



**GENTRY LOCKE**  
**EMPLOYMENT**  
**LAW SYMPOSIUM**  
 WORLD CHAMPIONSHIP STRATEGIES  
 FOR WORKPLACE CHALLENGES  
**2026**



GOOOOOAALI!

**LYNCHBURG MAY 7**  
**ROANOKE MAY 14**



**VIRGINIA'S LAW FIRM**  
 gentrylocke.com

# SCHEDULE

7:45-8:30	Breakfast and Networking
8:30-9:15	Injury Time: How to Handle Challenging Medical Leave or Accommodation Request - Todd Leeson
9:15-10:00	Global Pressure, Local Impact: Navigating Federal Workplace Enforcement - David Paxton & Jessica Otiono
10:00-10:15	Break
10:15-10:45	When the Whistle Blows: Top 10 Mistakes to Avoid in Workplace Investigations - Tammy Finley
10:45-11:15	No Red Cards, No Penalties: Winning Wage-and-Hour Compliance Under Federal and Virginia Law - Harrison Richards & Kiara Anguiano
11:15-11:45	From Kickoff to Offer Letter: Avoiding Hiring Pitfalls, Strengthening Onboarding & Managing AI - Amanda Morgan
11:45-12:45	Lunch
12:45-1:15	Knockout Game
1:15-1:45	Defending Your Roster: Protecting Business Interests Without Getting a Foul - Ryan Starks
1:45-2:15	2026 Legislative Update with Gentry Locke Consulting Patrice Lewis & Zach LeMaster
2:15-2:30	Break
2:30-3:15	When You Play Stupid Games, You Win Stupid Prizes: Welcome to the World of Retaliation in 2026 - Paul Klockenbrink
3:15-3:45	Goalkeeping the Workplace: Proactive Cyber Preparedness for HR Mike Gulland

As a SHRM Recertification Provider, Gentry Locke is recognized by SHRM to offer 5.5 hours of Professional Development Credits (PDCs) for SHRM-CPSM or SHRM-SCPSM for this day of programming.

The use of this official seal confirms that this Activity has met HR Certification Institute's® (HRCI®) criteria for recertification credit pre-approval. This Program has been approved for 5.5 Seminar recertification credit hours toward aPHR™, aPHRI™, PHR®, PHRca®, SPHR®, GPHR®, PHRI™ and SPHRI™ recertification through HR Certification Institute® (HRCI®).





## Todd A. Leeson

Partner

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Todd Leeson is the Chair of Gentry Locke’s Employment law practice group. He has over 35 years of experience representing and advising Virginia employers in employment and labor law matters and litigation. He regularly defends employment claims in Virginia courts and before agencies including the EEOC, National Labor Relations Board (NLRB), DOL, OSHA (whistleblower and retaliation claims), and the corresponding Virginia agencies (DOLI, OCR). His experience includes the defense of companies as to alleged violations of Title VII, ADA, ADEA, FLSA, FMLA, the NLRA, and Virginia employment laws. Todd regularly drafts, enforces, and/or litigates non-compete agreements and executive employment contracts. In addition, he has considerable experience representing management in labor union matters including union avoidance campaigns, unfair labor practice charges and labor arbitrations. He also represents Virginia colleges in various student conduct matters including Title IX and sexual misconduct complaints.

Todd is rated “AV/Preeminent” by Martindale-Hubbell, is repeatedly named one of the *Best Lawyers in America* in Labor & Employment Law, and has regularly been named to various lists, including Virginia Legal Elite. As recent examples, in 2022, Virginia Lawyers Weekly named Todd a “Go-To Lawyer for Employment Law, and in 2022 Best Lawyers in America named Todd the “Lawyer of the Year” (Labor law-management) in Roanoke. Todd was also honored by Virginia Lawyers Weekly in 2021 as a “Leader in the Law.”

### Education

- University of Notre Dame Law School, J.D. *cum laude*
- College of William and Mary, B.A.

### Experience

- Represents employers in employment-related litigation in federal and state courts in Virginia
- Has been counsel of record in over 90 employment cases in the Western District of Virginia
- Extensive advice to employers on various COVID-19 workplace questions, disputes, and issues
- Successfully defended companies in over 240 EEOC charges alleging various forms of harassment, discrimination and/or retaliation
- Obtained partial summary judgment in Virginia state court in business conspiracy and breach of fiduciary duty employment case that led to \$400,000 settlement for corporation.
- Attained early dismissal or resolution of several OSHA whistleblower complaints including MAP-21, AIR-21, STAA and the FSMA
- Led team of lawyers to persuade Federal Government, and opposing counsel, to voluntarily dismiss a False Claims Act Complaint filed against a local company
- Trusted counsel to Board of Directors to negotiate separation of CEO
- Achieved dismissal of wrongful termination case filed against a global manufacturer by a terminated safety manager
- Obtained summary judgment of age discrimination case filed in Federal Court
- Prevailed in grievance hearing before City personnel board in which board upheld significant discipline against long-service manager
- Brokered settlement of challenging Title IX sexual misconduct case on behalf of college in which complainant and respondent had divergent interests
- Collaborated with college counsel to respond to OCR discrimination complaint filed by former student; OCR dismissed complaint



- Defended local restaurant in FLSA collective action tip pooling lawsuit which was recently dismissed by the court
- Moved to quash EEOC document subpoena resulting in dismissal of potential ADA class action
- Obtained dismissal of joint employer Title VII case against local company
- Negotiated early settlement of NLRB protected, concerted activity (PCA) case filed against local company
- Worked with DOL officials to resolve overtime claims filed against area restaurant
- Successful mediation of WARN Act cases filed against coal company
- Prevailed in labor arbitration upholding management right to modify union employee's work schedule
- Successful defense of College in case in which student challenged suspension decision pursuant to College's Student Conduct Code
- Achieved favorable resolution of ADA termination lawsuit filed in Virginia Federal Court
- Prosecution of business competition, trade secret, and business conspiracy case filed against global corporation who hired executive with various restrictive covenants
- Obtained dismissal of FMLA claim investigated by DOL
- Favorable resolution of a non-compete and non-solicitation case filed against a corporation and a newly-hired employee
- Favorable early resolution of an ADA termination lawsuit filed against company by a senior executive
- Successful defense in labor arbitration of management's right to demote a union president
- Attained summary dismissal of race and age discrimination case
- Expediently resolved purported FLSA collective action case filed against a construction company
- Advised company to withdraw recognition of longstanding union and prevailed on union challenge before the NLRB
- Achieved early resolution of challenging federal whistleblower claim filed against corporation
- Obtained summary judgment for nation's largest retail pharmacy chain in ADA disability discrimination lawsuit
- Represented one of the world's leading wealth management companies that was sued in a non-compete case in Virginia
- Successfully prosecuted trade secrets case resulting in \$245,000 settlement for local manufacturer
- Persuaded court to dismiss a noncompete and trade secret action filed against an employer that hired a key employee
- Obtained summary judgment in sex discrimination lawsuit filed against global retailer with operation in Virginia
- Procured summary judgment for Fortune 100 insurer in a race discrimination case filed in Roanoke
- Retained by Executive Officer of Fortune 500 retailer to negotiate his executive employment contract with the Company
- Successfully represented management in several Union labor arbitration cases involving discharge or contract interpretation issues
- Acquired summary judgment for local college in tenure denial case
- Litigated significant ULP case with NLRB involving potential back pay or reinstatement of 23 terminated employees; case resolved on favorable terms
- Obtained summary judgment in ADA disability discrimination case against national bank
- Achieved partial summary judgment for Fortune 500 automotive supplier in sexual harassment and retaliation case
- Obtained defense verdict for local sheriff in race discrimination lawsuit; defense verdict affirmed on appeal
- Procured dismissal of wrongful termination case filed against health care employer by terminated nurse
- Obtained summary judgment for Fortune 500 company in Title VII equal pay case
- Procured summary judgment for employer in FLSA overtime lawsuit
- Represented several local businesses faced with Union organizing efforts and/or campaigns.
- Successfully conciliated case against local construction company in which EEOC had found "cause" in support of EEOC charge
- Obtained preliminary injunction for local software company in trade secrets and business conspiracy case
- Successfully represented local utility company as to several unfair labor practice allegations filed against it with the National Labor Relations Board
- Mediated employment-related cases on behalf of local companies in this region
- Obtained dismissal of Family Medical Leave Act (FMLA) case filed against one of the nation's largest food service distribution companies
- Achieved summary judgment in ADEA case arising out of reduction in force by local manufacturer
- Negotiated conciliation of EEOC religious discrimination charge on behalf of large fast food restaurant
- Successful defense of company in non-compete case in which company hired valuable executive from a competitor
- Favorable resolution of trade secrets and business competition case of behalf of a company who sued departing employees and their new employer
- Dismissal of ADA termination case filed against company by executive with alleged alcohol problems

## Affiliations

- Board of Directors, Jefferson Center (2023-Present)
- Board of Directors, Downtown Roanoke, Inc. (2014-2023); Chair of board (2021-22)
- Board of Directors, Family Service of Roanoke Valley (2016-2023); Chair of board (2020)
- Council member, Labor Relations & Employment Law Section of Virginia Bar Association (2008-2013, new term begins Jan. 1, 2024)
- Virginia State SHRM Legislative Director (2012-14)
- Board member, Roanoke Valley SHRM (2007-2009); Past President (2000)



- Board of Trustees, Taubman Museum of Art (2007-2012)
- Board of Directors, Roanoke Regional Chamber of Commerce (2010-2012)
- Elder, Salem Presbyterian Church (2011-2013, 2016-2018)
- Member, Federal Bar Association (2011-Present)
- Faculty Member, The Management Institute at Roanoke College (2011-Present)
- Associate member, National Association of College and University Attorneys (2014-Present)
- Past President, Downtown Roanoke Rotary Club (2004-2005)
- Chair, Virginia State SHRM Conference (2002)
- Member, Labor & Employment Section, American Bar Association (1989-2018)
- Member, Labor & Employment Section, Virginia Bar Association (1989-Present)
- Member and Past President, William & Mary Roanoke Alumni Association
- Graduate, Trial Advocacy Institute of UVA Law School (2000)
- Frequent speaker for SHRM, business and college groups in Virginia
- Author of dozens of employment law articles

## Awards

- Named “Go-To Lawyer” for Employment Law by Virginia Lawyers Weekly (2022)
- Named “Roanoke Lawyer of the Year” for Labor Law – Management (2022)
- Named one of *The Best Lawyers in America*® in the areas of Employment Law – Management (2011-2026), Labor & Employment Litigation (2011-2026), and Labor Law – Management (2019-2026)
- Designated one of the “*Legal Elite*” in the Labor/Employment law by *Virginia Business* magazine (2016-2017, 2019-2025)
- Named a “Leader in the Law” by *Virginia Lawyers Weekly* (2021)
- Designated a *Virginia Super Lawyer* in the area of Employment & Labor Law (2014-2019) and *Super Lawyers Business Edition US* in the area of Employment & Labor (2014)
- Named a “Legal Eagle” for Employment Law – Management and Litigation – Labor & Employment by *Virginia Living* magazine (2012)
- Named a *Top Rated Lawyer* for Labor and Employment law by American Lawyer Media (2013)
- VBA Community Servant with 50 hours or more of certified pro bono legal and nonlegal community service, The Virginia Bar Association (2004-2010)

## Published Work

- **[Beyond the headlines: Virginia Values Act poses significant legal risks to Virginia Employers](#)**; *Law360*; May 15, 2020
- **[#MeToo and the Male Business Executive: A Call For Proactive Leadership](#)**; *Corporate Counsel Magazine*; April 27, 2018.
- **[Preventing Harassment in the Workplace: An Updated Analysis of the EEOC’s Call for a “Reboot”](#)**; *Bloomberg BNA Daily Labor Report*; January 6, 2017.
- **[Five Steps Virginia Employers Should Take to Help Avoid Whistleblower or Retaliation Claims](#)**; *Virginia Human Resources Today*; Winter/Spring 2014.
- **[EEOC Seeks to Provide Job Protection for LGBT Employees](#)**; *Virginia Human Resources Today*; Summer/Fall 2013.
- **[Policy Prohibiting Wage Discussion Found Unlawful](#)**; *Virginia Human Resources Today*; Winter/Spring 2013.
- **[Employers Face Significant Challenges Complying with the ADA Amendments Act](#)**; *Virginia Human Resources Today*; Summer/Fall 2012.

## Case Studies

THE RESULTS OF CLIENT MATTERS DEPEND ON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. PAST SUCCESSES DO NOT PREDICT OR GUARANTEE FUTURE SUCCESSES.

- May 16, 2014 — **[Virginia Company Prevails in Hard-Fought Labor Arbitration Case](#)**





## W. David Paxton

Partner

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David Paxton advises and represents businesses, business owners, and executives in the areas of labor & employment law, complex litigation, shareholder disputes and whistleblower claims. He regularly advises businesses and non-profits in connection with governance issues, nondisclosure agreements, and noncompete agreements, and represents parties in litigation involving claims of breach of contract, unfair competition and trade secrets. As the demand for internal investigations has grown, David has been engaged by businesses, financial institutions, colleges and universities, local government agencies and non-profits to lead and conduct investigations into allegations of misconduct or unlawful activities, and he works closely with the firm's white-collar practice.

David serves as the key contact for the firm's *Chambers'* rated Labor & Employment Practice Group team, and has been a leader in ALFA International, the premier global legal network since 1988. He is a frequent guest speaker at national and regional employment law seminars and has consistently been named to *Best Lawyers in America* for Labor & Employment law since 2001. In 2021, David was named by Virginia Lawyers Weekly as one of Virginia's "Go To Lawyers for Employment Law."

### Education

- University of Virginia School of Law, J.D.
- U.S. Naval Justice School, Honor Graduate
- Hampden-Sydney College, B.A. summa cum laude, Phi Beta Kappa; Omicron Delta Kappa; Baker Scholar

### Experience

#### Complex & Multi-Party Litigation

- Successfully defended the VMI Alumni Association in civil rights and corporate governance case brought by members of a non-profit organization.
- Lead and directed a 13-month long internal investigative team, consisting of 70 lawyers, accountants, and IT members, tasked with investigating financial and business operations of a university over a 13-year time period
- Represented Drummond Coal, an international mining company, in a week long jury trial in federal court in Roanoke, Virginia, in connection with a complex contract dispute with Norfolk Southern, which resulted in a verdict for Drummond and \$35 million in relief granted; the jury verdict and relief awarded was upheld on appeal to 4th Circuit
- Represented a national retail company and obtained summary judgment on all claims filed in federal court in Newport News, Virginia by a customer who alleged defamation and race discrimination, and the ruling was not appealed.
- Represented a private equity and venture capital firm, and its owner in defense of a lawsuit filed in federal court in Roanoke, Virginia asserting ERISA and securities violations, and successfully obtained dismissal of all claims
- Trial counsel for *Rolling Stone* and Sabrina Erdely in *Eramo v Rolling Stone*, a case tried to a jury for 3.5 weeks in federal court in Charlottesville, Virginia
- Secured summary judgment for the plaintiff in *Doe v Alger*, a seminal case that recognized the due process rights of students at state universities accused of sexual misconduct based on a property right in continued enrollment
- Represented and successfully defended defendant in special litigation committee investigation of a derivative action for breach of fiduciary duty, where state court dismissed the shareholder's claims based on special litigation committee report
- Represented President of Peanut Corporation of America in connection with Congressional and criminal food safety investigations, and in lawsuit to secure D&O coverage for defense costs
- Represented national restaurant chain in connection with false "mouse in the soup" claims resulting in the felony criminal conviction of mother and son who made false allegations



- Secured jury verdict for three members of insurance company's Board of Directors in defense of claims brought by Commissioner of Insurance for fraud, fiduciary duty, conspiracy and securities violations. Also later recovered more than \$3 million in attorney fees on indemnity claims in case affirmed by Supreme Court of Virginia in *Gross v Weingarten*
- Trial and appellate counsel to college athlete accused of sexual assault and prevailed on the constitutional challenge to civil remedy under VAWA before U.S. Supreme Court in *United States v. Morrison*
- Secured summary judgment on multiple §1981 race discrimination claims brought by the Washington Lawyers Committee on behalf of customers and employees against large franchisee of national restaurant chain, and case not appealed.
- Secured dismissal of anti-trust and constitutional claims brought against state association that regulates public school athletics in Virginia by local media organization seeking to broadcast playoff games

## Employment Litigation

- Represented national, privately held company and obtained summary judgment dismissing claims filed in federal court in Roanoke, Virginia by a former employee alleging wrongful discharge and unpaid commissions and district court's decision was affirmed by 4th Circuit
- Represented subcontractor and successfully defended a FLSA collective action filed in federal court in Roanoke, Virginia by a large class of drywall workers who alleged unpaid overtime
- Represented high-tech manufacturer and successfully defended claims filed in federal court in Lynchburg, Virginia by a former employee who claimed to be an atheist and alleged religious discrimination and retaliation
- Represented publicly traded, national restaurant chain and successfully defended claims filed in federal court in Newport News, Virginia by a kitchen staff member who alleged race discrimination
- Represented private college and successfully defending claims filed in federal court in Roanoke Virginia by a professor who alleged disability discrimination, failure to accommodate, retaliation and FMLA violations
- Represented US subsidiary of multinational company and successfully defend a complex whistleblower claim brought under the Energy Reorganization Act before OSHA Administrative Law Judge and Administrative Review Board in Washington, DC
- Directed internal investigation conducted by former FBI agent of senior officials of a local governmental agency accused of various act of misconduct, which led to no charges or litigation
- Directed internal investigation conducted by former FBI agent into alleged claims of misconduct of a senior executive of large regional financial institution, which lead to a resolution with no subsequent litigation
- Obtained \$4 million jury verdict in federal court in Abingdon, Virginia for a privately held company against its former president on claim to recoup bonus paid under theory of unjust enrichment
- Represented and successfully prosecuted claims on behalf of a US subsidiary of an international pharmaceutical company against a former employee and a newly formed company on claims of breach of contract and tortious interference; *Shire, LLC v Mickle*, a case brought in federal court in Roanoke, Virginia
- Represents employers on a broad cross-section of industries on Title VII and ADEA claims of discrimination, harassment and retaliation, as well as wage and hour disputes in federal and state courts
- Represented multiple employers and employees in litigation involving claims of theft of trade secrets, unauthorized disclosure of confidential information, violations of non-competition/restrictive covenants, and other business torts
- Represented national manufacturer and retailer on claims of sexual harassment by former female employee to successful, pre-litigation resolution
- Represented national manufacturer on claims involving age and disability discrimination to successful resolution

## Labor & Employment

- Represents management in preparing executive employment agreements and in disputes with senior executives, and also represents senior executives and professionals in contract negotiations and in resolving disputes with companies, professional organizations, and non-profits, including cases governed by arbitration
- Represents and advises management from a broad cross-section of industries on full range of labor and employment issues that arise on a daily basis such as hiring, E-verify, I-9s, FMLA/ADA, USERRA, wage and hour, Affirmative Action Plans, COBRA, OFCCP audits, harassment and discrimination complaints, investigation of misconduct, OSHA complaints, termination, EEO charges, DOL investigations, and union avoidance
- Represented executive management team in negotiation of executive employment contracts which included equity compensation packages in connection with a \$250 million private equity deal
- Represented publicly traded company in contractual dispute with former employee and obtained a favorable court settlement of claims involving the valuation of stock options settlement
- Represented senior executive in a dispute with high-tech company and obtained a favorable out-of-court settlement of claims involving vesting and valuation of stock option rights.
- Represented founder and CEO of high-tech company in negotiation of executive employment contract in anticipation of venture capital investment
- Represented U.S. based companies in establishing indigenous workforce for new operations in India
- Represents management in various industries in planning and implementing workforce reductions
- Represents local school boards and police departments on employment-related matters

## Religious Organizations



- Provides general corporate governance, and employment advice to non-profit religious organizations as well as Christian churches and ministries
- Represented Board of Directors of a Christian non-profit organization in disputes with its founder and key members of management which led to agreed-upon separation without litigation
- Represents non-profit company in acquisition of large network of Christian radio stations

## Affiliations

- Fellow, Virginia Law Foundation (Inducted 2014)
- Chair, ALFA International Labor and Employment Law Section (2015-2018), Member of Labor & Employment Law Section Steering Committee (1996-Present); Member, ALFA International Board of Directors (2014-2017)
- Member, Labor & Employment Law Section, American & Virginia Bar Associations (1986-Present)
- Member, Virginia CLE Steering Committee, Labor & Employment Section (2000-2012), Chair (2010-2011)
- Board of Directors, Positive Alternative Radio, Inc. (2017-Present)
- Board of Directors, VHSL Foundation, Inc. (2004-2009)
- Board of Directors, Interfaith Hospitality Network of Roanoke Valley (2005-2009)
- Member, Planning Committee, Gridiron Club, Hampden-Sydney College (2007-2011)
- Member, Church Council, St. John Lutheran (2006-2009). President (2008-2009)

## Awards

- Named to Virginia Lawyers Weekly's Class of 2025 Hall of Fame
- Recognized as an AV Preeminent<sup>®</sup> rated attorney specializing in Civil Rights Law by Martindale-Hubbell<sup>®</sup> (2023)
- Named in Lynchburg Business Magazine's Top Lawyers List for Labor and Employment (2025)
- Named one of *The Best Lawyers in America*<sup>®</sup> for over twenty consecutive years in the area of Labor Law – Management (2024-2026), Employment Law – Individuals & Management (1999-2026), and Labor & Employment Litigation (2011-2026), named "2017 and 2024 Roanoke Lawyer of the Year" for Labor & Employment – Litigation and "2020 & 2025 Roanoke Lawyer of the Year" for Employment Law – Individuals
- Named to the "Virginia's Top 50 List" of *Virginia Super Lawyers* (2007) and *Virginia Super Lawyers* in the area of Employment & Labor Law (2007-2025), included in *Super Lawyers Corporate Counsel* edition (2009-2011) and *Super Lawyers Business Edition US* in the area of Employment & Labor (2012-2014)
- Named "Go To Employment Lawyer" by *Virginia Lawyers Weekly* (2020, 2022)
- Listed in *Benchmark Litigation* as a Local Litigation Star for Labor & Employment and General Commercial (2012-2018) and Insurance (2018); and *Benchmark Plaintiffs* for Labor & Employment (2012-2014), General Commercial, and Insurance (2014)
- Designated one of the "Legal Elite" in the Labor/Employment Law field by *Virginia Business* magazine (2000-2016, 2018-2025)
- Designated as a Fellow of the Virginia Law Foundation (2014)
- Named a "Legal Eagle" for Employment Law – Individuals, Employment Law – Management, Labor Law, and Litigation – Labor & Employment by *Virginia Living* magazine (2012)
- Voted Top Employment & Labor Attorney by readers in *The Roanoker* magazine's "Best Of" (2012)
- Named a *Top Rated Lawyer* for Labor and Employment law and Commercial Litigation by American Lawyer Media (2013)
- Inclusion on the Virginia Amateur Sports Wall of Honor in its inaugural year (2009)
- Navy Commendation Medal, Distinguished Legal Work (1983)

## Published Work

- Co-author, [2026 Brings Payroll Glitch for Salaried Employees: What All Employers Need to Know](#) (Winter 2026)
- Co-author, [FTC's Proposed Rule to Ban Noncompete Agreements – Initial Reactions](#) (Winter 2023)
- Co-author, [Virginia's New Laws](#) (Summer 2020)
- Co-author, [OSHA Changes Course: Employers Must Now Determine if COVID-19 Infection is Job-Related](#) (Spring 2020)
- Author, [DOL Issues New WARN Act FAQs](#) (Spring 2020)
- Co-author, [A Strange New Normal: The Pandemic and a New Virginia Law Usher in the Decade of the Whistleblower](#), (Spring 2020)
- Author, [EEOC Weighs in on Employer Duties](#) (Spring 2020)
- Author, [Employer's Guide to Responding to an Employee Positive COVID-19 Test](#) (Spring 2020)
- Co-author, [Revised CDC Guidance for Critical Industry Workers](#) (Spring 2020)
- Author, [New Procedures for Virginia Unemployment Benefits in Wake of COVID-19](#) (Winter 2020)
- Author, [Workplace Cleaning and Disinfection Recommendations](#) (Winter 2020)
- Author, [Virginia Department of Health Sets New Ground Rules for Employees Returning to Work Amidst COVID-19 Pandemic](#) (Winter 2020)
- Co-author, [Developing an Effective Business Response to COVID-19](#) (Winter 2020)
- Co-author, three-part series involving *Sex in the Workplace* (Fall/Winter 2019-2020):



- [Sex in the workplace: Virginia high court weighs in on employer responsibilities — Part I](#)
- [Sex in the workplace: Virginia high court weighs in on employer responsibilities — Part II](#)
- [Sex in the workplace: Virginia high court weighs in on employer responsibilities — Part III](#)
- Author, [Employer Alert: New Overtime Rule Effective January 15, 2020](#) (Winter 2019)
- Author, [Protected Activity: How Far Can an Employee Go to Collect Evidence?](#) (Winter 2018)
- Author, [Size No Longer Matters: ADEA Applies to All State and Local Government Employees](#) (Fall 2018)
- Author, [Employers: Update Your Summary of Rights Form for Background Checks](#) (Fall 2018)
- Co-author, [Rule 68 Offers of Judgment – a Useful Defense Tool](#); The VADA Journal of Civil Litigation, Vol. XXIV, No. 4 (Winter 2012-2013)
- Co-Author, *The Virginia Lawyer: A Deskbook for Practitioners*, Chapter 4, Employment Law: Employee Rights and Employer Responsibilities (2000-2007)
- Co-Author, *Annual Survey of Virginia Law: Labor & Employment Law*, 40, University of Richmond Law Review, 241 (2005 & 2007)

## Case Studies

THE RESULTS OF CLIENT MATTERS DEPEND ON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. PAST SUCCESSES DO NOT PREDICT OR GUARANTEE FUTURE SUCCESSES.

- Sep 23, 2019 — [Gentry Locke's David Paxton Helps Secure Jury Verdict in Favor of Multinational Corporation](#)





## Jessica E. Otiono

Associate

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**Jessica Otiono** is a member of the firm's General Commercial practice group, where she provides pragmatic, business-focused counsel that helps clients move transactions forward with clarity and confidence. She advises businesses across industries on corporate matters, including entity formation and structuring, commercial contracts, mergers and acquisitions, and corporate governance. Informed by her business-litigation background, Jessica drafts and negotiates complex commercial agreements and structures transactions to mitigate risk and support enforceability, all while ensuring compliance with applicable regulations.

Jessica's healthcare practice focuses on delivering corporate services to advising providers, physician groups, and other stakeholders on transactional and regulatory matters. Her approach emphasizes practical, operationally sound strategies to ensure compliance with federal and state requirements. In addition, Jessica assists organizations with business immigration needs, including counseling employers on Form I-9 compliance to satisfy federal employment verification obligations. Prior to joining the firm as an attorney, Jessica worked as a Summer Associate with Gentry Locke.

Jessica earned her J.D. magna cum laude from the University of Richmond School of Law where she belonged to the Richmond Law Moot Court Board, Richmond Business Law Forum, and the Richmond Journal of Law and Technology. Jessica is licensed in Virginia as well as her home country, Nigeria.

### Education

- University of Richmond School of Law, J.D., magna cum laude
- Nigerian Law School, B.L. (Hons)
- Lagos State University, L.L.B. (Hons)

### Experience

- Performed in-depth legal research and analysis, prepared persuasive pleadings, motions, and discovery responses, and successfully negotiated settlements to achieve favorable outcomes for clients.
- Reviewed and analyzed commercial agreements, advising clients on and negotiating key terms to mitigate risk and maximize economic value. Advised non-profit organization regarding board and governance obligation in compliance with Virginia law.
- Drafted, reviewed, and provided counsel on lease and employment agreements for business clients.
- Reviewed employment agreement and drafted memorandum of understanding and provider service agreements for healthcare providers.
- Advised healthcare providers on medical records retention requirements, ensuring compliance with all applicable laws and regulations.
- Advised business clients on employment verification requirements and drafted and reviewed internal Form I-9 policies and procedures to ensure optimal compliance with federal regulations.
- Advised business clients on the validity of electronic benefit elections and wellness program compliance with ERISA and Department of Labor requirements, providing actionable guidance for regulatory adherence.

### Affiliations

- American Immigration Lawyers Association



- American Bar Association
- Healthcare Lawyer's Association

## **Admissions**

- Virginia State Bar
- Nigerian Bar





## Tammy M. Finley

Counsel

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Tammy Finley is a member in Gentry Locke's Commercial Litigation group, where she leverages more than 25 years of executive and legal leadership experience to advise clients on complex business and litigation matters. Her practice includes business and commercial litigation, general commercial matters, labor relations, employment law and non-compete issues, cybersecurity and privacy response, legal and regulatory compliance, crisis management and incident response, and enterprise risk management. She advises executives and boards on governance, fiduciary duties, director and officer liability, shareholder engagement and activism, and helps clients navigate high-stakes disputes while balancing legal, business, and reputational considerations.

Prior to joining the firm, Tammy served as Executive Vice President, General Counsel & Corporate Secretary at Advance Auto Parts, Inc. (NYSE: AAP). She guided the company's transformation from a regional retailer into a \$10B+ publicly traded organization. During her tenure, she led critical functions including legal, compliance, risk management, human resources, and communications, while advising the company through more than 10 strategic acquisitions. She also served for over six years as an independent director for American National Bankshares Inc. (NASDAQ: AMNB), where she chaired both the Risk and Technology Committees.

Tammy is an active leader in civic and educational initiatives, serving on the boards of the Virginia Chamber of Commerce, the Hotel Roanoke LLC, the Blue Ridge Innovation Corridor, the Southern Virginia Regional Alliance, the Virginia Western Community College Educational Foundation, and the Taubman Museum of Art. Her combination of corporate, governance, and civic leadership experience allows her to provide clients with practical, business-focused solutions that are informed by real-world executive insight.

### Education

- College of William & Mary, Marshall-Wythe School of Law, J.D.
- Virginia Tech, B.A.

### Experience

#### Mergers & Acquisitions

Led HR Integrations and Internal Communications for 10+ acquisitions by Advance Auto Parts, including \$2B GPI/Carquest acquisition. Led legal planning, negotiations, and closing of \$1.5B Worldpac, Inc. subsidiary divestiture. Expanded IP brand portfolio through negotiation and closing of \$200M acquisition of DieHard®, a leading automotive battery brand.

#### Business and Commercial Litigation

Accomplished legal executive with extensive experience handling complex business and commercial disputes. Provides strategic guidance on litigation matters, ensuring quality legal advice, cost-effective solutions, and favorable outcomes. Specializes in employment litigation and has significant experience handling class action matters.

#### General Commercial Matters

Advises executives and boards on contracts, compliance, and corporate governance issues. As General Counsel for Advance Auto Parts, led legal strategy supporting enterprise growth, acquisitions, and organizational change, while fostering high-performing legal and corporate teams. Established Global Capabilities Center in India to expand company capabilities and innovation.

#### Employment, Labor Relations and Non-Compete Issues

Guides organizations through workforce management, employment compliance, and leadership transitions. Provides counsel on general employment matters, non-compete agreements, labor relations, and HR policy development, combining legal experience with practical



business insights. Experienced in organizational design, performance management, and succession planning, with significant experience conducting internal investigations, as well as advising on reductions in force, reorganizations, and related severance practices.

### Cybersecurity and Privacy Response

Advises on enterprise preparedness and response for data privacy and cybersecurity incidents. Develops and implements risk mitigation strategies, ensuring alignment with regulatory requirements and best practices, while minimizing operational disruption. Experienced in managing complex cyber incidents and defending related class action litigation.

### Crisis Management and Response

Experience navigating organizational crises, including high-stakes litigation, acquisitions, integrations, and stakeholder communications. Provides counsel on enterprise risk, corporate reputation management, and strategic decision-making during periods of rapid change. Was a key player in the COVID-19 pandemic response, including ensuring automotive aftermarket retailers were deemed essential service providers.

### Affiliations

- Board Member, Virginia Chamber of Commerce
- Board Member, Hotel Roanoke LLC
- Board Member, Blue Ridge Innovation Corridor
- Board Member, Southern Virginia Regional Alliance
- Board Member, Executive Committee and Secretary, Virginia Western Community College Educational Foundation
- Board Member, Endowment Committee, Taubman Museum of Art
- Co-Chair of Legal Institute, Virginia Chamber of Commerce
- Past Board Member and Chair, Roanoke/Blacksburg Regional Business Council
- Past Board Member, National Association of Corporate Directors

### Admissions

- Virginia State Bar





## *Harrison E. Richards*

### Associate

- Office: 540.983.9438
- Mobile: 540.613.7123
- Fax: 540.983.9400
- Email: [hrichards@gentrylocke.com](mailto:hrichards@gentrylocke.com)



Harrison Richards practices in the firm's commercial litigation group with a primary focus on employment litigation defense. Harrison regularly represents employers across a wide range of industries in both state and federal courts, defending against claims involving discrimination, retaliation, wage and hour violations, and other employment-related disputes. He also represents employers in administrative proceedings before agencies such as the Equal Employment Opportunity Commission (EEOC), the Office of Civil Rights (OCR), and the Virginia Employment Commission (VEC), and routinely participates in mediations to resolve disputes efficiently and effectively.

In addition to his litigation work, Harrison provides day-to-day counsel to employers on a broad spectrum of workplace issues. He regularly advises clients on compliance with federal and state employment laws, drafts and negotiates employment agreements, develops workplace policies and handbooks tailored to each organization's operational needs, offers practical solutions to complex personnel issues, and helps clients proactively manage and mitigate risk.

Harrison is a native of Roanoke, Virginia and is admitted to practice in both Virginia and the District of Columbia.

### Education

- The Catholic University of America, Columbus School of Law, J.D.
- Roanoke College, B.A., cum laude – Phi Beta Kappa, Member; Omicron Delta Kappa, Member.

### Experience

- Represents employers in employment-related litigation in state and federal courts.
- Handles claims involving discrimination, retaliation, harassment, wage and hour violations, and other workplace disputes.
- Represents employers in administrative proceedings before agencies such as the EEOC, state civil rights offices, and workforce agencies.
- Counsels employers on responding to agency charges, audits, and information requests.
- Conducts all phases of litigation, including early case assessment, discovery, motions practice, and trial preparation.
- Develops litigation strategies focused on efficiency, risk management, and practical business outcomes.
- Provides day-to-day counseling to employers on compliance with federal and state employment laws.
- Drafts, reviews, and negotiates employment agreements, restrictive covenants, and separation agreements.
- Prepares and updates employee handbooks and workplace policies tailored to each client's operations.
- Advises employers on complex personnel matters, including discipline, terminations, leave issues, and accommodations.
- Helps employers proactively mitigate risk through training, policy development, and preventative legal guidance.
- Advises employers on internal investigations involving employee complaints and workplace misconduct.
- Represents employers in mediation and settlement negotiations to resolve disputes efficiently.
- Partners with in-house attorneys and leadership to align legal strategy with business objectives.

### Affiliations

- Member, Virginia State Bar
- Member, District of Columbia Bar
- Member, Roanoke Bar Association



- Member, Federal Bar Association
- Member, Virginia Bar Association
- Member, Labor & Employment Section, Virginia Bar Association
- Board of Directors, First Fridays
- Executive Leadership Team, Roanoke Heart Ball
- Executive Board, Virginia Bar Association's Young Lawyers Division

## **Admissions**

- Virginia State Bar
- District of Columbia Bar
- United States District Court for the Western District of Virginia
- United States District Court for the Eastern District of Virginia
- United States District Court for the District of Columbia
- United States Court of Appeals for the Fourth Circuit





## *Kiara P. Anguiano*

Associate

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Kiara Anguiano is a member of the firm's Commercial Litigation practice group. Prior to joining the firm as an attorney, Kiara worked as a Summer Associate with Gentry Locke before graduating from the University of Richmond School of Law. While in law school, Kiara worked as a Legal Intern for the Community Tax Law Project in Richmond. She was also the founder of the Latin American and Hispanic Law Organization, an executive member of the Trial Advocacy Board, and a member of the Negotiation and Alternative Dispute Resolution Board. Kiara is a native Spanish speaker.

### **Education**

- University of Richmond School of Law, J.D.
- Virginia Military Institute, B.A.

### **Experience**

- Drafted pleadings, motions, and discovery requests and responses.
- Conducted legal research, analyzed facts, and synthesized findings into memoranda.
- Translated documents into Spanish.

### **Admissions**

- Virginia State Bar





## Amanda M. Morgan

Partner

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Amanda Morgan is a Partner in Gentry Locke's commercial litigation practice group where she serves diverse clients in a variety of complex lawsuits including contract and business disputes; estate litigation; product, premises and general liability claims; and employment issues. She also represents a number of governmental clients including community service boards, school boards, and local governments. Additionally, she assists clients before and in the early stages of litigation by applying practical, business, and legal solutions which often allow them to avoid expensive and lengthy litigation. Amanda also regularly advises businesses on employment best practices including hiring, onboarding, and policies and handbooks.

### Education

- University of Richmond School of Law, J.D. *magna cum laude*
- University of North Carolina, B.A.

### Experience

- Represented business owners in disputes with co-owners as well as third parties
- Represented businesses in complex contract and business tort disputes
- Represented executors, trustees, and beneficiaries in estate and trust litigation
- Represented individuals injured by industrial machinery and unsafe conditions as well as motor vehicles
- Represented individuals in boundary disputes, partition suits, and other real estate litigation
- Represented various employers in defending charges of discrimination
- Represented housing authority in contract and discrimination litigation
- Represented local government in FOIA, personnel, tax, zoning, real estate, procurement, and code enforcement matters
- Represented local community services board and school board in personnel and compliance matters
- Served as local counsel in patent and business litigation

### Affiliations

- Admissions:
  - Virginia State Bar (2005)
  - U.S. District Court Western District of Virginia (2006)
  - U.S. District Court Eastern District of Virginia (2007)
  - U.S. Court of Appeals 4th Circuit (2008)
  - U.S. Supreme Court (2011)
- Young Lawyers Conference Circuit Representative, Past Circuit Representative for 10th Judicial Circuit

### Case Studies

THE RESULTS OF CLIENT MATTERS DEPEND ON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. PAST SUCCESSES DO NOT PREDICT OR GUARANTEE FUTURE SUCCESSES.

- Oct 19, 2023 — [Upheld Opinion in Gender Pay Bias Case](#)
- Sep 13, 2022 — [Judgment for Enforcement of Post Nuptial Agreement & QTIP Trust](#)



- Aug 10, 2022 — [Snack Food Brands Change Orders Suit](#)
- Apr 12, 2022 — [\\$700,000 Judgement in Breach of Contract Dispute](#)
- Aug 25, 2020 — [\\$8,000,000 awarded in Products Liability Case](#)
- Apr 4, 2018 — [Summary Judgment in Breach of Contract action defeats \\$700,000 claim](#)
- Apr 3, 2017 — [Gentry Locke attorneys secure settlement for orphaned toddler](#)





## Ryan J. Starks

Partner

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Ryan Starks works in Gentry Locke’s commercial litigation practice group, where he assists clients with complex business and civil disputes in state and federal courts throughout Virginia. Ryan has also practiced before the U.S. Government Accountability Office and the Court of Federal Claims. Ryan has wide-ranging experience in courts extending from the eastern shore to southwest corner of the state. Ryan has represented businesses and individuals in complex contract, commercial landlord-tenant, employment, land use, and government contracting disputes. Ryan has also defended clients state and federal investigations stemming from Fair housing, False Claims Act, and other whistleblower complaints. Ryan was recently named to *Best Lawyers in America* for Commercial Litigation in 2026. Ryan has worked with a broad range of large and small domestic and international clients to achieve successful outcomes throughout the Commonwealth.

### Education

- Washington and Lee University School of Law, J.D.
- State University of New York (SUNY) Albany, B.A.

### Experience

- Represents businesses and individuals in lawsuits involving contract disputes, business torts, and other civil actions
- Represents landlords and tenants in commercial lease disputes
- Represents employers facing allegations of discrimination under Title VII of the Civil Rights Act
- Counsels clients through investigations by the Department of Justice and the State Attorney’s General Office including whistleblower litigation and alleged violations of the False Claims Act
- Represents government contractors in bid protests, and disputes with prime and subcontractors
- Counsels clients through multiparty alternative dispute resolution/mediation

### Affiliations

- Member: Virginia State Bar
- Member: Richmond Bar Association (CLE Committee)
- Member: Virginia Association of Defense Attorneys
- Member: Washington and Lee University Alumni Association, Richmond Chapter
- Member: New York State Bar
- Member: District of Columbia Bar

### Awards

- Named to *Best Lawyers in America* for Commercial Litigation (2026)
- Named to Best Lawyers “Ones to Watch” List for Commercial Litigation (2025)
- Named to Virginia Lawyers Weekly “Up & Coming Lawyers” List for the Class of 2024
- Named a “Legal Elite” by Virginia Business Magazine for Young Lawyers (2024-2025)
- Named a Virginia *Super Lawyers* “Rising Star” in Business Litigation (2025)





## *Patrice L. Lewis*

Government Affairs Director

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- Email: [plewis@gentrylocke.com](mailto:plewis@gentrylocke.com)



Patrice Lewis is a Partner and Government Affairs Director at our firm. She has a diverse background in law, policy and communications, along with a strong ability to analyze data and provide strategic insights. Patrice is dedicated to helping our clients achieve their legal, legislative, and strategic goals focusing on issues such as technology, healthcare, education, and criminal justice reform. Before joining our firm, Patrice worked as a strategic marketing and communications consultant for SIR, Inc., in Richmond, VA. In that role, she led various initiatives focused on communications, outreach and engagement, as well as diversity, equity, and inclusion. Additionally, Patrice served as an outreach representative for Senator Mark R. Warner, covering Central and South Central Virginia, and as the legislative assistant to the late Delegate (Judge) Onzlee Ware. A native of Roanoke, Virginia, Patrice earned her undergraduate degree in sociology from the University of Virginia and her law degree from Regent University School of Law. She is licensed to practice law in both Virginia and Maryland.

### Education

- Regent University School of Law, J.D.
- University of Virginia, B.A.

### Experience

- Served as Senior Advisor at Southeastern Institute of Research
- Worked as an Adjunct Professor of Research Methodologies at Virginia Commonwealth University Brandcenter
- Represented U.S. Senator Mark Warner at the United States Senate as an Outreach Representative
- Worked as a Legislative Assistant for Delegate Onzlee Ware, 11th District

### Affiliations

- Member, African American Advisory Council, VA250
- Lewis F. Powell, Jr. Inn of Court Member
- National Black Professional Lobbyists Association Member
- Past Diversity and Inclusion Committee Chair, Public Relations Society of America – Richmond Chapter
- Past Board Member, Brown Virginia
- Past Member, Government Affairs Committee, Chamber RVA Chesterfield County
- Past Member, Civic Engagement Committee, Urban League of Greater Richmond's Young Professional Network
- Past Advisory Board Member, Black RVA





## Zachary R. LeMaster

Government Affairs Director

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Zach LeMaster is a Government Affairs Director with Gentry Locke Consulting. In this capacity, he provides strategic advice to clients regarding the political and legislative realities of the Commonwealth.

Before joining Gentry Locke, he served as Legislative Aide and Chief of Staff to Majority Leader Thomas K. Norment, Jr. During his eight years with the Senator's office, he oversaw all office operations, including policy development, staff recruitment, and constituent services. Additionally, he led the Senator's Political Action Committees, raising over \$4 million during this time and ensuring compliance with Virginia's campaign finance laws.

Zach assisted in the passage of the Senator's priority legislation, including raising the tobacco use age to 21, decriminalizing marijuana, and creating an iLottery system for the Commonwealth. The most expansive legislative effort he was involved in was the institution of a regional sales tax to promote tourism in the Historic Triangle, which required coordination between regional trade associations, local governments, and the business community.

In the 2020 Special Session of the Virginia General Assembly, Zach helped develop and guide the Virginia Senate Republican Caucus legislative agenda on criminal justice reform and public safety. He assisted in the vetting process of nominations to inaugurate Virginia's Redistricting Commission.

During his time at Gentry Locke Consulting, he has led on emerging issues in blockchain, fintech, and renewable energy. He has worked against legislation which increases the burden on housing providers and presented to the Virginia Housing Commission on the negative impact of rent control policies. Lastly, Zach has worked to protect the Commonwealth's historic resources, securing over \$9 million in state grant funding for historic preservation programs.

Zach earned his Public Policy and Administration undergraduate degree from James Madison University (B.S., 2012); he has been with Gentry Locke since November 2021.

### Education

James Madison University, B.S. in Public Policy and Administration

### Experience

- Developed policy initiatives for the Virginia Senate Republican Caucus
- Planned and organized fundraiser that generated nearly \$4.5 million in funds
- Coordinated a regional group of local government and businesses on legislative strategies to support and promote tourism.
- Served as an intermediary for hundreds of constituent to various executive agencies
- Lead grassroots teams in historic special elections





## Paul G. Klockenbrink

Partner

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- Email: [klockenbrink@gentrylocke.com](mailto:klockenbrink@gentrylocke.com)



Paul Klockenbrink is a Partner in Gentry Locke’s Labor & Employment law group. Paul advises and represents employers throughout Virginia regarding employment law issues, as well as the litigation of non-compete agreements, and business-related claims. Paul is a frequent speaker at national and regional employment law seminars and also leads the firm’s Restaurant & Hospitality practice group. During his 30+ years with Gentry Locke, Paul has brought cases through successful jury verdicts involving discrimination, retaliation, sexual harassment, non-competition, defamation, and malicious prosecution. Paul is consistently noted as a *Virginia Super Lawyer* in Employment & Labor Law, and since 2009 he has earned a spot on the *Best Lawyers in America list* in Employment Law – Management. More recently, he was named to the *Virginia Lawyers Weekly* 2025 “Leaders in the Law” list as well as a “Go To Lawyer” for Employment Law.

### Education

- University of San Diego School of Law, J.D. *cum laude*
- University of Vermont, B.A.

### Experience

- Represent management and companies in broad cross section of industries on labor and employment issue that arise on a daily basis such as hiring, union avoidance, leave issues under FMLA/ADA, wage and hour issues, investigation of misconduct, termination issues, unemployment claims and EEO Complaints
- Conduct high level investigations on behalf of national companies
- Extensive litigation experience involving claims of theft and trade secrets and disclosure of confidential information in violation of noncompetition/nondisclosure agreements
- Representation of companies before EEOC, Department of Labor, and other agencies, including mediation
- Representation of management and training of supervisors regarding union activity
- Obtained multiple defense verdicts in federal jury trials in sexual harassment and ADA cases
- Obtained dismissal of lawsuits and claims on behalf of companies in discrimination cases
- Representation of publicly traded companies in discrimination matters
- Representation of local school boards and municipalities in connection with termination issues and separation packages

### Affiliations

- Member, Labor & Employment Section, Virginia Bar Association
- Member, Labor & Employment Section, American Bar Association
- Member, Virginia State Bar
- Member, California State Bar (inactive)
- Member, Society for Human Resource Management; National, Roanoke, and Lynchburg
- Board Member, Roanoke Wildlife Rescue (2014-Present)
- Member, University of San Diego Law Review, 1987-1988
- Frequent speaker for business groups throughout region

### Awards

- Named to the *Virginia Lawyers Weekly* 2025 “Leaders in the Law” list



- Named a “Go To Lawyer” for Employment Law by Virginia Lawyers Weekly (2024)
- Named one of *The Best Lawyers in America*® in the field of Employment Law – Management (2009-2026) Labor & Employment Litigation (2011-2026)
- Named to *Virginia Super Lawyers* in the area of Employment & Labor (2007-2021) and Employment Litigation: Defense (2021-2025), included in *Super Lawyers* Corporate Counsel edition (2009) and *Super Lawyers Business Edition US* in the area of Employment & Labor (2012-2014)
- Designated one of *Virginia’s Legal Elite* in Labor & Employment Law by *Virginia Business* magazine (2007, 2016, 2019-2025)
- American Jurisprudence Awards in Torts (1986) and Evidence (1987)

## Case Studies

THE RESULTS OF CLIENT MATTERS DEPEND ON A VARIETY OF FACTORS UNIQUE TO EACH MATTER. PAST SUCCESSES DO NOT PREDICT OR GUARANTEE FUTURE SUCCESSES.

- Oct 19, 2023 — [Upheld Opinion in Gender Pay Bias Case](#)
- Aug 4, 2016 — [Employer Defeats Hostile Workplace Claim](#)
- Sep 1, 2015 — [Allegation of Americans with Disability Act Discrimination Against Municipality Dismissed](#)
- May 29, 2015 — [University Prevails on Motion to Dismiss Claims by Former Employee](#)
- Apr 23, 2015 — [Company Prevails Twice in Hostile Work Environment Claim](#)





## Michael S. Gulland

Partner

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Michael Gulland is a Partner in Gentry Locke's Government and Regulatory Affairs and White Collar Defense, Investigations & Compliance practice groups. He advises corporations, executives, and professionals on government investigations, regulatory enforcement actions, internal compliance reviews, and risk management strategies. Michael also represents clients in litigation and data privacy matters, including guidance through both the immediate and longer-term aftermath of a cyber incident.

Michael has an unusually diverse combination of private and public sector legal and investigative experience. Before joining Gentry Locke, Michael spent nearly 14 years with the Federal Bureau of Investigation (FBI), most recently serving as Chief Legal Counsel and Supervisory Special Agent for the FBI's Norfolk Division. In that role, he handled all of the Division's legal matters including advising on the complete array of operational, intelligence, policy, and ethical issues. He advised on the FBI's investigation of cyber breaches and related incidents, counseling how to remediate such attacks and to mitigate the harm to private and public entities. Michael worked in lockstep with investigators and federal prosecutors in structuring high-profile white collar, public corruption, and other criminal investigations. Further, he defended the federal government and its components in civil litigation involving the Federal Tort Claims Act (FTCA), *Touhy*, and EEOC matters, and further assisted employees subject to *Bivens* actions in their personal capacity.

Before this role with FBI Norfolk, Michael served in multiple capacities in the FBI's Chicago Division. Most recently, Michael represented the FBI Chicago's legal interests as an Associate Legal Counsel. Prior to that, he investigated Chicago's most violent and dangerous gangs and other complex criminal organizations, partnering with federal and state prosecutors and law enforcement agencies in employing complex techniques to disrupt and dismantle these illegal enterprises.

Prior to his FBI career, Michael practiced complex civil litigation at premier law firms in both Chicago and Washington, D.C. He developed significant trial and litigation proficiency in subject matters involving The False Claims Act, breach of contract and other business disputes, products liability, employment discrimination claims, and insurance coverage. Michael conducted the direct and cross examinations of expert and lay witnesses at trial, took and defended dozens of depositions in state and federal courts, and briefed and argued numerous dispositive, *in limine*, and other motions.

Michael taught an undergraduate cyber law class from 2021 to 2025, serving as an adjunct professor in Old Dominion University's Department of Sociology and Criminal Justice. Michael instructed students regarding complex cyber-attacks including ransomware, spyware, social engineering, and DDoS techniques, among others, as well as providing an overview on cybersecurity.

### Education

- Northwestern University Pritzker School of Law, J.D., *cum laude*.
- University of Virginia, B.A.

### Experience

Federal Bureau of Investigation (FBI)

Chief Legal Counsel for the FBI Norfolk Division; Associate Legal Counsel for the FBI Chicago Division; Temporary Duty Assignments as Chief Legal Counsel for FBI Washington Field and Anchorage Field Offices.

- Advised on complete array of FBI operational, cyber, intelligence, policy, ethical, and employment/HR matters.
- Defended interests of federal government in civil litigation and claims involving FTCA, *Touhy*, and Title 31.



- Served as Privacy, Ethics, and Policy Officer and member of Compliance Council.
- Advised on and assisted in the conducting of internal investigations and white collar and other prosecutions.

Special Agent

- Investigated complex criminal enterprises and some of the country's most dangerous and violent gangs. Contributed to substantial disruptions and dismantlement of their illegal activity.

Private Sector Civil Litigation

- Defended major aircraft manufacturer in multi-million-dollar *qui tam*/False Claims Act lawsuit in which Relator alleged massive fraudulent billing scheme related to arms deal with foreign government.
- Prosecuted class actions against major automotive companies for universal product defects inherent in certain vehicle models.
- Appealed ruling by SEC instituting lifetime ban against client for purported securities violations.
- Litigated dozens of personal injury lawsuits against automobile manufacturer in various state courts around the country.
- Represented major chemical manufacturer in breach of contract action.
- Defended major law firm in high-profile age discrimination lawsuit brought by the EEOC on behalf of multiple former equity partners.
- Represented insurance company in two separate trials spanning a combined 13 weeks involving complex issues of first impression under state law.
- Defended private equity company in multi-million-dollar fraud and breach of contract action.

## Admissions

- Virginia State Bar
- Illinois State Bar
- United States District Court for the Eastern District of Virginia
- United States District Court for the Western District of Virginia
- United States Courts of Appeal for the Seventh Circuit
- United States Courts of Appeal for the D.C. Circuit
- United States District Court for the Northern District of Illinois



# **Injury Time: How to Handle Challenging Medical Leave or Accommodation Requests**

**Todd Leeson**



**Injury Time:**  
**How to Handle Challenging Medical Leave or Accommodation Requests**

Todd A. Leeson



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**Legal Risks re: EE Accommodation Requests**

- ADA / Va. Human Rights Act (disability)
- Title VII (especially Religion)
- PWFA / Va. Human Rights Act (pregnancy/childbirth)
- Cannabis Prescription???

 2026 EMPLOYMENT LAW SYMPOSIUM

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**Reasonable Accommodations Under ADA or VHRA**

- Employer required to provide "reasonable accommodations"
- To "qualified individuals with disabilities"
- Unless it would cause "Undue Hardship" on Employer

*EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship (Issued 2002)-remains useful for ERs*

 2026 EMPLOYMENT LAW SYMPOSIUM

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### Reasonable Accommodations Under ADA or VHRA

- ER not required to eliminate an "essential function" of job—a fundamental duty of the position
- ER not required to lower production standards
- If person NOT able to perform an "essential function," then person is not a "qualified" individual with a disability



2026 EMPLOYMENT LAW SYMPOSIUM

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### ER Obligation Once On Notice of Request

- Once person tells management she needs adjustment or change related to a medical condition or medical impairment, Employer is on Notice.
- Can't mandate that EE fill out form.
- ER duty to engage in "interactive process" with Person
- What is Your Company's Policy and Protocol?



2026 EMPLOYMENT LAW SYMPOSIUM

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### Va. Requirements to Publish Notices Va. Code 2.2-3905.1

- ER must post & include in handbook EE's right to reasonable accommodations for disabilities
- ER must provide to EE:
  - Upon Hire AND
  - Within 10 days of ER notice that EE has a disability

*Are You in Compliance???*



2026 EMPLOYMENT LAW SYMPOSIUM

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**Engaging in the “Interactive Process”**

- ER may ask questions to enable it to make informed decision including asking what accommodations person seeks
- ER may ask for documentation re: the medical impairment and functional limitations including that it come from health care professional.
- Reasonable to request that person cooperate. In absence of cooperation, ER may deny the accommodation request.

 2026 EMPLOYMENT LAW SYMPOSIUM

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**Examples of Potential Accommodations**

- Job restructure/modifications (but not essential functions)
- Modified or Part-Time Schedule
- Modified Workplace Policies (e.g., eating at desk)
- Reassignment to Vacant Position for which EE is qualified
- **Additional Leave (paid or unpaid)**

 2026 EMPLOYMENT LAW SYMPOSIUM

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**Additional Points**

- Not a valid excuse for EE with disability to engage in conduct in violation of ER policy.
- ER may discipline EE who violates a policy (ex: violence) even if the EE contends conduct due to his disability.
- “Direct Threat” defense—If ER has credible information that EE poses risk of harm to himself or others, ER may place EE on leave and require “fitness for duty” certification

 2026 EMPLOYMENT LAW SYMPOSIUM

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### Federal EEOC: Powerful Agency Setting National Policy

- 5 commissioners & General Counsel (currently 2R, 1D)
- Set Priorities, Initiatives for EEO Policies, Litigation
- Gatekeeper for 80,000+ Charges filed every year



**GENTRY LOCKE** 2026 EMPLOYMENT LAW SYMPOSIUM

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### EEOC Aggressive Enforcement in Accommodation Actions



**GENTRY LOCKE** 2026 EMPLOYMENT LAW SYMPOSIUM

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### FedEx to Pay \$280,000 in Work from Home Lawsuit (EEOC 4-17-26)

- Several dispatchers with medical disabilities permitted to work from home for years.
- FedEx concluded that all dispatchers would need to return to downtown office. One dispatcher forced to retire and filed ADA charge with EEOC.
- EEOC: ERs cannot take "blanket approach to telework accommodations." "Modifying work location may be reasonable accommodation requirement."

**GENTRY LOCKE** 2026 EMPLOYMENT LAW SYMPOSIUM

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### Kroger Sued for Denying Accommodations

- Checkout Attendant w/ neuropathy worked for years w/ walker
- New Manager concluded EE could not use walker & told her to take leave until she could return to work without an accommodation. Kroger then fired her.
- EEOC Press Release 3-30-26 that it had sued Kroger.



2026 EMPLOYMENT LAW SYMPOSIUM

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### EEOC Sues Butterball

- Long-term EE diagnosed w breast cancer sought intermittent leave to receive/recover from chemotherapy.
- Butterball outsourced its leave protocols to Third Party Benefits Administrator. Administrator did not approve leave. EE fired!
- EEOC Press Release 4-1-26: "Even when ER hires third-party, ER remains responsible for complying with the ADA."



2026 EMPLOYMENT LAW SYMPOSIUM

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### Peak Performers to Pay \$160,000 for Failure to Provide Additional Leave (EEOC 1-8-26)

- Executive Assistant had significant mental health impairments and requested 4-6 weeks of leave for outpatient treatment.
- ER denied her request, and fired her when she took the leave.
- Danger Alert: EEOC continues to bring these lawsuits. Often in conjunction w/ additional leave following 12 weeks FMLA leave.
- How much addn'l time off is reasonable? Highly Fact Specific.



2026 EMPLOYMENT LAW SYMPOSIUM

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### Pregnancy/Childbirth: Reasonable Accommodations & Interactive Process

- Updated Virginia and Federal laws (e.g., Pregnant Workers Fairness Act)
- Similar to ADA, ER must provide reasonable accommodations unless it would cause undue hardship
- Best practice—involve HR as to any next steps



2026 EMPLOYMENT LAW SYMPOSIUM

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### Va. Requirements to Publish Notices Va. Code 2.2-3909

- ER must also post & include in handbook EE's right to reasonable accommodations for pregnancy, childbirth or related medical conditions
- ER must provide to EE:
  - Upon Hire AND
  - Within 10 days of ER notice that EE is pregnant

***Are You in Compliance???***



2026 EMPLOYMENT LAW SYMPOSIUM

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### Va. Law Published Examples of Reasonable Accommodations

- "Reasonable accommodation" includes more frequent or longer bathroom breaks, breaks to express breast milk, access to a private location other than a bathroom for the expression of breast milk, acquisition or modification of equipment or access to or modification of employee seating, a temporary transfer to a less strenuous or hazardous position, assistance with manual labor, job restructuring, a modified work schedule, light duty assignments, and leave to recover from childbirth.



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### Urologic Specialists to Pay \$90,000 to Settle Pregnancy Lawsuit

- EE medical assistant in 3<sup>rd</sup> trimester of high-risk pregnancy. Sought accommodations to sit, take breaks, reduced hours as recommended by her doctor.
- ER required her to take unpaid leave, refused to promise to bring her back, and refused to guarantee breaks to express milk. When EE balked, ER fired her!
- EEOC Press Release 2-20-26: "EEOC vigorously protects pregnant women in the workplace."



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### EEOC Subpoena Action to Obtain Comparative Evidence in Pregnancy Case

- EE was driver who became pregnant and sought pregnancy-related lifting restrictions. When ER refused, she asked to be assigned as dispatcher, for which she was qualified.
- ER (JamRock) removed her from schedule & hired other new dispatchers.
- EEOC Press Release 3-12-26: EEOC seeks ER records on driver work schedules, job descriptions, dispatcher hires.



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### Train Your Managers, Please!!! (10-8-24: EEOC Sues Victra)

- ER (Victra) hired new sales EE. Just before 1<sup>st</sup> day of training, EE notified manager that she was pregnant and had to go to emergency medical appt.: "might be something wrong with my daughter's heart."
- Manager text: "I'm so sorry to hear about that, and I hope everything is okay. Please let me know if you need anything. I'll send positive vibes your way and hope it was a mistake. I don't mean to add additional stress, but I spoke to [the] HR Department, and unfortunately, we are going to have to close out this position. Until you feel you can 100% attend, you are going to have to reapply once you can."



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**Groff v. DeJoy: Religious Accommodations**

- USPS had contract to deliver Amazon on Sunday
- Groff is Christian who believed no work on Sunday
- USPS denied Groff request—"undue hardship" (morale issues, having to provide premium pay due to shortfall, impact productivity)
- 2023 Sup. Ct.: ER must show that burden to accommodate is "substantial in overall context of employer's business" (higher burden for ER)



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**EEOC New Focus on Religious Accommodations**

- EEOC 3-5-26 Press Release announcing \$100K settlement
- Employer (YMHA) allegedly failed to accommodate Christian employee to attend Sunday church services/meetings
- "When religion conflicts with a work requirement, employers must provide an accommodation **unless doing so would cause an undue hardship.**"

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**Additional Recent EEOC Actions on Religious Accommodations**

- EEOC Sues Blue Eagle Contracting (4-3-26)
- EEOC Sues Dollar General (3-24-26). Jewish assistant store manager excused from work on his Sabbath (Saturday) for several months.
  - **New** Store Manager mandated that EE would need to work Saturdays.
  - When EE refused, Dollar General demoted him.
  - EEOC lawsuit to remedy penalizing EE because of his faith.

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### Carlstar Group to Pay \$300,000 in Prescription Drug ADA Case

- ER learned certain EEs were taking various prescription drugs for treatment of disabilities, including narcotics & opioids.
- EEs were medically cleared to perform their duties and sought modifications to ER drug policy. ER fired EEs.
- EEOC Press Release 4-15-26: “[ADA] provides protections for disabled employees who lawfully take prescription drugs for qualifying disabilities. . . . Employers must provide accommodations to employees who take such medications and can perform the essential functions of their jobs.”



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### Does EE have legal right to use cannabis if contend use is for valid medical reason?

- ADA & Va. Law. ERs must provide “reasonable accommodations” to otherwise qualified individual with disability unless show undue hardship.
- Similar to current ADA process, EE has obligation to inform ER of medical condition and request for accommodation. ER may engage in typical “interactive process” with EE including seeking certification from health care provider
- You can ask health care provider to certify that EE able to perform essential functions of job in unimpaired condition.



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### Case-by-Case Analysis (Details Matter)

- What are the essential functions of the job?
- What is purported medical impairment
- Is there medical certification? What dosage/frequency?
- What are circumstances in which question has arisen (pre-employment? Random test? Reasonable suspicion? Post-accident)
- Will health care provider certify that if EE use as prescribed, EE can safely perform the job in unimpaired condition?



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**GENTRY LOCKE  
EMPLOYMENT  
LAW SYMPOSIUM**  
WORLD CHAMPIONSHIP STRATEGIES  
FOR WORKPLACE CHALLENGES  
2026

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# **Global Pressure, Local Impact: Navigating Federal Workplace Enforcement**

**David Paxton and Jessica Otiono**





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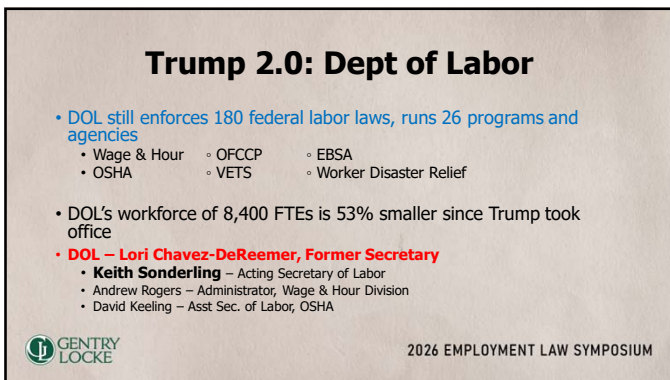
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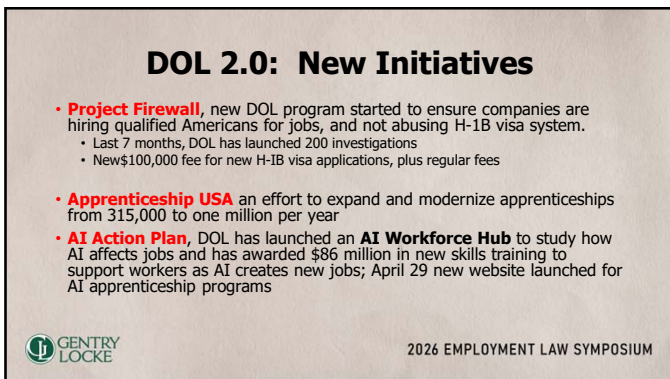
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## DOL 2.0: Independent Contractor?

- **FLSA "Employee" vs Independent Contractor Rule**
  - **May 1, 2025** – DOL no longer following Biden-era 2024 rule.
  - **New Proposed Rule** - Public comment period closed 4/28/26; not likely before 2027.
- **Regardless of the Test Used** – Misclassification is a serious risk issue for every company
  - FLSA (wages), FMLA, employee benefit plan, employer payroll taxes
  - Virginia state law allows claim – **burden is on company to prove worker is not an employee**
  - EPLI insurance is of limited value



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## Misclassification of Workers

- Fourth Circuit has adopted a six-part test**
- Upheld a **\$9 million** judgment against a nursing agency and its owner for misclassifying contract nurses *despite their specialized skills*:
    - **Amount of control** over the manner of the nurse's work
    - **Lack of opportunity for profit or loss**
    - Minimal investment in capital expenditures
    - Not the kind of "itinerant work" that independent contractors ordinarily perform
    - Nurses were subject to noncompete agreements
    - Services were integral to the company's business



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## Misclassification of Workers

- Misclassification of workers is more than an unpaid wage and benefit issue.
- In 2025, the **Supreme Court of Virginia** ruled that Amazon had misclassified delivery drivers in connection with a claim for VEC benefits
  - Amazon asked VEC to treat all "gig" drivers as a "class" and deny all of them benefits as they were all independent contractors.
  - VEC ruled against Amazon – found them to be employees
  - Amazon's challenge to the VEC ruling was unsuccessful
  - Amazon owed substantial back payroll taxes



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**DOL 2.0 - New Joint Employer Rule?**

- **April 22, 2026 – New rule who is a "joint employer" under FLSA, FMLA and the Migrant Worker Act** (similar to but not same as earlier Trump rule vacated by Biden) – **not until 2027**.
- **4<sup>th</sup> Circuit Salinas decision** currently controls in Virginia, but its test is a "novel" approach, new DOL rule would change 4<sup>th</sup> Circuit rule
- Two different scenarios:
  - **Vertical employers** (2 or more companies simultaneously benefit from employee's work) (general/sub relationship)
  - **Horizontal employers** (employee works separate hours in same workweek for two related or associated entities)

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**DOL 2.0: OFCCP**

**OFCCP is a shell of itself – Trump revoked Ex. Order 11246 (1964)**

- Gov't contractors no longer required/allowed to have AAP for sex, race and ethnicity

**Remaining AAP obligations: Section 503 (disabilities) and VEVRAA (protected veterans) – still enforced**

**Ex. 14398 (Mar.26, 2026)- prohibits operation of racially discriminatory DEI and new certification requirement on new contracts – enforced by DOJ, not OFCCP**

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**Trump 2.0: Illegal DEI**

**Executive Order 14173** prohibits all "illegal DEI" – 1/21/2025

- Fed. Contractor must certify that it "does not operate any programs promoting DEI that violates federal anti-discrimination laws."

**DOJ/EEOC Technical Guidance 3/19/25**


- Employment decision is considered illegal if race, sex, etc. it is just one of the factors considered when making the decision.
- Preferences based on and programs limited by sex or race will be challenged.
- Workplace balancing/decisions to promote diversity will be a problem ( there is "no diversity interest" exception)

**Executive Order 14398 – 3/26/26** - new fed contractors obligation to certify that it does not operate illegal racially discriminatory DEI programs

**DOJ Civil Rights Fraud Initiative – 5/19/25 – DOJ to use FCA**

- **FCA Liability** – if DEI certification is found to be false - whistleblower/bounty system – treble damages and attorney fees

**DOJ Illegal DEI Guidance – 7/29/2025 – road map to enforcement**

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### Trump 2.0 - EEOC

- EEOC currently consists of only 3 Commissioners – 11/25/25
- EEOC filed 16 religious discrimination cases - \$63 million recovered
- EEOC obtained \$21 million class settlement to resolve antisemitic harassment of Jewish employees of university in NYC
- EEOC sued a dairy company based on a manager's statement that "Americans are lazy" and preferred hiring Hispanic workers
- EEOC issues subpoena on behalf of class of white employees alleging race discrimination, including its DEI program
- EEOC during March meetings - approves 17 new suits – ADA (8), Religion (4), Race (2), Sex (2), Pregnancy (1)



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### Title VII Claims Easier

- **Ames v Ohio Dep't** – 6/05/25 Supreme Court (unanimous) rules for what has to be proven to show discrimination do not change if the employee is a member of a majority group – **no different rule for "reverse discrimination" cases.** Sexual orientation case - Female denied promotion, demoted and replaced by gay man
- **Muldrow v City of St Louis** – 4/17 / 24 – Supreme Court (unanimous) rules only required to show "some harm" when claiming discrimination – no longer have to show "significant harm" – police officer was transferred by kept his rank and pay – had to wear a uniform, work weekend shifts, oversee street patrols and loss use of unmarked car



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### Illegal DEI - EEOC

- **EEOC** – 1/23/26 – rescinds 2024 Harassment Guidance
- **Coke** – 2/17/26 – EEOC sues Coke bottling company for sex discrimination based on two-day women-only employer sponsored trip and networking event
- **4th Circuit** – 2/06/26 – vacated nationwide injunction that had blocked parts of Ex. Order on "illegal DEI"
- **Planned Parenthood** – 3/19/26 - \$500,000 settlement - **mandatory** "affinity caucuses" segregated by race, and DEI training that targeted white EEs
- **NY Times** – 5/05/25 – EEOC sued when well-qualified white male was not promoted alleges illegal DEI



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### FCA Liability for Illegal DEI Practices

**IBM agreed to pay \$17 million to settle FCA claims** alleging IBM engaged in a pattern of illegal DEI practices as gov't contractor

- **Settlement announced on April 10, 2026** Did not involve new certification requirements

**DOJ claimed IBM discriminated on the basis of race, sex and other protected factors by using policies to increase diversity of those hired and promoted.**

- **Bonuses** were tied to achieving demographic targets
- **Interview criteria** were altered for female and minority candidates
- **Exclusive training**, mentoring and development programs open only to females or minorities

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### Trump 2.0: DOJ/FTC

- **Jan. 16, 2025** – Biden’s **Joint Antitrust Guidelines for Business Activities Affecting Employees** – *targets situations involving wage-fixing, no-poach agreements, sharing confidential info with competitors, non-compete & other restrictive agreements*
  - **FTC Rule Banning Non-Compete Agreements – gone**
  - **NLRB GC Memo on Non-Compete Agreements** (May 2024) rescinded
- **Feb. 26, 2025** – **FTC appoints a Task Force** – saying “**FTC feels workers’ pain**” from unfair, deceptive and anticompetitive conduct, and will focus on no-poach/no hire agreements, noncompete agreements with low wage employees.
- **April 15, 2026** – **FTC ordered Rollins**, national pest-control company, to stop enforcing two-year noncompete agreements with more than 18,000 employee who were considered low wage

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### The Score Board: Agenda Overview



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### Kickoff: Form I-9 Basics

Section 1 must be completed by employee by the first day of work.

Employer must review documents and complete Section 2 within three business days of hire.  
\* Review documents only for reasonable genuineness and relation to employee, not immigration status.

Employers should refrain from asking an employee to produce a specific document.

Receipts are acceptable but employee must produce original replacement or another acceptable document within 90 days of the hire date.



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### Kickoff: Form I-9 Basics


Reverify only temporary work authorization documents.  
 Reverification should occur no later than 3 business days after expiration of temporary work authorization.

If an employee is hired within 3 years of completion of prior Form I-9, complete the applicable block on Supplement B or a new Form I-9.

Depending on the applicable section, errors on Form I-9 should be corrected by the appropriate person.

**Retention Rules**

If employee worked less than 2 years, retain their forms for three years after first date of employment indicated on Form I-9    
 If employee worked more than 3 years, retain their forms for one year after employment terminates



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### Group Stage: E-Verify & Mismatches


**E-verify: Additional compliance layer only**

**Mandatory Use v. Voluntary Use**

- e.g., State or Federal Contracting law requires E-verify.

**If using E-verify**

- Employee must provide SSN on Form I-9.
- Accept List B document with photo, if provided.
- Create E-Verify case by third business day after first day of work for pay.
- Enter email address if provided on Form I-9.
- Keep copy of photo matching document, if provided.
- Reverify in Form I-9 only, no new E-Verify case.



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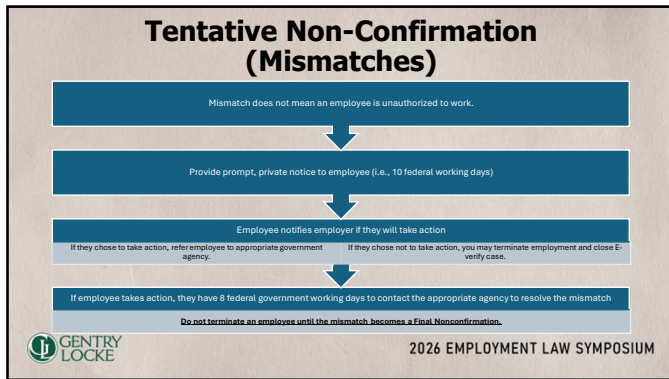
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### VAR REVIEW: INTERNAL I-9 AUDITS

- Internal I-9 Audits help employers identify and fix errors before external review by ICE.
- Audits highlight recurring errors indicating training gaps and unclear procedures.
- Self review is a key tool for managing compliance risk and ensuring consistent purposes.
- Audits are routine checks like VAR in soccer, not punitive but essential for compliance.

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### Knockout Round: ICE Audits

<p><b>Begins with a Notice of Inspection ("NOI")</b></p>	<p>Limited to a document driven review of Form I-9 and related records. Employers generally have 3 business days to respond with requested documents. Extension is discretionary.</p>
<p><b>ICE reviews Form I-9s for technical v. substantive violations</b></p>	<p>Technical/procedural errors – limited opportunity to cure Substantive violations – no opportunity to cure, subject to penalties. • Carry fines ranging from \$288 to \$2,861 per form.</p>
<p><b>ICE issues a written notice of findings</b></p>	<p>May be contested by requesting a hearing before an ALJ or by negotiating a settlement with ICE.</p>

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## Yellow Cards v. Red Cards – Form I-9 Violations

On March 16, 2026, ICE updated Form I-9 inspection Fact Sheet. See [Form I-9 Inspection Under Immigration and Nationality Act § 274A.11\(CE\)](#)


- Longstanding Virtue Memorandum effectively rolled back.

Many former technical errors are now treated as substantive.

No cure period for reclassified violations.

Document Copy Rule is no longer a safe harbor.

Fixing errors before NOI stops ongoing liability and starts 5-year limitations clock.



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## Yellow Cards v. Red Cards

Yellow Cards – technical violations, 10-day cure period available	Substantive violation – no 10-day cure period
Failing to record employee's SSN in Section 1 (For E-Verify enrolled employers)	Failing to complete Form I-9 or late completion of Form I-9
Failing to record employee's complete name at the top of page 2, Supplement A, or B	Missing employee date of birth
Failing to ensure employee provides other last name used	Missing USCIS/alien number
Failing to record employees new name in Supplement B during reverification	Missing date next to employee signature
Failing to use correct Form I-9 at initial completion	Missing name/title of employer
Failing to ensure employee provides an address in Section 1	Spanish Language Form I-9 used outside Puerto Rico
Failing to provide business address in Section 2	Missing expiration date in Section 1, Box 4



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## ICE Audit Game Plan

-  Routine internal audits remain the best defense i.e., at least annually.
-  Calander important dates and response deadlines.
-  Engage counsel early and respond only within the scope of the NOI.
-  Preserve and produce the required records within the designated period. Do not backdate or recreate forms. Designate an ICE team or Point of Contact personnel.



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## ICE Raid Game Plan

-  Immediately contact designated ICE Team.
-  Request credentials and warrants
 

Court warrant - can access non-public, private areas  
 Administrative warrant - cannot access non-public areas  
 Do not consent to raid if the ICE officer has no warrant and document your objection.
-  Accompany ICE throughout your facility, but do not obstruct.
-  Do not provide false information or hide employee.
-  Notify employees of their right, but do not instruct them to refuse to speak to ICE.
 

If employees are detained, inform their families.  
 No requirement to immediately terminate an employee upon detention.



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## Final Whistle: Key Takeaways

- Form I-9 compliance is an ongoing process, not a one-time form.
- Treat all employees consistently to avoid discrimination risk.
- E-verify adds obligations, it does not replace Form I-9 rules.
- Mismatches require notice, patience, and not immediate adverse action.
- Routine internal audits remain the best defense against ICE penalties.
- Respond to ICE inspection and raids deliberately not reactively.



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# When the Whistle Blows: Top 10 Mistakes to Avoid in Workplace Investigations

Tammy Finley





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**Mistake #1**  
**Having the Wrong Players on the Field**

**Importance of Investigator Skills and Neutrality**  
Investigators should have investigation experience and knowledge of relevant policies and processes, applicable business practices. Neutrality and independence are critical for investigators to ensure investigation is fair and defensible.

**Consequences of Wrong Choice**  
Choosing an inexperienced, biased or conflicted investigator damages workplace trust, morale and the credibility of the process.

**Best Practices in Investigator Selection**

- Select trained, neutral fact-finders with good communication skills
- Avoid actual or perceived conflicts of interest
- Develop investigation assignment matrix to identify and diversify investigator selection
- Consider external experts for high-risk or legal-sensitive matters

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**Mistake #2**  
**The Privilege Fumble**

**Misconceptions About Privilege**  
Not all workplace investigations are protected by attorney-client privilege; protection depends on investigation's purpose and structure and requires deliberate, disciplined actions throughout investigation process.

**Risks of Privilege Confusion or Waiver**  
Failing to establish or protect privilege can lead to disclosure of sensitive investigation materials to opposing parties, regulators or courts.

**Best Practices for Privilege Protection**

- Early decision on need for attorney-client privilege protection is critical. Consider worst case scenario planning, seek legal advice on need for privilege in sensitive matters
- Partner with legal counsel on scope, process and document preparation to establish and protect privilege
- Use clear verbal and written communication protocols (ACP labeling, confidentiality guidance, etc.)
- Limit sharing information about investigation to avoid inadvertent disclosure

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## Mistake #3 Starting Without a Game Plan

**Risks of Undefined Investigation Scope**  
Lack of clear scope leads to inefficiency, prolonged timelines, and confusion among stakeholders during investigations. Over broad investigations can identify unrelated issues that muddle investigation; too narrow scope can weaken investigation credibility by missing important issues.

**Impact on Stakeholders**  
HR and legal teams face resource strain and defensibility challenges when investigations lack proper boundaries. Undefined investigation parameters can lead to unnecessary or incomplete interviews and workplace disruption, while eroding investigator credibility.

**Best Practices for Scope**

- Clearly define scope of investigation based on specific allegations and policies (still remaining flexible, open minded)
- Consider if parties need to be separated pending investigation, be careful with transfers
- Consider if any stakeholders need to be notified of investigation (while being mindful of confidentiality)
- Identify and review any relevant materials/information (email, texts, recordings/video, time records, reports, social media)
- Expand scope only when new credible information arises; document expansion rationale



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## Mistake #4 Running Inconsistent Plays

**Risks of Inconsistency**  
Inconsistent investigation procedures can create perceptions of bias and discourage reporting of complaints. Inconsistent processes undermine investigation accuracy and credibility, damaging trust. Lack of standardization can create legal risks from bias and unequal treatment claims.

**Importance of Standardization**  
Standardized investigation frameworks for complaint intake, interviews, and documentation promote fairness and organizational credibility. Following a consistent investigation process leads to better outcomes and reduces legal risks.

**Best Practices for Standardization**

- Develop standardized frameworks for complaint intake, witness interviews and other investigation steps
- Create templates for use in note taking, interview summaries, final recommendations, etc.
- Avoid adding or circumventing investigation steps without proper justification
- Provide investigation training for all potential investigators



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## Mistake #5 Playing Solo

**Risks of Solo Interviews**  
Interviewing witnesses without support can create credibility and litigation risks, creating disputes about interview questions and responses. Solo interviews can create evidentiary weaknesses and expose organizations to claims of coercion or misrepresentation.

**Benefits of a Partner or Witness**  
Having an investigation partner or interview witness enhances credibility by providing corroboration, improving note-taking accuracy, and offering real-time perspective. Shared responsibility in investigations can improve quality control and defend against disputes.

**Best Practices for Investigation Teamwork**

- Include an appropriate, impartial partner or witness in interviews
- Ensure interview witnesses understand their role – listen only, note taker, etc.
- Be cognizant of applicable legal implications if recording interviews
- Consider second opinion/review of investigation findings to ensure no missed steps or risks
- Partner with outside legal counsel for high-risk or legal-sensitive matters



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## Mistake #6 Faulty Instant Replay

### Impact of Missing Details

Unresolved factual gaps weaken credibility and legal defensibility in investigations. Generalities and lack of detail hamper ability to make sound decisions, missed or unclear facts may lead to bad decisions.

### Importance of Thorough Follow-up

Probing inconsistencies and unresolved questions strengthens investigation outcomes. Failing to resolve inconsistencies can impact credibility calls and leave an investigation outcome open to debate/challenge. Memories fade over time without documented factual clarity.

### Best Practices for Clarity

- Ask the sensitive or difficult follow up questions – get detailed facts and avoid generalities
- Ask for specific quotes to avoid misunderstanding – words matter
- Ask “why” to gather rationale for witness statements or actions
- Practice good note-taking, promptly review and update interview notes following to ensure accuracy/proper wording
- Confirm witness written statements are understandable and align with interview, or ask witness to further clarify
- Attach referenced supporting materials and documents to notes/statements to avoid confusion



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## Mistake #7 Losing the Game Tape

### Impact of Poor Document Retention

Missing or incomplete records weaken a company's ability to justify decisions and investigation steps effectively. Failing to retain key investigation documents, or keeping excessive informal drafts, can weaken legal defenses and risk spoliation or exposure of unnecessary records.

### EEOC Retention Expectations

The EEOC expects employers to keep investigation records as evidence of prompt and appropriate response to workplace complaints. Challenges to investigation processes or outcomes can be filed >1 year following investigation.

### Best Practices for Document Retention

- Develop and follow document retention policies for investigation files and related information
- Consider centralized storage of investigation files, especially with remote or high turnover workforce
- Train all investigators on document retention practices
- Consult with legal counsel on document retention requirements to ensure compliance and mitigate risks, including using litigation holds where necessary



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## Mistake #8 Unwanted Overtime

### Impact of Delayed Investigation

Delayed or lengthy investigations can create perception of company inaction or investigator incompetence, frustrating both impacted employees and leadership. Failure to promptly address workplace concerns can create additional legal liability for employers.

### Importance of Prompt and Thorough Follow-up

It is critical to investigate complaints in a timely manner to remedy any improper workplace issues or behaviors. The EEOC and courts require prompt action when workplace complaints occur. Investigations should be conducted in an efficient and effective manner to build confidence in the investigation process and its outcome.

### Best Practices

- Develop investigation assignment matrix to enable efficient investigator assignments
- Ensure investigator has bandwidth to prioritize investigation, add resources where necessary
- Avoid delay caused by difficult witnesses or red herrings, seek guidance if roadblocks occur
- Be prompt in closing out investigation file documentation
- Consider engaging external experts for high-risk or time-sensitive matters, especially where time/resource intensive investigation steps are required



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## Mistake #9 Refusing to Call the Play

**Necessity of Credibility Decisions**  
Avoiding credibility determinations undermines accountability and is rarely justifiable in investigations. Reluctance to determine credibility can leave misconduct unaddressed and increase organization risk exposure, as well as create perception that company condones alleged behavior.

**EEOC and Court Expectations**  
Investigators must assess credibility based on consistency, corroboration and plausibility, beyond just witness demeanor. Relevant facts and observations should be noted to support a credibility decision.

**Best Practices for Credibility**

- Be ready to share informed point of view and recommendation(s) following investigation
- Develop structured frameworks to assist investigators in articulating rationale, provide investigator training
- Document reasoning for credibility determination as part of investigation file
- Review investigation steps and proposed recommendation with HR peer/supervisor for input, as needed
- Consult legal counsel in high-risk or sensitive matters



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## Mistake #10 After the Whistle Blows

**Importance of Remediation**  
Without remediation, organizations risk repeated misconduct and fail to protect employees effectively. Appropriate communication about remediation actions is also critical to avoid perception of inaction. Taking steps to prevent retaliation or workplace harassment by others are also required.

**EEOC and Court Oversight**  
EEOC and courts evaluate whether employers properly addressed investigation findings to prevent misconduct or address past harm. In some instances, companies can have external reporting requirements based on investigation findings.

**Best Practices for Remediation**

- Take prompt, appropriate remedial action to address issues confirmed by investigation
- Communicate investigation resolution with impacted parties – including applicable outcomes, non-retaliation protections
- Provide training on applicable workplace policies, update policies and practices when warranted
- Monitor workplace behaviors and relationships to guard against retaliation
- Document completed actions taken in response to workplace investigation – ensure intended remedial actions occurred



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# **No Red Cards, No Penalties: Winning Wage-and-Hour Compliance Under Federal and Virginia Law**

**Harrison Richards and Kiara Anguiano**



**No Red Cards, No Penalties:  
Winning Wage-and-Hour Compliance  
Under Federal and Virginia Law**

Harrison Richards  
Kiara Anguiano



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**Setting the Stage: Why Wage-and-Hour  
Compliance Keeps Us Up at Night**



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**Wage-and-Hour Compliance  
is a High-Risk Area**

- **High Litigation Risk**
  - Frequently litigated due to systemic payroll and classification errors.
- **Strict Liability Challenges**
  - Wage-and-hour laws hold employers responsible regardless of intent.
- **Impact of Minor Errors**
  - Small miscalculations repeated over time can cause significant liability.
- **Policy vs Practice Gap**
  - Discrepancies between written policies and managerial practices create compliance risks.
- **Regulatory Standards**
  - Federal and state laws impose strict concurrent compliance requirements.

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### Avoiding Penalty Kicks: Misclassification and Overtime Errors




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### Where Wage-and-Hour Claims Actually Begin

- **Trigger Events for Claims**
  - Wage claims often start after terminations, restructurings, or workforce reductions trigger employee legal consultations.
- **Minor Complaints Escalate**
  - Complaints concerning wage issues may escalate if mishandled or dismissed by management, raising legal risks.
- **Impact of Manager Responses**
  - Defensive or informal handling of complaints increases employer legal exposure.
- **Role of Labor Audits**
  - DOL audits can reveal systemic wage issues prompting claims.


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### Misclassification: A Familiar and Persistent Trap

- **Misclassification Risks**
  - Misclassification often occurs when employees are exempt based only on title or salary, ignoring actual duties and authority.
- **High-Risk Job Roles**
  - Working supervisors and administrative staff face high misclassification risks.
- **Overtime Pay Errors**
  - Common overtime errors include miscalculating pay rate by excluding bonuses, incentives, or shift differentials.
- **Reassessing Classifications**
  - HR professionals should regularly review job duties and classifications to avoid misclassification, especially after operational changes.


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## Keeping a Clean Game Plan for Modern Work Realities



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## Modern Work and the Expansion of Compensable Time

- **Blurred Work Boundaries**
  - Remote access and flexible schedules blur the lines between work and personal time, complicating compensable time evaluation.
- **Legal Standards for Work Time**
  - Compensable time is determined by whether work is 'suffered or permitted' under wage-and-hour laws, despite modern work changes.
- **Digital Communication Audit Trail**
  - After-hours emails, texts, and calls create a digital audit trail making denial of compensable work difficult.
- **Policy and Operational Alignment**
  - Effective risk management requires aligning company policies with operational practices to prevent off-the-clock work.

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## Pre- and Post-Shift Work, Travel Time, and Timekeeping.

- **Compensable Pre/Post-Shift Activities**
  - Time spent on pre- and post-shift tasks can be compensable if linked to job duties.
  - Pre- and post-shift communications like emails and calls are compensable if the employer knows the work is done, regardless of prior authorization.
- **Nuances of Travel Time**
  - Ordinary commuting is generally non-compensable, but workday travel or special assignments may require payment depending on context.
- **Timekeeping Best Practices**
  - Employers must use accurate timekeeping to track work outside traditional schedules and prevent underpayment.

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## Staying Onside with Payroll Deductions and Job-Related Expenses



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## Virginia's Strict Approach to Wage Deductions

- **Stricter Virginia Payroll Laws**
  - Virginia law mandates stricter payroll deduction controls compared to federal regulations.
- **Requirement for Written Authorization**
  - Employers must obtain a written and signed employee authorization specific to the deduction's nature and amount before withholding wages.
- **Common High-Risk Deductions**
  - High-risk deductions include uniforms, tools, training costs, shortages, and repayment of advances, requiring careful authorization.
- **Penalties for Non-Compliance**
  - Violations can lead to significant penalties including treble damages and attorneys' fees.
- **HR Compliance Best Practices**
  - HR must carefully document and regularly review deduction practices to meet legal standards.

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## Internal Audits and Manager Training as Prevention Tools

- **Role of Internal Audits**
  - Internal audits proactively identify and correct wage vulnerabilities before claims arise, focusing on job duties, salary thresholds, and overtime accuracy.
- **Examining Manager Behaviors**
  - Audits should assess manager actions that lead to off-the-clock work, including after-hours communication and informal scheduling adjustments.
- **Importance of Manager Training**
  - Training reinforces that all work time must be recorded, time edits need employee confirmation, and wage complaints require prompt escalation.
- **Non-Retaliation Emphasis**
  - Reinforcing non-retaliation policies is essential to prevent retaliation claims and protect employee rights.

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**Conclusion and Key Takeaways**



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**Practical Lessons for Employers**

- **Ongoing Compliance Priority**
  - Effective wage-and-hour compliance requires constant operational focus rather than reactive legal responses.
- **Mitigating Risks**
  - Periodic audits, accurate timekeeping, and consistent manager training help reduce compliance risks significantly.
- **Focus on High-Risk Areas**
  - Targeting misclassification, work time, and payroll deductions reduces costly penalties and builds trust.
- **Empowering Managers**
  - Managers serve as frontline defenders, equipped with tools and knowledge to enforce compliant practices.
- **Role of HR Professionals**
  - HR translates legal requirements into operations, embedding compliance into everyday workplace practices.
- **Prevention Benefits**
  - Investing in prevention lowers legal risks and adverse consequences.

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**Poll Everywhere**

**Please complete the following steps:**

1. Start a text message to 22333
2. In the message area, type ***gentrylocke123***
3. Send the message

You should receive confirmation of access shortly after!

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### Question #1

An employer conducts an internal wage-and-hour audit and discovers that certain "assistant managers" regularly perform non-exempt duties, work over 40 hours, and are paid a flat salary with no overtime. Which of the following steps is most effective in reducing the risk of treble damages under Virginia wage-and-hour laws?

- A.) Immediately reclassifying the positions as non-exempt and paying overtime prospectively.
- B.) Reclassifying the positions, correcting pay going forward, and implementing manager training to prevent off-the-clock work
- C.) Waiting to reclassify until after the next payroll cycle to avoid employee relations issues.
- D.) Relying on the job titles to support exempt status unless an employee files a complaint.



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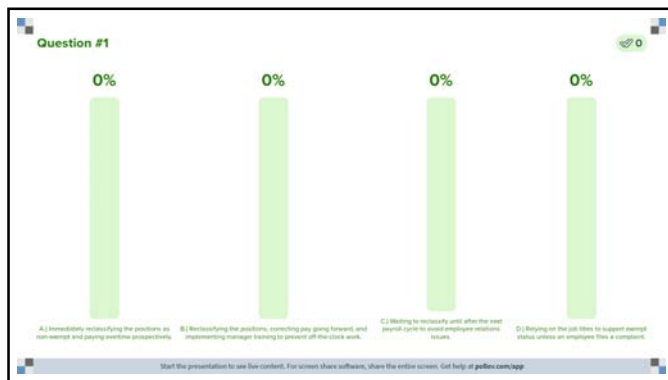
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### Question #2

A non-exempt employee clocks out at 5:00 p.m. but is required to remain on call for the next 30 minutes to respond if a supervisor sends a scheduling change via text. The supervisor usually does not text during that time, and on most days the employee receives no messages. Under federal and Virginia wage-and-hour law, how should the employer treat that 30-minute period?

- A.) The time is not compensable unless the employee actually receives and responds to a message.
- B.) The time is compensable only if the employee responds within a certain number of minutes.
- C.) The time is generally compensable because the employee's freedom is meaningfully constrained.
- D.) The time is not compensable if the employer's policy states that after-hours work is prohibited.



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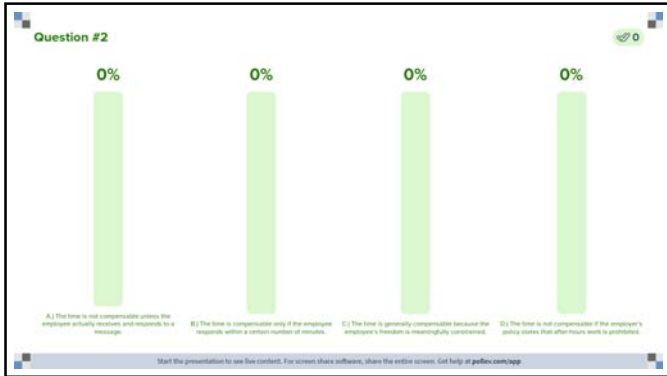
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**Question #3**

A non-exempt employee signs a written authorization allowing the employer to deduct the cost of required training if the employee leaves within six months. After the employee resigns, the employer deducts the remaining training balance from the employee's final paycheck. Under federal and Virginia wage-and-hour law, which statement is most accurate?

A.) The deduction is lawful because it was expressly authorized in writing and tied to a legitimate business expense.  
 B.) The deduction is lawful as long as the training primarily benefited the employee rather than the employer.  
 C.) The deduction is unlawful because minimum wage must be paid "free and clear," regardless of written authorization or intent.  
 D.) The deduction is lawful if the employer repays the employee the minimum wage shortfall within a reasonable time.

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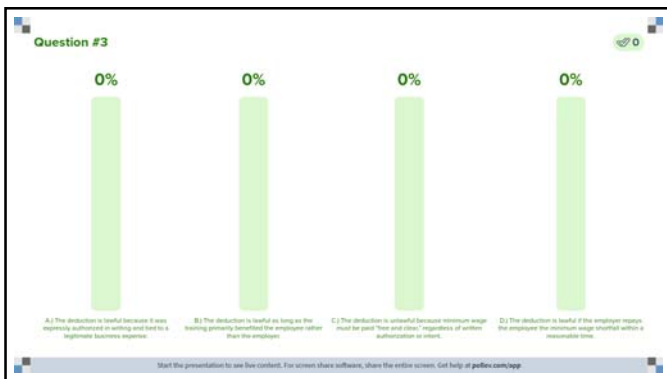
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# **From Kickoff to Offer Letter: Avoiding Hiring Pitfalls, Strengthening Onboarding & Managing AI**

**Amanda Morgan**





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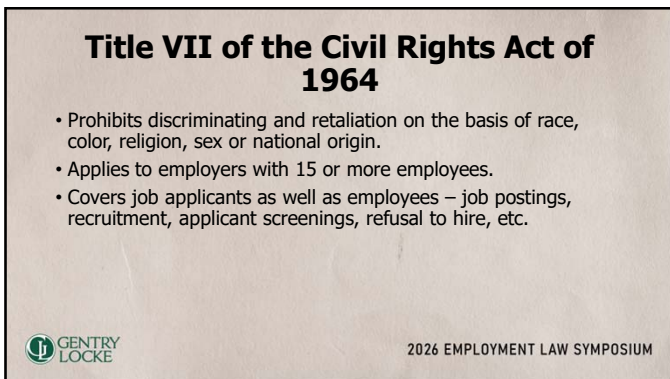
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### Virginia Human Rights Act (VHRA)

- Prohibits discrimination and retaliation on the basis of race, color, religion, sex, pregnancy, childbirth or related medical conditions, ethnic or national origin, sexual orientation, gender identity, age, marital status, disability, and military/veteran status.
- Generally, applied to employers with 15 or more employees (except for unlawful discharge claims). **BUT, as of July 1, 2026, applies to employers with 5 or more employees.**
- Covers job applicants as well as employees.



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### Age Discrimination in Employment Act (ADEA)

- Prohibits discrimination and retaliation on the basis of age against persons over 40 years old.
- Generally, applies to employers with 20 or more employees.
- Applies to state and local governments regardless of number of employees.
- Covers job applicants as well as employees.



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### Americans with Disabilities Act (ADA)

- Prohibits discrimination against qualified individuals with disabilities.
- Applies to employers with 15 or more employees.
- Covers job applicants as well as employees.



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### National Labor Relations Act (NLRA)

- Protects employees' and applicants' right to form, join, or assist labor organizations, and to engage in other concerted activities for the purpose of mutual aid or protection.
- Also protects right of employees to refrain from all such activities.
- Prohibits discrimination "in regard to hire" to encourage or discourage union membership.



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### Fair Labor Standards Act (FLSA)

- Requires employers to properly classify positions as exempt or non-exempt.
- Requires employers to pay minimum wage and overtime to non-exempt employees who work more than 40 hours in a work week.



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### Equal Pay Act

- Prohibits employers from wage-based discrimination on the basis of gender for jobs with equal skill, effort, and responsibility which are performed under similar working conditions.



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**Immigration Reform and Control Act**

- Requires employers to ensure that employees are lawfully authorized to work in the United States.
- Requires completion of Form I-9 and examination of original documents.

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**Uniformed Services Employment and Reemployment Right Act of 1994 (USERRA)**

- Provides rights for employees who take military leave or seek to return to work from military service.
- Also prohibits discrimination at pre-employment stage based on military status/obligations.

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**Fair Credit Reporting Act (FCRA)**

- Employers who use consumer reports and who deny a job to an applicant in whole or in part because of information contained in a consumer report must make certain pre-adverse action and adverse action disclosures to the applicant.
- Employers must also obtain consent for background checks in a stand-alone document (separate from a job application).

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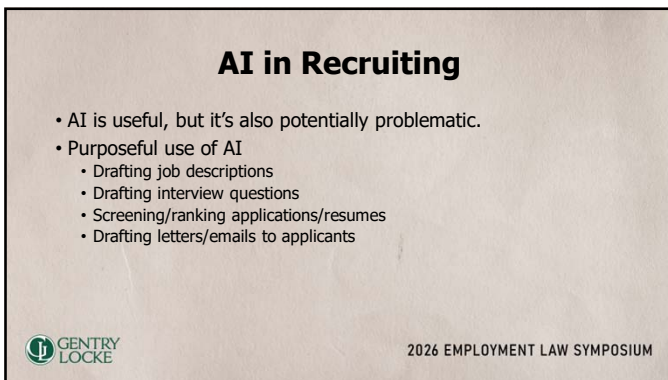
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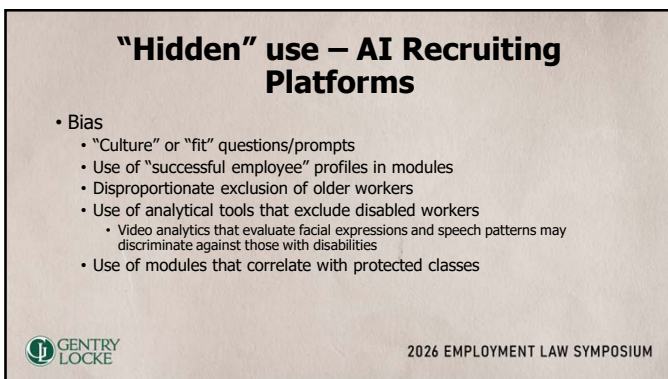
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**"Hidden" use – AI Recruiting Platforms**



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**"Hidden" use – AI Recruiting Platforms**

- Employers are responsible for biased AI by third-party vendors/websites
  - A vendor's claim that its program is free from bias cannot be relied on
  - Employers have an affirmative duty to assess whether the tools have a disparate impact on protected classes
    - Must understand what raw data is used
    - Must understand how the tool/program works
    - May need to request validation studies showing questions/process is necessary to the actual functions of the job
    - Should maintain documentation of this vetting process
    - Should add a level of human oversight/overrides



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**Headline Cases**

- **iTutorGroup, Inc.**
  - Automated applicant screening used to reject candidates
  - Alleged to have discriminated against older applicants (females over 55 and males over 60)
  - \$365,000 settlement
  - Mandatory policy changes
- **Mobley v. Workday, Inc.**
  - Challenged use of AI screening and rankings system
  - Alleged to have discriminated against race, age, and disability
  - Class action
  - Included vendor as a defendant
- **Eightfold AI Class Action (California)**
  - Challenge use of AI to screen and rank applicants
  - Talent matching and prediction software
  - Claimed Fair Credit Reporting Act (FCRA) violations by alleging that the output is a consumer report



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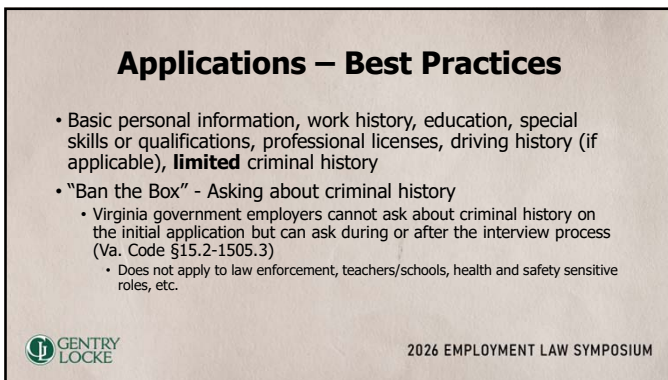
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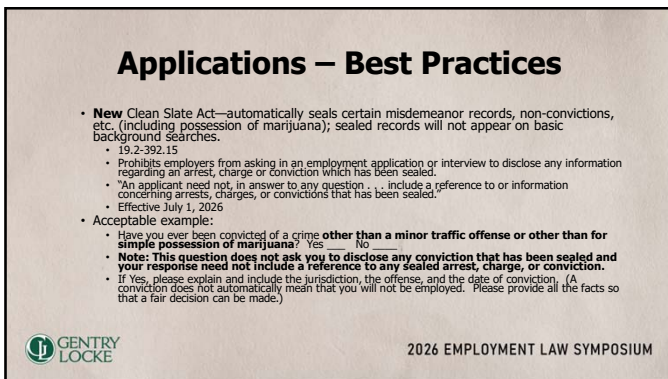
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### Applications – Best Practices

- You can ask about eligibility to work in the United States
- You can ask questions about availability to work a required schedule (e.g., Saturdays and/or Sundays)
- You can ask if able to perform the essential functions of the job with or without an accommodation
- Avoid questions that ask or are likely to elicit responses related to protected classifications
- Failure to hire claims:
  - Questions regarding ability to lift 30 pounds discriminatory screening tool if unrelated to job duties; (EEOC Settlement—Lori's Gifts)
  - Rejection of deaf candidate for housekeeping job (despite ability to perform essential functions with accommodation because employer required applicants to "hear and see within normal ranges and communicate verbally" (EEOC suit)



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### Applications – Best Practices

- Prior salary history
    - **New 40.1-28.7-12, effective July 1, 2026**
    - Prohibits a prospective employer from
      - (i) seeking the wage or salary history of a prospective employee;
      - (ii) relying on the wage or salary history of a prospective employee in considering the prospective employee for employment;
      - (iii) relying on the wage or salary history of a prospective employee in determining the wages or salary the prospective employee is to be paid upon hire;
      - (iv) refusing to interview, hire, employ, or promote or otherwise retaliating against a prospective or current employee for not providing wage or salary history or requesting a wage or salary range;
      - (v) failing or refusing to disclose in each public and internal posting for each job, promotion, transfer, or other employment opportunity the wage, salary, or wage or salary range; and
      - (vi) failing to set a wage or salary range in good faith.
- (Does not prohibit voluntary disclosures; can rely on voluntary disclosures to support a higher wage/salary and can confirm the prior salary to support the higher wage.)



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### Background Checks



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## Background Checks

- **Fair Credit Reporting Act** - applies to not just "credit reports"
- It applies to all consumer reports including background checks used in the employment process—criminal reports, driving reports, credit reports, etc.
- You must have a stand-alone consent form for conducting a background check. It cannot be a paragraph on the employment application or another form.
- If you plan to take adverse action based on a background check, you must first give notice—Pre-Adverse Action Notice. It must include a copy of the FCRA Summary of Rights, including the right to dispute the content of the report.
- You must wait at least five days before taking the adverse action. Then, you must send a Notice of the Adverse Action.
- This applies to both pre-employment and employment reports and decisions (promotions, annual reviews, etc.).



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## Interviews & Hiring Decisions



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## Interviews & Hiring Decisions

- **All pre-employment inquiries should focus on an applicant's skills and ability to do the job.**
- Rejected applicants will assume that you used all information that they provided to you. **So, if you don't need to know to make the decision, don't ask.**
- You may ask about ability of an applicant to perform the job with or without an accommodation.
  - If there is an obvious or voluntarily disclosed disability, you may ask how the essential functions would be performed.
- Ask the same uniform questions to all interviewees.
- Decisions must be based on legitimate, nondiscriminatory reasons.
- If an offer is conditional, list the specifics in the offer letter to avoid later confusion.
- Be cautious in withdrawing offer—EEOC suit for withdrawal of offer after learning applicant needed service dog for her PTSD—CDL driver—reasonable accommodation.



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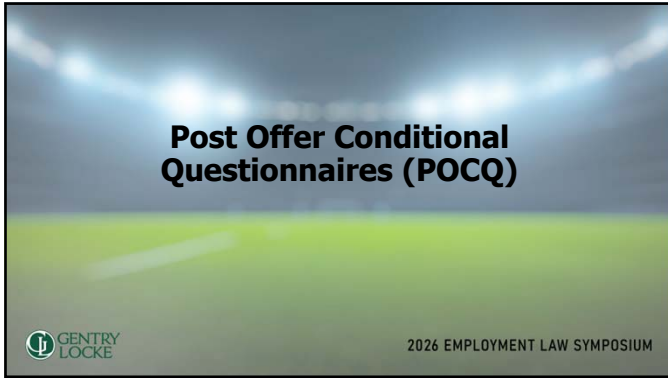
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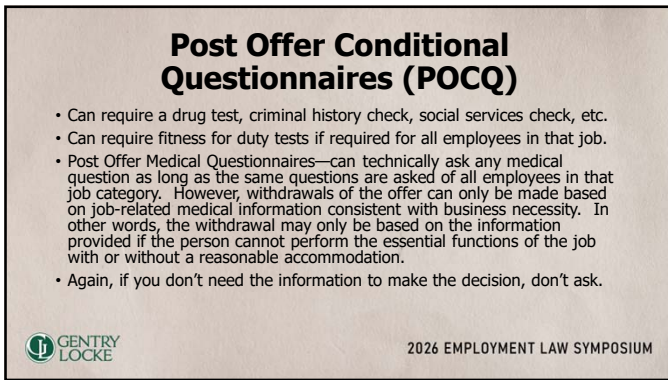
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## Onboarding

- Classification as exempt or nonexempt (FLSA)
  - Exempt:
    - Executives (salary, management of business, direct the work of at least 2 other employees, authority to hire/fire)
    - Administrative (salary, primary duty is office/non-manual work, exercises discretion and independent judgment)
    - Professional (salary, primary duty is work requiring advanced knowledge of intellectual or creative nature including the exercise of judgment and discretion; specialized study/degree)
    - Computer Employee (salary or fee basis, analyst, programmer, engineer, etc.)
    - Other exemptions: outside sales, highly compensated employees
  - Non-exempt:
    - Blue-collar workers/manual laborers
    - Police, Firefighters, Paramedics, First Responders
- 40.1-28.7:7—Private right of action against employers for misclassification
- Employee Handbooks
- Required posters/notices



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## Onboarding

- Employment Contracts
  - Term or At-Will
  - Noncompete agreements
    - There continues to be new legislation in this area.
    - Prohibited for "low wage" employees
    - "Low wage" means:
      - Earning less than the average weekly wage in Virginia (currently \$78,364.52) OR
      - Non-exempt under FLSA (as of July 1, 2025)
    - **New** legislation prohibits non-competes for healthcare professionals with some exceptions



2026 EMPLOYMENT LAW SYMPOSIUM

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## Onboarding

- **New** legislation prohibits enforcement for involuntarily terminated employees without a severance agreement
- Nondisclosure agreements
  - Allowed to protect trade secrets and confidential information
- Clearly explain benefits packages and eligibility
- Identify the people available to answer questions.



2026 EMPLOYMENT LAW SYMPOSIUM

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**GENTRY LOCKE**  
**EMPLOYMENT**  
**LAW SYMPOSIUM**  
WORLD CHAMPIONSHIP STRATEGIES  
FOR WORKPLACE CHALLENGES  
**2026**

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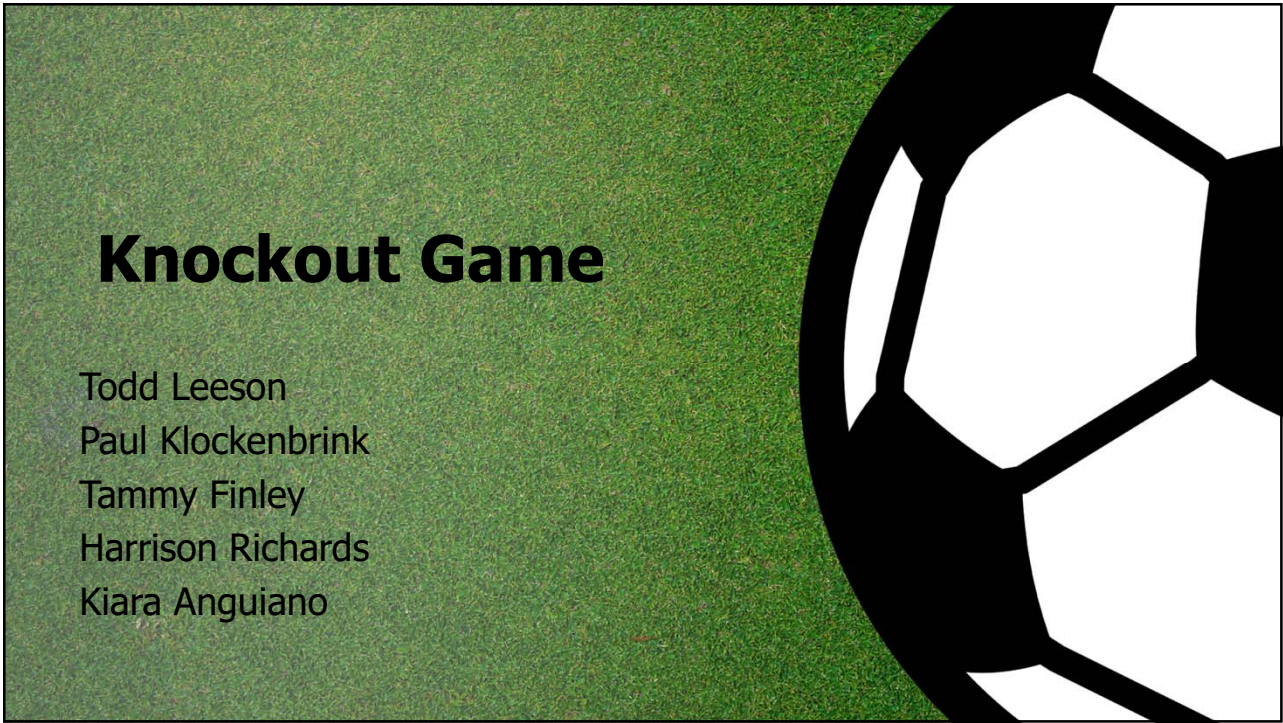
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# Knockout Game





## Poll Everywhere

If you haven't already done so, please complete the following steps:

1. Start a text message to 22333
2. In the message area, type ***gentrylocke123***
3. Send the message

You should receive confirmation of access shortly after!



2026 EMPLOYMENT LAW SYMPOSIUM

## Todd – Question #1

Old man Paul plays in an adult soccer league (against players much younger and much more talented). Paul hurts his knee during a game. He files a workers' compensation claim against Gentry Locke. He contends his injury is compensable because he was wearing Gentry Locke wrist bands and Gentry Locke headband during the game. "I was representing," Paul declared. Does he have a WC claim against GL?

- A.) Yes
- B.) No



2026 EMPLOYMENT LAW SYMPOSIUM

## Paul – Question #1

Lionel Messi has been on a leave from work due to an ongoing back issue and related surgery. His boss, Ronaldo, has significant concerns about Lionel's ability to return to work. Ronaldo believes that Lionel is just a worker's comp accident waiting to happen. Human Resources understands Ronaldo's concerns but knows the company cannot just fire Lionel.

Before Lionel can return to full work, Human Resources can require Lionel to provide a full release to return to work from his treating physician?

- A.) True
- B.) False



2026 EMPLOYMENT LAW SYMPOSIUM

## Paul – Trivia Question #1

What country has won the Men's World Cup the most times?

- A.) Italy
- B.) Brazil
- C.) Germany
- D.) France



2026 EMPLOYMENT LAW SYMPOSIUM

## Tammy – Question #1

The company's hotline receives a complaint against HR Manager Susie, alleging Susie doesn't provide the same level of development training to older workers that she provides to newer, younger workers. The complaint is routed to CHRO Betsy.

CHRO Betsy should:

- A.) Ask HR Manager Susie to describe her training programs and the criteria she uses to determine which workers need which types of training, along with all training records and rosters.
- B.) Ask HR Manager Frank to fully investigate the hotline complaint and share his findings and recommendations with CHRO Betsy as soon as possible.
- C.) Ask the company's asset protection team to investigate the complaint since they have experience handling theft complaints reported on the hotline.
- D.) Consider calling an outside law firm to investigate the hotline complaint.



2026 EMPLOYMENT LAW SYMPOSIUM

## Harrison – Question #1

Several employees participate in a private group chat in which they exchange jokes that mock a coworker's religion in connection with a national team that is participating in the World Cup. Screenshots of these messages later circulate among employees in the workplace.

What is the most appropriate course of action for Human Resources?

- A.) Defer action unless there is evidence the communications occurred on company systems or during working time, as off-duty, off-platform conduct generally falls outside the employer's purview.
- B.) Initiate an investigation to determine whether there is a sufficient nexus to the workplace or an impact on the employee's working conditions.
- C.) Address the situation through a general policy reminder and monitor for recurrence, escalating only if the affected employee raises a complaint or the conduct continues.
- D.) Evaluate whether the conduct independently satisfies the legal standard for actionable harassment before initiating any formal inquiry or intervention.



2026 EMPLOYMENT LAW SYMPOSIUM

## Kiara – Question #1

An employee violates company policy in their last week of work. HR asks whether part of the employee's wages can be withheld as a penalty. What is the correct answer?

- A.) Yes, if the handbook allows discipline
- B.) Yes, if the violation caused financial harm
- C.) No — wages generally cannot be withheld as punishment for policy violations
- D.) Yes, but only for exempt employees



2026 EMPLOYMENT LAW SYMPOSIUM

## Todd – Question #2

Employee Ed informs HR he is transitioning to a woman and prefers to be called Emily. Emily also seeks to use the women's restroom. Employee Nellie gets word of Emily's request and tells HR that Nellie strongly objects. HR rejects Emily's request and she files a charge of sex discrimination with the EEOC. How do you expect the EEOC to respond?

A.) EEOC will deny the charge. Women have the right to insist upon a single sex restroom.

B.) EEOC will accept the charge. It is settled law that there can be no discrimination against persons based on their gender identity. The Employer should have worked with the parties to seek a compromise.



2026 EMPLOYMENT LAW SYMPOSIUM

## Paul – Question #2

Harry Kane is an amazing soccer player but in his regular job, his recent performance has been anything but amazing. His supervisor, Kylian Mbappé has had enough of Harry's attitude and poor performance. He wants Harry fired and wants you to get a separation agreement and release put together for Harry to sign. Harry is 50 years old, but Kylian is not worried about getting a release for age discrimination because he is replacing Harry with a 52-year-old employee.

How long do you have to give Harry to review the separation agreement?

- A.) 21 days
- B.) as much time as the Company wants to give Harry
- C.) 7 days
- D.) 24 hours



2026 EMPLOYMENT LAW SYMPOSIUM

## Paul – Trivia Question #2

What country does Kylian Mbappe play for?!

- A.) Spain
- B.) South Africa
- C.) France
- D.) England



2026 EMPLOYMENT LAW SYMPOSIUM

## Tammy – Question #2

HR Manager Susie is investigating a workplace violence complaint against Project Manager Ben who is accused of threatening a third-party vendor in the break room. During his interview, Ben shares that he has seen another project manager, Jerry, take home office supplies and charge improper travel expenses to the company. Ben says this has been going on for years and involves a large amount of money.

What is Susie's best course of action?

- A.) Immediately schedule an interview with Jerry.
- B.) Ask Ben for evidence of his allegations against Jerry, including a list of potential witnesses. Once provided, review the evidence and interview all witnesses to determine if Ben is being truthful.
- C.) Complete the workplace violence investigation regarding Ben and determine her findings and recommended action(s), noting he may be a witness in another workplace investigation.
- D.) Call the police and ask them to assist with a theft investigation involving Jerry.



2026 EMPLOYMENT LAW SYMPOSIUM

## Harrison – Question #2

A group of non-exempt employees voluntarily stay at the workplace after the end of their scheduled shifts to order dinner and watch World Cup matches with one another in a conference room. Although attendance is not required and no manager is present, several employees begin intermittently responding to work-related emails during this time.

What is the most accurate assessment of the employer's potential wage and hour exposure?

- A.) The time is likely non-compensable because the employees' presence was entirely voluntary and not requested or controlled by management.
- B.) The time is compensable only if the employees were expressly directed or authorized in advance to perform work during this period.
- C.) The time may be compensable, particularly if the employer knows or has reason to know that such work is being performed.
- D.) The time is not compensable unless the additional work results in the employees exceeding forty hours in the work week.



2026 EMPLOYMENT LAW SYMPOSIUM

## Kiara – Question #2

A non-exempt employee works **five extra hours of overtime** in a workweek without prior supervisor approval, even though company policy requires OT to be approved in advance. When payroll flags the hours, HR asks whether the overtime can be unpaid because it violated policy. What is the correct approach?

- A.) The overtime does not need to be paid because it was not approved in advance.
- B.) The overtime can be unpaid, but the employee may receive a written warning.
- C.) The overtime must be paid if the employer knew or should have known the work was performed, but the employee may be disciplined for violating the approval policy.
- D.) The overtime only needs to be paid if the employee submits a written request afterward.



2026 EMPLOYMENT LAW SYMPOSIUM

## Todd – Question #3

The ABC Company is concerned female managers keep leaving. After some brainstorming, the executives announce a full day paid “Women’s Retreat” at a local spa that will include spa services, lunch, networking talks, and even a class on menopause.

Ned the Neanderthal is a hard-working ABC executive. He files a sex discrimination charge with the EEOC alleging that he has suffered financial harm and mental anguish from being excluded from the event. How do you expect the EEOC to respond?

- A.) EEOC will accept the charge but will not pursue because it is not one of their key initiatives.
- B.) EEOC will not accept the charge; an employer has a legal right to hold meetings like this, especially given the fact that they are trying to retain female managers.
- C.) EEOC will accept the charge and will make it a priority to prosecute. This is blatant sex discrimination.



2026 EMPLOYMENT LAW SYMPOSIUM

## Paul – Question #3

Employee Christian Pulisic just 'doesn't seem right' and coworkers have expressed concerns about his ability to safely do his job. He seems forgetful and at times like he is in a fog. Christian's last review was overall good, and he has not requested an accommodation or approached HR about any issues. Christian's boss, Mauricio Pochettino has started shifting some work duties away from Christian. What can you do about the coworkers' concerns?

- A.) Nothing. Except for dealing with performance issues and wait for the employee to make an accommodation request.
- B.) Tell the coworkers to mind their own business.
- C.) Approach Christian and engage him in a conversation about general concerns expressed to see he if needs any accommodation or assistance.
- D.) Approach Christian and ask if he has medial issue that the company needs to be aware of and if so, to provide a physician note allowing him to continue working.



2026 EMPLOYMENT LAW SYMPOSIUM

## Paul – Trivia Question #3

What team won the last Men's World Cup?

- A.) Argentina
- B.) Germany
- C.) France
- D.) Brazil



2026 EMPLOYMENT LAW SYMPOSIUM

## Tammy – Question #3

HR Manager Susie received a sexual harassment complaint about Supervisor Bob from one of Bob's subordinates, Lisa. Susie investigated the complaint and found that while Bob had not sexually harassed Lisa, he had made overly harsh comments about her work performance. Bob was counseled to curb his language and provide more constructive criticism and required to attend an online class on positive workplace conversations. Lisa recently asked Susie about the investigation, particularly inquiring about what happened to Bob.

HR Manager Susie should:

- A.) Share details of Bob's interview, including his embarrassment about the situation, and describe the counseling conversation and training class requirement.
- B.) Remind Lisa that all investigations are confidential and therefore Susie cannot provide any details about the investigation or any actions taken.
- C.) Advise that Susie did not find sexual harassment had occurred; however, she determined Bob had not communicated with Lisa in a constructive manner and he was counseled to improve his workplace communications.
- D.) Assure Lisa that everything has been appropriately handled by HR, without providing any additional details, and ask her to let HR know if there are any future issues.



2026 EMPLOYMENT LAW SYMPOSIUM

## Harrison – Question #3

During the World Cup, your company engages a “freelance” social media specialist to manage real-time match content. The individual works full-time hours over a six-week period, uses company-provided equipment, follows specific posting guidelines, and reports to the marketing director on a regular basis. The engagement is governed by a written independent contractor agreement and is intended to conclude at the end of the tournament.

From an HR and legal perspective, what is the most significant risk presented by this arrangement?

- A.) The defined, project-based duration and existence of a written agreement weigh strongly in favor of independent contractor status, reducing the likelihood of misclassification.
- B.) The arrangement presents a meaningful risk of misclassification, particularly given the degree of control and integration into the company’s operations, notwithstanding the temporary nature of the role.
- C.) The primary exposure is limited to potential tax reclassification, as short-term, project-based roles are generally treated as independent contractor relationships for wage and hour purposes.
- D.) The risk of misclassification is mitigated where the individual retains some discretion over how to execute assigned tasks, even if they work full-time hours and report to a company manager.



2026 EMPLOYMENT LAW SYMPOSIUM

## Kiara – Question #3

A department wants to pay a “1099 contractor” to help with operations. The worker: (1) works a set schedule set by the company, (2) uses company systems, (3) performs ongoing work that looks like a regular role, and (4) is paid weekly. In a misclassification dispute, which statement is most accurate?

- A.) A signed “independent contractor agreement” controls, so they’re a contractor.
- B.) Virginia starts with a presumption the worker is an employee; the employer must justify contractor status consistent with IRS guidelines.
- C.) The worker is a contractor as long as they are paid a flat weekly amount.
- D.) The worker is a contractor unless they complain to the Department of Labor.

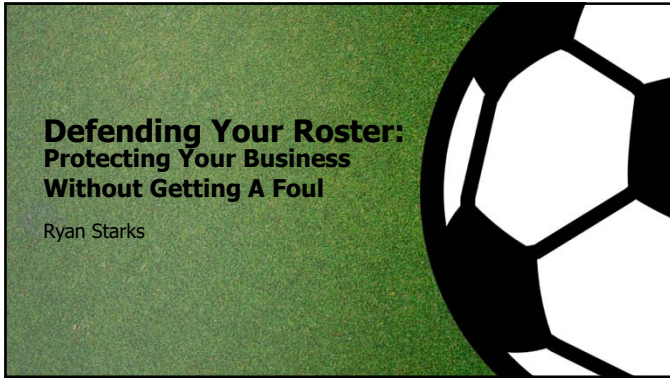


2026 EMPLOYMENT LAW SYMPOSIUM

# Defending Your Roster: Protecting Business Interests Without Getting a Foul

Ryan Starks





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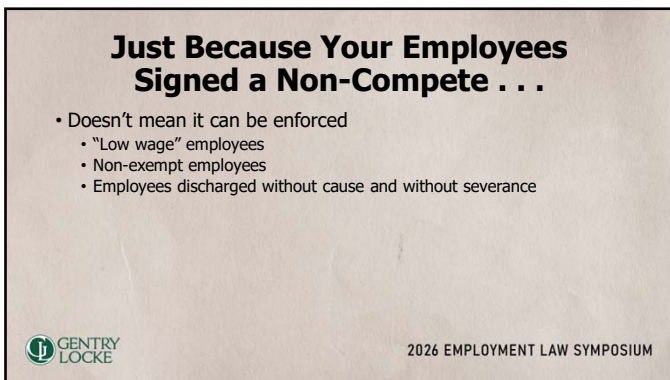
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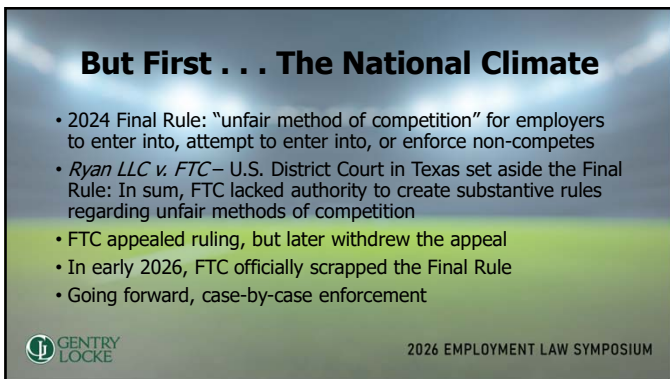
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**But First . . . The National Climate**

- FTC actively challenging non-competes deemed "overly broad" or "anticompetitive"
  - Rollins, Inc. (parent company of Orkin, HomeTeam, and Critter Control)
    - Rollins' non-competes prohibited employees from working in pest control for 2 years after leaving the company, within a 75-mile radius of one of Rollins' 700 locations nationwide.
    - On April 15, 2026, FTC ordered Rollins to cease enforcement of its non-compete agreements and notify employees they are no longer bound.
    - The order excludes directors, officers, and other senior leaders who exercise significant policy-making authority and are eligible for equity grants.

 2026 EMPLOYMENT LAW SYMPOSIUM

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**But First . . . The National Climate**

- FTC takes a dim view of non-compete agreements applied to all employees regardless of seniority or access to proprietary information. Requiring all employees to sign non-competes may invite scrutiny.
- While FTC has expressed particular interest in healthcare and minimum-wage employees, no industry is the clear.
  - FTC's recent enforcement actions span the pet cremation industry, healthcare, glass container manufacturers, security guards, and now pest control.
- Trump administration has moved the federal government away from being a "regulator" that bans these contracts and toward being an "enforcer" that only steps in when it believes a specific company is abusing the practice to harm competition.

 2026 EMPLOYMENT LAW SYMPOSIUM

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**But First . . . The National Climate**



- "The days of unreflective, unjustified, and anticompetitive noncompete agreements are over." – Andrew N. Ferguson, FTC Commissioner

 2026 EMPLOYMENT LAW SYMPOSIUM

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## Meanwhile, at the State Level

Total Bans	Income Based
<ul style="list-style-type: none"> <li>• California</li> <li>• Minnesota</li> <li>• North Dakota</li> <li>• Oklahoma</li> </ul>	<ul style="list-style-type: none"> <li>• Washington</li> <li>• Colorado</li> <li>• Oregon</li> <li>• Illinois</li> <li>• Maryland</li> <li>• Maine</li> <li>• Virginia</li> </ul>

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## Meanwhile, at the State Level

- Two clear themes dominate the state legislative landscape:
  - Healthcare is primary battleground — majority of new state restrictions aimed at protecting physician and clinical worker mobility, driven by workforce shortage concerns.
  - Low-wage workers are other focal point. Several states followed Virginia's lead tying enforceability to FLSA exempt/non-exempt status rather than just a dollar threshold.
- Multi-state employers — particularly those in healthcare, staffing, or any service industry — now face a genuinely complex patchwork that makes a one-size-fits-all non-compete form a significant legal risk.

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### Virginia's "Low Wage" Non-Compete Ban

- As of 2026, Virginia has one of the most robust and rapidly evolving protections for "low-wage" workers in the country.
- The law, originally passed in 2020 (VA Code § 40.1-28.7:8), was significantly expanded in 2025 and 2026.



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### Virginia's "Low Wage" Non-Compete Ban

- In 2026, a worker is considered "low wage" if they earn less than \$78,364.52 per year.
  - Changes every year
    - Based on average weekly wage in Virginia
    - Published by Virginia Department of Workforce Development in January
    - Based on prior year's quarterly census of employment and wages ("QCEW")
    - Currently \$1,507.01
- You can't:
  - Enter into a new non-compete with a low wage worker
  - Enforce an existing non-compete with a low wage worker
  - Threaten to enforce a non-compete against a low wage worker

GENTRY LOCKE 2026 EMPLOYMENT LAW SYMPOSIUM

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### Virginia's "Low Wage" Non-Compete Ban

- Employers who violate the ban can face:
  - Civil penalties of up to \$10,000 per violation
  - Lawsuits by employees to void the non-compete
    - Successful employees may be entitled to:
      - Lost compensation
      - Liquidated damages
      - Attorney's fees

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### Virginia's "Low Wage" Non-Compete Ban

- Some nuances:
  - A worker's average weekly earnings are calculated by dividing the worker's earnings during the period of 52 weeks immediately preceding the date of termination of employment by 52.
  - Does not include any employee whose earnings are derived, in whole or in predominant part, from sales commissions, incentives, or bonuses paid to the employee by the employer.
    - Courts generally interpret "predominant" to mean more than 50% of the employee's total annual compensation. If their base salary is \$30,000 but they earn \$50,000 in commissions, they likely fall outside the low-wage protection, even if their total pay is below the state average.


2026 EMPLOYMENT LAW SYMPOSIUM

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### Virginia's "Low Wage" Non-Compete Ban

- Some *more* nuances:
  - As of July 1, 2025, the ban was expanded to include all non-exempt employees (those entitled to overtime under the FLSA).
  - If a commissioned employee is classified as non-exempt, the non-compete ban applies to them, regardless of their commission structure or total pay.
    - **Remember:** A non-exempt employee is someone who is required by law to be paid at least the federal (or state) minimum wage and must receive overtime pay for all hours worked over 40 in a single workweek, typically because they earn less than \$1,128 per week (\$58,656 annually) and/or their pay fluctuates based on the quantity or quality of their work.


2026 EMPLOYMENT LAW SYMPOSIUM

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### The *Sentry Force* Decision

- January 27, 2026 ruling from the Court of Appeals of Virginia
- Important for understanding what falls within the scope of Virginia's "low wage" non-compete ban
- Distinguishes different types of non-solicitation provisions
  - **CRITICALLY:** Employee non-solicitations – as opposed to customer non-solicitations – fall within the broad definition of "covenants not to compete" and, therefore, cannot be entered into or enforced against low-wage employees.
    - "an agreement (1) between an employer and employee that (2) bars that employee from soliciting the employer's other employees (3) after the employee no longer works for the employer clearly falls within the scope of the statute."


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## The *Sentry Force* Decision

- **Takeaway #1:** A low-wage worker can start their own business or join a competitor, and their former employer cannot legally stop them from recruiting their old coworkers to join them.



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## The *Sentry Force* Decision

- Only *employee* non-solicitations are unlawful.
- When it comes to *customer* non-solicitations:
  - "Low wage" ban allows an employer to protect its customers from direct solicitation by its current or former employees.
  - An employer cannot, however, enter into a contract with its employees that bars them from providing services to the employer's customers if the customers first approach the former employee for services.
  - According to the Court: "the General Assembly gave employers the ability to enforce agreements that stop their employees from outright solicitation of their customers."



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2026 EMPLOYMENT LAW SYMPOSIUM

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### Senate Bill 170

- SB 170 (Effective July 1, 2026) amends the former "low wage" ban (Va. Code § 40.1-28.7:8):
  - Noncompete agreements will be void and unenforceable against any employee ("low" or high wage) who was discharged from employment without cause, unless the employer provides the employee a severance benefit or other monetary payment.
  - Employers are required to disclose the severance benefit or monetary payment upon execution of the noncompete agreement.
  - "Cause" is undefined.
  - Unclear what severance benefits or monetary payment must be offered, raising the question of how much severance is "enough" to satisfy the statute.



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### Senate Bill 170

- SB 170 does NOT apply to:
  - Employees with non-competes entered into before July 1, 2026
  - Employees who resign
  - Employees who are terminated "for cause"



2026 EMPLOYMENT LAW SYMPOSIUM

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### Senate Bill 170 – Food for Thought

- Read in conjunction with *Sentry Force*, does SB 170 permit a high-level executive, who is fired without cause and without severance, to passively solicit their former employer's customers?



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**Where Do We Go From Here?**

- Call us to review and revise your non-compete and non-solicitation agreements
  - CRITICALLY: Non-compete and non-solicitations agreements are still enforceable in Virginia if they are properly drafted.
- Evaluate termination practices
  - Ensure that appropriate severance or monetary payment mechanisms are in place for without-cause terminations.
    - REMEMBER: Severance benefit must be disclosed to employee at the time the employee signs the non-compete.
- NDAs are STILL FAIR GAME!

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**GENTRY LOCKE  
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WORLD CHAMPIONSHIP STRATEGIES  
FOR WORKPLACE CHALLENGES  
**2026**

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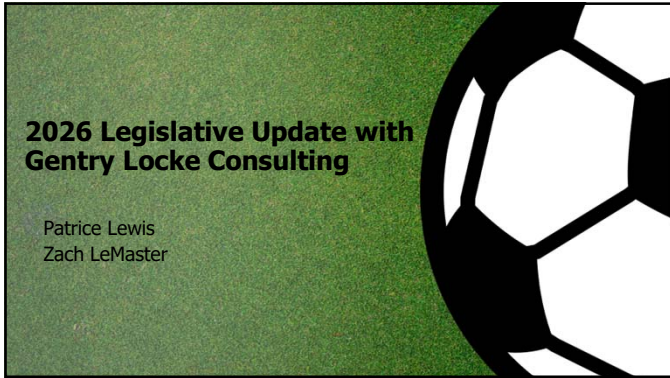
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# **2026 Legislative Update with Gentry Locke Consulting**

**Patrice Lewis and Zach LeMaster**





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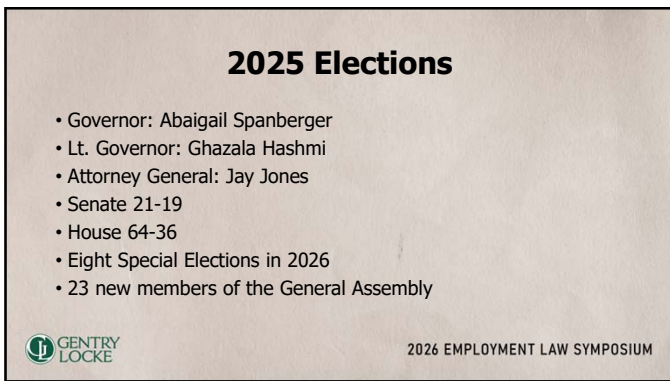
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### Wages

- HB1/SB1- Increases the minimum wage to \$15.00 per hour by January 1, 2028.
- HB20- Minimum wage; farm laborers or farm employees, temporary foreign workers.
- HB27- Overtime for certain employees; pay for domestic workers, delayed effective date.
- HB238- Minimum wage and overtime wages; payment, definitions, misclassification of workers, civil actions
- HB1100- Wage garnishments; treasurers' liens for unpaid taxes and charges.



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### Paid Family & Medical Leave

- HB5- Employment; paid sick leave, civil penalties.
- HB1207/SB2- Paid family & med. leave insurance program; definitions, notice requirements, civil action, report.



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### Collective Bargaining

- HB715- Labor and employment; collective bargaining by certain constitutional officers.
- HB1263/SB378- Public employees; repeals existing prohibition on collective bargaining, etc.



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### Non Competes

- HB69- Retail franchise agreements; governing law, competition restrictions
- HB627- Covenants not to compete; includes health care professionals, civil penalty.



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### Employee Protections

- HB670- Labor & employment provisions; application of law, protection of employees, definition of employer.
- HB675- Protection of employees; coercion or threat based on immigration status, civil penalty.



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### Workers Compensation

- HB426- Workers' compensation; employer's offset in event of recovery.
- SB771- Workers' compensation; burial expenses, annual adjustment.



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### Unemployment Compensation

- HB1320/SB759- Unemployment benefits; increase weekly benefit amount.



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### Prevailing Wage

- HB569- Public works contracts; prevailing wage rate, definitions, civil penalty.



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### Misc. Passed

- HB18/SB3 Employee Child Care Assistance Pilot Program; established, reports.
- HB275/SB10- Employment prohibition exceptions; apprenticeship program for children 16 years of age or older.
- HB338- Building Service employees; authority of local governments, definition.
- HB636- Prospective employer; prohibited from seeking wage or salary history of prospective employees.
- HB944- Workplace violence; policy required for certain employers, civil penalty, delayed effective date.
- HB967- Employer seeking wage or salary history of prospective employees; prohibited, etc.
- HB1218- Summer camps; employment of children.
- HB14510- Warehouse employers; required disclosures and recordkeeping, civil penalties.
- HB1481- Employment discrimination; employee notification of federal and state statute of limitations.
- HB1514- Employment decisions; automated decision systems, civil penalty.
- SB32- Denial or abridgement of the right to work; repeals certain provisions of the Code.



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### Failed Bills

- HB260- Public service companies; prevailing wage rate for underground infrastructure work.
- HB339- Employee protections; wage and hour, health and safety, and mining safety provisions.
- HB406- Workers' compensation; disability of law-enforcement officer, spousal wage replacement, report.
- HB923- Protection of employees; stay or pay contracts prohibited, civil penalty.
- HB930- Protection of employees; retaliatory action against employee prohibited.
- HB949- Covenants not to compete; exceptions, civil penalty.
- HB948- Virginia Minimum Wage Act; enforcement, penalties.
- HBB962- Employer seeking wage or salary history of prospective employees; prohibited, etc.
- HB1138- Economic development incentives; wage requirements.
- HB1319/SB760- Unemployment benefits; maximum duration
- HB1355- Labor and employment; payment of wages, definition.
- HB1372/SB758- Solar energy facility work; prevailing wage rate, apprenticeship requirements, civil penalties.
- SB667- Public service company; prevailing wage rate, apprenticeship requirements, penalties.



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### Virginia Budget



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**When You Play Stupid Games,  
You Win Stupid Prizes:  
Welcome to the World of  
Retaliation in 2026**

**Paul Klockenbrink**





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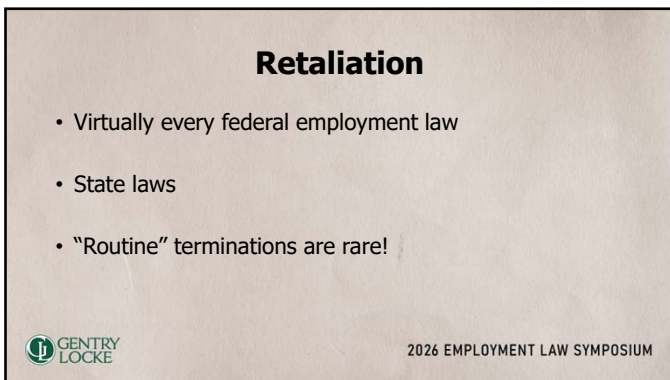
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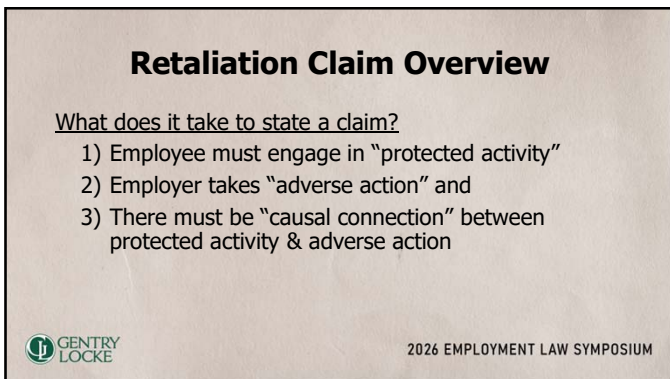
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### Retaliation – What is Protected Activity?

- Opposing an Unlawful Practice
  - Not Based on Outcome - Good Faith Belief of Violation
  - Responding to questions during an investigation
  - Threat to File Charge
- Participation in Proceeding (Supporting a Complaint)
  - Made a Charge, testified, assisted or participated in investigation, proceeding or hearing.



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### Causation: Link Between Protected Activity and Adverse Action

- TIMING is everything:
  - Why is today the day to take adverse action?
  - How have others been treated in the same situation?
- Who knew what and when?
  - What knowledge did the decisionmaker(s) have?
- Fear of a retaliation complaint should not prevent legitimate discipline for insubordination or poor performance.



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### Virginia's Whistleblower Law



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### Whistleblower Protection Law

- Very broad
- Protects workers from all forms of retaliation if they have reported suspected illegal activity (internally or externally) or have engaged in other forms of protected activity



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### Virginia Whistleblower Law Retaliation is Prohibited

- An employer cannot discharge, discipline, *threaten*, discriminate against, or penalize an employee or take other "*retaliatory action*" regarding an employee's compensation, terms, conditions, location or privileges of employment *because the employee:*



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### Because the Employee:

1. Or a **person acting on employee's behalf** in good faith reports a violation of *any federal* or state law or regulation to a supervisor or to any governmental body or law enforcement official;
2. Is requested by a governmental body or law enforcement official to participate in an investigation, hearing or inquiry;
3. Refuses to engage in a criminal act that would subject the employee to criminal liability;



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### Because the Employee:

- 4. Refuses an employer's order to perform an action that violates **any** federal or state law or regulation and the employee informs the employer that the order is being refused for that reason;
- 5. Provides information to or testifies before any governmental body or law enforcement official conducting an investigation, hearing or inquiry into alleged violation by employer of federal or state law or regulation.



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### Whistleblower Rights - Remedies

- One year to file lawsuit.
- No administrative filing requirement – can go straight to court.
- Court may order:
  1. An injunction to stop continued violation of this law.
  2. Reinstatement of the employee to the same or equivalent position held before the retaliatory action.
  3. Compensation for lost wages and benefits with interest, as well as attorney's fees and costs.



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### Virginia Values Act



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### Virginia Values Act

- It is an unlawful discriminatory practice for an employer to:
  - Discriminate against any employee or applicant for employment ..... because such individual has opposed any practice made unlawful by this law or because such individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this law.



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### Watch Out...

- *Individual* liability too, not just businesses.
- Owners, supervisors, co-workers, etc. can be sued individually for harassment, discrimination, etc.



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### Why This Law Matters?

- Summary judgment is virtually unavailable in Virginia state courts.
  - If not settled, then jury trial.
  - State Court allows for one "do over."
- No limit on damages
  - Low burden of proof; Employee must prove only that their protected characteristic was a "motivating factor" for any employment practice.
  - Backpay
  - Uncapped compensatory damages
  - Attorney's fees for the employee's attorney
  - \$350,000 cap on punitive damages applies



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### All In The Family

- Two co-workers, Mia and Erling are engaged.
- Mia's brother (Bruno) also works for the Company.
- Mia makes a sexual harassment claim against the very popular employee and her supervisor, Ronaldinho.
- The investigation determines it is a classic he-said-she-said but the Company moves the supervisor, Ronaldinho, to another division.
- Because of Ronaldinho's popularity with other workers, Mia and her family felt ostracized.
- Mia's brother, Bruno, and her fiancé leave the Company to join a competitor.
- Although the company has never sought to enforce it's noncompete agreement, it decides to do so because Bruno and Erling have gone to a competing company.
- Other employees have previously gone to this same competitor, and the Company has not sought to enforce the noncompete.
- Any issue?



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### Pre-Emptory Strike

- Employee complains about harassment
- Investigation reveals complaining employee is actual culprit or engaged in wrongdoing.
- If adverse action is taken against complaining employee = retaliation claim.
- How does Company handle?



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### Employee Fired After Angry Tweet about Holiday Gift

- Canadian employee fired from his job after angrily tweeting about a \$6 bottle of barbecue sauce he received as a Christmas gift from his employer.
- Employee received the barbecue sauce along with a wooden barbecue scraper as a present from the U.S. based company.
- Employee worked as a General Manager for 6 years.
- Employee shared his frustrations via an anonymous Twitter account "What kind of multi-billion-dollar company gifts its Canadian employees barbecue sauce as a holiday gift? While the U.S. employees stuff their faces with an actual holiday gift box."
- The following day the employee was told to delete the tweet and 10 days later he was terminated for "cause" and not entitled to severance pay (Canadian law).
- Although under Canadian law he could have been terminated for his Tweet, the company was required to pay severance because the court ruled it was not a "for cause" termination.



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### Family Matters

- Plaintiff was employed at Don's Super Value for 26 years. Her husband is a police sergeant in the same town.
- The wife of the owner of Don's Super Value was arrested for drunk driving.
- The plaintiff's husband is the police officer that arrested owner's wife for drunk driving.
- Plaintiff was fired from her employment shortly thereafter.
- Plaintiff sues for retaliation



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### Family Matters

- What happens next?
  - Court denied retaliation claim.
  - Effectively this was a termination for conduct outside of the employment relationship by someone other than the discharged employee.
  - Given the facts, the court acknowledged that the owner's actions based on what happened to his wife were "obviously retaliatory." Although the outrage of the facts alleged in this case brings a desire to see the law provide a remedy the court found that it did not.



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### A Fishy Opportunity

- In a case in the United States Court of Appeals for the First Circuit a doctor was award \$2M after being terminated 5 years after filing an age discrimination lawsuit.
- Despite the longtime gap, evidence suggested that the employer waited for a "fishy" opportunity to execute a long-held grudge.



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## Recommendations

- Assess your internal complaint and investigation protocols. Employees must feel empowered to come forward and that Company will take seriously.
- Training of Supervisors is Essential.
  - Retaliation Risk
- Safeguards to Ensure Terminations Justified
  - Timing?
  - Why today?
  - Documented?
- Documentation
  - Follow up
  - Decision documentation



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## Recommendations

- Evaluate whether to implement Dispute Resolution Agreement (e.g., arbitration) with your employees.
- Do you have sufficient insurance coverage (e.g., Employment Practices Liability Insurance) for substantial new risks?
- Separation Agreements – getting a release from potential claims:
  - Severance
  - Reference – allow EE to “resign”
  - Non-Disparagement
  - Confidentiality
  - Release of Claims



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# Goalkeeping the Workplace: Proactive Cyber Preparedness for HR

Mike Gulland





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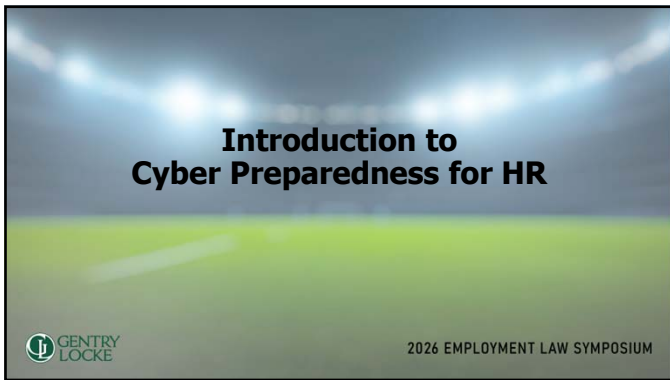
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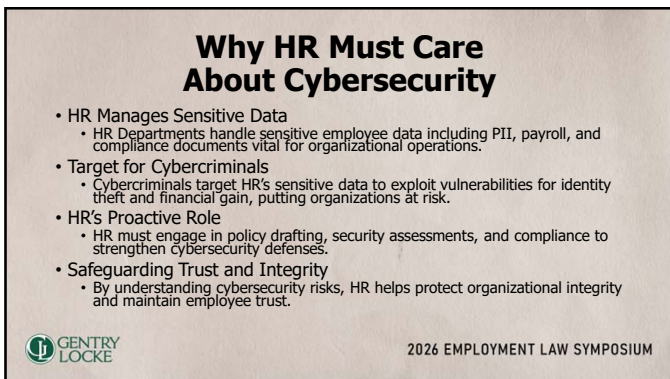
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### Evolution of Cyber Threats

- "DEAREST FRIEND, I am Dr. Okeke, a director at the Nigerian National Petroleum Corporation. I have a sum of \$20,000,000 (Twenty Million U.S. Dollars) in a suspense account. I need a foreign partner to transfer this money out of Nigeria. I am asking you to receive this money in your account, and in return, you will keep 30% of the total sum. To start, I need your banking details and some official company letterhead to process the release."
- Circa 2000s.



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### The Rising Threat Landscape

- Evolution of Cyber Threats
  - Cyber threats have advanced from simple phishing to sophisticated ransomware and social engineering attacks.
- AI-driven Attack Techniques
  - Threat actors utilize AI-driven phishing and credential harvesting methods to bypass traditional defenses.
- Human Factor Vulnerability
  - Attacks often exploit human vulnerabilities making HR systems prime targets needing awareness and training.
- Building Cybersecurity Resilience
  - Understanding threats and implementing policies and training are essential for strengthening HR cybersecurity.



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### Rising Cyber Attacks Against Companies (2021 – 2026)

- Cyber attacks against organizations have increased steadily over the past five years, with sharp acceleration after 2021.
- Ransomware incidents reached record levels in 2023–2025, with thousands of attacks publicly reported each year.
- Attack frequency now measures in thousands per day globally, not isolated events.
- Businesses in the U.S. remain the most targeted, particularly mid-size and large enterprises.
- Financial impact has escalated alongside frequency, with average breach and ransom costs rising significantly.



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### Why Cyber Attacks Are Increasing

- Expansion of remote work and cloud systems has increased attack surfaces.
- Ransomware-as-a-Service has lowered the barrier to entry for attackers.
- Attackers increasingly exploit human factors such as phishing and credential theft.
- Third-party vendors and supply chains are now common entry points.
- Cybercrime has become a mature, profit-driven industry rather than isolated hacking activity.



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### Regulatory Framework and Compliance



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### Key Regulations Impacting HR

- **Complex Regulatory Landscape**
  - HR must (at least indirectly) comply with GDPR, CCPA, HIPAA, and state privacy laws (like VCDPA) affecting employee data management.
- **Risks of Non-Compliance**
  - Failing to comply with regulations can lead to financial penalties, and damage to company reputation, litigation risks, ransomware costs, etc.
- **Proactive Policy Drafting**
  - Developing clear policies helps align HR practices with legal requirements and reduces risk exposure.
  - Be ready in advance!
- **Cross-Functional Collaboration**
  - HR works with legal and IT teams to implement compliant data systems and processes effectively.



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**Compliance as a Strategic Advantage**

- **Compliance as Advantage**
  - Viewing compliance beyond regulations helps build organizational trust and enhances market reputation significantly.
- **HR Leadership in Compliance**
  - HR integrates compliance into onboarding, training, and record-keeping to ensure organizational adherence.
- **Cultivating Security Culture**
  - Proactive compliance fosters a security-focused culture that exceeds legal requirements and builds trust

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**Drafting Policies Before Incidents Occur**

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**Essential Cybersecurity Policies For HR**

- **Develop Clear Security Policies**
  - HR must create policies on data access, password management, and incident reporting to protect sensitive information.
- **Effective Communication and Training**
  - Policies should be communicated clearly and reinforced with regular employee cybersecurity training sessions.
- **Collaboration with IT and Legal**
  - HR must work closely with IT and legal teams to ensure policies are comprehensive, enforceable, and aligned with goals.
- **Mitigate Risks and Liability**
  - Well-drafted policies act as preventive measures and help mitigate legal liability in case of security breaches.

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**Integrating Policies Into HR Processes**

- Policy Integration in HR
  - Policies must be embedded into daily HR processes like onboarding and performance reviews for effective implementation.
- Access Revocation Importance
  - Promptly revoking access for departing employees helps prevent insider threats and secures organizational assets.
- Shared Cybersecurity Responsibility
  - Embedding cybersecurity into HR workflows promotes a culture where security is everyone's responsibility.

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**Evaluating Incident Response Plans**

- Importance of Incident Response
  - An effective incident response plan helps minimize damage during cyber events and protects organizational assets.
- HR's Role in Review
  - HR reviews plans to ensure employee-related issues like communication and data recovery are covered.
- Testing and Readiness
  - Tabletop exercises test plans to identify gaps and improve organizational readiness for incidents.

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**The Role of Legal Counsel**

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**Why Engage an Attorney Before an Incident**

- Risk Mitigation
  - Early engagement of legal counsel helps identify and reduce risks before cyber incidents occur. Legal adds more value if involved at the outset.
  - Ensure necessary documentation is in order; provide training/tabletop exercises.
- Policy and Compliance Review
  - Attorneys ensure policies comply with regulations and contractual obligations are clear.
- Incident Response Preparation
  - Legal counsel assists in drafting incident response plans that meet regulatory standards.
- Liability Reduction
  - Engaging attorneys early demonstrates commitment to security, reducing potential liabilities.

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**Legal Support During and After Incidents**

- Importance of Legal Counsel
  - Legal counsel is essential to manage regulatory notifications, investigations, and lawsuits after a breach occurs.
- Preparedness and Contact Protocol
  - HR must know the right contacts and immediate steps to ensure a coordinated, rapid incident response.
- Navigating Reporting and Communication
  - Legal guidance supports compliance with complex reporting requirements and helps communicate with affected employees and regulators.

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**Building a Culture of Cyber Awareness**

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### Continuous Improvement and Monitoring

- Ongoing Cybersecurity Efforts
  - Cybersecurity requires continuous monitoring rather than a one-time setup to remain effective against evolving threats.
- Feedback Loops in HR
  - HR should implement feedback loops to assess and improve cybersecurity policies and training programs regularly.
- Adapting to Emerging Threats
  - Regularly updating policies based on new threats and regulations keeps the organization resilient and secure.
- HR Leadership in Security
  - By promoting continuous improvement, HR leads in protecting employee data and maintaining organizational integrity.



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### Cyber Preparedness Case Study: Target (2013)

- Breach began with stolen credentials from a third-party HVAC vendor with system access.
- Vendor personnel were not subject to company-level cybersecurity training or controls.
- Security alerts were generated but not escalated or acted upon by staff.
- HR owned processes – vendor onboarding, training, and access management – were key failure points.
- Impact: 40+ million payment cards compromised; severe financial and leadership consequences.



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### Cyber Preparedness Case Study: Equifax (2017)

- Known software vulnerability remained unpatched despite internal alerts
- Employees lacked effective training, accountability, and enforcement for security duties.
- No clear ownership or escalation when required actions were missed.
- HR influence included training compliance, role clarity, and performance accountability.
- Impact: Roughly 148 million individuals affected; hundreds of millions in settlements.



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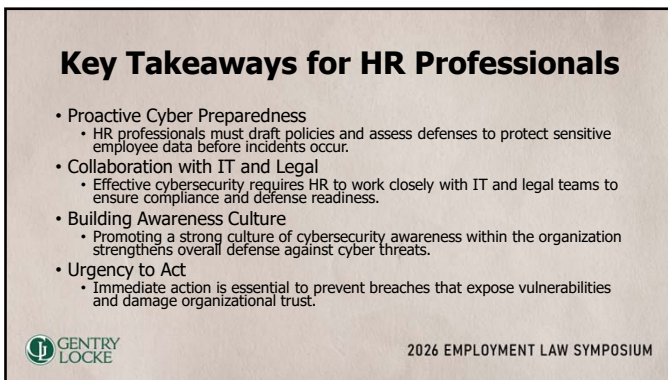
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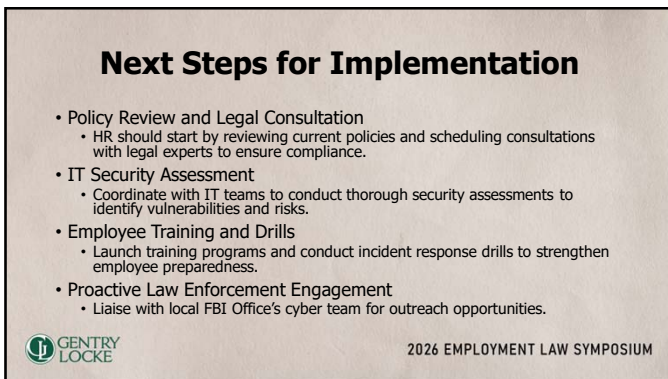
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**Thank you for attending!**

**Reach out to us if we can be of assistance.**

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