A LITTLER PRESENTATION

2026 Employment Law Update for Home Care



September 18, 2026

Littler

Presented By

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Littler's 45+ Home Care Attorneys (1,300 in US!)



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Agenda

1. TPS Terminations – September 2026 Update + Common I-9 Mistakes
2. State & Federal Law Trends to Watch + Litigation Update
3. Fun with AI!
4. Q&A



Legal Notice

The materials and opinions presented by the speakers at this presentation represent the speakers' views, are for educational and informational purposes only, are not intended to be legal advice and should not be used for legal guidance or to resolve specific legal problems. In all cases, legal advice applicable to your organization's own specific circumstances should be sought.

We strongly encourage you to consult legal counsel of your choice on specific matters involving employment law, and important personnel policies and practices prior to adoption or implementation.

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TPS Update and Common I9 Mistakes



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TPS Update

- The U.S. Supreme Court in *Mullins v. Doe* confirmed the Department of Homeland Security's authority ***to end the TPS program*** for **Haiti, Burma, Somalia, Yemen, Syria, Ethiopia, and South Sudan**.
- the United States Citizenship and Immigration Services (USCIS) established new TPS termination dates of ***July, August, and September 2026*** for TPS-related Employment Authorization Documents.

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Temporary Protected Status Expirations

Key Country Terminations | 2025-2026

2025
- Nepal | Aug. 5
- Honduras | Sep. 8
- Nicaragua | Sep. 8
- Venezuela (2021 TPS) | Nov. 7

2026
- Yemen | Jul. 20
- Haiti | Jul. 27
- Syria | Jul. 27
- Burma (Myanmar) | Aug. 7
- South Sudan | Aug. 7
- Somalia | Aug. 14
- Ethiopia | Aug. 18

- El Salvador – September 9, 2026

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TPS Update
So What Does This Mean for Employers?

- It is ***unlawful*** (as of September 9, 2026) to employ a worker who is only permitted to work pursuant to one of these TPS programs.
- ***Action Steps (NOW!)***
  1. Review your Form I-9 records to determine if any workers only have TPS designation EADs.
  2. Contact any such workers IMMEDIATELY to determine if they have other employment authorization documents
     - ✓ If so, you should ***complete Supplement B***
     - ✓ If none, ***terminate employment ASAP (should have been on or before date applicable to county of citizenship)***

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Documents that Do Not Show Work Authorization

- Documents that ***DO NOT show*** continuing work authorization:

X EAD with category C11;
X Receipt for I-765 application for EAD;
X Receipt for I-589 application for asylum;
X Receipt for Biometrics notice for I-765 or I-589;
X Receipt for I-765 approval.

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Documents that Do Not Show Work Authorization (Continued)

- Documents that ***DO NOT show*** continuing work authorization:
  - X IRS individual taxpayer number (ITIN)
  - X Restricted Social Security card as List C document – stated not valid for employment unless DHS work authorization;
  - X Expired passport, driver's license, or green card, unless extended by USCIS documentation; and
  - X Foreign passport, unless it has I-551 stamp or is accompanied by Form I-94 which has worker's unexpired nonimmigrant status.

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Homeland Security

ICE I-9 Audits

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Notice of Inspection

Office of Investigations

U.S. Department of Homeland Security
[Address]
[Address]

U.S. Immigration and Customs Enforcement

NOTICE OF INSPECTION

[Date]

[Name of Company Official]
[Company Name]
[Company Address]

Dear Sir/Madam:

Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify employment eligibility of persons hired after November 6, 1986 using the Employment Eligibility Verification Form I-9.

U.S. Immigration and Customs Enforcement (ICE) regulations require the provision of three days notice prior to conducting a review of an employer's Forms I-9. This letter serves as advance notice that ICE has scheduled a review of your forms for *Insert date and time*. You may, however, waive the three-day period, should you wish to do so, by annotating and signing the bottom of this letter and advising this office of your decision.

During the review, *Insert name and title of ICE point of contact* will discuss the requirements of the law with you and inspect your Forms I-9. The purpose of this review is to assess your compliance with the provisions of the law. ICE will make every effort to conduct the review of records in a timely manner so as not to impede your normal business routine.

Sincerely,

Insert name
Insert title (GS or above)

I wish to waive the three day notice to which I am entitled by regulation.

(Printed Name) (Signature) (Date)

AILA InfoNet Doc. No. 09031660. (Posted 03/16/09)

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Civil Penalties

- I-9 paperwork for uncorrected technical and substantive violations result in penalty of **$288 to $2,861*** for each individual.
- Knowingly hiring violations result in penalty of **$716 to $5,724*** per violation for 1st offense.

  *These ICE penalties increased by about 3% in 2026.



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Criminal Penalties

- Criminal penalties for immigration violations:
  - Where ICE finds employer knowingly employed individuals who lack work authorization - *imprisonment for up to 6 months and/or fines*
  - Harbored and/or transported undocumented workers - *up to 5 years in prison for simple harboring*
  - Tax fraud – paying undocumented workers in cash or 1099 worker - *up to 3 years in prison & fine of up to $100,000*
  - Transporting - *up to five years in federal prison*.

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Common I-9 Errors

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Common I-9 Errors – Section 1

- Failure to complete an I-9 form w/in 3 days – either through inadvertence or because you are incorrectly engaging worker as 1099 worker;
- Failure to sign I-9 form by employee;
- Failure to check box for citizenship or employment-authorized immigration status and/or record Alien/USCIS #;
- Failure to verify eligibility of employment through E-Verify (Arizona-specific, A.R.S. § 23-214).

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Common I-9 Errors – Section 2

- Failure to complete employer certification in Section 2;
- Failure to sign I-9 form by employer rep;
- Failure to complete Lists A OR B and C;
- Failure to record expiration date, type of document and/or issuing authority missing;
- Failure to sign and/or date within 3 days after 1st day of employment.

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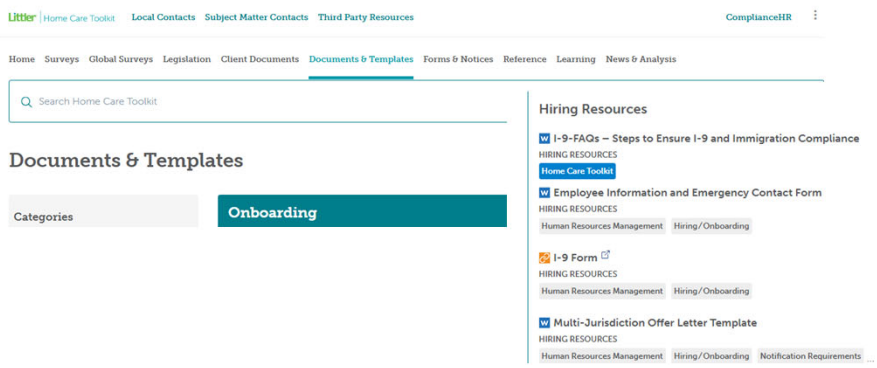
Littler Resources & Your Next Steps For Compliance

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Pro Tip – How to Prepare For An ICE I-9 Audit

- **Internal I-9 audit** – cure errors on I-9 forms & ID and discharge undocumented workers.



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Pro Tip – How to Prepare For An ICE I-9 Audit

- Ensure staff are properly trained on completing / storing I-9 forms.
- Consult ICE website or counsel about any types of ID you are not familiar with.
- Keep copies of documentation accepted as proof of identity & employment authorization with Form I-9.

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Your Next Steps

1. Plan for the knock on your door
   - Identify internal lead team member
   - Educate Team (reception to management to team lead)
   - Know the Attorney to call
2. ICE Training
3. Self Audit I-9 files (Correct Mistakes before ICE serves NOI!)
4. Call Counsel Immediately! *If you wait and try to handle yourself, it could be too late*

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State/Federal Law Trends To Watch



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Arizona Law Update

- HB 4168 – No tax on tips and overtime
- HB2663 – Leave for Military Training
- App-Based Worker Contract Termination
- Minimum Wage 2027 - $15.65 (Annual Announcement)



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LITTLER 2026 EMPLOYER SURVEY

Employee Departures: Employers Are Taking Action

Restrictive covenant and confidential-information risk is common, and enforcement is active.

92%
of employers saw employees leave for competitors
18% experienced coordinated group exits

WHAT EMPLOYERS REPORTED

55% reported a restrictive covenant or confidentiality violation



95%
took action when a violation occurred
Only 5% took no action

HOW EMPLOYERS RESPONDED

- **81%** Cease-and-desist letter
- **71%** Reminder of ongoing obligations
- **35%** Litigation against departing employees
- **17%** Litigation against the new employer
- **17%** TRO or preliminary injunction

EMPLOYER TAKEAWAY: **Pair enforceable agreements with early-warning monitoring and a coordinated Legal + HR + IT response plan.**

Survey of 300+ U.S. executives; response percentages are not mutually exclusive.

Source: Littler Annual Employer Survey 2026 / Littler Report, Sept. 15, 2026

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Federal/State Law Trends To Watch

State/Local

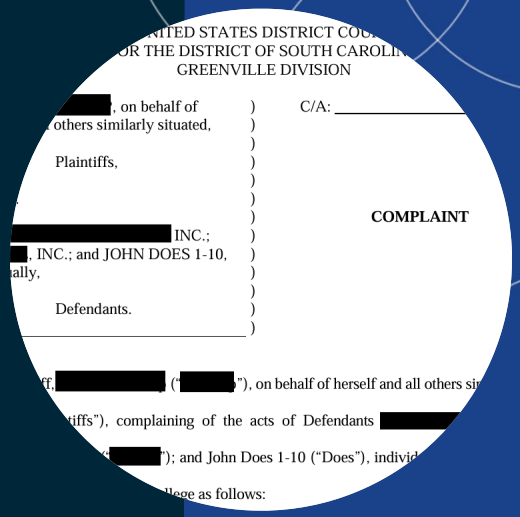
- AI use in employment regulation
- Paid Sick Leave/Worker Classification
- Non-Compete and Non-Solicitation Restrictions

Federal

- Anti-Kickback Law: Certain payments – *e.g., sign on bonus* – paid to certain workers – *e.g., family member of care recipient* – under Medicaid reimbursed care model may be deemed to violate the Anti-Kickback laws
- New Joint Employment Regulation

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Litigation Trends – September 2026 Home Care Update


GREENVILLE DIVISION

C/A: _____

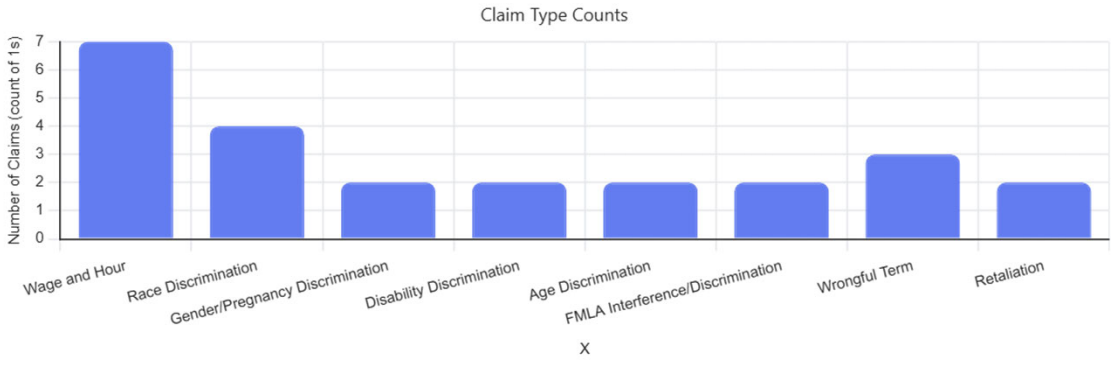
Plaintiffs,

COMPLAINT

Defendants.

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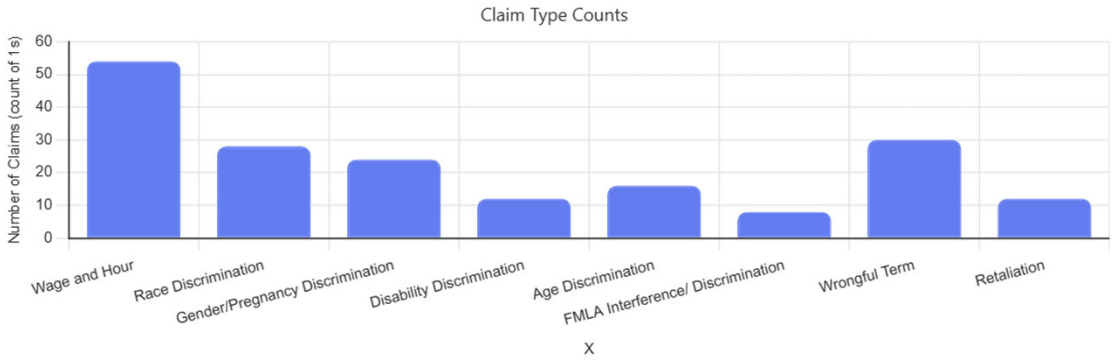
Employment Lawsuits/Claims Filed Against Home Care (1 week snapshot)



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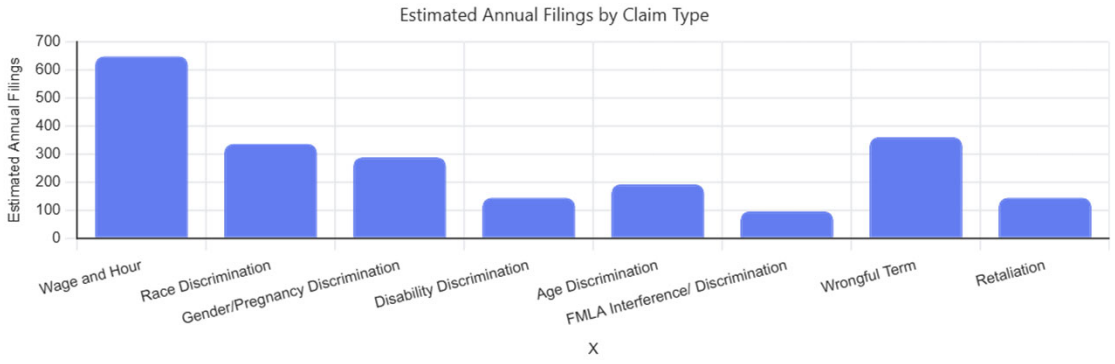
Employment Lawsuits/Claims Filed Against Home Care (1 month snapshot)



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Employment Lawsuits/Claims Filed Against Home Care (1 year snapshot)



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Costs of Litigation = Money + Time + Reputation

	Single Plaintiff Lawsuit	Class/Collective Action Lawsuit
MTD	$25,000 - $50,000+	$35,000 - $75,000+
Discovery / MSJ	$75,000 – 200,000+	$150,000 – 500,000+
Trial	$150,000 - $350,000+	$350,000 - $1,500,000+
Appeals	$35,000 - $65,000+	$65,000 - $105,000+

What is your and your team's time worth over years of litigation?
And what about the potential costs if you lose?

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Takeaways?

- Wage and Hour litigation dominates
- Despite their dedication, disgruntled caregivers do not hesitate to sue their employers
- Litigation costs significant money ***and time***!
- EPLI is great for certain kinds of claims, but at most offers limited defense fees for wage and hour claims.
- The stats on the prior slides do not account for (1) US DOL or state wage and hour audits; or (2) private settlements

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How Do You Use AI?

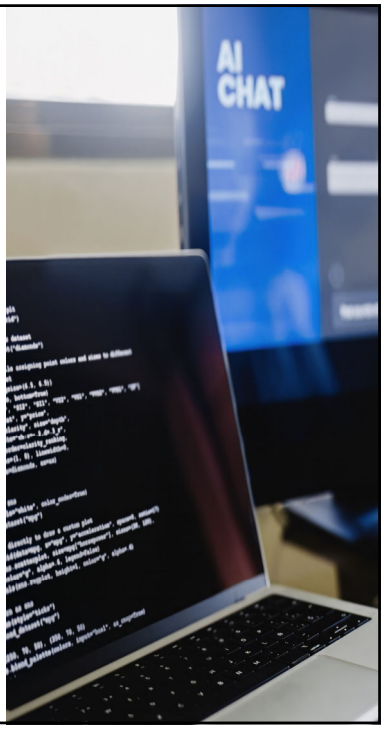
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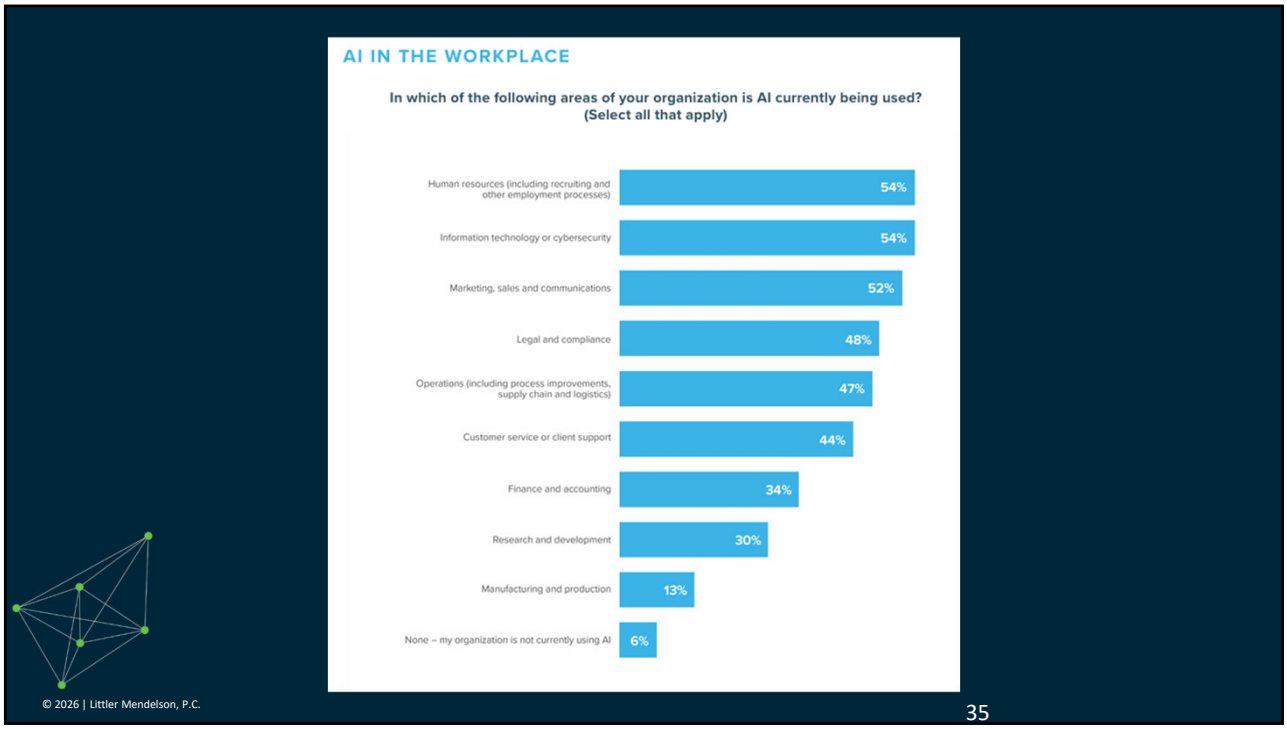
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How Are Employers Using AI?

- **Agendas / To Do Lists**
- **Read E-mails and Propose Responses**
- **Recruiting** (*e.g.*, resume screening, candidate assessment)
- **Creating HR-related materials** (*e.g.*, job descriptions, contracts)
- **Employee management** (*e.g.*, evaluating performance)
- **Employee development** (*e.g.*, on-demand resources)
- **Analyzing company policies and practices**

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AI is Reinventing Human Resources

- HR is embracing AI tools without knowing exactly what they will deliver or change
- For many companies, the first pilots of AI are in talent acquisition
  - Can see significant, measurable, and immediate results
  - Reduces time to hire
  - Increases productivity for recruiters
  - Delivers an enhanced candidate experience that is seamless and simple



Want To See How We Used AI?

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Any use of AI, however, must be viewed through the lens of MANY applicable employment and AI laws. For example . . .

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What Laws Apply To The Use Of AI In The Workplace?

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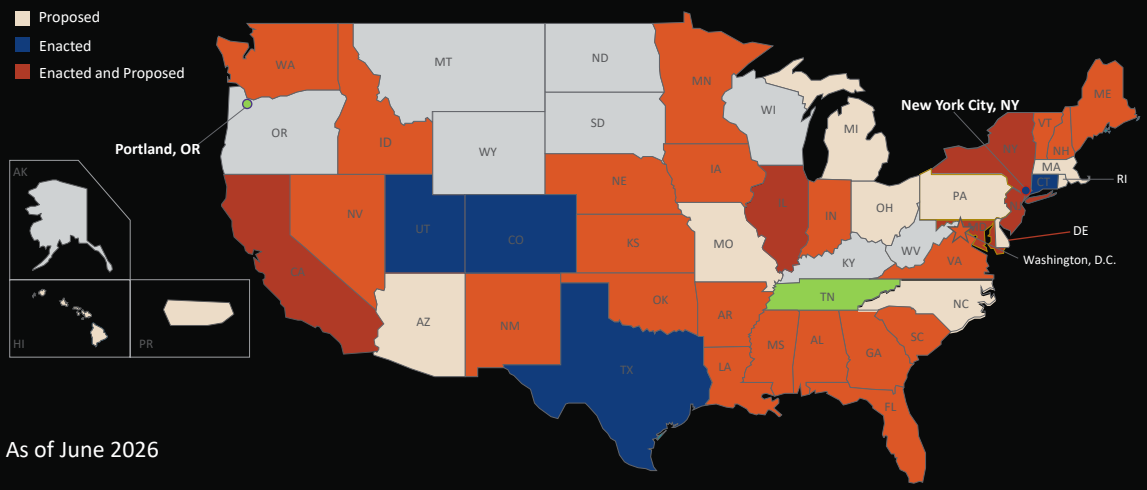
Federal Laws Applied to AI

- EEO laws
- Wage and Hour (FLSA)
- NLRA
- FCRA
- Privacy laws (e.g., HIPAA)
- AI Specific . . .

Pending and Enacted AI Legislation

Legislation and Regulations Impacting Employment and HR Functions

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As of June 2026

Arizona
Proposed AI Laws

Chatbot Protection Act – ***Proposed/Not enacted***

- Requires mandatory disclosure of chatbot providers to clearly state that users are interacting with a chatbot and not a human and cannot misrepresent their services

- **HB 4098** - ***Proposed /Not enacted***
  - Businesses that create, use, sell, or provide access to AI systems MUST conduct a risk assessment on the AI system related to discrimination or bias, safety, privacy, and catastrophic risks

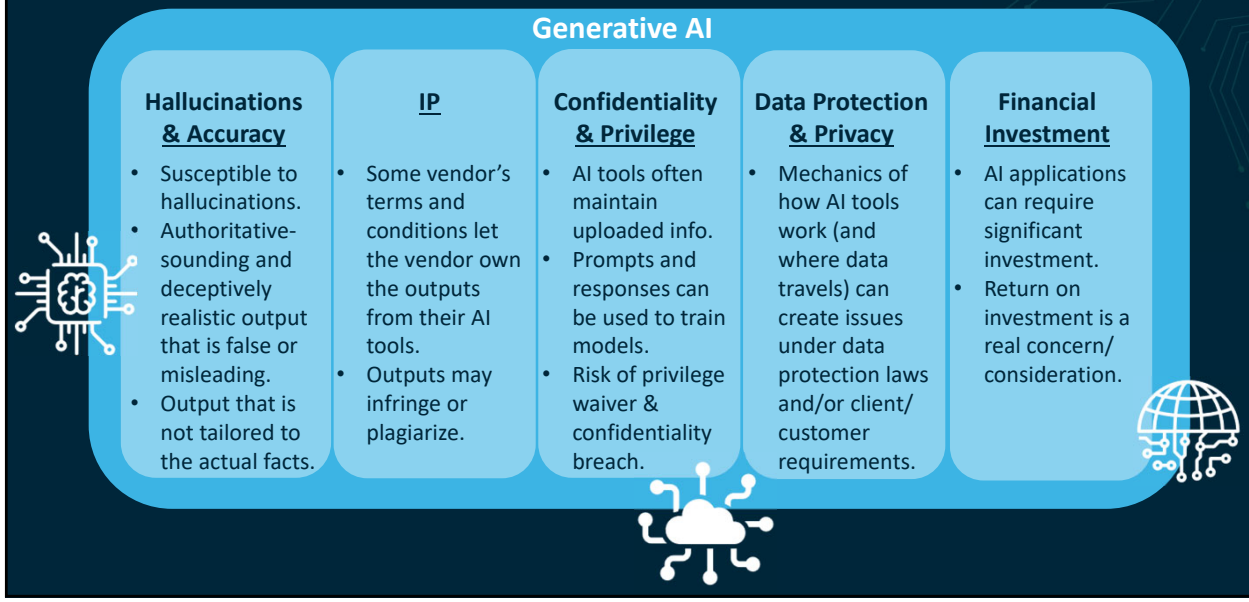
- **SB 1815** - ***Proposed /Not enacted***
  - Requires data controllers to only collect personal data that is relevant and reasonably necessary; prohibits controllers from processing data in an unlawfully discriminatory manner or without the consent of the consumer

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So What Are Some Of the Risks of Using AI In The Workplace?

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But There Are Risks & Costs



Disclosure of Confidential/HIPAA protected information

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AI Tools can be:

- Private AI / Enterprise AI system / data sandboxing / single-tenant architecture / locally hosted AI
- Publicly Trained AI model

Important to know which you are using as uploading confidential client/patient/company information can result in:

- Breach of contract
- Breach of fiduciary obligations of employment
- HIPAA breach
- Disclosure of company proprietary / confidential information to the public

If you can't put it on Facebook, don't upload it to an AI Tool

AI Scheduling/EVV algorithms and wage-hour exposure

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Employers have an obligation to

- Create records of all "hours worked"
- Pay for all hours worked at applicable minimum or contract rate
- Pay a premium overtime rate according to federal (and state) thresholds

AI scheduling tools that ***auto-adjust shifts***, ***travel time***, ***split-shift assignments***, ***or implement unlawful rounding*** can create off-the-clock work, missed overtime, or FLSA violations if the algorithm isn't tracking and accounting for actual time worked

Deepfake Harassment Isn't Just Hypothetical

Ex-Lifeguard Says Ga. YMCA Fired Her Over Doxing Report

The YMCA of Metropolitan Atlanta Inc. has been sued by a former lifeguard who alleges she was fired after reporting that another YMCA employee doxed and shared doctored photos of her and other female YMCA lifeguards on a pornographic website.

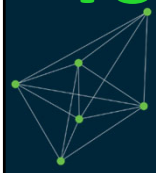
Ex-Prosecutor Disbarred For Fabricating Harassing Texts

Aldine ISD middle school teacher demands accountability after face used in 'deep fake' porn video

- Unfortunately becoming more common to see deepfakes creating sexually explicit content.
- Employer / Individual liability for sexual harassment
  - Vicarious liability; failure to properly investigate; failure to take prompt and effective remedial action
- Hostile work environment (severe or pervasive)
- Defamation
- Negligent hiring/negligent retention

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How Do You Control The Use Of AI To Protect Your Company?



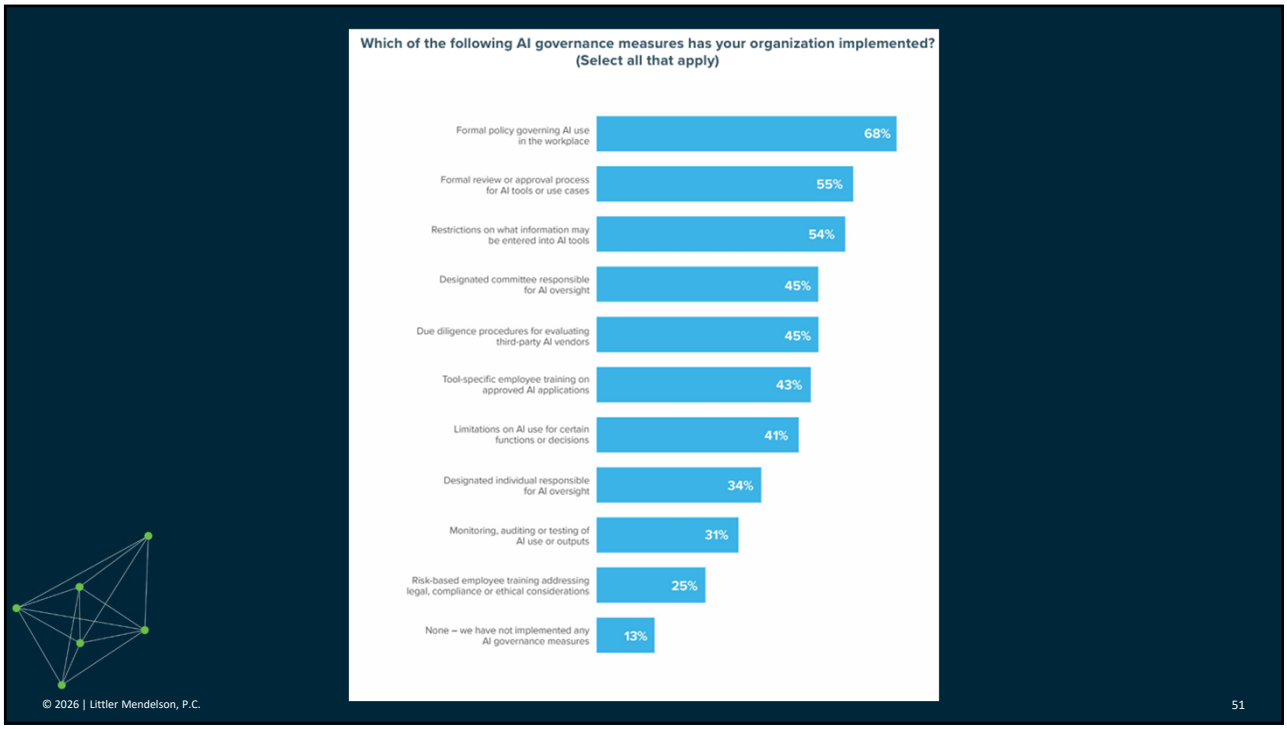
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Remember - "The vendor built it" and "Everyone is using it" Are Not Defenses

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- If you use a vendor tool that causes or produces a discriminatory outcome, YOU – the employer – will be held responsible for that outcome.
- Do your homework to try to understand the steps the vendor has taken to try to avoid unlawful outcomes
- Review the vendor contract and understand the allocation of risk and indemnification

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Considerations for Recording, Transcription, and Notetaking with AI

- Lawsuits have been brought alleging notetaking tools recorded private conversations ***without the consent of all participants*** and used those recordings to train its AI models without adequate disclosure – ***potential HIPAA violation or invasion of privacy***
- AI transcription considerations: consent, biometrics, accuracy, discrimination and disparate impact, ***attorney-client privilege***, data retention and confidentiality
- AI transcription tools may misunderstand accents, speech impediments or other characteristics tied to protected classes. This can create ***disability discrimination or disparate impact exposure*** if those transcripts inform performance reviews, hiring decisions or disciplinary actions.

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Action Steps For AI Compliance

1. Identify any currently applicable law and monitor proposed federal, state, and local AI laws/requirements.
2. Have an AI Use Policy and train team on use.
3. Understand AI tool – what does it do and how does it do it?
4. Evaluate fit, potential bias, and legal compliance.
5. Understand privacy limitations – what should not be shared with AI Tool/vendor absent contractual obligation to safeguard and keep info private.
6. Maintain human oversight of use and output.

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Ask The Employment Attorneys Anything!

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Submit Questions!

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Thank You



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