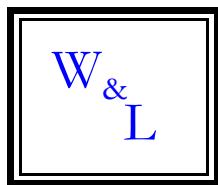


EMPLOYMENT LAW BULLETIN

A Monthly Report On Labor Law Issues



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DO EMPLOYER RULES REGARDING MARIJUANA NEED TO CHANGE IN LIGHT OF THE NEW PRESIDENTIAL EXECUTIVE ORDER?

On December 18, 2025, President Trump issued an executive order entitled “Increasing Medical Marijuana and Cannabidiol Research.” The executive order primarily deals with the medical use of marijuana, but goes on to note that marijuana is currently controlled under Schedule I of the Control Substances Act, the most serious category. In 2023, the Department of Health and Human Services recommended to the Drug Enforcement Agency that marijuana instead be controlled under Schedule III. The Schedule I drugs are defined as drugs with no currently accepted medical use, a high potential for abuse, and a lack of accepted safety for use of the drug under medical supervision. Schedule III drugs are classified as having a potential for abuse less than the drugs or other substances in Schedules I and II, and currently an accepted medical use and treatment in the United States, with potential for moderate or low physical dependence, but a high psychological dependence in the event of drug abuse. The distinction is that the Schedule III drugs are available by prescription and subject to medical oversight once prescribed, while the Schedule I drugs are never lawful for medical use.

The executive order doesn’t change the current Schedule I status but instead directs the Attorney General to complete the rescheduling process “in the most expeditious matter in accordance with federal law.” Thus, the executive order currently changes nothing, nor does it suggest that marijuana will eventually become “legal” under federal law for recreational use. If the change to Schedule III occurs, marijuana will likely be available by prescription for some individuals with approved conditions, and possibly have these costs covered through health insurance.

In spite of the executive order, state law bans or restrictions remain valid and enforceable as well as a state law protections for medical marijuana users. The effect is that employers can retain their policies prohibiting the use of marijuana and enforce drug-free workplace policies consistent with state law.

Similarly, currently there will be no changes in workplace policies required in the transportation industry, as the federal Department of Transportation has implemented rules prohibiting the use of marijuana by regulated workers, including truck drivers and others.

The main learning point from the executive order is that changes may come in the future that may affect those in certain states as well as for transportation workers.

Another point is that employees may have read about these changes and may not understand the limited scope of the order. It is important therefore if the need arises for employers to communicate that their policies have not changed as the executive order does not affect current marijuana laws or workplace rules.

HARASSMENT CLAIMED FROM CO-WORKER COMPLAINTS THAT EMPLOYEE DIDN'T SPEAK MUCH ENGLISH

Discrimination rules applicable to national origin is a priority for the current chairperson of the Equal Employment Opportunity Commission (EEOC), with particular emphasis on discrimination against American workers by preferring those of other national origins. However, the issues of national origin create other legal problems, as exemplified by a recent case in which plaintiff “experienced daily instances of customers, co-workers and supervisors laughing at her, mocking her, and becoming angry with her due to her inability to communicate in English.” Plaintiff contended that she was mistreated because of her Russian heritage. However, in a December 2025 ruling, the Eleventh Circuit Federal Court of Appeals concluded that the plaintiff failed to establish a hostile work environment claim based on her national origin. *Elena Mukhina v. Walmart*, Case No. 24-11586 (11th Cir. 2025). The court said such actions over the inability to communicate did not amount to harassment based on her national origin. The court pointed to some court precedent that said that comments about an employee’s accent can show national origin bias, but the court said this only applied when combined with other harassing conduct, and that Title VII does not support the premise that an employee’s national origin can be equated with the language they use.

Editor’s Note: The employer won this claim based on the plaintiff’s inability to speak English, but the court noted that such issues can be evidence of national origin bias. Therefore, employers should monitor these considerations in spite of the favorable court precedent.

EMPLOYMENT COSTS RISE AT LOWEST LEVEL IN FIVE YEARS

According to a December 2025 report from the Bureau of Labor Statistics (BLS), increases in wages and benefits increased 3.5% in the twelve months ending last September. The BLS indicates that hiring fell and layoffs climbed to the highest level since 2023. At the same time, voluntary quits fell to the lowest level since 2020, indicating declining worker confidence in finding another job. These shifts coincide with lower wage growth. Wages and salaries grew 3.5% from a year earlier.

At the same time, healthcare costs are increasing as the cost of insurance per employee is expected to rise 6.7% in 2026, the highest increase in 15 years. Employers are having modest success in cost reduction in measures such as raising deductibles, and a majority of Americans still get their health insurance through their employer.

According to recent surveys, the average premium for a single individual in an employer health plan in 2025 was \$9,225, growing by 24% in the past five years. At the same time, the average family premium was nearly \$27,000. The main driver of rising premiums appear to be prescription drug costs, but other reasons include chronic disease, higher use of services, and hospital prices.

Small businesses will see premium hikes of around 11%. Those participating in ObamaCare marketplaces will see increased charges of around 26%, with factors including rising hospital costs, the growing popularity of expensive weight-loss drugs, and the threat of tariffs. Most enrollees in ObamaCare will be affected by the expiration of the enhanced tax credits, that result on average in a 114% increase in premium payments.

JOB INTERVIEWS CAN BE A GOOD SELECTION DEVICE

The Economist magazine reports that job interviews are “the worst way to select people, except for all the others.” One of the more encouraging surveys published in 2022 finds that structured job interviews have the

most predictive value of any recruitment method, ahead of things like assessment centers or psychometric tests. The word “structured” normally means a standardized set of job-related questions which are put to every candidate and each of which is scored according to an agreed system. It is widely reported that an unstructured interview, in which hiring managers make questions up on the fly and reach decisions based on good instincts, have less than half the predictive validity of a structured one.

On the other hand, having good interviews are not very good at predicting how candidates will do. According to some studies, the research suggests that less than 20% of a person’s actual job performance can be attributed to scores in a structured interview. So it makes sense to use other assessments as well as structured interviews. The study suggests that a battery of measures might together be able to predict as much as 40% of a candidate’s eventual performance.

The lesson is that a structured job interview is a relatively good selection device, but it is not a cure-all.

SUGGESTIONS ON HOW TO DIFFUSE A TENSE SITUATION

Of primary importance is that the best avoidance is to recognize the early warning signs. In other words, at the beginning of a confrontation, the person in question may be only mildly annoyed, but if two people begin escalating the situation, it can ratchet up towards unfortunate results and even violence. There are some techniques to calm a person down.

One way to de-escalate is some form of apology. It could be something as simple as “I’m sorry you are so frustrated, I’m trying to do the best I can,” or something of that nature. The second device is to agree with the declarant to the extent practical. A third consideration is to find a way to make things right. If the person loses control and starts shouting, a good approach is remain calm and say, “Can we both talk about this in a civil manner, please,” or something of that nature. It may be helpful to be somewhat docile as you cannot get into an argument if you don’t argue back. A related approach is to say, “Look, I don’t want any kind of trouble, why don’t we just see if we can work this out.” If in spite of these techniques things get out of hand, find a way to get out of the aggressor’s line of sight. As part of applying these techniques, consideration should be given to either calmly moving toward an exit point or at least planning how to get away.

EMPLOYERS BLAME UNIONS FOR RECENT SHUTDOWNS

A good amount of publicity has come out recently about two major closings that employers blame on their unions. In the most recent, at the Pittsburgh Post-Gazette, the company announced it will stop publication on May 3 because a court decision required it to operate under a previous labor contract that made continued publication impossible. The case is *PG Publishing Co. v. NLRB*, No. 25A725, a stay denied by U.S. Supreme Court on 1/7/26.

In a related development, a federal appeals court ruled in November that Yellow Transportation’s breach of contract lawsuit against the Teamsters union and several local unions, could continue. The company claims that Teamsters general president Sean O’Brien orchestrated contractual breaches to defeat the company’s efforts to stay in business by restructuring its operations. The company claims O’Brien was willing to let Yellow

collapse in a show of Teamsters' strength. The case is *Yellow Corp. v. International Brotherhood of Teamsters*, No. 24-3111, 10th Cir. 11/5/25.

In still another related development, the monitor overseeing the United Auto Workers Union after a major scandal said in a November report that the union still has a culture steeped in fear and division and is stalling needed change, making it difficult for current leadership to keep corruption from creeping back in. The UAW was put under monitoring in 2021 after a federal investigation into a kick-back scheme involving union officials and certain auto industry executives, leading to more than a dozen convictions, including guilty pleas from former presidents. Unfortunately, the monitor said the president's office used the newly created compliance department as a "Trojan horse" to pursue false accusations against the treasurer and limit her ability to check union spending. Members have reported that they fear they will lose their jobs if they don't follow the president's "marching orders."

\$27 MILLION VERDICT AGAINST EMPLOYER ON DISABILITY DISCRIMINATION OVER REFUSAL TO RETURN EMPLOYEE TO WORK

In December of 2025, an Oregon federal judge refused Union Pacific's effort to set aside a \$27 million verdict in a suit from the worker alleging he was discriminated against for an injury. *Granas v. Union Pacific Railroad Co.*, Case No. 1:21-cv-00116 (D. Ore. 2025). After the plaintiff dislocated his right shoulder, he was cleared to return to work without restrictions. The railroad had concerns of re-injury while climbing ladders, which was an essential function of his position, and he was allegedly given permanent work restrictions that cost him his position. Although the employer argued that the plaintiff was not a "qualified individual" because the injury made him incapable of performing essential job functions, the federal judge credited evidence that he was qualified, from the plaintiff's medical providers and expert witnesses who testified that he was ready to work and climb ladders, and that there was no evidence he was at risk for re-dislocation. The judge also found that the employer had improperly used its "one percent" policy, in which employees are not allowed to return to their jobs if they face injuries that left them with a one percent or greater chance of incapacitation. The judge found that the treatment of the plaintiff was not the result of careful evaluation, but it was due to a strict, blanket policy that automatically disqualified any employees with a shoulder dislocation, and thus discriminates against anyone who discloses that injury or disability.

A jury had sided with the plaintiff and awarded him about \$500,000 in past wages, \$440,000 in future pay, \$1 million in non-economic damages, and \$25 million in punitive damages.

Editor's Note: Under the federal Americans with Disabilities Act (ADA), there are limits on punitive and compensatory damages, but some state laws may not have such limitations. The judge and jury apparently found the one percent policy not consistent with the disability laws that generally require individual assessment.

In a related development, in January of this year, a jury in a Florida district court found that an employer failed to accommodate a job applicant's disability during pre-hiring drug testing in connection with their use of prescription medications. *EEOC v. The Princess Martha LLC*, No. 8:22-cv-02182 (N.D. Fla. 1/12/26). The court upheld the jury finding that indicated that the employer had not engaged in an interactive process for disability accommodation. The jury's award of \$400,000 total and compensatory and punitive damages wasn't grossly excessive, according to the judge, but the award was subject to a \$50,000 statutory cap for those type damages based on the size of the employer, and the judge reduced the jury award accordingly.

TPS UPDATE (As of 1/19/2026)

The Trump Administration has acted to terminate TPS status for several countries. Of course, litigation has followed each notice of termination. However, if the Trump Administration continues to follow the law, these terminations will be upheld because the Secretary of Homeland Security has vast discretion to terminate TPS status and courts do not have authority to review the exercise of that discretion. The following table provides the work authorization expiration dates and TPS status expiration dates. Notably, a person may lose work authorization but still have TPS status. The most recent changes are italicized.

ALERT: After reviewing country conditions and consulting with the appropriate U.S. government agencies, Secretary of Homeland Security Kristi Noem determined that Honduras, Nepal and Nicaragua no longer met the conditions for its designation for Temporary Protected Status (TPS). See Termination of the Designation of Honduras for Temporary Protected Status, 90 Fed. Reg 30089 (July 8, 2025); Termination of the Designation of Nepal for Temporary Protected Status, 90 Fed. Reg 24151 (June 6, 2025); Termination of the Designation of Nicaragua for Temporary Protected Status, 90 Fed. Reg 30086 (July 8, 2025). Honduras's TPS designation and related benefits terminated on Sept. 8, 2025. Nepal's TPS designation and related benefits terminated on Aug. 5, 2025. Nicaragua's TPS designation and related benefits terminated on Sept. 8, 2025. However, on Dec. 31, 2025, a single judge in the U.S. Northern District of California issued an order vacating the Secretary's TPS termination decision. National TPS Alliance et al. v. Noem et al., No. 25-cv-05687-TLT (N.D. Cal.). The judge did so even though the Department of Homeland Security recently prevailed twice in the U.S. Supreme Court in a similar case. The Department of Homeland Security vehemently disagrees with this order and is working with Department of Justice to determine next steps.

Country	EAD Auto-Extended Through:	Status Designated Through:
Burma (Myanmar)	January 26, 2026	January 26, 2026
El Salvador	March 9, 2026	September 9, 2026
Ethiopia%	(see below)	February 13, 2026
Haiti#	February 3, 2026	February 3, 2026
Lebanon*	N/A	May 27, 2026
<i>Somalia\$</i>	<i>March 17, 2026</i>	<i>March 17, 2026</i>
South Sudan	January 5, 2026	January 5, 2026
Sudan*	April 19, 2026	October 19, 2026
Syria@	(see below)	(see below)
Ukraine*	April 19, 2026	October 19, 2026
Venezuela 2021!	(see below)	(see below)
Venezuela 2023^	(see below)	(see below)
Yemen*	September 3, 2025	March 3, 2026

\$As proof of continued employment authorization through March 17, 2026, Temporary Protected Status beneficiaries from Somalia can show their EADs that have the notation A-12 or C-19 under Category and a "Card Expires" date of March 17, 2023, September 17, 2024, and March 17, 2026.

@Court litigation has extended work authorization and TPS status for Syrians beyond November 21, 2025. The government intends to appeal the district court decision and is expected to prevail on appeal.

%As proof of continued employment authorization through February 13, 2026, Temporary Protected Status beneficiaries from Ethiopia can show their Employment Authorization Documents that have the notation A-12 or C-19 under Category and a "Card Expires" dates of June 12, 2024 or December 12, 2025.

*Employees from these countries may not have work authorization unless they have completed registration and application requirements by certain deadlines. Visit www.uscis.gov/humanitarian/temporary-protected-status for more information.

#A federal district court ruled that TPS status and work authorization for Haitians continues through February 3, 2026. The Trump administration has terminated TPS status and work authorization for Haitians after February 3, 2026.

! TPS beneficiaries who received TPS-related employment authorization documents (EADs), Forms I-797, Notices of Action, and Forms I-94 issued with October 2, 2026, expiration dates on or before February 5, 2025 will maintain work authorization and their documentation will remain valid until October 2, 2026. All other TPS Venezuela 2021 beneficiaries are no longer authorized to work and no longer have TPS status after November 7, 2025.

^ TPS beneficiaries who received TPS-related employment authorization documents (EADs), Forms I-797, Notices of Action, and Forms I-94 issued with October 2, 2026, expiration dates on or before February 5, 2025 will maintain work authorization and their documentation will remain valid until October 2, 2026. All other TPS Venezuela 2023 beneficiaries are no longer authorized to work and no longer have TPS status.

Be sure to visit our website at <http://www.wimlaw.com> often for the latest legal updates, Alerts, and Firm biographical information!

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