EXECUTIVE SERIES:
LABOR & EMPLOYMENT

FROM DHS TO NLRB - FEDERAL ENFORCEMENT PRIORITIES



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ENFORCEMENT PRIORITIES: UNITED STATES DEPARTMENT OF HOMELAND SECURITY



Cynthia Gomez, Partner

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WHY DHS ENFORCEMENT MATTERS TO EMPLOYERS

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- **I-9 Compliance**
  DHS can inspect an employer's Forms I-9 and related employment records
- **Worksite Enforcement**
  ICE and HSI may appear at a workplace as part of an investigation or enforcement action
- **Employee Impact**
  Enforcement involving an employee can create immediate HR, staffing, payroll, leave, and business continuity issues
- **Employer Liability**
  Immigration compliance violations can result in civil penalties and, in certain circumstances, criminal exposure
- **Operational Disruption**
  An unexpected government visit can quickly involve HR, management, security, legal, and communications teams
- **Preparation Matters**
  A clear response protocol helps employers protect their rights while complying with lawful government requests
- **Bottom Line:** Immigration enforcement is not just an immigration issue. It is an HR, compliance, and business continuity issue

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KEY DHS ENFORCEMENT PRIORITIES

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Where DHS attention lands inside the workplace

WORKSITE ENFORCEMENT
ICE and HSI target unlawful employment, knowing employment of unauthorized workers, and egregious worksite violations.

FORM I-9 INSPECTIONS
Continued attention to Notices of Inspection, recordkeeping, corrections, reverification, retention, and audit trails.

WORKER EXPLOITATION
Emphasis on smuggling, document fraud, forced labor, trafficking, and money laundering that intersect with the workforce.

INTERAGENCY COORDINATION
Cases may involve DOL, DOJ, SSA, and the IRS where wage, documentation, tax, or discrimination issues overlap.

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THE I-9 INSPECTION PROCESS: WHAT YOU NEED TO KNOW

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1. **Notice of Inspection** — the process typically begins when ICE/HSI serves an NOI requesting I-9 records and related documentation
2. **Three business days** — employers generally have at least three business days to produce the requested I-9 forms
3. **Supporting documentation** — agencies may also request payroll records, employee lists, business records, and E-Verify documentation
4. **Potential outcomes** — technical or procedural failures, suspect documents, discrepancies, notices of intent to fine, or referral for further investigation
5. **Be ready in advance** — know who receives government notices, who calls counsel, where I-9s are stored, and how records are gathered quickly

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CURRENT RISK AREAS

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Where the errors show up

- Systemic I-9 errors: missing signatures, incomplete Section 2 entries, late completion, inconsistent corrections, improper reverification
- Work authorization changes: expiring EADs, Temporary Protected Status developments, visa-status changes, and gaps in reverification tracking
- Remote and distributed workforces: inconsistent onboarding across locations, remote verification issues, decentralized document retention

Where the exposure widens

- Staffing and subcontractor relationships: reliance on third-party labor, vendors, or contractors without adequate compliance oversight
- Anti-discrimination tension: verification duties must be balanced against rules barring document abuse, citizenship-status and national-origin discrimination, and retaliation

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PRACTICAL EMPLOYER READINESS STEPS

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- **Conduct a privileged I-9 self-audit —** identify missing forms, incomplete fields, late completion, reverification gaps, and retention problems before an agency request arrives
- **Standardize correction protocols —** never backdate, conceal, or overwrite; corrections should be transparent, dated, and consistent
- **Update response plans —** set a protocol for Notices of Inspection, site visits, subpoenas, warrants, and employee communications
- **Train front-line personnel —** reception, security, HR, and managers should know what to do if agents appear at a worksite
- **Review vendor and staffing agreements —** confirm representations, audit rights, indemnities, and escalation processes for immigration-compliance concerns
- **Maintain nondiscrimination safeguards —** avoid over-documentation, selective reverification, or different treatment based on citizenship, status, or national origin

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WHAT EMPLOYERS SHOULD DO THIS QUARTER

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- Inventory where I-9s are stored and confirm who owns the process
- Prioritize a sample or full audit, scaled to workforce size and risk profile
- Refresh HR training on Form I-9, reverification, remote onboarding, and anti-discrimination rules
- Develop a written government-response protocol and test it with HR, legal, security, and operations
- Brief leadership on business-continuity planning in the event of a Notice of Inspection or worksite visit

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READINESS CHECKLIST

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1. **Records:** I-9s located, complete, and retained correctly, with a privileged self-audit completed or scheduled
2. **People:** named owners for receiving government notices, contacting counsel, and producing records within three business days
3. **Process:** written protocols for Notices of Inspection, site visits, warrants, corrections, and reverification tracking
4. **Partners:** staffing, vendor, and subcontractor agreements reviewed for representations, audit rights, and indemnities
5. **Protection:** HR and front-line training refreshed, nondiscrimination safeguards in place, leadership briefed on continuity

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THE ENFORCEMENT OUTLOOK AT THE NLRB: HAPPY DAYS ARE HERE AGAIN(?)

Daniel Altchek, Partner



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OVERVIEW

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- What is the NLRA?
- What is the NLRB? How does the NLRB enforce the NLRA?
- Why are we talking about this *now*?
- Anticipated changes in the law
- Takeaways for employers

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A REFRESHER ON THE NATIONAL LABOR RELATIONS ACT

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Coverage:	• Private sector • Excludes supervisors and managers • ***Includes non-union employees***
Rights:	• Organize • Bargain collectively • Engage in "protected concerted activity"
Regulates:	• Union representation elections • Collective bargaining and labor relations • Interference with protected rights

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WHAT DOES "ENFORCEMENT" MEAN AT THE NLRB?

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Board:

- 5 members, nominated by the President, confirmed by the Senate
- Adjudicates cases, decisions are binding precedent
- Can overturn precedent
- 3 members make a quorum
- By tradition, overturning precedent requires at least 3 votes

General Counsel:

- Nominated by the President, confirmed by the Senate
- Prosecutes cases and sets enforcement priorities
- Can seek to change the law by advancing legal theories through cases
- But it is the Board that makes law

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WHY ARE WE TALKING ABOUT THIS *NOW*

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2020-24:	Biden-appointed NLRB majority and aggressive GC	Novel expansion of NLRA rights for employees and unions	Overturned many established precedents
January 2025:	Board reduced to 2 members; no quorum	Acting GC appointed; rescinded Biden-era guidance	Backlog of cases begins to build
December 2025:	Quorum restored	GC Crystal Carey confirmed	Focus on agency operations

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WHY ARE WE TALKING ABOUT THIS *NOW*

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January – August 2026: GC Carey's Priorities

- Reducing the backlog of cases
- "Promoting fair, efficient, and consistent enforcement" of the Act
  - Encouraging settlements, especially in work rules cases
  - Limiting the use of "enhanced remedies"
  - Narrower requests for evidence in ULP cases

August 2026:

- Fourth Board member was confirmed
- Now there is an employer-friendly majority with sufficient votes to overturn precedent
- GC Carey issued a new memo identifying Board precedents targeted for reversal

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TARGETED PRECEDENTS: UNION STATUS IRRELEVANT

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Severance agreements

- Overturn: *McLaren Macomb*, 372 NLRB No. 58 (2023)
  - Bars severance agreements with broad confidentiality and non-disparagement provisions
- Return to prior standards under which broad confidentiality and non-disparagement provisions were permissible

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TARGETED PRECEDENTS: UNION STATUS IRRELEVANT

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Workplace/handbook rules

- Overturn: *Stericycle, Inc.*, 372 NLRB No. 113 (2023)
  - Facially neutral workplace rules are presumptively unlawful if they have a "reasonable tendency" to chill Section 7 activity
  - Effectively placed the burden on employers to justify commonplace handbook policies
- Restore: *The Boeing Co.*, 365 NLRB No. 154 (2017), as refined by *LA Specialty Produce Co.*, 368 NLRB No. 93 (2019)
  - Balance employee rights against legitimate business justifications

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TARGETED PRECEDENTS: UNION STATUS IRRELEVANT

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Dress codes

- Overturn: *Tesla, Inc.*, 371 NLRB No. 131 (2022)
  - Restrictions on union insignia are presumptively unlawful absent "special circumstances"
- Restore: *Wal-Mart Stores, Inc.*, 368 NLRB No. 146 (2019)
  - Balancing test; partial restrictions may be lawful

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TARGETED PRECEDENTS: UNION STATUS IRRELEVANT

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Protected concerted activity

- *Lion Elastomers LLC*, 375 NLRB No. 41 (Sept. 23, 2026)
  - Remanded to ALJ to decide under *General Motors LLC*, 369 NLRB No. 127 (2020)
  - Restoring the single *Wright Line* standard for abusive-conduct discipline
  - Disregarding the setting-specific misconduct standard of *Miller Plastic Products, Inc.*, 372 NLRB No. 134 (2023), vacated in part, 141 F.4th 492 (3d Cir. 2025) and *Lion Elastomers LLC II*, 372 NLRB No. 83 (2023), vacated and remanded, 108 F.4th 252 (5th Cir. 2024)

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TARGETED PRECEDENTS: UNION STATUS IRRELEVANT

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Expanded/consequential remedies

- Overturn: *Thryv, Inc.*, 372 NLRB No. 22 (2022)
  - Make-whole relief for "all direct or foreseeable pecuniary harms," not just backpay/reinstatement
- Rejected by Circuit Courts as exceeding Board authority:
  - *Hiran Management v. NLRB* (5th Cir.)
  - *NLRB v. Starbucks* (6th Cir.)
  - But upheld by *IUOE, Local 39 v. NLRB*, 127 F.4th 1023 (9th Cir. 2025)

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Captive audience meetings

- Overturn: *Amazon.com Services LLC*, 373 NLRB No. 136 (2024)
  - Prohibits captive audience meetings
- Restore: *Babcock & Wilcox Co.*, 77 NLRB 577 (1948)
  - Captive audience meetings permitted as long as there is no threat of reprisal nor promise of benefit

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TARGETED PRECEDENTS: THE REPRESENTATION PROCESS

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Employer predictions about unionization

- Overturn: *Siren Retail Corp. d/b/a Starbucks*, 373 NLRB No. 135 (2024)
  - Effectively prohibits employer predictions regarding the consequences of unionization unless prediction is based on "objective fact" of "demonstrably probable consequences beyond" the employer's control
- Restore: *Tri-Cast, Inc.*, 274 NLRB 377 (1985)
  - Predictions that unionization would negatively impact ability of employees to address issues directly with their employer were categorically lawful

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TARGETED PRECEDENTS: THE REPRESENTATION PROCESS

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Bargaining orders

- Overturn: *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023), enforced 2026 WL 1079297 (9th Cir. 2026)
  - Dramatically lowered the bar for issuance of bargaining orders without an election; requires card-based recognition if employer fails to petition for an election
- Restore: *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969) and *Linden Lumber Div., Summer & Co.*, 190 NLRB 718 (1971), aff'd 419 U.S. 301 (1974)
  - Bargaining orders issued only where the ULP makes a fair election unlikely
  - Employer may disregard card-based demand for recognition; union must petition for election

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TARGETED PRECEDENTS: UNIONIZED EMPLOYERS

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Waiver of the right to bargain

- Overturn: *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024)
  - Bargaining waiver must be “clear and unmistakable “
- Restore: *MV Transportation, Inc.*, 368 NLRB No. 66 (2019)
  - Bargaining waiver based on “contract coverage” standard

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TARGETED PRECEDENTS: UNIONIZED EMPLOYERS

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Unilateral Changes

- Overturn: *Wendt Corp.*, 372 NLRB No. 135 (2023) and *Tecnocap, LLC*, 372 NLRB No. 136 (2023)
  - Employer must bargain over every issue, including those for which there is longstanding precedent of action, before making pre-contract and post-expiration unilateral changes
- Restore: *Raytheon Network Centric Systems*, 365 NLRB No. 61 (2017)
  - Pre-contract and post-expiration unilateral changes permissible if consistent with past practice

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TARGETED PRECEDENTS: UNIONIZED EMPLOYERS

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Dues checkoff after contract expiration

- Overturn: *Valley Hospital Medical Center, Inc. ("Valley Hospital II")*, 371 NLRB No. 160 (2022)
  - Dues checkoff survives CBA expiration
- Restore: *Bethlehem Steel Co.*, 136 NLRB 1500 (1962), as reaffirmed in *Valley Hospital Medical Center, Inc. ("Valley Hospital I")*, 368 NLRB No. 139 (2019)
  - Dues checkoff may be ended unilaterally at contract expiration

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TAKEAWAYS FOR EMPLOYERS

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- **Settlements:** easier to resolve ULP charges
- **Severance Agreements:** diminished risk
- **Handbooks/work rules:** return to sanity is less risky
- **Union avoidance:** rules have not changed…yet
  - Be aware of state law on captive audience meetings
- **Carefully assess timing of actions:** might be worth acting on anticipated changes in the law based on lead time for any ULP charge
- **Keep in touch with your lawyer at Saul!**

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THE NEW ENFORCEMENT ERA:
EEOC & DOL PRIORITIES



Peter Hall, Partner

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LEARNING OBJECTIVES

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- Identify major EEOC and DOL enforcement changes since 2025
- Recognize the DEI, national-origin, and religious-accommodation theories prioritized by the EEOC
- Assess how recent Supreme Court decisions are reshaping Title VII
- Advise clients on OFCCP changes and DOL wage-and-hour priorities
- Apply practical compliance steps to reduce risk

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WHAT WE'LL COVER

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- What changed and what stayed the same
- EEOC: DEI & "reverse" discrimination
- EEOC: national origin & religion
- DOL: contractors & wage-and-hour
- The management playbook

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FROM SYSTEMIC BARRIERS TO COLORBLIND ENFORCEMENT

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Old Strategic Enforcement Plan (FY2024–2028, rescinded)

- Emphasis on disparate impact theories
- EEOC supported lawful and appropriate DEIA programs
- Expansive "vulnerable worker" priorities (LGBTQI+, immigrants)
- Adopted via public listening sessions + notice-and-comment

New National Enforcement Plan (FY2025–2029, eff. June 4, 2026)

- Abandon disparate impact theories
- DEI programs reframed as enforcement targets
- Single-sex spaces; national-origin ("American workers")
- Issued by Chair directive; no public comment

Sources: EEOC NEP at 3, 5; EEOC Strategic Enforcement Plan FY2024–2028 (rescinded).

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Three Executive Orders Driving the Shift

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EO 14173 (Jan. 21, 2025)
- Targets private-sector DEI
- Revokes EO 11246, LBJ's 1965 federal-contractor affirmative action framework
- Requires certification of no unlawful DEI programs
- Requires agreement that anti-discrimination compliance is "material" to government payment decisions
- Result is greater potential False Claims Act & qui tam exposure



EO 14281 (Apr. 23, 2025)
- Directs agencies to move away from disparate-impact theories "to the maximum degree possible"



EO 13892 (Oct. 9, 2019)
- No regulation-by-enforcement; avoid "unfair surprise"

Sources: Exec. Orders 14173, 14281 & 13892.

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COURTS' ROLE IN SHAPING ENFORCEMENT PRIORITIES

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Key Supreme Court Cases

AMES (2025)

Majority-group plaintiffs need no heightened "background circumstances" showing; same standard for all.

MULDROW (2024)

Discriminatory transfer needs only "some harm" that "need not be significant."

GROFF (2023)

Must show "substantial increased costs" to deny a religious accommodation on undue hardship grounds.

BOSTOCK (2020)

Sex discrimination covers sexual orientation and gender identity.

Sources: Ames, 605 U.S. 303; Muldrow, 601 U.S. 346; Groff, 600 U.S. 447; Bostock, 590 U.S. 644.

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EEOC — DEI & "REVERSE" DISCRIMINATION



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EEOC'S EXAMPLES OF POTENTIALLY UNLAWFUL "DEI"

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- Diverse slates, diverse interview panels, diversity statements
- Compensation/bonuses tied to demographic goals or "quotas"
- ERG/affinity-group membership limited by protected trait
- Training/mentorship/sponsorship allocated by race or sex

Pursuing workplace diversity through these methods can result in allegations of "reverse discrimination."

Sources: EEOC DEI technical-assistance guidance (Mar. 2025); EEOC NEP at 5; Muldrow, 601 U.S. 346.

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WHAT THE AGENCY SAYS VS. WHAT THE CASES HOLD

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The administration's framing

- *SFFA* "ended" race-conscious decisions everywhere
- Voluntary affirmative action is effectively dead
- *Bostock* is narrow / cabined

Sources: SFFA, 600 U.S. 181; Weber, 443 U.S. 193; Johnson, 480 U.S. 616; Bostock, 590 U.S. 644.

What the opinions actually say

- *SFFA* addressed college admissions, not Title VII employment
- *Weber* & *Johnson* still permit narrow voluntary plans (criticized, not overruled)
- *Bostock* squarely protects sexual orientation & gender identity

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ENFORCEMENT IN ACTION: EEOC V. NEW YORK TIMES

As reported, the EEOC sued on behalf of a white male editor passed over for promotion

- Times had published "Call to Action", which reportedly:
  1. Set goal of increasing Black and Latino representation in leadership by 50%
  2. Identified women of color as underrepresented in leadership
  3. Incorporated DEI expectations into leadership evaluations and compensation decisions
- Takeaway: public diversity goals announced with the best of intentions can become Exhibit A against the company

Sources: As reported by Venable and Husch Blackwell (JD Supra);.

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ENFORCEMENT IN ACTION: EEOC V. COCA-COLA BEVERAGES NORTHEAST

As reported, the EEOC sued a Coca-Cola distributor for a women-only trip and networking event, alleging sex discrimination against men

- Women-only event included paid travel, lodging, meals, and networking opportunities
- Theory: event access is a term, condition, or privilege of employment
- Takeaway: single-sex/-race events, ERGs, and programs are squarely at risk

Sources: As reported by Saul Ewing and Butler Snow (JD Supra);

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ENFORCEMENT IN ACTION: IBM'S $17M FCA SETTLEMENT

IBM's DEI-related practices allegedly resulted in race- or sex-based employment decisions → not consistent with anti-discrimination compliance certification

- Announced Apr. 10, 2026; IBM paid $17,077,043
- Conduct: diversity-linked bonuses, diverse slates, demographic goals, restricted training
- Hook: alleged false certification of Title VII / FAR 52.222-26
- IBM denies liability
- Takeaway: DEI-related claims can be pursued as government fraud, not just discrimination

Sources: As reported by ArentFox Schiff and Latham & Watkins, citing DOJ release and settlement.

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TWO MORE EEOC FRONTS: NATIONAL ORIGIN & RELIGION

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National origin / "American workers"

- "H-1B preferred" ads = national-origin evidence
- Project Firewall — DOL–EEOC H-1B enforcement (launched Sept. 19, 2025); first Secretary-certified investigations; back wages, penalties, debarment
- Seward and Son: $150K settlement

Religious accommodation

- *Groff*: employer must show "substantial increased costs" to deny accommodation on hardship grounds
- Religious accommodation theories continue expanding – RFRA, COVID vaccine mandates
- EEOC is actively pursuing religious-accommodation claims
  - Example: Chick-fil-A Sabbath-accommodation suit

Sources: Employment Alert; Employment Law Counselor; Groff, 600 U.S. 447; Project Firewall — DOL (Sept. 19, 2025); EEOC–DOL partnership (Nov. 24, 2025).

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DOL — CONTRACTORS & WAGE-AND-HOUR



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DOL ON TWO FRONTS: CONTRACTORS (OFCCP) & WAGE-AND-HOUR (WHD)

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OFCCP — contractors

- EO 11246 affirmative-action framework revoked
- Part 60 rule scheduled to take effect Oct. 26, 2026
- ~$996M in annual compliance costs eliminated
- Section 503 (disability) & VEVRAA (veterans) survive

WHD — wage & hour

- Overtime remains primary enforcement focus (~80% of back-wage violations)
- 2019 overtime thresholds restored after 2024 rule vacated
  - $684/week for standard salary-basis exemptions
  - $107,432/year highly-compensated
- Rulemaking shifts: independent-contractor rollback; joint-employer proposals
- "Bad actor" enforcement + expanded compliance guidance

Sources: Rescission of EO 11246 Implementing Regulations at 1; 29 C.F.R. § 541.601; Texas v. U.S. Dep't of Labor (E.D. Tex. 2024).

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ENFORCEMENT IN ACTION: WHD'S "RANCHO CHICO" CONSENT JUDGMENT

DOL secured a $750,000 consent judgment against four Washington restaurants for overtime, minimum-wage, retaliation, and child-labor violations affecting 42 workers.

- E.D. Wash. (reported Aug. 2026)
- FLSA overtime + sub-minimum-wage (nonexempt paid salary for all hours) → ~$18,000/employee
- Retaliation against a worker who filed a wage complaint
- Child labor: minors operating hazardous equipment

Source: WHD/DOL (E.D. Wash., 2026).

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THE DEFENSE PLAYBOOK

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1. Review DEI programs now — candidate slates, diversity statements, demographic-linked pay
2. Reconsider single-sex/single-race events, ERGs, and mentorships
3. Review recruiting materials and hiring practices for visa preferences
4. Federal contractors: watch the FCA certification exposure
5. Wage/hour: re-check overtime exemptions, worker classification, and joint-employer/ aggregation issues

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