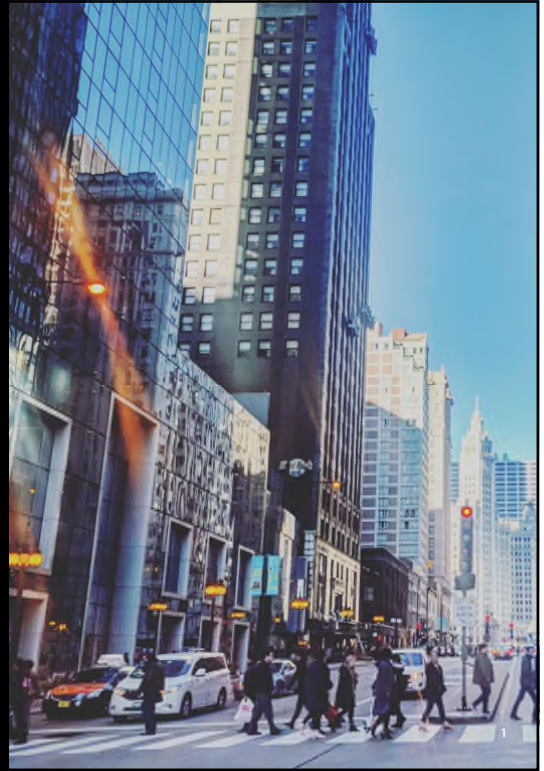




2025 Illinois Labor & Employment Law Symposium

October 14, 2025



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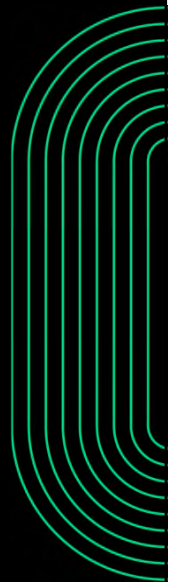


New Developments in Federal and Illinois Labor and Employment Laws

Presented by:

Natasha Jenkins, Senior Attorney
Daniel V. Kinsella, Senior Counsel

October 14, 2025



2

Changing Landscape in Employment Laws

Presenter:



Natasha E. Jenkins
Senior Attorney



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Hot Topics in Employment Law

Update on Federal and Illinois Law

- U.S. Immigration and Customs: What to do when "ICE" shows up?
- Illinois Legislative Update:
 - Paid and Unpaid Leave Laws
 - Amendments to Illinois Human Rights Act
 - Nursing Mothers in Workplace Act
 - Family Neonatal Intensive Care Act
 - Equal Pay Act
 - Illinois Workplace Transparency Act
- Illinois Whistleblower Act



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4

U.S. Immigration and Customs Enforcement A.K.A. “ICE”

Who is ICE?—Now, What?

- Armed federal agents or unarmed agents working with armed local law enforcement officers
- Mission: Protecting America through criminal investigations and enforcing immigration laws.
- Conduct raids in **public and private** areas of the workplace depending on scope of valid judicial warrant (search, detain, arrest) OR
- I-9 Audits pursuant to a Notice of Investigation, (no warrant needed)



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What to do when ICE Comes Knocking?

Front Line Employees

- Stay calm and polite
- Ask for the purpose of the visit
- Alert management or designated personnel immediately
- Develop a script for receptionist

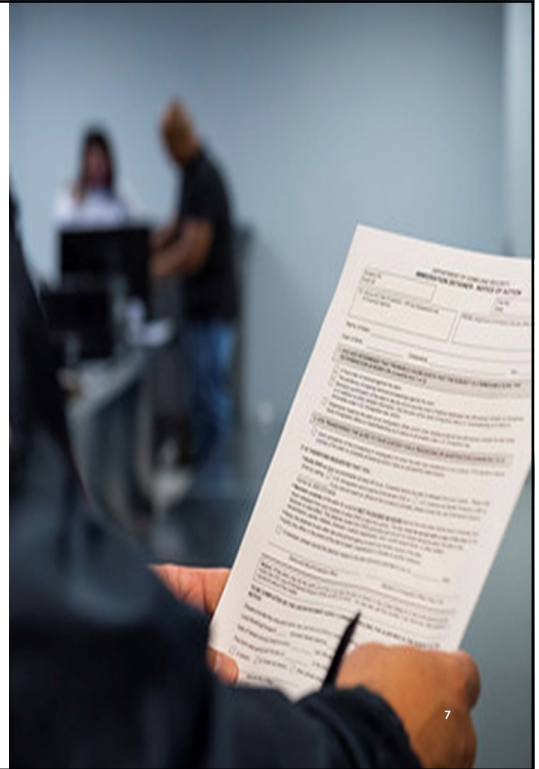


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What to do when ICE Comes Knocking?

Managers/Supervisors

- Contact legal counsel immediately
- Verify ICE agent credentials: Request ID and business card
- Record names, badge numbers, and contact info
- Ask ICE if they have an administrative warrant, or Judicial warrant
- Send the warrant and credentials to legal counsel for guidance



7

I-9 Audits

Who Can You Hire?

- Always OK to hire these people:
 - US citizens
 - Lawful permanent residents (LPR – “green card holders”)
 - Refugees or asylum seekers
- **All statuses below require employer sponsorship:**
 - H-1B, TN
 - L-1 or E Visa
 - J-1 (sometimes can be a “free agent” but not common)
 - O-1
- **All other temporary workers need an EAD**
 - EAD cards (J-2, F-1, H-4, green card pending, etc.



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I-9 Basics & Timelines

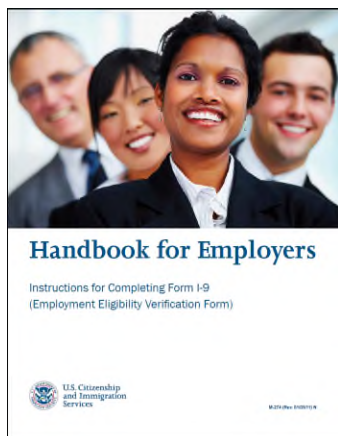
- **I-9s are required for every employee**
- Employers must have one for all employees hired since November 7, 1986
- Current one-page form: <https://www.uscis.gov/i-9>
- Employee completes **Section 1 on or before the first day of hire**
- Employer has three business days, after the day of hire, to complete Section 2 and examine original documents (four-day rule)
- Employer, or its agent, reviews original documents and completes Section 2

DO NOT:

- Accept expired documents or help obtain documents
- **Hire persons who lack valid work authorization – actual and constructive knowledge**
- Hire a subcontractor (staffing company or independent contractor) to hire someone you have reason to believe is not work authorized
- **Employers may face criminal liability** and fines for having actual or constructive knowledge docs are fake, help undocumented workers, transport undocumented workers or harbor them.



A Fairly Complex Little Form



70+ pages



For a one-page form



What's Different About the New Form I-9?

- Only 1 page – not 2
- Instructions down to 8 pages, instead of 15 pages
- Preparer/Translator is on a separate page
- Rehire/reverification is on a separate page
- New box for virtual I-9 inspection
- No need to fill out every box, or put N/A
- Eliminates the word “alien”



I-9 PENALTIES FOR VIOLATIONS

Violation Type	2024 Penalty Range	2025 Penalty Range
Form I-9 Paperwork Violations	\$281 – \$2,789	\$288 – \$2,861
Knowingly Employing Unauthorized Workers		
First Offense	\$698 – \$5,579	\$716 – \$5,724
Second Offense	\$5,579 – \$13,946	\$5,724 – \$14,308
Third or Subsequent Offense	\$8,369 – \$27,894	\$8,586 – \$28,619
Document Fraud		
First Offense	\$575 – \$4,610	\$590 – \$4,730
Subsequent Offense	\$4,610 – \$11,524	\$4,730 – \$11,823
Unfair Immigration-Related Employment Practices		
First Offense	\$575 – \$4,610	\$590 – \$4,730
Second Offense	\$4,610 – \$11,524	\$4,730 – \$11,823
Third or Subsequent Offense	\$6,913 – \$23,048	\$7,120 – \$23,500
Failure to Notify DHS (E-Verify Employers)	\$973 – \$1,942	\$990 – \$1,980



Seizure of Documents/Items

Best Practices for Management

- Conduct Internal I-9 Audit
- Make a list of items seized in a raid
- Take photos of equipment seized in a raid
- If possible, make copies of documents
- Do NOT sign anything without attorney advice
- Do NOT obstruct or argue!



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Hot Topics in Employment Law

**The General Assembly Marches On:
New Legislation in Illinois – and Not Necessarily Friendly**

Part II- Illinois Legislative Update:

- Paid and Unpaid Leave Laws
- Amendments to Illinois Human Rights Act
- Nursing Mothers in Workplace Act
- Family Neonatal Intensive Care Act
- Equal Pay Act
- Illinois Workplace Transparency Act
- Illinois Whistleblower Act



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IL Paid Leave for All Workers Act

- In 2023, Illinois, Cook County, and City of Chicago each enacted laws requiring employers to provide ALL employees with **40 hours** of paid leave
- Leave may be taken for any reason
- Employers may not require employees to provide documentation to support the leave
- Employers may require 7-day notice for the leave



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Illinois Military Leave Act (Formerly Military Leave Act)

- Job-protected unpaid leave for immediate family members called to military service
- Employers with 15 to 50 employees must provide up to **15** days of **unpaid leave**
- Employers with 50 or more employees must provide up to **30** days of **unpaid leave**
- To qualify, employees must work at least 12 months (1,250 hours) in the prior year



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New Law: Military Funeral Honors Leave

Effective August 1, 2025

- Applies to employers with 51 or more employees
- Employers must provide up to **8 hours of paid** leave per month (capped at 40 hours per year) to employees who participate in funeral honors details at veteran funerals
- Employers may request verification of participation and, in limited circumstances, may deny leave in 24/7 congregate care facilities, if granting it would impair operations



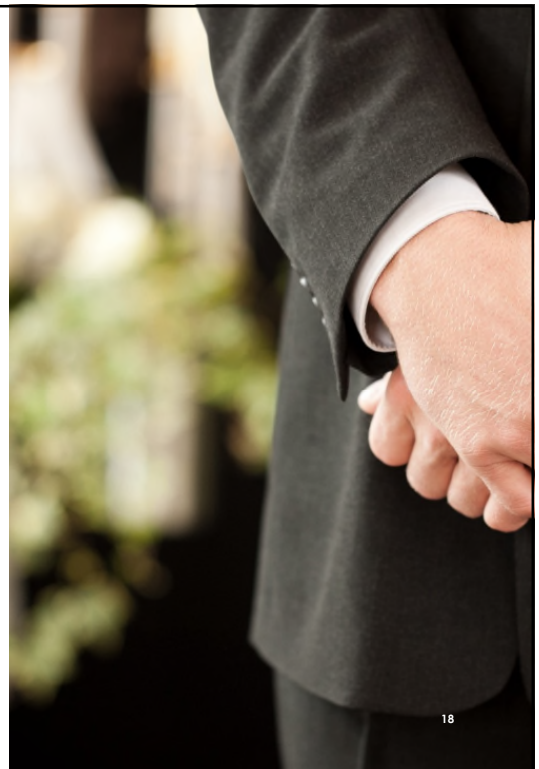
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Illinois Family Bereavement Leave Act (Family Bereavement Law) Updates

Background

Applies to employers with 50 or more employees for each working day during **20 or more calendar workweeks**

- Allows for 10 workdays of unpaid bereavement leave for the loss of a “covered family member” **which is now expanded.**
- Leave must be taken within **60 days** after an employee receives notice that a “covered family member” has died



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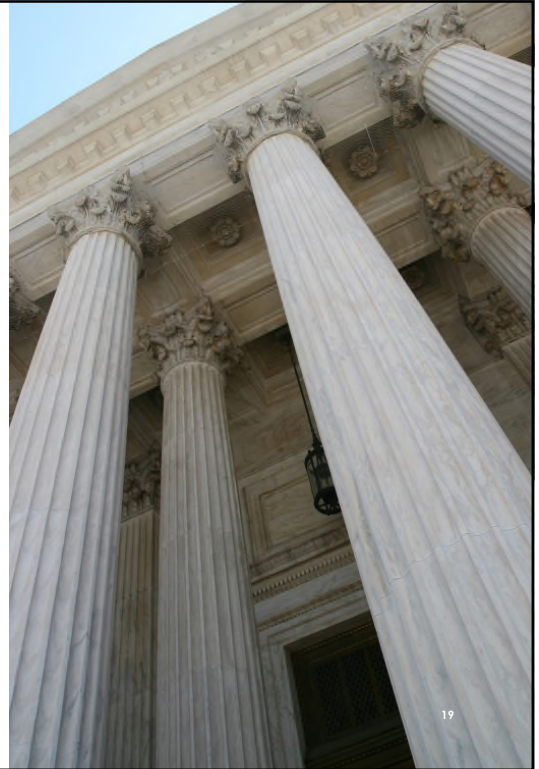
Amendments to Illinois Human Rights Act

Background

- Act prohibits employment discrimination based on certain protected classes, including:

Race	Marital Status
Color	National Origin
Religion	Age
Sexual Orientation	Military Status
Gender Identity	Order of Protection Status
Religious Garb	Traits associated with race
Sex (including sexual harassment & pregnancy)	Physical or Mental Disability

- Also prohibits retaliation



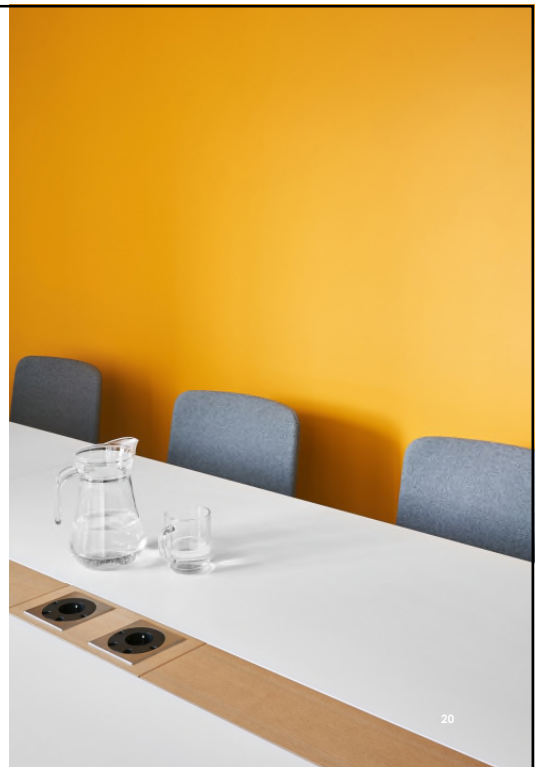
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Amendments to Illinois Human Rights Act

Effective January 1, 2026

- Fact-finding conferences discretionary** rather than mandatory
- Party Request:** If both the complainant and the respondent submit a written request for a fact-finding conference within **90 days** of the charge being filed, the IDHR must convene one (unless it has already issued its report)
- Department Discretion:** The IDHR retains the authority to require a fact-finding conference even if neither party requests it.
- New civil penalties for violations under the Act



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Family Neonatal Intensive Care Act

Effective June 1, 2026

- Employers with 16-50 employees must provide employees up to **10 days of unpaid leave** when their child is a patient in a NICU
- Employers with 51 or more employees must provide up to **20 days of unpaid leave**
- Employers may require **reasonable verification** of a child's NICU stay, but they may not request confidential medical information (HIPAA)



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Nursing Mothers in Workplace Act

Pre-2026

- Employers with 5 or more employees must provide **reasonable** break time each day to an employee who needs to express breast milk for up to **one year** after child's birth
- A private room required location (no toilet stall) **MUST** be close to work area
- Breaks can run concurrently with other break time and
- Employer may not reduce compensation or require paid leave **unless accommodation undue hardship**



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Amendments to Nursing Mothers in Workplace Act

Effective January 1, 2026

- Employers with 5 or more employees must provide **30 minutes** break time each day to an employee who needs to express milk
- Additional time allowed during paid breaks
- Can't require employee to use accrual of paid leave during breaks or reduce comp
- A private room is required (no toilet stall) **MUST** be close to work area
- Must provide accommodation, **unless accommodation causes undue hardship**



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Amendments to Employee Blood & Organ Donor Leave Act

Effective January 1, 2026

- Applies to employers with 51 or more employees and now covers full and part-time employees
- **10 days of paid leave** in any 12-month period for organ donation
- **1 hour of paid leave** or more every 56 days to donate blood
- Employers can require prior approval
- Pay for part-time employees must be based on the daily average pay during **last 60 days of employment**

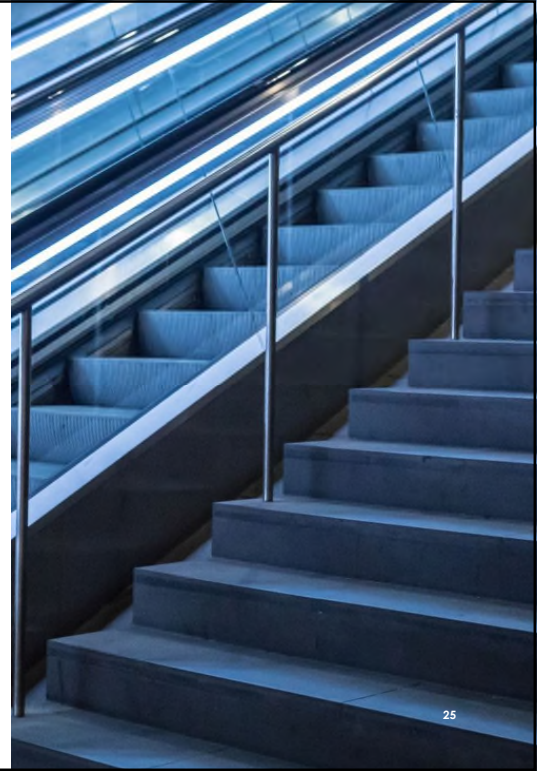


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Paid Leave Laws

Next Steps / Some Best Practices:

- Determine which paid leave law(s) applies
- Review & revise existing policies/handbooks
- Train H.R. managers & supervisors
- Obtain/create notices and post them



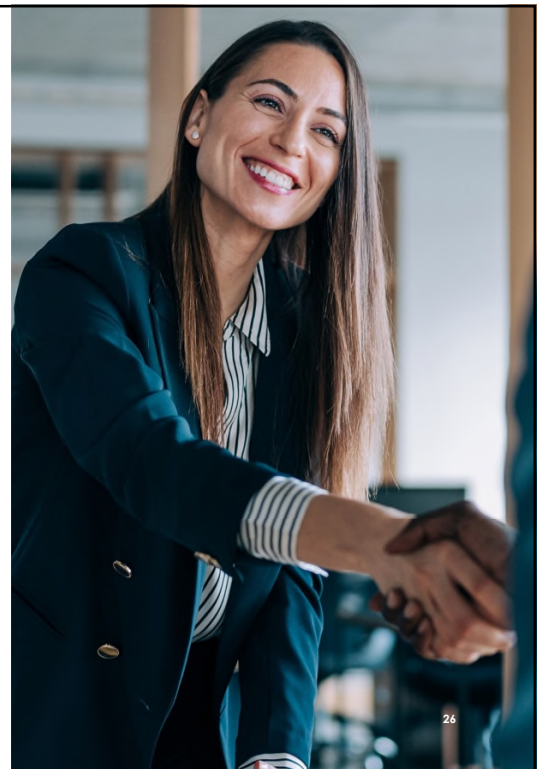
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Illinois Equal Pay Act

Effective January 1, 2025

- Employers must include the **good faith range of the wage or salary** that the employer reasonably expects to offer
- Must include a general description of benefits and other forms of compensation, including bonuses, stock options and other incentives the employer expects to offer for the position
- Employer must ensure any third-party recruiter also has the required info
- Third party is required to post the information and may be liable for not posting

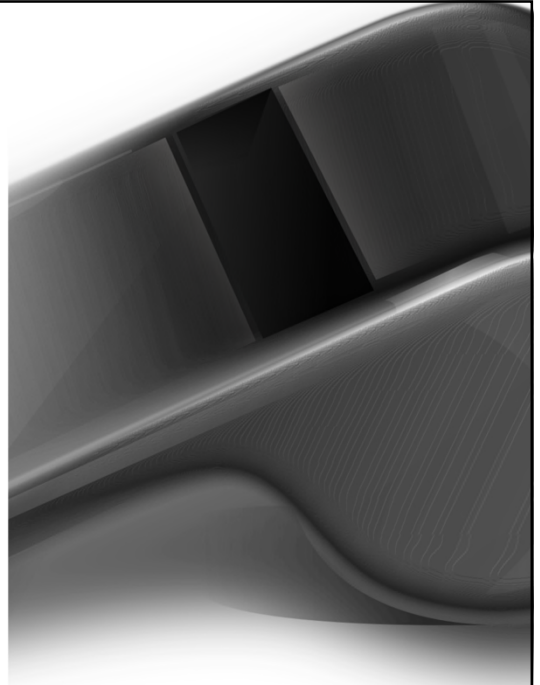


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Amendments to Illinois Whistleblower Act

- Prohibits retaliation against employees who disclose information to government or law enforcement that they **reasonably believe** violates the law
- Prohibits employers from making **policies or acts** intended to prevent disclosures
- **Effective January 1, 2025**
- Protections for employees who in **good faith**, make or threaten to make **internal reports** to supervisors, officers or board members or contracting entities
- Protects employees who refuse to participate in conduct they **reasonably** believe is **unlawful** or poses a threat to safety



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Other Illinois and Local Updates

- Unemployment Insurance Amendment – Covers mental health disability
- Victims' Economic Security and Safety Act – Device usage protections
- Chicago Paid Leave and Safe Leave Ordinance – 40 hours leave, carryover, usage rules
- Minimum Wage – Up to \$16.60 effective July 1, 2025
- Fair Workweek Ordinance – Predictable schedules and compensation for changes
- **Many other updates are covered in HR By the Numbers: Thresholds for Employer Coverage**



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Questions?



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A Program for Holding the Union at Bay

Presenter:



Daniel V. Kinsella
Senior Counsel



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A Program for Holding the Union at Bay

- Know your employees
- Learn about the possible Union
- Fix problems
- Train management and supervisors
- Communicate with employees

45

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Outline of Topics for Supervisor / Manager Training

- I. What is a Union and What Does It Do?
- II. What Law Governs this Process?
- III. Which employees are subject to being organized? Distinctions between "Managers", "Supervisors" and "Employees".
- IV. What is the Employer's position on unionization?
 - A. State your position clearly.
 - B. You are not putting ideas in their heads.



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Outline of Topics for Supervisor / Manager Training

Continued

- V. The Mechanics of Organizing a workplace from the union's point of view.
 - A. Meetings
 - B. Cards
 - C. Presentations to Employer – what does the employer do?
 - D. A Demand or a Petition
- VI. The Do's and Don't's for the Employer. That can and can't the Employer say and do?



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Outline of Topics for Supervisor / Manager Training

Continued

- VII. The Campaign Specifics
 - A. What happens in campaign?
 - B. How Long Does it Last?
- VIII. Election Day
 - A. What happens?
 - B. Union Needs a Majority of Those Voting. (Tie goes to the Employer.)
 - C. If Union Loses.
 - 1. Potential Challenges and/or Unfair Labor Practice Charges.
 - 2. Union is Barred for a Year.



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Outline of Topics for Supervisor / Manager Training

Continued

D.If Union Wins.

1. Potential Challenges.

2. Employer Must Recognize and Bargain in Good Faith.

IX.Collective Bargaining.

A.Employer Must Bargain "In Good Faith".

B. Employer Does Not Have to Agree to any Contract Term.

C.Union Can Strike/Employer Can Lock Out.

 D.Special Care is Involved.

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Questions?



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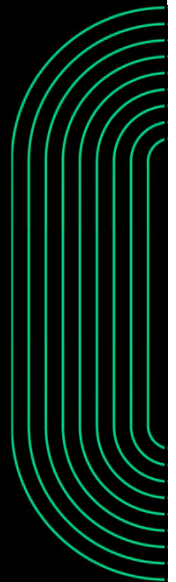
When Do Private Sector Employers' Diversity, Equity, & Inclusion ("DEI") Initiatives Constitute "Illegal DEI?"

Why and How to Move Forward with DEI Lawfully and Successfully



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October 14, 2025



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Agenda

What DEI is and isn't

Why DEI matters

Changes in the law: USSC cases Executive Orders,
& Guidance

Difference between legal & "illegal" DEI

DEI Do's and Don'ts for private sector employers

Should private employers scrap DEI?

Examine unconscious bias & training

Questions



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What is DEI?



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Defining Diversity

Diversity involves the presence of differences within a group



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Typical Legally Protected Categories

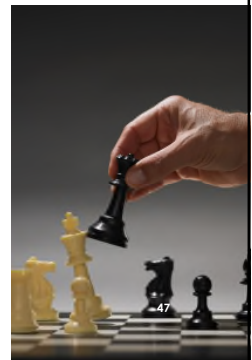
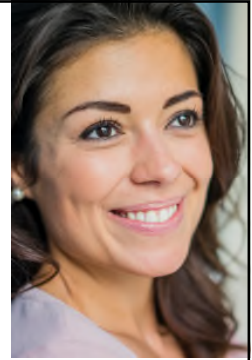
- Race
- Religion
- National origin
- Age
- Differently-abled
- Sex
- Sexual orientation
- Marital status
- Parental status
- Military status



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Other Characteristics

- Thinking style
- Socio-economic background
- Values
- Education
- Resilience
- Work ethic
- Personality
- Skill sets
- Hobbies
- Experiences



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Equity

Equity involves ensuring fair treatment, access, and opportunities



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Why DEI Matters

Helps remove barriers to
full participation
for all

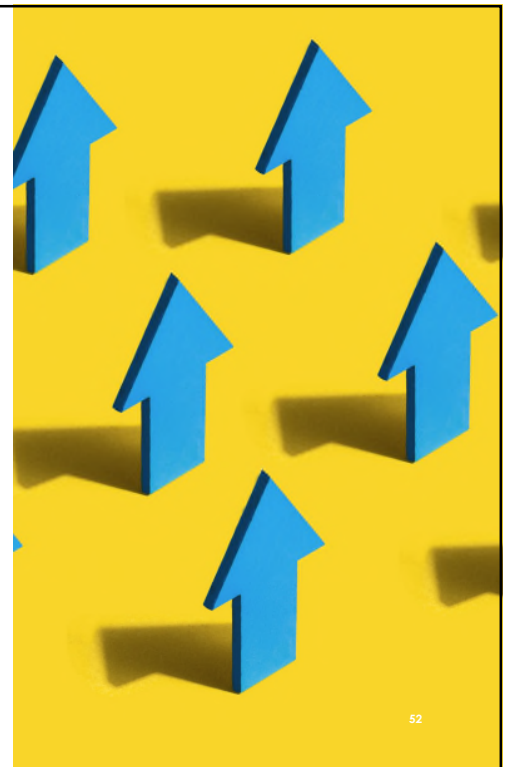


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DEI Workplace Benefits

- **Better Recruitment:** More extensive & inclusive talent pool
- **Better Retention:** Higher employee retention; lower turnover
- **Better Performance:** Studies show diverse workplace teams usually outperform homogenous teams



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Karen Boswell, Managing Director of Hitachi Rail Europe, Commenting on DEI Advantages

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Karen Boswell OBE
The Business Case for Diversity

HITACHI
Inspire the Next

Impact on business performance



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Affirmative Action (“AA”) vs. DEI

- AA goal: employer workforce mirrors labor pool demographics
- AA gives special consideration to groups considered historically excluded; redress disadvantages
- AA programs include internal auditing & reporting systems to measure progress & compliance



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Affirmative Action (AA) vs. DEI

AA may seem like many employers' DEI policies, EXCEPT:

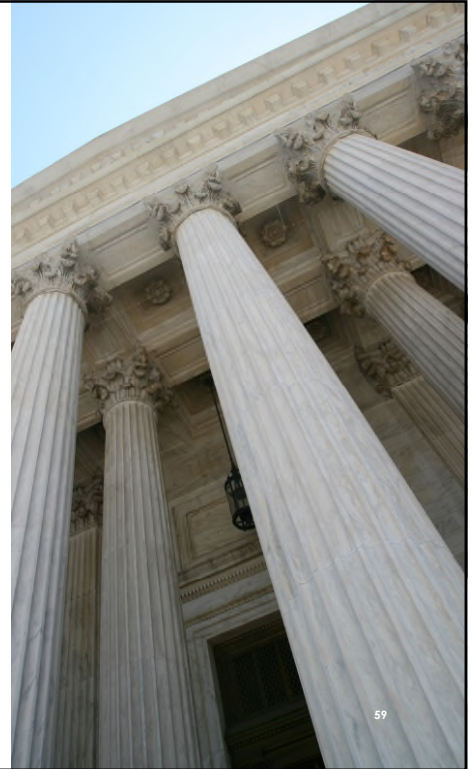
- Mandatory vs. aspirational
- Quotas based on race & sex
- Positions earmarked for minorities
- Executive compensation rewards if goals achieved



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USSC AA SFFA Decision

- **Two Cases:** *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20-1199, and *Students for Fair Admissions, Inc. v. University of N.C.*
- **Holding:** Use of race as a “plus factor” in higher education decisions violated Equal Protection Clause & Title VI of Civil Rights Act of 1964

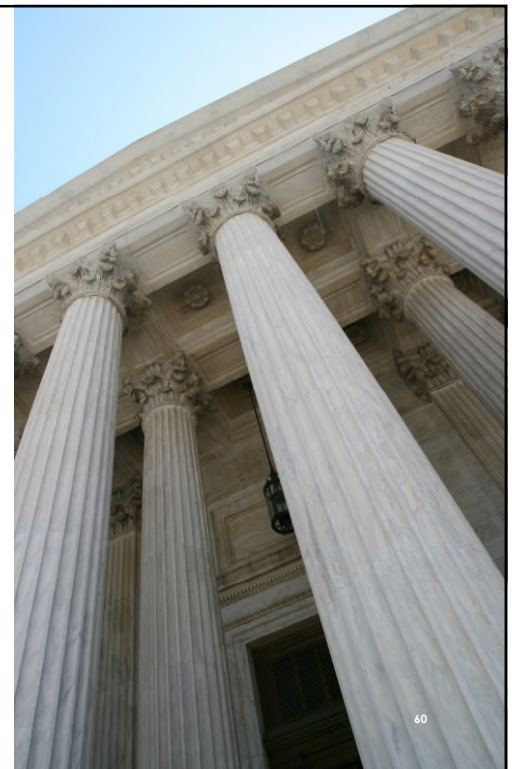


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The Dissents

“the majority...announces ‘colorblindness for all’ by legal fiat. But deeming race irrelevant in law does not make it so in life.”



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Justice Gorsuch's Foreboding Concurrence

- No reason to interpret Title VII any differently than Title VI
- Both use similar wording to prevent discrimination
- Title VI states any programs receiving federal funding may not discriminate on grounds of "race, color, or national origin"



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The Messages:

**Employers
Beware**

**Battle Lines
Drawn**



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Claims from Conservative Activists

- EEOC urged to investigate Fortune 500 Companies' DEI Efforts
- Suits filed against large law firms for their DEI initiatives



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Impact: Companies / Firms Rolled Back DEI Initiatives

- Google & Meta defunded DEI
- Zoom & Tractor Supply laid off DEI teams
- Moolson Coors rolled back DEI initiative
- Macy's & Target lost customers & faced legal fights over DEI programs
- Ford, Harley Davidson, Deere, & Lowes curtailed some DEI programs
- Some law firms re-evaluated DEI initiatives



10/9/24 WSJ Article



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USSC Decision in *Ames v. Ohio* (U.S. 2025) re: Reverse Discrimination

- Marlene Ames – Heterosexual woman & Ohio state employee passed over for a promotion in favor of a lesbian candidate. Later demoted and replaced by a gay man.
- Sued under Title VII claiming reverse sex discrimination (based on her heterosexual orientation).
- District Court ruled for employer because she didn't satisfy a "background circumstances" requirement: that the employer was "the unusual employer" who discriminates vs. a member of a majority group.



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Court of Appeals (6th Circuit)

- Appeals court affirmed. Agreed that, as a "majority-group" plaintiff, Ames needed to offer additional "background circumstances" beyond what is ordinarily required in a Title VII prima facie case.

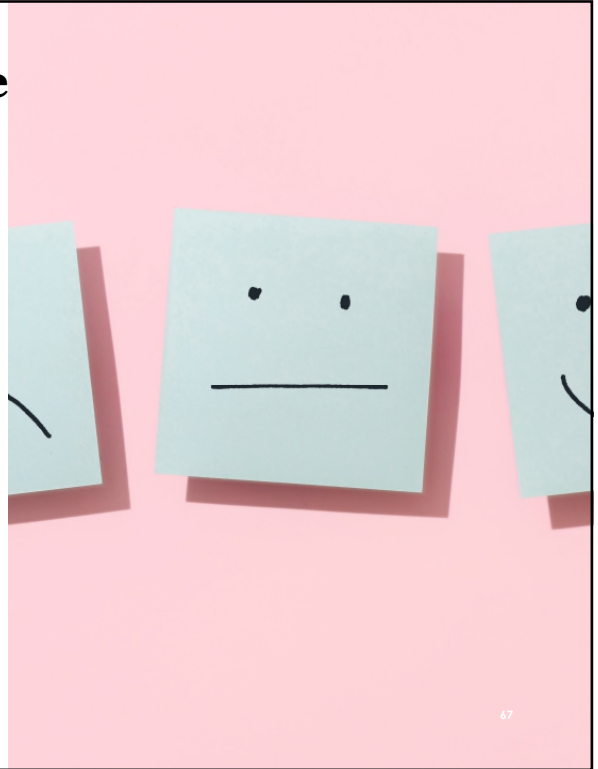


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Prima Facie Discrimination Case (i.e., what an employee must show)

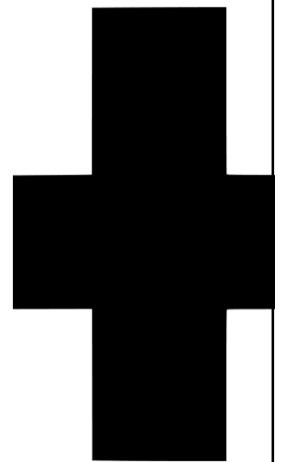
- Protected class
- Adverse employment action
- Employee met legitimate performance expectations
- Employee treated differently from similarly situated employees outside protected class



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Court of Appeals (6th Circuit)

The “something more” (the plus factor) was evidence showing that the employer was inclined to discriminate against majority-group members (here, straight or non-LGBTQ employees).



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USSC Unanimous Holding – Feb. 2025

- No special or extra proof requirements may be imposed on majority group plaintiffs bringing “reverse discrimination” claims.
- Why? Title VII prohibits discrimination vs. **any individual**. Title VII does not distinguish between plaintiffs based on whether they are part of a historically disadvantaged group.

No ruling on the merits of the discrimination claim. USSC only decided the standard.

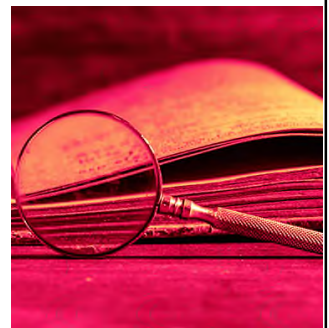


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Implications for DEI

- DEI policies giving preferences to historically underrepresented groups may be vulnerable to reverse discrimination claims.
- Employers will need clearer records & rationales for how DEI initiatives are structured.
- More employers may scale back DEI efforts, fearing litigation.



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Executive Orders (“EOs”) Issued 1/21/25

- “Initial Rescissions of Harmful Executive Orders and Actions”
- “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”



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EOs Criticized Private Employers

that have “adopted and actively use dangerous, demeaning, and immoral race-and sex-based preferences under the guise of so-called ‘diversity, equity, and inclusion’ or ‘diversity, equity, inclusion, and accessibility.’”

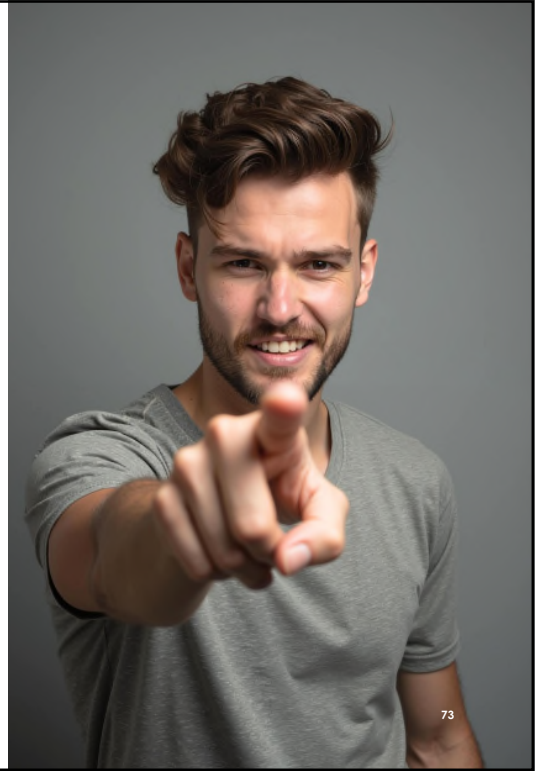
- Take employee questions and concerns about DEI seriously.



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EO's Pointed Out

that “[i]llegal DEI and DEIA policies ... deny, discredit, and undermine the traditional values of hard work, excellence, and individual achievement in favor of an unlawful, corrosive, and pernicious identity-based spoils system”



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EO's Pointed Out

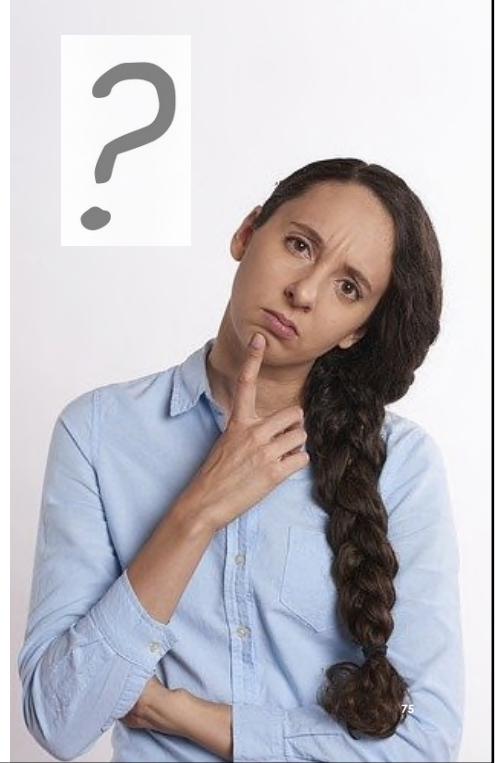
and by “diminishing the importance of individual merit, aptitude, hard work, and determination when selecting people for jobs and services in key sectors of American society.”



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Illegal DEI?

- “Illegal DEI” seems to refer to “reverse discrimination.”
- Yet, the EEOC says, “There is no such thing as ‘reverse discrimination.’ There is only discrimination based on protected characteristics.”
- Query: Do the EO’s intend to eliminate all DEI programs irrespective of preferences, set asides, & quotas?



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EEOC/DOJ Guidance re: What DEI Related Discrimination Includes



- Employee resource or other affinity groups limited to employees based on race, sex, or other protected characteristics
- Unlawful quotas based on those characteristics
- “Balancing the workforce”
- Employer use of “diverse slates” – pools of job applicants that deliberately include people of diverse backgrounds
- Excluding workers from training/mentorship programs



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DOJ Guidance On Unlawful DEI Practices

- Department of Justice memo (7/29/25) addressed to federal funding recipients
 - DOJ memo relies on Title VII, which applies to private employers
- DOJ lists DEI practices that may violate federal employment laws



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DEI Practices that May Violate Federal Employment Laws

- Prioritizing candidates based on protected characteristics
- Mandating race-based composition in interview slates
- Favoring vendors based on sex or race
- Reserving opportunities for specific racial groups



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Difference between Legal & “Illegal” DEI

Policies and practices that promote the concept of diversity and diversity of thought

vs

Policies and practices that provide preferences based on factors such as race, gender, and other protected characteristics

Permissible

Not Permissible



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Do's

There's a lot you can do



80

Do's

- Establish clear and lawful hiring criteria based on qualifications and merit
- Prioritize widescale recruitment efforts to attract a large pool of applicants from a variety of backgrounds, educational experiences, and schools
- Be open to all candidates
- Train your interviewing and hiring team
- Consider providing the hiring team with a set of several permissible questions



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Do's

- Ensure multiple managers are involved in employment decisions like hiring, promotions, discipline, & termination
- Set clear expectations re: the skills, experience, behavioral traits, and outcomes required for a position
- Develop a position profile that transcends a job description and outlines what success would look like



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Do's

- Specify what a candidate will be doing and identify the most important outcomes the candidate must deliver
- Use behavioral-based questioning in interviews
 - Ask open-ended not leading questions
 - Focus on the circumstances, what actions the candidate took, and the results the candidate achieved



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Do's

- Hire, develop, and promote the most talented and productive employees irrespective of protected characteristics
- Provide all employees with opportunities to learn, develop, and grow
- Be sure hiring manager can lawfully justify why "X" was hired over others
- Document hiring decisions
- Make employees feel valued



84

Don'ts

What **not** to do



85

Don'ts

- Don't set aside positions or set quotas based on protected characteristics
- Don't use race/gender as a "plus" factor or to earmark positions
- Don't use DEI initiatives that include specific numerical targets
- Don't tie executive compensation to attainment of DEI goals
- Don't discriminate



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Don'ts

- Don't engage in affirmative action
- Don't set deadlines or unrealistic timeframes for achievement of DEI goals
- Don't restrict training or mentorship programs based on protected characteristics



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Example 1 of Unlawful vs. Lawful Hiring Inquiries

**Loaded question confined
to Black candidates:**

Unlawful

Tell me about your experience growing up as a poor, Black boy in NY and how you overcame your upbringing.

**Neutral question asked of all
candidates:**

Lawful

Tell me about an experience you had with adversity and how you overcame it with resilience.

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Example 2 of Unlawful vs. Lawful Hiring Inquiries

**Loaded question confined
to minority candidates:**

Unlawful

As a minority candidate, you surely have had different cultural experiences. Please tell me how those cultural experiences can help you succeed in our marketing department.

**Neutral question asked of all
candidates:**

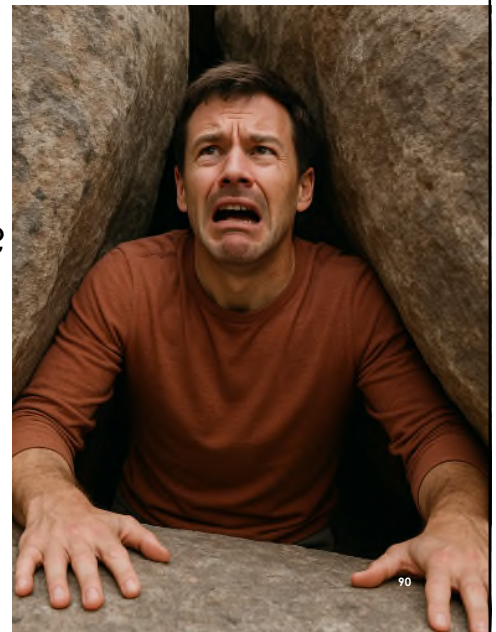
Lawful

Creativity and diversity of thought are important qualities to succeed in our marketing department. Please give me some examples of your creativity and your thought process.

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Should Private Employers Scrap DEI?

- Each employer must answer for itself
- Tension: Advocated and practiced DEI for years. Now, you will abandon what you have touted for fear of repercussions from the Administration?
- Between a rock and a hard place
- What kind of culture do you want?
- Will referring to DEI advance or hinder the culture? Will it be politically or economically risky?



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Should Private Employers Scrap DEI?

- Perhaps update the language to avoid being perceived as “loaded” or even unlawful.
- Instead of using the term “ DEI,” use terms like “welcoming culture” and “meritocracy”
- Exhibit leadership. Take a stand.
- Having employees with varied backgrounds, experiences, thought processes, and views is lawful and advantageous

Fear is a reaction.

Courage is a decision.

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Should Private Employers Scrap DEI?

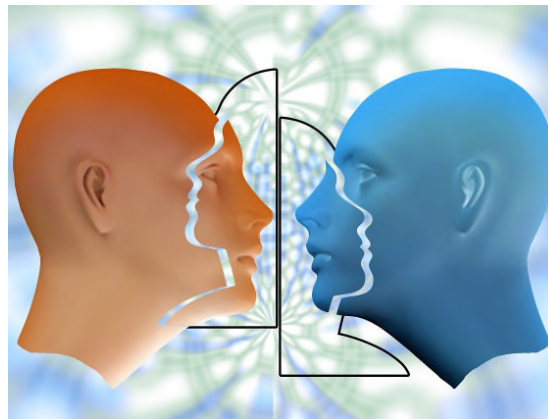
- Making decisions based on talent, skill, merit, innovative ideas, initiative, hard work, & excellent performance will help your organization succeed
- As a by-product, your organization may organically wind up with a cross-section of diverse and collaborative individuals who carry out the mission
- That kind of culture is worth celebrating – whether or not you call it DEI



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Unconscious Bias Training

- 9/2020: EO 13950 restricted training such as unconscious bias
- 2021: Pres. Biden rescinded the EO
- EEOC & DOJ support training designed to prevent discrimination & harassment
- Includes unconscious bias training that is focused on education, awareness, and fairness



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Unconscious Bias

- Often blind to our biases
- Not aware we have them
- Explore some examples through three videos



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Unconscious Bias

- Valerie Alexander
- An exercise from her TED Talk



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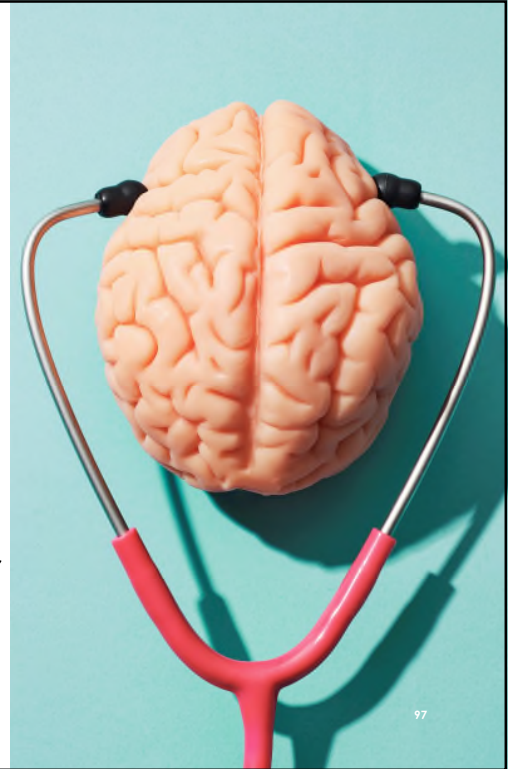


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Unconscious Bias

- Valerie is right
- Our brains “are less of a fan of what’s not familiar”
- We unconsciously fill in the blanks with what is familiar
- That may produce a biased or stereotypical view



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Unconscious Bias

- Another example from the *NY Times*
- Going to watch a few short clips of Kris and Matt
- Identify for yourself which of Kris and Matt is gay



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Unconscious Bias

If you thought Kris was gay, maybe it was because you filled in the gap through what you perceived as the stereotypical sound of a gay person's voice, and the kinds of activities in which gay and straight individuals are perceived to engage



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Unconscious Bias

- We all have unconscious bias on some level
- It's not whether we do
- It's how we deal with it



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Kristin Pressner TED Talk

- Humbling realization of bias
- Takes responsibility for her bias
- Notes we can all fall into the trap
- Clever solution to act bias-free



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TED^x Basel
x = independently organized TED event

Proudly presented by



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Kristin Pressner

- Aspired to create a culture where women are treated equitably, valued, and supported
- Because of unconscious bias, she almost didn't
- Learned a great lesson and how to catch herself



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Tips to Check Yourself

- Be aware of unconscious bias
- Our brains fill in the gap with what is familiar
- Observe your immediate reaction
- Are you stereotyping?
- Are you passing judgment?
- Flip it to test it
- Empathize



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Recap

Explored what DEI is and isn't
Discussed why DEI matters
Examined changes in the law
Compared legal & "illegal" DEI
Reviewed Do's and Don'ts for private employers
Asked, should they scrap DEI
Examined "unconscious bias"



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Questions?



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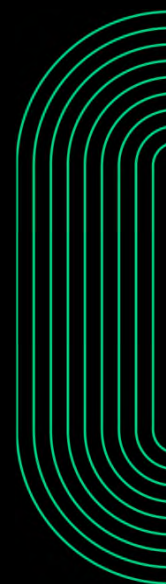
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Conducting Internal Investigations: Best Practices for Public and Private Employers

Presented by:

Yvette Heintzelman, Member
Kaitlin Salisbury, Associate

October 14, 2025



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Presenters



Yvette Heintzelman
Member



Kaitlin Salisbury
Associate



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Overview

- What is an investigation?
- When do employers conduct internal workplace investigations?
- Goals of internal workplace investigations



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Conducting an Investigation

Who should conduct your investigation?

- Capable of being a witness
- Attorney
- HR/ Company Employees
- Third-party investigator – neutral party



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Attorney-Client Privilege

- Attorney-client privilege can protect investigation materials
- Not all investigation materials are privileged
- Designate, but know just designation is not enough!
- Watch for waiver

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Investigation Process

- Review complaint or conduct
- Know the purpose
- Who will conduct the investigation?
- Gather and review all relevant documents prior to beginning interview
- Identify key initial witnesses and timing and order of interviews



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Gathering the Facts

Investigator's Role

- Make factual determinations
- Make findings of fact and recommendations regarding policy violations
- Legal conclusions-- NOT in investigation memorandum

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Five Common Investigation Pitfalls

Practical Tips



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1. Failing to Investigate

- Liability exposure
- Waiting for a complaint
- Being reactive vs. proactive
- How to investigate
- When to investigate
 - Actual knowledge
 - Employee complaint
 - Sufficient facts
 - Observations
 - Rumors / gossip



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2. Not Interviewing the Right People

- Who should be interviewed:
 - The complainant
 - Alleged wrongdoer
 - Co-workers
 - Other witnesses
 - Complainant's supervisor
 - Supervisor of alleged wrongdoer



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3. Failing to Give an Upjohn Notice

- What's an Upjohn Notice?
 - Comes from a USSC case
 - A notice to protect the attorney client privilege
 - Notice that the attorney represents only the organization
 - Does not represent the employee individually
 - A "corporate Miranda warning"
 - The point: the privilege belongs to the organization



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4. Failing to Reiterate Anti-Retaliation Stance and Not Ensuring Employee Safety

- Not advising all that the organization prohibits harassment and retaliation
- Not ensuring employee safety
- Not reducing contact between the complainant & the accused
- Better to move / remove the accused than the complainant



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5. Overpromising / Sympathy

- Don't promise confidentiality
- Don't promise particular action if allegations are corroborated
- Strike a balance between empathy and professionalism



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The Investigation Is Over—Now What?

- Identify decisionmaker
- Review applicable policies
- Review fact-findings of the investigator
- Assess the credibility of evidence
- Determine appropriate response
 - Substantiated
 - Unsubstantiated



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Unionized Workforce Considerations



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Collective Bargaining Agreement

- Important to review in investigation
- Can impact how investigative interview is conducted
- Can impact who can participate

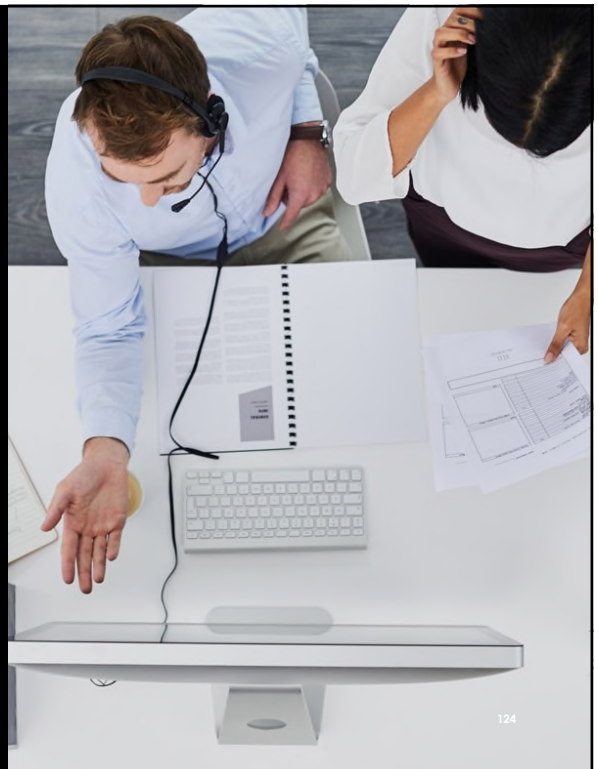


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Weingarten Rights

- Occur when employee is subject to questioning that could lead to discipline
- Employee must invoke
- Representative cannot interfere

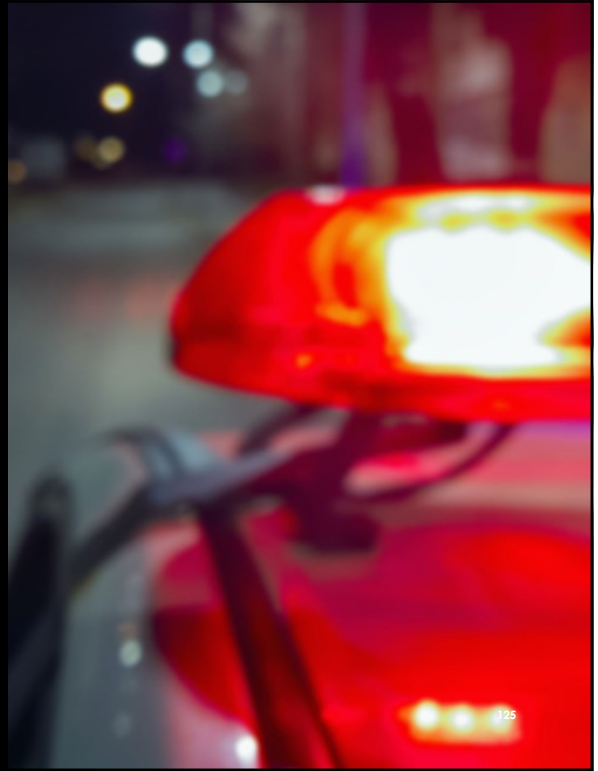


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Special Considerations for Police and Fire Internal Investigations

- Governing Rules
- Peace Officer Disciplinary Act
- Firefighters Disciplinary Act



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Case Study

A scenario

Rumors have surfaced that Frank, who manages the marketing team, is having more than a normal business relationship with his Executive Assistant, Sandy. Someone at the company spotted Frank and Sandy on the jumbotron at a concert together.



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What do you do?

- Is this enough for an investigation?
- Who should conduct the investigation?
- Who should be interviewed as part of the investigation?
- How should you document results?
- What should you do after the investigation?



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Questions?



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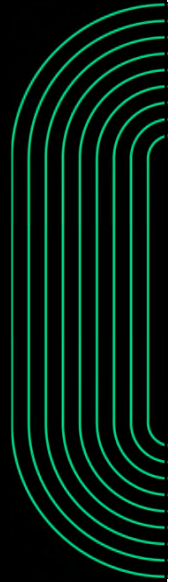
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Hot Employment Law Topics for All Employers

Presented by:

Peter Berk, Senior Attorney
Yvette Heintzelman, Member
Daniel V. Kinsella, Senior Counsel
Hillary Popejoy, Strategic & Crisis Communications Advisor



Presenters



Peter Berk
Senior Attorney



Yvette Heintzelman
Member



Daniel V. Kinsella
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Hillary Popejoy
Strategy & Crisis
Communications Advisor





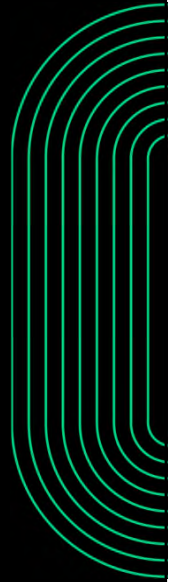
Crisis Communications

Case Studies, Lessons Learned, & Risk Mitigation Strategies

Presented by:

Yvette Heintzelman, Member
Hillary Popejoy, Strategy & Crisis Communications Advisor

October 14, 2025



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Culture, Communications & Risk

Culture Drives Reputation – Reputation Drives Risk



- Most crises start inside an organization **before** it hits social media.
- The warning signs are often there.
- Silos create confusion, expose risk, and slow response times.
- Alignment between teams is critical.
- Most effective crisis management starts before the crisis hits.



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Crisis Management is Managing Risk



In today's world, anything can become public in seconds – a TikTok, internal memo, a private conversation, or a Slack message taken out of context.



Social media turns everyone – employees, customers, prospects – into a journalist with a platform.



Most crises have a legal or financial dimension. How you respond can determine if it stays an issue or becomes a crisis.



Silence is no longer neutral. Narratives form in minutes, and credibility is lost just as fast.



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Crisis Communications Overview/Framework

One viral moment can redefine a company's reputation in minutes.

- A crisis is any event that disrupts operations or damages trust.
- They can be sudden (*ex. accidents, misconduct, data breaches*) or slow-burning (*ex. cultural issues, litigation, changes in regulations*).
- Every crisis has three parts: **what happened, what people think happened, and how you respond**. The response matters more than the event itself. Credibility is often shaped in the first minutes to hours.
- Early coordination between teams builds credibility and trust. Have a structure in place to keep emotion, rumors, and speculation from driving the narrative is key.



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Why Early Communication Matters

Time is your biggest risk.

- Once an issue escalates, timing is everything.
- By the time you see it online, the window to shape perception has already narrowed.
- Early and coordinated communication gives you the chance to frame the facts before speculation fills the vacuum.
- Stakeholders today expect a fast response and transparency.
- Brands that communicate with speed, empathy, and clarity recover faster and maintain trust.
- **The saying is: *the first story told is often the story that sticks.***



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Most crises start as internal issues.

It's a cultural, operational, or personnel issue that grows and eventually becomes public.



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Diversity, Equity, and Inclusion Crises

By The Numbers

- Workplace misconduct costs US businesses **\$20B annually**.
- Public companies facing discrimination lawsuits experience an **average - .035% drop in stock price** after disclosure.
- Target's share price **fell 22%** after backlash tied to its DEI and Pride initiatives.

Implications

- DEI rollbacks or controversy can signal inconsistency in company values.
- Fuels consumer boycotts and market backlash.
- Consumer/stakeholder backlash can dominate the narrative and overshadow mitigation efforts.

Considerations

- DEI issues often lead to cultural flashpoints.
- Build a narrative that aligns with core values and stakeholder expectations.
- Engage legal, HR, and comms early to assess risk, plan disclosures, and sequence messages.
- Prepare early, test the message, and proactively monitor stakeholder sentiment.

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Target

Target scaled back DEI programs under political pressure. The rollback leaked before official communication creating intense consumer backlash, media scrutiny, and lawsuits.

Where it Went Wrong:

- Decisions were made w/o employee input.
- Internal messaging was inconsistent and reactive.
- CEO response came late and lacked transparency and empathy.
- The shifting "why" behind the change created confusion and distrust.

What Could Have Been Done Differently?

- Frame changes as evolving strategy.
- Communicate early and align expectations.
- Prepare consistent talking points/messaging.
- Lead with empathy and reaffirm values.



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Whistleblower & Retaliation Crises

By The Numbers

- Organizations viewed as punishing whistleblowers **have 21% lower employee trust and engagement scores.**
- Companies disclosing whistleblower cases see **stock prices fall an average of - 2.8%.**
- Retaliation makes up **over half** of EEOC discrimination claims, making it one of the most common complaints.

Implications

- Mishandling retaliation or whistleblower claims can signal poor governance and lack of accountability to stakeholders.
- Stakeholders view retaliation as evidence of systemic cultural problems.
- Loss of employee trust and public credibility amplifies long-term reputation and brand damage.

Considerations

- Communicate early and neutrally to demonstrate integrity and control of the narrative.
- Create pre-approved message frameworks that highlight fairness, transparency, and action.
- Review internal reporting and response systems to ensure they align with brand values and risk posture.

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Moët Hennessy

A former Moët Hennessy executive filed suit alleging sexual harassment, discrimination, and unfair dismissal, MH has denied wrongdoing. Coverage highlighted broader questions about the company's workplace culture.

Where it Went Wrong:

- No immediate or transparent acknowledgement of the claims.
- Legal defensiveness overshadowed empathy and accountability.
- Mixed internal and external messages created confusion.
- Leadership silence damaged credibility and cultural confidence.

What Could Have Been Done Differently?

- Launch and independent investigation and share progress transparently.
- Issue a neutral holding statement expressing concern and commitment to fairness.
- Prioritize internal communication and reinforce anti-retaliation protections.
- Align HR, legal, and Communications for consistent tone and timing.



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Executive/HR Scandals – Credibility Crises

By The Numbers

- Organizations with public governance or employee relations issues generate significant reputational damage.
- After scandals are made public, employees report lower sentiment, reduced job satisfaction, and higher turnover.
- Corporate misconduct announcements result in **-4.1% cumulative abnormal stock returns**.

Implications

- Executive or HR misconduct often becomes a reflection of the company cultures and value.
- The perceived credibility of HR is lost if implicated, silent, or seen as complicit.
- Public perception tends to treat executive scandals as systemic failures, not isolated incidents.
- Crises involving leadership often attract heavy media attention.

Considerations

- Build a crisis management plan that anticipates executive misbehavior scenarios.
- The absence of quick, credible communication damages long-term reputation more than the behavior itself. Establish pre-approved messaging that demonstrates accountability and action.
- Treat brand recovery as a long-term process. Integrate action, policy reviews, and communications milestones.

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Astronomer

Astronomer's CEO and Head of HR, both married at the time, were caught on a stadium "Kiss cam," and the video went viral. Moment turned into a credibility crises, raising questions about workplace ethics, leadership judgement, and HR accountability. Both resigned within a week.

Where it Went Wrong:

- Slow acknowledgement allowed rumors and speculation to spread.
- Employees learned through social media.
- No clear internal messaging or visible accountability.
- HR leader's involvement magnified the negative perception.

What Could Have Been Done Differently?

- Issue a brief, factual statement acknowledging awareness and review.
- Communicate internally first to maintain transparency and trust.
- Reinforce ethical standards and HR's commitment to impartiality.
- Manage tone carefully and do not appear defensive or dismissive.



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Layoff/Reduction in Force Crises

By The Numbers

- Mishandled layoffs increase **voluntary turnover by 31%**.
- Employer reputation scores **drop 20-30%** after poorly managed reductions.
- **Consumer trust declines by 21%** when layoffs appear insensitive or poorly communicated.

Implications

- The tone and process of layoffs reflect leadership integrity and organizational values.
- Poor communication turns operational decisions into reputational crises.
- Employee engagement and productivity suffer long after the initial announcement.

Considerations

- Have a strategic plan for communicating both internally and externally.
- Pressure test the message.
- Align internal stakeholders on messaging, tone, and timing.
- After the event, continue to communicate and follow up to rebuild trust and stabilize culture.

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Stripe

Stripe laid off 300 employees through an internal email that included a cartoon duck and wrong termination dates. Screenshots went viral; memo was criticized as tone-deaf and careless. The mistake became the story and damaged trust among employees and the public.

Where it Went Wrong:

- Tone and visuals clashed with the seriousness of the message.
- Inaccurate details fueled confusion and frustration.
- Communication was transactional, lacked empathy or leadership presence.
- Internal and external messaging appeared uncoordinated.

What Could Have Been Done Differently?

- Vet all communications with HR, legal, and comms before release.
- Deliver sensitive news directly from leadership, not through mass email.
- Double-check tone and accuracy, especially when under time pressure.
- Follow up with personal outreach and clarifications.



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Labor Strikes– Credibility Crises

By The Numbers

- US employees **lost 11.6 million workdays** to strikes in 2023.
- The 2023 auto and entertainment strikes cause **more than \$10B in economic losses**.
- Public approval of unions reached **68%**, the highest since 1965.
- Public sentiment often sides with workers.

Implications

- Strikes can disrupt operations, revenue, and brand perception, often with intense media coverage.
- Lack of communication can give opportunity for someone else to control the narrative.
- How an organization responds becomes a reflection of its culture and values.
- Strikes create a perception problem.

Considerations

- Prepare a response framework before tensions escalate.
- Communicate early, acknowledge employee concerns, and reinforce company position.
- Maintain visibility and consistency.
- Keep messaging fact-based and balanced to preserve trust.

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Hilton Labor Strikes

In 2025 more than 400 Hilton Americas Houston employees went on Strike due to wage and safety concerns. As the story spread, the union drove the narrative while Hilton looked distant and reactive. The local press described it as the unions first hotel strike in Texas.

Where it Went Wrong:

- Delayed acknowledgement allowed the union to control public framing.
- Corporate statements lacked empathy and visibility.
- No consistent updates to employees or media during negotiations.
- Leadership absence reinforced perception of indifference.

What Could Have Been Done Differently?

- Issue early, empathetic statements recognizing employee concerns.
- Maintain ongoing communication with staff, media and guests.
- Provide visible leadership engagement and demonstrate accountability.
- Use clear, balanced messaging that supports fairness and business continuity.



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Key Takeaways

Preparation protects reputation

- Anticipate common crisis types
- Build response frameworks early
- Align legal, HR, and communications before issues escalate
- Test messages for tone, timing and consistency
- Practice through simulations



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When You Leave Today – What Steps Can You Take?



- Identify your top 3 internal risks areas that can impact your reputation
- Build or update your crisis playbook
- Identify and align your core teams
- Prepare your spokespeople
- Run a simulation
- Track: social media, employee feedback and external signals for early warning
- Adapt your plans as the ecosystem changes



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Crisis Management is a Team Sport

- Legal protects compliance
- HR protects culture
- Communication protects trust
- Together they protect reputation



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Questions?



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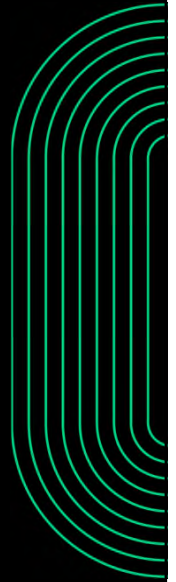
Why and How An Employer Should Protect Its Trade Secrets and Confidential Information:

What Employees Should Know about Protecting Trade Secrets and Confidential Information

Presented by:

Daniel V. Kinsella, Senior Counsel

October 14, 2025



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I. Introduction

The Most Famous Trade Secret:

- **The formula for making Coca-Cola is one of the best kept trade secrets on the planet.**
- **Imagine if that secret formula were to become public by the action of a rogue employee; carelessness; or a cyber-security attack.**
- **Coke's business could be devastated, and it would dramatically impact shareholders and employees.**
- Common sense definition of a "trade secret" (general explanation; not legal jargon)
- Why protecting trade secrets matters (to an employer, employees, and customers)
- Risks include competitors, department employees, cyber threats



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II. What Counts as a Trade Secret?



Examples relevant to an organization (*formulas, processes, client lists, strategies, pricing, etc.*)



What is **NOT** a trade secret (*public information, things easily discoverable*)



The difference between trade secrets, patents, copyrights, and trademarks



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III. Employee Responsibilities



Duty of confidentiality (*while employed and after employment ends*)



Importance of respecting non-disclosure agreements (“NDAs”) and company policies



Safe handling of sensitive documents, data, and discussions



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IV. Everyday Practices to Protect Trade Secrets

- Have a confidentiality / trade secret protection clause in all agreements with employees:
 - Higher level employees – Full blown Employment Agreements with trade secret and confidential information protections.
 - Lower level employees – Offer letter with a confidentiality clause OR a separate Trade Secrets and Confidentiality Agreement.
 - Employee Handbook – Adopt a prominent steadfast policy



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IV. Everyday Practices to Protect Trade Secrets - Continued

- Train **all** employees about the importance of maintaining trade secrets and confidential information – for their employer and for themselves
 - In person and/or video training
 - Issuance of written instructions / directions
 - Password and access security (strong passwords, multi-factor authentication, locking screens)



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IV. Everyday Practices to Protect Trade Secrets - Continued

- “Need to know” principle: share only with authorized colleagues
- Avoid careless talk: elevators, social media, conferences, family/friends
- Properly document storage and disposal (shredding, secure deletion, avoiding personal devices)



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V. Red Flags and Risks

- Not all materials that should be treated on a confidential basis are “marked” as confidential
Examples:
 - A response to a Request for Proposal, or the early drafts of that response may not be marked.
 - A list of the past orders and preferences of a particular customer may not be marked.
 - Drafts of financial or accounting records, including trial balances and drafts of proposed footnotes may not be marked.
- Phishing emails, social engineering, and cyberattacks
- Unapproved use of personal email, cloud services, or USB drives
- Inadvertent disclosures (attachments, “reply all,” wrong recipients)
- Departing employees taking data with them



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VI. Legal and Business Consequences

- Potential liability (civil, criminal, and disciplinary consequences)
- Impact on the employer: lost competitive advantage, reputational damage, lost jobs

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VII. How to Respond to Issues



What to do if you suspect a breach or mistake (reporting channels, no retaliation)



Who to contact (legal, HR, compliance, IT Security)



Importance of prompt reporting to mitigate harm



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VIII. A Culture of Confidentiality

- Emphasize that it is everyone's role and responsibility to safeguard information
- Explain management's commitment to rewarding and protecting employees who do the right thing
- Reinforce that protecting trade secrets and confidential information protects everyone's future



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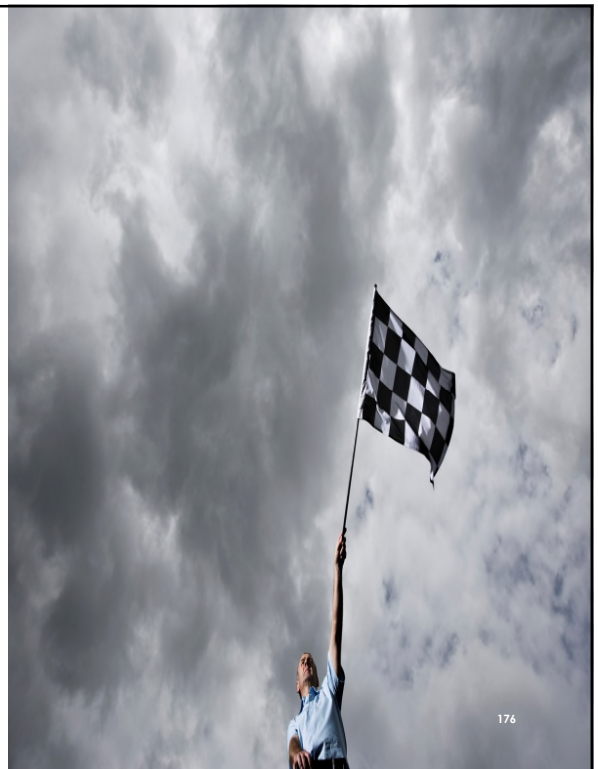
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IX. Conclusion and Key Takeaways

- Remember the definition and scope of trade secrets
- Handle employer information responsibly every day
- When in doubt – ask before sharing, disclosing, or using sensitive information
- Go back and review your agreements, employee handbook, training (if any), and protocols
- When in doubt, contact your legal counsel



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Questions?



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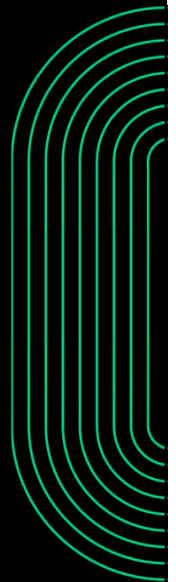


Artificial Intelligence and Employment Law

Presented by:

Peter Berk, Senior Attorney

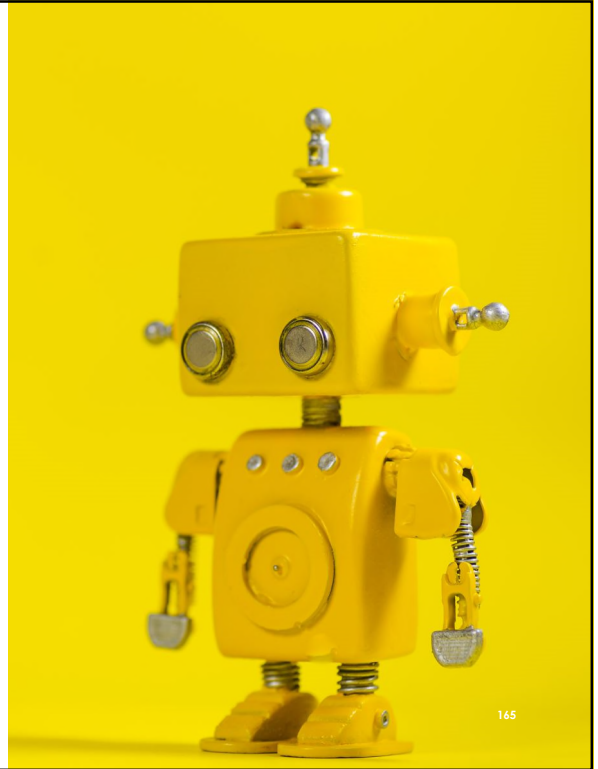
October 14, 2025



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Agenda

- AI Definitions and Use Cases
- State AI laws
- Discrimination Risks
- Privacy Risks
- Hallucination Risk
- Copyright and other liability
- Questions

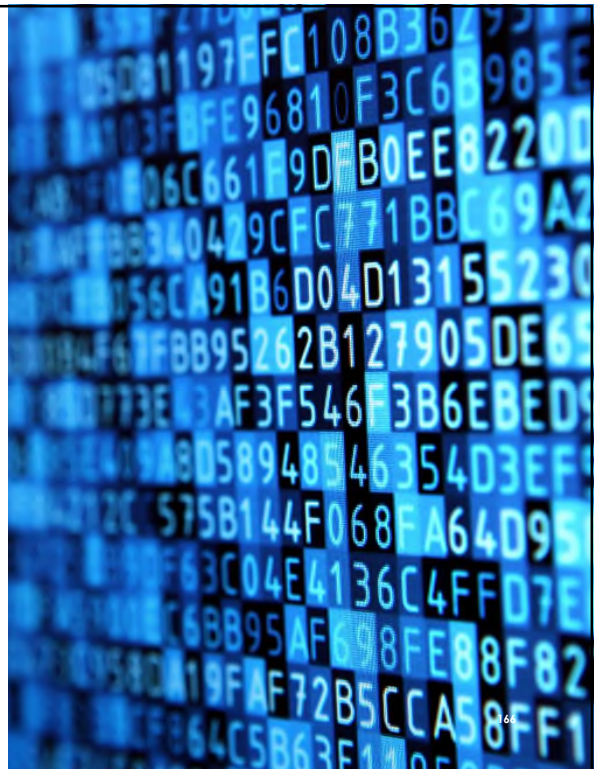


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AI Definitions and Usage

What is AI?

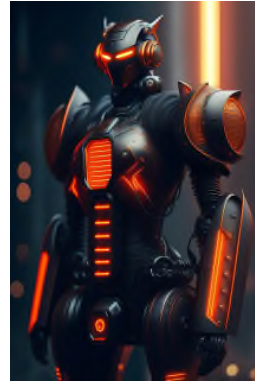
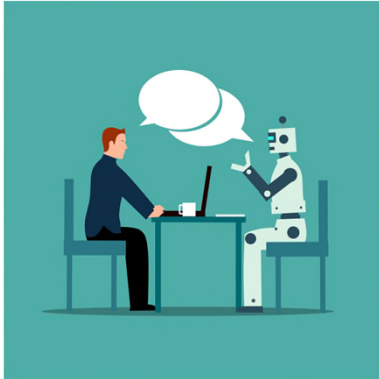
- **ChatGPT (25 words or less):**
Artificial Intelligence (AI) creates systems that can perform tasks requiring human-like intelligence, such as learning, recognizing patterns, and making decisions.
- **AI is not:** AI does not mean a computer is “thinking” or “learning” in the way we think of it. At bottom, its still 1's and 0's.



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AI Definitions and Usage

- Current Uses in employment and business
- Overall Risks of Use



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State Laws Specific to Employment

- Illinois – 820 ILCS 42/1, *et seq.*
- New York – NYC Local Law 144
- Colorado – SB 21-169
- Others
 - California
 - Federal Proposals

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Discrimination

- Relevant Areas
- Case Examples
 - *Huskey*
 - *Kisting-Leung and Lakken*
- EEOC Action
 - *iTutor*
 - Guidance



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Privacy

- Usage of employee/customer personal information
- Usage of data beyond authority
 - Training Data and Privacy
- Relevant Laws (BIPA, GDPR, California)
- Recent Cases – and a trend

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Hallucinations

- AI Hallucination definition
 - Why this happens
- Risk
- Case examples
 - *Walters*
 - *Arve Hjalmar Holmen*
 - Attorneys



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Copyright and Other Liability

- Copyright
 - Training Set
 - Output
- Defamation
- International
- Recent Teen Cases



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Employer Liability for Infringing Output and Mitigation

- Liability
 - Negligence/Duty of Care in deployment
 - FTC Enforcement
 - Legislation
- Mitigation
 - Contractual terms
 - Oversight
 - Other



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Key Takeaways

- AI is a tool not an answer
- Risks Abound
- Human oversight is needed
- AI liability is evolving (Plaintiffs' attorneys, enforcement and legislation)



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Questions?



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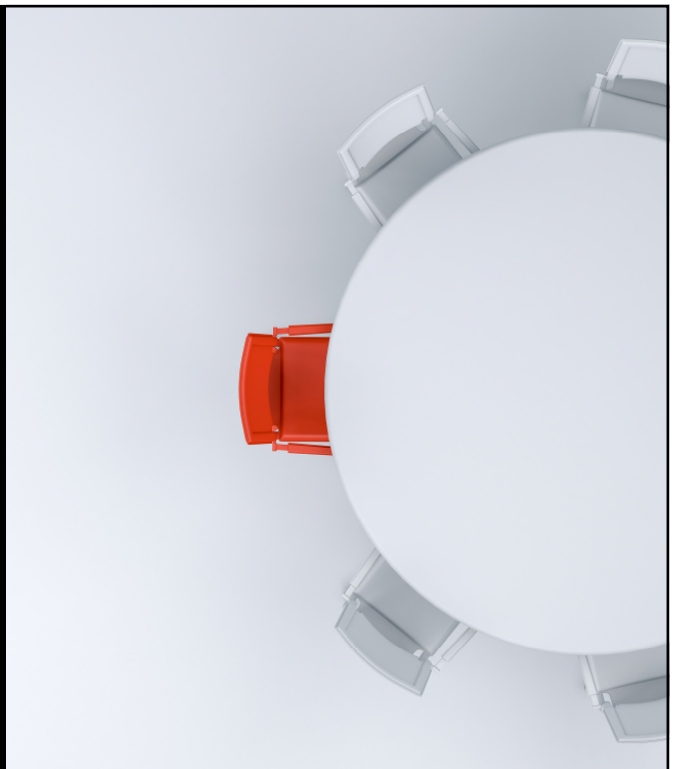
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 Clark Hill

Roundtable Discussion

Everything You Always Wanted to Know About Labor and Employment Law But Were Afraid to Ask



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Reminders

- Approved for 5 hours of CLE with IL State Bar and HCRI/SHRM credit for HR Professionals
- To receive credit, please complete and sign the form before you leave.
- We will send out certificates for SHRM/HRCI following today's symposium.

SHRM Illinois Activity ID: 25-THTSU, 5 HOURS

HRCI Program ID (5 hours): 718534

- Digital copies of slides and white papers will be emailed following today's program



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Thank You

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