



BIG BEAUTIFUL
EMPLOYMENT LAW UPDATE
FSA 12TH ANNUAL COMPLIANCE COLLABORATIVE CONFERENCE
Angela H. Sanders

Post & Schell^{PC}
ATTORNEYS AT LAW

© 2025 Post & Schell, P.C.

1



Post & Schell^{PC}
ATTORNEYS AT LAW

**DIVERSITY, EQUITY
AND INCLUSION**

www.postschell.com

2



EEOC/DOJ JOINT GUIDANCE


- DEI programs may violate Title VII if employment action is motivated, in whole or in part, by an employee's or applicant's race, sex, or another protected characteristic
- No legitimate general business interest in diversity and equity (including perceived operational benefits or customer/client preference) have ever been found by SCOTUS or EEOC to permit race-motivated employment actions
- There is no such thing as "reverse" discrimination; there is only discrimination

Post & Schell
ATTORNEYS AT LAW

4

EEOC DEI GUIDANCE

- Prohibited Activity:
 - Exclusion from training, mentoring, sponsorship programs, fellowships, selection for interviews
 - Limiting membership in workplace groups, such as Employee Resource Groups (ERGs), Business Resource Groups (BRGs), or other employee affinity groups
 - Separating workers into groups based on race, sex, or another protected characteristic when administering DEI or any trainings, workplace programming, or other privileges of employment
 - Customer preference is not a defense to discrimination
- Training:
 - Diversity or other DEI-related training may create a hostile work environment if the training is discriminatory in content, application, or context
 - Reasonable opposition to DEI training may constitute protected activity for purposes of a retaliation claim



WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION RELATED TO DEI AT WORK

When you are asked to attend a DEI training, you may have a choice of whether to attend. If you choose not to attend, you may be asked to provide a reason. If you are asked to provide a reason, you may want to consider the following:

What can DEI-related discrimination look like?

Disparate Treatment

Limiting, Segregating, and Classifying

Harassment

Retaliation

Who can be affected by DEI-related discrimination?

What should I do if I encounter discrimination related to DEI at work?

5

5

EEOC: GENDER IDENTITY

April 2025

➡

EEOC instructs staff to sideline gender identity cases

May 2025

➡


Federal court (N.D. Texas) vacates portions of EEOC's Harassment Guidance expanding definition of "sex" under Title VII (use of restroom; misgendering/ pronouns)

July 2025

➡

EEOC resumes evaluation of gender cases

- Applies higher standard of review to transgender bias cases
- Acting Chair announces intent to rescind Guidance related to gender identity discrimination and harassment against LGBTQ+ individuals
- Will align EEOC guidance with EO 14168 (federal agencies to prioritize biological sex in and remove references to gender ideology)
- Cannot rescind guidance until EEOC has quorum




Post & Schell
ATTORNEYS AT LAW

6

6

BEST PRACTICES

- Review:
 - Policies, plans, practices, handbooks, statements
 - Initiatives, programs, training materials, hiring practices
- Compliance Issues:
 - Eliminate diversity quotas, demographic-driven criteria
 - Focus on skills, qualifications
 - Invite everyone – inclusion and belonging
 - Review neutral criteria for unforeseen impact
 - Confirm robust internal complaint processes, anti-retaliation
 - Include non-discrimination clauses in 3rd party contracts



A circular graphic with 'INTERNAL AUDIT' in the center, surrounded by various icons representing different business functions and audit areas.

Post & Schell^{PC}
ATTORNEYS AT LAW

7

7

Post & Schell^{PC}
ATTORNEYS AT LAW

www.postschell.com

WAGE AND HOUR

8

ONE BIG BEAUTIFUL BILL ACT EMPLOYMENT PROVISIONS

- Enacted: July 4, 2025
- Budget and tax bill
- Employer Ramifications
 - New tax deductions for qualified overtime wages
 - No tax on qualified tips
 - Increases tax benefit plan thresholds
 - Expands business tax credits



Post & Schell_{PC}
ATTORNEYS AT LAW

9

9

NO TAX ON QUALIFIED OVERTIME

- Effective **January 1, 2025**
 - New income tax deduction up to \$12,500 (\$25,000 joint return) for "qualified overtime wages" employers report on Form W-2
- "Qualified Overtime"
 - Overtime wages which an employer is required to pay under Section 7 of the FLSA:
 - 40+ hours worked in a 7-day workweek;
 - Eligible health care employees who work 8+ hours in a day or more than 80 hours in a 14-day period; and
 - Law enforcement and fire employees who work 216+ hours in a 28-day period (or proportional)



**DOES NOT
INCLUDE
VOLUNTARY
PREMIUM PAY!!**

Post & Schell_{PC}
ATTORNEYS AT LAW

10

10

NO TAX ON QUALIFIED TIPS

- Effective **January 1, 2025**
 - New deduction of up to \$25,000 for “qualified tips” reported by employers on Form W-2
- “Qualified Tips”
 - Paid in cash, credit/debit card, through tip-sharing arrangements
 - Must work in occupation which customarily and regularly receives tips (list by 10/2/25)
 - Tip is:
 - Paid voluntarily, without any consequence for non-payment;
 - Not the subject of negotiation; and
 - Determined by the payor
 - Does not include mandatory gratuities or service charges automatically charged by establishments
 - Applies to gig-workers and independent contractors who are engaged in a course of trade or business that customarily receives tips



Post & Schell_{PC}
ATTORNEYS AT LAW

11

11

BENEFIT PLAN CHANGES EFFECTIVE JAN 1, 2026

- For Employees:
 - Section 125 Dependent Care FSA increases from \$5,000 to \$7,500
 - Permanent extension of telehealth safe harbor for HDHP on first dollar basis without cost sharing
 - HSAs may be used to pay Direct Primary Care (DPC) monthly premiums – up to \$140 for individual, \$300 for family
- For Employers:
 - May provide up to \$5,250/year for employee educational expenses
 - Paid FMLA leave tax credit now permanent:
 - Min. paid must be 2 weeks; and
 - Rate of pay is not less than 50% of EE's normal wages
 - Employer-provided childcare tax credit increase to:
 - 40% of qualifying costs up to a max of \$500,000 (large businesses)
 - 50% of qualifying costs up to a max of \$600,000 (small businesses)

Post & Schell_{PC}
ATTORNEYS AT LAW

12

12

OBBBA ACTION ITEMS

- Educate workforce
 - Not an automatic payroll credit, but an IRS tax credit
 - Benefit plan threshold increases
- Separately track “Qualified Overtime” and “Qualified Tips”
 - Understand pay codes used by your organization
 - Premium Pay often called OT in payroll systems
- New W-2 must track and report Qualified Overtime and/or Qualified Tips
- Maintain documentation of educational expenses, paid FMLA, paid childcare expenses



13

FLSA: LIQUIDATED DAMAGES DOL POLICY CHANGE

- FLSA provides for “liquidated damages”
 - An amount equal to unpaid wages or overtime (double recovery) as compensation for delayed payment
 - Since 2010, DOL sought liquidated damages in administrative, prelitigation matters
- New DOL Guidance (Effective 6/27/25)
 - DOL (WHD) will no longer seek or collect liquidated damages because power not expressly granted to DOL by Congress
 - Investigations limited to back wage recovery; no penalty damages unless case proceeds to litigation
- Courts may still impose liquidated (“double”) damages in FLSA litigation



14

FLSA: DOMESTIC SERVICES EXEMPTIONS

HISTORY OF EXEMPTIONS

- 1974: FLSA extended to “domestic service” employees, including those employed by private households and small companies
 - **Companionship Exemption:** Employees who provide “companionship services” exempt from *minimum wage and OT*
 - **Live-In Exemption:** Employees who provide domestic service in a household and reside in the household exempt from *OT only*
- 1975: DOL issues regulations interpreting the Exemptions, coverage extended to third party employers (home care agencies)
- 2007: SCOTUS holds that DOL has discretion to apply (or not) the Companionship and Live-In Exemptions to employees of home care agencies

Post&Schell_{PC}
ATTORNEYS AT LAW

15

15

FLSA: DOMESTIC SERVICES EXEMPTIONS

PROPOSED RESCISSION OF 2013 REGULATIONS

- 2013: DOL issued regulations narrowing the scope of the Exemptions
 - Third party employers (home care agencies) cannot claim Exemptions
 - Restricted amount of time companion can provide “care” for ADLs – 20%
- 2015: DOL begins enforcing 2013 Regulations
- **July 2, 2025: DOL issued NPRM to rescind 2013 Regulations**
 - Restore Exemptions to home care agencies
 - Eliminate 20% limitation on “care” services
- **July 25, 2025: DOL issued FAB 2025-04**
 - Suspends enforcement of 2013 Regulations pending rulemaking process
 - Reminder: Companionship Exemption does not apply to RNs/LPNs

Post&Schell_{PC}
ATTORNEYS AT LAW

16

16

Post & Schell^{PC}
ATTORNEYS AT LAW

www.postschell.com

DEPT OF
LABOR

17

DOL: OPINION LETTERS
RELAUNCHED 6/2/2025

Wage and Hour
Division

Occupational
Safety and Health
Administration

Employee
Benefit Security
Administration

Veterans'
Employment and
Training Service

Mine Safety
and Health
Administration

Opinion Letters
(FLSA, FMLA)

Letters of
Interpretation

Advisory Opinions
and Info Letters

Opinion Letters

New MSHA
Info Hub

FLSA2025-1: Whether a service provider for a virtual marketplace company is an employee of the company under the FLSA or an independent contractor

FLSA2025-02: Whether a manager or supervisor under Section 3(m)(2)(B) of the FLSA can receive tips from a tip pool when working in a non-supervisory capacity

FMLA2025-01-A: Whether the Family and Medical Leave Act regulations pertaining to substitution of paid leave apply when employees take leave under state or local paid family leave programs

2/5/2025: Enforcement Stay of the COVID-19 Recordkeeping and Reporting Requirements Under 29 CFR 1910.502 (Healthcare ETS)

18

Post & Schell^{PC}
ATTORNEYS AT LAW

© 2025 Post & Schell, P.C.

9



19

Post & Schell
PC.
ATTORNEYS AT LAW

www.postschell.com

NON-COMPETE AGREEMENTS

20

FTC Non-Compete Ban

■ Regulation Timeline:

• April 2024: FTC issued broad non-compete ban

• Aug 2024: Texas federal court struck down rule (FTC lacked authority)


• Sept 2025: FTC dropped appeals (*Ryan, LLC v. FTC*; *Properties of the Villages v. FTC*) – rule is vacated

■ Sept 10, 2025: FTC issued letters to large healthcare employers and staffing firms

• Encouraged to review non-compete agreements and restrictive covenants

• FTC will take action against overbroad or unjustifiably restrictive non-competes that limit worker mobility or patient choice

■ Existing non-competes remain enforceable, subject to state law requirements/limitations



Post & Schell_{PC}

ATTORNEYS AT LAW

21

21

STATE NON-COMPETE LAWS

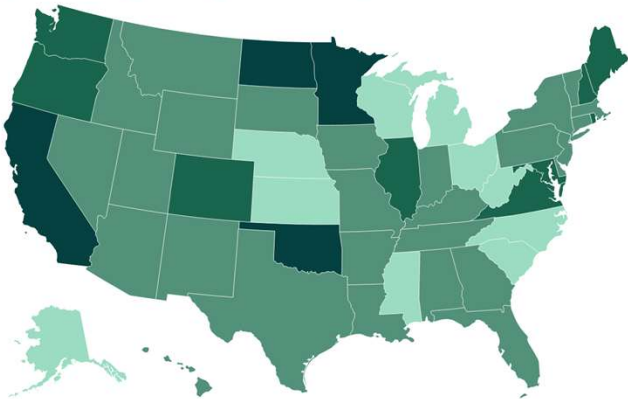
Legislative Restrictions

No restrictions

Full Ban

Income Restrictions

Other Restrictions



Map: Economic Innovation Group

Updated Sept. 21, 2024 (eig.org/state-noncompete-map)

ECONOMIC INNOVATION GROUP

■ **Prohibited:** California, North Dakota, Oklahoma, Minnesota

■ **Income Restrictions:** Colorado, Illinois, Maine, Maryland, New Hampshire, Oregon, Rhode Island, Virginia, Washington

■ **Other Restrictions:** Alabama (professionals), Arizona (broadcast industry), Arkansas (licensed professionals), Connecticut (broadcast; security guards; home health; physicians), Delaware (physicians), Hawaii (employees of tech businesses), Idaho (key employees), Florida (medical specialists), Georgia (sales; managers; key employees), Indiana (physicians), Iowa (healthcare), Kentucky (temporary health care staff), Louisiana (two years), Massachusetts (one year; broadcast; healthcare; students), Missouri (secretary, clerical), Montana (motor vehicle industry), Nevada (hourly employees), New Jersey (domestic workers), New Mexico (healthcare), New York (broadcast), [Pennsylvania \(healthcare\)](#), Texas (physicians), South Dakota (two years), Tennessee (direct care workers), Utah (one year; broadcast industry), Vermont (cosmetology and barber students)

■ **No Restrictions:** Alaska, Kansas, Michigan, Nebraska, North Carolina, Ohio, South Carolina, West Virginia, Wisconsin, Wyoming

22

22

Post & Schell_{PC}

ATTORNEYS AT LAW

11

© 2025 Post & Schell, P.C.

Post & Schell^{PC}
ATTORNEYS AT LAW

www.postschell.com


LABOR RELATIONS

23

NLRB STATUS

THE NLRB HAS BEEN WITHOUT A QUORUM SINCE JANUARY 2025

- Nominations:
 - Scott Mayer (to 2029) and James Murphy (to 2027)
 - Confirmations needed to restore quorum and resume Board decisions
- Employer Impact
 - No precedential rulings until quorum restored
 - Delays in ULP cases and bargaining-related decisions
 - Greater uncertainty in labor law compliance and strategy
 - General Counsel may still issue complaints
 - States attempting to fill the gap, increasing compliance burdens for multi-state employers



24

BIDEN-ERA MEMOS RESCINDED FEBRUARY 14, 2025	
GC 21-06	Instructing Regions to seek "the full panoply of remedies" available in ULP cases
GC 21-07	Instructing Regions to craft settlement agreements that "ensure the most full and effective relief"
GC 21-0	Taking the position that certain college athletes are "employees" under the NLRA
GC 23-08	Declaring that the "proffer, maintenance, and enforcement" of noncompete agreements in employment contracts and severance agreements violate the NLRA
GC 25-01	Taking the position that so-called "stay-or-pay" provisions are unlawful (TRAPs, repayment of sign-on bonus)
GC 22-06	Advising Regions that they may seek a judgment to force employers to comply with the specific terms of settlement agreements in ULP cases
GC 23-02	Raising questions about the impact of electronic monitoring on employee's Section 7 rights
GC 23-05	Clarifying that the Board's February 2023 McLaren Macomb decision that non-disparagement and confidentiality provisions in severance agreements are unlawful applies retroactively to agreements already signed

25

Post & Schell
PC.
ATTORNEYS AT LAW

www.postschell.com

LEGISLATIVE
UPDATE

26

ONE BIG BEAUTIFUL BILL ACT

LONG-TERM CARE PROVISIONS

- Delays implementation of Biden-era CMS minimum staffing rule until **2034**
- Reduces retroactive Medicaid coverage period from three to two months



Post&Schell_{PC}
ATTORNEYS AT LAW

27

27

DOMESTIC WORKER BILL OF RIGHTS

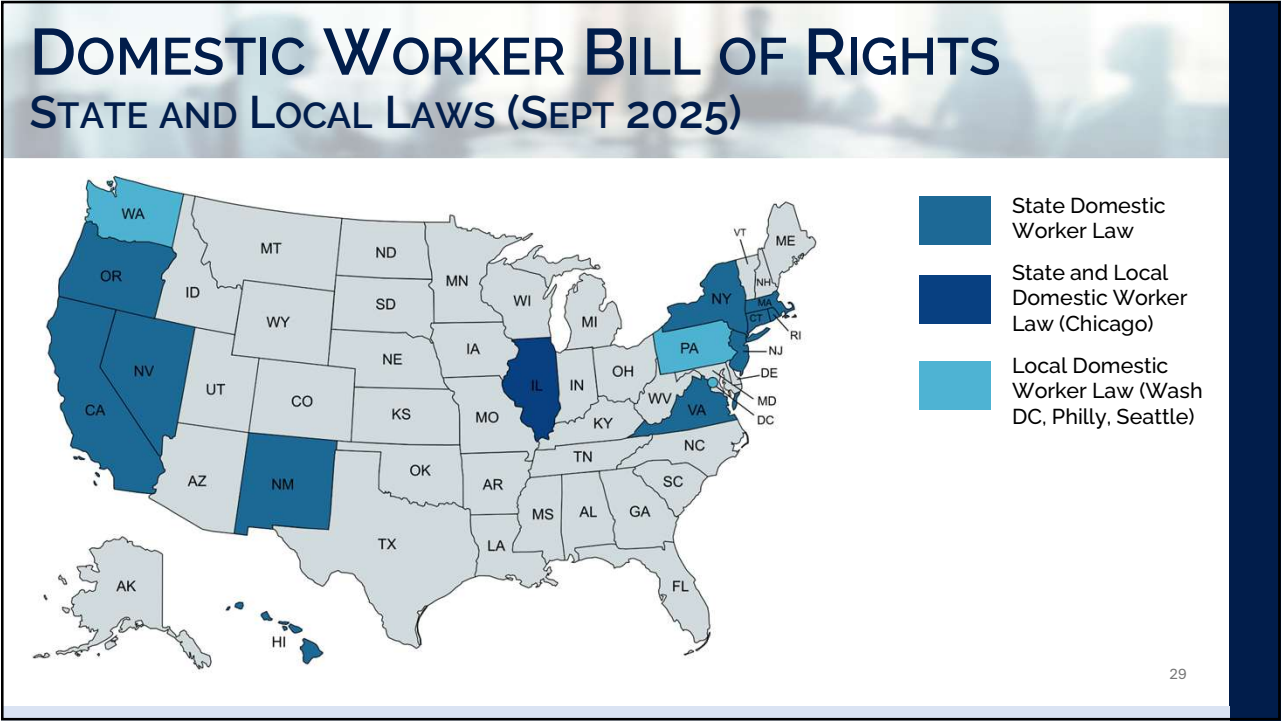
HR 3971

- Introduced in House June 12, 2025
- Previously introduced in 2019, 2021, 2024 – not passed
- Domestic Employee Rights and Protections
 - Repeals FLSA domestic worker exemption from overtime
 - Extends Title VII to domestic workers
 - Requires written agreement for domestic workers
 - Paid sick time of 1 hour/every 30 hours worked; cap 56 hours
 - Provisions for work schedules, meal and rest breaks

Post&Schell_{PC}
ATTORNEYS AT LAW

28

28



29

Post & Schell
P.C.
ATTORNEYS AT LAW

www.postschell.com

IMMIGRATION ENFORCEMENT

30

ESSENTIAL WORKERS FOR ECONOMIC ADVANCEMENT ACT

HR 5494 (Introduced in House Sept 18, 2025)

- Bipartisan proposal previously introduced in 2023-2024 session – no action
- Creates new temporary visa (H2-C)
 - Non-seasonal, nonagricultural work that does not require college degree (including work in long-term care)
 - Visa valid for three (3) years, with two (2) renewals → nine (9) years
- Position requirements:
 - Employer located area where unemployment rate is 7.9% or less
 - Position has been advertised for at least 30 days
 - Position has been unfilled:
 - On first day of month for three (3) consecutive months
 - For more than 60 days in 90-day period
 - Employer cannot layoff U.S. workers to hire H2-C workers

31

31

REMOTE I-9 VERIFICATION

E-Verify users may inspect I-9 documents remotely

- Employee must provide digital copies of the front and back of their employment eligibility and identity documentation
- Employer must examine the documents for authenticity
- Live video call required to confirm documents belong to employee
- Check the box on Form I-9 indicating alternative procedure was used

Post & Schell_{PC}
ATTORNEYS AT LAW

32

32

IMMIGRATION ENFORCEMENT

- **EO 14159: Protecting the American People Against Invasion**
 - Prioritizes strict enforcement of immigration laws
 - Recommits to a policy of mass detention and deportation of immigrants
 - Increased enforcement and collaboration with local authorities
- **Expanded Enforcement**
 - ICE budget tripled → more audits/worksite enforcement
- **Increased Workplace Risk**
 - Workforce disruption in high-risk industries (including healthcare)

33

TERMINATION OF TPS PROGRAMS STATUS AS OF SEPT 29, 2025*

**Dates subject to change based on litigation – check USCIS website before re-verifying*

COUNTRY	DEADLINE TO RE-REGISTER	REVERIFICATION OF REGISTRATION	FINAL DATE FOR EAD	REVERIFICATION OF EAD
Haiti	Aug 3, 2025	Aug 4, 2025	Feb 3, 2026	Feb 4, 2026
Nicaragua	Passed	Passed	Sept 8, 2025	Sept 9, 2025
Venezuela (2023)	April 2, 2026	April 3, 2026	Oct 2, 2026	Oct 3, 2026
Venezuela (2021) (Re-registered by Sept 10, 2025)	Sept 10, 2025 April 2, 2026	Sept 11, 2025 April 3, 2026	Oct 2, 2026	Oct 3, 2026
Venezuela (2021) (Did Not Re-register by Sept 10, 2025)	Sept 10, 2025	Sept 11, 2025	Nov 7, 2025	Nov 8, 2025
Honduras	Passed	Passed	Sept 8, 2025	Sept 9, 2025

34

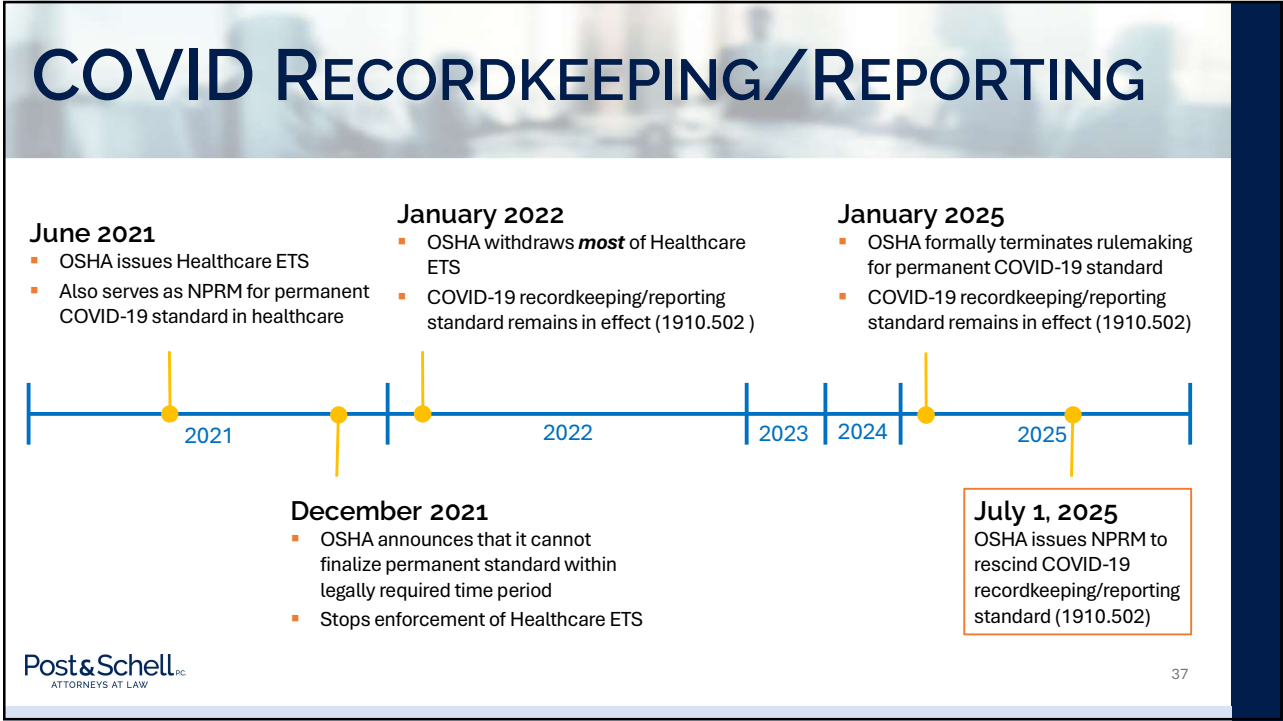
IMPLICATIONS FOR EMPLOYERS

- Strengthen employment eligibility verification practices
 - Periodic internal audits and reverification of EADs/TPS eligibility
 - Train those responsible for I-9 process on proper completion, recordkeeping
 - Conduct extra review if remote I-9 verification was performed
- Prepare for Increased Audits and Enforcement Actions
 - Review policies on hiring, onboarding, and retention of foreign nationals
 - Have ICE response plan in place
- Reevaluate Recruitment and Hiring Strategies
 - Review sponsorship policies to determine the impact of potential delays or denials on workforce planning
- Engage counsel early to mitigate penalties

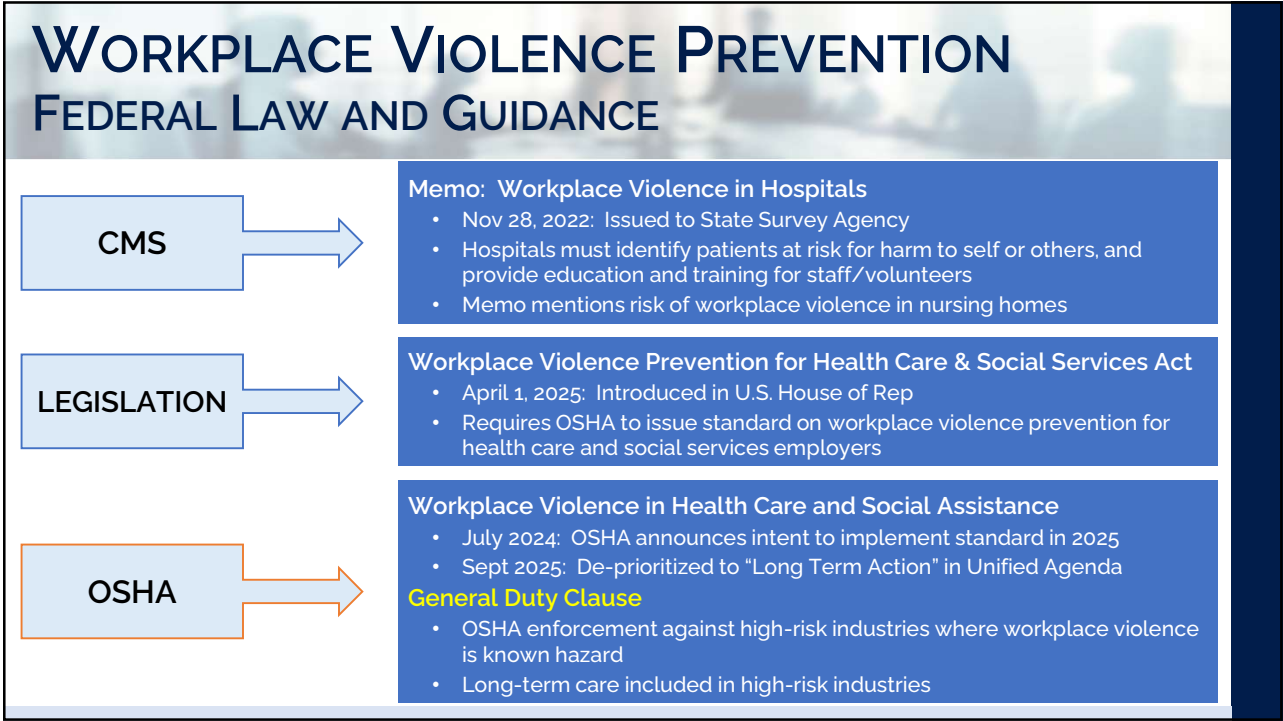
35

SAFETY AND HEALTH

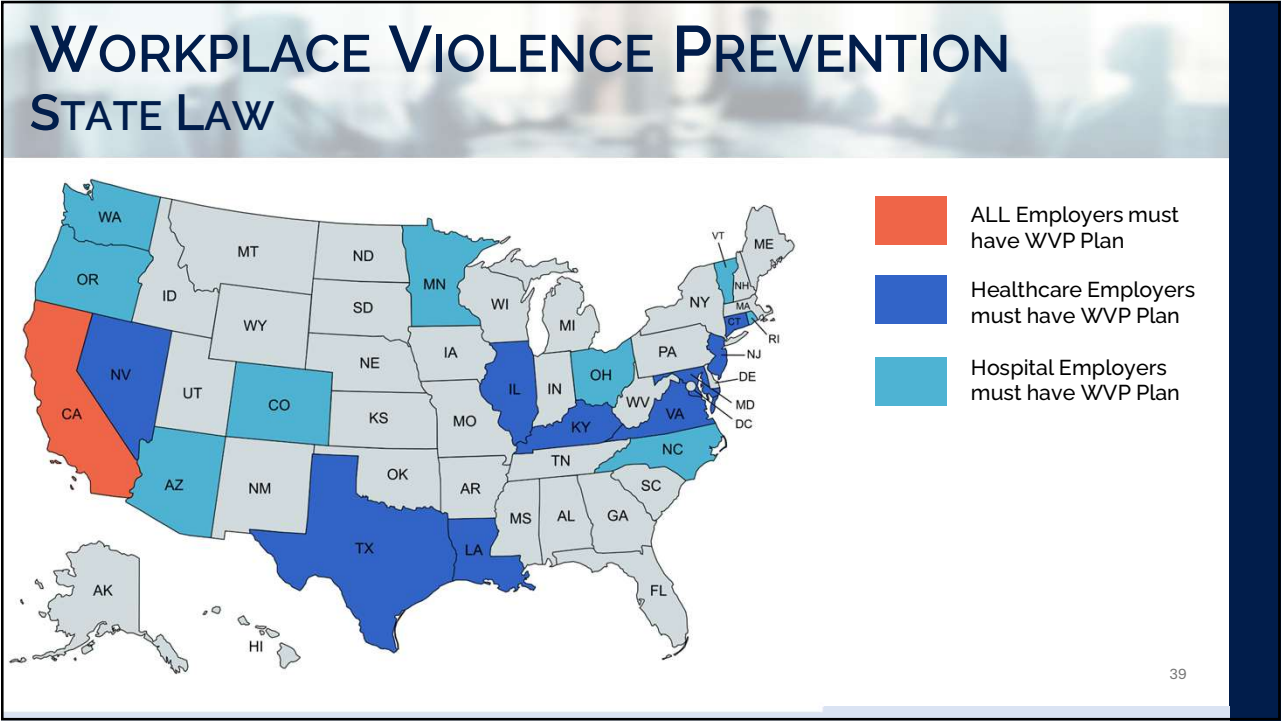
36



37



38



39

39

Post & Schell
P.C.
ATTORNEYS AT LAW


www.postschell.com

MARIJUANA LEGALIZATION

40

STATUS UNDER FEDERAL LAW

- Marijuana remains illegal under the Controlled Substances Act
- Classified as Schedule I Drug
 - High potential for abuse
 - No currently accepted medical use in the U.S.
 - Lack of accepted safety for use under medical supervision
- Schedule I includes:
 - Marijuana
 - Heroin
 - LSD
 - MDMA (Ecstasy)
 - Peyote
 - Methaqualone (Quaalude)
 - Psilocybin (Magic Mushrooms)
 - Bath Salts




Post & Schell_{PC}

ATTORNEYS AT LAW

41

41

POTENTIAL RESCHEDULING



October 2022

President Biden directs HHS and DEA to reexamine marijuana scheduling

August 2023

HHS recommends moving marijuana to Schedule III

April 2024

DOJ issues opinion affirming HHS's two-part test for "currently accepted medical use"

May 2024

DEA issues notice of proposed rulemaking to move marijuana to Schedule III

August 2024

DEA announces hearing on proposed rulemaking to reschedule marijuana

October 2024 – January 2025

Progress on proposed rulemaking stalled due to procedural challenges

August 2025

President Trump states that Administration is looking at reclassification; decision in coming weeks
Nine Republican Reps send letter to AG Bondi opposing rescheduling

September 2025

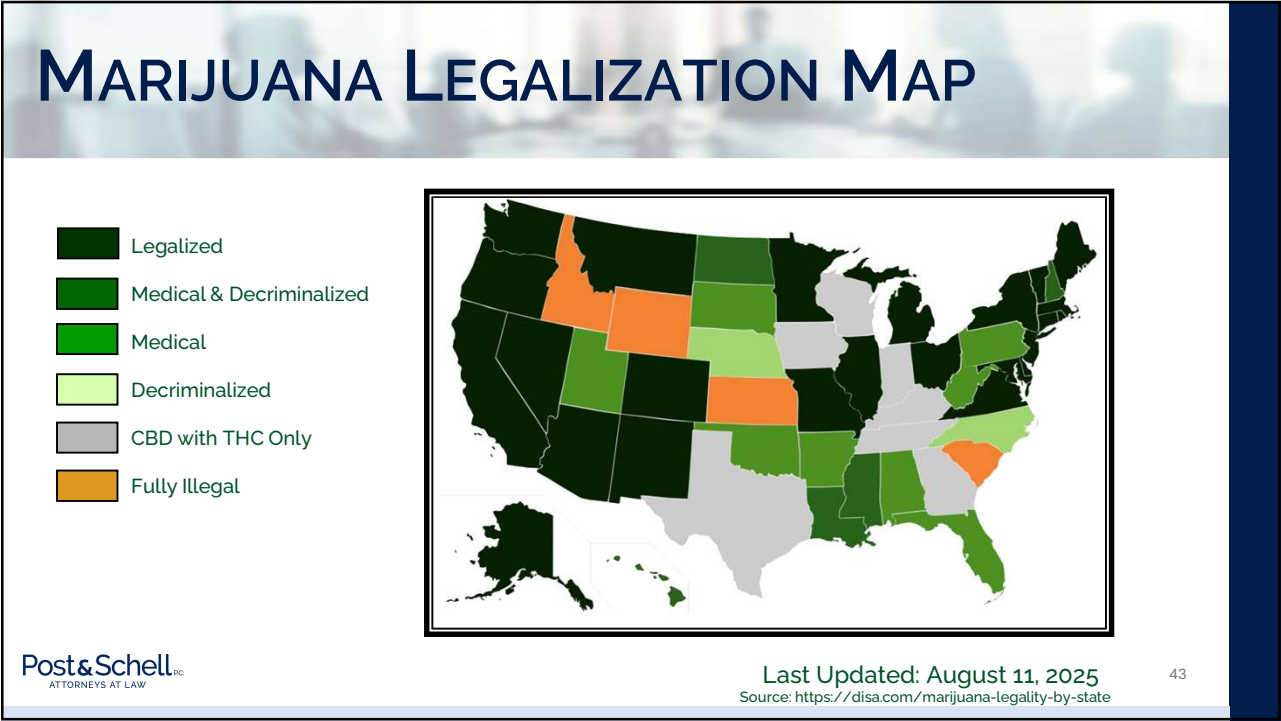
Florida Rep reintroduces Marijuana 1-to-3 Act to legislatively move marijuana to Schedule III

Post & Schell_{PC}

ATTORNEYS AT LAW

42

42



WORKFORCE LEGISLATION

SB 114

CNA TRAINING REFORM

Passed by Senate Sept 9, 2025

- Standardizes CNA curriculum, competency testing, and training in PA
- Permits nursing students and graduates to qualify for CNA exam
- Imposes timeline for Dept of Ed to approve facility-based training programs

SB 115

SKILLS COMPETENCY IN LIEU OF DIPLOMA OR GED

Passed by Senate May 7, 2025

- Skills competency exam in lieu of diploma/GED to *certain* individuals seeking DCW position in personal care or assisted living
- Certain individuals:
 - Citizen of or educated in another county;
 - Lawfully resides in U.S.
 - Otherwise qualified as DCW
- If individual meets requirements 1-3, facility not required to obtain waiver

SB 116

GRADUATION CREDITS FOR HS EMPLOYMENT

Intro in Senate Jan 22, 2025

- High school juniors and seniors may earn up to two (2) elective credits towards graduation for working in facility, on paid or voluntary basis
- Facility includes:
 - Long-term Care Facility
 - Personal Care Home
 - Assisted Living Residence

45

PA FAIR CONTRACTING FOR HEALTH CARE PRACTITIONERS

- Any non-compete entered into **after 1/1/25** with Health Care Practitioner (HCP) that is greater than one (1) year is *void and unenforceable*:
 - HCP: MDs, DOs, CRNAs, CRNPs, PAs
 - Non-compete covenant: Agreement that has effect of impeding ability of HCP to continue treating patients or accepting new patients after the term of employment
- Reason for departure
 - Non-competes may not be enforced if HCP is dismissed
 - If HCP is not dismissed, non-competes of **one (1) year** or less may be enforced
- May recover reasonable expenses from HCP if expenses are:
 - Directly attributable to the HCP and accrue within three (3) years prior to separation (unless caused by dismissal)
 - Related to relocation, training and establishment of patient base
 - Amortized over a period of up to five (5) years from the date of separation

Post & Schell, PC.
ATTORNEYS AT LAW

46

46

Angela H. Sanders
Employment & Labor Group
asanders@postschell.com
717-391-4436 (Direct)



QUESTIONS?

Post & Schell_{PC}
ATTORNEYS AT LAW

47