

FP's Top 2026 Predictions for Workplace Litigation

Insights

1.13.26

Our Litigation and Trials thought leaders pulled together their top predictions for the new year so that employers can get a running start to 2026. If you want more, [register here](#) for our FP Forecast 2026 Webinar.

TOP PREDICTIONS FOR WORKPLACE LITIGATION

- ✓ Disparate Impact Claims Will Decrease – But Majority-Group Bias Claims Will Rise
- ✓ Increased State-Level Litigation and Enforcement
- ✓ AI-Generated Evidence Will Become a Core Discovery Battlefield
- ✓ New Litigation Danger as Employees Claim Green Card Favoritism

2026



Disparate Impact Claims Will Decrease – But Majority-Group Bias Claims Will Rise

President Trump [issued an executive order in April](#) that aims to eliminate the use of disparate impact liability in all contexts to the maximum extent possible – potentially giving employers new leverage against disparate impact claims (which employees may still bring under federal and state law). However, the Trump administration's anti-DEI stance, along with a [Supreme Court decision in June](#) scrapping an extra hurdle for "majority-group" discrimination claims, will lead to a rise in similar workplace bias claims in many parts of the country.

Increased State-Level Litigation and Enforcement

As many states work to fill perceived gaps created by federal deregulation, we will see a major uptick in state-level litigation and enforcement of workplace law claims. You should also stay tuned for more court challenges over states' attempts to step into areas of federal oversight, such as the NLRB's ongoing lawsuits against California and New York for attempting to expand their power to regulate private sector labor.

AI-Generated Evidence Will Become a Core Discovery Battlefield

In 2026, AI-generated ESI – especially from AI notetakers, meeting summaries, auto-drafted emails, and chat assistants – will be routine in litigation. Parties will be fighting over accuracy, admissibility, consent, privilege, preservation obligations, and more.

New Litigation Danger as Employees Claim Green Card Favoritism

Discrimination claims are rising against employers accused of favoring foreign national workers over US workers. Attorneys from our Immigration Practice Group spotted this new litigation danger in early 2025, and we don't see it going away this year.

Want More?

- You can read our entire FP Forecast 2026, which is full of predictions spanning many practice areas and industries.
- You can register here for our **FP Workplace Law Forecast 2026 Webinar**.

Conclusion

We will continue to monitor developments related to all aspects of workplace safety law. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our Litigation and Trials Practice Group.

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