

Annual Alaska Employment and Labor Law Seminar 2026

Thursday, October 29, 2026

Davis Wright Tremaine LLP

Agenda

8:30– 9:00 AM	**Breakfast and Registration**
9:00 – 9:05 AM	**Opening Remarks** **Speaker:** Mike O'Brien, Partner
9:05 – 9:35 AM	**Navigating the Last Frontier of Labor Relations** An overview of significant changes and standards overturned by the current administration, NLRB, its General Counsel and the courts. **Speakers:** Mike O'Brien, Partner and Kristal Graham, Associate
9:35 – 9:40 AM	BREAK
9:40 – 10:30 AM	**Legal Update: What's Changing in Employment Law?** Presenters will provide an up-to-date review of changes to Alaska and federal law, along with agency decisions and predictions regarding future trends employers need to be aware of. **Speakers:** Jack Day, Associate; Mackenzie Olson, Associate; and Zoë Wise, Associate
10:30 – 10:35 AM	BREAK
10:35 – 11:05 AM	**Tips and Traps: A Practical Guide to Managing Leave** Multiple laws, often in multiple cities and states – improve your risk management in one of the most litigated areas of employment law. **Speakers:** Elizabeth Hodes, Partner
11:05 – 11:10 AM	BREAK
11:10 AM – 12:00 PM	**Conducting Effective Investigations** Learn how to conduct workplace investigations that are thorough, fair, and legally defensible without creating unnecessary risk. This practical session will cover when a duty to investigate is triggered, how to conduct effective witness interviews, assess credibility, evaluate evidence, and document findings. Attendees will leave with practical guidance they can apply immediately to investigate workplace concerns with confidence. **Speakers:** Patti Vecera, Of Counsel
12:00 – 1:30 PM	**Closing Remarks and Networking Lunch**

Table of Contents

SECTION 1

Navigating the Last Frontier of Labor Relations
An overview of significant changes and standards overturned by the current administration, NLRB, its General Counsel and the courts.

Speakers: Mike O'Brien, Partner and Kristal Graham, Associate

SECTION 2

Legal Update: What's Changing in Employment Law?
Presenters will provide an up-to-date review of changes to Alaska and federal law, along with agency decisions and predictions regarding future trends employers need to be aware of.

Speakers: Jack Day, Associate; Mackenzie Olson, Associate; and Zoë Wise, Associate

SECTION 3

Tips and Traps: A Practical Guide to Managing Leave
Multiple laws, often in multiple cities and states – improve your risk management in one of the most litigated areas of employment law.

Speakers: Elizabeth Hodes, Partner

SECTION 4

Conducting Effective Investigations
Learn how to conduct workplace investigations that are thorough, fair, and legally defensible without creating unnecessary risk. This practical session will cover when a duty to investigate is triggered, how to conduct effective witness interviews, assess credibility, evaluate evidence, and document findings. Attendees will leave with practical guidance they can apply immediately to investigate workplace concerns with confidence.

Speakers: Patti Vecera, Of Counsel

SECTION 5

Speaker Bios

Navigating the Last Frontier of Labor Relations

Davis Wright Tremaine LLP

DWT.COM

Navigating the Last Frontier of Labor Relations

ANNUAL ALASKA EMPLOYMENT AND LABOR LAW SEMINAR 2026

Mike O'Brien
PARTNER | Anchorage

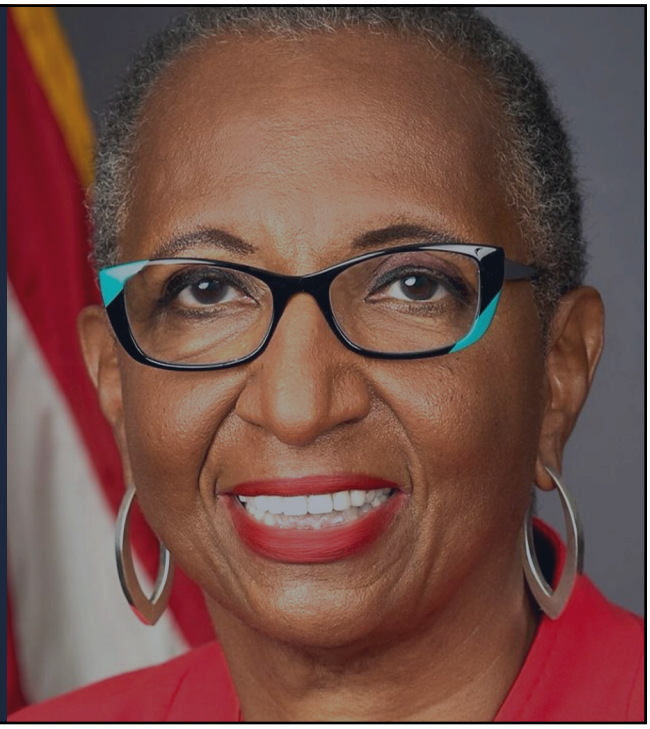
Kristal Graham
ASSOCIATE | Anchorage

OCTOBER 28, 2026



The NLRB From 2025 to 2026: An Update

Removal of Board Member Gwynne Wilcox



Unlawful Removal and Reinstatement

The district court ruled the January 27, 2025, mid-term removal unlawful, ordering reinstatement of the board member.

Supreme Court Stay

The Supreme Court stayed the reinstatement pending appeal, foreshadowing their position.

Implications for NLRB Independence

The case raises questions about the NLRB's structure and independence, impacting labor law stability.

Davis Wright Tremaine LLP

Courts and *Loper Bright*: Deference to the NLRB?

"Keep your eyes on *Trump v. Slaughter*,"

overturning *Humphrey's Executor*

End of *Chevron* Deference

Loper Bright ended *Chevron* deference, requiring courts to independently interpret federal agency statutes.

Circuit Split on NLRB Deference

Different circuits vary: D.C. Circuit defers highly to the NLRB, Sixth Circuit applies independent review citing *Loper Bright*.

Unresolved Legal Impact

Supreme Court declined certiorari on NLRB cases, leaving forum-dependent outcomes and unsettled deference standards.



Humphrey's Executor

(1935) U.S. Supreme Court ruled that the U.S. Constitution allows congress to add **job protections** limiting the president's ability to fire executive officials of:

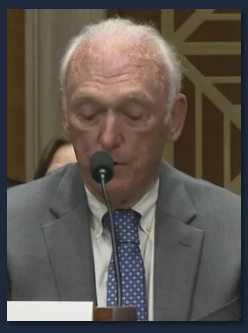
- Independent agencies
- That possess quasi-legislative or that are quasi-judicial in nature.

Overturned by Supreme Ct. in *Slaughter* on June 29th.

NLRB: Back in Business



David M. Prouty



James R. Murphy



Scott A. Mayer

Board Composition & Leadership

Board Quorum and Majority

The NLRB quorum restoration in January 2026 established a 2–1 Republican majority shaping policy and case outcomes. James Murphy and Scott Mayer join David Prouty.

Role of General Counsel

General Counsel Crystal Carey plays a key role in prosecutorial decisions and case prioritization, influencing Board actions. Longtime NLRB employee and management-side attorney

Impact on Labor Relations Policy

Republican majority favors employer interests affecting union organizing and bargaining obligations policies.



Davis Wright Tremaine LLP

Loper Bright v. Raimondo, June 28, 2024

- Court reconsidered “Chevron Deference” doctrine that requires courts to acquiesce to an agency’s interpretation of the law, a staple of administrative law for almost forty years.
- Each federal court can draw its own conclusions regarding adequacy of facts and appropriateness of government action.

Home Depot USA, Inc., 373 NLRB No. 25 (2024)

PCA found because:

- Employee's refusal to remove BLM marking was "concerted" because it was a "logical outgrowth" of prior concerted employee protests about racial discrimination in their workplace;
- Employee's conduct was an attempt to bring those group complaints to the attention of Home Depot managers; and
- The employee's conduct was also "for mutual aid or protection" because the issue of racial discrimination involved employees' working conditions.



Davis Wright Tremaine LLP

Home Depot U.S.A v. NLRB (8th Cir. 2025)

November 6, 2025 appeal from NLRB to the 8th Circuit

Held that the NLRB was wrong to inhibit Home Depot's ability to restrain employees' writing on their uniforms

Refused to defer to NLRB decision under *Loper Bright*

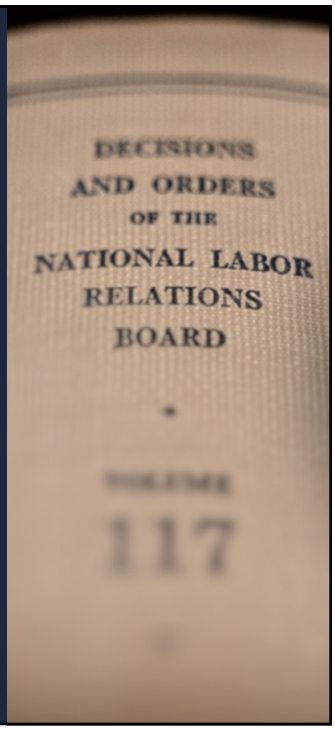
Davis Wright Tremaine LLP

The Biden-to-Trump Transition at the NLRB

After a slow start in 2025, the NLRB is shifting toward a more employer-friendly posture.

Interim GC William Cowan rescinded key guidance from former GC Jennifer Abruzzo in 2025, including:

- **GC 21-05,** Utilization of Section 10(j) proceedings
- **GC 21-06** and **07**, Seeking Full Remedies and Seeking Full Remedies in Settlement Agreements
- **GC 23-05,** Guidance on *McLaren Macomb* Decision
- **GC 23-08,** Non-Compete Agreements that Violate the NLRA
- **GC 24-01,** Guidance on Procedures in *Cemex Construction Materials Pacific, LLC*
- **GC 24-06,** Clarifying Universities and Colleges Disclosure Obligations under the NLRA
- **GC 25-01,** Remedying the Harmful Effects of Stay or Pay Provisions



Snowflake, Inc.

375 NLRB No. 39 • September 16, 2026

Snowflake was a multibillion-dollar cloud computed firm based in Silicon Valley and the employee was an accomplished software engineer who "received enormous sums of money in salary and stock options"

"[Employee] had a history of poor interpersonal skills which [Employer] did not tolerate and which caused [Employer] to lawfully counsel and demote him while he was a supervisor….

Starting on [the date of his demotion], ***it was incumbent on [Employer] to recognize and respect [Employee]'s Section 7 right to advocate for improved terms and conditions of employment***—even if that advocacy was direct, unwelcome, or confrontational (but not violent or threatening)."



PRACTICAL TAKEAWAY

Before firing a non-supervisory employee who raised group workplace concerns, separate the conduct issue from the protected complaint and document the decision carefully.

Lion Elastomers LLC

375 NLRB No. 41 • September 23, 2026

- Lion disciplined union representative Joseph Colone after a safety meeting and later discharged him.
- Under the prior *Atlantic Steel* framework, the answer turned on context, specifically examining where the conduct occurred, what was said, the nature of the outburst, and whether the exchange was provoked.
- The 2026 Board recognized General Motors as governing precedent and sent the case back to the administrative law judge for analysis under that standard.

Under General Motors, Wright Line asks whether the employer would have taken the same action without the protected activity.



PRACTICAL TAKEAWAY

Before imposing discipline, document the conduct and comparable treatment of other employees. Be prepared to show that the same action would occur without the protected activity.

Starbucks Corporation

375 NLRB No. 49 • September 30, 2026

- During a Union organizing campaign, on the store patio, a manager told an employee she would leave if employees unionized.
- At mandatory July meetings, manager invited complaints and offered to escalate them. They also warned employees they would lose announced medical benefits and dress-code changes if they unionized.

The Board found that the manager's statements about her previous employment and that she would leave if the employees unionized were protected opinion speech.

But the Board affirmed manager violated the Act by telling the employees they would not receive certain benefits and soliciting grievances with implied promises to remedy them to discourage union support.



PRACTICAL TAKEAWAY

Even with the current NLRB, give careful guidance to managers about how to speak with employees about unionization during a campaign. Keep personal opinions separate from benefit and avoid grievance-solicitation practices.

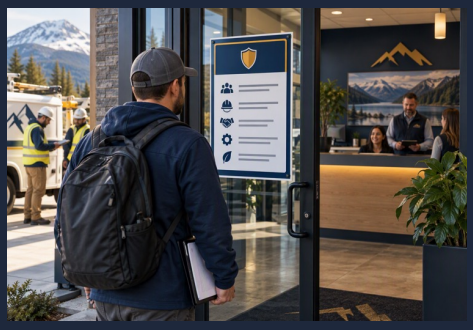
Catholic Health Initiatives Colorado

375 NLRB No. 37 • September 9, 2026

- On February 16, an employee filed a decertification petition. By February 23, they had collected signatures from 53% of the Unit.
- Beginning February 24, management promised employees higher pay if they signed the decertification petition and solicitated signatures.
- The employer withdrew recognition on March 5 after verifying majority support for the petition.

The Board still found management's assistance, promises, and restrictions unlawful. BUT the timing of the majority signatures preserved the withdrawal of recognition.

"[T]o hold otherwise would yield an affirmative bargaining order and attendant decertification bar that would inappropriately shackle employees to a union for which a majority of unit employees have freely exercised their statutory right to indicate that they would prefer to be represented by a different bargaining representative, or not to be represented at all."



PRACTICAL TAKEAWAY

Keep managers out of employee decertification efforts. Preserve dated, objective evidence of loss of majority status.

Thank You!



Mike O'Brien
PARTNER | Anchorage

mikeobrien@dwt.com
P:907.257.5342



Kristal Graham
ASSOCIATE | Anchorage

kristalgraham@dwt.com
P:907.257.5312


Davis Wright
Tremaine LLP

Legal Update: What's Changing in Employment Law?

Davis Wright Tremaine LLP

Legal Update: What's Changing in Employment Law?

ANNUAL ALASKA EMPLOYMENT AND LABOR SEMINAR 2026

Jack Day
ASSOCIATE | Anchorage

Mackenzie Olson
ASSOCIATE | Anchorage

Zoë Wise
ASSOCIATE | Anchorage



OCTOBER 28, 2026

DWT.COM

Agenda: A Review of Trends and Developments

Governmental Agencies
- Leadership Changes
- Enforcement Data and Priorities
- Agency Action

Executive Orders

Federal & State Court Cases



Davis Wright Tremaine LLP

Government Agencies

- EEOC, ASCHR, AERC
- National Labor Relations Board
- Department of Labor – Federal (27 different entities)
- Department of Labor – State
- Occupational Safety and Health Administration
- Alaska Occupational Safety and Health
- Office of Federal Contract Compliance Programs

The U.S. Equal Employment Opportunity Commission (EEOC)

?				?
Vacant	**Brittany Bull Panuccio** **Commissioner** **REPUBLICAN**	**Kalpana Kotagal** **Commissioner** **DEMOCRAT**	**Andrea Lucas** **Chair** **REPUBLICAN**	**Vacant**



EEOC Chair Andrea Lucas Sets New Enforcement Direction

- Designated EEOC Chair in November 2025
- Commissioner since 2020; current term expires in 2030
- Prioritizes intentional discrimination, religious liberty, and DEI-related and anti-American discrimination
- Emphasizes prevention, compliance education, and evenhanded enforcement

ASCHR Gains Fifth Commission Member

Alaska State Commission for Human Rights

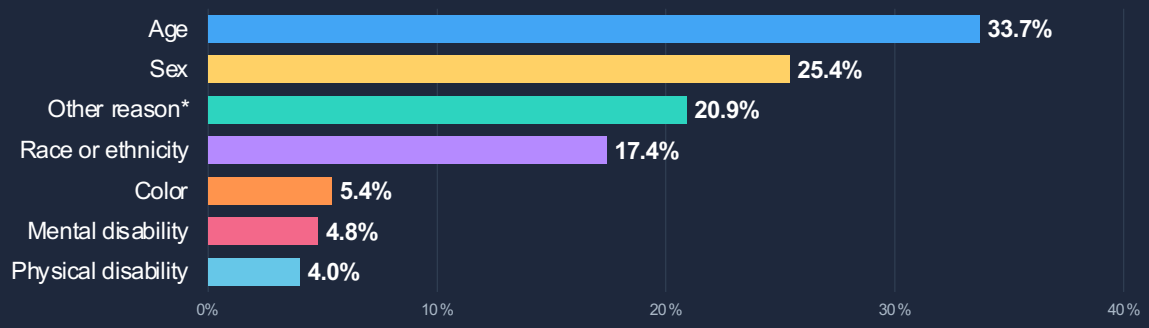
- Dorene Lorenz, Juneau (Chairperson)
- Jessie Ruffridge, Soldotna (Vice Chairperson)
- William Craig, Sitka
- Rebecca Carrillo, Juneau
- **Grace Salazar, Anchorage (newest Member)**

EEOC & ASCHR: By the Numbers



Davis Wright Tremaine LLP

2026 ASCHR Survey Reveals Perceived Unfair Employment Experiences from Alaskans



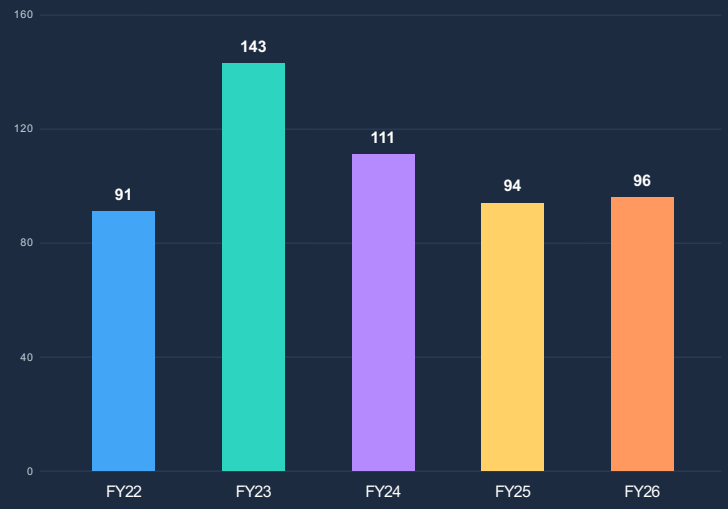
*Other reason includes political beliefs, physical appearance, and education or experience.
Respondents could select more than one perceived reason.

58.3% of respondents took no action in response

16.5% reported the issue internally to a supervisor or HR

Davis Wright Tremaine LLP

EEOC Enforcement Data: FY 2026 Remained Historically Low

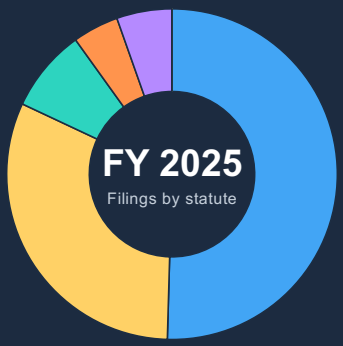


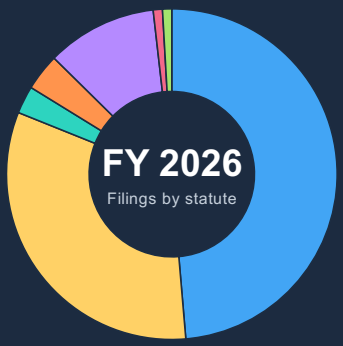
96

Enforcement lawsuits filed in FY 2026

Slight uptick in lawsuits from FY 2025

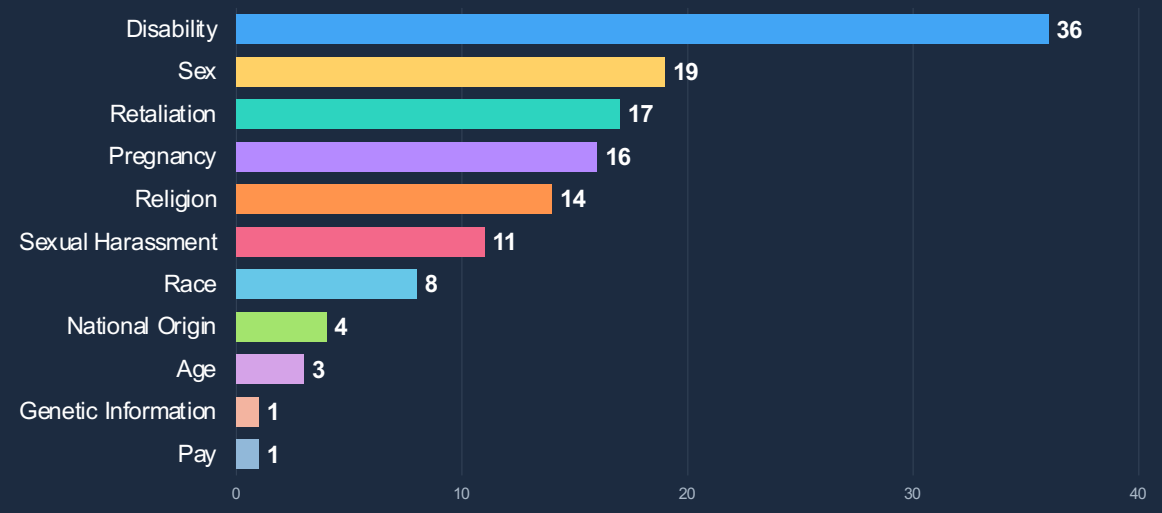
EEOC Filings by Statute: FY 2025 and FY 2026



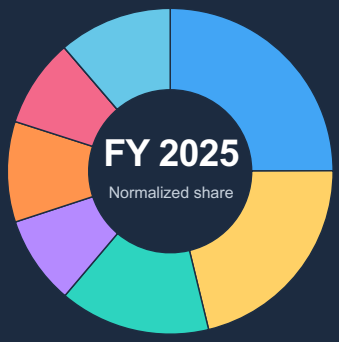


STATUTE	Title VII	ADA	ADEA	PDA	PWFA	GINA	EPA
FY 2025	56	35	9	5	6	–	–
FY 2026	54	36	3	4	12	1	1

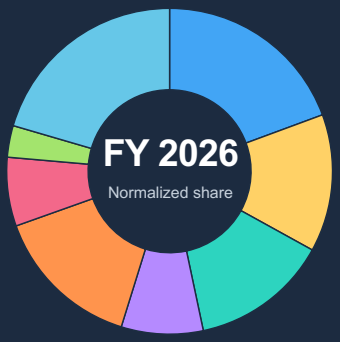
FY 2026 EEOC Filings by Allegation Basis



EEOC Filings by Industry: FY 2025 and FY 2026



INDUSTRY	FY 2025	FY 2026
Hospitality	25.0%	19.4%
Healthcare	21.3%	13.7%
Manufacturing	15.0%	13.7%
Staffing	8.8%	8.1%
Transportation and Logistics	10.0%	14.8%
Construction	8.8%	6.8%
Marketing	—	3.1%
Retail	11.3%	20.5%



EEOC Retakes Control of Litigation

- A January 2026 resolution generally returns litigation-authorization decisions to the Commission.
- Commissioners will vote on proposed litigation, including systemic, pattern-or-practice, resource-intensive, legally unsettled, and publicly controversial cases.
- The resolution includes limited exceptions, including when the Commission lacks a quorum.
- Employers should expect greater Commission oversight and potentially more selective EEOC litigation.

EEOC Formalizes Its Enforcement and Strategic Plans

The Commission adopted a new National Enforcement Plan for FY2025–2029 in June 2026.

The Commission adopted an updated Strategic Plan for FY2026–2030 in August 2026.

The plans emphasize evenhanded enforcement, outreach and training, efficient use of enforcement authority, and improved public service.

The agency is now translating its leadership priorities into formal Commission-approved plans.

EEOC's New National Enforcement Plan

- **Prevention**, **voluntary resolution**, and **litigation** remain the EEOC's three principal enforcement tools.
- **Intentional discrimination** and **pattern-or-practice** claims will receive priority over disparate-impact theories.
- The EEOC will target **facially discriminatory policies** and **broad-impact practices**, including certain DEI, accommodation, and harassment matters.
- Priority legal issues include recent Supreme Court precedent, religious accommodation, the PWFA, retaliation, vulnerable workers, and circuit conflicts.

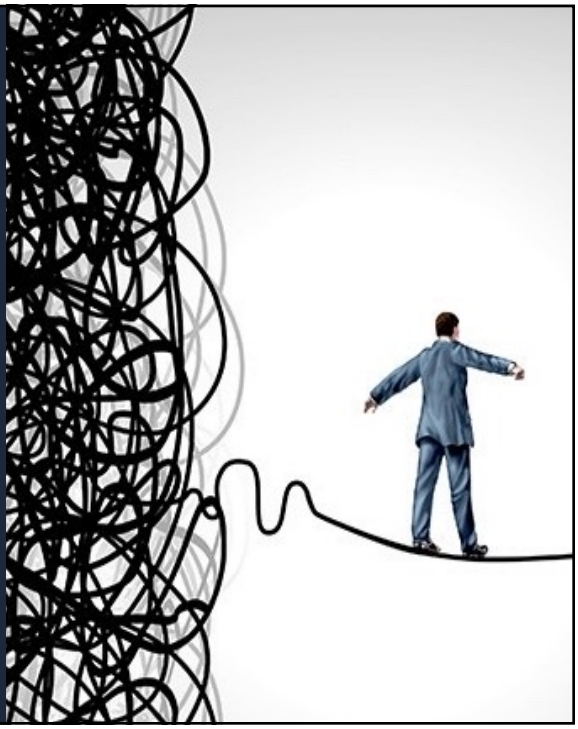
EEOC's National Enforcement Priorities

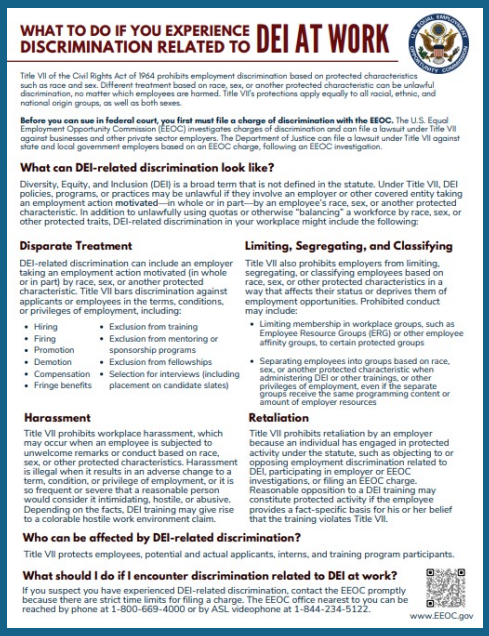
"Remedying DEI-related race and sex discrimination;

Protecting workers from anti-American national origin discrimination;

Defending women's rights to single-sex spaces at work and workers' rights to express the binary nature of sex; and

Protecting workers' religious liberty rights to receive religious accommodations and be free from religious discrimination, harassment, and related retaliation"





WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION RELATED TO DEI AT WORK

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on protected characteristics such as race and sex. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees are harmed. Title VII's protections apply equally to all racial, ethnic, and national origin groups, as well as both sexes.

Before you can sue in federal court, you first must file a charge of discrimination with the EEOC. The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination and can file a lawsuit under Title VII against businesses and other private sector employers. The Department of Justice can file a lawsuit under Title VII against state and local government employers based on an EEOC charge, following an EEOC investigation.

What can DEI-related discrimination look like?

Diversity, Equity, and Inclusion (DEI) is a broad term that is not defined in the statute. Under Title VII, DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action **motivated**—in whole or in part—by an employee's race, sex, or another protected characteristic. In addition to unlawfully using quotas or otherwise "balancing" a workforce by race, sex, or other protected traits, DEI-related discrimination in your workplace might include the following:

Disparate Treatment

DEI-related discrimination can include an employer taking an employment action motivated (in whole or in part) by race, sex, or another protected characteristic. Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including:

- Hiring
- Firing
- Promotion
- Demotion
- Compensation
- Fringe benefits
- Exclusion from training
- Exclusion from mentoring or sponsorship programs
- Exclusion from fellowships
- Selection for interviews (including placement on candidate slates)

Limiting, Segregating, and Classifying

Title VII also prohibits employers from limiting, segregating, or classifying employees based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities. Prohibited conduct may include:

- Limiting membership in workplace groups, such as Employee Resource Groups (ERG) or other employee affinity groups, to certain protected groups
- Separating employees into groups based on race, sex, or another protected characteristic when administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources

Harassment

Title VII prohibits workplace harassment, which may occur when an employee is subjected to unwelcome remarks or conduct based on race, sex, or other protected characteristics. Harassment is illegal when it results in an adverse change to a term, condition, or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive. Depending on the facts, DEI training may give rise to a colorable hostile work environment claim.

Retaliation

Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, such as objecting to or opposing employment discrimination related to DEI, participating in employer or EEOC investigations, or filing an EEOC charge. Reasonable opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.

Who can be affected by DEI-related discrimination?

Title VII protects employees, potential and actual applicants, interns, and training program participants.

What should I do if I encounter discrimination related to DEI at work?

If you suspect you have experienced DEI-related discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000 or by ASL videophone at 1-844-234-5122.

www.EEOC.gov

EEOC Scrutiny of DEI-Labeled Employment Practices

- In February 2026, Chair Andrea Lucas sent a Title VII compliance letter to leaders of 500 large employers.
- The letter addresses employment policies, programs, and practices labeled as "DEI" or by other terminology.
- The EEOC emphasized merit-based employment decisions and individual treatment without regard to race or sex.

EEOC and DOJ Issue DEI Guidance Documents

In March 2025, the EEOC, in coordination with the DOJ, issued two "technical assistance" guidance documents **"focused on educating the public about unlawful discrimination related to 'diversity, equity, and inclusion' (DEI) in the workplace"**

Guidance stresses that Title VII does not provide any exception for DEI or **"diversity interests"** in prohibiting discrimination based on race, sex, or other protected category

Intentional Discrimination Takes Center Stage

The National Enforcement Plan recognizes that intentional discrimination is "more egregious" than unintentional disparities and prioritizes intentional discrimination arising from broad-based policies, programs, and practices

The plan eliminates use of disparate impact liability theories in investigations “to the maximum degree possible”

Employer Takeaways:

- Fewer agency-led disparate-impact probes, but private litigation risk remains
- Maintain validation and business necessity documentation for selection procedures and policies

Religious Accommodation Is an Enforcement Priority

The EEOC reported filing **16 religious-discrimination lawsuits** and recovering **$63 million dollars** for workers through pre-litigation resolutions and litigation settlements between January 1 and May 7

Employers should ensure explicit policy prohibitions on religious harassment, accessible reporting channels, and a robust, documented accommodation process (e.g., scheduling, prayer breaks, dress/grooming)

Train managers on the interactive process and undue hardship analysis

Sex-Based Rights and Harassment Guidance

In January 2026, the Commission voted to rescind its **2024 Enforcement Guidance on Harassment in the Workplace**

In February 2026, the EEOC issued a federal-sector appellate decision stating that Title VII permits federal agencies to maintain single-sex bathrooms and similar intimate spaces

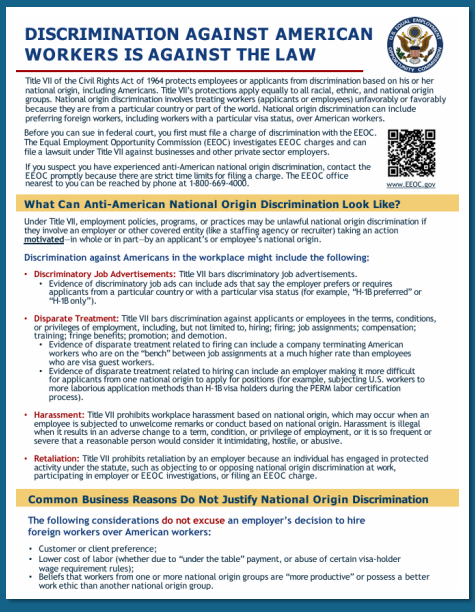
Employer Caution: Rescission of EEOC guidance does not itself amend Title VII or eliminate applicable federal, state, or local protections. Employers should evaluate the governing law before revising workplace policies

EEOC Targets Alleged "Anti-American" National-Origin Bias

The EEOC has made national-origin discrimination favoring foreign workers over American workers an enforcement priority.

Risk Areas for Employers:

- Job postings
- Recruiting pipelines
- Hiring and promotions
- Compensation and working conditions
- Staffing and sponsorship



DISCRIMINATION AGAINST AMERICAN WORKERS IS AGAINST THE LAW

Title VII of the Civil Rights Act of 1964 protects employees or applicants from discrimination based on his or her national origin, including Americans. Title VII's protections apply equally to all racial, ethnic, and national origin groups. National origin discrimination involves treating workers (applicants or employees) unfavorably or favorably because they are from a particular country or part of the world. National origin discrimination can include preferring foreign workers, including workers with a particular visa status, over American workers.

Before you can sue in federal court, you first must file a charge of discrimination with the EEOC. The Equal Employment Opportunity Commission (EEOC) investigates EEOC charges and can file a lawsuit under Title VII against businesses and other private sector employers.

If you suspect you have experienced anti-American national origin discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000.

www.EEOC.gov

What Can Anti-American National Origin Discrimination Look Like?

Under Title VII, employment policies, programs, or practices may be unlawful national origin discrimination if they involve an employer or other covered entity (like a staffing agency or recruiter) taking an action **motivated**—in whole or in part—by an applicant's or employee's national origin.

Discrimination against Americans in the workplace might include the following:

- **Discriminatory Job Advertisements:** Title VII bars discriminatory job advertisements.
  - Evidence of discriminatory job ads can include ads that say the employer prefers or requires applicants from a particular country or with a particular visa status (for example, "H-1B preferred" or "H-1B only").
- **Disparate Treatment:** Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including, but not limited to, hiring; firing; job assignments; compensation; training; fringe benefits; promotion; and demotion.
  - Evidence of disparate treatment related to firing can include a company terminating American workers who are on the "bench" between job assignments at a much higher rate than employees who are visa guest workers.
  - Evidence of disparate treatment related to hiring can include an employer making it more difficult for applicants from one national origin to apply for positions (for example, subjecting U.S. workers to more laborious application methods than H-1B visa holders during the PERM labor certification process).
- **Harassment:** Title VII prohibits workplace harassment based on national origin, which may occur when an employee is subjected to unwelcome remarks or conduct based on national origin. Harassment is illegal when it results in an adverse change to a term, condition, or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive.
- **Retaliation:** Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, such as objecting to or opposing national origin discrimination at work, participating in employer or EEOC investigations, or filing an EEOC charge.

Common Business Reasons Do Not Justify National Origin Discrimination

The following considerations do not excuse an employer's decision to hire foreign workers over American workers:

- Customer or client preference;
- Lower cost of labor (whether due to "under the table" payment, or abuse of certain visa-holder wage requirement rules);
- Beliefs that workers from one or more national origin groups are "more productive" or possess a better work ethic than another national origin group.

Department of Labor (DOL)/Wage-and-Hour Division (WHD)



Davis Wright Tremaine LLP

Secretary of Labor Lori Chavez-DeRemer Resigns

- Just over a year in office: March 2025 to April 2026
- Misconduct allegations and internal civil rights complaints preceded her exit
- Inspector general scrutiny covered both the secretary and senior aides



Davis Wright Tremaine LLP

New Secretary of Labor, Keith Sonderling

- Senate confirmed by a 47-41 vote on September 30, 2026.
- Previously served as Deputy Secretary and in DOL's Wage and Hour Division.
- Former EEOC Commissioner and Vice Chair.
- Brings significant wage-and-hour, employment, and agency experience



Davis Wright Tremaine LLP

Updates Incoming: Independent Contractors and Joint Employers

In February 2026, the DOL issued notice that it intends to revise its analysis for distinguishing between employees and independent contractors under the FLSA

- The change would rescind a 2024 rule and replace it with an "economic reality" test

In April 2026, the DOL issued notice that it intends to revise its analysis for assessing joint employer status under three federal wage and hour laws

- The proposed analysis includes specific tests for determining joint employer status in "vertical" and "horizontal" scenarios

New Wage and Hour Division Administrator Andrew Rogers

- Senate confirmed October 7, 2025
- Leads enforcement and interpretation of federal laws governing:
  - Minimum wage, overtime, and child labor
  - FMLA and nursing-mother protections
  - Davis-Bacon prevailing wages
  - Certain immigration-related employment protections
- Previously served as a senior WHD policy adviser, focusing on regulations and opinion letters
- Brings 12 years of private-practice wage-and-hour experience



Wage & Hour Division: Compliance, Guidance, and Voluntary Resolution

WHD continues to emphasize compliance assistance, opinion letters, and employer guidance.

The Department has revived tools designed to encourage voluntary compliance before litigation.

Employers should expect continued enforcement activity, but with greater emphasis on guidance and self-correction.

Wage-and-Hour Questions in Focus

Recent WHD opinion letters addressed:

- Whether pre-shift roll calls are compensable.
- Whether certain bonuses must be included in the regular rate.
- Whether hybrid-work travel time is compensable.
- Whether walking time affects meal-period deductions.
- When employees with supervisory duties may participate in tip pools.

Employer Takeaway: Timekeeping, hybrid work, bonuses, exemptions, and tip practices remain the highest-risk wage-and-hour issues.

Executive Orders 2026: Policy Signals for Employers

EO 14398: Addressing DEI Discrimination by Federal Contractors

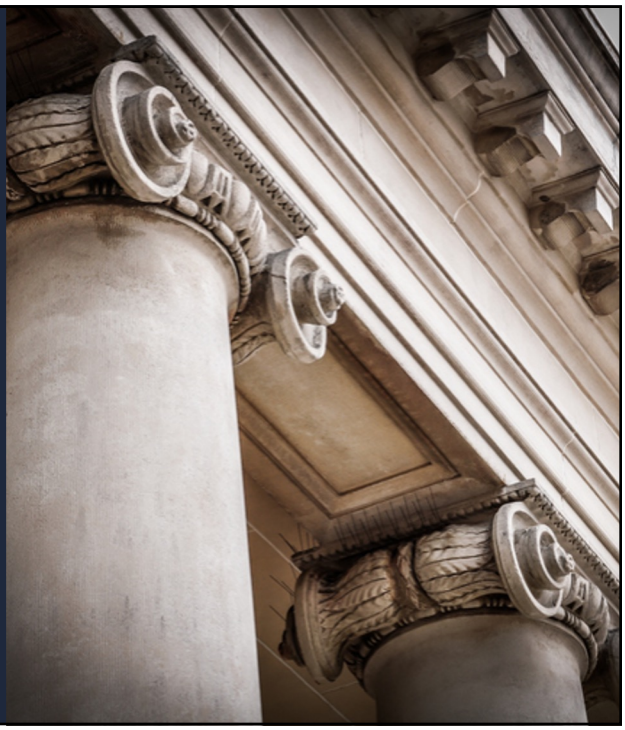
EO 14403: Promoting Retirement Savings-Access for American Workers by Establishing TrumpIRA.gov

EO 14426: Accelerating Access to Veterans' Benefits and Employment Opportunities

EO (pending): Enhancing Program Integrity and Interagency Coordination in the Administration of the H-1B Nonimmigrant Visa Program

The Courts

Litigation Trends, Notable Decisions, and Cases to Watch



Davis Wright Tremaine LLP

Flowers Foods, Inc. v. Brock, 608 U.S. 380 (2026)

Key Facts

- A distributor picked up Flowers Foods products at a Colorado warehouse and delivered them to local stores without leaving Colorado.
- He sued under the FLSA and state law. Flowers moved to compel arbitration under his distribution agreement.

Holding

- The FAA § 1 transportation-worker exemption can cover an intrastate leg of an interstate journey.
- The worker need not cross state lines or interact with a vehicle that crosses state lines.
- The worker must still play a direct, necessary, and active role in moving goods across borders.

Key Takeaway: FAA exemption applies more broadly to more individuals; issues like FLSA misclassification may have to be litigated in court, resulting in greater expense.

National Labor Relations Board v. North Mountain Foothills Apartments, LLC, 157 F.4th 1089 (9th Cir. 2025)

Key Facts

- A new maintenance employee discussed his hourly wage and housing subsidy with coworkers at an apartment complex.
- Management called the discussions a "red-hot issue," a "hornets' nest," and a "crisis situation," then discharged him the next day.

Holding

- Discussing pay with coworkers is a protected concerted activity under the NLRA.
- Substantial evidence supported the NLRB's finding of discharge for actual or perceived protected activity.
- The Ninth Circuit rejected Article II, Seventh Amendment, and due process challenges to the NLRB proceeding.

Key Takeaway: Employers should train managers not to question, restrict, or discipline employees for discussing pay.

Hollis v. R&R Restaurants, Inc., 159 F.4th 677 (9th Cir. 2025)

Key Facts

- A dancer sued one club under the FLSA for misclassification as an independent contractor.
- A manager connected to that club and a second club canceled her scheduled performance at the second club because of the lawsuit.

Holding

- The FLSA's anti-retaliation provision can apply even if the retaliator is not the plaintiff's current employer.
- The plaintiff need only show the retaliator acted directly or indirectly in an employer's interest in relation to the employee. No agency relationship required.

Key Takeaway: Retaliation can extend to affiliated actors and future work opportunities.

Williams v. Legacy Health, 174 F.4th 1201 (9th Cir. 2026)

Key Facts

- Current and former hospital employees and a physician challenged denial of religious exemptions from a healthcare system's COVID-19 vaccination requirement.
- The district court granted summary judgment for the healthcare system, and the employees appealed.

Holding

- Accommodating the exemption requests would have created undue hardship for the healthcare system.
- The healthcare system had no obligation to give individualized consideration to each employee's proposed accommodation.

Key Takeaway: Healthcare and safety-sensitive employers should document operational, safety, staffing, and patient-care burdens when denying religious accommodation requests on undue-hardship grounds.

Brown v. Alaska Airlines, Inc., 179 F.4th 707 (9th Cir. 2026)

Key Facts

- Two flight attendants commented on Alaska Airlines' internal forum after it supported the Equality Act. One cited religious freedom and conscience protections. The other asked if Alaska Airlines could "regulate morality."
- Alaska Airlines fired both. They sued Alaska Airlines and their union for religious discrimination.

Holding

- Triable issues existed on whether Alaska Airlines fired them because of religious beliefs:
  - Brown's post was facially religious, Alaska Airlines and union understood it as so, and discharge notice overstated her conduct.
  - Smith's post was less facially religious but survived because Alaska lines considered her situation together with Brown's.

Key Takeaway: Even if no discrimination occurs, there might be enough evidence to go to trial.

Combs v. Netflix, Inc., 180 F.4th 1201 (9th Cir. 2026)

Key Facts

- A former employee sued Netflix for discrimination, harassment, hostile work environment, and retaliation.
- The district court compelled arbitration. The employee argued that the EFAA barred arbitration.

Holding

- As a matter of first impression, a "dispute" under the EFAA requires some opposition or disagreement between the parties.
- The EFAA did not apply to preclude Netflix's motion to compel arbitration.

Key Takeaway: Following enactment of the EFAA, the timing of events affects arbitrability.

Krzesni v. Wellpinit School District, 182 F.4th 1147 (9th Cir. 2026)

Key Facts

- A project director alleged nonrenewal because he disclosed misuse of federal grant funds for a Hawaii trip.
- The district began nonrenewal before a later call in which the federal grant contact described the funding issue as "fraud".

Holding

- A protected disclosure must contain information the employee objectively reasonably believes is evidence of misconduct.
- An annual grant report that described and justified the use of funds was not a protected disclosure because it did not objectively indicate misconduct.

Key Takeaway: A retaliation claim needs a real protected disclosure, not just a neutral report or vague question.

Mitchell v. Bering Strait School District, 586 P.3d 672 (Alaska 2026)

Key Facts

- A teacher in a remote village fell down stairs in housing he rented from the school district.
- He brought claims for negligence (and related contract claims), whistleblower violation and retaliation, wrongful termination, defamation, bad faith and malice in claims processing, workplace safety violations, and IIED against the district and principal.
- The district moved to dismiss the case pursuant to Rule 12(b)(6). The District argued that workers' compensation was the exclusive remedy for the teacher's accident.
- The trial court dismissed all claims; the Alaska Supreme Court reversed as to the negligence, wrongful termination, whistleblower, defamation, and IIED claims.

Holding

Key Takeaway: Employers that provide or facilitate remote housing should not assume workers' compensation exclusivity will bar all housing-related claims.

Carey-Thomann v. University of Alaska Fairbanks 588 P.3d 651 (Alaska 2026)

Key Facts

- A blind student sued the University of Alaska Fairbanks after falling from a campus balcony when he mistook a guardrail for a bench and climbed over it.
- The student sued the University for negligence, and the superior court granted summary judgment in favor of the University.

Holding

- The ADA did not impose a negligence duty of care on the university.
- The Alaska Human Rights Act also did not impose a negligence duty of care on the university.
- UAF did not have a duty to protect the student from an obvious danger created by the student's actions.

Key Takeaway: Functional safety features and the limits of statutory duties matter in institutional liability.

Walsh v. HNTB Corp., 169 F.4th 330 (1st Cir. 2026)

Key Facts

- Walsh was a 55-year-old long-time IT employee who was placed on a three-month PIP.
- During the PIP, one manager allegedly told Walsh to "shut up," and another said she could "be replaced with younger, cheaper people." Walsh successfully completed the PIP and resigned about ten months later.

Holding

- The PIP was not an adverse employment action under *Muldrow* because it did not change Walsh's title, compensation, duties, or opportunities, and functioned as documented counseling.
- There was no constructive discharge because the working conditions were not objectively so intolerable that a reasonable person would have felt compelled to resign.

Key Takeaway: Circuits are still working through what counts as an adverse action after *Muldrow*, and the answer may vary by jurisdiction.

Newton v. LVMH Moët Hennessey Louis Vuitton Inc., 2026 WL 2819692 (2d Cir. Sept. 21, 2026)

Key Facts

- A former in-house attorney filed sexual harassment, sexual assault, and retaliation claims that were compelled to arbitration under an arbitration agreement.
- After LVMH's new Chief Legal Officer asked to meet one-on-one to discuss settlement of her pending claims, the attorney refused or did not respond, and she was terminated.

Holding

- The attorney plausibly alleged retaliation because, in context, refusing to meet about settlement of her discrimination claims could constitute protected activity.

Key Takeaway: Employers should treat settlement discussions and refusals to settle as legally sensitive protected-activity territory and avoid any adverse action that could be tied to that refusal.

2026-2027 U.S. Supreme Court Preview

- ***Wassily v. Blanche***
  - Is someone who received asylum status but lost that status after a criminal conviction eligible to apply for and receive lawful permanent resident status?
- ***DOL v. Sun Valley Orchards***
  - Does the DOL have statutory or constitutional authority to fine agricultural employers for violating the H-2A temporary visa program?
- ***Younge v. Fulton Judicial Circuit District Attorney's Office***
  - May an employer rely on an unpleaded affirmative defense at summary judgment without amending its answer?
- ***Crowther v. Board of Regents of the University System of Georgia***
  - Does Title IX provide employees of federally funded educational institutions a private right of action to sue for sex discrimination?

Thank You!



Jack Day
ASSOCIATE | Anchorage
jackday@dwt.com
P: (907) 257-5319



Mackenzie Olson
ASSOCIATE | Anchorage
mackenzieolson@dwt.com
P: (907) 257-5306



Zoë Wise
ASSOCIATE | Anchorage
zoewise@dwt.com
P: (907) 257-5352

Tips and Traps:
A Practical Guide to Managing Leave

Davis Wright Tremaine LLP

DWT.COM

Tips and Traps: Managing Leave and Accommodations

ANNUAL ALASKA EMPLOYMENT AND LABOR SEMINAR 2026

Liz Hodes
PARTNER | Anchorage

OCTOBER 28, 2026



Agenda

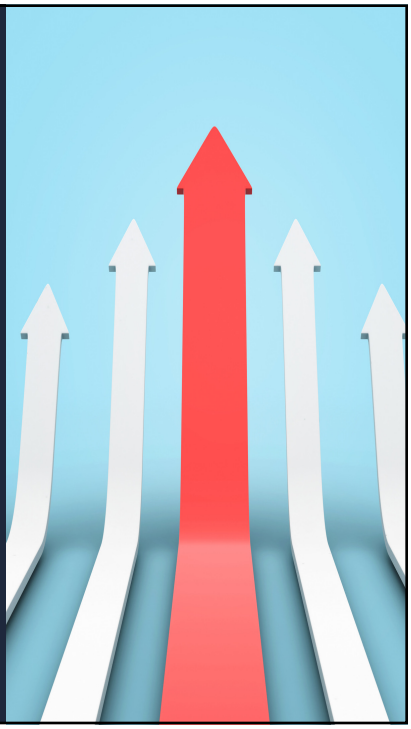
A Little Context

Top 10 Issues to Consider

Keys to Success

Let's Get Some Baselines....

- How many of you grant employees unlimited PTO?
- How many of you have an unpaid leave policy in addition to different types of paid leave?
- How many of you employ 50 or more employees?
- How many of you employ 15 or more employees?
- How many of you have operations in multiple states?
- How many of you use PTO to cover PSL obligations?
- How many of you contract leave administration to a third party?



Absent from Work: Which Bucket(s)?

Holidays	Paid Sick Leave	Disability or Pregnancy Accommodation	Workers' Compensation Leave
Vacation	Family and Medical Leave Act (FMLA) and state equivalents	Other Leaves of Absence (Policies, gov't contracts, or local laws)	



Multiple laws and policies may apply at the same time.

Time (Leave) vs. Money

Time
- FMLA
- ADA

Money
- Workers' compensation
- Short-term / long-term disability

Both
- State and local safe and sick time laws
- State and local paid family leave laws



1 Granting and Designating Leaves

- Tell employees they are eligible for PSL or FMLA leave when you know, or should know, leave may be needed.
- Be prepared with leave eligibility and designation forms.
- Designate qualifying leave as PSL or FMLA leave.
- Offer disability-accommodation leave when you know, or should know, it may be needed.





2 Training

- Train supervisors to recognize leave and accommodation needs and requests.
- Train supervisors to engage HR rather than grant or deny accommodations independently.
- Monitor whether employees know how to submit accommodation requests to HR.

3 Consider Each Applicable Law

- Consider sick-leave requirements, including rules affecting requests for a doctor's note.
- Track absences separately from failure to timely call-in.
- Understand which absences are protected (PSL, FMLA, and agreed accommodations).
- Review leave, accommodation, and other policies when evaluating potential accommodations.



4 Reasonably Accommodating



- Keep an open mind about possible accommodations:
  - Light duty
  - Temporary transfer
  - Part-time work
  - Additional leave
  - Temporary employees
- Consider disability-accommodation leave even when an employee is ineligible for PSL or FMLA leave.
- Consider precedent with similarly situated individuals.
- Consider employer policies that address unpaid leave options/limits.

5 Interactive Process

- Actually engage in the interactive process.
  - Communicate and exchange ideas.
  - Use form letters carefully.
- Document the interactive process.
  - Use follow-up memoranda or emails.
  - Prepare Exhibit A.
- Be mindful that routine emails may not be privileged.

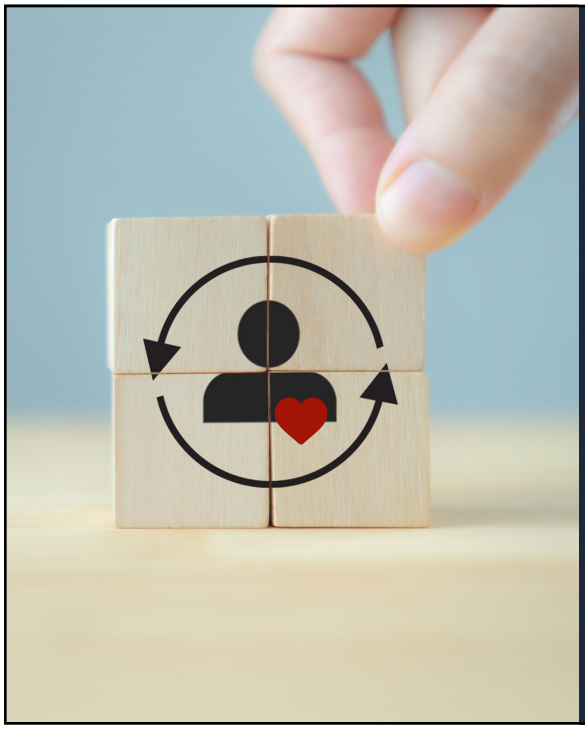


6 Manage Employee Expectations

- Clearly communicate leave balances and be aware of them.
- Pay attention when employees stray from intermittent leave schedules/frequency (you may have questions; they may need a provider update).
- Don’t misuse terms of art (e.g., “accommodation” versus protected leave).
- Be clear if an accommodation is temporary.
- Avoid mixed messages, such as saying a position cannot be held open and then citing layoff or position elimination.
- Help supervisors understand what the accommodation means for everyone involved.

Davis Wright Tremaine LLP





7 Jumping the Gun

- Do not terminate automatically when PSL or FMLA leave ends; consider disability accommodations and unpaid leave.
- Do not rush to find undue hardship.
- Consider extending leave or replacing the employee rather than terminating employment.
- Address group-insurance implications.

8 Practical Matters

- Ensure employees can be reached during leave.
  - Personal email address
  - Current mailing address and telephone number
  - Preferred communication method
- Communicate about a specific return-to-work date.



Davis Wright Tremaine LLP



9 Returning from Leave

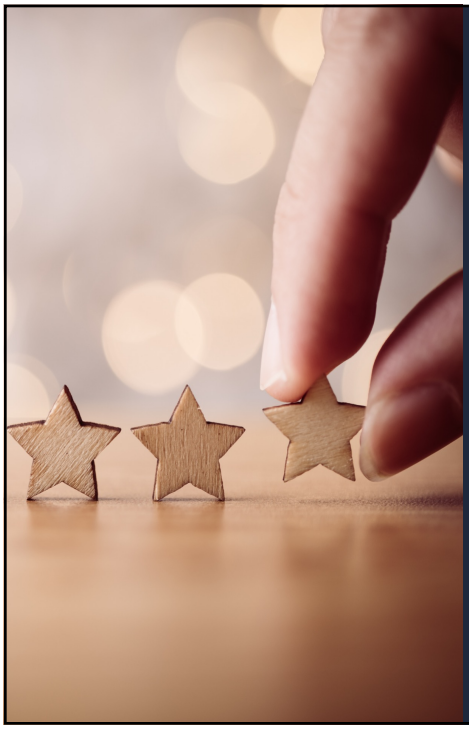
- Reach out before an extended leave expires to be sure everyone is on the same page.
- Help employees locate another position if they cannot perform the prior job; merely competing for jobs is not an accommodation.
- Consider and offer reasonable accommodations, including a transition period.

10 Termination Complications

- Retaliation risks associated with muddy timing cannot always be avoided.
- Plan for an employee to request leave or accommodation while a termination decision is pending or during the termination meeting.
- Assess requests where the only restriction sought, and prescribed by the employee's doctor, is a new supervisor.



Davis Wright Tremaine LLP



Keys to Success

1. Patience.
2. Engage with the employee and manager immediately when there is a leave or accommodation request.
3. Train supervisors and managers to spot flags.
4. Be clear about the nature of the leave (PSL, PTO, FMLA, disability, workers comp, unpaid allowance under policy, reasonable accommodation).
5. Preserve flexibility where you can. ("We cannot guarantee…," "depending on our business needs.")

Keys to Success (cont.)

6. Confirm you understand information from a medical provider.
7. Never assume you know, can diagnose, or prescribe appropriate treatment.
8. Maintain confidentiality of medical information.
9. Always do an individualized assessment for accommodation requests.
10. When in doubt, escalate to Benefits and/or Legal.



Questions?



Thank You!



Liz Hodes
PARTNER | Anchorage

elizabethhodes@dwt.com
P:907.257.5300

Davis Wright Tremaine LLP

Conducting Effective Investigations

Davis Wright Tremaine LLP

DWT.COM

Conducting Effective Investigations

ANNUAL ALASKA EMPLOYMENT AND LABOR SEMINAR 2026

Patti Vecera
OF COUNSEL | Anchorage

OCTOBER 28, 2026



Agenda

- Goals of an Investigation
- Planning the Investigation
- Witness Interviews
- Concluding the Investigation

Goals of an Investigation

Goals:

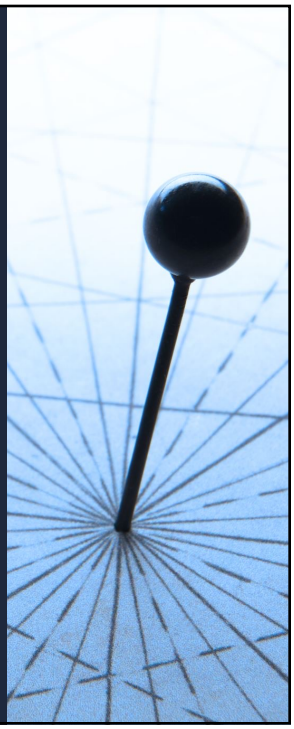
Meet legal obligations:
Investigate complaints and take appropriate action

Ensure due process:
Conduct a fair, impartial, and thorough investigation

Inform decision-makers:
Provide facts to support informed decisions

Demonstrate accountability:
Show complaints are taken seriously

Drive improvements:
Identify necessary policy changes or targeted training for prevention and compliance



When to Investigate

Reasonable Belief

Any time the Company has reason to believe wrongdoing or misconduct occurred

Formal Complaints

Triggered by a formal written complaint

Informal Concerns

Verbal or informal reports (e.g., employee may share concerns)

Supervisor Observations

Inappropriate conduct observed by a supervisor, even though no one has complained

Anonymous Reports

Complaints submitted anonymously

Third-party Complaints

Reports made by individuals not directly involved

What Types of Issues Require Investigation?



Internal complaints: From employees or concerning third parties (e.g., harassment, discrimination, retaliation)



Violations of Company policies



Employee fraud and dishonesty



Off-duty and/or off-site misconduct



Whistleblowing / Safety complaints



What If the Complainant Asks You **NOT** to Investigate?

- Employer still has a duty to investigate
- You cannot agree to do nothing
- You cannot agree to complete confidentiality

Planning the Investigation

Role of Investigators

Neutral fact finder:
Not a decision- maker or provider of legal advice

Focused on facts:
Investigate facts and potential **policy violations**, not legal violations

Impartiality:
Not an adversary of the complainant or accused

Consider:
May become a witness in the matter if litigation ensues



Davis Wright Tremaine LLP

Who Is a Good Investigator?

- Skilled in conducting prompt and thorough investigations
- Knowledgeable about the employer and its policies
- Understands the law and/or works effectively with counsel
- Patient, persistent, diligent, and detail oriented
- Perceived as neutral and fair
- Discreet and respects confidentiality
- Effective and credible witness if litigation arises

Investigation: Privileged?

Attorney-client Privilege:
A legal protection that preserves the confidentiality of communications between attorney and client.

Attorney Work Product:
A legal protection that preserves confidentiality of communications where there is a threatened or pending lawsuit or claim.

Issues To Consider:
Not every material collected / created during an investigation will be privileged, but an investigation launched at the request of counsel should be treated as privileged.

What Should the Investigator Do First?

1	Notify appropriate individuals:	Identify who needs to be informed about the complaint (e.g., in-house counsel)
2	Assess need for interim action:	Address safety concerns or consider administrative leave, if necessary
3	Define scope:	Clarify allegations, identify witnesses, and outline the investigation's focus
4	Review applicable policies:	Check to see if a CBA applies to any witnesses
5	Document initial communications:	Acknowledgement letter to complainant / notification to accused



Letter to Complainant

- Acknowledges receipt of complaint
- Affirms the Company is committed to a discrimination and harassment-free workplace and takes all complaints seriously
- Advises the Company will promptly initiate a thorough investigation, and complainant will be contacted for an interview
- Confirms the Company's commitment to maintaining confidentiality to the extent possible during the investigation
- Reminds that the Company strictly prohibits retaliation and *directs* complainant to report any retaliatory behavior

Letter to Accused

- Provides notice that a complaint has been received regarding alleged conduct and, where appropriate, summarizes the allegations
- Affirms the Company's commitment to a discrimination- and harassment-free workplace and that all complaints are taken seriously
- Advises the Company will promptly initiate an investigation, and accused will be contacted to schedule an interview as part of this process
- Reminds that the Company will protect confidentiality to the extent possible while conducting the investigation
- States expectation of full cooperation as the Company works to conduct a thorough and impartial investigation
- Reminds that retaliation of any kind will not be tolerated and that maintaining professionalism throughout this process is expected

Gathering Info / Evidence

Collect and review relevant records:

- emails
- Documents
- internal messages
- texts
- notes, etc.

Gather additional evidence:

- Photos
- security videos
- voicemails
- card swipes
- social media, etc.

Identify and prioritize witnesses for interviews:

- Start with Complainant
- Interview others with direct or relevant knowledge
- Follow up with witnesses identified during interviews
- Conclude with the accused employee(s)

Witness Interviews

Where Should Witness Interviews Be Conducted?

- Preferably in person, if possible
- Ensure the location is private and minimizes visibility (e.g., avoid all-glass conference rooms)
- Choose a space free from distractions
- Select a comfortable setting to facilitate open communication



Davis Wright Tremaine LLP

Starting Witness Interviews: Sample Opening Script

- My name is _____ and I am the Company's HR Manager.
- I am here to investigate [brief summary of complaint / report].
- This interview is not being recorded, and I need you to confirm that you are not recording it either.
- I ask that you keep this discussion confidential and avoid sharing it with others to protect the integrity of the investigation.
- The Company expects your full cooperation and truthful responses to my questions.
- Please note the Company will not tolerate retaliation against anyone for participating in this investigation / please report any perceived retaliation to me.

Other Potential Interview Issues

Requests to have third party attend

- Attorney? No
- Union Rep? Yes, usually
- Family / Friend? No

Prepare Outline?

- Depends on circumstances and information known about complaint allegations

Stay Flexible!

- Plan your questions in advance … but stay flexible
- Don't let the outline run the interview



Questioning Techniques

DO …

- Build rapport and establish conversational atmosphere
- Use both open and closed questions and the strategic pause
- Maintain an open mind and avoid forming early conclusions
- Paraphrase responses to confirm the witness's account
- Take accurate and comprehensive notes



Questioning Techniques

DO NOT …

- Share information provided by other witnesses
- Avoid asking uncomfortable or challenging questions
- Guarantee confidentiality or anonymity

Getting More Information: Some Strategies

"I have noticed…"

"Help me out. If you were sitting in my shoes having to resolve this inconsistency, how would you think about it?"

"Why do you think they would say that?"

"I have the sense there may be more context here. Is there other information that I should take into account?"

"I am curious / confused / interested"

"Bear with me. I have to ask some tough questions. Just because I ask them, does not mean I have formed conclusions. Why did you / did you not."

"I may be missing something. Help me understand that."

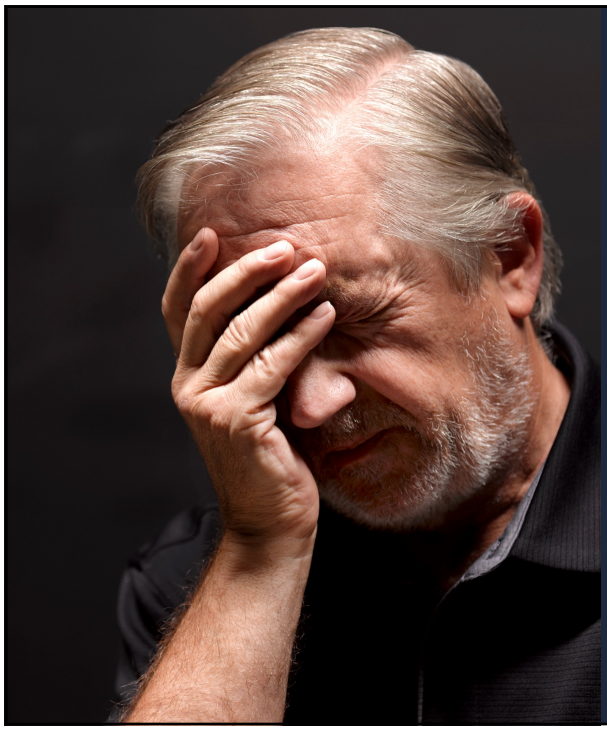
Additional Notes for Interviewing the Accused

1. Inform the accused generally of the claim (do not overshare)
2. Assure that purpose is to gather facts
3. Be prepared to deal with anger, embarrassment, fear, etc.
4. Consider having another person present
5. If accused fails to participate, explain the Company may draw a negative inference, impose discipline, and/or will make findings based on the information available

Assessing Credibility

- Demeanor and behavioral cues
- Consistency
- Candor with facts that aren't helpful to the witness
- Reasonableness of the story
- Motives for lying / history
- Nonverbal cues



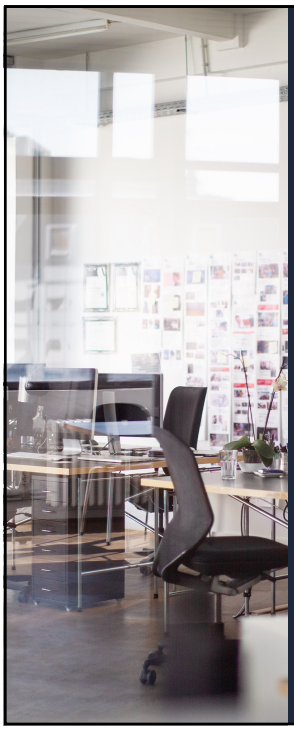


Non-Verbal Cues

- Changes in speech patterns when answering tough questions
- Avoiding eye contact or excessive staring
- Rubbing forehead or back of neck, touching the nose or chin
- Perspiring, trembling, blushing
- Contrived emotional displays
- Placing hand over mouth
- Fidgeting
- Overloading of details
- Shut down or withdrawn body language

Closing the Interview

Closing Questions	Ask standard questions: • "Is there anything else you'd like to add?" • "Are there any documents I should review?"
Next Steps	Explain the investigation process moving forward. Reiterate the Company's **anti-retaliation policy**.
Follow Up	Encourage employees to reach out if they recall additional information.
Who Else?	Ask if there's anyone else you should speak to or anything else you should know



Key Information to Obtain in a Hostile Work Environment Investigation

- The **context, nature, and frequency** of the alleged conduct (to be reviewed by counsel for a legal determination)
- Whether the conduct involved a **protected class** and, if so, specify which class
- Whether the conduct was **unwelcome or offensive** to the complainant
- Whether the conduct was **severe or pervasive**, and the impact on the complainant
- Whether the complainant or other employees followed the Company's **mandatory reporting procedures**

Concluding the Investigation

When Are You Done?

CONSIDER (AND PERHAPS REVIEW WITH COUNSEL):



Key facts

Are the central facts and issues resolved, or do disputes remain?



Follow-ups

Do you need more interviews or documents to ensure a confident conclusion?



Re-interviews

Should the complainant or witnesses be re-interviewed based on new information?

When Are You Done?

CONSIDER (AND PERHAPS REVIEW WITH COUNSEL):



Critical evaluation

Are there gaps that could undermine the investigation if reviewed later?



Findings

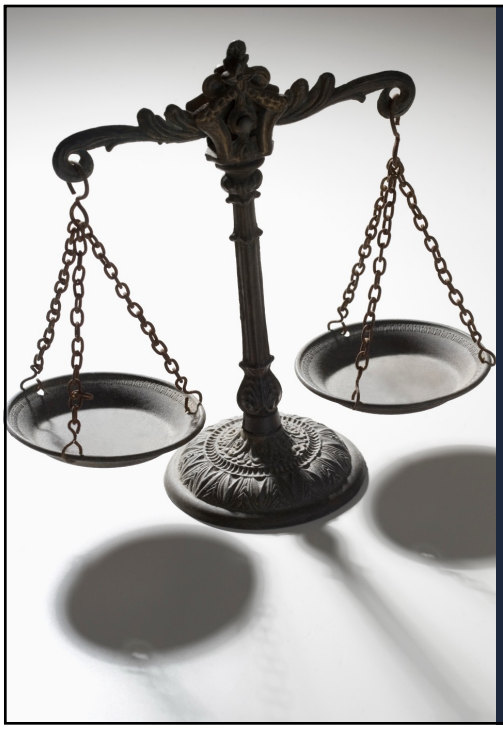
Is the complaint or policy violation substantiated?

Davis Wright Tremaine LLP

ANNUAL ALASKA EMPLOYMENT AND LABOR SEMINAR 2026

Evaluating and Analyzing Investigation Findings

1	Evaluate Evidence	Assess credibility, reliability, corroboration, and consistency of witness accounts Look for contradictions or gaps that could affect fairness
2	Assess Conduct	Consider the severity of the behavior and its impact on individuals and the workplace environment
3	Identify Patterns	Look for recurring behaviors or systemic issues Are there similar complaints or previous concerns involving the same individual(s)?
4	Finalize Findings	What conclusions can you draw? Do the facts fit a policy violation or support a formal finding?



Evidentiary Standard: Preponderance of the Evidence

= >50% Likelihood

“More likely than not”

Handling “He Said/She Said” Cases Using the Preponderance Standard

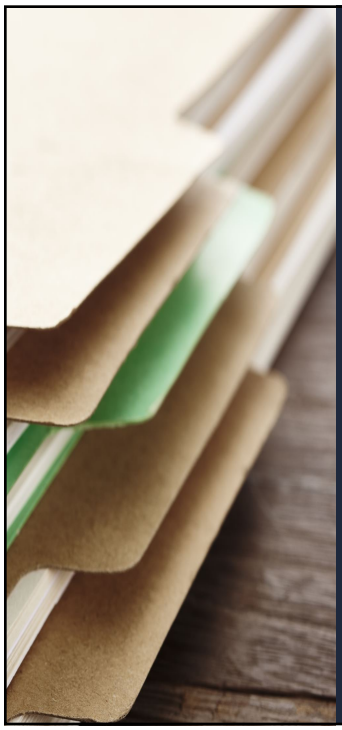
Even without witnesses, a finding is possible by evaluating:

Circumstantial evidence	Corroboration by third parties	Credibility analysis	Patterns of similar conduct
Draw logical inferences from the surrounding facts	Verify details or statements indirectly	Assess consistency, plausibility, motive, and bias	Identify behaviors or incidents supporting the claim



What Are the Next Steps?

Advise Decision-Makers:	Provide verbal guidance on conclusions, policy violations, and recommended remedial actions.
Avoid Legal Conclusions:	Do not label findings as “sexual harassment” or “hostile work environment.”
Written Report:	Determine if a written report is needed: • **Privileged**: Full report (and/or) • **Non-Privileged**: Executive summary
Preserve Confidentiality:	Protect the investigative file and related evidence.
Prevent Retaliation:	Monitor to ensure no retaliation occurs.



The Investigation Report

Introduction:	Include relevant factual background information and context for the investigation
Allegations:	Outline the allegations investigated
Evidence:	Summarize key testimony from the complainant, witnesses, and accused, as well as any documents reviewed
Findings and Conclusions:	• Describe findings on policy violations (avoid legal conclusions) • Note any credibility assessments made
Recommendations:	**Suggest next steps (**e.g., coaching, training, or discipline); keep it vague
Conclusion:	Summarize the outcomes

Close-Out Letters

To Complainant:

Thank the complainant for coming forward

Confirm investigation was conducted

Advise regarding whether allegations were substantiated, policy was violated, etc.

Do not disclose any disciplinary plans to be imposed upon accused (if applicable)

To Accused:

Thank the accused for cooperation (if applicable)

Confirm investigation was conducted

Advise regarding whether allegations were substantiated, policy was violated, etc.

Emphasize zero-tolerance for retaliation

Questions?

Thank You!



Patti Vecera
OF COUNSEL | Anchorage

pattivecera@dwt.com
P: (907) 257-5383


Davis Wright
Tremaine LLP

Speaker Bios



Jack Day

Associate, Anchorage

John "Jack" Day is an employment litigation attorney. Based out of the firm's Anchorage office, Jack represents clients in a broad range of employment matters in state and federal courts, including discrimination, wage-and-hour, retaliation, and wrongful termination claims.

An Army veteran and skilled writer, Jack brings varied knowledge to his practice. He is experienced in all aspects of civil litigation, including taking and defending depositions, researching and drafting complex motions, responding to and drafting written discovery, preparing clients for trial, presenting oral arguments, and resolving matters through mediation. Outside of employment law, Jack has argued cases involving insurance, liability, and personal injury issues.

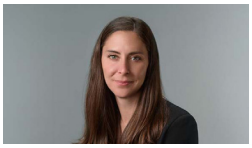
As a clerk, Jack helped manage the Alaska court system's mediation program in Anchorage, providing conflict resolution for litigants prior to trial. He also assisted with research and analysis for 10 state judges. Jack has private-sector legal experience – he has drafted contracts, negotiated agreements, conducted research such as title searches for surface and mineral estates, and assisted in other matters specific to oil and gas project development. Before practicing law, Jack worked in the financial sector and served in the U.S. Army for almost six years. During his military service, he was stationed at the John F. Kennedy Special Warfare Center in North Carolina, where he was a student in the Special Forces Qualification Course, and at Joint-Base Elmendorf Richardson in Anchorage, where he was a Scout Reconnaissance Paratrooper and Non-commissioned Officer.



Kristal Graham

Associate, Anchorage

Kristal Graham counsels employers on compliance with laws governing hiring and terminations, leaves of absence and accommodation, wage-and-hour, personnel policies, and other employment and labor issues. She defends employers against workplace disputes in front of federal and state agencies and state and federal court proceedings. She also advocates for employers in labor arbitration proceedings and advises clients on a range of labor relations issues, including union representation elections, collective bargaining, and general personnel management.



Elizabeth P. Hodes

Partner, Anchorage

Elizabeth (Liz) Hodes works with Alaska's diverse group of employers on maintaining positive and productive workplace environments. She helps clients address employment issues before they occur, providing advice and counsel on all types of personnel matters—including leaves of absence, wage-and-hour, and harassment prevention—and conducting investigations when necessary. Liz also specializes in executive-level employment matters, advising boards through complex leadership challenges and transitions. While her goal is to avoid costly disputes, when litigation does arise, Liz ardently defends her clients from employment claims across the spectrum, from discrimination to non-compete issues and everything between. Although she often works with clients toward early and efficient case resolution, her experience in trial, arbitration, and appeals before the Alaska Supreme Court proves valuable at all stages of litigation.

For her corporate clients, Liz litigates disputes related to corporate governance, contracts, unfair trade practices, and other issues. She also has experience representing unionized employers, advising them on maintaining labor peace. Liz has represented healthcare entities, oil and gas companies, financial services companies, utility providers, broadcast companies, and a variety of other businesses. Given that many of her clients are in industries where privacy and security are of pivotal importance, Liz has expertise working to protect confidentiality and related interests.

Liz leads the firm's Alaska office, whose employment team is ranked in the top tier by the leading publication Chambers USA. Liz is personally recognized as a top labor and employment attorney (Band 1) by Chambers, which quotes clients as saying, "We look up to her and trust her legal opinion – she is truly invaluable to us."



Michael O'Brien

Partner, Anchorage

Mike O'Brien is the go-to attorney for clients faced with urgent labor and employment issues. His reputation is built on being responsive to his clients' needs while helping them creatively navigate their thorniest problems.

Mike has extensive experience in matters related to collective bargaining (blue-collar and white-collar), union organizing, labor arbitrations, unfair labor practice charges, and general labor-management relations. He also leads internal workplace investigations, counsels on crisis management, and trains on discrimination avoidance and other HR matters. Mike's clients range from the largest Fortune 50 companies to utilities, Alaska Native Corporations, and regional and local businesses.

If litigation becomes inevitable, Mike is as comfortable in the courtroom as he is in the boardroom. He has been fiercely litigating on behalf of clients for over two decades, with more than 60 jury trials and frequent appearances before the NLRB, the EEOC, ASCHR, the U.S. Department of Education, and other federal and state administrative agencies.

Mike exemplifies DWT's commitment to pro bono legal assistance, with a long track record of representing domestic violence victims, especially those whose citizenship, sexual orientation, or income make them particularly prone to exploitation or abuse.



Mackenzie Olson

Associate, Anchorage

Mackenzie Olson is an employment attorney at the firm. Recognized by Best Lawyers as "one to watch" in labor and employment law, Mackenzie leverages experience gained as a litigator in order to resolve her clients' most complex employment challenges in and out of the courtroom. She also advises companies across an array of industries on compliance and other issues and assists in filings and appearances before state and federal agencies, arbitrators, and state courts, particularly in Alaska.

Before joining DWT, Mackenzie practiced in both labor and employment law and energy, environmental, and resource law. She has broad experience in Alaska's legal community: in addition to serving as an assistant district attorney in the Anchorage District Attorney's Office and as an assistant attorney general in the Office of Criminal Appeals, Mackenzie clerked for Judge H. Russel Holland at the U.S. District Court for the District of Alaska and for Judge David Mannheimer at the Alaska Court of Appeals. While pursuing her J.D., she clerked for the Washington State Attorney General's Office in the Natural Resources and Consumer Protection divisions and externed for Judge Stephen J. Dwyer at the Washington State Court of Appeals, Division I.



Patti A. Vecera

Of Counsel, Anchorage

Patti Vecera works with her clients to analyze, strategize, and resolve workplace issues so they can get back to what they want and need to be focused on: running their business. Based on years of first-hand experience with the full range of employment allegations and claims, Patti offers practical and efficient advice with a keen ability to get to the heart of the matter without wasting any time. Having responded to hundreds of agency charges, Patti also advises her clients on the best course of action to maximize the likelihood of prevailing.

Patti advises employers on all aspects of the employment relationship, including employment policies, employment agreements, federal/state law compliance, and challenging workplace situations. She also defends employers in breach of contract, wrongful discharge, harassment, discrimination, and wage and hour claims; provides day-to-day employment-related counseling; oversees and conducts investigations into issues of harassment and other workplace misconduct; and represents clients in negotiating collective bargaining agreements and grievance arbitrations proceedings, including appearing before the National Labor Relations Board and the Alaska Labor Relations Board.



Zoë Wise

Associate, Anchorage

Zoë Wise focuses on employment matters. Before joining the firm, she clerked for the Alaska Supreme Court, where she analyzed appellate case files, drafted bench memoranda and opinions, and researched Alaska and federal law. Zoë also brings experience supporting tribal governments and justice systems through prior legal and clinical roles. Prior to law school, Zoë worked as a paralegal and taught English at the University of Alaska Fairbanks. Zoë is a citizen of the Muscogee (Creek) Nation.



DWT.COM