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EMPLOYMENT LAW BULLETIN

A Monthly Report On Labor Law Issues

W & L

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XXXXIV, Issue 9 September 2026

HOUSE PASSES LAW TO REQUIRE ARBITRATION IF EMPLOYER WILL NOT AGREE TO INITIAL UNION CONTRACT

On June 9, 2026, the U.S. House of Representatives passed the Faster Labor Contracts Act (FLCA), a concept long supported by organized labor. The FLCA would amend the National Labor Relations Act (NLRA) for the first time in over 50 years and require mandatory arbitration to settle an initial agreement in bargaining for a newly formed union. The employer will have only 10 days to begin bargaining with such a new union, and 90 days to reach an agreement with that union. Thereafter, either the employer or the union may notify the Federal Mediation & Conciliation Service (FMCS) to request arbitration of the dispute. If the FMCS cannot bring the parties to an agreement after 30 days, it would refer the dispute to a three-person arbitration panel. The panel would include one member selected by labor, one by the employer, and one neutral, mutually agreed upon, all selected within 14 days of the referral to arbitration. The majority of the arbitration panel would settle the contract with a decision that would be binding for two years. The decision would be based on certain statutory factors such as the employer's financial status, the size and type of the employer's operations, employees' cost of living, employees' ability to sustain themselves with wages and benefits they earn, and wages and benefits other employers in the same industry provide their employees.

The purpose of this new bill is to guarantee an initial labor contract for a newly-formed union. Data shows that unions took an average of 429 days after certification to ratify their first contract between 2005 and 2023, as there are no deadlines under current law regarding a first contract. In about half of the situations, an agreed-upon contract is never reached. Unions claim that employers engage in tough bargaining in an initial contract to avoid a union. The bill would thus guarantee the union a first contract.

The vote in the House was 230-195 in favor of the bill, with 20 Republicans joining 210 Democrats in supporting the bill. The bill still must pass the Senate, where Republican Senator Josh Hawley, R.-Mo., has joined Sen. Cory Booker, D-N.J., to introduce their version of the bill. At least two other Republican senators have indicated some support for this measure.

If the bill is to be defeated in the Senate, there must be significant opposition from the employer community. There are several arguments against the bill that union members themselves would recognize. For example, the bill takes away the rights of union members to ratify a collective bargaining agreement, and the right to strike to seek better terms in the collective bargaining agreement. The bill in essence turns over the determination of the new labor agreement to a third party arbitrator, who may know nothing about the industry. Further, the bargaining that occurs prior to the arbitration may be based more on influencing the arbitrator than in reaching an agreement on a contract. There are no guidelines in the bill as to how long the arbitration will take.

Editor's Note: These type arrangements are common in the public transportation sector, and are known as "interest" arbitration, rather than "rights" arbitration. This writer has personally arbitrated numerous such interest arbitrations. As an example of their complexity, an employer usually must call witnesses for each of the contract issues in dispute, to testify why the employer's version of the issue should prevail. It is not uncommon for the employer to introduce literally hundreds of exhibits supporting its position. Sometimes the exhibits are so voluminous and lengthy, it is necessary to summarize each one, on the theory that the arbitrators may never read all the exhibits, so it is best for them to at least be likely to read the summaries. Further, arbitrators depend on support from both the employer and organized labor sectors to gain appointments as arbitrators, and so it is quite common for them to compromise and "split the baby." The arbitration process is not only quite complicated, but also quite expensive.

NEW DOJ GUIDANCE FINDS EEOC'S PREVIOUS UNINTENTIONAL BIAS GUIDANCE UNCONSTITUTIONAL

In a Department of Justice (DOJ) Memo issued on June 9, 2026, the DOJ has re-evaluated the Equal Employment Opportunity Commission's (EEOC) enforcement guidelines under Title VII of the 1964 Civil Rights Act, as they pertain to the disparate impact theory of discrimination. This theory basically states that neutral employment policies applied to all employees can be illegal if they have a discriminatory effect on a protected class, regardless of the lawful intent of the policies. The Memo sets forth why the Uniform Guidelines on Employee Selection Procedures and Affirmative Action Guidelines appear to be unlawful. DOJ interprets these Guidelines as a form of racial-proportionality mandate which encourages employers to engage in race-based decision making to avoid liability. The DOJ finds such an approach unconstitutional and unlawful.

The DOJ advocates that the 1971 *Griggs v. Duke Power Co.* decision has been modified by the more recent Supreme Court ruling in *Louisiana v. Callais*, which narrowed the Voting Rights Act by adopting a stricter standard challenging voting zones as racially discriminatory.

Editor's Note: It should be noted that the Supreme Court ruling in *Griggs v. Duke Power* was essentially codified through law in the 1991 Amendment to Title VII. Therefore, this statute currently remains applicable law unless and until overturned by the courts.

THE SUPREME COURT ALLOWS STATES TO RESERVE WOMENS' TEAMS TO BIOLOGICAL FEMALES

The U.S. Supreme Court has upheld the laws of two states reserving female teams for biological females, finding such laws do not violate either the Equal Protection Clause or Title IX of the civil rights law. The Court reasons that the policy is not a transgender classification, but instead is the same biological rule applied to everyone. That is, a male who identifies as a male and a male who identifies as a female are treated the same, as both may compete on male or co-ed teams, and neither may take a spot on a girls' team. The Court reasons that these laws pass Constitutional scrutiny. The statute forbids sex discrimination, and women's sports themselves would otherwise be unlawful, a result Congress never intended. *Little v. Hecox*, No. 24-38 (U.S., 6/30/26) and *West Virginia v. B.P.J.*, No. 24-43 (U.S., 6/30/26).

EEOC VOTES TO TERMINATE EEO-1 WORKFORCE DATA REPORTS

A vote on July 21, 2026, was 2-1 by the EEOC Commissions to end workforce demographic data collections. A notice of rulemaking must appear in the Federal Register for a 30-day comment period, after which the

Agency can convene again to finalize the rescission. The EEO-1 reports require employers with 100 or more employers, or federal contractors with over 50 workers, to submit annual workforce demographic data by job category, sex, race or ethnicity. The Commission has in the past used the information for enforcement and research, as well as supporting company self-assessments. EEOC Chair Andrea Lucas stated that: "The Commission's EEO reporting requirements may have the unintended consequence of promoting rather than reducing discrimination, because of the mistaken view that it is permissible for employers to take race and sex-based actions to correct statistical imbalances."

Even should the EEO-1 requirement be eliminated, there is some argument that the Uniform Guidelines on Employee Selection Procedures, issued in 1978, require the maintenance of records disclosing the impact of selection procedures for people identifiable by race, sex, or ethnic group. There is an argument that the Guidelines require companies to continue to maintain the data even without submitting EEO-1 forms. In any event, should the Uniform Guidelines be eliminated by the EEOC, it is clear there is no obligation under Title VII itself to create or maintain such demographic records. Some employers believe that regardless of requirements, obtaining such data can be helpful to employers for self-evaluation.

Editor's Note: There is a great deal of controversy even among the employer community as to whether maintaining racial data on applicants and employees is helpful or dangerous. Some commentators argue that the maintenance of such data helps an employer to defend discrimination claims, and further some states such as California have state laws requiring the maintenance of such demographic data. Others say the maintenance of such data by employers allows plaintiffs to prove their case that discrimination has occurred as revealed by the employer's own data. Otherwise, plaintiffs would have a much more difficult time finding proof of the race and sex of the comparable employees or applicants in question.

It should also be noted in its National Enforcement Plan released on June 4 of this year, the EEOC said company policies that allow sharing data about employee's race or sex by non-HR personnel could constitute a discriminatory DEI practice, at least under some circumstances.

This is an area where caution and legal advice from competent employment law counsel is necessary. Also, individual employers may have different approaches to such issues.

TRUMP ACCOUNTS BEGAN FUNDING ON JULY 4

Individuals and corporations can begin making contributions to tax-advantaged investment accounts for children starting July 4, 2026, and some major employers announce they will match the $1,000 of the government seed funding for eligible employees. Most companies are awaiting additional guidance before initiating such initiatives. Children born between 2025 and 2028 can receive a $1,000 federal contribution from the Treasury.

Trump Accounts were established in the 2025 tax-and-spending bill. Parents can sign their child up for an account and it will be invested in index funds and can be accessed once the child turns 18, and it becomes similar to an IRA. Annual contributions are limited to $5,000, and employers can contribute up to $2,500 each year. Employers can also set up plans for their employees to make pre-tax contributions to the accounts through cafeteria plans.

Some charitable organizations are contributing to the accounts, including a $10 billion donation from Michael and Susan Dell. About six million children have been signed up as of July 6, according to Treasury Secretary Scott Bessent. Parents, grandparents, and other eligible contributors will be able to collectively add as much as $5,000 per child each year. The child must be a U.S. citizen, and only one account is allowed per child. On August 11, 2026, the U.S. Treasury Department released a proposal clarifying key aspects of how employers can facilitate contributions towards a Trump Account for their employees. Most employers will likely find the proposal clarifies many of the issues that concern such programs.

Non-profits and state and local governments can make tax-deductible contributions that do not count towards the limit. Accounts can be set up through IRS Form 4547 or an online application at https://trumpaccounts.gov/. Contributions by individuals are like Roth (rather than traditional) IRAs in that they are not deductible, which affects how withdrawals are taxed later. Trump Accounts represent an effort to institutionalize asset building from birth. Sen. Cory Booker (D.N.J.) considers the program a step in the right direction. He calls it a downpayment on a bipartisan idea that should be improved over time. Parents who contribute to these accounts later converting it to a Roth IRA can set up a great retirement plan for their child.

A related development is that President Trump signed an executive order in late April expanding access to retirement plans for workers whose employers do not offer a retirement plan. The plan will be implemented at the start of 2027, in which anyone can go to https://www.trumpira.gov/ and open the new low-cost IRA account. Also, as part of the federal Saver's Match Program, low income Americans will be eligible to receive up to $1,000 per year in matching funds deposited directly into their accounts. Any individuals earning less than $35,500 and married couples earning less than $71,000 are eligible for the Saver's Match.

TPS UPDATE (as of 8/19/2026)

The Trump Administration has succeeded in terminating TPS status for people from several countries. This update provides information about the remaining countries for which TPS status is available. If a country is not listed below, the employer should determine whether an employee with TPS status has work authorization for a different reason. Notably, a person may lose work authorization but still have TPS status.

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

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.

*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.

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