From FAMLI to OMG, the Year in Employment Law

2025 Labor & Employment Law Update

COAN, PAYTON & PAYNE, LLC
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Practice Areas:
Labor & Employment
Employment litigation
Labor Relations & Disputes

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Topics Covered

LEGISLATIVE UPDATE

- State law changes

CASE LAW UPDATE

- State cases
- Federal cases

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HB 25-1001 – Wage Act Amendment

- Definition of “employer” is expanded
  - Now includes individuals who own or control at least 25% of ownership interest in a company
  - One exception – minority owners who demonstrate full delegation of authority to control day-to-day operations
- Narrows already limited path to recovery of attorneys’ fees for employers
  - Recovery only allowed if: (a) tender was made; and (b) employee persued an action lacking substantial justification
  - Prior law required that employee recover more than amount tendered or be subjected to paying attorneys’ fees—not the case anymore

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HB 25-1001 – Wage Act Amendment

- Increases CDLE claim authority from $7,500 to $13,000 with standard increases starting in 2028 of at least $1,000 per year
- Increased DLSS penalties and fines
- Misclassification of employee as independent contractor—statutory penalties now between $5,000 and $50,000
- Expands retaliation provision:
  - Allows for recovery of noneconomic compensatory damages
  - Prohibits use of employee's immigration status to discriminate or retaliate against an employee
  - Creates presumption that adverse action within 90 days of protected conduct, without more, is retaliation

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HB 25-1001 – Wage Act Amendment

- Cannot make payroll deductions that drop employee below minimum wage
- CDLE can waive, under certain conditions, penalty for an employer's failure to pay wages if the employer pays all claimed wages within 14 days
- In civil action for unpaid wages, Court can issue equitable relief for employee
- Allows CDLE to order reasonable attorneys fees and costs following an investigation of a discrimination/retaliation complaint

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HB 25-1208 – Tip Credit Offset

- Current law: Local government that enacts a minimum wage must provide a tip offset for tipped employees in an amount equal to the tip offset amount described in the state constitution, which is $3.02
- On and after January 1, 2026, a local government that has a local minimum wage that exceeds the state minimum wage may increase the tip offset
- Local governments still cannot impose a tip offset in an amount that allows a tipped employee to earn less than the state minimum wage minus $3.02

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2025 Wage Rate Updates

- Minimum wage is $14.81 for non-tipped employees ($11.79 tipped)
- Executive/administrative/professional exemption requires a minimum annual salary of $56,485
- Highly compensated employee exemption requires annual salary of $127,091

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HB 24-1130 – Biometric Privacy Requirements

- Updated Colorado Privacy Act to require Colorado employers to obtain consent before collecting and using biometric information and to adopt biometric policies
- Policies must include a retention schedule for biometric identifiers and data, a protocol for responding to security incidents, annual reviews, and deletion guidelines for biometric data
- Effective date was July 1, 2025 (law passed in 2024)

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Kelly Loving Act – Transgender rights protection

- Effective May 16, 2025
- Refusing to use an individual's chosen name and/or pronouns may be considered an unlawful employment action under the Colorado Anti-Discrimination Act ("CADA")
- CADA revised to include "chosen name" and pronouns in the definition for "gender expression"
- Provides that new policies for contractors and educators relating to names must be all inclusive for students and individuals adopting other names
- Repeals a provision that limits state registrar to amend a gender designation on birth certificate, and provides that other ID cards may also amend

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FAMLI Update

- Starting January 1, 2026, additional 12 weeks of paid FAMLI leave will be available for parents of children receiving inpatient care in a neonatal intensive care unit (“NICU”)
- Extends current premium amount financing the program (0.9% of wages) through 2025, but sets 2026 premium amount at lower threshold (0.88% of wages)

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SB 25-083 – Limits on non-competes in medical field

- Prohibits most non-competes and patient non-solicitation agreements from being enforced against health care providers (doctors, dentists, RNs, PAs, etc.)
- Prohibits restrictions on disclosing information about an upcoming career move to a patient, even if still employed
- Allows for non-competes in certain sales of business as long as HCP is a majority owner or receives payment equal to the amount of time the individual is being asked to "sit out" using the prior 2 years annual cash compensation as a reference point
- Not retroactive – applies only to agreements entered into after August 6, 2025

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HB 25-1090 – Protections against Deceptive Pricing Practices

- Beginning January 1, 2026, all persons, including bars, restaurants, delivery apps, and landlords, must clearly disclose all mandatory fees upfront. Hidden or misleading charges are banned
- Bars & Restaurants – must disclose mandatory service charges and an accurate description of their distribution
- Delivery companies – must disclose all fees, explain their purpose, and show an itemized subtotal before checkout
- While not an employment law, this may trigger potential whistle blowing claims and claims for wrongful termination in violation of public policy in the event an employee reports or complains about noncompliance or are asked not to comply

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SB 25-276 – Protection of Civil Rights Immigration Status

- Creates protections for immigrants and prohibits disclosure of personal information maintained by Colorado state agencies or political subdivisions to federal immigration enforcement officials
- Repeals annual reporting requirements concerning requests for a person's personal identifying information
- If a state employee or agency intentionally violates its provisions, it subjects them to a fine

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SB 25-276 – Protection of Civil Rights Immigration Status

- Employers in public education, libraries, childcare centers, institutes of higher education, and health care facilities must adopt a policy for employees and students/children/patients/patrons that contains the following:
    - Procedures to provide PII about children/students who are enrolled and is/was present
    - Procedures to provide PII as required by state and federal law of parents, guardians, relatives
    - Procedures to provide access/consent to access PII that otherwise would not be accessible
    - Procedures to release info as required by subpoena, orders, or warrants issued by the federal judiciary
    - Designate an employee to be notified if info or access is requested by federal immigration officials
    - Identification of said documentation of the PII that is being sought, alongside the name and badge number of the immigration official, subpoena issued by the federal judiciary, or order of the same
    - Procedures to communicate info about the request for info to the parent/guardian of the child, if applicable

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SB 25B-004 AI Regulation

- Delays implementation of the AI regulations established by SB 24-205
- Rather than AI regulations going into effect on February 1, 2026, those regulations are delayed until June 30, 2026
- We will likely see bills during the 2026 session attacking SB 24-205
- Primary purpose of the special session was to respond to the state revenue losses prompted by HR 1 and address the state budget, although the AI debate was highly contested.

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State cases

- TRAPS Litigation
  - Training Repayment Agreement Provision (TRAPS)
  - CRS 8-2-113(3) provides that CO employers may use TRAPS when the employer provided training is <u>distinct</u> from normal, on-the-job training
  - State of Colorado v. Petsmart
    - Ads for grooming school said:
      - “Become a PetsMart groomer! 4-week FREE Grooming Academy”
      - “4-week FREE Grooming Academy, 16 weeks of PAID salon training”

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State cases

- TRAPS Litigation
  - Colorado AG has authority to investigate any potential TRAPs violation he/she wishes to investigate
  - AG has the ability to recover three times the amount of employer's actual or attempted recovery of training costs
  - Federal regulation of TRAPs has waned, so we are seeing state AGs fill in the gaps and increase enforcement

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State cases

- *Hamilton v. Amazon.com Services LLC* (Colo. 2024)
  - Question: is holiday incentive pay included in calculation of “regular rate of pay” under the Colorado Wage Claim Act?
  - Answer: Yes. Holiday pay is a shift differential.
  - “The regular rate of pay ‘must reflect *all* payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments…Those payments include, as pertinent here, shift differentials, which, as noted above, are defined to comprise the scenario in which ‘an employee receives a higher wage or rate because of undesirable hours or disagreeable work.’”

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State cases

- *Nolly v. Ameristar Casino Black Hawk, LLC* (Colo. App. 2025)
  - Question: When must a lunch break be remunerated under the CWCA?
  - Answer: Employer cannot require an employee to return early or to stay on the premises for any duration of the meal period or the meal period must be remunerated as time worked. An employee must similarly be duty-free.
  - "The COMPS Order provides that employees who have a shift longer than five hours are entitled to an uninterrupted and duty-free meal period of at least a [thirty]-minute duration. Employees must be completely relieved of all duties and permitted to pursue personal activities for a period to qualify as non-work, *uncompensated* time."

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State cases

- *303 Beauty Bar LLC v. Div. of Labor Standards and Statistics* (Colo. App. 2025)
  - Question: Section 8-4-105(1)(b) prohibits an employer from making deductions from employees' wages with a few limited exceptions, including one for "loans, advances, goods or services, and equipment or property provided by an employer to an employee pursuant to a [lawful] written agreement." What type of deductions are permitted under this exception?
  - Answer: Employer cannot deduct standard business expenses from an employee's wages.
  - "The salon's business is providing beauty services to its customers. It employs cosmetologists who are required to use the salon's products to provide those services. Adopting the salon's reasoning would allow an employer to deduct from an employee's wages any costs that are inherent in the job—for example, the cost of drafting paper for an architect or polish for a dental hygienist—simply because the employee may receive an incidental benefit from the mere fact of being employed."

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State cases

- *Miller v. Crested Butte* (Colo. 2024)
  - Non-employment case with employment implications. Father sued after daughter was injured when she fell from a ski lift. Father signed a waiver on behalf of daughter waiving all negligence claims.
  - Question: Could ski resort owner absolve itself of liability for negligence per se under several Colorado statutes applicable to ski resorts?
  - Answer: No. Ski resort owner could not absolve itself of liability for negligence per se notwithstanding a private release of claims.
  - “First, settled precedent from this court has established that a party cannot discharge its obligation to perform a statutory duty by way of an exculpatory agreement… Because we have concluded, contrary to Crested Butte’s assertions and the conclusion of the district court below, that Crested Butte, in fact, owed statutory and regulatory duties to Miller and to Annie, we further conclude that Crested Butte could not avoid those duties by way of private release agreements.”
  - May be relevant to occupations where employees must sign releases before working.

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State cases

- *Moreno v. Circle K Stores, Inc.* (D. Colo. 2025), *cert granted* by Colorado Supreme Court to resolve question of state law
  - Question: Does Colorado law recognize a public-policy exception to the at-will employment doctrine that allows an employee to bring a wrongful termination claim in the event the employee is terminated for actions taken in self defense?
  - Answer: ???
  - Could affect employers’ confront and chase policies, which are prevalent in retail industry

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Federal cases

- *Ames v. Ohio Department of Youth Services*
  - "Reverse" discrimination
  - No heightened threshold
    - Previous rule—for reverse discrimination, plaintiff would have to show "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority"
  - 9-0 decision by SCOTUS

- Title VII and disparate treatment
  - Employers cannot intentionally discriminate against employees on the basis of race, color, religion, sex, or national origin. 42 U.S.C. 2000e-2(a)(1)
  - Title VII draws no distinction between majority-group plaintiffs and minority-group plaintiffs

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Federal cases

- *Scheer v. Sisters of Charity of Leavenworth Health Sys., Inc.*, (10th Cir. 2025)
  - Tenth Circuit applied SCOTUS's "some harm" standard to a disability discrimination claim under the ADA

- *3484, Inc. v. National Labor Relations Board; 3486, Inc. v. NLRB* (10th Cir. 2025);
  - Be careful about text messages and conversations about union activity!

- *Dixon v. Northeastern State Univ.* (10th Cir. 2025)
  - Individual liability under the FMLA recognized
  - For Title VII, for purposes of temporal proximity, the last instance of protected activity is the proper date for measurement

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  - Tenth Circuit recognized individual liability under the FMLA

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Federal cases

- *Brock v. Flower Foods* (10th Cir. 2025)
  - Interstate commerce exception for Federal Arbitration Act is very broad
  - FAA does not permit compelled arbitration of “contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce”
  - Last mile drivers, who did not traverse state lines, were deemed to be part of “interstate commerce” because they were part of a larger interstate delivery system, Court refused to compel arbitration

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Thank you!

QUESTIONS?

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