

A LITTLER PRESENTATION

Legal Update: Critical Developments for Home Care Providers

July 15, 2026

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Presented By

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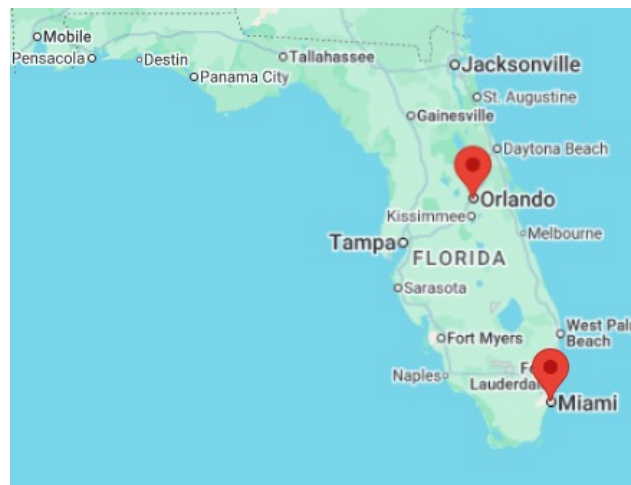
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Littler's 45+ Home Care Attorneys (1,300 in US!)



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Littler's Florida Offices & 62 Attorneys



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Agenda

1. Updated AI Legislation Map + Most Recent AI Lawsuit
2. What's Happening With The US DOL's Proposed Companionship & Live-In Exemption Regulations?
3. TPS Terminations – July 23, 2026 Update + Common I-9 Mistakes
4. State/Federal Law Trends to Watch

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We strongly encourage you to consult legal counsel of your choice on specific matters involving employment law, and important personnel policies and practices prior to adoption or implementation.

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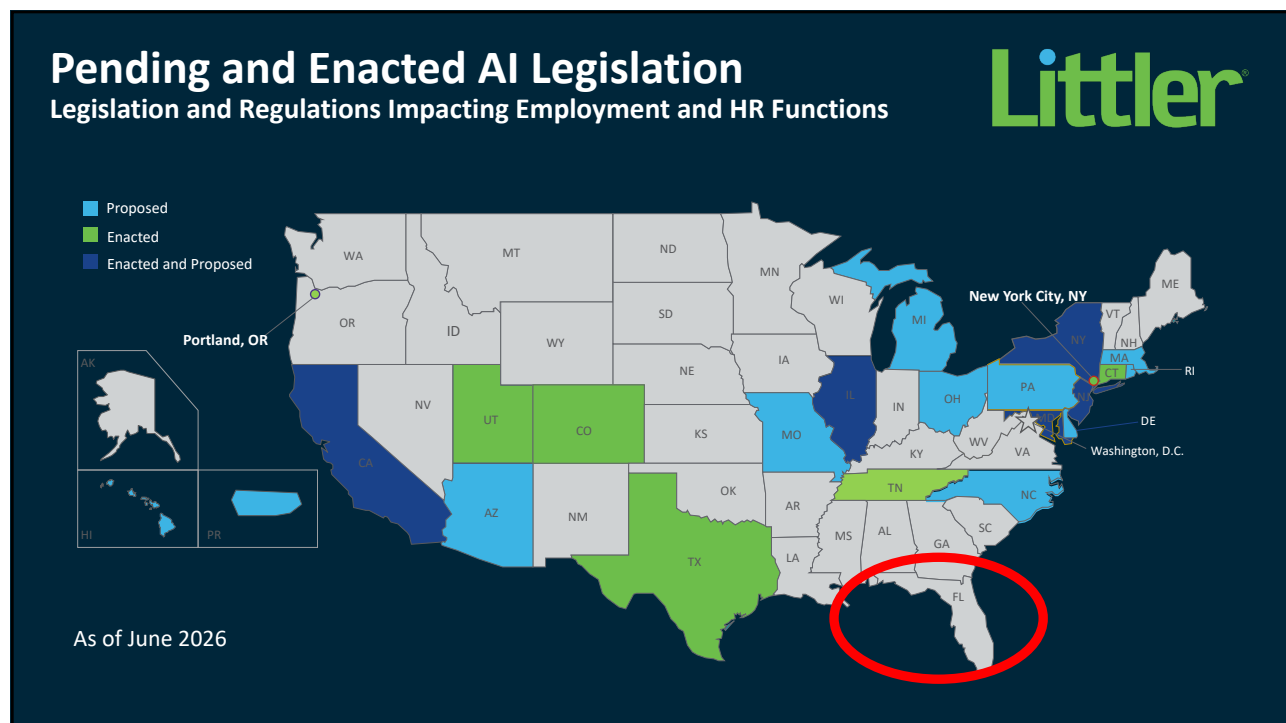
Submit Questions!

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LOCAL EVERYWHERE

**Updated AI Legislation
Map + AI Litigation**

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Recent AI Lawsuit

- 26 current/former EEs sued over RIF decision
- Alleging ER used AI-enabled tools that considered keystroke and activity-monitoring data, AI-usage dashboards, and also assisted performance-ranking to score, rank, and select for layoff.
- Allegation is that the tools failed to take into consideration protected FMLA, ADA, and Pregnancy leaves.
- In other words, EEs who took these kinds of leaves were allegedly more likely to be selected for RIF than EEs who did not take these kinds of leaves.

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U.S. DOL Proposed Regulations – Companionship & Live-In Exemption

Current Law



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Current Regulation (29 C.F.R. §552.109) Excludes Third-Party Employers from Classifying as Exempt

§ 552.109 Third party employment.

- (a) Third party employers of employees engaged in companionship services within the meaning of § 552.6 may not avail themselves of the minimum wage and overtime exemption provided by section 13(a)(15) of the Act, even if the employee is jointly employed by the individual or member of the family or household using the services. However, the individual or member of the family or household, even if considered a joint employer, is still entitled to assert the exemption, if the employee meets all of the requirements of § 552.6.

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Future Law?



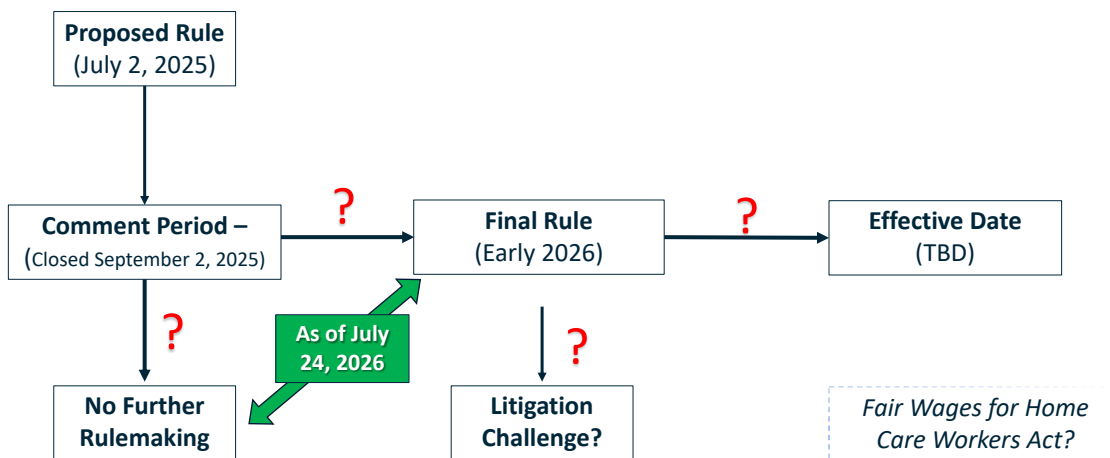
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On July 2, 2025 U.S. DOL Proposed Regulations . . .



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So What Happens Next?



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NEW - Fair Wages for Home Care Workers Act?

- On March 12, 2026, Sens. Patty Murray (D-WA), Andy Kim (D-NJ), and Rep. Alexandria Ocasio-Cortez (D-NY) (in addition to their co-signers) introduced legislation that would statutorily mandate minimum wage and overtime pay for home care workers and domestic workers.
- The legislation is a direct response to the DOL's proposed companionship and live-in exemption regulations.

So What Does This Mean?!?

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So What Does This Mean IF DOL Regs Are Finalized AND You Operate in Certain States??

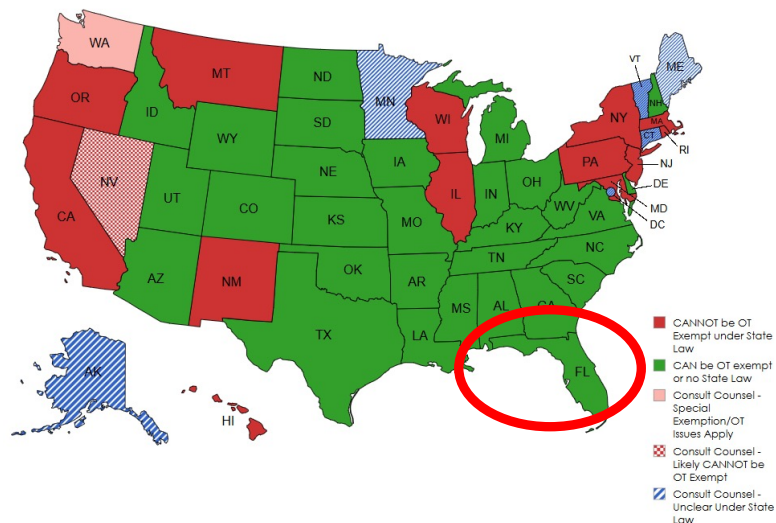
Qualifying companions and live-in caregivers could be exempt under FLSA !!!



But wait, there's more . . .

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Which State Do You Operate In?



So What Should You Do Now If You Are A **GREEN** State?

Should you change practices immediately to get ahead of your competition?



**In the Words of the late great Dikembe Mutombo,
No, No, No!**

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What Is A *Safe Bet* To Do Now If You Are A **GREEN** State?

1. ~~COMMENT!! (CURRENTLY DUE BY SEPT 2)~~
2. Evaluate compensation models
3. Create Conversion Plan

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GREEN State - Evaluating Compensation Models/Options = *Brighter Future*

- Will classifying as exempt improve or hurt recruiting? Retention?
- Will eliminating OT costs change rates charged to clients?
- Will eliminating OT decrease recordkeeping obligations?
- Will law change again in near future?

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GREEN State – Consider Creating A Conversion Plan

- Target date
 - Payroll
 - Revise Timekeeping policy?
 - Revise Job Description?
 - Revise Job posting?
 - Communication plan to managers/supervisors/office team + FAQs
 - Communication plan to impacted caregivers + FAQs
 - Communication plan to clients + FAQs
- Review payroll after change to ensure correct

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Littler Conversion Package (IF rule finalized)

1. Timeline + Action Steps Summary
2. Revised Timekeeping Policy
3. Template Communication + FAQs for managers/supervisors/office
4. Template Communication + FAQs for impacted caregivers
5. Template Communication + FAQs for clients

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So What Do We Recommend Doing In All States?



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Fields with an Asterisk (*) are required.



First Name *

Last Name *

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- ☐ Pay Equity Compliance
- ☐ Privacy and Data Security
- ☐ Unfair Competition and Trade Sec
- ☐ Wage and Hour
- ☐ Whistleblowing, Compliance and Investigations
- ☐ Workers' Compensation
- ☐ Workplace Training
- ☐ Workplace Violence Prevention and Crisis Response

+ Industries

- ☐ Construction
- ☐ Emerging Companies and Venture Capital
- ☐ Energy
- ☐ Financial Services
- ☐ Healthcare

☐ Healthcare - Home Care

- ☐ Higher Education
- ☐ Hospitality
- ☐ Retail
- ☐ Sports
- ☐ Transportation

+ Industries

+ States/Territories

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TPS Update and Common I9 Mistakes

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TPS Update

- The U.S. Supreme Court in *Mullins v. Doe* confirmed the Department of Homeland Security's authority **to end the TPS program** for **Haiti, Burma, Somalia, Yemen, Syria, Ethiopia, and South Sudan.**
- the United States Citizenship and Immigration Services (USCIS) established a new TPS termination dates for TPS-related Employment Authorization Documents :
 - July 24, 2026** (Haiti, Somalia, Syria, Yemen)
 - July 27, 2026** (Burma (Myanmar))
 - July 30, 2026** (Ethiopia and South Sudan)

TPS Update So What Does This Mean for Employers?

- It is **unlawful** (as of the applicable termination date) to employ a worker who is only working pursuant to one of these TPS programs.
- **Action Steps (NOW!)**
 1. Review your Form I-9 records to determine if any workers only have TPS designation EADs.
 2. Contact any such workers IMMEDIATELY to determine if they have other employment authorization documents
 - ✓ If so, you should **complete Supplement B**
 - ✓ If none, **terminate on or before applicable term date**

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Documents that Do Not Show Work Authorization

- Documents that **DO NOT show** continuing work authorization:
 - X** EAD with category C11;
 - X** Receipt for I-765 application for EAD;
 - X** Receipt for I-589 application for asylum;
 - X** Receipt for Biometrics notice for I-765 or I-589;
 - X** Receipt for I-765 approval.

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Documents that Do Not Show Work Authorization (Cont . . .)

- Documents that **DO NOT show** continuing work authorization:
 - ✗ IRS individual taxpayer number (ITIN)
 - ✗ Restricted Social Security card as List C document – stated not valid for employment unless DHS work authorization;
 - ✗ Expired passport, driver's license, or green card, unless extended by USCIS documentation; and
 - ✗ Foreign passport, unless it has I-551 stamp or is accompanied by Form I-94 which has worker's unexpired nonimmigrant status.

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Homeland Security

ICE I-9 Audits

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Notice of Inspection

Office of Investigations
U.S. Department of Homeland Security
(Address)
(Address)

 U.S. Immigration
and Customs
Enforcement

NOTICE OF INSPECTION

[Date]

[Name of Company Official]
[Company Name]
[Company Address]

Dear Sir/Madam:

Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify employment eligibility of persons hired after November 6, 1986 using the Employment Eligibility Verification Form I-9.

U.S. Immigration and Customs Enforcement (ICE) regulations require the provision of three days notice prior to conducting a review of an employer's Forms I-9. This letter serves as advance notice that ICE has scheduled a review of your forms for insert date and time. You may, however, waive the three-day period, should you wish to do so, by annotating and signing the bottom of this letter and advising this office of your decision.

During the review, insert name and title of ICE point of contact will discuss the requirements of the law with you and inspect your Forms I-9. The purpose of this review is to assess your compliance with the provisions of the law. ICE will make every effort to conduct the review of records in a timely manner so as not to impede your normal business routine.

Sincerely,

Insert name
Insert title (GS or above)

I wish to waive the three day notice to which I am entitled by regulation.

(Printed Name) _____ (Signature) _____ (Date) _____

ATIA InfoNet Doc. No. 09031660. (Posted 03/16/09)

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Civil Penalties

- I-9 paperwork for uncorrected technical and substantive violations result in penalty of **\$288 to \$2,861*** for each individual.
- Knowingly hiring violations result in penalty of **\$716 to \$5,724*** per violation for 1st offense.

*ICE penalties will be increasing about 3% in 2026.

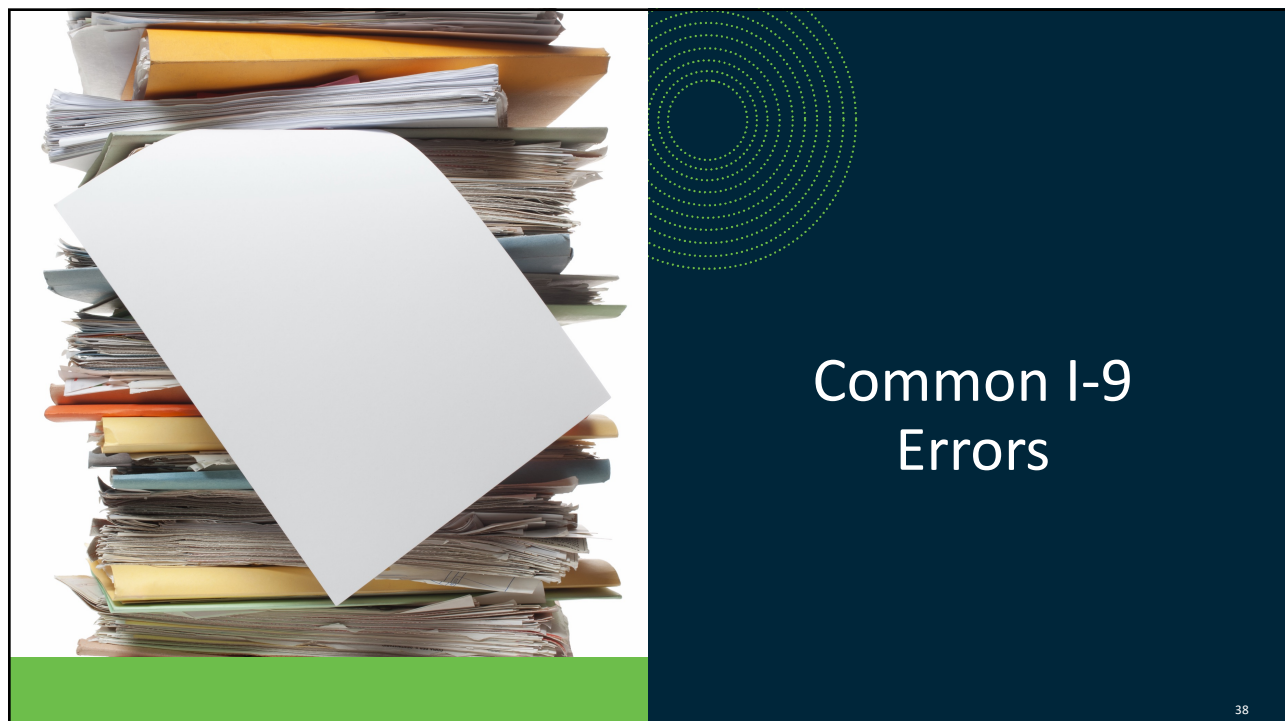


Criminal Penalties

- Criminal penalties for immigration violations:
 - Where ICE finds employer knowingly employed individuals who lack work authorization - *imprisonment for up to 6 months and/or fines*
 - Harbored and/or transported undocumented workers - *up to 5 years in prison for simple harboring*
 - Tax fraud – paying undocumented workers in cash or 1099 worker - *up to 3 years in prison & fine of up to \$100,000*
 - Transporting - *up to five years in federal prison.*

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Common I-9 Errors

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Common I-9 Errors – Section 1

- Failure to complete an I-9 form w/in 3 days – either through inadvertence or because you are incorrectly engaging worker as 1099 worker;
- Failure to sign I-9 form by employee;
- Failure to check box for citizenship or employment-authorized immigration status and/or record Alien/USCIS #.

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Common I-9 Errors – Section 2

- Failure to complete employer certification in Section 2;
- Failure to sign I-9 form by employer rep;
- Failure to complete Lists A OR B and C;
- Failure to record expiration date, type of document and/or issuing authority missing;
- Failure to sign and/or date within 3 days after 1st day of employment.

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**Little Resources
&
Your Next Steps
For Compliance**

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Pro Tip – How to Prepare For An ICE I-9 Audit

- Internal I-9 audit** – cure errors on I-9 forms & ID and discharge undocumented workers.

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Legislation

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Documents & Templates

Forms & Notices

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I-9-FAQs – Steps to Ensure I-9 and Immigration Compliance

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HIRING RESOURCES

Human Resources Management

Hiring/Onboarding

I-9 Form

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Human Resources Management

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Multi-Jurisdiction Offer Letter Template

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Human Resources Management

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Notification Requirements

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Vaughn & Storch - Employment Law Update: Identifying Risks, Trends, and Recommendations So Your Compliance Doesn't Go Up in Flames

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Pro Tip – How to Prepare For An ICE I-9 Audit

- Ensure staff are properly trained on completing / storing I-9 forms.
- Consult ICE website or counsel about any types of ID you are not familiar with.
- Keep copies of documentation accepted as proof of identity & employment authorization with Form I-9.

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Your Next Steps

1. Plan for the knock on your door
 - Identify internal lead team member
 - Educate Team (reception to management to team lead)
 - Know the Attorney to call
2. ICE Training
3. Self Audit I-9 files (Correct Mistakes before ICE serves NOI!)
4. Call Counsel Immediately! *If you wait and try to handle yourself, it could be too late*

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State/Federal Law Trends To Watch



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Additional Federal/State Law Trends To Watch

State/Local

- AI use in employment regulation
- Domestic Worker Bill of Rights
- Paid Sick Leave
- Non-Compete and Non-Solicitation Restrictions

Federal

- Anti-Kickback Law: Certain payments – *e.g., sign on bonus* – paid to certain workers – *e.g., family member of care recipient* – under Medicaid reimbursed care model may be deemed to violate the Anti-Kickback laws
- New Joint Employment Regulation

Federal Trend: Anti-Kickback

- US OIG Opinion Letter 2025-12 (Posted January 5, 2026)
- Addressed
 - ✓ payment of sign-on bonuses
 - ✓ to prospective employees of home care agency
 - ✓ who were a family member of care recipient
 - ✓ under a state Medicaid reimbursed waiver program
- **Unfavorable** finding

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Federal Trend: US DOL Joint Employment Rule

- Notice of Proposed Rule Posted April 23, 2026
- Comment period closed June 22, 2026
- Goals:
 - ✓ Make vertical and horizontal JE standards clearer
 - ✓ Provide more examples
- If finalized, focus on actual control over important employment terms/conditions
- Less likely franchisor would be found to be JE

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State Trend: 2026 Minimum Compensation Thresholds Restrictive Covenant Agreements

- Colorado
 - \$130,014 (non-compete)
 - \$78,008.40 (non-solicit)
 - Maine - \$63,840
 - Oregon - \$119,541
 - Rhode Island - \$39,900
 - Virginia - \$78,364.52
 - Washington - \$126,858.83
 - Washington D.C. - \$162,164
 - Florida CHOICE ACT – >2x annual mean wage for county where
 - ER has principal place of business or
 - where employee resides
- Note that these threshold amounts are expected to change periodically***

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**Ask The
Employment
Attorneys
Anything!**

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Questions?



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Thank You



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