

LABOR AND EMPLOYMENT LEGAL LANDSCAPE

WHAT IS THE SHAPE OF WORKPLACE LAW IN 2026?



AN OVERVIEW OF LAW IN THE WORKPLACE

NAOMI BENSdorf FRISCH, ROPA LEGAL COUNSEL

AG&D
ASHER, GITTler & D'ALBA
www.ulaw.com

TYPES OF LAW

- **STATUTES**
- **REGULATIONS**
- **AGENCY GUIDANCE**
- **EXECUTIVE ORDERS**
- **CASE LAW**

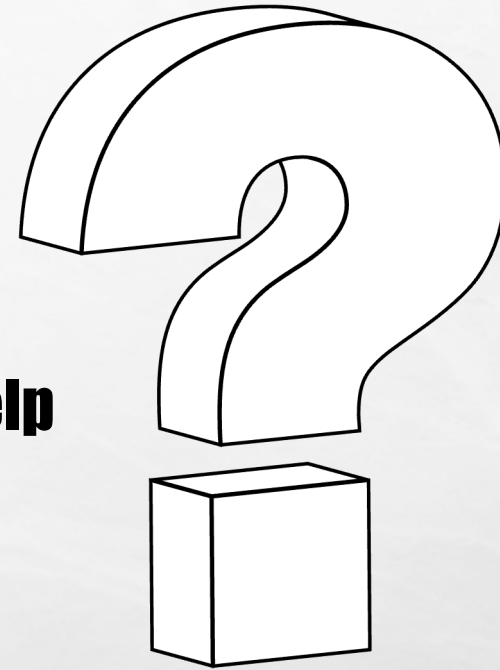
What is a statute?

- **A Law passed by Congress or other Legislative Body**
- **Codified**
- **Enumerated Policy**



What is a regulation?

- **Put out by Executive Branch Agencies with rule making authority, as directed by Congress, to help people understand how to apply language of statutes**
- **Have the Force of Law**
- **Require Notice to and Comment from the Public to be finalized**
- **Congress's explanation of a Regulation**



What are Executive Orders?

- **Directives from the President to Agencies as to how to carry out the Laws**
- **Require no congressional approval**
- **Can only be repealed or modified by a sitting president**
- **The ABA's description of an Executive Order**

WHAT ABOUT THE COURT?

- Courts decide how to interpret the law; i.e., what the language of a statute means
- E.g. *Bostock v. Clayton County*



STATUTES THAT APPLY TO THE ORCHESTRA WORKPLACE



NATIONAL LABOR RELATIONS ACT

29 U.S.C. §§ 151–169

- **Provides employees the right to organize collectively to bargain over wages, hours and working conditions with their employer**
- **Administered/enforced by the National Labor Relations Board (NLRB)**
- **NLRB Website on the NLRA**

STATUTES ENFORCED BY THE U.S. EEOC

- **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**
- **THE PREGNANT WORKERS FAIRNESS ACT**
- **AMERICANS WITH DISABILITIES ACT**
- **AGE DISCRIMINATION IN EMPLOYMENT ACT**

TITLE VII

- **Prohibits discrimination, harassment, and retaliation in the workplace on the basis of race, color, sex, national origin, religion**
 - **Text from the EEOC website**

PWFA

- **Pregnant Workers Fairness Act expands protections for pregnant workers by requiring certain enumerated reasonable accommodations and giving some automatic protections.**
 - **EEOC on the PWFA**

ADA

- **Americans with Disabilities Act**
- **Prohibits discrimination and retaliation on the basis of a disability**
- **Must be able to perform the essential functions of your position “with or without” a reasonable accommodation**
- **Eeoc on disability**

ADEA

- **Age Discrimination in Employment Act**
- **Prohibits discrimination against workers over the age of 40.**
- **EEOC on Age Discrimination**

OTHER NOTABLE STATUTES



FAMILY AND MEDICAL LEAVE ACT

FMLA

Act and regulations

- **Provides 12 weeks of unpaid, job protected leave for an employee's own serious health condition or to care for an immediate family member with a serious health condition**
 - **May be taken all at once or "intermittently"**
- **Enforced by the Department of Labor**

WAGE AND HOUR LAWS

- **FAIR LABOR STANDARDS ACT (FLSA)**
- **STATE WAGE LAWS**
 - **MINI FLSA**
 - **LAWS THAT REQUIRE PAYMENT OF WAGES**
 - **INDEPENDENT CONTRACTOR RULES (STATE SPECIFIC)**
- **NONCOMPETE LAWS**
- **PROTECTIONS FOR FREELANCE WORKERS**

EXECUTIVE ORDERS AND AGENCY GUIDANCE



EXECUTIVE ORDER **11246**

Signed by Lyndon Johnson in 1965; established the rule that the federal government must establish equal opportunity hiring practices, and federal contractors required to refrain from discrimination in hiring.

- **On January 21, 2025, president trump issued an executive order entitled “ending illegal discrimination and restoring merit-based opportunity.” With this EO, president trump upended decades of anti-discrimination policy by rescinding executive order 11246**
- **<https://www.Whitehouse.Gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/>**

OTHER TRUMP EXECUTIVE ORDERS

ENDING RADICAL AND
WASTEFUL GOVERNMENT
DEI PROGRAMS AND
PREFERENCING

PREVENTING WOKE AI IN
THE FEDERAL
GOVERNMENT

RESTORING EQUALITY OF
OPPORTUNITY AND
MERITOCRACY

THE END OF DISPARATE IMPACT?

- on october 20, 2025, leah cross, an amazon worker, sued the eeoc and andrea lucas for failing to pursue her claims that amazon's bathroom break policy for drivers has an unlawful disparate impact against women. she is represented by karla gilbride, former general counsel to the eeoc under biden, who was fired by trump in january 2025.

IMPACT ON ORCHESTRAS

FEDERAL FUNDING

orchestras that receive federal grants may now be in the crosshairs if they engage in “illegal” dei.

DEI INITIATIVES

dei initiatives such as diversity fellowships or audience development programs create risk

“REVERSE” DISCRIMINATION

- knoxville symphony
- wicked pit

EEOC GUIDANCE

BIDEN ADMINISTRATION

Charlotte Burrows, Chair

final rule and guidance on
the pregnant workers
fairness act

guidance on workplace
harassment

TRUMP ADMINISTRATION

andrea lucas, chair

ceases enforcement of disparate
impact cases

prioritizes anti-white discrimination

rescinds harassment guidance
rescinds reporting requirements

EEO LEADERS

FORMER EEOC AND DOL
OFFICIALS

OPPOSE LUCAS

WEBSITE

HOW CAN WE USE THIS INFORMATION?

HYPOTHETICAL DISCUSSION



IMPORTANT SUPREME COURT DECISIONS OF THE LAST FEW YEARS



GROFF V. DEJOY, 600 US 447 (2023)

- **Court makes it harder for employers to deny religious accommodations, holding that in order to deny, the burden must be a “substantial increased cost”, rather than previous “more than de minimus” standard**
- **Now easier for employees to get religious accommodations**

MULDROW V. CITY OF ST. LOUIS, MISSOURI, **601 U.S. 346 (2024)**

- **Court rejects previous rules that a plaintiff must show that an alleged adverse employment action was “significant” or “material” and must only show “some harm” as a result of an employer’s discriminatory act.**
- **Makes it easier for employees to survive motions to dismiss discrimination cases**

CHILES V. SALAZAR, 607 U.S.

[3/31/2026]

- **a Colorado law banning “conversion therapy”—i.e., attempts to “convert” someone’s sexual orientation or gender identity—violates the Free Speech Clause of the First Amendment**

CHILES V. SALAZAR, 607 U.S.

[3/31/2026]

- **a Colorado law banning “conversion therapy”—i.e., attempts to “convert” someone’s sexual orientation or gender identity—violates the Free Speech Clause of the First Amendment**

TRUMP V. SLAUGHTER, 609 U.S. [JUNE 29, 2026].

- **Overrules 1935 case *Humphrey's Executor*, which allowed congress to set limits on the President's power to terminate members of independent government agencies without cause.**
- **applies to agencies with enumerated for-cause removal protections, including the NLRB.**
- **The President no longer needs cause to fire agency members, as has been the precedent for decades.**

FINAL THOUGHTS...

- **hard to rely on the nlrba right now**
- **think outside the box – is there another way?**
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