



# When It Rains It Pours

## *Stay Afloat with the Deluge of Federal, State & Local Legal Updates*

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***Disclaimer: This presentation is not legal advice and is based upon current statutes, regulations, and related guidance that is subject to change. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps employers must take under applicable laws. For legal advice on these or related issues, please consult qualified legal counsel directly.***

# Weather Team



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# Federal Cases

# U.S. Supreme Court

## *Loper Bright Enterprises v. Raimondo*



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### FACTS

- Challenged rule by the National Marine Fisheries Service (NMFS) requiring Atlantic herring fishermen bear the cost of hiring government-certified observers to collect regulatory data, with fees reaching up to \$750 per day.

### DECISION

- Overturned *Chevron* deference; courts must now determine if agency interpretations of statute are the “correct” interpretation rather than a “permissible” one. Courts must use independent judgment and may not defer to agency interpretation simply because a statute is ambiguous.

# U.S. Supreme Court

## *Loper Bright Enterprises v. Raimondo*



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### Impact

- 1.** Increases vulnerability of agency regulations (DOL, EEOC, OSHA, FTC) to legal challenges
- 2.** Employers should monitor changes in federal rules and potential policy changes, particularly under new administration
- 3.** State regulations not impacted by decision



# U.S. Supreme Court

## *Muldrow v. City of St. Louis*



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### FACTS

- Sgt. Muldrow was transferred against her will to a new role. Her rank and pay remained the same, but her responsibilities, access to certain perks, and work schedule changed. She was replaced by a male officer. Muldrow brought a claim for gender-based discrimination.



### DECISION

- Broadened “adverse employment action” under Title VII to include any treatment that results in a “disadvantageous change” to an “economic or tangible” term or condition of employment.

# U.S. Supreme Court *Muldrow v. City of St. Louis*



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## Impact

1.

Easier for employees to claim discrimination based on adverse job actions

2.

Employers must document objective reasons for job transfers and re-assignments, especially for protected-class employees



# Ninth Circuit Court of Appeals

## *Okonowsky v. Garland*



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### FACTS

- Okonowsky, a psychologist at a federal prison, alleged that a coworker created an anonymous Instagram page filled with offensive and discriminatory content, including posts that implicitly targeted her. More than 100 prison employees, including several senior personnel, followed and interacted with the account.

### DECISION

- Online conduct occurring outside of work and work hours may contribute to a hostile work environment if it affects an employee's working conditions.

# Ninth Circuit Court of Appeals *Okonowsky v. Garland*



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## Impact

1.

Extends “workplace” boundaries to include offsite online conduct

2.

Employers must investigate reported harassment in the context of total environment

3.

Revise social media policies as needed

# Ninth Circuit Court of Appeals

## *Cadena v. Customer Connexx LLC*



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### FACTS

- Employees had to start up computers and open timekeeping software before they could clock in to work. Total startup times ranged from 1 to 20 minutes, with an average of 6-12 minutes. Employees were not paid for startup time. Employer argued that this time was “de minimis” and need not be compensated.

### DECISION

- No “bright line” rule for de minimis time, but key factors must be considered: (1) regularity of the additional work time; (2) aggregate amount of uncompensated time; and (3) the practical or administrative difficulty of recording the additional time.



# Ninth Circuit Court of Appeals

## *Cadena v. Customer Connexx LLC*



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### Impact

1.

Employers face heightened scrutiny on uncompensated time, even in small amounts

2.

Review and adjust policies for pre-/post-shift work

3.

Explore alternative time-tracking methods to ensure compliance

# Ninth Circuit Court of Appeals

## *Mattioda v. Nelson*



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### FACTS

- Dr. Mattioda, a NASA scientist with hip and spine disabilities, alleged he faced a hostile work environment after requesting premium-class airline tickets as an accommodation for work travel, including disparaging comments from his supervisors.



### DECISION

- Confirmed that disability-based harassment claims are permissible under the ADA and Rehabilitation Act.

# Ninth Circuit Court of Appeals

## *Mattioda v. Nelson*



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### Impact

1.

Aligns disability-based harassment protections with those for race, gender, and other protected characteristics under Title VII

2.

Employers must handle accommodation requests respectfully and prevent retaliatory conduct





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# Federal Legislation & Rulemaking

# FTC Noncompete Rule



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FTC issued rule prohibiting all new noncompetes and most existing ones, with limited exceptions for senior executives, effective September 4, 2024



Texas district court issued a nationwide injunction staying the rule from going into effect



FTC has filed an appeal to the Fifth Circuit Court of Appeals; other lawsuits are also pending



Continue to monitor developments, and consider alternatives such as nonsolicitation and confidentiality agreements

# EEOC Guidance on Harassment Claims



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- Sex discrimination includes intentional misgendering and denial of restroom access consistent with employee's gender identity
- Harassment can include online chats and other messaging systems
- Hostile work environment can be caused by any person, including not only supervisors and coworkers, but also customers, clients, vendors, and third parties



# EEOC Guidance on Harassment Claims



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- Severe **AND** pervasive conduct not required for harassment claim; a single severe act may suffice
- Employers have “knowledge” of harassment not only after an official report or complaint, but if any manager or supervisor witnesses the conduct, or if the conduct is widespread and pervasive that employer *should* have known about it

# Pregnant Workers Fairness Act of 2023



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- Made part of the Civil Rights Act of 1964, effective June 27, 2023
- Requires covered employers to provide reasonable accommodations for known limitations on workers due to pregnancy, childbirth, and related conditions (unless causes undue hardship to employer)



# Pregnant Workers Fairness Act of 2023



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- Examples of Accommodations:
  - Drinking water, additional restroom breaks, sitting/standing adjustments, and eating/drinking breaks
- Employers probably already did this based on Americans with Disabilities Act (ADA), but this just creates another law to be sued under!





# New Thresholds for Exempt Employees



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- U.S. Department of Labor adopts increased salary threshold to be considered “exempt” from Fair Labor Standards Act’s (FLSA) overtime rules
- New salary threshold is just under \$44,000 per year to meet executive/administrative/professional exemptions, and increases to \$58,656 beginning January 1, 2025
- Also increased salary threshold for “highly compensated” exemption to \$132,964 per year; will increase to \$151,164 on January 1, 2025
- Thresholds will automatically update every three years!



# New (Old) Independent Contractor Rules



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- U.S. Department of Labor returns to multi-factor test for “independent contractor” status, reversing Trump-era focus on two factors
- Multi-factor test includes:
  - a) extent services are integral part of the business,
  - b) permanency of relationship,
  - c) opportunities for profit/loss,
  - d) initiative/judgment exercised by worker,
  - e) amount of investment, and
  - f) degree of control over worker
- Return to Trump-era focus on two factors in 2025?



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# Washington Legislation & Rulemaking



# Washington Employers on Communicating to Employees on “Political” or “Religious” Matters



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Prohibits employers from disciplining, discharging, or otherwise penalizing employees for refusing to:

-  *Attend or participate in an employer-sponsored meeting with the employer or its agent, representative, or designee, the primary purpose of which is to communicate the employer’s opinion concerning religious or political matters; or*
-  *Listen to speech or view communications, including electronic communications, the primary purpose of which is to communicate the employer’s opinion concerning religious or political matters; or*
-  *As a means of requiring an employee to attend a meeting or participate in communications described above; or*
-  *Because the employee, or a person acting on behalf of the employee, makes a good faith report, orally or in writing, of a violation or a suspected violation of this new law.*

# New Rules for Noncompetition and Nonsolicitation Agreements



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1. While the statute still expressly excludes nonsolicitation agreements/provisions it significantly narrowed the exception.
  - Now captures nonsolicitation provisions/agreements if they “directly or indirectly prohibit the acceptance or transaction of business with a customers.”
  - Further, to be outside the statute the nonsolicit must only relate to “current” customers of the employer. If the limitation includes “past” or “prospective” customers, it would be considered a noncompete and must meet the statutory requirements.
2. Must be provided at the time of the “initial oral or written” acceptance of the job offer.
3. Washington law must apply.



# Expanded Definition of “Family” Under the Paid Sick Leave Law



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Beginning as of January 1, 2025, definitional changes to RCW 49.46.210 will expand who is considered to be the employee’s family member or a child for purposes of using paid sick leave, and expanding when paid sick leave can be used for closure of a child’s school or place of care:

- The definition of “family” is revised to include: (1) any individual who regularly resides in the employee’s home, unless that individual only resides in the same home and there is no expectation of care by the employee; and (2) an individual for whom the relationship creates an expectation that the employee will care for the person, and that individual depends on the employee for care.
- “Child” will now also include the spouse of the employee’s child.
- With regard to closure of a child’s school or place of care, in addition to closure for a health-related reason, paid sick leave can be used when the closure is due to a declaration of an emergency by a local, state, or federal government, which may be unrelated to health issues.



# Clarified Definition of “Construction Worker” Under Paid Sick Leave Law



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Sick Leave Law was amended previously to requiring a payout of accrued sick leave (or PTO if used to satisfy the sick leave requirements) for any “construction worker” who works less than 90 days for the employer:

- *“Construction worker” means a worker who performed service, maintenance, or construction work on a jobsite, in the field, or in a fabrication shop using the tools of the worker’s trade or craft.*

# Expanded Protections Under the Equal Pay and Opportunities Act



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- Washington's Equal Pay and Opportunities Act, which was enacted in 2018, and prohibits discriminatory pay practices, in addition to imposing a number of pay transparency-related affirmative requirements on Washington employers, has until now only addressed gender-based pay disparity.
- As amended, the law now expands those protections to prohibit disparity in pay based upon any protected class status, not just gender:
  - ... age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, as those terms are defined in RCW 49.60.040.*



# New Rules at Construction Jobsites for Menstruating & Lactating Workers



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- Jobsites must now have appropriate bathroom facilities for menstruating construction workers that include, internal latch/locks, adequate time, and an adequate and convenient supply of menstrual hygiene products at no cost to the workers.
  - Menstrual hygiene products must either be located in all gender-neutral bathrooms and bathrooms designated for workers who menstruate, or provided in kits for each worker who needs such product.
- Jobsites must also have appropriate lactation facilities, also including a private space with a lock/latch, convenient and hygienic refrigeration for milk storage, and a convenient water source, near the same location, for the worker to clean/wash their hands and equipment.



# Minimum Wage Increases



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## As of January 1, 2025:

- **Washington State:** \$16.66 per hour
- **Seattle:** \$20.76 per hour
- **SeaTac:** \$20.17 per hour \*\*Hospitality and transportation employees only
- **Bellingham:** From January 1 – April 30, 2025, \$17.66 per hour. From May 1 – December 31, 2025, \$18.66 per hour.
- **Burien:** Based upon size of employer, \$16.66 (1-20 FTEs), \$18.66 (21-499 FTEs) \$19.66 (500+).
- **Renton:** Based upon employer size and gross revenue, ranges from \$16.66 - \$20.90.
- **Tukwila:** Based upon employer size and gross revenue, ranges from \$16.66 - \$21.10.



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# Washington Cases

# *Suarez v. Washington*



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## FACTS

- Suarez worked at a certified nursing facility for adults with disabilities, a facility operates 24 hours a day, seven days a week, and staff are required to do mandatory overtime. After refusing to work mandatory overtime shifts and taking an unscheduled leave for a religious event, Suarez was terminated for unreliability. She then brought claims for religious discrimination.

## HOLDING

- Washington Supreme Court held “[a]n accommodation requiring preferential treatment on the basis of religion to the detriment of other protected classes is unsurprisingly an undue hardship.” The court found that accommodating Suarez’s requests would have required the employer to violate the applicable collective bargaining agreement, and therefore constituted sufficient hardship for the employer to refuse.



# *Bittner v. Symetra Nat'l Life Ins. Co.*



## FACTS

- Bittner was an executive, who claimed his termination was in retaliation for his prior support for his efforts to both support and encourage subordinate employees to pursue internal and external remedies for what they felt was unlawful harassment, as well as objecting to pressure from his manager to fire his oldest employee so they could get more “younger members on the team.” The Company argued that Bittner’s conduct was not protected because it interfered with Bittner’s duties owed to Symetra as an officer and senior manager.

## HOLDING

- The Washington Court of Appeals rejected this argument and held that officials and senior managers’ conduct **must** be protected, otherwise they may be incentivized to “insulate the company from legal liability over their desire to eliminate and prevent discrimination in the workplace.”



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# Oregon Legislation & Rulemaking

# Senate Bill 1515: Changes to Paid Leave Oregon



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- Use of Paid Benefits
  - Employees may choose whether to use any accrued paid benefits during a period of leave *in addition to* their Paid Leave Oregon benefits
- Time Loss
  - Employees eligible to receive unemployment benefits or time loss are ineligible for benefits under Paid Leave Oregon
- Exempts Paid Leave Oregon benefits from garnishment
  - Exceptions: child or spousal support; restitution for crime victims



# Senate Bill 1515: Changes to OFLA



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- Reasons for leave that no longer qualify
  - Parental leave
  - Serious health condition leave
- Bereavement leave capped
  - Two weeks per death of a family member; four weeks per leave year
- Expands sick child leave
  - No longer limited to serious health conditions
- Child placement leave
  - Temporarily covers two additional weeks of leave for the fostering or adoption process

# Post SB 1515: Coordinating Protected Leave



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## Paid Leave Oregon

### Qualifying reasons for leave:

- Family leave
- Medical leave
- Safe leave

### Duration of Leave:

- 12 weeks: family, medical, or safe leave
- 2 weeks: limitations related to pregnancy

## OFLA

### Qualifying reasons for leave:

- Sick child
- Bereavement
- Pregnancy disability
- OMFLA
- Temporary: child placement

### Duration of leave:

- 12 weeks: sick child/bereavement
- 12 weeks: pregnancy disability
- Temporary 2 additional weeks for child placement leave

# One to Watch: Proposed OAR 839-005-0010



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- Proposes definitions of “appropriate corrective action” and “promptly correcting harassing behavior”
  - Means that an employer
    - Intervenes without avoidable delay to effectively halt harassing behavior;
    - Adequately investigates and ascertains the extent of harassing behavior;
    - Takes appropriate disciplinary measures proportionate to the seriousness of the offense;
    - Does not penalize the reporting employee or make the aggrieved party worse off; and
    - Effectively acts to prevent further harassment or retaliation against the reporting employee or aggrieved party for reporting or exercising rights concerning harassing behavior
- Incorporates additional express obligations on an employer’s response to reports of harassment in the workplace





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# Oregon Cases

# Lessons Learned: *McClusky and Cuddigan-Placito*



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- When considering employee discipline, be sure to evaluate the full picture
  - Has the employee engaged in protected activity?
    - Reported a concern regarding safety, compliance, or violation of potentially applicable law?
  - Is the reason for the discipline based on the protected activity?
  - How close in time is the disciplinary action to the protected activity?

# THANK YOU



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