Staying Ahead: The Legal Trends Every HR Pro Must Know





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SRM® West Virginia

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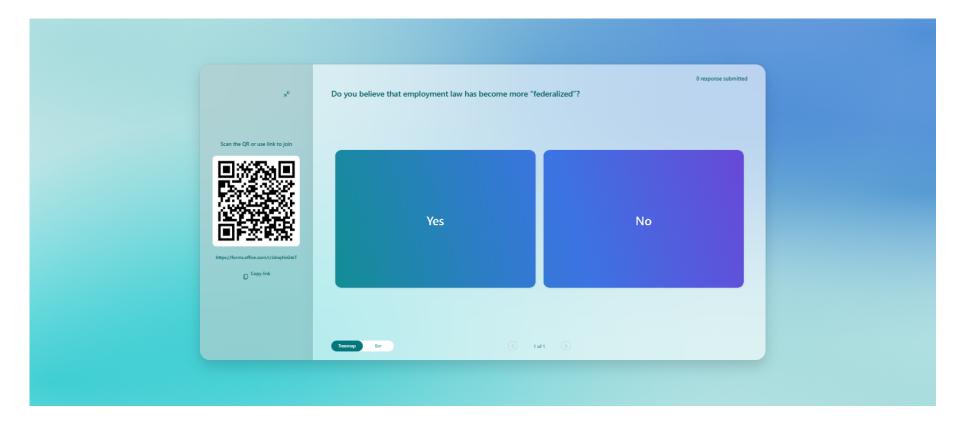
The Dynamic Landscape of Employment Law in 2025

- Some trends in employment law:
 - "Federalization" of Employment Law
 - Pay Transparency
 - o Employee Surveillance
 - Political Speech in the Workplace
 - Social Media Searches
 - Workplace Relationships
 - Reverse Discrimination Litigation
 - o More Room for Religion in the Workplace
 - o Independent Contractor Classification
- Opportunity to engage with the presentation
- Scan QR Code on each slide (or use code in the printed presentation materials)
- During the presentation, you will be prompted to vote





"Federalization" of Employment Law

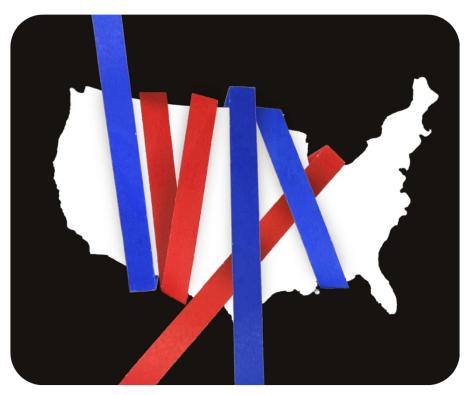






"Federalization" of Employment Law

- More state and local regulations in blue states
- Overall decrease in federal regulation and enforcement
 - o FTC national ban on non-competes paused
 - o Federal employment discrimination claims have stalled
 - Number of lawsuits filed by the EEOC has dropped
 - □ FY 2023 143
 - □ FY 2024 111
 - □ FY 2025 94
- West Virginia state law trends

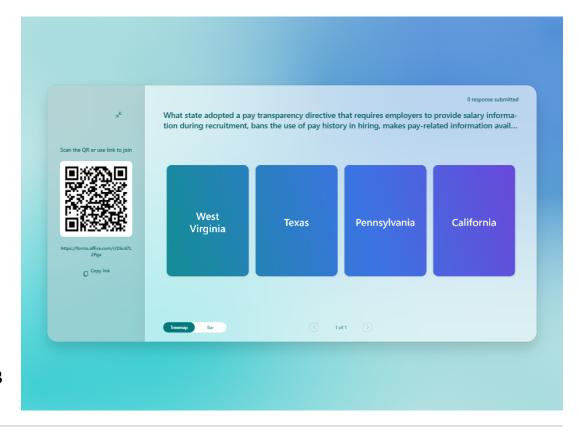






Pay Transparency

- What state adopted a pay transparency directive that requires employers to provide salary information during recruitment, bans the use of pay history in hiring, makes pay-related information available to employees upon request, and requires companies with 100+ employees to report on gender pay gaps if they exceed 5%?
 - West Virginia
 - Texas
 - Pennsylvania
 - California
 - Answer: European Union in 2023







Pay Transparency

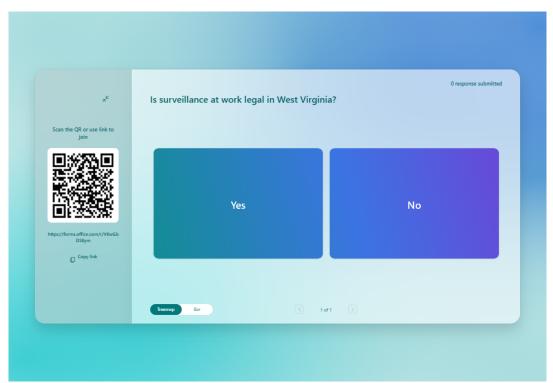
- U.S. is trending towards greater pay transparency
 - o 15 states (including the District of Columbia) have enacted pay transparency laws that require disclosure of pay range under certain circumstances
 - West Virginia does not
 - Pennsylvania does not
 - 22 states have enacted salary history bans that preclude employers from relying on pay history to set compensation
 - West Virginia does not
 - Pennsylvania does not have a state-wide law; there is a local ordinance in Philadelphia







Employee Surveillance



- Is surveillance at work legal in West Virginia?
 - Authorized with restrictions
 - No audio
 - Not permitted in areas where employees have an expectation of privacy
 - Must be for legitimate business purpose

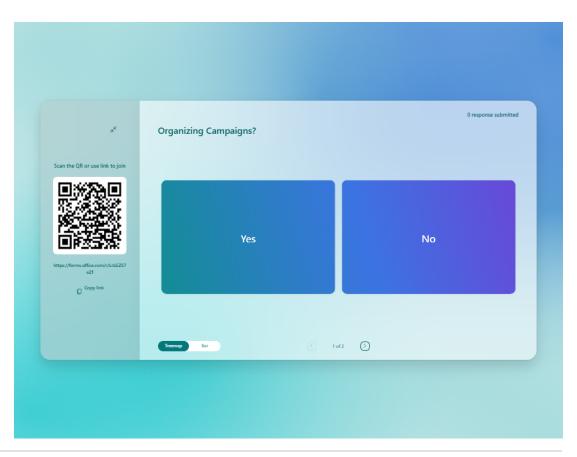




Employee Surveillance

- Specific circumstances:
 - o Organizing campaigns?
 - o Collective bargaining negotiations?

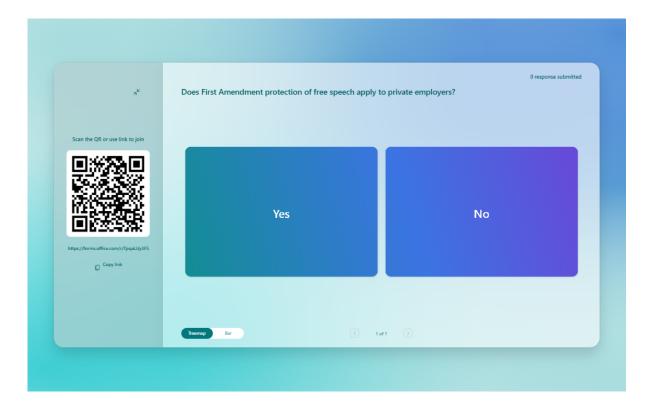








Political Speech in the Workplace



Does First Amendment protection of free speech apply to private employers?





Political Speech in the Workplace

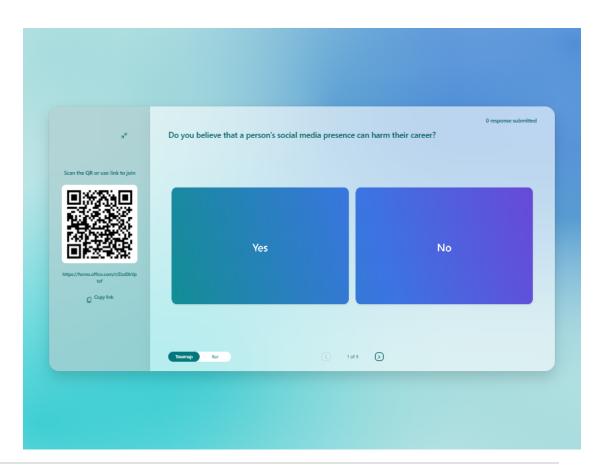
- Generally, First Amendment does not apply to private businesses
- HOWEVER... there are statutory exceptions:
 - National Labor Relations Act (NLRA)
 - Protects speech between co-workers regarding: (1) unionizing; (2) workplace safety;
 (3) wages; and (4) collective bargaining.
 - Protection extends to speech inside and outside of the workplace on social media
 - o Title VII of the Civil Rights Act of 1964
 - Protects an employee's right to speak out against discrimination or harassment in the workplace





Social Media Searches

- Do you believe that a person's social media presence can harm their career?
- Have you researched an applicant's social media history before extending an offer?
- Has a search uncovered materials that caused you to turn down an applicant?







Social Media Searches

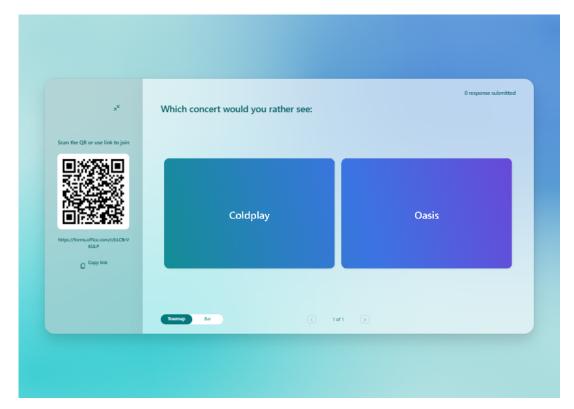
- States vary, restricting employers from accessing an applicant's social media history
- Employers incorporate social media policies into employee handbooks







Workplace Relationships



Which concert would you rather see:







Workplace Relationships

- o How can Employers Respond?
 - Banning specific relationships
 - Anti-fraternization policies
 - "Love contracts"
 - Sexual harassment training
- How do policies relating to workplace relationships reconcile with anti-harassment policies?
- How do the policies reconcile with antiharassment policies?

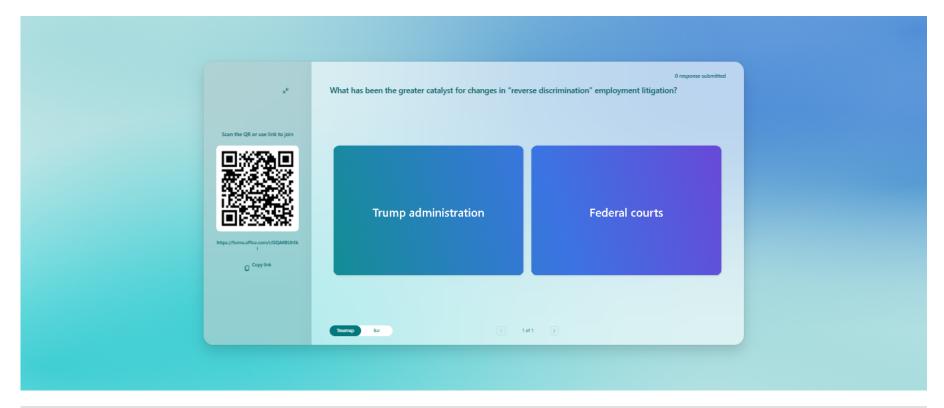






Reverse Discrimination Litigation

What has been the greater catalyst for changes in "reverse discrimination" employment litigation?







Reverse Discrimination Litigation

Executive Actions

- Campaign against DEI
- Change in EEOC enforcement policies

Judicial Actions

- Ames v. Ohio Dep't of Youth Servs., 605 U.S. 303, 145 S. Ct. 1540, 221 L.Ed.2d 929 (2025)
 - SCOTUS rejected the "background circumstances" test
- Muldrow v. City of St. Louis, 601 U.S. 346, 144 S. Ct. 967, 218 L.Ed.2d 322 (2024)
 - SCOTUS held that employees do not need to show a "significant" or "material" change in employment terms to bring a Title VII claim





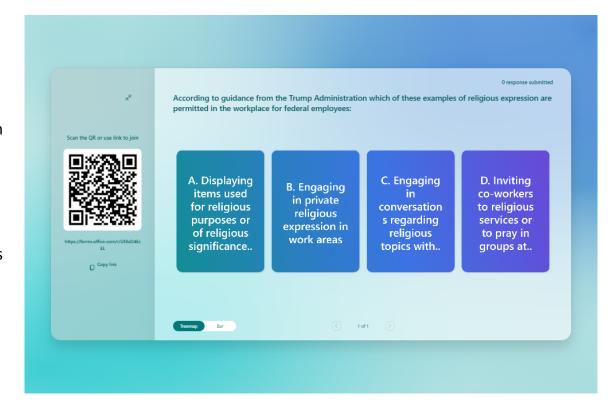




More Room for Religion in the Workplace

- According to guidance from the Trump administration, which of these examples of religious expression are permitted in the workplace for federal employees:
 - A. Displaying items used for religious purposes or of religious significance in the office (i.e., Bibles, religious artwork, posters, etc.)
 - B. Engaging in private religious expression in work areas
 - c. Engaging in conversations regarding religious topics with fellow employees
 - D. Inviting co-workers to religious services or to pray in groups at the office

Answer: All the Above







More Room for Religion in the Workplace

- July 16, 2025, Office of Personnel Management Memo (OPM): "Religious Accommodations for Religious Purposes"
- July 28, 2025, OPM Memo: "Protecting Religious Expression in the Federal Workplace"
- Memos apply to the federal workforce; are changes coming to the private sector?





Independent Contractor Classification

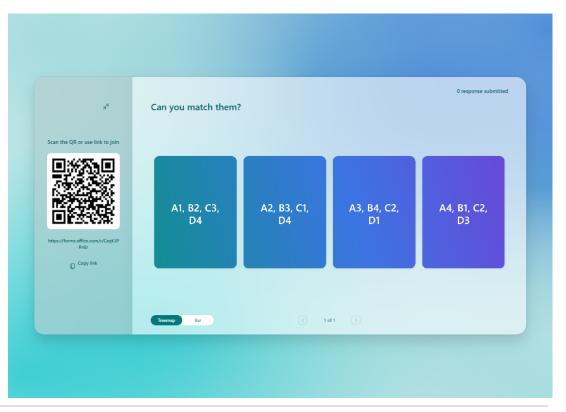
- **Swinging Pendulum**
 - From 2016-2025: FOUR different interpretations of the independent contractor classification





Independent Contractor Classification

- Can you match them?
- A. Pre-Trump
- Trump (1.0)
- Biden
- D. Trump (2.0)
- "Totality of the Circumstances"
- Multi-Factor Test
- 3. Two Core Factors: nature/degree of control and opportunity for worker's profit or loss
- 4. Non-enforcement







Takeaways

- Depending upon where your company does business, you may see more workplace regulation at the state and local levels as the federal government continues to pull back
- Employees may see litigation as a preferred remedy to agency enforcement
- More employers are being transparent with their pay practices, and employees increasingly have an expectation that they will be able to measure their pay vis-à-vis their peers
- Employers have more tools to keep tabs on their employees, but zones of privacy still exist
- Workplace relationships will continue to affect and infect the workplace; employers must balance competing interests
- Employees have more margin to practice their religion in the workplace, and employers should be cautious when employees declare that something is "against my religion"
- Taking matters into their own hands, employees and applicants will bring more reverse discrimination cases as they push back against any perceived deviation from merit-based decision-making





Questions?

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