

BUSINESS SUCCESS SYMPOSIUM: Legal Update

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Artificial Intelligence (“AI”)



AI Services Continue to Expand

- Resume Screening Tool
- Transcription of Meetings and Interviews
- Benefits- AI Therapists
- Customer Support Tools
- Deepfakes
- And on, and on, and on...

AI – Current State Laws

- Illinois Artificial Intelligence Video Interview Act (2022), as amended effective January 1, 2026
- New York City Local Law 144 (July 5, 2023)
- Colorado Anti-Discrimination in AI Law (May 17, 2024, effective February 1, 2026)
- Maryland Facial Recognition During Interviews (2020)
- California, Cal. Lab. Code Sec. 927 (Jan. 1, 2025)
- Proposed laws in California, Georgia, Nebraska, New Jersey (AG's office issued guidance in Jan. 2025), New Mexico, New York, Oklahoma
- EEOC also addressed AI discriminatory recruitment in Strategic Enforcement Plan for 2024 - 2028, which was published in Federal Register in late September 2023

Virginia – House Bill 2094

- Virginia has not enacted specific AI-discrimination statute, but . . .
- VA House passed House Bill 2094 (the Artificial Intelligence Use and Accountability Act) to regulate “high-risk” AI systems, which includes provisions to address potential discrimination.
- This law would have required impact assessments, prevention of algorithmic discrimination in key areas, and granted individuals rights to challenge AI decisions on or by July 1, 2026.
- VA Governor Youngkin vetoed HB 2094 in March 2025, so its future remains uncertain.
- Employees may still rely on Virginia Human Rights Act.
- Will Virginia pass a less stringent HB 2094?

“No Tax On Overtime”

One Big, Beautiful Bill (“OBBB”) Tax on Overtime

- Effective for 2025 through 2028
- Applies only to the “half” portion of “time-and-a-half”
- Tax deduction when filing federal income taxes
- Maximum annual deduction is \$12,500 (\$25,000 for joint filers)
- Phases out for taxpayers with modified adjusted gross income over \$150,000 (\$300,000 for joint filers)

Virginia & Non-Competition Covenants

A Further Narrowing

- Effective July 1, 2025 (Va. Code Ann. § 40.1-28.7:8)
- Expands definition of “low-wage” employees to include employees classified as non-exempt under FLSA, regardless of amount of weekly earnings.
- No non-competes with “low-wage” employees
- No retroactive application of new definition

A Further Narrowing (cont.)

- “Low-wage employee” was/is an employee whose average weekly earnings were less than the average weekly wage of employees in the Commonwealth of Virginia.
- On December 10, 2024, VDOL announced the 2025 average weekly wage for determining who is a “low-wage employee” is \$1,463.10 (or \$76,081.14 a year).
- Correct classification under FLSA is always vital.
- Review/revise existing and planned revisions to employment agreements, offer letters, handbooks, and other policies.



Virginia Unemployment Compensation

Increased Unemployment Benefits

- Starting January 1, 2026, unemployment benefits will increase \$52/week.
- The law directs Commission on Unemployment Compensation, in partnership with Virginia Employment Commission, to study feasibility of annual adjustments to benefit amounts based on changes in average weekly wage.
- May (will?) eventually lead to higher unemployment insurance taxes to support increased benefits.
- Businesses should prepare for potential rise in unemployment insurance.



United States Supreme Court ("SCOTUS") Roundup

Ames v. Ohio Department of Youth Services, 145 S. Ct. 1540 (2025)

- Heterosexual woman alleged “reverse” discrimination. Lower courts dismissed claims for failing to show “background circumstances” suggesting bias.
- SCOTUS unanimously struck down “background circumstances” requirement, which had forced “majority” group members to meet higher evidentiary standard when alleging workplace discrimination.
- Employers should ensure all workplace policies and practices are applied fairly and consistently, which you should do anyway.

***Stanley v. City of Sanford*, No. 23-997, 606 U.S. ____ (June 20, 2025)**

- Plaintiff forced to retire due to Parkinson’s disease, sued the City for cutting her retiree health benefits alleging post-retirement disability discrimination.
- 7–2 decision, SCOTUS ruled Title I of ADA applies only to current employees or job applicants—not retirees.
- Ruling limits ADA protections after retirement and clarifies that to sue under Title I, a plaintiff must be a “qualified individual” seeking or holding job.

E.M.D. Sales, Inc. v. Carrera, 145 S. Ct. 34 (2025)

- Sales reps sued EMD claiming they were wrongly denied overtime pay. EMD argued plaintiffs were exempt as “outside salespeople.”
- Lower courts rejected this defense saying EMD failed to prove that exemption under the “clear and convincing evidence” standard.
- SCOTUS held that employers must prove FLSA exemptions by preponderance of the evidence (i.e., more likely than not).
- Aligns FLSA exemption cases with typical civil litigation standard and reverses several lower court rulings in the Fourth Circuit that had required the higher burden of proof.



Miscellaneous

Miscellaneous

- *Loper Bright Enters. V. Raimondo*, 603 U.S. ____ (2024)
- Joint employer rule
- Independent contractor versus employee under FLSA (and others?) (DOL)
- White collar exemption issues under FLSA appear to be on backburner (DOL)
- EEOC enforcement
- Virginia minimum wage as of January 1, 2025 = \$12.41

Q&A DISCUSSION

THANK YOU!

PRESENTER



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