
- Executive-level challenges impacting decision-making

Implication for employers

Organizations must maximize the **perceived value of total rewards** while prioritizing **cost-effective, high-impact investments**

Medical & Rx Industry Trends are climbing again in 2026

Medical & Rx Industry Trend | Forecast History



Trend drivers:

Reset Baselines: Almost all provider – carrier contracts have been renegotiated following the post-COVID inflation spike

No Surprises Act Fallout: Providers are winning carriers disputes over OON reimbursements at an 80%+ rate, leading to high prices and longer medical lag

Multiple Rx Drivers: Expanded GLP-1 indications, Gene Therapy pipeline expansion, specialty drug rollouts and increased drug development costs

Regulatory Pressures: Expiration of enhanced ACA subsidies, tariffs on imported medical devices and tightening Medicare reimbursements

Trend mitigators:

Artificial Intelligence improving provider quality, fraud & waste reduction in billing and overall process improvement (long time horizon)

Medical management levers like tightening utilization management and payment integrity solutions, resulting in some success in managing total cost of care

Rx Biosimilars add competition to specialty drug market (Humira – 2023, Stelara – 2025, Keytruda – 2026+)

Increased employer adoption of solutions and tools to manage health plans in the short- and long-term

Source: Historical Gallagher Actuarial Trends Forecasts (2016-2024); Gallagher's U.S. Healthcare Carrier Trend Survey (February 2025)

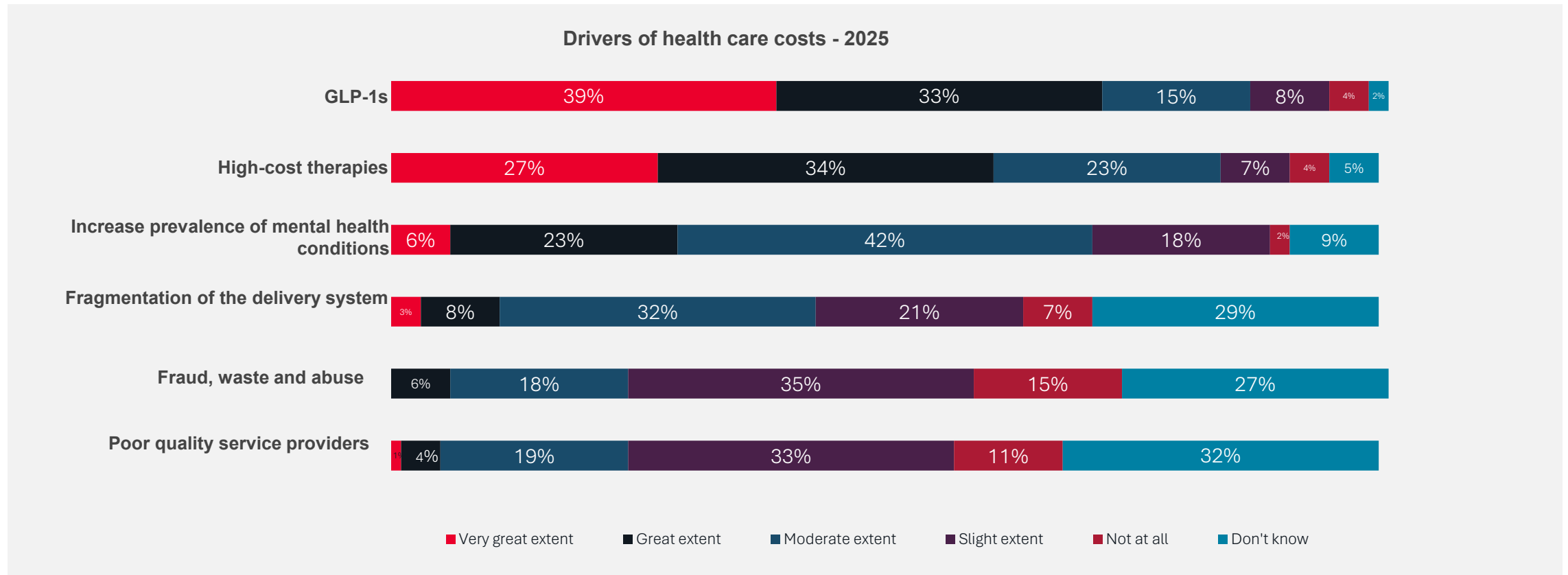
Source: PwC Medical cost trend: Behind the numbers 2026

Source: BGH 2026 Employer Health Care Strategy Survey

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Top drivers of rising health care costs

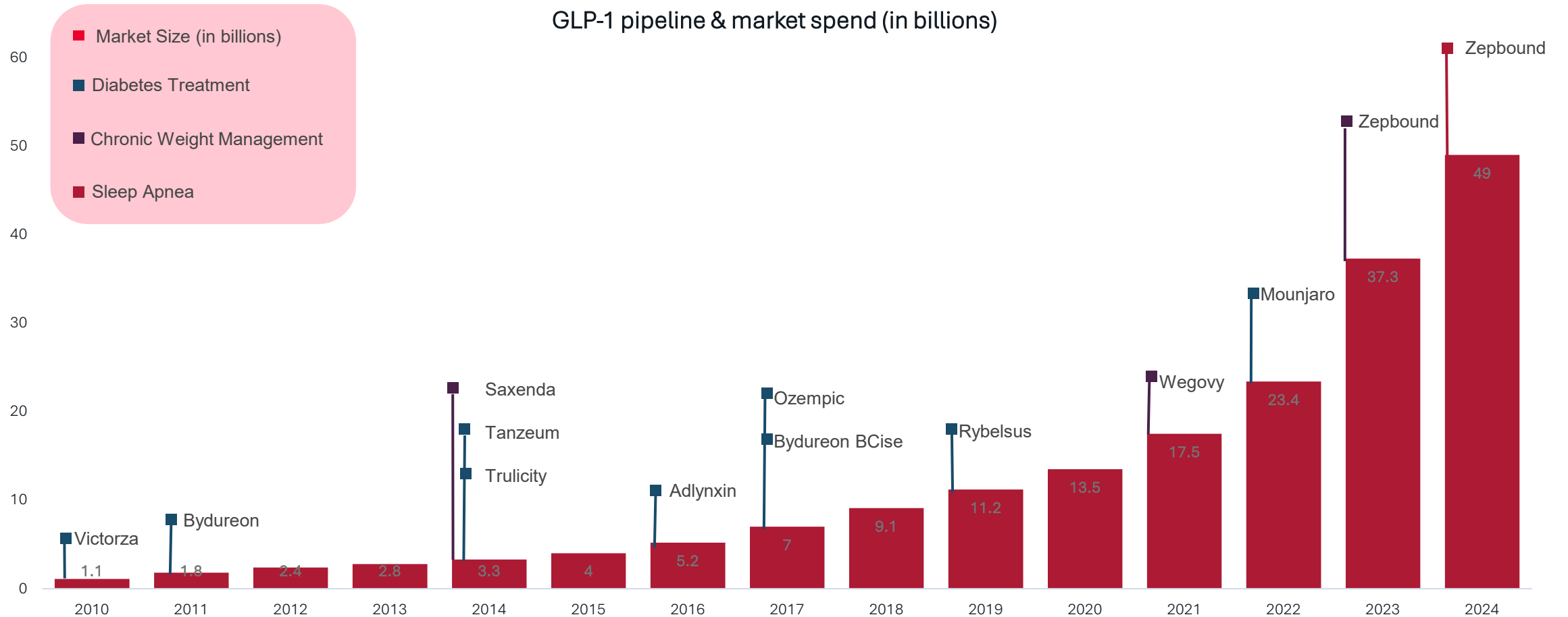
Employers are facing rising costs from expensive therapies and conditions.



Source: *Business Group on Health: 2026 Employer Health Care Survey*

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GLP-1 market spend over the years

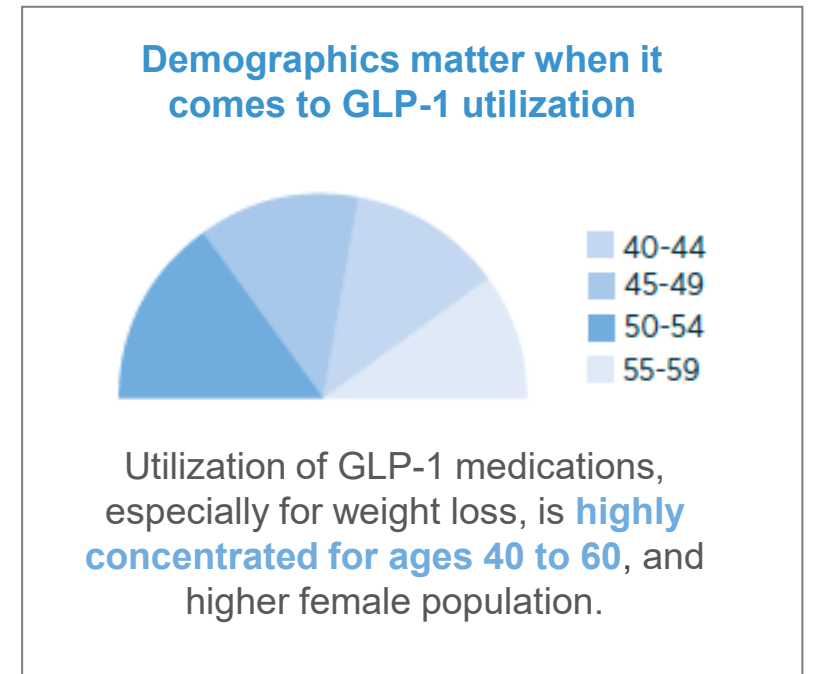
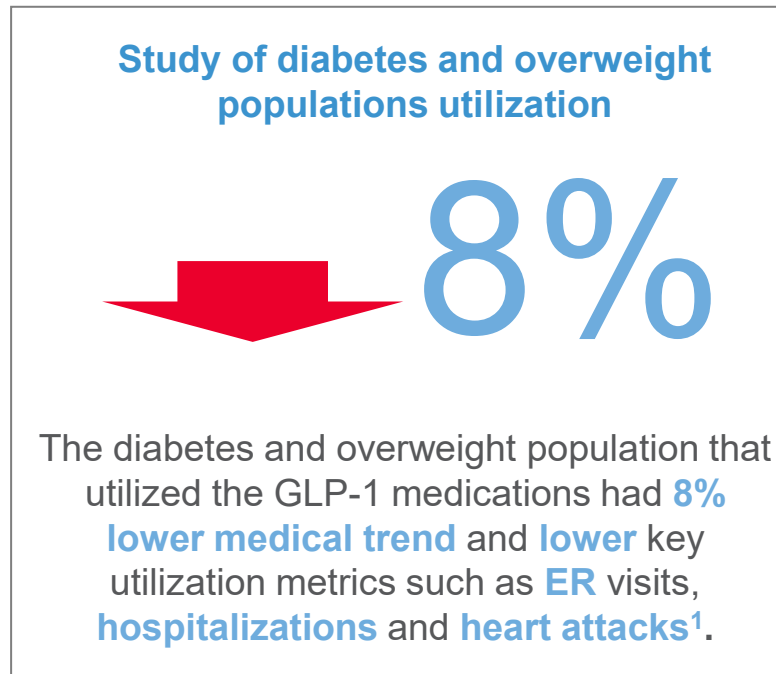
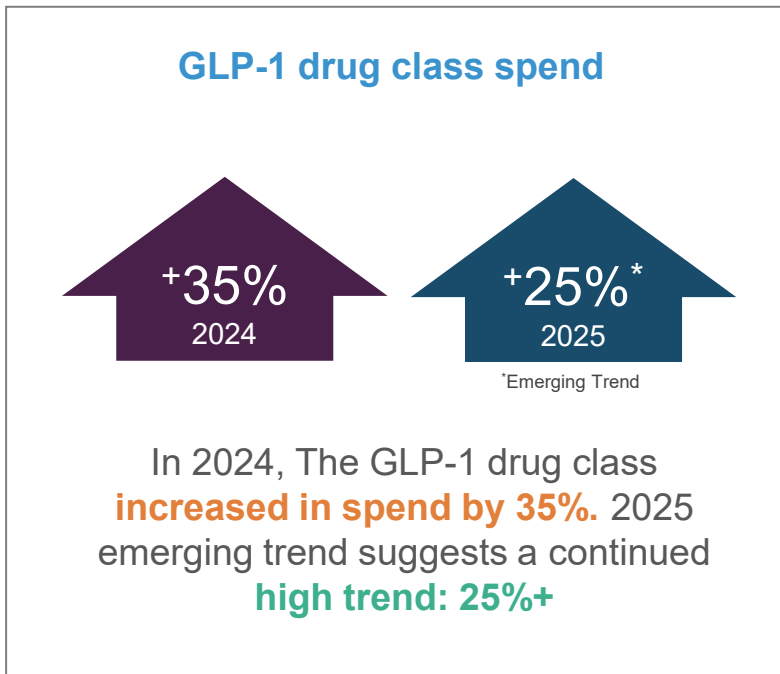


Source: Evernorth Health Services: Pharmacy in Focus Navigating the GLP-1 Conundrum, Demand, Cost and Sustainability
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GLP-1 cost impact analysis

GLP-1 (glucagon-like peptide-1) medications are cost drivers for health plans.

GLP-1 medications have emerged as a leading contributor for pharmacy trend, driven by sharp increase in utilizations and expanded drug class indication. This analysis aims to provide cost insights and address the often-asked question: **Do GLP-1s reduce medical spend?**



The bottom line:
GLP-1 medication management is complex. While it can improve health outcomes, **current costs outweigh the medical spend reduction.**

¹Compared to the population not taking the medication

Weight Loss Drug Update

Weight Loss Drug Landscape | Spectrum of Coverage Solutions

Richest Coverage

No Coverage for Weight Loss GLP-1's

Weight loss programs (Carrier or third-party) and GLP coupon program information

Funded HRA for Non-Covered GLP's

Partner with an HRA vendor to administer a capped monthly benefit limited to GLP-1 drugs

RxSave Card

A carved-out discount card that lowers employer GLP-1 spend by directing members to the best cash price across 14 PBMs and discount cards at their local pharmacy

Carved Out Coverage w/ qualifications

Coverage administrator applies prior authorization and requires weight management enrollment

PBM/TPA accumulator sharing may be limited

Carved-in Coverage via PBM

Option for BMI-based Prior Authorization (est. 62% approval rate vs 75%+ est. diabetic GLP approval rate)

Expected Rx claim load: 5 – 15%

Lowest Cost

Weight management vendors

There is a wide array of vendors in the marketplace that offer weight management programs in conjunction with GLP-1 drug therapy

- Vendors are offering digital, collaborative platforms to help users achieve sustainable weight loss
 - Common features: personalized coaching, smart scale integration, comprehensive tracking
- Most offer weight-loss coaching in addition to diabetes and diabetes prevention
 - Often charged on a per engaged member per month fee
- GLP-1 obesity utilizers enrolled in mandatory weight-management programs show far better outcomes than those enrolled in voluntary programs



Gene Therapy

Cost is a consideration

Product Name	Indication	Estimated Cost	Estimated Eligible Population (# of candidates)
Roctavian	Severe hemophilia A	\$2.9 M	2,500
Lantidra	Type 1 Diabetes (T1D)	N/A	<80,000
Elevidys	Duchenne muscular dystrophy (DMD) ages 4-5	\$3.2 M	1,000
Vyjuvek	Dystrophic epidermolysis bullosa (DEB)	Up to \$1.2 M (dosing varies)	~1,500
Omisirge	Hematologic malignancies who are planned for umbilical cord transplant	\$338,000	~2,000
Adstiladrin	Non-muscle invasive bladder cancer (NMIBC)	N/A	2,500
Hemgenix	Adult hemophilia B	\$3.5 M	1,500
Skysona	Cerebral adrenoleukodystrophy (CALD)	\$3 M	40
Zynteglo	Transfusion-dependent beta thalassemia (TDT)	\$2.1 M	850
Carvykti	Multiple myeloma	\$478,950	<3,000

Source: IBD Analytics

Cell & Gene Therapy Pipeline

Cell & Gene Therapy (CGT) Pipeline Drugs with Upcoming FDA Review

The CGT landscape is evolving rapidly. As of July 2025, there are at least 34 FDA-approved CGTs available in the U.S. market, and that number is predicted to reach 60+ product-indication approvals by 2030.

Generic Name	Indication	Approved (estimated)	Estimated Cost	Notes
Rebisufligene Etisparovec	Mucopolysaccharidosis type IIIA	August 2025	\$3M+ for a one-time treatment	Currently, no therapies (chronic or one-time) are approved for MPS IIIA
Zopapogene Imadenovec	Recurrent respiratory papillomatosis (RRP)	August 2025	\$500K - \$750K per treatment course	PRGN-2012 is competing with Inovio's INO-3107 to be the first product approved for treatment of RRP.
Etuvetidigene Autotemcel	Wiskott-Aldrich syndrome (WAS)	4Q 2025	\$3M+ for a one-time treatment	Would be an option for patients who are eligible for a transplant but cannot find a matched donor.
Clemidsogene Lanparovec	Mucopolysaccharidosis II (Hunter syndrome)	November 2025	\$3M+ for a one-time treatment	Current enzyme replacement therapy does not cross the blood brain barrier and therefore does not benefit the neurodegeneration experienced in the disease
Mozafancogene Autotemcel	Fanconi anemia	Pending	\$2M - \$3M for a one-time treatment	Has fast Track, Rare Pediatric, and Orphan Drug designations An estimated 2,000–2,500 people are affected in the U.S. with Fanconi Anemia

Key Considerations



Health plan, PBM coverage, and ongoing monitoring of appropriate benefit coverage & documentation



Prior Authorizations



Centers of Excellence



Outcomes Based Pricing Arrangements



Stop Loss/ Reinsurance Solutions

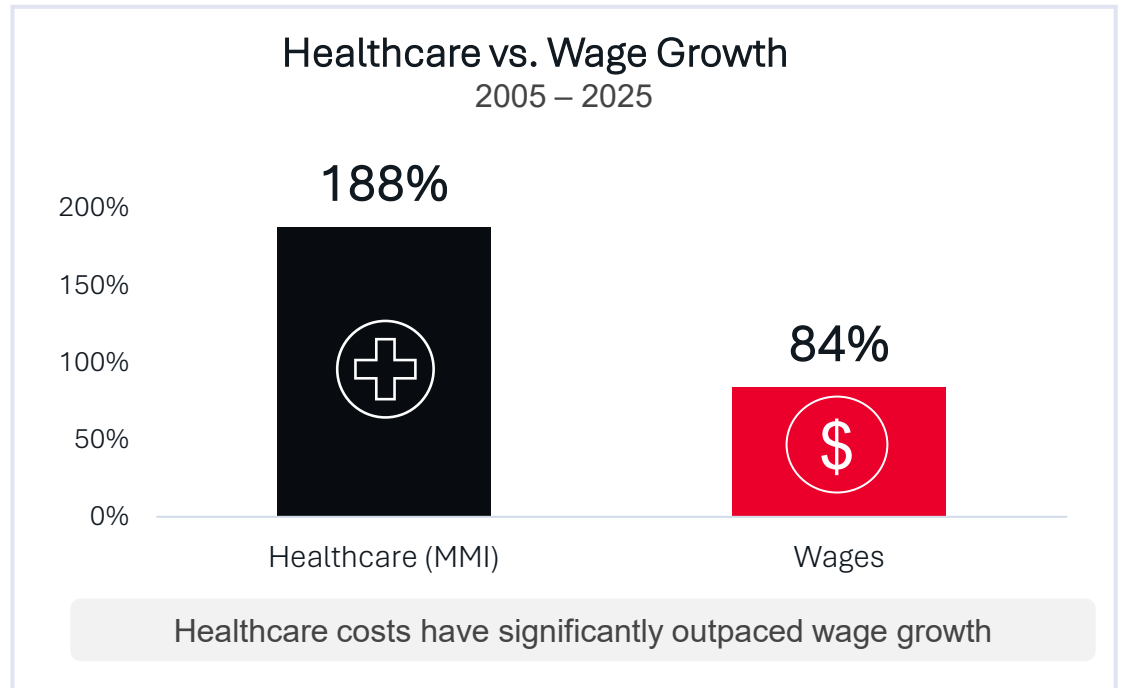
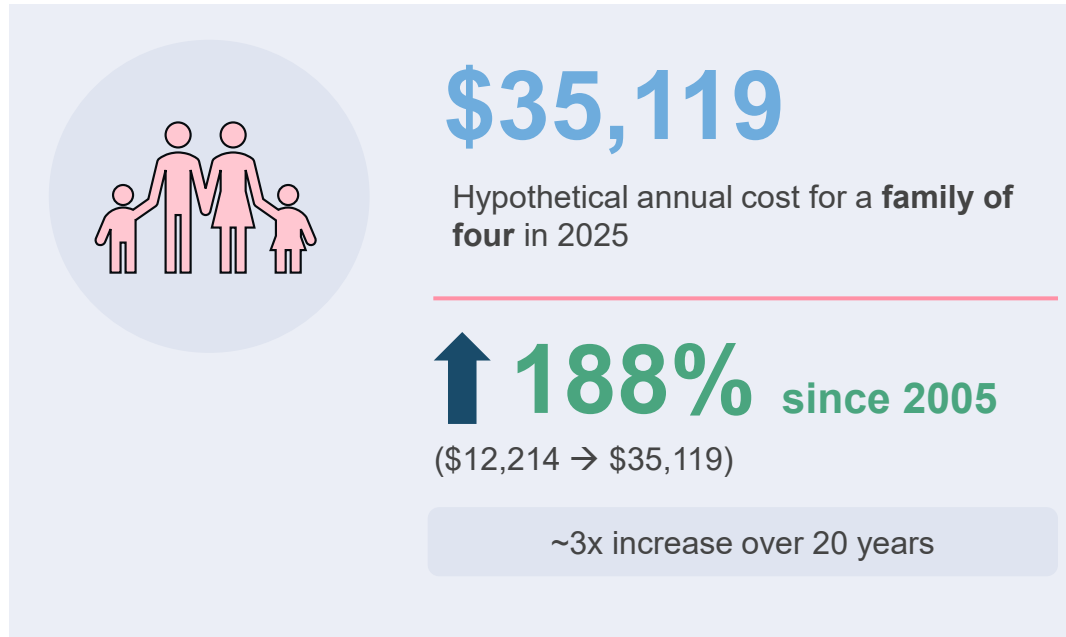


Understanding the dynamic FDA-approved pipeline for gene therapy

Driving Behavior

Healthcare costs continue to outpace wages

The cost of healthcare for a typical family has nearly tripled over the past 20 years, far exceeding wage growth.



Outpatient facility care (+286%) and **pharmacy (+234%)** have rose the fastest over the last 20 years. **Inpatient facility care (+167%)** and **professional services (+155%)** have also more than doubled.

Source: 2025 Milliman Medical Index, How have healthcare cost changed over the past 20 years?

Employers are shifting from broad wellness to high-cost condition management

High-Cost Claimants (HCC) risk has increased over the past five years and continues to rise at a rapid pace, requiring targeted strategies to bend the cost curve.



\$1 Million

Over the past 5 years, both the cost and prevalence of HCC exceeding \$1 million have risen significantly.



Leverage Trend

Stop Loss Exposure: 13%–30% of total claims currently fall above stop loss thresholds, driven by specific plan settings.



Predictability

The higher the initial cost, the more likely the "repeat" high-cost status.

Cancer, MSK and cardiovascular conditions continue to drive HCCs

The top 5 high-cost conditions remained unchanged from 2021–2025, and the same top 3 drivers continue to dominate both stop loss and overall plan spend.

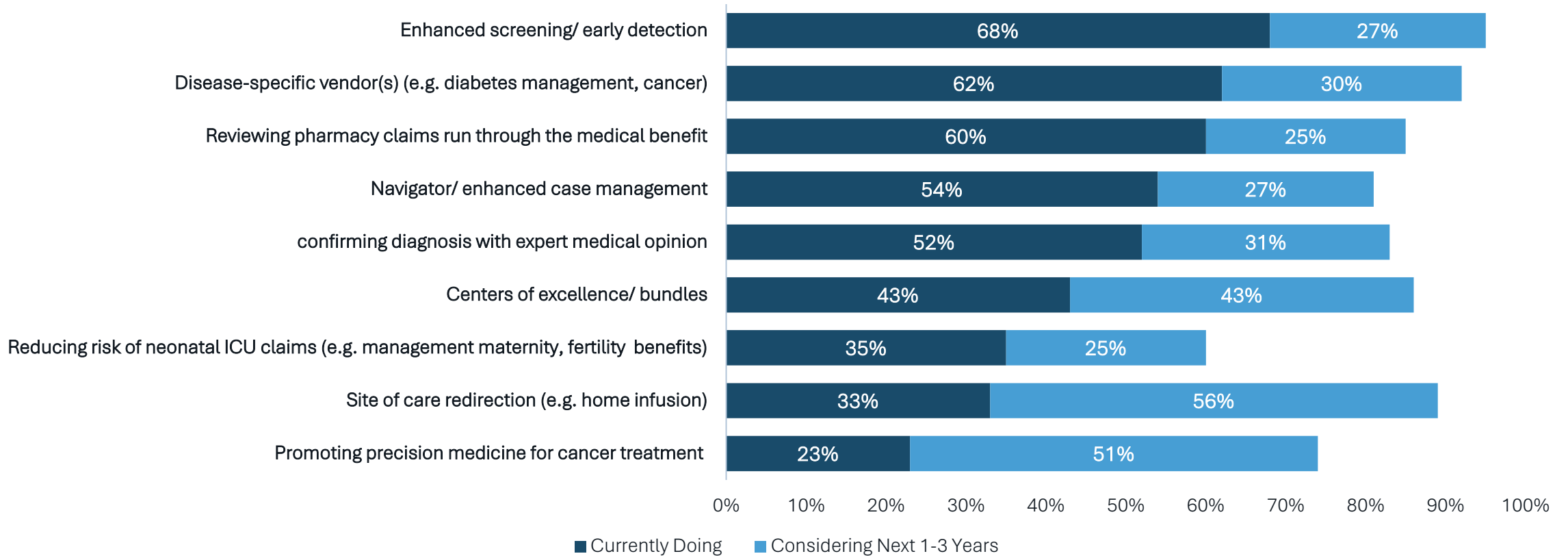
2024 Rank	4 Year Rank	Condition/ Disease/ Disorder	Average Cost (per claimant)	% Medical Spend (vs Rx)
1	1	Malignant Neoplasm	\$235.7K	60%
2	2	Cardiovascular (CVD)	\$146.4K	92%
3	3	Orthopedics/ MSK	\$116.4K	71%
4	4	Leukemia, Lymphoma, Multiple Myeloma	\$305.8K	67%

Conditions Driving Overall Plan Costs (Q: what are the top 3 conditions impacting your organization’s health care costs for 2025)			
Condition	2025	2024	2023
Cancer	88%	80%	86%
MSK	71%	74%	75%
Cardiovascular	35%	40%	30%

Top 5 costing conditions (average annual cost per claimant):
 Newborn/ Infant Care (\$476.2K), Hemophilia/ Bleeding (\$399.9K), Congenital Anomaly (\$335.1K), Leukemia, Lymphoma, Multiple Myeloma (\$305.8K), Malnutrition (\$248.5K)

Employers are actively deploying HCC mitigation strategies

Employer strategies to mitigate high-cost claims



Creating Culture

Culture Reminders

Beyond base salary, which components do you leverage the most to attract key talent?

#1 Culture

#2 Benefits

Whose job is culture?

63%

of employees state it is the leader's **primary job** to develop culture

Who has the greatest impact on your mental health?

69%  **Spouse**

51%  **Doctor**

69%  **Manager**

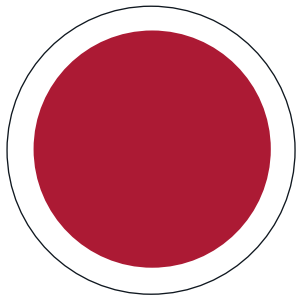
41%  **Therapist**



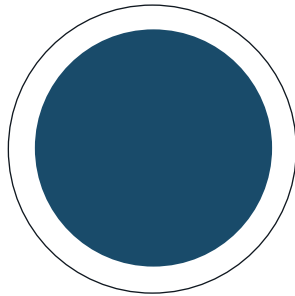
employees say their manager fails to recognize the impact they have on their team's mental wellbeing (35%)

Key Qualities Desired in a Direct Manager

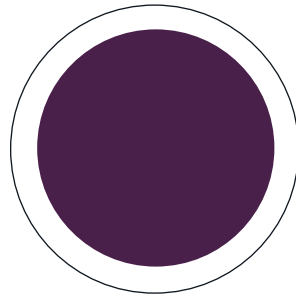
What are the most important qualities to you in your direct manager? Select all that apply:



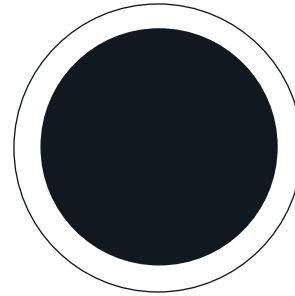
Trustworthy



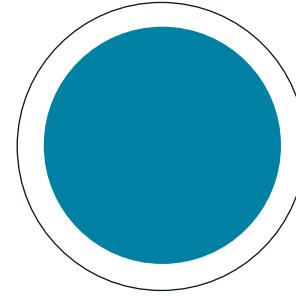
Effective Communicator



Open Minded



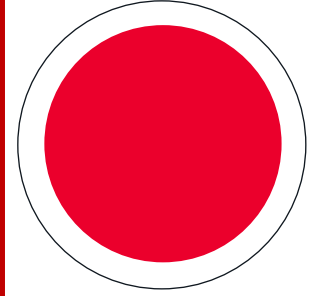
Consistent



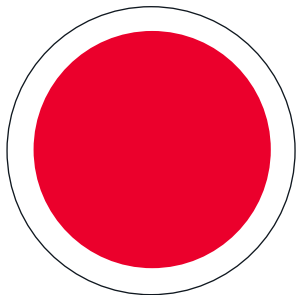
Visionary/
forward thinking



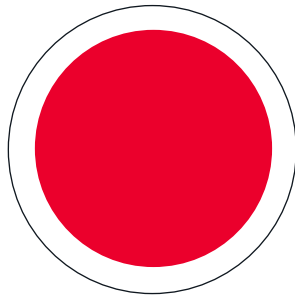
Knowledge/
Expertise



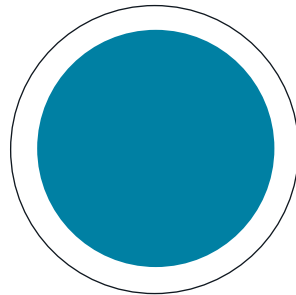
Empathetic



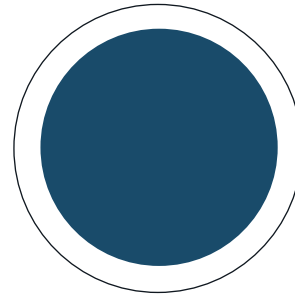
Humility



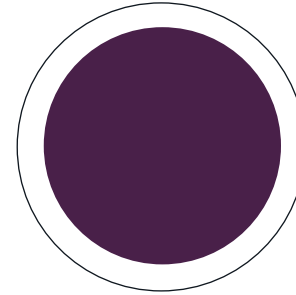
Influence



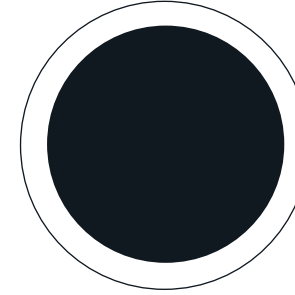
Gratitude



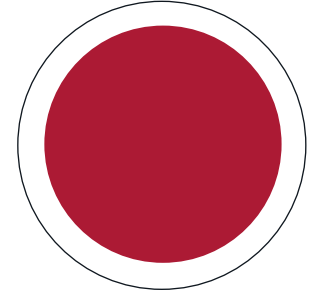
Courage



Sense of humor



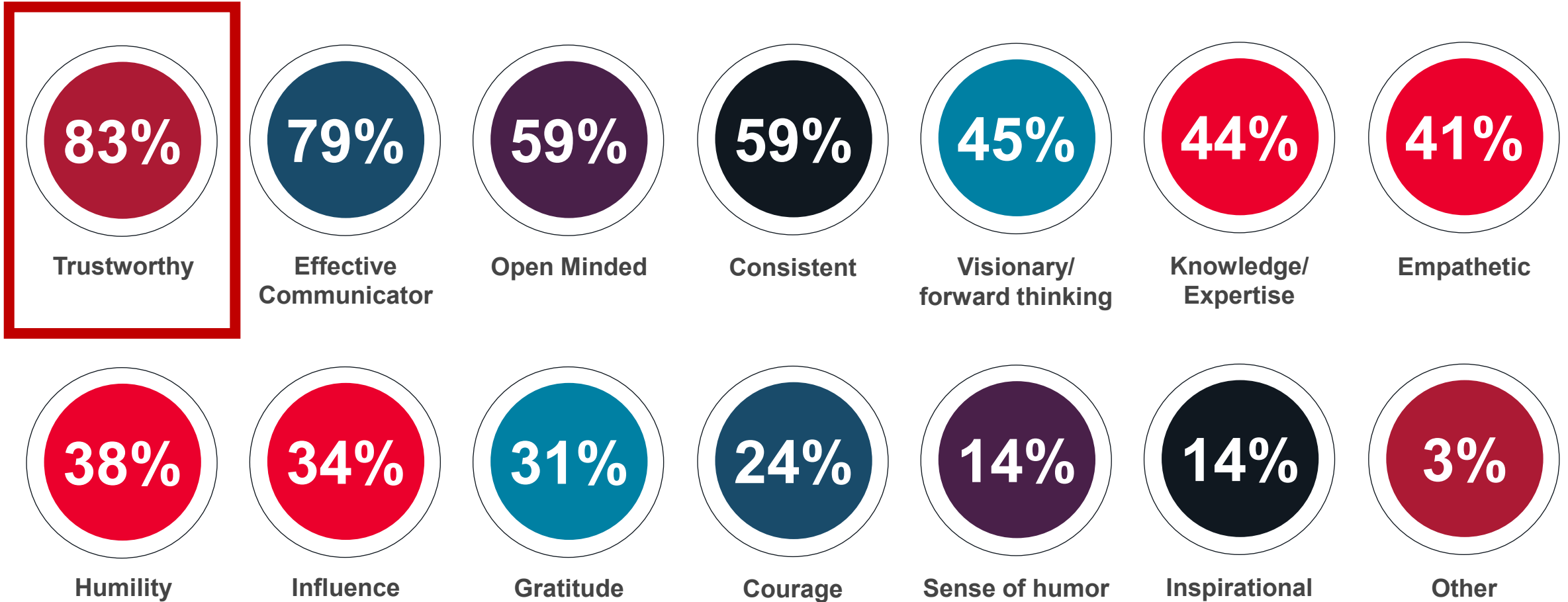
Inspirational



Other

Key Qualities Desired in a Direct Manager

What are the most important qualities to you in your direct manager? Select all that apply:



Key Qualities Desired in a Direct Manager

What are the most important qualities to you in your direct manager? Select all that apply:



Trustworthy



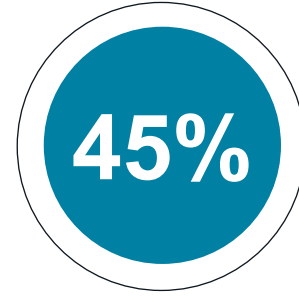
Effective Communicator



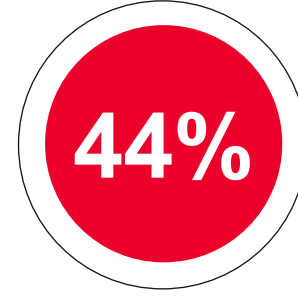
Open Minded



Consistent



Visionary/
forward thinking



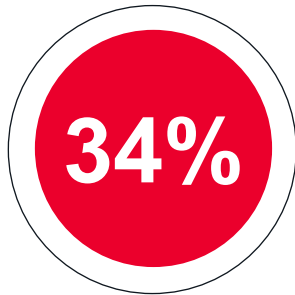
Knowledge/
Expertise



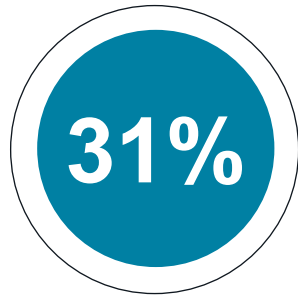
Empathetic



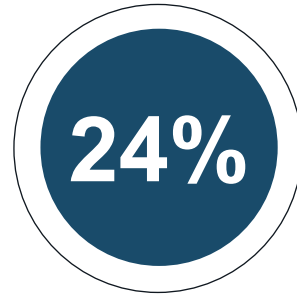
Humility



Influence



Gratitude



Courage



Sense of humor



Inspirational



Other

Why Do We Care About Trust?

In high trust organizations...

74%

Less stressed

76%

More engaged

66%

Closer to
colleagues

40%

Experience
burnout

Current % of responders who strongly agree that there is a high degree of leadership trust in their organization

12%

Harvard Business Review: The Neuroscience of Trust: 2017

Gallagher Organizational Wellbeing Poll: Stress, Culture & Leadership: May, 2025

Trust Impact: Headwinds and Tailwinds

Trust is positively or negatively impacting our health, performance, relationships

Headwind

LOW TRUST

- Slower to get to destination
- Bumps along the way, stressful
- Uses more fuel
- Slower AI adoption
- Reduced benefit utilization and appreciation

Tailwind

HIGH TRUST

- Get to destination faster
- Less turbulence, less stressful
- Uses less fuel
- Increased benefit engagement

Employee Engagement

Perception vs. Reality

What do we think?

58%



Agree with statement
“Our Workforce is Highly Engaged”

Are we measuring?

57%



Have measured within
last 2 years

What do we know?

~31%



Are Highly Engaged

Achieving Organizational Wellbeing thru Proactive People Strategies

The path to ensuring your strategy and the efforts of your team are focused on the areas most important to your business and most relevant to your people requires a holistic Organizational Wellbeing approach

Understand The Market

- Benchmarking
- Compensation Analysis
- Compliance
- Healthcare Analytics
- Communications Audit

Know Your Workforce & Employee Voice

- People Insights
- SDoH Analysis
- Generational Characteristics
- Benefit Preference Surveys
- Leadership Alignment
- Employee Engagement Surveys
- Focus Groups

Build Proactive People Strategies



Live It...

- Strategic Communications
- Focus on Trust
- Employee Value Proposition
- Accountability/Modeling
- Training & Development
- Leadership Development

**Better Leaders = Better Business &
Health Outcomes**

We're all leaders!

Thank you!



- Sarah Darley
- Area Vice President
- Employee Benefits Consultant
- Sarah_Darley@ajg.com



Gallagher

Insurance | Risk Management | Consulting



**BACK
AT 12:30**



CYBERSECURITY FOR HR: WHY HR IS A CYBER TARGET





Presented by



Dan Pepper

Partner
Fisher Phillips

Workforce Threat Landscape (2026)

- Identity-centric attacks dominate: credential theft, MFA fatigue/push-bombing, session-token theft, SIM swaps targeting HR/Payroll admins.
- Ransomware and data-extortion crews hit HR/Payroll, HCM, and benefits SaaS; payroll lockouts escalate to wage-hour and labor exposure within hours.
- Shadow GenAI and unsanctioned agentic AI assistants leak PII/PHI; recruiting bots and HR copilots ingest sensitive data without DPIA or retention controls.
- DPRK and other state-linked IT-worker fraud: synthetic identities placed into remote technical and HR-adjacent roles to exfiltrate data and trigger OFAC exposure.
- SaaS supply-chain compromise: a single payroll, benefits, or HCM vendor breach exposes the workforce of every downstream employer.

Additional Common Cyber Threats HR Faces

- BEC and Vendor Email Compromise: actors impersonate HR, leadership, or trusted vendors to reroute direct deposits, redirect ACH, or extract W-2/PII data.
- Data Misdelivery: inadvertent disclosure of employee PII to the wrong recipient through email, SaaS share links, or misconfigured HR portals.
- Third-Party Vendor and Subprocessor Risk: payroll, benefits, HCM, and AI-recruiting platforms (and their AI sub-processors) carry cascading breach exposure.
- AI Deepfakes and Voice Cloning: candidate impersonation in video interviews, voice-cloned executives directing payroll/banking changes, AI-generated harassment content (Title VII exposure).
- Synthetic-Identity / DPRK IT-Worker Fraud: stolen or fabricated identities used to obtain remote roles; FBI/OFAC sanctions exposure plus insider data theft and extortion.
- MFA Fatigue and Help-Desk Social Engineering: push-bombing and pretext calls to IT/HR support to reset MFA, swap SIMs, and pivot into HCM systems.

Why HR is a Cyber Target

- HR manages sensitive personal data (SSNs, bank accounts, medical information, etc.)
- Threat actors know that HR teams manage this information, and tend to target systems containing HR data to quickly exfiltrate known sensitive data



Anatomy of an HR Breach

1. Phishing or credential-stuffing hits an HR or payroll admin account.
2. Lateral movement into HCM/Payroll or time-clock systems.
3. Data exfiltration; ransomware or payroll redirection (BEC).
4. Operational impact: missed pay cycles, tax filings, benefits enrollment.
5. Legal triggers: breach notification, wage-hour, NLRA monitoring issues.



Legal Framework Heat-Map

Regime	HR-Centric Exposure
Breach Notification	50-state employee-data breach laws; HIPAA Breach Rule; CIRCIA (CISA final rule expected 2026): 72-hr incident / 24-hr ransom payment reporting
Privacy & Biometrics	20 state comprehensive privacy laws (CA/CO/CT/TX/VA + 15 more); GDPR; BIPA and TX/IL/WA biometrics; WA My Health My Data; MD ODPA data minimization
Labor & Employment	NLRA Section 7 (electronic surveillance/algorithmic management); state worker-monitoring notice laws (NY, CT, DE); OSHA whistleblower
Wage-Hour	FLSA/state: pay on time despite outages; record-keeping duties; HIPAA Security Rule NPRM (final rule pending) raises ePHI baseline including HR-held health data
AI in Employment	NYC LL 144 AEDT; IL HB 3773 (1/1/26); CO AI Act (6/30/26); TX TRAIGA (1/1/26); CA CRD AI regs (10/1/25); CCPA ADMT regs; Title VII/ADA/ADEA still apply despite EEOC AI guidance withdrawal
SEC / Public Cos.	Reg S-K Item 106 (annual cyber risk mgmt/governance); Item 1.05 Form 8-K materiality & 4-day timing; SEC enforcement against misleading cyber disclosures
Contracts/Vendors	DPAs, AI addenda (training-data, model output, audit), security riders, subprocessor flow-downs, OFAC/sanctions reps in vendor and contractor agreements

AI in Employment: 2026 State Patchwork

Federal posture (2025-26): retreat. Trump EO 14179 rescinded Biden AI EO 14110; EEOC removed AI guidance from its website; EO 14281 disfavors disparate-impact enforcement. Title VII, ADA, ADEA, GINA, FCRA still apply.

State activity is where the action is:

- NYC Local Law 144 (in force): bias audit, candidate notice, public posting for AEDTs.
- Illinois HB 3773 (1/1/26): AI use disclosure to employees and applicants; bias prohibition.
- California CRD employment AI regs (10/1/25) + CCPA ADMT regs (1/1/26): bias testing, notices, opt-out, recordkeeping.
- Colorado AI Act (effective 6/30/26 after delay): impact assessments, risk mgmt program, consumer notices for high-risk AI; AG enforcement.
- Texas TRAIGA (1/1/26): intent-based liability, deepfake/discrimination prohibitions, NIST AI RMF safe harbor; penalties up to \$200K/violation.
- EU AI Act: prohibitions effective 2/2025; high-risk obligations (incl. employment AI) phasing in through 2026-27.

Spotlight: Biometrics & Time-Keeping

- High-frequency risk: finger/face scans for clock-in/clock-out.
- Common gaps: missing written policy, consent, and retention schedule.
- Key controls: narrowly-scoped purpose, vendor indemnity, deletion deadlines, alternate authority.
- Litigation posture: class exposure for technical violations should be treated as priority control.



Spotlight: AI Deepfakes and Effective Controls

- Video interview impersonation: pre-scheduled, liveness checks, randomized challenge prompts, secondary ID proofing, post-interview notarized identity attestation for sensitive roles.
- Voice-cloned payroll or HR directives: out-of-band verification for any changes; mandatory 24-hour hold for DD changes; staff training on voice cloning per FTC guidance
- Employee-targeted deepfake harassment: explicit ban in anti-harassment policy on AI-generated content of co-workers.
- Disinformation about HR programs or union/collective activity: crisis comms templates; “source of truth” channels; adopt provenance technologies where feasible (C2PA style).

Interactive Hypo #1: Payroll Ransomware During Union Vote

- Facts: Friday 2pm payroll lockout; encryption note; exfiltration claimed.
- Union authorization cards due Monday; IT suggests forced MFA immediately.
- Questions to solve:
 - Who joins the privileged call (counsel, forensics, carrier, PR)?
 - Is an SEC 8-K required (if issuer)? Materiality cues?
 - Do we need to bargain before deploying new controls (MFA/surveillance)?
 - How do we ensure timely wage payments?

Hypo #1 Debrief: Key Take-Aways

- Privilege first: counsel-led communications; separate business vs. legal threads.
- Parallel tracks: (1) containment/restoration, (2) payroll continuity, (3) legal notifications.
- Labor overlay: evaluate duty to bargain over changes in terms (e.g., new MFA).
- If public company: materiality analysis & investor-relations coordination.

Drafting Clinic: Handbook Insert (Acceptable Use Policy + GenAI)

- Employees must use company-approved systems for HR transactions; personal AI/chat tools and consumer agentic AI assistants may not process or store employee data.
- Use of GenAI or automated decision-making technology (ADMT) for recruiting, performance, scheduling, or discipline requires prior written approval, documented business necessity, bias testing, and logging of prompts and outputs.
- No AI tool may make a final consequential employment decision without meaningful human review.
- Phishing-resistant MFA (FIDO2/passkeys) is mandatory for HR, payroll, and time-keeping systems; credential sharing and shared service accounts are prohibited.
- Identity verification for new hires and contractors must include live video, government ID, and address-of-record checks; reshipment of company devices to third-party addresses is prohibited.
- Workplace monitoring is limited to legitimate business purposes, complies with state worker-monitoring notice laws, and will not interfere with protected concerted activity.

Vendor DPA Rider – HR SaaS Essentials

- 24-hour incident notice; 72-hour update cadence; cooperation with CIRCIA, HIPAA, SEC, and state breach reporting; no bare-bones “substantially similar” reliance.
- Phishing-resistant MFA, SSO, encryption at rest/in transit, key management standards, SBOM and vulnerability disclosure, secure SDLC attestations.
- **AI rider:** no use of customer data for model training without consent; disclosure of all sub-processors and AI sub-models; model-output indemnity; data-residency and retention controls; alignment to NIST AI RMF or ISO 42001.
- **Workforce integrity:** vendor reps re: identity verification of personnel, OFAC/sanctions screening, no DPRK or sanctioned-jurisdiction personnel performing services.
- Subcontractor flow-downs; breach cost allocation with no-cap carve-outs for PII/PHI; data return and verified deletion on termination.
- Right to audit, SOC 2 Type II / ISO 27001 / HITRUST, plus AI bias audit reports where employment ADMT is involved.

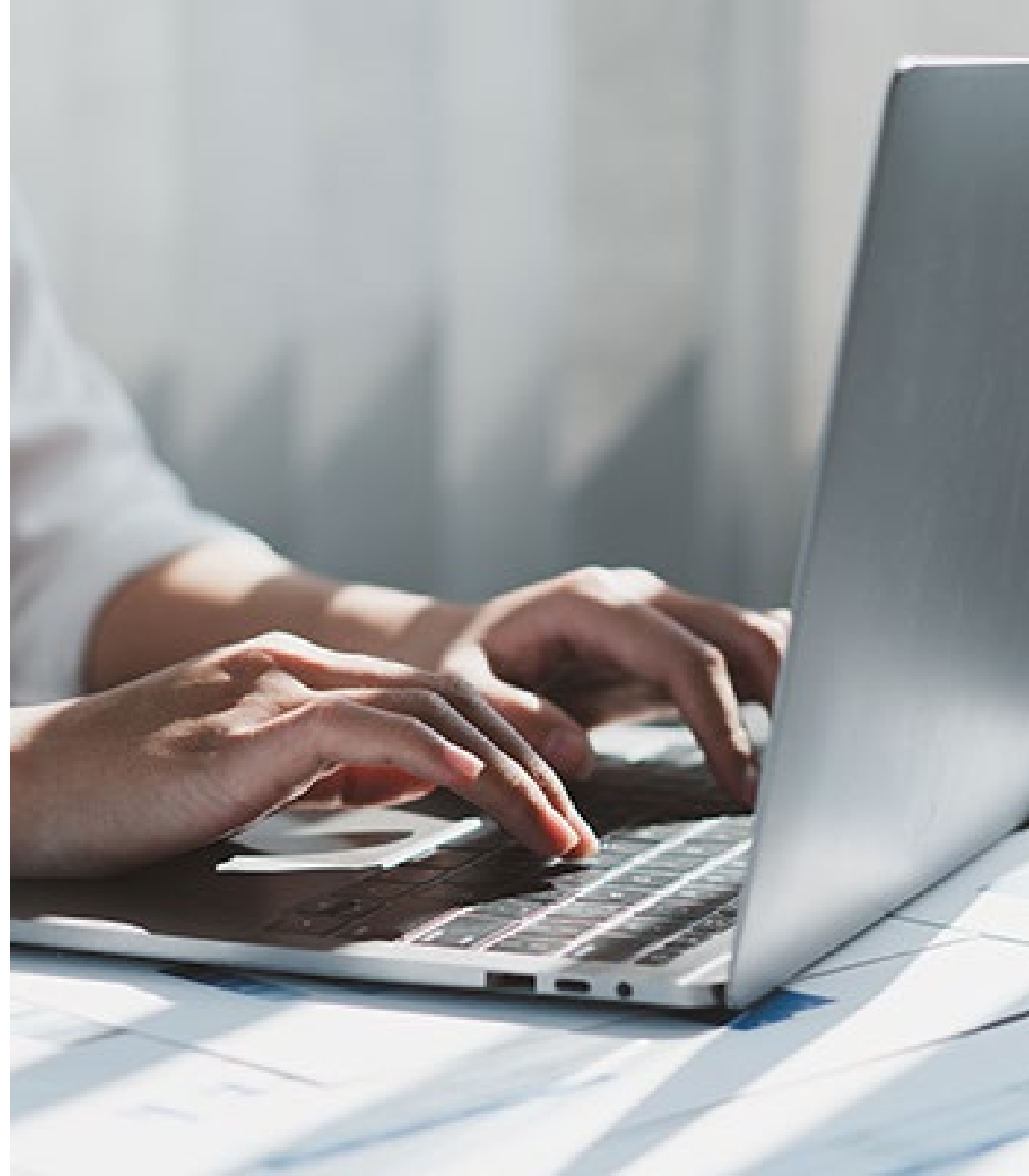
Rapid-Notification Playbook (Employees)

- Trigger: Credible indication of access/exfiltration involving HR/Payroll data.
- Day 0–1: Counsel-led forensics, facts memo, decision on containment vs. pay continuity.
- Day 1–3: Jurisdiction mapping, draft notices, union/works council coordination.
- Day 3–10: Send employee notices, set call center/FAQ, credit monitoring (if warranted).
- Documentation: privilege log, insurer updates, regulator correspondence.



Insurance & Breach Coach Angle

- Panel alignment: pre-approved forensics, PR, and restoration vendors.
- Proactive credits: training, MFA, playbooks, and tabletop exercises lower premiums.
- Hotline value: <15-minute response, privileged triage, insurer-ready documentation.
- Quarterly metrics: cycle time, cause analysis, lessons learned → carrier confidence.



Interactive Hypo #2: GenAI Chatbot Leaks Candidate PHI

- Facts: AI recruiting bot ingests medical accommodation info from candidates across CO, IL, CA, and TX; vendor logs are exposed via public S3 bucket; bot is also using prompts to make pass/fail screening recommendations.
- Discuss: privilege setup; ADA/GINA exposure; CCPA ADMT regs and CRD bias-testing; CO AI Act / IL HB 3773 / TRAIGA / NYC LL 144 obligations; HIPAA intersection if any; vendor accountability and indemnity.
- What immediate candidate, employee, and regulator messaging is appropriate, and who carries the notice burden -- the deployer or the developer?

Best Practices for HR Team

- **Train & Test:** ongoing phishing, voice-clone, and deepfake awareness; quarterly tabletop drills.
- **Verify Out-of-Band:** direct deposit, banking, and HR-data changes confirmed via second channel; assume voice and video can be cloned.
- **Identity-Proof New Hires:** live video, government ID match, address-of-record verification; no laptop reshipments to third parties (DPRK red flag).
- **Phishing-Resistant MFA:** FIDO2/passkeys for HR and payroll admins; SMS and TOTP-only are no longer adequate.
- **Limit Access & Govern AI:** least-privilege to HR data; sanctioned AI tools only; log prompts/outputs; no PII/PHI to consumer GenAI.
- **Vendor Due Diligence:** assess security and AI posture, sub-processor list, training-data practices; document for breach-response privilege.
- **IR Readiness:** HR's role pre-defined for ransomware, BEC, and AI-tool exposure; counsel on call before forensics start.

Your 90-Day Action Plan

1. Run an HR data-flow mini-assessment (where data lives, who has access, which vendors, which AI tools and sub-processors).
2. Build an HR/recruiting AI inventory; map each tool to ADMT, CO AI Act, IL HB 3773, NYC LL 144, TRAIGA, EU AI Act, and Title VII/ADA exposure.
3. Deploy phishing-resistant MFA for HR/Payroll admins; tighten new-hire identity verification (live video, ID, address-of-record); harden offboarding.
4. Pressure-test BEC, voice-cloning, and ransomware scenarios in tabletop; align with CIRCIA 72-hour / 24-hour reporting baseline.
5. Artifacts to update: handbook (AI/ADMT/MFA), AI governance policy (NIST AI RMF or ISO 42001), vendor AI rider, notification playbook, candidate notice/opt-out where required.



Questions?



**RESUME
AT 1:30**



COLORADO UPDATES: NAVIGATING WORKPLACE LAW IN 2026





Moderator



Danielle Urban

Partner
Fisher Phillips

Panelists



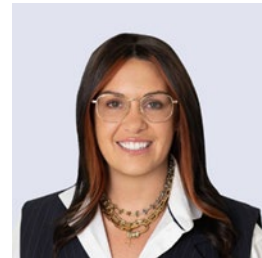
Hillary Ross

Partner
Fisher Phillips



Jane Waterman-Joyce

Associate
Fisher Phillips



Jessica Reed-Baum

Associate
Fisher Phillips



UPDATES TO EXISTING LAWS

FAMLI: Expanded Leave for NICU Care

- **What's New:** Starting January 1, 2026, eligible employees can now take up to an additional 12 weeks of FAMLI leave to care for an infant in a Neonatal Intensive Care Unit (NICU).
- **Total Leave:** This expands the potential total leave under the FAMLI program to 24 weeks per infant for NICU care (and, in the case of pregnancy or childbirth complications, up to 28 weeks).
- **Eligibility:** This applies to biological, adoptive, and foster parents, as well as those standing in loco parentis.
- **Documentation:** Requires documentation from the treating facility.
- **Action Items:**
 - Train management on the new NICU Leave benefit and updated notice requirements.
 - Ensure your policies align with FAMLI requirements.

FAMLI: Updated Notice Requirements for 2026

- **Mandatory Update:** Employers must use the updated FAMLI Program Notice, effective January 1, 2026.
- **Key Inclusion:** The updated notice now explicitly includes information about Neonatal Care Leave.
- **Distribution:** The Program Notice must be provided at hire, upon request, and within five business days of learning of a potential FAMLI-qualifying need. Remote workers must receive notice electronically.
- **Action Items:**
 - Immediately replace old FAMLI Program Notices with the new 2026 version.
 - Don't forget postings!

Wage and Hour

- **Higher Claim Limits:** Caps on administrative claims for wages filed with the Colorado Department of Labor and Employment will go up from \$7,500 to \$13,000 starting July 1, 2026, with further increases every two years for inflation.
- **Independent Contractor Misclassification:** Employers can now be fined up to \$50,000 for misclassifying an employee as an independent contractor.
- **Individual Liability:** Expanded definition of "employer" now includes an individual who owns or controls at least 25% of the ownership interest in an employer.
- **Broader Remedies Available:** Employees can now pursue “equitable relief” under the Colorado Wage Claim Act, including to deter future violations and prevent unjust enrichment.
- More wage and hour changes will be discussed in a later session...

Restrictive Covenants for Medical Providers

- **Elimination of Physician Exception:** Specific provisions that previously treated physicians differently are gone.
- **Void Covenants:** Any covenant not to compete, including customer or patient nonsolicits, that restricts an applicable healthcare provider's ability to practice medicine is now void.
- **Protected Patient Communications:** Covenants cannot prohibit communication about:
 - Continuing practice
 - New professional contact information
 - Patient's right to choose a provider
- **Application:** Applies to agreements with physicians, physician assistants, dentists, and advanced practice registered nurses entered into or renewed after August 6, 2025.
- **Action Items:**
 - Review existing agreements for compliance
 - Update confidentiality agreements

Additional Protections for LGBTQ+ Individuals

- **The "Kelly Loving Act"**: While effective mid-2025, 2026 is the first full year of enforcement for new protections under the Colorado Anti-Discrimination Act (CADA).
- **Chosen Names**: It is now a discriminatory practice to refuse to use an individual's "chosen name" if that name is requested in connection with a protected class (e.g., gender expression or disability).
- **Gender Expression**: The definition of gender expression was explicitly expanded to include "how the individual chooses to be expressed."
- **Action Items**:
 - Review and revise handbooks
 - Train managers
- **More to Come**: "Right to Be Out at Work" HB 26-1319 Introduced in Legislature



UPCOMING LEGISLATION TO KNOW

HB26-1272 Extreme Temperature Worker Protections

Re-do of last year's HB 25-1286

Requires the Colorado Department of Labor and Employment to do the following:

- Collect data concerning temperature-related emergencies at worksites in the state by
 - Creating a website where the public can submit incidents of temperature related injury/illness
 - Obtain data from the CDPHE regarding heat related injury or illness (but not cold-related)
 - Collect “similar” data from the Division of Worker’s Compensation
- Develop a model temperature-related injury and illness prevention plan (TRIPP)
- Develop procedures for requiring employers whose workers are exposed to extreme heat or cold to submit a TRIPP to the Division before September 1, 2028, along with review and update procedures
- Develop training standards related to temperature safety and ensure that employers are providing proper training to workers affected by extreme temperatures

HB26-1272

Re-do of last year's HB 25-1286

Why It Matters:

- Colorado's attempt to regulate worksites experiencing extreme temperatures as a reaction to the perceived failure of the federal government to pass any heat standards
- Creates additional documentation and training obligations for employers
- Open question of who enforces, and how?

Status of Bill

- "Under consideration"

HB26-1005

Re-do of last year's SB 5

Attempt to Overturn the Labor Peace Act's Union Security Vote Requirement:

- Specifies the right to collective bargaining includes any mandatory subject of bargaining
- Eliminates requirement for second election to negotiate union security agreement clause in the collective bargaining process
- Declares that it is not an unfair labor practice for an employer to refuse to agree to a lawful proposal made by the exclusive representative of the employees, or for the exclusive representative of the employees to refuse to agree to a lawful proposal made by the employer, concerning a mandatory subject of bargaining if the refusing party has bargained in good faith with the other party.
- Requires employers and employees, through their exclusive representative, to bargain in good faith

HB26-1005

Why It Matters:

- Eliminating the second election requirement for a union security agreement means that a union can negotiate a union security clause as part of normal negotiations
 - A union security clause means that the union can collect fees from all workers – not just union members – in order to fund union activities.
 - Fees are different from dues
- Easier path for unions to secure funding and increase activity

Status of Bill

- “Under consideration”
- Passed in last iteration but was vetoed by Gov. Polis

HB26-1054 “Protections for Worker Safety”

Another Attempt to Regulate Workplace Safety at the State Level:

- Adopts the “general duty clause” of the federal Occupational Safety and Health Act at the state level
- Allows the state to regulate workplace safety in areas where federal OSHA is silent with enforcement mechanism
- Creates private right of action for aggrieved individuals or unions
 - Similar to California’s PAGA – both injunctive and monetary relief

Status of Bill

- “Under consideration”



EMERGING DEVELOPMENTS IN WORKPLACE INVESTIGATIONS

Generational Divides Are Reshaping the Investigative Process

- Four generations, four workplace norms
- Different views on professionalism and conflict
- These differing viewpoints increasingly shape:
 - how complaints are made
 - what conduct is perceived as inappropriate
 - how witnesses respond during investigations
- As employment counsel, we are seeing more investigations where the core issue is not necessarily misconduct alone — but a clash of workplace expectations

Bottom Line: Investigations require contextual analysis

Employees are reporting more conduct — and reporting it earlier

Increased Employee Awareness = Expanded Complaint Categories

- Younger employees are more willing to raise concerns and less tolerant of ambiguous workplace behavior
- Complaints now more commonly involve:
 - tone of communication
 - microaggressions
 - off-hours communication
 - management “style” concerns
- Conduct historically dismissed as “personality conflict” may now be legally actionable as harassment, retaliation, etc.
- Subjective workplace impact matters

What We Are Seeing in Investigations: Investigations increasingly require credibility findings around subjective workplace impact—not simply objective policy violations

The evidence in workplace investigations is now overwhelmingly digital

Technology and AI Have Changed the Evidence Landscape

- Investigations are now digitally driven
- Texts, chats, emojis, disappearing messages, metadata
- Generational divides affect technology use
- Employers are also beginning to confront AI-related issues:
 - AI-generated communications
 - AI note summaries
 - AI screening/monitoring tools
 - employee misuse of AI platforms

Attorney Perspective: Investigators must now assess not only witness testimony, but the authenticity, context, permanence, and discoverability of digital evidence.

Modern investigations require legal rigor plus cultural fluency

Communication Gaps Are Creating Credibility Challenges in Interviews

- Investigators must adjust interview techniques
 - Different generations communicate differently regarding conflict, authority, and emotional impact
- Policies must account for modern workplace realities
- Documentation is more critical than ever
 - Because complaints are increasingly nuanced and subjective, employers need well-documented investigative reasoning and credibility assessments
- Defensibility depends on perception management
 - Employees judge investigations not only by outcome, but by: (1) whether they felt heard, (2) whether the process felt fair, (3) whether leadership understood the context

How to prepare your workplace for these developments

What Employers Must Do Differently Going Forward

- Adapt interview style to workforce demographics
- Modernize policies for digital conduct and AI
- Increase documentation of credibility findings
- Focus on both fairness and defensibility





Questions?



WELCOME TO COLO-FORNIA: COLORADO'S RAPIDLY SHIFTING WAGE AND HOUR LAW





Presented By



Micah Dawson

Partner
Fisher Phillips



Sarah Bennett

Associate
Fisher Phillips

Colorado's Changing Wage & Hour Landscape

2025–2026: A Year of Significant Change

- New legislation and regulations are reshaping employer and wage payment obligations — with a clear focus on expanding employee protections and increasing employer liability at every level.

Mirroring California: A Trend to Watch

- Colorado is adopting policies increasingly aligned with California's robust employee protections. Understanding these parallels is essential for proactive, forward-looking compliance strategy.



CO WAGE AND HOUR REFRESHER

Roadmap for Today's Presentation

- Refresher on wage/hour basics like minimum wage, meal and rest requirements and overtime including the critical timeline for responding to wage demands.
- Updated Exemption classifications for 2026 and misclassification penalties.
- Enhanced penalties for non-compliance.
- Who is coming after you? There have been increases in agency authority and rates of w/h lawsuits filed.
- Class action threats and trends
- How to protect your company.

2026 Statewide Minimum Wage: \$15.16/Hour

Hourly Employees

- \$15.16/hour. This represents the standard wage rate applicable to all workers without tip-eligible positions.

Tipped Employees

- \$12.14 hour base wage plus tips. Employers must ensure total compensation reaches minimum wage.

Local Minimum Wages

- Denver is at:
 - \$19.29/hour (non-tipped) and
 - \$16.27/hour (tipped) for 2026.
- Always verify the local rate before setting pay for any position.

Risks of Non-Compliance

- Failure to pay the correct minimum wage — particularly in multi-location operations — is one of the most common triggers for Colorado Wage Act claims and CDLE administrative complaints.

Overtime Requirements: 1.5x Pay After 40 Hours/Week or 12 Hours/Day



Overtime Triggers

40+ hours per workweek OR
12+ hours in any workday OR
12 consecutive hours
(regardless of shift time)



Overtime Rate

1.5 times regular hourly rate
for all non-exempt
employees



Comp Time Prohibited

Compensatory time off ('comp
time') is PROHIBITED - only
cash payment allowed

Meal and Rest Breaks: Mandatory Paid Rest Every 4 Hours, Unpaid Meal After 5 Hours

1

Paid 10-Minute Rest Break

- Required for every 4 hours worked or major fraction thereof

2

Unpaid 30-Minute Meal Break

- Required for shifts of 5 or more consecutive hours

3

Meal Break Timing

- Must occur after first 2 hours and before final 2 hours of shift

4

Complete Duty Relief

- Employees must be completely relieved of all duties during meal breaks

Wage Payment Rules: 14-Day Payment Deadline and New One-Time Penalty Waiver

Written Demand Response

- Employer must pay within 14 days of employee's written wage demand

Penalties for Non-Payment

- 2x unpaid amount or \$1,000 per employee (non-willful); 3x unpaid amount or \$3,000 per employee (willful violations)

NEW 2025: One-Time Penalty Waiver

- Employer can receive a penalty waiver if they pay within 14 days of administrative complaint filing

Repeat Offender Exception

- Waiver unavailable if violation occurred within past 5 years

Employee Exemptions: \$56,485 Minimum Salary Required for Exempt Status in 2026

Minimum Exempt Salary

- \$56,485/year (\$1,086/week) required for exempt employee classification under 2025 standards

Highly Compensated Employee (HCE) Threshold

- \$127,091/year compensation level for employees classified as highly compensated

Duties Test Requirement

- Exemptions require both salary threshold AND duties test covering executive, administrative, or professional roles

Federal FLSA Threshold

- Federal baseline is \$35,568, but Colorado's higher threshold of \$56,485 applies to employees in the state

2025 Amendments: Misclassification Penalties Up to \$50,000 and Expanded Enforcement

Worker Misclassification Penalties (NEW)

- \$5,000 first willful violation; \$10,000 if uncorrected after 60 days; \$25,000 second violation within 5 years; \$50,000 repeat uncorrected violation

Expanded Employer Definition

- Individuals owning or controlling 25% or more of a business are now personally liable for misclassification violations

CDLE Claim Jurisdiction Increase

- Wage claim jurisdiction limit increases from \$7,500 to \$13,000 per employee, effective July 1, 2026

Local Enforcement & Public Disclosure

- Counties and cities can now enforce the Wage Act; CDLE must publish violations and violator names online

Enhanced Enforcement: Retaliation Protections and Licensing Consequences

1 Retaliation presumption

- Adverse action within 90 days of protected activity creates inference of retaliation

2 Protected activities

- Filing complaints, raising wage concerns, exercising wage rights

3 Licensing authority reporting

- CDLE reports willful violations to licensing/permitting agencies within 60 days

4 Business license consequences

- Potential restrictions, suspensions, or revocations for violations

5 Attorney fee limits

- Employers can only recover fees if employee claim lacks substantial justification



WHO IS COMING AFTER YOU?

Owner Liability Exposure



Personal Liability Risk

- Owners with 25%+ control are now personally liable for unpaid wages and penalties

Proportional Exposure

- The liability is not capped at business assets

Affirmative Defense Required

- You must document full delegation of operational control to avoid liability



Multi-Entity Concerns

- Owners across multiple businesses face compounded exposure

Anti-Retaliation & Expanded Remedies Under HB 25-1001

90-Day Retaliation Presumption

- Any adverse action taken against an employee within 90 days of a protected wage and hour activity — such as filing a complaint or raising compliance concerns in good faith — may, without more, establish retaliatory intent. No prior bright-line rule existed under the CWA.

Expanded Scope of Protected Parties

- Anti-retaliation protections now extend beyond direct employees to cover any person regularly engaged in a business or commercial activity that contracts for labor — pulling in gig workers and independent contractors in the wage context.

New Equitable Relief Available

- Employees may now seek equitable relief — including injunctions to deter future violations and prevent unjust enrichment — in addition to back wages and statutory penalties. This substantially broadens the value of wage claims.

Tightened Attorney Fee Standard

- Employers can only recover attorney's fees where the court finds the employee's claim "lacking substantial justification." The old standard (employee fails to recover more than employer's tender) is gone — making fee recovery for employers far harder.

Potential Exposure Continues to Rise

Increased Employee Remedies

- Employees may now seek equitable relief — including injunctions “to deter future violations and prevent unjust enrichment” — in addition to back wages, statutory penalties (the greater of 2x unpaid wages or \$1,000, or 3x/\$3,000 for willful violations), and compensatory damages for economic loss, noneconomic loss, and emotional distress. The availability of emotional distress damages in particular substantially increases settlement leverage and case value, and mirrors the California model that Colorado has been tracking.

Automatic Misclassification Fines

- Employers found to have willfully misclassified a worker as an independent contractor now face automatic fines: \$5,000 per first willful violation; an additional \$10,000 per violation not remedied within 60 days of a CDLE finding; and \$25,000–\$50,000 for second or subsequent willful violations within five years. No prior finding or court order is required to trigger the initial fine — the CDLE can impose it upon determining misclassification. These fines update every two years beginning in 2028. Critically, the law also now covers independent contractors themselves as protected parties who may file wage claims — a significant expansion of who can sue.

CDLE Administrative Jurisdiction Cap Increasing

- The CDLE's jurisdiction to investigate wage complaints increases from \$7,500 to \$13,000 per employee (exclusive of penalties and fines) beginning July 1, 2026, through December 31, 2027, and increases every two years thereafter.

Denver Civil Theft/Auditor's Office

Denver youth homeless shelter set to open in July scales back costs after losing wage dispute

Urban Peak, which is building a four-story, 136-bed shelter for young people ages 15-24, will have to pay an estimated \$2 million in labor costs after losing its appeal

- Denver Auditor's Office has been enforcing Denver's new Civil Theft Ordinance.
- Ask your friends.....
- Be ready!


300% increase in Class Action Lawsuits in Colorado.

B Bloomberg Law News

Wendy's \$3.95 Million Deal Over Colorado Rest Claims Approved

Wendy's International agreed to pay up to \$3.95 million to settle class claims from Colorado employees who may have missed required rest breaks.

Feb 20, 2025



L Law360

Convenience Store Chain To Pay \$3.5M To Settle Wage Suit

A \$3.5 million settlement between a convenience store chain and workers accusing it of failing to provide proper meal and rest breaks has...

Jun 29, 2021

VD VailDaily.com

Vail Resorts offers \$13M to settle class action lawsuits

Vail Resorts has extended a \$13.1 million offer to settle five wage and labor lawsuits filed in California, a step that could have...

Jan 19, 2022




L Law360

Colo. Nurses Seek OK For \$14M Wage Class Settlement

A group of nurses urged a Colorado federal judge to grant preliminary approval to a \$14 million class action settlement resolving claims...

1 week ago



Wage & Hour Class Actions: A Rapidly Expanding Threat

Why Colorado Is a Target

- Colorado's COMPS Order imposes overtime and break obligations stricter than federal law — including daily overtime after 12 hours — creating additional grounds for class claims beyond the FLSA. The combination of state and federal standards gives plaintiffs' counsel multiple avenues to certify a class.

Misclassification: The Highest-Volume Driver

- IC misclassification and exempt status misclassification remain the dominant triggers for Colorado wage class actions. HB 25-1001's automatic fines for misclassification — up to \$50,000 per repeated willful violation — create a parallel enforcement regime that amplifies individual litigation exposure.

Expanded Remedies Fuel Larger Cases

- The availability of equitable relief, compensatory damages for economic and noneconomic loss, and emotional distress damages (added by HB 25-1001) dramatically increases the potential recovery in a class case. Larger damages exposure accelerates settlement pressure and draws more plaintiffs' firms to the state.

Public Employer Naming Raises Stakes

- CDLE must now publish the names of employers with adjudicated violations online. A class action filed concurrently with an administrative complaint can trigger public disclosure — adding reputational risk on top of financial exposure.

Key Litigation Areas to Watch

- Off-the-clock work; meal and rest break violations under COMPS; tip credit and tipped wage claims (now complicated by local ordinance variation); FAML I interference; and AI-driven scheduling and timekeeping disputes are all emerging or accelerating class action vectors in Colorado.

Actionable Steps for Employers

01 | Verify and Update Minimum Wage and Overtime Compliance

- Confirm all hourly rates meet Colorado's 2026 statewide minimum of \$15.16/hr and Denver's \$19.29/hr (non-tipped). Audit overtime calculations for compliance with both the 40-hr/week and 12-hr/day triggers. Eliminate any comp-time arrangements—only cash payment is lawful.

02 | Audit Meal, Rest Break, and Exempt Classification Practices

- Verify employees receive a paid 10-minute rest every 4 hours and a 30-minute unpaid meal break for shifts over 5 hours, timed correctly within the shift. Confirm all exempt employees meet Colorado's 2026 salary threshold of \$56,485/yr and satisfy the applicable duties test—do not rely on the lower federal FLSA threshold of \$35,568.

03 | Reclassify Independent Contractors and Document Ownership Delegation

- Conduct a full IC classification review—willful misclassification now triggers automatic fines up to \$50,000 per violation. Owners or shareholders with 25%+ control should document full delegation of day-to-day operational authority in writing to preserve the affirmative defense against personal liability under HB 25-1001.

Actionable Steps for Employers *Continued*

04 | Establish a Wage Demand Response Protocol and Use the One-Time Penalty Waiver

- Train HR and payroll to treat written wage demands as triggering a strict 14-day payment deadline. Where wages are legitimately owed, pay promptly upon receipt of an administrative complaint to utilize the new one-time penalty waiver—available only if no violation occurred in the past 5 years.

05 | Strengthen Anti-Retaliation Practices and Expand Protected Party Awareness

- Any adverse action within 90 days of a wage complaint now creates a presumption of retaliation. Train managers accordingly and implement a documentation protocol for all performance actions. Remember that anti-retaliation protections now extend to gig workers and contractors—not just direct employees. Be aware that FAMLI interference claims carry their own retaliation exposure.

06 | Prepare for Class Action Exposure and CDLE Public Enforcement

- Colorado class action filings have increased 300%—misclassification, off-the-clock work, and meal/rest break violations are the top drivers. CDLE now publishes employer violations and violator names online and will report willful violations to licensing authorities. Proactive internal audits and prompt remediation are essential to avoiding public disclosure and license jeopardy.



Questions?

**THANK YOU
FOR
JOINING
US TODAY!**

