

Employment & Labor Law Seminar

2026 Half-Day Event

October 1, 2026

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.



1

Welcome



Cameron Garrison
Managing Partner
Kansas City



2

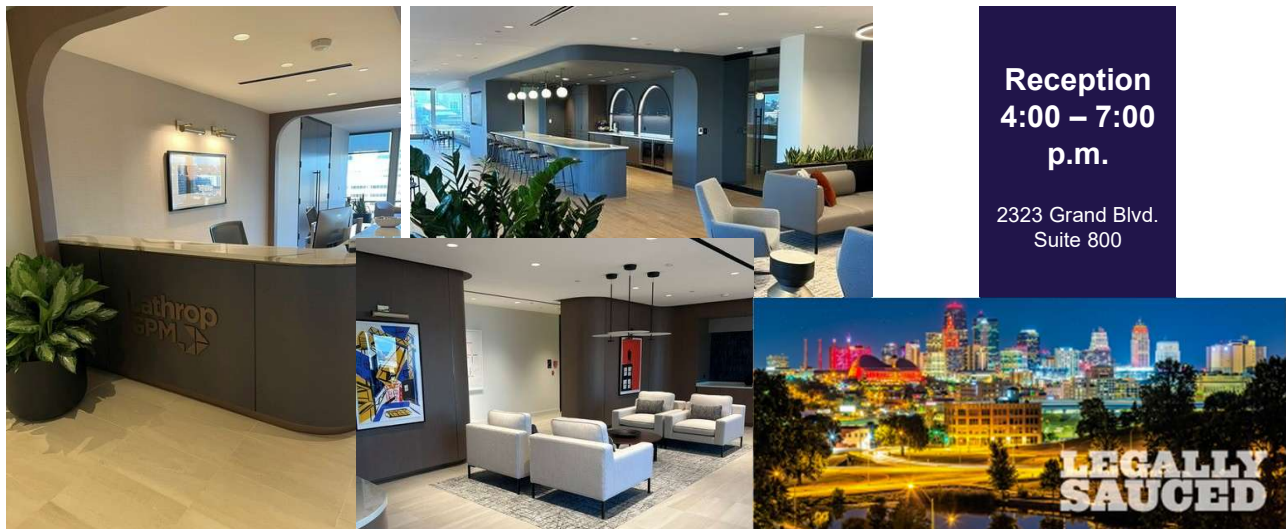
Lathrop GPM Labor & Employment Team



© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

3

Join Us! Kansas City Open House: Legally Sauced Edition



Reception
4:00 – 7:00
p.m.

2323 Grand Blvd.
Suite 800

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

4

**Scan for
HRCI, SHRM
& CLE Credit**



5



**Scan to submit
a question you
would like Josh
Pierson to
address during
today's keynote
session**



6

2026 Employment Law Highlights



Jill Waldman
Partner
Kansas City



Tammy Somogyi
Counsel
Kansas City

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.



Federal Agency Updates

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

EEOC Update

- + EEOC finally has a “quorum” as of October 2025.
- + EEOC is actively pursuing President Trump administration’s shifted discrimination law interpretations and focus on alleged “illegal DEI.”
- + EEOC issued a new National Enforcement Plan (NEP) on June 4, 2026, for 2025-2029 years.
 - https://www.eeoc.gov/sites/default/files/2026-06/NEP_-_signed.pdf

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

9

Other EEOC Developments

- + **January 23, 2026** | Rescinded the 2024 “Enforcement Guidance on Harassment in the Workplace”
 - Guidance had applied Supreme Court’s *Bostock* ruling under Title VII to harassment claims, including LGBTQ+ based harassment
- + **June 30, 2026** | Withdrew 1979 guidance titled “Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964 as Amended” and related “Compliance Manual Section 607 on Affirmative Action”
 - Materials had provided guidance on creating a voluntary affirmative action plan as a legal defense to a claim that race or sex-conscious action violates Title VII
 - EEOC maintains that past guidance is inconsistent with text of Title VII and obsolete based on recent case law and changes in historical and cultural factors

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

10

Case Law Updates

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

11

E.M.D. Sales, Inc. v. Carrera **145 S. Ct. __ (Jan. 15, 2025)**

- + Employees challenged their employer's classification of certain positions as exempt from the overtime requirements of the FLSA.
- + The Supreme Court resolved a split among the federal circuits regarding the employer's burden of proof for FLSA exemptions.
- + The Court held employers need only establish an exemption by a preponderance of the evidence and rejected the argument that a heightened "clear and convincing evidence" standard applies.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

12

Ames v. Ohio Department of Youth Services **605 U.S. 303 (June 5, 2025)**

- + Employee alleged that she was denied promotion opportunities because she was heterosexual and later demoted in favor of LGBTQ employees.
- + The Supreme Court rejected the “background circumstances” requirement that some courts had imposed on majority-group plaintiffs pursuing Title VII discrimination claims.
- + The Court held that Title VII applies equally to all individuals and majority-group plaintiffs are not subject to a heightened evidentiary standard.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

13

Young v. Colorado Department of Corrections **__F.4th __ (10th Cir. May 11, 2026)**

- + A white corrections employee alleged that a mandatory racial sensitivity training created a hostile work environment in violation of Title VII and Section 1981 because the training addressed concepts such as “white fragility” and “white exceptionalism.”
- + The Tenth Circuit affirmed dismissal of the claims, holding that a single diversity training session and its alleged aftereffects were not sufficiently severe or pervasive to alter the terms and conditions of employment.
- + The court found that the employee failed to demonstrate any tangible impact on employment, such as changes to job duties, advancement opportunities, compensation, or workplace treatment. The court also found the training did not require the employee to adopt any particular ideological viewpoint.
- + The court rejected the argument that the employer’s failure to investigate complaints independently created a hostile work environment (though it noted that such facts could support a stronger claim under different circumstances).

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

14

Crowther v. Board of Regents of the University System of Georgia (cert. granted May 18, 2026)

- + The Supreme Court agreed to decide whether employees of federally funded educational institutions may pursue sex discrimination claims directly under Title IX or whether Title VII provides the exclusive remedy.
- + The case arises from claims brought by former Georgia Tech women's basketball coach MaChelle Joseph and professor Thomas Crowther alleging sex discrimination and retaliation by university employers.
- + The Eleventh Circuit held Title IX provides a private right of action for students, but not employees, concluding that Congress intended Title VII to govern employment-discrimination claims.
- + The Supreme Court review will resolve a circuit court split, as several other federal circuits currently permit employees to pursue employment discrimination claims under both Title IX and Title VII.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

15

Tri-Star Imports, Inc. d/b/a Mercedes-Benz of St. Louis v. Jackson Lewis, P.C., et al. ***__ S.W.3d __ (Mo. App. E.D. Apr. 14, 2026)***

- + Client sued its law firm for legal malpractice arising from workplace investigations and related employment litigation. The engagement agreement required arbitration clause with the Uniform Arbitration Act of Missouri."
- + The law firm moved to compel arbitration, arguing the Federal Arbitration Act ("FAA") governed because the representation involved interstate commerce.
- + The Missouri Court of Appeals held the Missouri Uniform Arbitration Act ("MUAA"), not the FAA, governed because the parties expressly agreed Missouri arbitration law would apply. The court further held the arbitration provision was unenforceable because it failed to include the mandatory statutory notice required by RSMo. § 435.460 stating in capital letters that the contract contained a binding arbitration provision.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

16

Stanley v. City of Sanford, Florida **145 S. Ct. __ (June 20, 2025)**

- + Retired firefighter challenged post-employment disability-related changes to retiree health insurance benefits under the ADA.
- + The Supreme Court held that Title I of the ADA protects current employees and applicants who are “qualified individuals.”
- + The Court concluded that, in most circumstances, retirees cannot pursue ADA Title I based on actions occurring after the employment relationship has ended (i.e., after retirement).

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

17

Kidwell v. Blue Valley School District **Case No. 25-2004-DDC (D. Kan. Jun 4, 2026)**

- + In response to employer’s request that the employee submit a doctor’s note indicating the earliest possible return to work date, employee provided a note indicating she “no work until reevaluated on 10/10/23”.
- + Employer terminated employee two days after receiving the note, saying she was out of contractually provided leave and FMLA leave.
- + Court denied employer’s motion for summary judgment on the employee’s ADA failure to accommodate claim. The court held, “Admissible evidence in the summary-judgment record supports the view that defendant short-circuited the interactive process by firing plaintiff promptly after receiving the doctor’s note.”

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

18

Kendall v. Zoltek **175 F.4th 1002 (8th Cir. May 18, 2026)**

- + The plaintiff employee was a production operator. The employer required production operators to stand for their 12-hour shifts. Employee was injured at work and employer allowed her to temporarily perform job duties while seated.
- + After a few months the employer and employee discussed employee's medical restrictions. The employee was ultimately placed on medical leave in part because she could not perform her job duties while standing. After the employee's leave was exhausted and the employer learned that some of the restrictions were permanent, the employer terminated the employee.
- + The employee sued, arguing the employer failed to accommodate her disability. The employer defeated the employee's argument that its decision to temporarily allow her to sit to perform her job meant that standing was not an essential function of the job.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

19

Hayes v. Gstek, Inc. **___ F.4th ___ (5th Cir. May 8, 2026)**

- + An IT systems administrator employed by a federal contractor requested full-time remote work as an accommodation for autism, depression, and social anxiety disorder following the employer's return-to-office requirements.
- + Employer denied the request for full-time telework because its government client no longer permitted certain contractor positions to be performed entirely remotely but offered a partial accommodation allowing telework several days per week.
- + The Fifth Circuit held that employee was not a "qualified individual" under the ADA because regular in-person attendance was an essential function of the position that he could not perform.
- + The court further held that temporary pandemic-era remote work arrangements did not permanently alter the essential functions of the job and that employers are not required to eliminate essential job functions as an accommodation.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

20

Strife v. Aldine Independent School District **138 F.4th 237 (5th Cir. May 16, 2026)**

- + Employee alleged that a school district took approximately six months to approve a request to bring a service animal to work as disability accommodation.
- + During that period, the district sought additional medical documentation and an independent medical examination before ultimately approving the request. Employer eventually granted portions of the requested accommodation but only after substantial delay and administrative back and forth.
- + The Fifth Circuit held that an unjustified delay in providing a reasonable accommodation may constitute a failure to accommodate under the ADA, even when the accommodation is eventually granted and the employee experiences no separate adverse employment action.
- + The court emphasized employers must engage promptly and meaningfully in the accommodation process once notice is received.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

21

How the National Labor Relations Board Could Affect Your Workplace in the Coming Year



John Whitworth
Counsel
Kansas City



Terry Kilroy
Senior Counsel
Kansas City



Jack Rowe
Senior Counsel
Kansas City

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.



22

Board Update

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

23

National Labor Relations Board (NLRB)



David M. Prouty
Aug 2021 – Aug 2031



James R. Murphy (Chair)
Jan 2026 – Dec 2027



Scott A. Mayer
Jan 2026 – Dec 2029



James R. Macy
Aug 2026 – Aug 2030

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

24

NLRB General Counsel (GC) – Crystal Carey



Memos

- Further Guidance Regarding General Counsel Priorities (Aug 26, 2026)
 - Prioritizing processing of aged cases to reduce backlog
 - Implementing sustainable, prudent case handling practices to prevent a repetitive backlog
 - Positions Taken by the GC
- Earlier 2026:
 - Operational Priorities to Ensure Consistent, Fair, and Timely Case Resolution Across Regions (Jan 28, 2026)
 - Case Handling Guidance (Feb 27, 2026)

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

25

NLRB General Counsel (GC) – Crystal Carey

- **Positions Taken by the GC**
 - **Severance Agreements (and other Employment Agreements)**
 - Arguing to overrule *McLaren Macomb*
 - **Work Rules** Arguing to overturn *Stericycle*
 - **Dress Codes** requesting the Board to reinstate *Wal-Mart Stores*
 - **Protected Concerted Activity** urging revisitation of *Lion Elastomers*
- **Member Footnoting**: Since the Board regained its quorum members Murphy and Mayer have been attaching footnotes to decisions that name a precedent they would revisit once a third vote existed

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

26

Protected Concerted Activity & Its Limits

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

27

Topic	Current Precedent	The Rule	Why it May be Revisited	Potential Impacts
Workplace Rule/Handbooks	<i>Stericycle</i> 372 NLRB No. 113 (2023)	Facially neutral policies may be unlawful if employees could reasonably interpret them as restricting protected activity.	Active merits litigation. Both reflecting the GC's position that <i>Stericycle</i> should be overturned.	Greater deference to business justifications; reduced handbook litigation; more predictable policy.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

28

Topic	Current Precedent	The Rule	Why it May be Revisited	Potential Impacts
Severance Agreements	<i>McLaren Macomb</i> , 372 NLRB No. 58 (2023)	Offering a severance agreement that contains confidentiality or non-disparagement provisions which have a reasonable tendency to interfere with employees' Section 7 rights, is a violation.	Active merits litigation. GC proposing a new standard or returning to <i>Baylor</i> and <i>IGT</i> .	Revival of Confidentiality and Non-disparagement clauses, provided they are narrowly tailored.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

29

Topic	Current Precedent	The Rule	Why it May be Revisited	Potential Impacts
Dress Codes	<i>Tesla, Inc.</i> , 371 NLRB No. 131 (2022)	Neutral dress codes are no longer enough by themselves to restrict protected workplace messaging.	Active merits litigation. GC positioning a return to <i>Wal-Mart Stores, Inc.</i>	Greater flexibility enforcing neutral dress-code and branding policies.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

30

Topic	Precedent	The Rule	Practical Employer Impact
Employee Misconduct During Protected Activity	<i>General Motors LLC</i> , 369 NLRB No. 127 (2020) <i>*Restored through Lion Elastomers III.</i>	Protected activity does not necessarily excuse workplace misconduct.	Greater flexibility enforcing workplace conduct standards and disciplining abusive behavior.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

31

Practical Applications of AI in the Workplace



Tedrick Housh
Partner
Kansas City



Jay Harrington
Associate
Kansas City

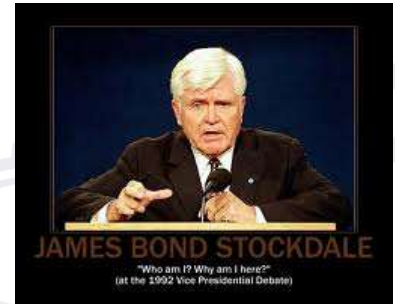
© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.



32

Four Questions Before Using AI

- What information am I sharing?
- What am I asking AI to do?
- How will I validate the response?
- Would I be comfortable defending the exchange later?



© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

33

Is It Safe?

Enterprise AI Platforms

Prompts and responses receive enterprise protections.

AI Platform often claims it is not using data to train its own foundation models, just the employer's.

Interactions may be logged and subject to retention, audit, and eDiscovery controls.



Consumer AI Tools

Terms, retention, training practices, and administrative visibility may differ.

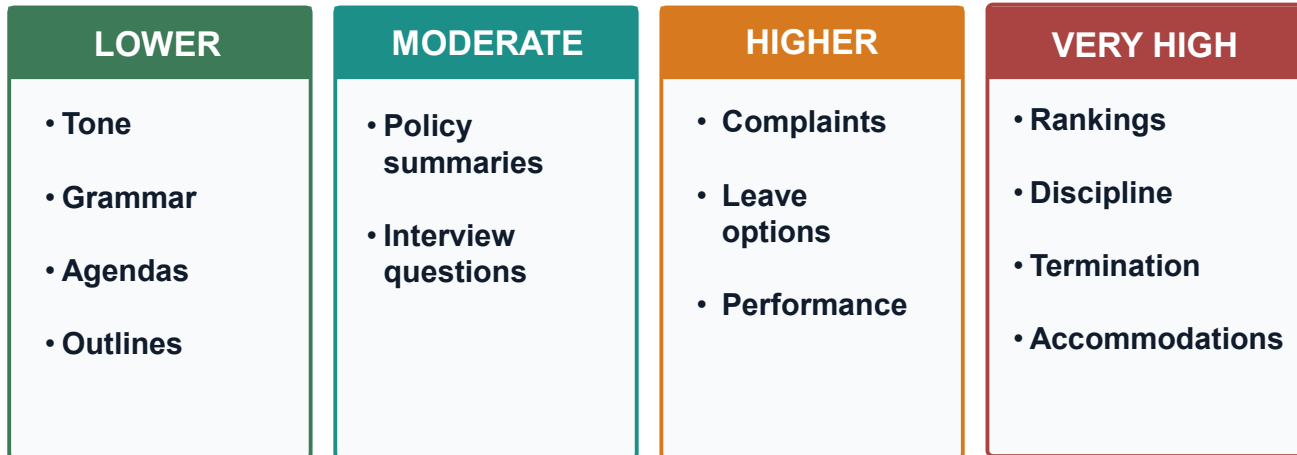
Do not assume a consumer account has the same protections as an approved enterprise tool.

Security protection does not eliminate HR's duty to minimize sensitive information.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

34

Not All HR Uses Carry the Same Risk

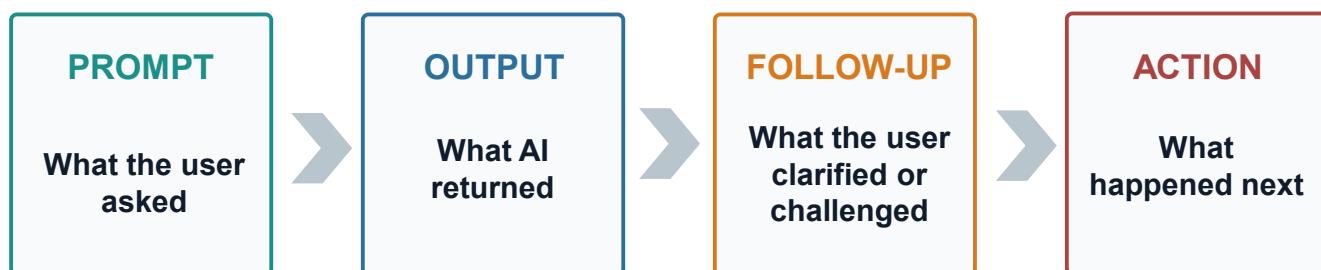


As risk rises, increase data minimization, verification, documentation and escalation.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

35

Assume the AI Exchange Will Be Part of the Record



Noting inaccurate AI Output shows disagreement, but it does not erase the exchange.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

36

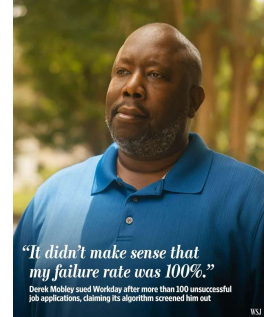
Mobley v. Workday and Discovery of AI Audits for Bias



The *Mobley* Court protected attorney-directed AI bias testing from discovery, but not every AI-related record.

Plaintiffs sought bias-testing code, testing results and underlying data. Attorneys curated the data, the testing supported legal advice and there was business or regulatory use of the bias testing.

Lesson: Counsel involvement alone is not enough. The purpose and use of the work matters.



© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

37

Did Meta Use AI to Layoff 8,000 Employees in July?

Twenty-six employees sued Meta in July 2026, alleging use of AI disadvantaged employees on leave or with disabilities. Meta denies the claims and states that people made the decisions.

ALLEGED INPUTS

Performance ratings
Productivity metrics
“AI-native” ratings
AI token usage

ALLEGED GAP

Approved leave
Disability circumstances
Adjusted output

KEY QUESTION

Did human review meaningfully account for context the metrics missed?

Allegations only. The case is unresolved.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

38

Agentic AI is already here, but not ubiquitous.

Before a human is involved, an AI agent will:

- Gather information
- Summarize records
- Compare alternatives
- Recommend actions
- Escalate issues
- Monitor compliance
- Generate documentation
- Communicate with employees

And HR Will Need To Answer:

- Who designed the workflow?
- Who validates the outputs?
- Who has authority to override recommendations?
- Which decisions require human review?
- How do we audit the system?
- Who is accountable when the result is wrong?

**The challenge will not be whether AI makes employment decisions.
The challenge will be explaining where the human part of the decision occurs.**

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

39

Break
2:10 p.m. – 2:25 p.m.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

40

Form I-9 and E-Verify Compliance Pitfalls to Avoid



Gizie Hirsh
Partner
Kansas City

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.



41

The Latest

- + ICE and CBP working with unprecedented budget increase of **\$81.2 billion**
- + Proposed major **expansion of I-9 inspections**
- + **ICE reclassification** of common Form I-9 technical errors as substantive in March 2026
- + **Increased fines**



© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

42

Hypothetical Scenario 1

- ☐ An ICE officer visits your company to serve a Notice of Inspection (NOI) and asks to review Forms I-9 and related documents for ten of your employees. The officer asks if he could review the Forms onsite.
Whose approach is correct?

- a) Dan, the new HR Manager, who cheerfully lets the officer borrow his desk while he goes out to lunch and instructs staff to hand over I-9s of the affected employees to the officer for review.
- b) Daria, the manager-on-duty, who politely tells the officer to leave while she checks with a higher up, then inadvertently sets the notice on her to-do pile where it lays untouched for a month.
- c) Dolly, the company's CEO, who asserts the company's right of three business days to respond to the NOI, and immediately orders staff to review and correct the affected Forms I-9 before production.
- d) None of the above.



© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

43

Hypothetical Scenario 2

- ☐ Your company is served a Notice of Inspection (NOI) by mail.
Whose approach is correct?

- a) Dan, the new HR Manager, who immediately orders staff to re-verify all non-US citizen employees and immediately terminate those without employment authorization.
- b) Daria, the manager-on-duty, who insists on preserving the record and works with HR to prepare the Forms I-9 and other documents for production untouched.
- c) Dolly, the company's CEO, who immediately orders an internal audit of the Forms I-9 and directs HR staff to fix any errors on the I-9s before production.
- d) None of the above.



© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

44

Hypothetical Scenario 3

❑ Your regional manager, Michael Scott, hears of a competitor receiving a Notice of Inspection from ICE and fears his company may be next. He orders an internal audit be conducted right away. **The following errors were discovered during the internal audit – what is the best way to correct them?**

- a) I-9s completed late.
- b) Missing I-9s.
- c) Several employees with expired employment authorization that were never re-verified.
- d) Some employees were never run through E-Verify although the company participates in E-Verify.
- e) Improper documents used for I-9s and E-Verify.



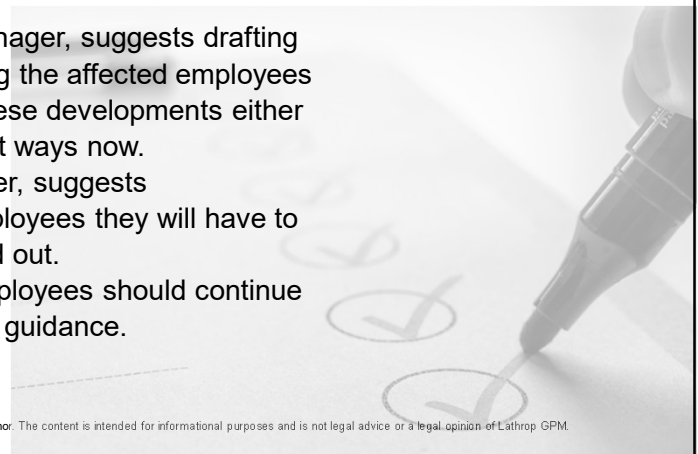
© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

45

Hypothetical Scenario 4

❑ During the audit, some employees with an expiring employment authorization mention they are worried about some confusing legal developments which could potentially affect their valid work authorization. Michael asks his staff for advice on what to do – **who is correct?**

- a) Dwight, Assistant to the Regional Manager, suggests drafting an empathetic termination letter telling the affected employees the company does not understand these developments either and it is simpler for all involved to part ways now.
- b) Pam, Receptionist turned HR Manager, suggests apologetically telling the affected employees they will have to be placed on leave until this is figured out.
- c) Jim, Sr. Sales Rep., suggests the employees should continue to work while the company gets clear guidance.
- d) All of the above.



© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

46

Hypothetical Scenario 5

- During the audit, it is discovered that the company used the remote verification procedure to complete Forms I-9 of certain employees although the company was not signed up for E-Verify when these employees were onboarded. Michael again asks his staff what to do – **whose approach is correct?**
- a) Pam suggests E-Verifying the affected employees right away retroactively.
 - b) Dwight suggests not doing anything, “let bygones be bygones.”
 - c) Kelly, the self proclaimed business manager, suggests completing new Forms I-9 for the affected employees using the traditional method, by inspecting documents in person.
 - d) All the above.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

47

Between a Desk and a Hard Place: Navigating Legal and Business Risks of Remote Work



Bridget Romero
Partner
Kansas City



Ellen Rudolph
Counsel
Kansas City



Natalie Kay
Associate
Kansas City

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.



48

Remote Work

- How many of you worked from home last week?
 - Last year?
 - Ever?
- How many of you worked from home BEFORE the Covid-19 pandemic?
- How many of you worked from home DURING the Covid-19 pandemic?

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

49

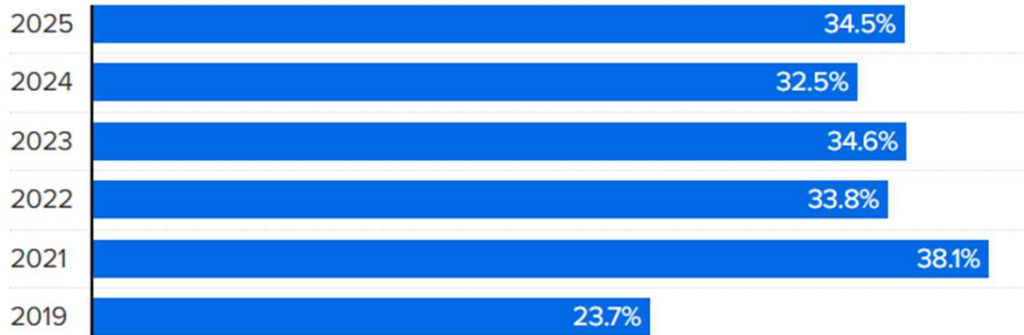
The Current State of Remote Work

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

50

State of Remote Work in 2026

What share of employed U.S. workers are working from home on an average day?



Source: U.S. Census Bureau



© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

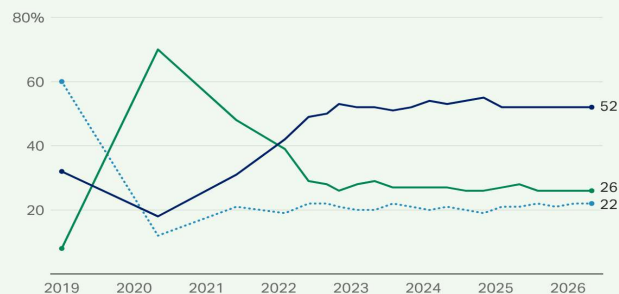
51

State of Remote Work in 2026

Work Locations for U.S. Employees With Remote-Capable Jobs

Employees have much more work flexibility now than before the pandemic.

— % Exclusively remote — % Hybrid — % On-site



Data are among U.S. full-time, remote-capable employees.

GALLUP

Gallup survey indicates that among employees with remote-capable jobs:

- ~ 60% prefer hybrid work
- ~ 1/3 prefer fully remote work
- Less than 10% prefer fully on-site work

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

52

How Employees View Return-to-Office Mandates

Offices are pressure cookers. Demanding that workers come in more often turns up the heat.

Companies such as Best Buy and General Mills recently added another mandatory in-office day, adding to high overall office stress over fears of layoffs and AI.

By Dee DePass
The Minnesota Star Tribune

JUNE 1, 2026 AT 6:00AM

According to Owl Labs survey, if hybrid/remote workers were no longer allowed to work remotely, they would:

- Start to look for another job that offers more flexibility in when and where they work (40%)
- Expect a pay increase (22%)
- Stay, but be less happy (19%)
- Not mind (10%)
- Quit (5%)
- Stay, but be less willing to work as hard (4%)

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

53

State of Remote Work in 2026 (Cont.)

• Key trends:

- Employers continue to increase return-to-office requirements.
- More than 1/3 of employees still work from home, with hybrid work being the norm rather than the exception.
- Employees increasingly view workplace flexibility as a significant component of compensation and job satisfaction.
- Employers are evaluating productivity, culture, collaboration, regulatory compliance, and cybersecurity concerns.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

54

The Compliance Landscape: Key Areas of Risk

- Reasonable accommodations and the interactive process
- Wage-and-hour laws
- Preserving data privacy and information security
- Preventing and addressing home office injuries
- Tax compliance
- Application of additional state-specific laws
 - Salary history bans
 - Pay transparency laws
 - Crown Act
 - Additional protected classes
 - AI in hiring laws
- Employee retention and organizational culture

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

55

Remote Work as a Reasonable Accommodation

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

56

Remote Work as a Reasonable Accommodation

- According to the EEOC:
 - Remote Work may be a reasonable accommodation where the person's disability prevents successfully performing the job on-site and the job (or parts of the job) can be performed at home without causing undue hardship (i.e., significant difficulty or expense)
- Employees likely to cite COVID-era remote work as evidence the accommodation is feasible and does not pose undue hardship

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

57

Remote Work as a Reasonable Accommodation (Cont.)

- Guidance from EEOC's 2026 Remote Work FAQs for *federal-sector* employees:
 - Return-to-Office mandates do not eliminate accommodation obligations
 - Employers must conduct individualized assessments
 - Remote work is not automatically required
 - The key inquiry remains whether remote work enables performance of essential job functions

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

58

Remote Work as a Reasonable Accommodation – Lessons from Case Law

Facts supporting employee

- Employee has already successfully performed job remotely
- Actual job duties do not require in-person presence
- Medical evidence ties remote work to disability
- Employer cannot identify specific duties requiring in-person work
- Employer's alternative accommodations may not address the disability
- Evidence of a deficient interactive process

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

59

Remote Work as a Reasonable Accommodation – Lessons from Case Law (Cont.)

Facts supporting employer

- Clearly defined essential functions that truly require physical presence
- Evidence that remote work eliminates an essential function
- Poor remote performance history
- Demonstrable operational or business hardship
- Good-faith participation in the interactive process
- Consistent, evidence-based justification rather than generalized policies

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

60

Remote Work as a Reasonable Accommodation – Employer Checklist

- Acknowledge request promptly
- Engage in good-faith individualized interactive process; avoid blanket denials
- Don't request medical records beyond what's necessary
- Identify and evaluate essential job functions
- Assess whether partial remote work may be effective
- Document each step, including business reasons for decision
- Follow up with employee in writing
- Train managers on accommodation obligations

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

61

Wage & Hour Compliance Concerns

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

62

Wage & Hour Compliance

- Common issues
 - Off-the-clock work (e.g., after-hours emails)
 - Unauthorized overtime
 - Meal and rest break compliance
 - Timekeeping accuracy

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

63

Wage & Hour Compliance: Mitigating Risks

- Clear timekeeping expectations
- Prohibition on off-the-clock work
- Enforce overtime policy consistently (discipline + pay)
- Restrict after-hours system access
- Manager training
- Regular audits and technology tracking protocols consistent with applicable law
- Employee attestations
- Remote work agreements
- Others?

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

64

Keeping Your Company's Data & Proprietary Information Secure

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

65

Data Privacy & Information Security

Mitigating Risks

- Technology controls
 - Multifactor authentication
 - Device encryption
 - VPN enforcement
 - Data-loss-prevention tools
 - Mobile device management
 - AI access controls
 - Others?
- Administrative and legal controls
 - Remote work agreements
 - Confidentiality, IP, and trade secret protection policies
 - AI governance policies
 - Cybersecurity training
 - Incident reporting procedures
 - Breach response procedures
 - Others?

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

66

Workplace Injuries at Home

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

67

Workplace Injuries at Home

- If an employee works partially or fully remote from their home, their home may be considered their “workplace” under the law.
- Consider Workers Compensation claims coverage and OSHA recordkeeping.
- OSHA will generally not inspect a home office, but OSHA recordkeeping rules can still treat an injury at home as work-related (think OSHA 300 logs!).
- Under OSHA regulation 29 C.F.R. § 1904.5(b)(7), an injury or illness occurring while an employee is working at home is considered work-related when:
 - the employee was performing work for pay or compensation in the home, and
 - the injury or illness was directly related to the performance of work, rather than the general home environment.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

68

FMLA and Remote Workers

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

69

FMLA: Where is a remote employee's "worksite"?

- An employee's worksite is ordinarily **the site the employee reports to** or, if none, **from which the employee's work is assigned** — not the employee's home
- This matters because FMLA eligibility requires **50 employees within 75 miles** of the employee's worksite
- Example:
 - A remote employee in Overland Park, KS reports to and receives assignments from the company's Kansas City, Missouri office
 - The KC, MO office — not the employee's home in Overland Park — is the worksite
 - Eligibility depends on whether 50+ employees work within 75 miles of KC, MO

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

70

Employees Across State Lines

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

71

Employees Across State Lines

- An employee sitting at home in another state can expose the employer to that jurisdiction's state and local employment laws, payroll and unemployment requirements, wage-and-hour laws, workers compensation regime, and can impose broader tax or business-registration obligations.
- 1. HR needs to know where employees are physically performing work.
- 2. Adopt a "no working from another state without approval" rule.
- 3. Create an approved-state list
- ***Practice tip: Maintain a reliable field in the HRIS for:***
 - home address;
 - approved work location;
 - assigned/company office;
 - states in which the employee regularly performs work; and
 - whether the arrangement is permanent, hybrid, or temporary.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

72

Employees Across State Lines

4. Run a pre-hire/pre-move compliance checklist - Before HR approves someone to work in a new state, someone should answer at least these questions:

Employment law

- What minimum wage applies?
- What overtime rules apply?
- Are meal/rest periods required?
- Does the state/locality mandate paid sick leave?
- Is there paid family/medical leave?
- Are vacation/PTO payout rules different?
- Are expense reimbursements required?
- Are there special personnel-file/pay-statement requirements?
- Are there state-specific discrimination protections?
- Are electronic labor-law postings needed?

Payroll/tax

- Does payroll need to register for withholding?
- Is there state/local income-tax withholding?
- Where are unemployment taxes paid?
- Is there a reciprocity arrangement?

Insurance

- Does the workers' compensation policy cover the employee in the new state?
- Does the carrier need to add that state?
- Are there state-specific disability or paid-leave insurance requirements?

Corporate/tax

- Does the employee's presence create business registration, corporate income/franchise tax, sales-tax, or other nexus implications?

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

73

Key Takeaways & Best Practices

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

74

Key Takeaways and Best Practices

- HR needs to know where employees are physically performing work.
- Use remote-work agreements
 - Define approved work location(s), including safety and reporting obligations
 - Establish work hours, availability, and timekeeping expectations
 - Address equipment, technology, and expense reimbursement requirements
 - Include confidentiality and data-security obligations
 - Address privacy and monitoring expectations
 - Address childcare/dependent-care expectations
- Establish clear and robust policies
- Be mindful of state law and tax implications
- Educate and train managers

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

75

Hypotheticals
**as time permits*

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

76

Remote Work as a Reasonable Accommodation – Hypothetical

- Marcus is a software engineer for a Missouri-based technology company. Since March 2020, Marcus has worked entirely remotely and has consistently received excellent performance reviews. His supervisors have regularly praised his productivity, responsiveness, and ability to collaborate effectively with team members through virtual meetings and online project management tools.
- In September 2026, the company announces a new return-to-office (RTO) policy requiring all employees to work in the office at least four days per week beginning January 1, 2027. Company leadership explains that the policy is intended to improve innovation, collaboration, mentoring, and team cohesion.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

77

Remote Work as a Reasonable Accommodation – Hypothetical

- Following the announcement, Marcus submits a request to Human Resources seeking an accommodation to continue working remotely on a full-time basis. Marcus explains that he has generalized anxiety disorder and that commuting and working in a crowded office environment significantly exacerbates his symptoms. Marcus notes that he has successfully performed all essential functions of his job remotely for nearly seven years.
- After receiving the request, HR contacts Marcus's manager regarding the accommodation. In responding to HR, the manager states in an email: "Everyone has anxiety — he'll adjust."

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

78

Remote Work as a Reasonable Accommodation – Hypothetical

- Without further discussion, HR denies Marcus's request in a brief email stating, "Collaboration and team cohesion are essential to the software engineer role."
- Marcus reports to the office under protest for several weeks but experiences increased anxiety symptoms. Believing the company failed to properly consider his accommodation request, Marcus files a charge with the EEOC.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

79

Remote Work as a Reasonable Accommodation – Issues and Analysis

- Disabled under applicable law?
- Interactive Process Failure?
- Essential Functions Analysis?
 - What are the essential job functions? Job description should (accurately) identify essential functions.
 - 'Collaboration' must be analyzed specifically. Is physical presence truly essential, or is it a preference?
- Pandemic Evidence?
 - Marcus worked successfully from home for ~6 years with excellent reviews. This undercuts an 'undue hardship' or 'essential function' argument.
- Manager's email to HR
 - Discoverable!
 - Minimizing disability ('everyone has anxiety') shows potential bias and lack of training. Creates evidence of discriminatory animus.
- Alternatives?
 - Hybrid schedule? Modified in-office days? Quiet workspace?
 - Employer must consider alternatives even if it can deny full-time remote.

© 2025 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

80

Multi-State Hiring – Hypothetical

- TechCo, a technology company headquartered in Texas, recruits Jennifer to serve as its Sales Director. Throughout her employment, Jennifer lives and works remotely from her home in Minnesota. She rarely travels to Texas and performs most of her work from Minnesota, managing customer relationships and developing sales opportunities across several Midwestern states. As a condition of employment, Jennifer signs an employment agreement prepared by TechCo. The agreement includes:
 - A 12-month noncompete provision prohibiting Jennifer from working for any competitor anywhere in the United States following the end of her employment.
 - A choice-of-law provision stating that Texas law governs the agreement.
 - A mandatory arbitration provision requiring all employment-related disputes to be arbitrated in Dallas, Texas.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

81

Multi-State Hiring – Hypothetical

- Jennifer works for TechCo for two years. During that time, she develops strong relationships with customers, gains access to confidential sales data and pricing information, and consistently exceeds her sales targets. In early 2027, Jennifer resigns and accepts a position with a competing company. The new role is based in Minnesota and involves many of the same customers and markets she managed while employed by TechCo.
- Within days of learning about Jennifer's new position, TechCo sends Jennifer a cease-and-desist letter alleging that she is violating the noncompete agreement. The letter demands that Jennifer immediately stop working for the competitor and threatens legal action if she refuses. When Jennifer refuses to comply, TechCo initiates arbitration proceedings in Dallas pursuant to the employment agreement.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

82

Home Office Injury – Hypothetical

- David is a full-time accountant for a Missouri-based company and works exclusively from his home in Waldo. The company adopted a remote-work model several years ago and provides remote employees with a laptop computer and a second monitor. However, the company does not provide desks, chairs, or other ergonomic office equipment. The company has no written remote-work policy. It has never conducted a home office assessment, provided ergonomic guidance, or inspected David's workspace. Employees are generally permitted to choose their own work locations within their homes.
- David performs all of his work from the kitchen area of his home. Because he does not have a dedicated home office, he works at his kitchen table using a folding chair that he purchased himself.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

83

Home Office Injury – Hypothetical

- At approximately 2:00 p.m. on a Tuesday, David is participating in a scheduled Microsoft Teams meeting with coworkers and his supervisor. During the meeting, the folding chair collapses. David falls to the floor and suffers a fractured wrist. David is taken for medical treatment and is unable to perform his job duties for approximately eight weeks. David subsequently files a Missouri workers' compensation claim, asserting that the injury arose out of and in the course of his employment because it occurred while he was actively participating in a work-related meeting during normal working hours.
- When speaking with Human Resources, David questions whether his injury should have been reported to OSHA because it occurred while he was working remotely from home.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

84

Home Office Injury – Hypothetical

- Eight weeks after his injury, David's physician clears him to return to work but recommends an ergonomic chair and keyboard to prevent reinjury to his wrist.
- David asks HR to purchase an ergonomic chair and keyboard for his home office so he can return to work. He points out that this equipment is standard in the company's office.

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

85

Keynote Session

EEOC Procedures and Priorities in 2026



Joshua M. Pierson
Assistant Regional Attorney
U.S. Equal Employment Opportunity Commission

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

86



EEOC Procedures and Priorities in 2026

Joshua M. Pierson
Assistant Regional Attorney, EEOC



U.S. Equal Employment Opportunity Commission

87

EEOC: who we are and what we do



U.S. Equal Employment Opportunity Commission

88

EEOC Leadership

The Commission

- Andrea R. Lucas, Chair
- Kalpana Kotagal, Commissioner
- Brittany Bull Panuccio, Commissioner

General Counsel

- Vacant



U.S. Equal Employment Opportunity Commission

89

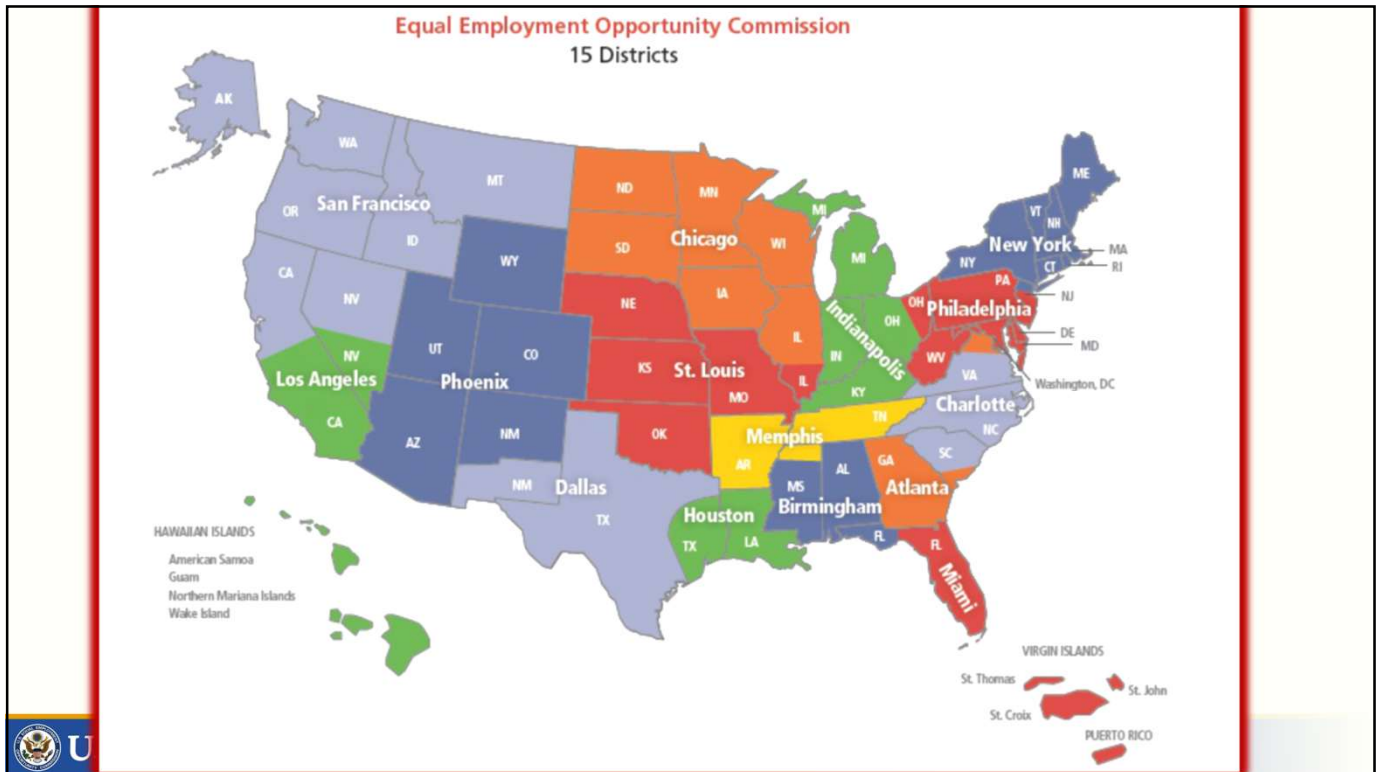
Agency organization

- ▶ All commissioners and the General Counsel are independent, presidential appointees who do not report to anyone else at the agency.
- ▶ Most EEOC programs report to the Chair including the Office of Field Programs, responsible for receiving and investigating charges of discrimination.
- ▶ The General Counsel supports the Commission and provides direction, coordination, and supervision of the EEOC's litigation program.



U.S. Equal Employment Opportunity Commission

90



91

St. Louis District



Leadership:

David Davis, District Director
Andrea Baran, Regional Attorney



Three offices:

St. Louis
Kansas City
Oklahoma City



U.S. Equal Employment Opportunity Commission

92

St. Louis District



Enforcement:



Legal



U.S. Equal Employment Opportunity Commission

93

Statutes the EEOC Enforces

- ▶ Title VII of the Civil Rights Act of 1964 (Title VII)
- ▶ Age Discrimination in Employment Act of 1967 (ADEA)
- ▶ Americans with Disabilities Act of 1990 (ADA)
- ▶ Equal Pay Act of 1963 (EPA)
- ▶ Genetic Information Nondiscrimination Act of 2009 (GINA)
- ▶ Pregnancy Workers Fairness Act of 2022 (PWFA)



U.S. Equal Employment Opportunity Commission

94

Discriminatory Practices: Any Aspect of Employment

- ▶ Hiring, Discharge, Layoff, Promotion, Demotion
- ▶ Benefits, Disability leave
- ▶ Other aspects of employment such as:



U.S. Equal Employment Opportunity Commission

95

Discriminatory practices also include --

- ▶ Harassment based on race, color, national origin, religion, sex, disability, or age; genetic information;
- ▶ Failure to accommodate for disability, religion; and pregnancy;
- ▶ Denying employment opportunities because of marriage to, or association with, an individual of a particular race, color, national origin, religion, sex, disability, or age.



U.S. Equal Employment Opportunity Commission

96

Discriminatory practices: retaliation



Retaliating against an individual for filing a charge, participating in an investigation, or opposing discriminatory practices is unlawful under all the laws EEOC enforces.



Anything that might deter a reasonable employee from complaining about discrimination, taken for the purpose of doing so, could be a retaliatory act.



U.S. Equal Employment Opportunity Commission

97

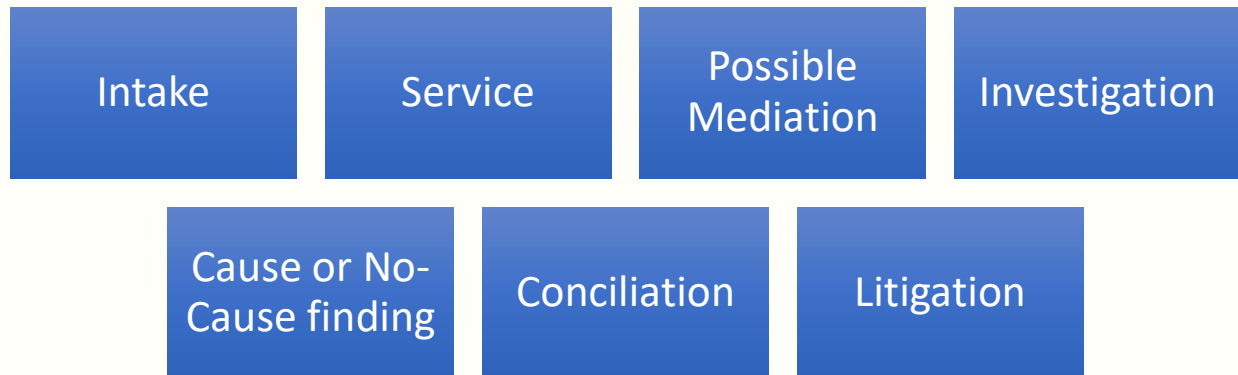
Charges, Investigations, Conciliation, and Litigation



U.S. Equal Employment Opportunity Commission

98

Possible steps after inquiry



U.S. Equal Employment Opportunity Commission

99

Investigation

An official inquiry into claims arising out the Charge of Discrimination. May include:

- ▶ Interviews
- ▶ Requests for documents and information
- ▶ Onsite visits
- ▶ Subpoenas



U.S. Equal Employment Opportunity Commission

100

Investigation

Conduct during investigation

- ▶ Work with your investigator if you have concerns
- ▶ Provide timely information and responses
- ▶ Prepare an effective position statement ([Effective Position Statements | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/effectivestatement))
 - "An effective position statement is clear, concise, complete, and responsive."
- ▶ Be specific and provide documentation when able



U.S. Equal Employment Opportunity Commission

101

Cause or No-Cause finding

- ▶ At the conclusion of the investigation, the agency will determine whether there is reasonable cause to believe that unlawful discrimination has occurred.
- ▶ If it does not: dismissal and issuance of Notice of Right to Sue.
- ▶ If it does:
 - Letter of Determination
 - Invitation to Conciliation



U.S. Equal Employment Opportunity Commission

102

Conciliation

Title VII's conciliation provision instructs the Commission to "endeavor to eliminate [an] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." This language grants "expansive discretion" to the EEOC "to decide how to conduct conciliation efforts and when to end them," in holding that the precondition of conciliation must be satisfied before the EEOC can file suit.

- ▶ Agency will typically insist on injunctive relief—changes to policies and practices.
- ▶ Agency will often ask for training or ongoing efforts
- ▶ Note: not the same as mediation



U.S. Equal Employment Opportunity Commission

103

Litigation

Employment Discrimination

Subpoena Enforcement Actions

Applications for Temporary Restraining Order or Preliminary Injunction

Intervention in Private Lawsuits



U.S. Equal Employment Opportunity Commission

104

Litigation

Employment Discrimination

Subpoena Enforcement Actions

Applications for Temporary Restraining Order or Preliminary Injunction

Intervention in Private Lawsuits



U.S. Equal Employment Opportunity Commission

105

Litigation

When conciliation does not succeed in resolving the charge, EEOC has the authority to enforce violations of its statutes by filing a lawsuit in federal court.

If the EEOC decides not to litigate, the charging party will receive a Notice of Right to Sue and may file a lawsuit in federal court within 90 days.



U.S. Equal Employment Opportunity Commission

106

Jurisdiction

- ▶ Investigate:
 - All charges of discrimination against any respondent
- ▶ Litigate:
 - Claims against *private* employers covered by the statutes EEOC enforces
 - Claims under the Age Discrimination in Employment Act and the Equal Pay Act against *public* employers
 - The Department of Justice litigates all other claims against public employers



U.S. Equal Employment Opportunity Commission

107

Charge and Litigation Statistics



U.S. Equal Employment Opportunity Commission

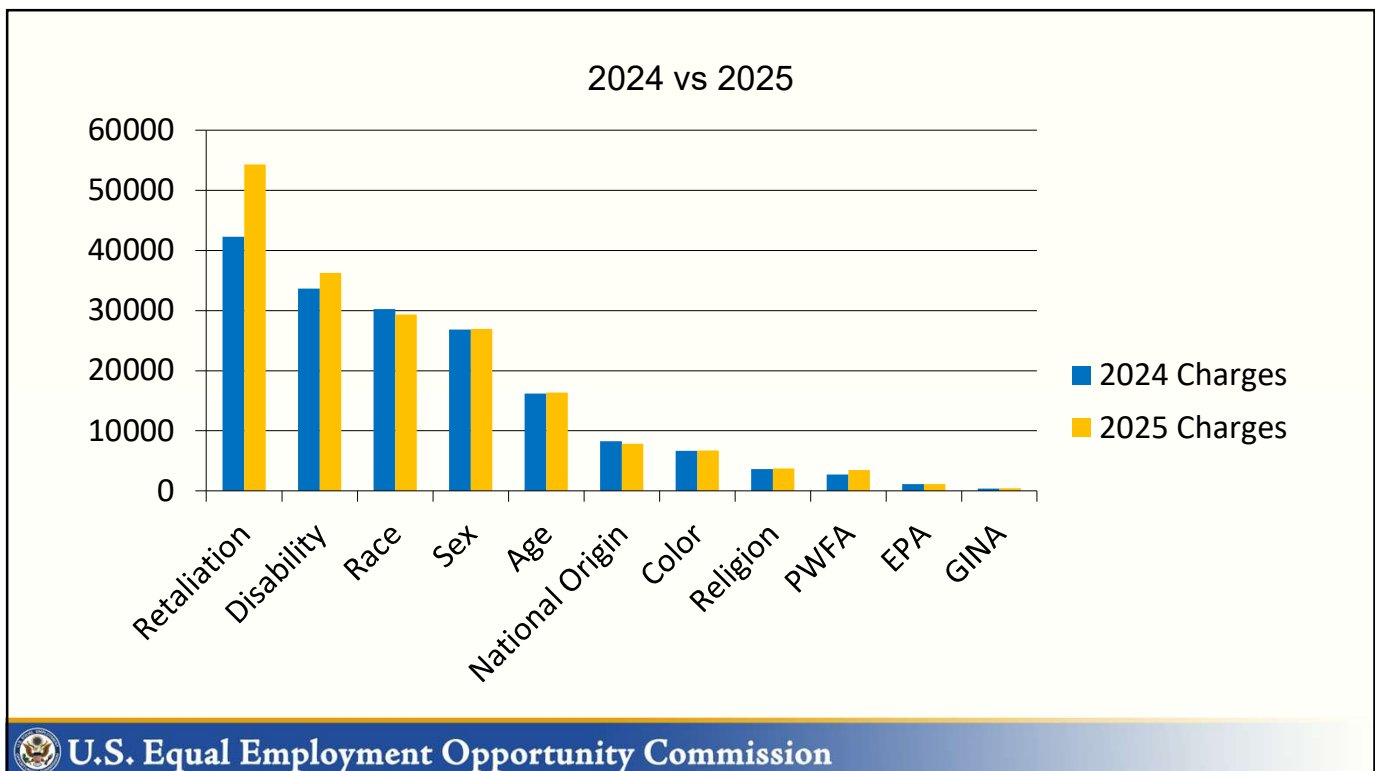
108

<u>2024</u>	<u>2025</u>
Total Charges: 88,531	Total Charges: 88,201
▶ Retaliation: 42,301 (47.8%)	▶ Retaliation: 54,350 (61.6%)
▶ Disability: 33,668 (38%)	▶ Disability: 36,256 (41.1%)
▶ Race: 30,270 (34.2%)	▶ Race: 29,338 (33.3%)
▶ Sex: 26,872 (30.4%)	▶ Sex: 26,941 (30.5%)
▶ Age: 16,223 (18.3%)	▶ Age: 16,353 (18.5%)
▶ Less than 10,000:	▶ Less than 10,000:
■ National Origin	■ National Origin
■ Color	■ Color
■ Religion	■ Religion
■ PWFA, EPA, GIA	■ PWFA, EPA, GINA
(charges can have multiple bases)	(charges can have multiple bases)



U.S. Equal Employment Opportunity Commission

109



U.S. Equal Employment Opportunity Commission

110

Litigation Statistics

2024

Total: 142

- ▶ Title VII: 66
- ▶ ADA: 48

2025

Total: 107

- ▶ Title VII: 54
- ▶ ADA: 35



U.S. Equal Employment Opportunity Commission

111

Priority Charge Handling Procedures



U.S. Equal Employment Opportunity Commission

112

Priority Charge Handling Procedures

Adopted in June 1995, these procedures give EEOC personnel flexible procedures for processing charges, including the discretion to decide the appropriate level of resources to be used for each charge.



U.S. Equal Employment Opportunity Commission

113

Priority Charge Handling Procedures

Categorization of priority upon intake

Priority treatment given certain cases, others investigated as resources and time permit, and still others dismissed

Emphasize voluntary resolution where possible



U.S. Equal Employment Opportunity Commission

114

EEOC Priorities



Litigation Case Selection

The EEOC files employment discrimination lawsuits in select cases. When deciding whether to pursue litigation, the General Counsel will consider several factors, including the nature of the violation, the issues presented, and the wider impact the lawsuit could have on the EEOC's efforts to combat workplace discrimination. Because of limited resources, the EEOC cannot file a lawsuit in every case where the agency finds discrimination and the EEOC's efforts to secure voluntary compliance through the agency's conciliation process are unsuccessful.

[EEOC Litigation | U.S. Equal Employment Opportunity Commission](#)

Strategic Impact

The agency remains committed to strategically using its resources for the biggest impact



Some considerations:

Strong evidence

Large-scale
violations

Clear or egregious
unlawful conduct

Unrepresented
parties



U.S. Equal Employment Opportunity Commission

117

Specific Issues

All forms of race discrimination, including programs that give preference to one group over another

National origin discrimination, especially practices that disadvantage American workers

Religious discrimination, including antisemitism and anti-Christian bias

Even handed enforcement of the statutes



U.S. Equal Employment Opportunity Commission

118

Questions?

Keynote Session Q&A: EEOC Procedures and Priorities in 2026



Joshua M. Pierson
Assistant Regional Attorney
U.S. EEOC



Rosalee McNamara
Partner
Lathrop GPM

© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

119

Your Feedback is Important to Us!



© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.

120

Thank you for attending!

Join Us!

Reception:

4:00 – 7:00 p.m.

2323 Grand Blvd., 8th Floor



© 2026 Lathrop GPM. All rights reserved. Dissemination and duplication is prohibited without express consent from the author. The content is intended for informational purposes and is not legal advice or a legal opinion of Lathrop GPM.