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# Employment Law Deskbook

Publication 117 Release 52 May 2025

## HIGHLIGHTS

**Release 52**

**Revised Chapters**

- A number of chapters have been updated in this release: chapters 7, 8, 9, 12, 13, 14, 15, 17, 18, 23, 24, 25, 26, and 27.

**Chapter 7—Wages, Hours, and Compensation**

The Fifth Circuit, in Ash v. Flowers Foods, Inc., No. 23-30356 (5th Cir. Mar. 28, 2024), held that the Motor Carriers Act is applicable, for the purposes of barring overtime, when employees play a part in achieving the shipper's fixed intent to move goods between states.

In White v. Patriot Erectors, L.L.C., No. 23-50524 (5th Cir. June 26, 2024), the Fifth Circuit found that the plaintiff presented sufficient evidence that he worked at least eight hours each week off-the-clock and the employer's time records were incomplete. The Court upheld the award of unpaid overtime compensation, liquidated damages, and attorney's fees.

The Minnesota Supreme Court, in Alonzo v. Menholt, No. A22-1796 (Minn. 7/10/24), recognized the tort of negligent selection of an independent contractor under Minnesota common law.

Chapter 7 has been updated with a description of these decisions.

**Chapter 8—Terms, Conditions, and Privileges of Employment**

The Eighth Circuit found that there was a genuine issue of material fact as to whether the employer had interfered with the plaintiff's right to take FMLA leave in Black v. Swift Pork Co, 113 F.4th 1028 (8th Cir. 2024). However, the court affirmed the dismissal of his FMLA discrimination claim, noting the absence of a discriminatory motive playing a role in

the termination decision.

The Eighth Circuit held, in Famuyide v. Chipotle Mexican Grill, Inc., 111 F.4th 895 (8th Cir. 2024), that the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, 9 U.S.C. § 181.402(a), which prevents forced arbitration of a workplace dispute as to sexual harassment and assault claims, does apply to claims that arose after the Act's enactment date.

The EEOC published a final rule and guidance, in April 2024, 89 FR 29096, to implement the Pregnant Workers Fairness Act, 24 U.S.C.2000gg. The Act requires a covered entity to provide reasonable accommodations to a qualified employee's or applicant's known limitations related to pregnancy, childbirth, or related medical conditions, barring an undue hardship to the employer.

Chapter 8 has been updated with a description of these decisions.

**Chapter 9—Discipline and Discharge**

The U.S. Supreme Court held, in Murray v. UBS Securities, LLC, 601 U.S. 23, 144 S.Ct. 445 (2024), that whistleblowers must prove that their protected activity was a contributing factor in the employment decision, but need not prove that their employer acted with "retaliatory intent."

In Collins v. Union Pacific Railroad, 108 F.4th 1049 (8th Cir. 2024), the Eighth Circuit reversed the district court's order of summary judgment on the retaliation and racial discrimination claims. The court remanded the case and noted that under the U.S. Supreme Court's recent decision in Muldrow v. City of St. Louis, 601 U.S. 346 (Apr. 17, 2024), a plaintiff in a Title VII discrimination claim need not show that the adverse employment action was significant, material, or serious.

In Gamble v. County of Cook, No. 23-1531 (7th Cir. July 2, 2024), the Seventh Circuit affirmed summary judgment for the employer, noting that full-time and part-time employees often lack sufficient similarities to serve as adequate comparators.

In Vavrav Honeywell Int'l, Inc., No. 23-2823 (7th Cir. July 10, 2024) an employee was discharged after he refused to complete online unconscious bias training. The court affirmed the dismissal, finding that the employer presented a legitimate basis for the discharge and that Plaintiff failed to establish causation.

In Adebiyi v. South Suburban College, No. 22-2516 (7th Cir. Apr. 17, 2024), the Seventh Circuit affirmed summary judgment for the employer who terminated a college administrator for performance issues. The court found that the plaintiff failed to show a causal link between her having filed a charge of discrimination and her termination.

In Anderson v. Mott Street, No. 23-2765 (7th Cir. June 13, 2024), the Seventh Circuit held that even if the plaintiff's email was a protected act, the general manager of the employer did not receive the email until two days after terminating the plaintiff,

and thus no causal connection was established.

The Eighth Circuit has considered several cases involving employee violation of COVID-19 policies and protocols, including failure to disclose exposure to persons testing positive for COVID-19, and refusal to be vaccinated on the basis of religious beliefs. See Johnson v. Westinghouse Air Brake Technologies Corp., 104 F.4th 674 (8th Cir. 2024), Cole v. Grp. Health Plan, Inc., 105 F.4th 1100 (8th Cir. 2024), and Clobes v. 3M Co., No. 23-2266 (8th Cir. 2024).

In Garick v. Moody Bible Institute, No. 21-2683 (7th Cir. Mar. 18, 2024), the Seventh Circuit held church autonomy does not bar courts from adjudicating all disputes involving religious institutions. The court held that the terminated female teacher's disparate treatment claims did not require judicial entanglement into religious doctrinal matters.

In Monden v. Consolidated Nuclear Security, L.L.C., No. 23-10553 (5th Cir. Mar. 8, 2024), the court held that even if the plaintiff established a prima facie case of retaliation for his whistleblower reporting, the plaintiff's misconduct was overwhelming and the court affirmed summary judgment for the employer.

Chapter 9 has been updated with a description of these decisions.

**Chapter 12—Unemployment Compensation**

In Morgan v. Labor & Indus. Rev. Comm'n, No. 2023AP1010 (Wis. App. 2d Dist. June 5, 2024), the court found that the claimant had underreported her self-employment income in seeking PUA program benefits and was at fault for the overpayment of benefits.

In Catholic Charities Bureau, Inc. v. LIR Comm'n, 2024 WI 13, the Wisconsin Supreme Court held that the Catholic Charities Bureau is not organized primarily for religious purposes and thus is not exempt from unemployment tax liability for its employees.

Chapter 12 has been updated with a description of these decisions.

**Chapter 13—Workers' Compensation**

In Emerson v. Dart, No. 23-3029 (7th Cir. July 26, 2024), the Seventh Circuit affirmed the dismissal of a claim of retaliatory discharge for filing a workers' compensation claim. The Court found that plaintiff's claims did not cross the line from "conceivable to plausible."

In Cronk v. Illinois Workers' Comp. Comm'n, 2024 IL App (1st) 221878WC, the First District held that under the broad eligibility criteria for surviving children benefits, the claimant was entitled to benefits for the decedent who suffered a heart attack and died while shoveling snow for the employer, as testimony showed that shoveling snow was a contributing factor to the decedent's condition.

In Tombrello v. State of La. Through LSUHSC, No. 55,490-

WCA (La. App. 2d Dist. Apr. 10, 2024), the court noted that the officer's PTSD arose from an incident with combative ER patient, but did not find the officer to be permanently and totally disabled.

In Kibodeaux v. Jan's Constr. Co., Inc., No. 23-434 (La. App. 3d Cir. Apr. 3, 2024), the court rejected the claim of a surveyor for an oilfield company that COVID-19 was an occupational disease.

In Ray v. Lynx Prod. Servs., Inc., Nos. 2023 CA 0839, 2023 CA 0840, 2023 CA 0841 (La. App. 1st Cir. Feb. 23, 2024), the court held that because the claimants judicially confessed that the decedent is a seaman or longshoreman, their claims are governed by federal maritime law, and their state law claims for wrongful death and survival damages are dismissed. The court also noted that nonpecuniary damages cannot be recovered for the death of a longshoreman injured in territorial waters.

Chapter 13 has been updated with a description of these decisions.

**Chapter 14—Employee Benefits Laws**

In Artz v. Hartford Life & Accident Ins. Co., No. 23-2269 (7th Cir. May 6, 2024), the Seventh Circuit affirmed the denial of long-term disability benefits to a claimant with MS, holding that the evidence did not show that severity and persistency of MS symptoms resulted in functional impairment.

The Sixth Circuit, in Parker v. Tenneco, Inc., No. 23-1857(6th Cir. Aug. 20, 2024), held that the individual arbitration provisions in a 401(k)plan covered by ERISA were invalid as a prospective waiver of substantive statutory. rights under ERISA. In that case, two individual employees filed suit alleging that the plan fiduciaries had breached their fiduciary duties and sued under § 502(a)(2) on behalf of their plans. The court noted that the individual arbitration provision, which had been added as an amendment to the plan, was non-severable.

Chapter 14 has been updated with a description of these decisions.

**Chapter 15—Written Employment and Termination Agreements**

In Arthur J. Gallagher & Co. v. Annison, No. 2023 CA 0770 (La. App. 1st Cir. June 13, 2024), the court severed certain unenforceable provisions of an employment agreement but found that a preliminary injunction should issue as the former employees breached the noncompete provisions in the agreement.

Chapter 15 has been updated with a description of this decision.

**Chapter 17—Labor Relations**

In Loper Bright Enters. v. Raimondo, 603 U.S. 369 (June 28, 2024), the U.S. Supreme Court held that the Administrative Procedure Act requires courts to excise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law because a statute is ambiguous. The Court thus overruled

Chevron U.S.A. Inc. v. NRDC, 467 U.S. 837, 104 S.Ct. 2778 (1984).

The NLRB has issued two decisions on "captive audience" meetings in which employers make statements to workers that unionization is not in their best interests. In Amazon.com Services LLC, 373 NLRB No. 136 (2024), the NLRB ruled that an employer violates section 8(a)(1) of the NLRA by requiring employees to attend such meetings in which the employer expresses its views on unionization. However, the Board noted that such meetings may occur so long as there is reasonable advance notice on the subject of the meeting and that the attendance is voluntary and that no attendance records will be kept. In Siren Retail, d/b/a Starbucks, 373 NLRB No. 135 (2024), the Board held that employer statements predicting negative impacts from unionization must be carefully phrased on the basis of objective facts, and not those which suggest a threat of retaliation based on misrepresentation and coercion.

In Ballou v. United Parcel Serv., Inc., No. 23-3021 (10th Cir. Feb. 21, 2024), the Tenth Circuit held that union members' state law tort claims of fraud and misrepresentation against the employer were subject to *Garmon* preemption, as the plaintiffs raised arguable claims of violations of Section 8 of the NLRA.

The NLRB's McLaren Macomb decision, 372 NLRB 58 (2023), contains important warnings to employers as to severance agreements, and also as to releases of liability. That decision, as well as the NLRB General Counsel Guidance, NLRB GC Memo 23-05 (Mar. 22, 2023), state that the proffering of a release which includes confidentiality or non-disparagement provisions is an unfair labor practice in violation of Section 8(a)(1) of the National Labor Relations Act, as it interferes with employees' rights under Section 7 of the Act. The McLaren decision and the Guidance also indicate that any broadly worded provisions in a release which go beyond the employer and beyond the date of the release are also likely unfair labor practices in violation of Section 8(a)(1) of the Act.

In Stericycle, Inc., 372 NLRB 113 (2023), the NLRB articulated a new standard for determining when employee handbook rules violate the NLRA. Now, typical provisions such as conduct, professionalism, and anti-harassment rules can be found to violate the NLRA unless they are narrowly tailored. The Board clarified that it would interpret the rule from the perspective of an employee who is subject to the rule and economically dependent on the employer, and who also contemplates engaging in protected concerted activities.

In District Hospital Partners, L.P., 373 NLRB No. 55 (May 8, 2024), the NLRB found the employer engaged in bad-faith bargaining because the employer's adherence to a combination of proposals, taken as a whole, would have left employees and the union with substantially fewer rights

and less protection than provided by law without a contract.

In International Union of Operating Engineers, Local 150 v. NLRB, Nos. 22-2674, 23-3172, 23-1014, 23-3172 (7th Cir. July 23, 2024), the Seventh Circuit upheld the NLRB's order finding a mining company in violation of Sections 8(1)(5) and (1)(1) of the National Labor Relations Act for various conduct, including unilaterally implementing a new punch-in policy.

In Renew Home Health v. NLRB, No. 22-60584 (5th Cir. Mar. 7, 2024), the Fifth Circuit held that the RN Case Managers are not statutory supervisors, as their exercise of any supervisory function is limited to a clerical or reportorial nature. The court also affirmed the NLRB's finding that the employer had committed unfair labor practices in doing coercive interrogation and in terminating an employee based on, at least in part, her protected activity.

Chapter 17 has been updated with a description of these decisions.

**Chapter 18—EEOC Statutes and Regulations**

The EEOC published a final rule and guidance, in April 2024, 89 FR 29096, to implement the Pregnant Workers Fairness Act, 24 U.S.C.2000gg. The Act requires a covered entity to provide reasonable accommodations to a qualified employee's or applicant's known limitations related to pregnancy, childbirth, or related medical conditions, barring an undue hardship to the employer.

Chapter 18 has been updated with a description of this update.

**Chapter 23—State Employment Laws Summary**

**Alaska**:

SB 147: amends the workers' compensation law to provide that the employee or employer may request an eligibility evaluation if an employee is unable to return to employment for 90 consecutive days as a result of injury.

**Arizona**:

HB 2764: requires home health agencies to contact an applicant's previous employers to obtain information relevant to a person's fitness to work there, and requiring verification that potential employees are not on the adult protective services registry.

**California**:

SB 1350: expands the definition of "employment" to include household domestic service performed on a permanent and temporary basis, but with several specified exclusions.

SB 988: enacts the "Freelance Worker Protection Act", which protects independent contractors who are paid at least $250. It prohibits the hiring party from taking adverse action against a worker for exercising their rights under this bill.

SB 2200: restricts the requirement of having a driver's license in job postings where it is not a bona fide occupational qualification.

SB 399: enacts the California Worker Freedom from Employer In-

timidation Act, to curtail the ability of an employer to require employees to attend employer-sponsored meetings that convey the employer's opinions on religious or political matters.

AB 2123: eliminates an employer's ability to require employees to use accrued vacation leave before accessing the Paid Family Leave Program.

AB 2499: this expands the protections for time off for jury duty, court appearance, and victim-related activities.

AB 1815: amends the definition of "race" in the anti-discrimination provisions of the Government and Educations Codes. Race is now inclusive of protective hairstyles including braids, locs, and twists.

**Connecticut**:

HB 5005: Expands paid sick leave coverage and expands the definition of "family member" for whom employees can use the leave.

**Delaware**:

SB 233: creates the Service Worker Protection Act which gives protections for certain service employees during changes of ownership, and sets requirements for notifying and retaining employees.

**Illinois**:

Effective January 1, 2025, amendments to the Illinois Equal Pay Act (HB 3129) require Illinois employers with 15 or more employees to disclose the pay scales and benefits in all job postings.

Amendments to the Illinois Human Rights Act prohibit discrimination on the basis of family responsibilities (HB 2161) or reproductive health decisions, and increase the time to file a Complaint to two years, increased from 300 days. (P.A. 103-0973). An amendment to the Act (effective January 1, 2026, make it a civil rights violation for any Illinois employer to use Artificial Intelligence (AI) that has the effect of discrimination, and to fail to notify employees of the employer's use of AI (HB 3773).

Amendments to the Illinois Whistleblower Act significantly expand the Act's coverage. The amendments (HB 5561) prohibit retaliation against employees who disclose or threaten to disclose the employer's unlawful activity to entities who contract with the employer. The amendments also expand the definition of "adverse action" to include any action that could dissuade a worker from disclosing or threatening to disclose protected information.

Effective January 1, 2025, the Illinois Worker Freedom of Speech Act (SB 3694) prohibits employers from requiring employees to participate in employer-sponsored meetings communicating the employer's religious or political matters.

Effective August 2, 2024, an amendment to the Illinois Biometric Information Privacy Act (BIPA) (SB 2979) states that BIPA does not provide for per-scan damages.

**Kentucky**:

SB 47: allows employers to establish policies to limit cannabis use in the workplace.

**New York**:

AB A08805C: requires employers to provide up to 20 hours of paid leave for pregnant employees to attend prenatal medical appointments and procedures.

**Oregon**:

HB 4127: creates standards for warehouse employees' quota requirements and documentation of quotas and provides that current and former employees have a right to certain records upon request.

**Pennsylvania**:

HB 1633: enacts the Fair Contracting for Health Care Practitioners Act which bans certain noncompete covenants if the covenant is for more than one year or if the practitioner was dismissed by the employer.

Chapter 23 has been updated with a description of these developments in state law.

**Chapter 24—Privacy in the Workplace**

Effective August 2, 2024, an amendment to the Illinois Biometric Information Privacy Act (BIPA) (SB 2979) states that BIPA does not provide for per-scan damages.

Chapter 24 has been updated with a description of this development in state law.

**Chapter 25—Preventing and Investigating Sexual Harassment Claims**

In EEOC v. Village at Hamilton Pointe LLC, No. 22-2806 (7th Cir. May 9, 2024), the Seventh Circuit affirmed grants of summary judgment and partial summary judgment and a jury verdict for a long-term care facility and a company that provided services, concluding that the alleged sexual harassment conduct claimed by several employees was not so severe and pervasive to change the employees' work environment.

Chapter 25 has been updated with a description of this decision.

**Chapter 26—Americans with Disabilities Act**

In Howard v. City of Sedalia, 103 F.4th 536 (8th Cir. 2024), the Eighth Circuit held that the employee, who had Type I diabetes, presented inadequate evidence that having her service dog with her at work was required to access benefits and privileges of employment.

In Brooks v. City of Pekin, No. 23-2140 (7th Cir. Mar. 8, 2024), the Seventh Circuit found that there was no ADA violation where the police officer's request for a shift transfer as accommodation for sleep apnea was denied, as the employer satisfied its duty to explore a range of accommodation, and the officer's physician's note indicated that the officer could do the job with or without accommodation.

In EEOC v. Wal-Mart Stores East, L.P., Nos. 22-3202,23-1021 (7th Cir. Aug. 27, 2024), the Seventh Circuit affirmed award of compensatory and punitive damages, for failure to ac-

commodate employee with Down Syndrome after change in work-scheduling policies, and held that the employer has the burden to show that its conduct was unlikely to recur, as to the request for injunctive relief.

Chapter 26 has been updated with a description of these decisions.

**Chapter 27—Alternative Dispute Resolution**

The Fifth Circuit, in Work v. Intertek Resource Solutions, Inc. No. 23-20120 (5th Cir. May 28, 2024). held that where language in an arbitration agreement is clear and unmistakable in its incorporation of the JAMS Rules, which provide that the arbitrator decides the question of arbitrability, questions of arbitrability (whether individual or class arbitration) will be held delegated to the arbitrator.

In Bissonnette v. LePage Bakeries Park St., LLC, 601 U.S. 246, 144 S.Ct. 905 (2024), the U.S. Supreme Court repeated its prior holding in ruling that a transportation worker need not work in the transportation industry to be exempt from the Federal Arbitration Act.

Chapter 27 has been updated with a description of these decisions.

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## VOLUME 1

**Revision**

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