

2025

EMPLOYMENT LAW UPDATE

PACAH Spring Conference

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EEOC AND DOJ DEI GUIDANCE

EXECUTIVE ACTION ON DEI

Jan 20: EO 14151 – Ending Radical and Wasteful Govt DEI Programs and Preferencing	Directs OMB to terminate all DEI/DEIA mandates, policies, programs, preferences and activities in the Fed Govt	March 26 TRO banning DOL from cancelling fed contracts/grants
Jan 20: EO 14168 – Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Govt	Policy of the U.S. to recognize two sexes, male and female, with respect to Executive interpretation and application of federal law Directs A.G. issue guidance to ensure the freedom to express binary nature of sex, and right to single-sex spaces in the workplace Directs fed agencies to withdraw guidance docs inconsistent with EO 14168	Prelim Injunction banning Dept of State from enforcing passport policy of two sexes only against transgender plaintiffs
Jan. 21: EO 14173 – Ending Illegal Discrimination and Restoring Merit-Based Opportunity	Orders all fed agencies to enforce civil-rights laws and combat illegal private-sector DEI preferences, mandates, policies, programs, activities Revokes EO 11246, which requires affirmative action by federal contractors Directs OFCCP to stop enforcement of affirmative action requirements, require contractors/grantees to certify that they do not have DEI programs	March 26 TRO banning DOL from requiring certification from contractors/grantees
Feb. 5 – A.G. Memo to DOJ Civil Rights Division and Office of Legal Policy	Directs DOJ to submit recommendations for enforcing civil rights laws to end “illegal” DEI programs in the private sector	

EEOC/DOJ JOINT GUIDANCE

WHAT YOU SHOULD KNOW ABOUT DEI-RELATED DISCRIMINATION AT WORK (3/19/2025)

- DEI programs may violate Title VII if employment action is motivated, in whole or in part, by an employee's or applicant's race, sex, or another protected characteristic
- The EEOC's position is that there is no such thing as "reverse" discrimination; there is only discrimination
- No general business interests in diversity and equity (including perceived operational benefits or customer/client preference) have ever been found by the Supreme Court or the EEOC to be sufficient to allow race-motivated employment actions

EEOC/DOJ JOINT GUIDANCE

WHAT YOU SHOULD KNOW ABOUT DEI-RELATED DISCRIMINATION AT WORK (3/19/2025)

- Unlawful Segregation:
 - Limiting membership in workplace groups, such as Employee Resource Groups (ERG), Business Resource Groups (BRGs), or other employee affinity groups
 - Separating workers into groups based on race, sex, or another protected characteristic when administering DEI or any trainings, workplace programming, or other privileges of employment
- Harassment During Training:
 - Diversity or other DEI-related training may create a hostile work environment if the training is discriminatory in content, application, or context
- Retaliation:
 - Reasonable opposition to a DEI training may constitute protected activity for purposes of a retaliation claim

EXECUTIVE ORDER 14281 (APRIL 23, 2025)

Restoring Equality of Opportunity and Meritocracy

- Policy of the U.S. to eliminate use of disparate impact liability
- Disparate impact
 - Employer's facially neutral policy has an unjustified adverse impact on members of a protected class
 - Example: Abercrombie & Fitch "Look Policy" prohibits retail store employees from wearing hats and head coverings
- Directs:
 - Fed agencies to deprioritize enforcement of "disparate-impact liability"
 - A.G. to repeal or amend Title VII regulations
 - A.G. and EEOC Chair to review all pending investigations, civil suits, consent judgments
- Disparate impact still unlawful under PA Human Relations Act
 - EO 14281 directs A.G. to determine whether federal law preempts state laws that impose disparate impact liability

EMPLOYER ACTION ITEMS

- Review and evaluate:
 - Hiring and promotion policies that give preference based on demographics
 - Internship and mentoring programs that give preference based on demographics
 - Training/programming that give preference based on demographics (ESL classes, etc.)
 - Harassment and discrimination training content
 - Segregation of training classes
 - Affinity group policies and programs
 - Job description/duties of Chief Diversity Officer
 - Supplier diversity initiatives
- Audit DEI-programs and policies with assistance of counsel to maintain privilege



WAGE & HOUR

BUDGET PROPOSAL

H.Con.Res. 14:

"Big Beautiful Bill"

**Establishing
Congressional
Budget for FY
2025 and Setting
Forth Budgetary
Levels for FY
2026-2034**

- Feb. 25, 2025: Adopted by House of Reps.
- Creates a framework to guide Congress on related legislation for the year
- Sets up a reconciliation bill that would:
 - Extend 2017 tax cuts
 - Introduce new cuts worth \$4.2 trillion

BUDGET RELATED BILLS

S. 1046 No Tax on Overtime Act	<ul style="list-style-type: none">▪ Proposed amendment to Tax Code to exclude overtime from gross income
H.R. 561 Overtime Pay Tax Relief Act	<ul style="list-style-type: none">▪ Proposed amendment to Tax Code to establish a deduction for certain overtime payments▪ Deduction may not exceed 20% of regular wages from the same employer▪ Deduction not permitted if adjusted gross income exceeds: \$100k for individual; \$150K for head of household; \$200K for married filing jointly
H.R. 560 Second Job Tax Relief Act	<ul style="list-style-type: none">▪ Proposed amendment to Tax Code to exclude compensation from secondary employment for certain taxpayers from income tax and payroll tax
H.R. 559 Seniors in the Workforce Tax Relief Act	<ul style="list-style-type: none">▪ Proposed amendment to Tax Code to establish an above-the-line tax deduction for seniors (65 and older) through 2029▪ Amount of deduction: \$25K for individual; \$50K for joint filers and surviving spouses▪ Deduction begins to phase out when adjusted gross income exceeds: \$100K for individuals; \$200K for joint filers and surviving spouses
H.R. 558 Tip Tax Termination Act	<ul style="list-style-type: none">▪ Proposed amendment to Tax Code to provide that certain tips shall not be subject to income taxes through 2030▪ Up to \$20K excludible
H.R. 557 Working Class Bonus Tax Relief Act	<ul style="list-style-type: none">▪ Proposed amendment to Tax Code to establish a deduction for certain amounts received as a bonus through 2029▪ Amount of deduction may not exceed 15% of individual's regular wages from the same employer▪ Deduction not permitted if adjusted gross income exceeds: \$100k for individual; \$150K for head of household; \$200K for married filing jointly

BIDEN-ERA FLSA REGULATIONS

Rule Increasing White Collar Salary Thresholds

(Eff. June 2024)



- Increased salary thresholds for White Collar and Highly Compensated exempt employees
- Legal Challenges
 - Nov. 15, 2024: Rule vacated by Eastern Texas District Court
 - Nov. 26, 2024: Biden DOL appealed decision to 5th Circuit
 - Dec. 30, 2024: Rule vacated by Northern Texas District Court
 - *Feb 28, 2025: Trump DOL appealed decision to 5th Circuit*
- Current thresholds:
 - Exec, Admin, Prof: \$684/week (\$35,568/year)
 - Highly Compensated: \$107,432/year

80/20/30 Rule for Tipped Workers

(Eff. Dec. 2021)



- Updated rule for employers to take tip credit when tipped employees perform non-tipped work
- Aug. 23, 2024: Rule vacated by 5th Circuit Court of Appeals
- Dec. 16, 2024: DOL withdraws Rule, reverts to prior “dual jobs” rule

Independent Contractor Rule

(Eff. March 2024)



- Jan. 2021: Trump DOL issues employer-friendly rule re: worker classification
- May 2021: Biden DOL withdraws rule
- Jan 10, 2024: Biden DOL issues employee-friendly rule
- Multiple legal challenges filed
- 2025: DOL requesting abeyances in several suits to reconsider Biden-era rule

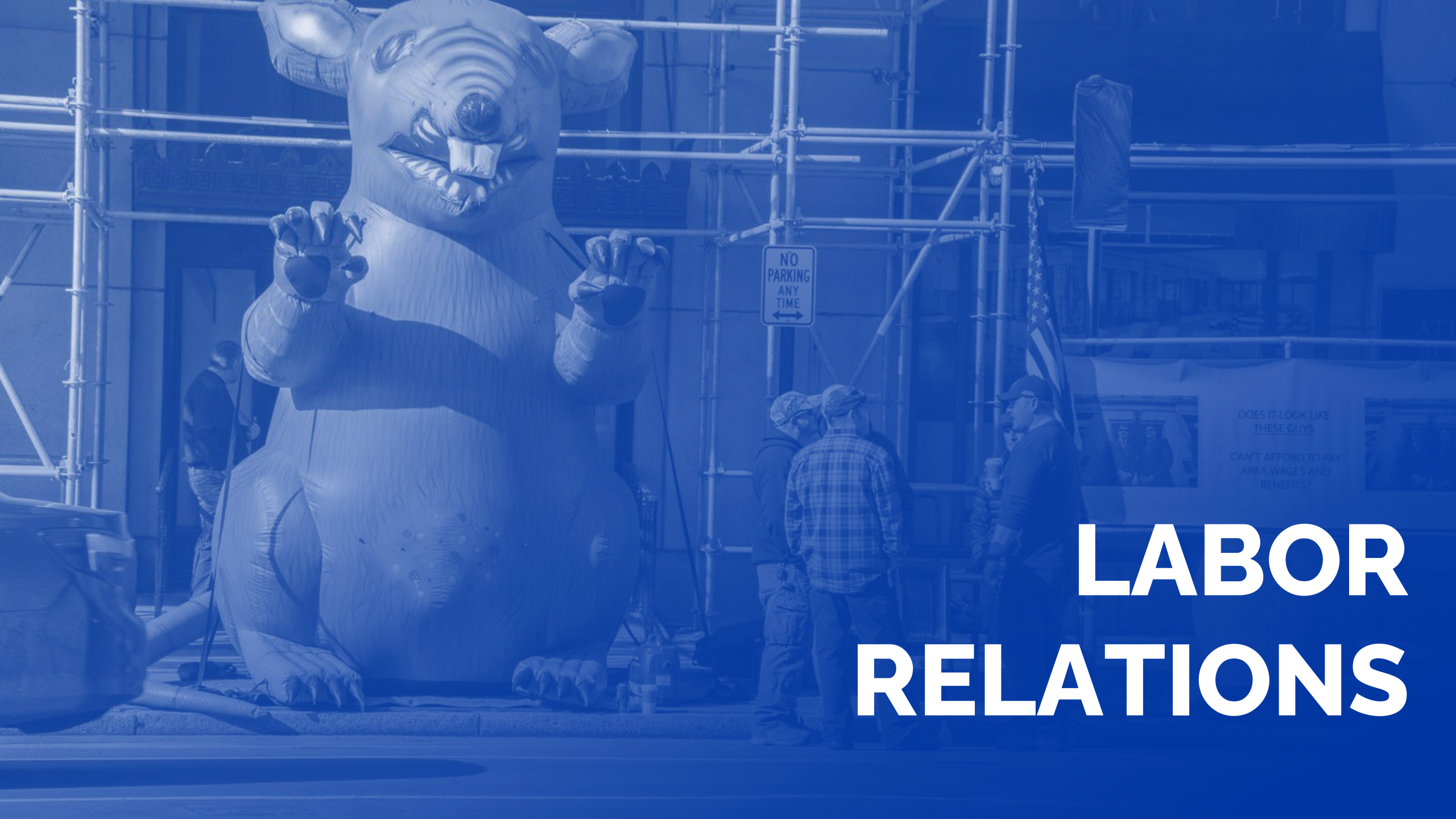
TRAVEL TIME

- FLSA Regulations (29 C.F.R. § 785.38)
 - Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.
- *U.S. DOL v. Nursing Home Care Mgmt., Inc.* (3d Cir. Jan. 31, 2025)
 - Time spent by Home Health Aides traveling between clients is compensable travel time
 - Employer willfully violated FLSA by:
 - Failing to pay for travel time
 - Failing to compensate breaks of 20 minutes or less
 - Paying OT bi-weekly (80 hours) instead of weekly (40 hours)
 - Willful → **3** years of back wages

REGULAR RATE



- Overtime rate = 1.5 times “Regular Rate” of pay
- Regular Rate includes:
 - Shift differentials
 - Working two different jobs
 - Non-discretionary bonuses
 - Attendance Bonuses
 - Production Bonuses
 - Safety Bonuses
 - Certain Retention Bonuses
 - Certain Referral Bonuses (second installment)



LABOR RELATIONS

DOES IT LOOK LIKE
THESE GUYS

CAN'T AFFORD TO PAY
AREA WAGES AND
BENEFITS?

BIDEN-ERA G.C. MEMOS

Feb. 14, 2025: Acting GC rescinded several Memos issued by prior

GC 21-06	Instructing Regions to seek “the full panoply of remedies” available in ULP cases
GC 21-07	Instructing Regions to craft settlement agreements that “ensure the most full and effective relief”
GC 21-0	Taking the position that certain college athletes are “employees” under the NLRA
GC 23-08	Declaring that the “proffer, maintenance, and enforcement” of noncompete agreements in employment contracts and severance agreements violate the NLRA
GC 25-01	Taking the position that so-called “stay-or-pay” provisions are unlawful (TRAPs, repayment of sign-on bonus)
GC 22-06	Advising Regions that they may seek a judgment to force employers to comply with the specific terms of settlement agreements in ULP cases
GC 23-02	Raising questions about the impact of electronic monitoring on employee's Section 7 rights
GC 23-05	Clarifying that the Board's February 2023 McLaren Macomb decision that non-disparagement and confidentiality provisions in severance agreements are unlawful applies retroactively to agreements already signed

COUNTER CAMPAIGNS

***New Concepts v. Living, Inc. v. NLRB*, 94 F.4th 272 (3d Cir. 2024)**

■ Facts

- Following CBA expiration, union failed to request bargaining for two years
- After negotiations began, employees filed a decertification petition
- Employer ceased negotiations based on good faith doubt that union was supported by a majority of the bargaining unit
- Union filed ULP – blocked vote on petition
- August: Employer distributed Memo to employees advising of their right to resign from Union and refrain from paying dues; 90% resigned
- December: Employer issued another Memo advising of their right to voluntarily pay dues, no employees requested to pay dues
- September: Employer polled employees as to their support for Union, employees voted against Union 61-9, Employer withdrew recognition

COUNTER CAMPAIGNS

***New Concepts v. Living, Inc. v. NLRB*, 94 F.4th 272 (3d Cir. 2024)**

■ NLRB vs. Court of Appeals Holdings

NLRB	THIRD CIRCUIT
<ul style="list-style-type: none">▪ December Memo violated the NLRA because Employer imposed a deadline (12/30) not supported by the CBA▪ Employer unlawfully solicited responses to December Memo	<ul style="list-style-type: none">▪ Dues-deduction card only permitted revocation twice per year after 12/31; Employer advised caution concerning deadline▪ No evidence that Employer solicited responses
<ul style="list-style-type: none">▪ Employer made regressive proposals on three issues:<ul style="list-style-type: none">○ Wage freeze○ Elimination of dues check-off○ Elimination of arbitration	<ul style="list-style-type: none">▪ Wage freeze came after union rejected offer of merit increases▪ Dues check-off consistent with Employer's position that employees were dissatisfied with union▪ No history of arbitration
<ul style="list-style-type: none">▪ Employer's poll violated NLRA▪ Withdrawal of recognize violated NLRA	<ul style="list-style-type: none">▪ Employer had good faith reason to doubt union's majority status given decertification petition and the resignation of 90% of the bargaining unit

REPLACEMENT WORKERS

In re Sutter Valley Hospitals, ALJ No. JD-17-25 (Feb. 28, 2025)

■ Facts

- 15 bargaining units at hospital, contracts expired
- In past, unions conducted strikes during negotiations
- Anticipating strikes, hospital contracted with staffing agency for temporary replacement works
- Contract required hospital to use agency staff for a minimum of 5 days
- Unions gave notice of a 24-hour strike, 20 facilities, 7,000 workers
- Parties negotiated to avoid work stoppage
- Strike occurred, union made unconditional offer to return after 24-hours, but hospital did not reinstate until end of five-day period

■ *ALJ Holding**

- NLRB has historically found that contractual obligations an employer makes to secure replacement employees can constitute legitimate business justification for delaying reinstatement

COVID BONUS PAY

***Alaris Health v. NLRB*, 123 F.4th 107 (3d. Cir. 2024)**

■ Facts

- April 2020, nursing home operator began paying COVID bonuses in 2020 – 25% of hourly rate, then increased to 100% of hourly rate
- Each time employer announced bonus, union accepted and reminded employer that union had the right to bargain over compensation changes
- Late April 2020, employer began scaling back bonuses, union objected and demanded opportunity to bargain, employer ignored demands

■ Court of Appeals Holding

- Court found that bonuses were form of hazard pay → mandatory subject of bargaining
- Decision at odds with Sixth Circuit case holding that employer did not have duty to bargain over decision to issue, and later rescind, hazard pay



U.S. Citizenship
and Immigration
Services

IMMIGRATION ENFORCEMENT

EXECUTIVE ORDER 14159 (JAN. 20, 2025)

Protecting the American People Against Invasion

- Prioritizes strict enforcement of immigration laws,
- Recommits the U.S. to a policy of mass detention and deportation of immigrants
- Increased enforcement
 - May affect hiring practices and employment eligibility verification
- Collaboration with authorities
 - Federal, state, and local authorities are encouraged to share information, potentially increasing enforcement actions and audits

IMPLICATIONS FOR EMPLOYERS

- Strengthen employment eligibility verification practices
 - Periodic internal audits of I-9 forms
 - Train those responsible for employer's I-9 process on proper completion and recordkeeping procedures
- Prepare for increased audits and enforcement actions
 - Review policies and practices related to hiring, onboarding, and retaining foreign nationals to ensure compliance with federal and state immigration laws
 - Have a plan in place for responding to Immigration and Customs Enforcement (ICE) raids
- Reevaluate recruitment and hiring strategies
 - Review immigration sponsorship policies to determine the impact of potential delays or denials on workforce planning

REMOTE I-9 VERIFICATION

- E-Verify users may inspect I-9 documents remotely
- Process
 - The employee must provide digital copies of the front and back of their employment eligibility and identity documentation
 - After receiving the documentation, the employer must examine the documents and determine that the documents appear to be reasonably genuine
 - The employer must conduct a live video call with the employee to further review the front and back of the documents and confirm that the documents relate to the employee
 - Check the box on Form I-9 (8/1/2023 version) indicating that the alternative procedure was used

ICE ENFORCEMENT

ICE can visit a workplace for several reasons:

- Issuing a Notice of Intent to audit 1-9s
- Looking for or investigating a particular employee or group of employees
- Conducting a worksite enforcement action, commonly known as a “raid”:
 - Execute Criminal (Judicial) Warrant: ICE has demonstrated to a judge that it has probable cause to carry out the unplanned visit to search and seize a person or property
 - Execute Civil (Administrative) warrant: ICE has demonstrated to an administrative official that it has probable cause to believe that an employee of the company is removable

PREPARING FOR AN ICE VISIT

- Ensure I-9s are compliant, conduct internal audit
- Train the team or individual responsible for I-9s and provide adequate materials to assist them in recognizing both lawful and potentially fraudulent documents
- Develop a preparedness plan with legal counsel
 - Establish communication procedures
 - Assign responsibilities for key personnel such as HR, security, and reception in the event of an ice visit
 - Create a “cheat sheet” with step-by-step instructions for how to respond, including who to call first and second, and where to keep ice agents for those who may encounter agents first
 - Share the plan with relevant supervisors or managers to ensure they are familiar with their responsibilities

OSHA



SAFETY & HEALTH

WALKAROUND RULE

- Worker Walkaround Designation Process (Effective May 31, 2024)
- Employees may select a third party to accompany them during OSHA inspection
- Concerns:
 - Union access to non-unionized workplaces
 - Conflicts with current union representatives
 - Access to confidential and proprietary information
 - Resident/patient privacy

WORKPLACE VIOLENCE

- Currently enforced under General Duty Clause
 - 2024: OSHA announced intention to issue proposed standard
 - Several State Plans have adopted standards
- Hospitals, nursing homes and other healthcare settings consider at risk for workplace violence
- Workplace violence prevention program
 - Management commitment and worker participation
 - Worksite analysis and hazard identification
 - Hazard prevention and control
 - Safety and health training
 - Recordkeeping and program evaluation

WORKERS COMPENSATION

Applying For A ☐ Permit ☐ ID Card ☐ Renewal ☐ Replacement (Check any that apply)

Your Personal

Full Last Name

Full First Name

Date of birth

Nationality

ID card number and Details

Date of Expiration:

Your Personal Details

Height

Status:

Others

Address where you live

Identification Information

Driver license?

Leamer permit?

Non-driver ID Card?

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

The objectives will be based on how you gain sales by acquiring and keeping customers. A marketing strategy helps on making good messages with the right twist of marketing approaches in order to have a good outcome of your sales and marketing activities.

Out-of-State License ID No:

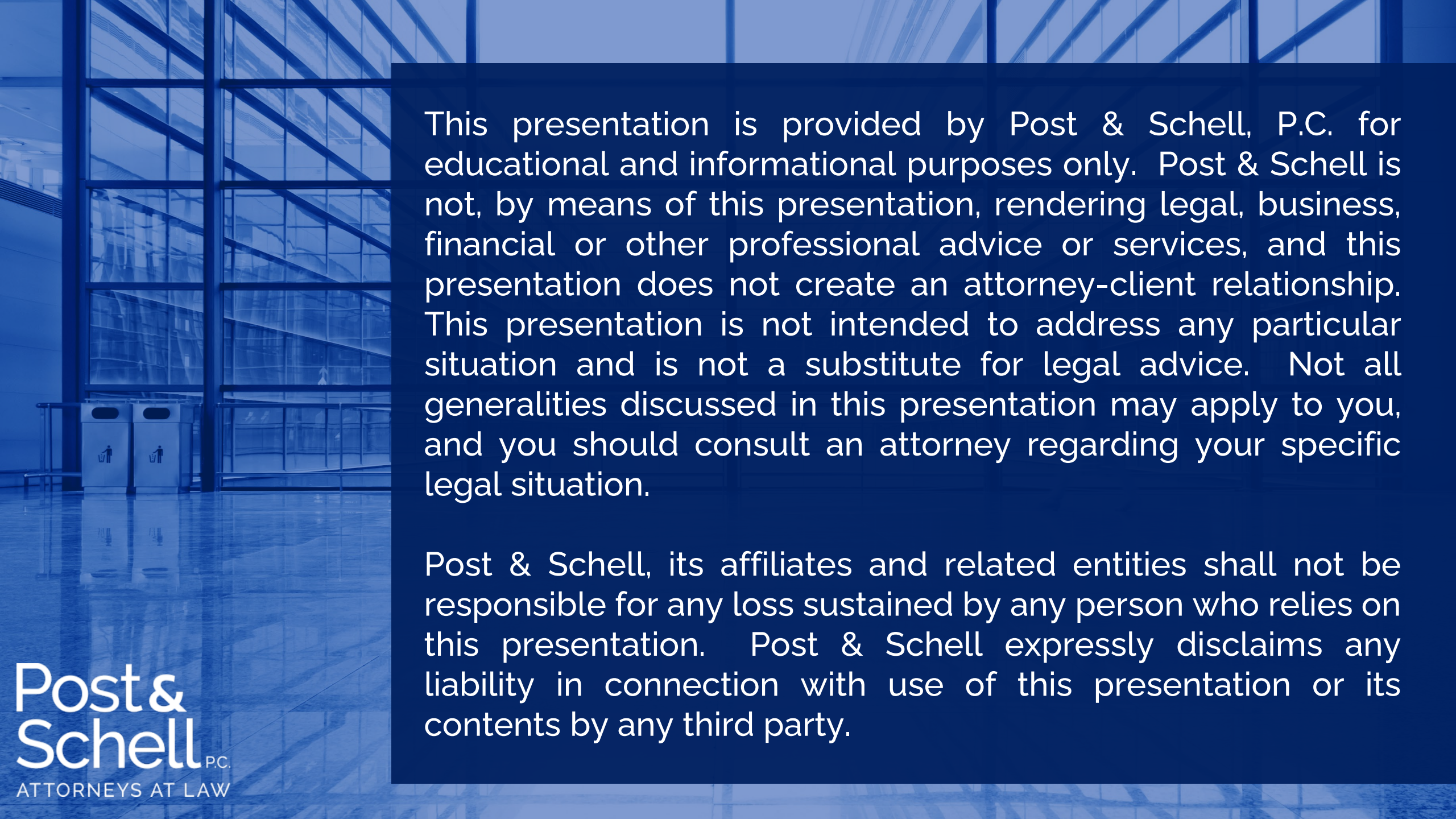
Contact Details

WORKERS COMPENSATION

- Amends PA Workers' Compensation Act
- Requires that insurers and employers offer claimants the option to receive WC payments via direct deposit
 - Must notify claimants by providing a Commonwealth-issued authorization form via mail or electronically
 - Must issue check if claimant does not return authorization form
- Deadline for implementation: Dec. 28, 2025

QUESTIONS





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P&S Employment and Labor Services

EMPLOYMENT COUNSELING

- HR audits
- Employment agreements
- Handbooks and personnel policies
- Compliance with federal, state and local employment laws
- Wage and hour compliance
- Employee misconduct, theft and discipline
- Hiring, termination, severance and work force reductions
- Union avoidance

INVESTIGATIONS

- Discrimination
- Compliance with corporate policies
- Workplace violence
- Employee theft

EMPLOYMENT LITIGATION

- Defense of harassment and discrimination
- Administrative agency investigations (EEOC, PHRC, DOL, OSHA, NLRB)
- Wage and hour defense
- Enforcement of restrictive covenants