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Navigating the Evolving Landscape of Workplace Law in 2026

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2026 brings significant shifts in employer obligations and workplace practices, influenced by evolving priorities within key federal agencies. During our firm's recent [webinar](#), I, along with my colleagues, [Scott Hecker](#) and [Letitia Silas](#), delved into the enforcement strategies at the Equal Employment Opportunity Commission (EEOC), Department of Labor (DOL), and the National Labor Relations Board (NLRB), and offered our crucial insights for employers aiming to mitigate risks and ensure compliance.

EEOC Priorities: Discrimination and Accommodation in Focus

Now with three of the five Commissioners sworn in since the beginning of the Trump Administration, the EEOC is aggressively enforcing Title VII and the Americans with Disabilities Act. A major priority for the EEOC in 2026 is scrutinizing Diversity, Equity, and Inclusion (DEI) practices. The EEOC warns that DEI initiatives could be deemed unlawful if employment actions are motivated, even in part, by an employee's protected category. Employers are advised to review their DEI policies and practices to avoid becoming targets of investigation, as seen in the recent enforcement action against [Nike](#).

National origin discrimination is another area of intense focus. The EEOC's November 2025 technical guidance clarifies its enforcement priorities, emphasizing equal protection for all, including addressing anti-American bias, where a preference for foreign workers, including visa holders, over U.S. workers is considered unlawful. The EEOC is actively partnering with the Department of Labor on "Project Firewall" to coordinate enforcement, especially in industries with high foreign labor use, which could lead to multi-agency investigations. Proactive steps that employers should be taking include reviewing job postings, standardizing HR processes for U.S. and foreign workers, auditing pay and promotion practices, updating EEO policies to include national origin, and providing comprehensive training for managers and HR professionals.

Religious accommodation requests are also under aggressive enforcement. The EEOC emphasizes a broad definition of religion, including non-traditional beliefs that are sincerely held. While social, political, and personal preferences are not protected, employers should generally assume a belief is religious unless there is objective evidence to question it. Common requests since the COVID-19 pandemic include alternatives to vaccination and flexible scheduling for religious observances. Employers are cautioned that "undue hardship" for denying an accommodation means a substantial burden on operations, not just a minimal cost.

Department of Labor (DOL): A Shift Towards Compliance Assistance

The DOL is also signaling a shift in its enforcement approach. While wage and hour enforcement activities will continue, the DOL has walked back efforts to secure liquidated damages in pre-litigation wage and hour investigations, a practice common under previous administrations. This suggests a move away from aggressive enforcement towards compliance assistance.

A key example of this shift is the reinvigorated DOL opinion letter program. These letters provide official guidance on specific circumstances, helping employers understand the DOL's position on various compliance questions, such as regular rate calculation, Family and Medical Leave Act compliance, and exemption issues. The DOL's press releases also indicate this change, with many focusing on compliance assistance materials rather than solely on enforcement actions. However, child labor violations remain an area of focus for investigation.

National Labor Relations Board (NLRB): Administrative Changes and Expected Overturns

The NLRB is expected to undergo significant changes, particularly with the appointment of Crystal Carey as the new General Counsel. While traditionally an incoming General Counsel issues a memo outlining a new prosecutorial direction, GC Carey's initial focus is on clearing the backlog of cases (44:03).

A new agency-wide docketing protocol has been implemented, placing a higher burden on charging parties to submit evidence promptly. This means that charging parties must now provide detailed timelines, relevant documentation, and witness lists within two weeks of filing a charge, or face dismissal for lack of cooperation. Even with sufficient evidence, charges will undergo an initial review for sufficiency before being assigned to a board agent for investigation, and then only if an agent has the bandwidth to handle the case.

In terms of legal precedent, the new board is expected to overturn several rulings from the previous administration that were less business-friendly. This includes overturning the prohibition on employers communicating economic realities during organizing drives, lifting the prohibition on mandatory captive audience meetings, and reversing limitations on confidentiality and non-disparagement provisions in severance agreements. The NLRB is also anticipated to remove limitations on employers' ability to regulate their workplace through fair rules, moving away from interpreting rules from the perspective of an employee intending to engage in protected activity.

Finally, employers are strongly advised not to ignore state laws, especially given the shifts at the federal level. There is an anticipated increase in state laws in areas where federal law is silent, such as paid family leave, protection for vulnerable populations, and workplace safety regulations. Staying informed about both federal and state-level changes is crucial for comprehensive employer compliance in 2026.