Labor & Employment Law Roundup: 2025 in Review and 2026 Outlook, Part 1 of 2

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As 2025 comes to a close, the new year offers an opportunity to take a look back at the trends and developments that have shaped labor and employment law over the past year, and what they might indicate about the landscape in 2026.

Employers across the United States have had to manage a shifting legal and regulatory landscape. Companies with workforces both large and small have had to contend with sharp pivots in the enforcement priorities at the federal government level, a quorum-less National Labor Relations Board for most of the year, differing priorities at the state level, and an active court of public opinion.

Here, we examine some major labor and employment legal themes that defined 2025 and how they may impact employers in 2026, as well as new laws employers can expect to take effect in 2026.

The State of Diversity, Equity, and Inclusion

Shortly after he took office, there was much concern over a series of Executive Orders ("EO") issued by President Trump, which called for dismantling of Diversity, Equity, and Inclusion ("DEI") programs.

While these EOs caused much concern among employers, and did appear to threaten companies who chose to keep their DEI programs, the reality in 2025 was much different. Agencies like the EEOC have not yet begun enforcing the EOs against private employers, and the administration has yet to establish a clear plan of enforcement. To date, most litigation and enforcement have been limited to federally funded schools and higher education systems.

Changes to EEOC Policy

The EEOC was rankled by the President's firing of two commissioners early in the year, which left the agency without a quorum for some months. Now that there is a quorum and the EEOC can act, it is clear from updates to the EEOC Guidance that employers should expect the EEOC to pursue race discrimination claims on behalf of majority groups, some of which may be challenging DEI programs or affirmative action hiring.

One such area of focus for the EEOC appears to be national origin discrimination, with emphasis on discrimination against Americans. On November 19, 2025, the Agency issued a publication emphasizing its stance on remedying what it perceives to be anti-American bias. The publication reiterates that Title VII protects against discrimination on the basis of national origin, with an emphasis on discrimination against Americans.

President Trump also issued an order in April 2025 directing the EEOC to deprioritize claims of

"disparate impact." In response to the order, the EEOC closed all investigations into disparate impact on September 30, 2025. While the EEOC's efforts in pursuing the theory have been paused for the time being, employers are cautioned that disparate impact remains a viable theory of liability in litigation.

Some states have taken steps to mitigate the fallout from the EEOC's disparate impact policy. In New York, for example, Governor Kathy Hochul signed a bill codifying disparate impact as a method of establishing unlawful employment discrimination under the New York State Human Rights Law.

Enforcement Under the False Claims Act

The federal government has also signaled an intent to deploy the False Claims Act ("FCA") as an enforcement mechanism of its DEI-related policies. Under the FCA, private companies holding contracts with the government may be liable to the government for "false certifications" of compliance with federal laws. If the government views a particular DEI program or policy as violative of Title VII and other civil rights laws, the government can seek to institute an action under the FCA.

So far, the U.S. Attorney General's deployment of the FCA has been limited to issuing Civil Investigative Demand ("CID") letters to private employers holding contracts with the government. A CID is a legal tool established under the FCA that allows the government to demand documents, responses, and testimony without court approval, and is often a preliminary investigative step to civil action.

The names of employers receiving CIDs are not public due to the investigatory nature of the mechanism; however, it is possible that 2026 may bring to light more information regarding the progress of the Attorney General's efforts under the FCA.

SCOTUS's Ruling in Ames v. Ohio Department of Youth Services

The Supreme Court also weighed in on what has been dubbed claims of "reverse discrimination." In June 2025, the Supreme Court issued an opinion in *Ames v. Ohio Department of Youth Services*, which struck down case law in the Sixth Circuit that created a heightened evidentiary standard for individuals claiming discrimination based on their membership in a majority group under Title VII. In a 9-0 opinion written by Justice Ketanji Brown Jackson, the Court stated that Title VII's plain text bars discrimination against "any individual" because of a protected characteristic and does not authorize different standards for plaintiffs claiming discrimination based on a "protected characteristic" generally considered a majority group characteristic.

Since Ames, we have seen several courts in the Sixth Circuit and beyond citing to the Supreme Court's Ames decision. For circuits previously applying the "background circumstances" test, we have seen several cases where the elimination of the "background circumstances" test has been determinative of the result.

As just one example, a district court in Kansas allowed a white male employee's discrimination and retaliation case to proceed, in part because he was no longer required to show "background circumstances" as previously required in the Tenth Circuit before the Ames decision. The case is *Horinek v. Spirit AeroSystems, Inc*.

Employers Must Stay Vigilant

While for the most part private employers have yet to face direct federal challenges to their DEI programs and policies, employers should continue to stay up to date in 2026 on the shifting priorities

and initiatives taking place at the EEOC and other federal and state agencies responsible for enforcement.

In addition, we expect there to be a continuing uptick in “reverse discrimination” claims on the single plaintiff level, with employees challenging decisions which they believe were motivated by DEI programs or policies.

AI and Employment Law

Throughout 2025, employers continued to shift their core human resources infrastructures to AI platforms, which have found usefulness in recruiting, hiring, performance evaluations, promotions, compensation, and termination decisions. The adoption has outpaced the legal framework, and some states and cities are poised to catch up in 2026. For example:

- New York City’s Local Law 144 requires annual bias audits and applicant/employee notices when a company employs an automated employment decision tool on prospective applicants and current employees.
- In Colorado, the state has enacted a statute that takes effect in June 2026, which designates the use or development of AI systems for employment and hiring decisions as “high risk,” triggering greater duties for both developers of the systems and the employers using their platforms.
- California has also integrated AI-decision-making into its employment regulations. Under California’s Fair Employment and Housing Act, employers may not use automated-decision systems that discriminate against applicants or employees based on protected characteristics, and must maintain automated-decision employment records for a minimum of four years.

In addition to legislation, the EEOC has already indicated that existing anti-discrimination statutes apply fully to employment decisions made by AI in a suit brought against an employer that implemented an automated software decision-making program for employment hiring decisions. The EEOC ultimately settled the case, but the EEOC’s enforcement action represents the Agency’s willingness to bring such a case under federal discrimination laws.

As human resources departments begin to implement AI systems into their workforce management infrastructure, employers should be aware of how these new technologies conduct their decision-making processes, and make sure they comply with existing laws.

Conclusion

As is clear from the legislative, policy, and technological trends and changes noted above, the labor and employment enforcement landscape is ever-changing, requiring employers to be adaptive and malleable. If you have any questions regarding your current workplace policies or compliance with legal requirements, contact any member of Kelley Drye’s labor and employment team.