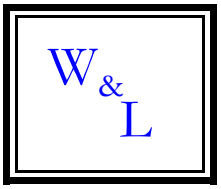
Wimberly, Lawson, Steckel, Schneider & Stine, P.C.
Suite 400, Lenox Towers, 3400 Peachtree Road, N.E., Atlanta, Georgia 30326
E-MAIL:Lawyers@wimlaw.com
(404) 365-0900 FAX (404) 261-3707

EMPLOYMENT LAW BULLETIN

A Monthly Report On Labor Law Issues



TO VIEW OUR LATEST ALERT(S), PLEASE VISIT OUR WEBSITE AT www.wimlaw.com.

•Affiliated offices•
TENNESSEE
Knoxville * Nashville
Morristown * Cookeville
SOUTH CAROLINA
*Greenville
GEORGIA
*Athens

VOLUME XXXXIV, Issue 1 January 2026

EEOC ISSUES NEW GUIDANCE ON NATIONAL ORIGIN DISCRIMINATION

On November 19, 2025, the EEOC released new guidance affirming EEOC Chair Andrea Lucas's commitment in advancing robust enforcement and awareness around national origin discrimination and anti-American bias. The EEOC announced in a press release that many employers have policies and practices preferring illegal aliens, migrant workers, or non-immigrant guest workers over American workers, in violation of federal employment law. Lucas said: "Nothing justifies illegal national origin discrimination - whether rooted in cost of labor, customer preferences, or stereotypes." The document defines national origin discrimination as: "Treating employees or applicants unfavorably or favorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background." She gives examples of using discriminatory job advertisements, or holding U.S. workers to stricter application processes than foreign workers.

EFFECT OF ADMINISTRATION'S ABANDONMENT OF DISPARATE IMPACT IN THE AREA OF DISCRIMINATION CONTINUES TO BE FELT

In April 2025, the Administration ordered federal agencies to cease enforcement of a legal theory known as "disparate impact," a neutral policy applicable to all, that disproportionately harms members of a particular race, sex, or other protected category like disability or age. These theories were often used, for example, in cases involving employee selection procedures and criminal background checks. As a result of such executive orders, the Equal Employment Opportunity Commission (EEOC) reportedly has concluded all disparate impact cases and has issued right to sue letters allowing workers to bring their disputes in federal court, without the handling of such cases by the EEOC. In situations where the discrimination charges include both disparate impact allegations and intentional discrimination claims, known as "disparate treatment," the disparate treatment claims are continued, but the EEOC will not continue investigating or prosecuting disparate impact claims. In December 2025, the Justice Department issued a rule that it will focus solely on "intentional discrimination" in its regulation of federally funded programs, and that the Department of Justice's (DOJ's) Title VI Civil Rights Regulations "do not prohibit conduct or activities that have a disparate impact." The regulation follows the executive order calling for the elimination of "the use of disparate-impact liability in all contexts to the maximum degree possible."

There has been some push-back on the new policies, as some former EEOC officials have objected to the new policy and at least one lawsuit has been brought contending that the EEOC is legally required to at least investigate discrimination charges using the disparate impact theory. A federal district court recently rejected this claim and the court found the plaintiff lacked standing in the claim by not suffering "a cognizable injury" from the change in policy. *Ross v. EEOC*, Motion to Dismiss Granted 11/25/25 (D.D.C., No. 1:25-cv-03702).

Editor's Note: It is critically important for employers to note that the Administration's abandonment of the disparate impact method of proving discrimination does not apply to "private" lawsuits brought by individuals or class representatives, as the change in policy only applies to government enforcement, not private litigation. Thus, employers are reminded to still be aware of potential liability under the disparate impact theory in private litigation.

ISSUES ARISE FOR EMPLOYERS CONCERNING THE OVERTIME TAX BREAK

The new Administration's tax law lets most workers deduct up to $12,500 of the "half" of the "time-and-a-half" of federal overtime income this year through 2028. However, the benefit does not apply to Social Security and Medicare taxes. Payroll systems will need to be programmed for 2026 to track the relevant income so that it can be reported. The Internal Revenue Service (IRS) has stated employers may report qualified overtime for 2025 in Box 14 of the 2025 W-2.

There is an issue whether employers separate the income eligible for the overtime deduction in tax forms they send employees. Most employers want to accommodate their workers, but some companies fear some legal risk if they do this incorrectly. The IRS has provided guidance to employees on how to calculate the deduction. There is penalty relief available on the W-2 Form reporting for 2025, but only for that year. The guidance indicates employers won't face penalties for neglecting to separately provide the total amount of overtime compensation. The hope is that the new information from the IRS will assist employers in calculating the overtime deduction properly, making the possibility for penalties less worrisome. The IRS has not updated the W-2 Forms for the 2025 tax year to account for the overtime deduction, but employers can use a box for "Other" if they report their employees' eligible compensation. The recent guidance only applies to the 2025 tax year, and people are filling out their returns in 2026 for the 2025 tax year.

NLRB TO MOVE QUICKLY AS QUORUM IS RESTORED

The U.S. Senate on December 18, 2025, confirmed two nominees to give the National Labor Relations Board (NLRB) the minimum number needed to regain a quorum and thus to resolve cases. The NLRB has been unable to issue decisions during Trump's second term because his firing of member Gwynne Wilcox dropped the Board below the three-member minimum necessary for a quorum. The Supreme Court has blocked a judge's order to reinstate Wilcox as litigation over her termination proceeds. The two new members join Democrat member David Prouty, who continues to serve on the Board. The two new members of the Board will be Scott Mayer, who served as Boeing's Chief Labor Counsel, and James Murphy, a former NLRB attorney.

The former NLRB Chair, Marvin Kaplan, has stated that he expects the new Board to start issuing opinions immediately, explaining that the Board's staff has developed draft opinions on a number of cases that the new Board could potentially issue quite quickly. Kaplan did indicate that the new three-member Board is unlikely to change significant NLRB precedent, because of the NLRB's long tradition needing three votes to overturn such precedent. This will slow the new NLRB from reversing Biden-era precedents such as those banning captive audience meetings and allowing card-check procedures where unfair labor practices have occurred. However, Kaplan indicates that the new Board can still "clarify" certain Biden-era rulings, and Board traditions allow clarification even though a three-member majority may be necessary under Board tradition to overturn directly the prior precedent.

In addition, the next nominee to be the new General Counsel of the Board is likely to be confirmed, Crystal Carey, a former management-firm partner. Her nomination has previously been held up because of some concern expressed by Sen. Josh Hawley about Carey refusing to enforce NLRB precedent that she disagrees with. Her nomination as General Counsel has been held up most of the year. The General Counsel position is quite important at the NLRB, and some consider it the most important position, because the General Counsel decides whether to pursue cases, and has prosecutorial discretion in the process.

DEVELOPMENTS WITH STARBUCKS STRIKE

The union at Starbucks, Starbucks Workers United, has become frustrated that it has not been able to negotiate (on its desired terms, of course) a collective bargaining agreement with any Starbucks location. The union has been in negotiations with Starbucks for more than 18 months. Although technically each location has its own negotiations, the union has been trying to negotiate over some type of national framework for negotiations. In less than 400 of Starbucks's total of over 13,700 locations, unions have won an NLRB-conducted union election.

Although the union claims the company has been "stonewalling" them at the bargaining table for more than six months, the union has rejected Starbucks's contract proposals including annual raises. The union claims Starbucks has only guaranteed annual raises of 2%, and doesn't agree that employees will get enough hours of work to qualify for benefits. Starbucks, in turn, claims it already offers "the best job in retail," with barista pay averaging over $19 per hour, and total compensation over $30 an hour when counting benefits.

Reportedly, around 3,000 workers have been on strike at more than 30-40 locations nationwide for almost a month now. In New York City, about a dozen baristas were arrested outside the Empire State Building, where the police asked the picketers to stop blocking entrances. The union has attracted political support with New York City Mayor Zohran Mandani and Sen. Bernie Sanders walking the picket line.

SOME EMPLOYERS ARE ENCOURAGING WORKERS TO USE AI

A number of companies are reportedly providing bonuses to employees as an encouragement to use Artificial Intelligence (AI) at work. IBM is among the firms that are paying cash, awarding points or other incentives to encourage the adoption of AI. At Brez, payouts range from $150 for small scale efforts to thousands of dollars for those with high impact. IBM provides points redeemable for items such as appliances, electronics or concert tickets.

One reason for the encouragement is that some companies have invested heavily in AI. According to a survey conducted by ChatGPT, employees indicated that using AI has improved either the speed or quality of their work. On the other hand, researchers at the Massachusetts Institute of Technology found no real return on investment in generative AI initiatives. Researchers at Harvard and Stanford are also skeptical.

DANGERS OF TRANSCRIBING E-MEETINGS

One effect of AI in its transcription services has been to expand the use of recording meetings and even phone-call transcriptions. Zoom meeting calls are particularly often attended by AI transcription. There are dangers to such use.

First, in litigation, plaintiffs often seek such transcriptions as part of the discovery process. Occasionally, loose talk in such transcriptions create damaging evidence that can be used against employers in litigation. Further, if lawsuits are filed, employers have an obligation to place "litigation holds" on relevant information in their possession, and failure to maintain such information when the likelihood of litigation is clear, can create an "adverse inference" that the discarded information would have been harmful to the employer. A court can punish the employer in various ways for not retaining such relevant information, including instructing a jury that the information would have been damaging to the employer or even granting a ruling against the employer on the merits.

A particular concern expressed by some is whether the recording of meeting content results in the AI being provided to a third party to the conversations, which has significant legal consequences. Using an AI tool is argued by defendants to be analogous to a tape recording, but some courts have found that a vendor that can make independent use of the collected information can be considered a third party. Plaintiffs may argue that the use of such AI tools leads to a loss of the attorney-client privilege and/or can raise a wiretapping claim, or even an argument as to the loss of trade secrets.

Editor's Note: The issue of the plaintiff's seeking of transcriptions of meetings and calls is definitely a concern, but the other concerns noted above are yet to be developed in the case law.

TPS UPDATE (As of 12/15/2025)

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.

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
Somalia*	September 17, 2025	March 17, 2026
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

@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!

WIMBERLY, LAWSON, STECKEL,
SCHNEIDER & STINE, P.C.
Suite 400, Lenox Towers
3400 Peachtree Road, N.E.
Atlanta, GA 30326-1107
ADDRESS SERVICE REQUESTED