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EMPLOYMENT LAW BULLETIN

A Monthly Report On Labor Law Issues

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EEOC UPHOLDS BATHROOM EXCLUSION FOR TRANS-SEXUAL EMPLOYEE

Employers are struggling with how to handle trans-sexual employees who choose to use the bathroom of their gender choice, rather than their biological sex. At least know the Equal Employment Opportunity Commission (EEOC) has made its position clear. On February 26, 2026, the EEOC rejected a federal-sector employee's request to use a female-designated bathroom after transitioning. The EEOC concluded that Title VII allows federal employers "to maintain single-sex bathrooms and similar intimate spaces," and permits them to "exclude employees, including trans-identifying employees, from opposite-sex facilities."

The EEOC states that its opinion is consistent with the plain meaning of "sex" as understood by Congress at the time Title VII was enacted. The opinion does note that "no federal court has yet authoritatively addressed" whether Title VII allows workplaces to maintain single-sex bathrooms and intimate spaces, or whether the statute mandates that employers allow transgender employees access to bathrooms and locker rooms "otherwise reserved for the opposite sex."

Editor's Note: While this case confirms the position of the EEOC, it does not control how a federal court would rule. The Supreme Court in 2020 held that Title VII's prohibition on sex discrimination emcompassed claims based on a person being gay or transgender, but the majority opinion stated that the justices "do not purport to address bathrooms, locker rooms, or anything else of the kind."

Because of the legal dilemma, employers might be advised to direct transgender employees to "neutral" bathrooms available for both male and female employees. In recent times, many public establishments have only bi-sex bathrooms that segregate the stalls with closed doors.

EEOC GUIDANCE ON 2026 EEO-1 REPORTS

There has been a lot of confusion about the 2026 filing of EEO-1 reports, also known as Standard Form 100. According to a notice of an EEOC proposal sent to the White House on May 14, 2026, the EEOC would rescind the regulations for the EEO-1 annual data collection. This report requires companies with at least 100 employees to share data on the race, sex, and national origin of their workforce, and the EEOC has used this as part of its workplace anti-discrimination enforcement.

It is not yet clear if the proposal to end the EEO-1 reporting will impact this year's reporting. The EEOC has yet to announce its online portal of the EEO-1 report filing for 2026. Last year, the agency started the portal in late May.

FURTHER DEVELOPMENTS AND ADVICE USING AI FOR EMPLOYMENT MATTERS

In last month's newsletter, we discussed a federal case from New York which held that an individual's artificial intelligence-generated documents were not protected by the attorney-client privilege. This has caused most attorneys to advise their clients not to use "public" AI tools for confidential matters without first consulting an attorney. Attorneys themselves are now worried about the second question, what happens when an attorney uses such AI tools for privileged matters.

It remains somewhat of an open question whether attorney-client privilege extends to third-party agents whose assistance is necessary to the attorney's rendering of legal advice. Therefore, even attorneys have to be careful about using any AI tool on client matters, and to review the platform's actual data practices to determine whether prompts are retained, whether they can be accessed, how they provide a response to legal process, and whether deletion is available.

As mentioned in the last newsletter, the Florida Bar published an excellent document on March 16, 2026, entitled "The Florida Bar Guide to Getting Started with AI." It discusses each type of "general" AI model, including Anthropic's Claude, Google's Gemini, Microsoft's Copilot, Open AI's ChatGPT, and xAI's Grok, along with law-specific AI models such as CoCounsel by Westlaw, Lexis Plus AI, and Vincent by Clio. It suggests that a good start is to first explore general AI models such as ChatGPT, Gemini, or Copilot for administrative tasks and brainstorming. It suggests that the legal AI models such as CoCounsel, Lexis Plus AI, or Vincent by Clio are better for legal research and document review. Visitors should be careful initially and not use any confidential or client-specific information, until the user is sure of the various legal protections.

In general, free general AI models use your questions and uploaded documents to train future models. Therefore, to maintain client confidentiality, you will need a paid subscription. You should confirm that your account settings do not allow data sharing and that you can delete your prompts and uploads at any time. Some platforms have methods to turn off or opt out of data sharing. One advantage of the three main legal AI models is their promise to maintain client confidentiality, use of strong security, and reduced hallucination risk. Remember that only certain paid licenses for general AI models promise prompts and uploads will not be used for training or stored. Remember also that the models are being updated and revised so that the user must generally rely on the current representations of each provider. The Florida Guide does a good job of discussing the relative merits of each type of provider.

The legal issues are so complicated that at least five federal district courts have issued specific protective orders restricting the use of generative AI platforms with protected materials. A detailed framework was drafted by the U.S. District Court of Colorado in *Morgan v. V2X Inc.*, 2026, WL 864223 (D. Colo. 5/30/26). This particular Order includes the following:

> No party or authorized recipient may input, upload, or submit CONFIDENTIAL Information into any modern artificial intelligence platform, including any generative, analytical, or large language [model-based] tool ('AI'), unless the AI provider is contractually prohibited from: (1) storing or using inputs to train or improve its model; and (2) disclosing inputs to any third party except where such disclosure is essential to facilitating delivery of the service. Where disclosure to a third party is essential to service delivery, any such third party shall be bound by obligations no less protective than those required by this Order. In addition, the AI provider must contractually afford the party or authorized recipient the ability to remove or delete all CONFIDENTIAL Information upon request. A party intending to use

AI that it contends meets these requirements must retain written documentation of these contractual protections.

Editor's Note: The advice in this Florida Bar Guide is primarily directed towards lawyers, but many of the suggestions also apply to employers' own use of AI platforms. Employers have the same interest in protecting their confidential information or trade secrets, as well as hopes of avoiding disclosure to opposing parties in court discovery.

One of the reasons for all this interest is that pro se (individual parties to litigation without legal representation) plaintiffs are extensively using AI for self-represented filings. Therefore, attorneys defending employers in employment litigation should consider seeking an AI order in the litigation to reduce the time spent verifying whether the cites or authorities exist and whether they support what the plaintiff claims. Defendant employers are also increasingly incorporating AI usage questions into their standard discovery requests, to identify what tools were used and whether histories were deleted or disabled, and request prompts and outputs tied to the drafting of pleadings or motions and to the factual narratives on which the pro se party relies. It is unknown at this point whether AI-assisted litigation preparation materials will be considered by the courts as protected work product. Further, lawyers may need to explicitly include AI information in their document preservation letters to their clients, as well as to the plaintiff. In general, until this area of the law is clarified, such information should be treated as general electronic information. Employers must also be counseled about any uploading of confidential information into AI tools.

These issues also are a further reminder that employers need AI usage policies to specifically address which platforms are approved with company data, prohibit the connection of personal AI agents to internal systems, and make clear that approved tools mean enterprise-tier deployments for the appropriate data handling function. If the company allows employees to use different systems to connect personal AI agents to those systems, the other party will argue the company failed to protect the very information it now claims is secret.

RECENT ICE ENFORCEMENT CHANGES AFFECT EMPLOYER COMPLIANCE IN COMPLETING FORM I-9

For many years, the definition of substantive and technical violations in properly completing Form I-9 allowed employers to correct many inaccuracies without fines that were so-called "technical" violations rather than "substantive" violations. There is a detailed checklist of substantive and technical errors set forth in what has been called the Virtue Memo, a 1997 memorandum published by the Immigration and Naturalization Service. On March 16, 2026, however, Immigration and Customs Enforcement (ICE) updated its Form I-9 Inspection Fact Sheet to expand the scope of what constitutes a substantive violation.

The updated Fact Sheet broadens the definition of substantive violations to include previously correctable technical errors, which now include incomplete Section 1 fields, incomplete or incorrect recording of Section 2 documentation details, and deficiencies in the preparer and translator certification. The current Fact Sheet, however, classifies these and other common clerical errors historically considered to be technical violations, to substantive violations subject to an immediate fine. The updated Fact Sheet also classifies certain areas related to missing or incomplete information on Form I-9 as substantive errors, whereas previously they were not considered to be violations if the employer retained a legible copy of the relevant employee document.

Editor's Note: The bottom line of these changes is that employers will face increased exposure to civil penalties ranging from $288 to $2,861 for a violation, with reduced ability to cure deficiencies during a government investigation. The result is that employers should increase their internal compliance programs and audits and have appropriate I-9 protocols.

OSHA EXTENDS ITS HEAT PROGRAM

Although there is no federal Occupational Safety and Health Administration (OSHA) heat rule, OSHA still issues heat citations under its General Duty clause. On April 10, 2026, OSHA issued an updated National Emphasis Program for outdoor and indoor heat-related hazards. The updated plan will "direct Agency resources where they can make the biggest impact" "focusing inspections and outreach in industries and workplaces where heat stress risks are most likely to occur." The updated plan sets forth a "target list" of 55 "high-hazard" industries, including animal slaughtering/processing and many others. OSHA will attempt to make random heat inspections on any day that the weather service has announced a heat warning or advisory, based on its target list. In addition, OSHA will focus on heat-related hazards even during non-heat-related inspections in some circumstances.

NEW ORDER RECLASSIFIES SOME MARIJUANA PRODUCTS AVAILABLE BY PRESCRIPTION

On April 23, 2026, a final Order was issued reclassifying FDA-approved medications that contain marijuana authorized pursuant to a state and medical marijuana program as a Schedule III controlled substances and make them available by prescription. The Order specifically states that it does not legalize the use of marijuana for recreational purposes. While the Order does not address the workplace, there will be more employees in states with medical marijuana programs who will be authorized to use marijuana for medical reasons. This means that more employees who are medical marijuana users will be able to present evidence of their state medical marijuana approvals to explain positive drug tests and request workplace accommodations. The U.S. Department of Transportation has not yet announced that the change will affect its testing rules which include marijuana on the list of prohibited drugs.

TPS UPDATE (as of 6/1/2026)

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. Notably, a person may lose work authorization but still have TPS status.

Burma (Myanmar)

After reviewing country conditions and consulting with the appropriate U.S. government agencies, Secretary of Homeland Security Kristi Noem determined that Burma (Myanmar) no longer met the conditions for its designation for Temporary Protected Status (TPS). See Termination of the Designation of Burma (Myanmar) for Temporary Protected Status, 90 Fed. Reg 53378 (Nov. 25, 2025). Burma's TPS designation and related benefits terminated on Jan. 26, 2026. However, on Jan. 23, 2026, a single judge in the U.S. Northern District of Illinois issued an order postponing the Secretary's TPS termination decision, Aung DOE et al. v. Noem et al., No. 25-cv-15483 (N.D. Ill.). The validity of Employment Authorization Documents (EADs) issued under the TPS designation of Burma (Myanmar) with an original expiration date of Nov. 25, 2025, May 25, 2024, or Nov. 25, 2022, is extended until further court action.

El Salvador
See the table below.

Ethiopia
After reviewing country conditions and consulting with the appropriate U.S. government agencies, Secretary of Homeland Security Kristi Noem determined that Ethiopia no longer met the conditions for its designation for Temporary Protected Status (TPS). See Termination of the Designation of Ethiopia for Temporary Protected Status, 90 Fed. Reg 58028 (Dec. 15, 2025). Ethiopia's TPS designation and related benefits were slated to terminate on Feb. 13, 2026. However, on Jan. 30, 2026, a single judge in the U.S. District of Massachusetts stayed the Secretary's TPS termination decision. African Communities Together et al. v. Noem et al., No. 26-cv-10278-BEM (D. Mass.). This means that an employer can continue to hire and employ Ethiopians with EADs with June 12, 2024, or December 12, 2025, expiration dates until further court action.

Haiti
Federal courts have ruled that Haitians in TPS status can stay and work beyond the February 3, 2026, date set by the Trump administration. The validity of Employment Authorization Documents (EADs) issued under the TPS designation of Haiti with an original expiration date of February 3, 2026, August 3, 2025, August 3, 2024, June 30, 2024, February 3, 2023, December 31, 2022, October 4, 2021, January 4, 2021, January 2, 2020, July 22, 2019, January 22, 2018, or July 22, 2017 is extended per court order. Miot et al. v. Trump et al., No. 25-cv-02471-ACR (D.D.C.). This means that an employer can continue to hire and employ TPS Haitians with EADs with these expiration dates until further court action. This case is scheduled for oral argument before the United States Supreme Court in April 2026 with a decision expected by June 2026.

Honduras
The validity of EADs issued under the TPS designation of Honduras with an original expiration date of Jan. 5, 2018, July 5, 2018, Jan. 5, 2020, Jan. 4, 2021, Oct. 4, 2021, Dec. 31, 2022, June 30, 2024, and July 5, 2025, was extended per district court order. National TPS Alliance et al. v. Noem et al., No. 25-cv-05687-TLT (N.D. Cal.). The Ninth Circuit ruled that the district court was wrong. This means that an employer cannot continue to hire and employ TPS Hondurans with EADs with these expiration dates.

Lebanon
See the table below.

Nepal
The validity of EADs issued under the TPS designation of Nepal with an original expiration date of June 24, 2018, June 24, 2019, March 24, 2020, Jan. 4, 2021, Oct. 4, 2021, Dec. 31, 2022, June 30, 2024, and June 24, 2025, was extended per district court order. National TPS Alliance et al. v. Noem et al., No. 25-cv-05687-TLT (N.D. Cal.). The Ninth Circuit ruled that the district court was wrong. This means that an employer cannot continue to hire and employ TPS Nepalese with EADs with these expiration dates.

Nicaragua
The validity of EADs issued under the TPS designation of Nicaragua with an original expiration date of Jan. 5, 2018, Jan. 5, 2019, April 2, 2019, Jan. 2, 2020, Jan. 4, 2021, Oct. 4, 2021, Dec. 31, 2022, June 30, 2024, and July 5, 2025, was extended per district court order. National TPS Alliance et al. v. Noem et al., No.

25-cv-05687-TLT (N.D. Cal.). The Ninth Circuit ruled that the district court was wrong. This means that an employer cannot continue to hire and employ TPS Nicaraguans with EADs with these expiration dates.

Somalia

After reviewing country conditions and consulting with the appropriate U.S. government agencies, Secretary of Homeland Security Kristi Noem determined that Somalia no longer meets the conditions for its designation for Temporary Protected Status (TPS). See Termination of the Designation of Somalia for Temporary Protected Status, 91 Fed. Reg 1547 (Jan. 14, 2026). Somalia's TPS designation and related benefits were slated to terminate on March 17, 2026. However, on March 13, 2026, a single judge in the District of Massachusetts issued an order staying the Somalia TPS termination. African Communities Together et al. v. Noem et al., No. 26-cv-11201(D. Mass.). This means that an employer can continue to hire and employ Somalia TPS workers with 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, until further court action.

South Sudan

After reviewing country conditions and consulting with the appropriate U.S. government agencies, Secretary of Homeland Security Kristi Noem determined that South Sudan no longer meets the conditions for its designation for Temporary Protected Status (TPS). See Termination of the Designation of South Sudan for Temporary Protected Status, 90 Fed. Reg 50484 (Nov. 6, 2025). South Sudan's TPS designation and related benefits were slated to terminate on Jan. 5, 2026. However, on Dec. 30, 2025, a single judge in the District of Massachusetts issued an order staying the South Sudan TPS termination. African Communities Together et al. v. Noem et al., No. 25-cv-13939-PBS (D. Mass.). The validity of Employment Authorization Documents (EADs) issued under the TPS designation of South Sudan with an original expiration date of Nov. 3, 2023, May 3, 2025, or Nov. 3, 2025, is extended per court order. This means that an employer can continue to hire and employ South Sudan TPS workers with EADs with these expiration dates until further court action.

Sudan

See the table below.

Syria

After reviewing country conditions and consulting with the appropriate U.S. government agencies, Secretary of Homeland Security Kristi Noem determined that Syria no longer meets the conditions for its designation for Temporary Protected Status (TPS). See Termination of the Designation of Syria for Temporary Protected Status, 90 Fed. Reg 45398 (September 22, 2025). Syria's TPS designation and related benefits were slated to terminate on Nov. 21, 2025. However, on Nov. 19, 2025, a single judge in the Southern District of New York issued an order staying the Syria TPS termination. Dahlia Doe v. Noem, 25-cv-8686 (S.D.N.Y.). The validity of EADs issued under the TPS designation of Syria with an original expiration date of Sept. 30, 2025, March 31, 2024, Sept. 30, 2022, or March 31, 2021, is extended per court order. Dahlia Doe v. Noem, 25-cv-8686 (S.D.N.Y.). This means that an employer can continue to hire and employ Syrian TPS workers with EADs with these expiration dates until further court action. This case is scheduled for oral argument before the United States Supreme Court in April 2026 with a decision expected by June 2026.

Ukraine

See the table below.

Venezuela

After reviewing country conditions and consulting with the appropriate U.S. government agencies, Secretary of Homeland Security Kristi Noem determined that Venezuela no longer meets the conditions for its designation

for Temporary Protected Status (TPS), and that the termination of the 2023 Venezuela TPS designation is required as it is contrary to the national interest. On October 3, 2025, the Supreme Court allowed the termination to take immediate effect. 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, pursuant to the U.S. District Court for the Northern District of California's order dated May 30, 2025.

Yemen

After reviewing country conditions and consulting with the appropriate U.S. government agencies, Secretary of Homeland Security Kristi Noem determined that Yemen no longer meets the conditions for its designation for Temporary Protected Status (TPS). See Termination of the Designation of Yemen for Temporary Protected Status, 91 Fed. Reg 10402 (March 3, 2026). Yemen's TPS designation and related benefits were slated to terminate on May 4, 2026. However, on May 1, 2026, a single judge in the Southern District of New York issued an order staying the Yemen TPS termination. Doe v. Noem, 26-cv-2103 (S.D.N.Y.). The validity of Employment Authorization Documents (EADs) issued under the TPS designation of Yemen with an original expiration date of March 3, 2023, September 3, 2024, and March 3, 2026 is extended per court order. Doe v. Noem et al., 26-cv-2013 (S.D.N.Y.) and Doe v Noem et al., 26-cv-2280 (S.D.N.Y.)

See table below for other countries:

Country	EAD Auto-Extended Through:	Status Designated Through:
El Salvador*	March 9, 2026	September 9, 2026
Lebanon*	November 27, 2026	November 27, 2026
Sudan*	April 19, 2026	October 19, 2026
Ukraine*	April 19, 2026	October 19, 2026

*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.

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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