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EXECUTIVE SERIES:
LABOR & EMPLOYMENT



Surviving the Earthquake: Shifting Priorities at the DOL and NLRB

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Program Outline

- I. DOL Wage & Hour 2025 Update
- II. NLRB 2025 Update
- III. EEOC 2025 Update

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DOL Wage & Hour Update

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2024 Minimum Salary Rule

- **April 2024:** DOL issues final rule to increase minimum salary threshold for FLSA “white collar” exemptions (exec, admin, and professional).
- **November 2024:** TX Fed. Ct. invalidates rule, DOL appeals.
- **April 2025:** DOL moves to stay appeal, tells court it is reconsidering rule.
- **August 2025:** DOL informs court it “will undertake further regulatory action.”
- **Current Status:** For now, minimum salary level for “white collar” exemptions remains at \$684/week - \$35,568/year (2019 rule). DOL will likely withdraw 2024 rule and propose new minimum salary threshold (number currently uncertain).

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“Dual Jobs” Rule For Tipped Workers

- **2020:** DOL issues rule re: ER’s ability to claim tip credit when workers perform tipped and non-tipped duties. (Never takes effect)
- **2021:** DOL issues “80/20” rule.
- **April 2024:** Fifth Cir. vacates “80/20” rule, original 1967 regulation takes effect.
- **June 2025:** DOL releases proposed rule to rescind original 1967 regulation.
- **Current Status:** 1967 regulation is currently in effect, but may be rescinded. It may possibly be replaced by a rule identical or akin to the 2020 rule.

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Home Care FLSA Exemptions

- **1974/75:** Home care employees who provide “companionship services” and live-in domestic service employees are exempt from certain FLSA requirements.
- **2013:** DOL issues rule preventing third-party employers (e.g., home care agencies) from claiming either exemption.
- **July 2025:** DOL issues proposed rule to reinstate exemptions for third-party employers, and instructs personnel to stop enforcement of 2013 rule.
- **Current Status:** If it becomes final, the proposed rule will have significant effect on employers that place home care employees in private homes (in states that follow FLSA standard).

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Newly-published Regulatory Agenda

- **New Joint Employer Standard Under FLSA?**
 - **No proposed rule yet**, but may possibly look similar to 2020 rule (more narrow than current standard).
- **New Independent Contractor Standard Under FLSA?**
 - **No proposed rule yet**, but very likely will be more business-friendly than current standard (2024 rule).
 - **May 2025:** DOL issues enforcement guidance directing personnel to not apply 2024 rule in investigations.
 - “The Department intends to rescind the 2024 IC rule and is considering how it will proceed. . . .”

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Enforcement Updates

- **Liquidated Damages**
 - **June 2025:** DOL issues Field Assistance Bulletin stating it will not seek or collect payment of liquidated damages in any administrative matter under FLSA. (Does not include lawsuits in court.)
- **PAID Program**
 - **July 2025:** DOL announces return of Payroll Audit Independent Determination (PAID) program, which allows ERs to resolve FLSA and certain FMLA violations through self-audit and voluntary reporting without incurring penalties beyond any back wages owed. (Does not affect EE rights under state law.)

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NLRB Update

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Shifting Staff And Board Members

- **January 2025:** GC and Board Chairperson removed, leaving NLRB without a quorum.
- **February 2025:** Acting GC removed, new Acting GC appointed.
- **March 2025:** New GC nominated (not yet confirmed). D.C. Fed. Ct. holds Chairperson's removal unlawful, and DOJ appeals.
- **May 2025:** SCOTUS grants stay of D.C. Court's order, and thus Chairperson cannot continue to work.
- **July 2025:** President nominates two individuals to vacant seats (not yet confirmed).
- **Current Status:** NLRB will remain without quorum and unable to act unless/until new nominees are confirmed by Senate.

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Policy Trends

- Despite no Board quorum, Regional Offices have continued to accept, process, and investigate ULP charges (though currently closed due to shutdown).
- **February 2025:** Acting GC rescinds 31 Biden-era memoranda.
 - **Rescinded:** Memo endorsing expansive view of “protected concerted activity.”
 - **Rescinded:** Memo taking position that non-competes in employment contracts generally violate NLRA.
 - Many memoranda rescinded “pending further guidance.” (none yet)

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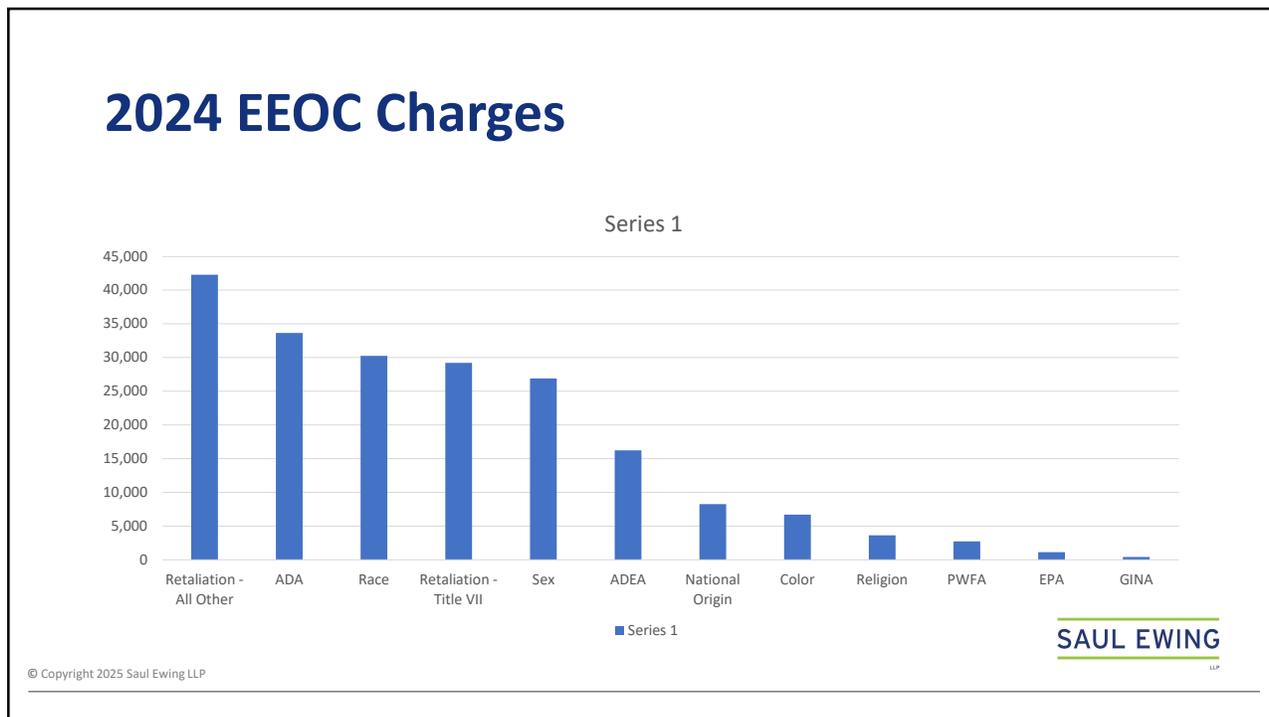
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EEOC Update

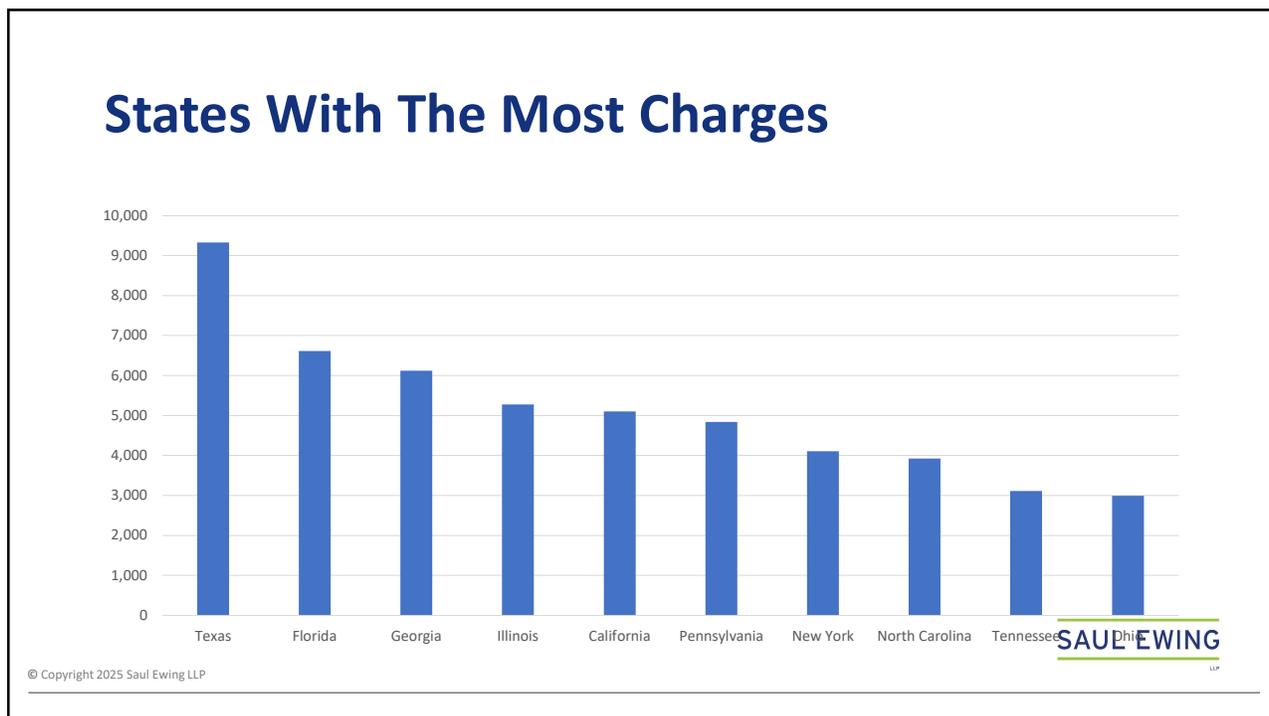
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2025 EEOC Changes

- **January 21, 2025:** President Trump appointed Andrea R. Lucas as EEOC Acting Chair.
- **January 30, 2025:** President Trump removed General Counsel Karla Gilbride, as well as two Commissioners.
- **February 4, 2025:** President Trump appointed Andrew Rogers as Acting General Counsel.
- **October 7, 2025:** Senate confirmed new Commissioner Brittany Panuccio; gives quorum.

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2024 v. 2025 EEOC Initiatives

2024

- Eliminating barriers in recruiting and hiring.
- Protecting vulnerable and underserved workers.
- Addressing emerging issues like AI and long-term COVID.
- Preserving access to the legal system from overly broad agreements.
- Preventing harassment.

2025

- Anti-American Bias – abuse of legal immigration system or contributing to illegal immigration.
- Antisemitism on Campuses – religious bias and harassment.
- Leadership for the Employment of American with Disabilities (LEAD Initiative) – goal to increase the population of individuals with severe disabilities employed by the federal government.

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EEOC And State Agencies

EEOC

- Majority race discrimination.
- Male-complainant discrimination.
- Religious discrimination and harassment, particularly Antisemitism.

State Agencies

- Minority race discrimination.
- Sexual orientation, gender expression, gender identity.
- Mental disabilities.

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EEOC Investigations/Enforcement

- Targeting institutions of higher education, DEI programs.
- Changes to the investigative process:
 - Extensive information requests.
 - In-depth witness interviews.
- Increase in probable cause findings?

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Disparate Impact Claims

- September 15, 2025 Memo to EEOC area, local, and district offices, directing them to discharge all impact theories by September 23rd; issue right to sue notices by October 31st.
- Disparate impact claims:
 - Codified in Title VII.
 - Facially neutral policies that have disproportionate negative impact on protected classes.
- Administration's rationale: such claims promote the assumption that any racial imbalance in the workforce stems from discrimination.
- Amazon driver sued the EEOC over dropping use of disparate legal impact theory.

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