

# Employment Law Corner

## Monthly Report



FOLEY & FOLEY<sup>PC</sup>  
ATTORNEYS AT LAW

February 2025

### February Updates

DEI Is Not DOA

CH-CH-CH-CH-CHANGES!

A Strategy to Calm the Chaos of Change

### Employment Law Corner:

#### Quick Information You Need: A Quarterly News Update and FAQs from the Workplace

Running an organization while keeping up with employment law obligations is no small feat. That is where our *Quarterly News Update* comes in handy. We stay on top of new and emerging legal developments—at the state, local, and federal levels—to help keep our clients informed. By analyzing case law and tracking trends, we provide proactive guidance to keep you ahead of the curve. It's what we do, so you can focus on what you do best.

We have also included some noteworthy and frequently asked employment law questions that we received this Quarter from the thousands of clients who use our [Employment Counsel On-Call Triage Service](#).

### Litigation Roundup

In the last quarter of 2024, several significant employment law cases emerged. These cases highlight the evolving nature of employment law, emphasizing the need for employers to remain informed and adjust their policies as necessary.

- SCOTUS determined that the appropriate standard for resolving overtime exemption classification disputes under the Fair Labor Standards Act (FLSA) is the "preponderance of the evidence" standard, rather than the more heightened "clear-and-convincing" standard applied by some courts. *E.M.D. Sales, Inc. v. Carrera*, 2025 U.S. LEXIS 364 (U.S., Jan. 15, 2025)
- A District Court in Texas issued a nationwide strike down of the Department of Labor's 2024 overtime rule, nullifying the planned July 2024 and January 2025 salary threshold increases to maintain employee exemptions under the Fair Labor Standards Act (FLSA). *State Plano Chamber of Comm. v. US DOL*, 2024 U.S. Dist. LEXIS 207864 (E.D. Tex. Nov. 15, 2024).
- Just Three days after lifting a Texas judge's nationwide injunction on enforcement of the Corporate Transparency Act's ("CTA") reporting requirements, the 5th Circuit had a change of heart. The nationwide injunction preventing the enforcement of the CTA and its reporting requirements has been reinstated, *for now*. *Tex. Top Cop Shop, Inc. v. Garland*, 2024 U.S. App. LEXIS 32702 (5 Cir., Dec. 26, 2024).
- The Massachusetts Supreme Judicial Court held that the Massachusetts Paid Family and Medical Leave Act (PFMLA) does not require that employees

continue to accrue benefits such as vacation, sick leave, and length-of-service credit while on PFMLA leave. *Bodge v. Commonwealth*, 494 Mass. 623, 624 (Mass. Sept. 13, 2024).

- The Ninth Circuit held that Montana’s 2021 law adding vaccination status to protect classifications under the Montana Human Rights Act is constitutional and not preempted by either the Americans with Disabilities Act (ADA) or the Occupational Safety and Health Act (OSH Act). *Mont. Med. Ass’n v. Knudsen*, 119 F.4th 618, 620 (9 Cir., Oct. 9, 2024).
- The Sixth Circuit held that for purposes of FMLA, an adult can be found to be *in loco parentis* to another adult with a disability, even when the disability arises in adulthood. *Chapman v. Brentlinger Enters.*, 2024 U.S. App. LEXIS 31694 (6 Cir., Dec. 13, 2024).
- The National Labor Relations Board (NLRB) recently overturned a long-standing rule that allowed employers to freely state how unionization would impact an employee's direct relationship with management. Now, these statements must be based on objective facts and cannot imply that the employer will stop direct interaction with employees if they vote for a union, as this would be considered a retaliatory threat violating the NLRA. *Ripoli v. R.I. Dep’t of Hum. Servs.*, 2024 U.S. App. LEXIS 31819 (1 Cir., Dec. 16, 2024)

#### Hot Topics from Q4

Below is a summary of some “hot” questions we received in Q4 and the guidance we provided:

- **Can we ask an applicant medical questions after an offer is made and accepted?** Employers have broad discretion to ask medical and disability-related questions once a job offer has been made, if the same questions are asked of all similarly situated employees. An employer may not withdraw the job offer solely because the employee revealed that they have a disability. Instead, an employer can withdraw the job offer only if it can show that the employee is unable to perform the essential functions of the job (with or without reasonable accommodation), or that they pose a significant risk of causing substantial harm to themselves or others.
- **We offered an employee an ADA accommodation, and she is declining it because she does not want to work in that position. What can we do?** The ADA does not require an employer to agree to an employee’s preferred accommodation if there is another accommodation available with the same effect. If the employee refuses the accommodation and is unable to perform the current job duties, you can treat the employee as you would any other non-disabled employee in that position that is not performing the necessary job duties.
- **Do we need to consider hours worked in a second job with the company for purposes of calculating overtime?** Under both federal and state law, non-exempt employees performing two jobs for the same employer must receive overtime for hours worked over 40 in a work week. So long as both positions are classified as non-exempt, the hours worked for both jobs would be considered together for purposes of overtime.

- **If we decide not to hire an employee based on a criminal background check, do we need to send them a copy of the report?** If you take an adverse action against an applicant by refusing to hire, you are required to provide them with a copy of the report, list which conviction disqualified them, your reasoning for the disqualification, notice of their right to respond, and provide them with 5 days to respond before you can make the decision final. Note that some state laws have additional requirements.

### **Do You Have Questions?**

We can help! Our **[Employment Counsel On-Call Triage Service](#)** is a perfect resource for employers of all sizes looking to receive guidance on employment law and HR-related questions. We work with clients day in, day out to help them navigate complex legal issues and implement best practices. We receive unique questions every day through the **[On-Call Service](#)** and are ready to tackle any issue where you need help!

### **Who We Are:**

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.
- We are constantly searching for the trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.
- We are not like other firms: Anyone can tell you what the law states and its limits. That is easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business: **[Foley & Foley PC attorneys specialize in Employment and Labor Law in the Public and Private Sectors \(foleylawpractice.com\).](#)**

### **Meet Martine Wayne**

Martine concentrates her practice on advising and representing businesses on a wide range of labor and employment matters. Martine's experience includes employment litigation and providing strategic guidance on a myriad of employment issues, including discrimination, employment policies and agreements, wage and hour issues, leaves of absence and terminations. Check out her full bio **[here!](#)**



### **Contact Us**



[www.foleylawpractice.com](http://www.foleylawpractice.com)

[info@foleylawpractice.com](mailto:info@foleylawpractice.com)

(844) 204-0505