



US Capitol Dome

THE NEW FEDERALISM IN EMPLOYMENT LAW



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The Speaker



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The image shows the interior of the US Capitol Dome, featuring a large central fresco surrounded by ornate architectural details and a balcony with statues.

Federalism

The [United States Constitution](#) addresses federalism by dividing and sharing power between the federal and state governments, primarily through the enumerated powers of Congress in Article I, Section 8, the Supremacy Clause in Article VI, and the Tenth Amendment, which reserves powers not delegated to the federal government to the states or the people. This system creates a national government with specific, limited powers while allowing states to maintain significant authority over local matters.

Key Constitutional Provisions

- **Enumerated Powers (Article I, Section 8):** This section lists the specific powers granted to the federal government, such as the power to regulate interstate commerce and establish the military.
- **Supremacy Clause (Article VI):** This clause establishes that the Constitution and federal laws made in accordance with it are the supreme law of the land, overriding any conflicting state laws.
- **Tenth Amendment:** This amendment clarifies that any powers not explicitly given to the federal government, nor prohibited to the states, are reserved for the states or the people.

How These Provisions Create Federalism

- **Division of Power:** The Constitution assigns distinct responsibilities to the federal government and leaves other areas to the states.
- **Shared Authority:** While the federal government has its designated powers, states retain significant authority to regulate for the health, safety, and welfare of their residents.
- **Intergovernmental Relations:** The Constitution includes other elements, such as Article IV and Article V, that outline the relationships and responsibilities between different states, often referred to as "horizontal federalism."

Federalism Illustrated



US Capitol Dome



Dual Federalism
Layer Cake (ChatGPT)



Cooperative Federalism
Marble Cake (ChatGPT)



New Federalism
Marble Layer Cake (ChatGPT)



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I. FEDERAL DEVELOPMENTS

A. Executive Orders

[2025 Executive Orders](#): 209 as of October 7, 2025 (EO 14147-EO 14355); see also Heritage Foundation's [Mandate for Leadership: 2025 Presidential Transition Project](#) (Project 2025)

- [EO 14148](#): Initial Rescissions of Harmful Executive Orders and Actions
- [EO 14151](#): Ending Radical and Wasteful Government DEI Programs and Preferencing
- [EO 14168](#): Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
- [EO 14171](#): Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce
- [EO 14173](#): Ending Illegal Discrimination and Restoring Merit-Based Opportunity (OFCCP)
- [EO 14179](#): Removing Barriers to American Leadership in Artificial Intelligence to American Leadership in Artificial Intelligence
- [EO 14188](#): Additional Measures To Combat Anti-Semitism
- [EO 14192](#): Unleashing Prosperity Through Deregulation
- [EO 14210](#): Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative
- [EO 14215](#): Ensuring Accountability for All Agencies
- [EO 14217](#): Commencing the Reduction of the Federal Bureaucracy
- [EO 14219](#): Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative
- [EO 14238](#): Continuing the Reduction of the Federal Bureaucracy (eliminating Mediation and Conciliation Service (FCMS))
- [EO 14281](#): Restoring Equality of Opportunity and Meritocracy
- [EO 14343](#): Further Exclusions From the Federal Labor- Management Relations Program



B.1. Federal Enforcement Agencies: Equal Employment Opportunity Commission (EEOC)

- Former EEOC Chairperson Charlotte Burrows, Vice Chairperson Jocelyn Samuels, and General Counsel Karla Gilbride from the Biden era were dismissed by President Trump.
- Acting Chairperson Andrea R. Lucas was reappointed. Commissioner Kalpana Kotagal continues to serve, and Commissioner Brittany Bull Panuccio was just appointed to create a quorum on the EEOC. Acting General Counsel Andrew Rogers (now confirmed to head the Department of Labor's (DOL's) Wage and Hour Division (WHD)) was appointed.
- New EEOC priorities include enforcement and investigation of: DEI-motivated workplace discrimination; anti-American national origin discrimination; biological sex discrimination; focus on religious bias and harassment, including antisemitism, and other under-enforced areas. New EEOC Guidance and EEO-1 data collection reflect these priorities. Project 2025 proposes the elimination of EEO-1 data collection.
- In 2024, the EEOC secured nearly \$700 million in monetary recoveries, benefitting about 21,000 claimants. This is the highest monetary recovery the EEOC has ever achieved. (See [EEOC](#) and [Seyfarth](#).)
- Between the government's recent deferred resignation program, layoffs, and hiring freezes, the EEOC workforce may be reduced to its 2019 level, about 250 fewer employees out of over 2,100 employees.
- The EEOC's FY 2026 Budget Request of \$435.382 million is \$19,618 million below its FY 2025 Enacted Budget. (See [DOGE](#).)
- Less funding and staffing may lead to delays in processing charges under Title VII, the Equal Pay Act, the Age Discrimination in Employment Act, Sections 501 and 505 of the Rehabilitation Act, Titles I and V of the Americans with Disabilities Act, the Government Employee Rights Act, Title II of the Genetic Information Nondiscrimination Act, and the Pregnant Workers Fairness Act.
- Suspension of federal funding to states (EEOC funding to federal employment practices agencies) and joint filing may follow. In California, the Civil Rights Agency (formerly DFEH) is the FEPA.

The image shows the interior of the US Capitol Dome, featuring a large circular fresco at the top, surrounded by ornate architectural details and a balcony with columns. The lighting is warm and golden.

B.2. Federal Enforcement Agencies: National Labor Relations Board (NLRB)

- NLRB Chairperson Gwynne A. Wilcox and General Counsel Jennifer Abruzzo from the Biden era were dismissed by President Trump. Democrat members David M. Prouty and Lauren McFerran remain. President Trump has nominated Scott Mayer and James R. Murphy for the two vacant Republican seats, but the nominations are pending Senate confirmation, which is required to restore a quorum of at least three members. Currently NLRB has no quorum.
- NLRB Acting General Counsel William B. Cowen rescinded more than a dozen pro-union memos from the former General Counsel, signaling a shift away from union-friendly litigation strategy.
- The NLRB fiscal year (FY) 2026 Budget Request is \$285.2 million, which is 4.7 percent or \$14 million below the FY 2025 Enacted Budget of \$299.2 million. (See [DOGE](#).) As of March 2025, approximately 30 of approximately 1300 NLRB employees took the government's recent deferred resignation program. This is likely under-reported.
- Less funding and staffing may mean unfair labor practice (ULP) processing delays.
- GC Cowen plans to re-empower Regional Directors to promote and handle settlements.
- Increased emphasis on NLRA preemption may mean states cannot regulate areas that the NLRB regulates (i.e., the California Chamber of Commerce and California Restaurant Association's [lawsuit](#) challenging the California Captive Audience Meeting ban under [SB 399](#)).

B.3. Federal Enforcement Agencies: U.S. Department of Labor (DOL)

- Lori Chavez-DeRemer is the new Secretary of Labor. Many members of the [DOL leadership](#) have been appointed. EEOC Acting General Counsel Andrew Rogers has been confirmed to head the Wage and Hour Division (WHD).
- The Administration plans to save \$455 million by cutting DOL's contracts, grants, and office leases. See Department of Government Efficiency (DOGE) [website](#).)
- DOGE aims to cancel grants from the DOL's Bureau of International Labor Affairs for a savings of about \$237 million. The subagency works to improve labor rights overseas.
- DOGE also seeks to shutter 87 DOL offices nationwide to save an estimated \$23 million and terminate at least 96 agency contracts for trainings, software, and other services worth about \$192 million, according to a Bloomberg Law analysis of the DOGE website.
- Potential savings could make it harder for DOL to enforce laws protecting workers' safety, pay, and ability to compete in the global economy, former DOL officials and grant recipients say.
- In the case of the Occupational Safety and Health Administration (OSHA), for example, office closures and the potential for staff cuts could slow agency enforcement and oversight designed to prevent on-the-job illness and injuries.
- Pursuant to [EO 14173](#), the Office of Federal Contract Compliance Programs (OFCCP) will be eliminated and its responsibilities moved from DOL to the EEOC.

(See [link](#) to Bloomberg Law Daily Labor Report.)

B.4. Federal Enforcement Agencies: U.S. Department of Justice (DOJ) Civil Rights Division

- Harmeet Dhillon is the new Assistant Attorney General of DOJ's Civil Rights Division. The Civil Rights Division has the authority to enforce all Federal civil rights statutes, including: the Americans with Disabilities Act (ADA) Titles 1-3; Rehabilitation Act; Title VII Civil Rights Act; Uniformed Services Employment and Reemployment Rights Act (USERRA); Title IX of the Education Amendments, and more.
- Speaking at a recent Federalist Society event, Dhillon likened the division's work under Democratic administrations to a speeding train. She said Republican administrations typically try to "just slow the train down . . . This is the opportunity where we can ensure that our nation's civil rights laws benefit all Americans, not just a select few." (See [NPR](#).)
- The new priorities of DOJ's Civil Rights Division include redirecting resources to the executive orders, including: "Protecting Children from Chemical and Surgical Mutilation," "Keeping Men Out of Women's Sports," "Eradicating Anti-Christian Bias" and "Additional Measures to Combat Antisemitism."
- The Trump administration launched an investigation into whether Chicago engaged in racial discrimination by hiring Black employees for top jobs; said it would use an antifraud law to pressure universities to end diversity and inclusion programs; pulled back from federal oversight of local law enforcement; and sued an Idaho town of 925 people for refusing to allow a small Christian church to operate in a commercial zone. (See [Wall Street Journal](#).)
- Some 250 attorneys — or around 70% of the division's lawyers — have left or will have left the department in the time between President Trump's inauguration and the end of May, according to current and former officials. (See [NPR](#).)

C.1. Federal Legislation and Regulations

- [2025 Executive Orders](#): 209 as of October 7, 2025
 - EO 14147-EO 14355 (see slide 7)
- One Big Beautiful Bill Act, [H.R.1 — 119th Congress](#) (2025-2026), Statute at Large 139 Stat. 72 - Public Law No. 119-21
- Implementing Doge Bill, [H.R. 199 – 119th Congress](#) (2025-2026) (USAID, NPR, PBS) Referred to the House Committee on Appropriations
- Unknown number of regulations to be rescinded or promulgated



US Capitol Dome

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C.2. Federal Legislation and Regulations: Budget and Personnel

- Continuing Appropriations and Extensions Act, 2026, [H.R.5371 – 119th Congress](#) (2025-2026) Not having achieved 60 votes in the affirmative, failed passage in Senate by Yea-Nay Vote. 55-45 (October 1, 2025)
- The Office of Personnel Management estimates the federal government could see about 1 in 8 civilian workers gone by the end of the year, or about 300,000 employees out of 2.4 million — most of them voluntary. More than 150,000 took the Trump administration's "Fork in the Road" buyout offer. ([NPR](#))
- The Congressional Budget Office estimated that approximately 750,000 federal employees will be furloughed following the October 1, 2025 shutdown, ultimately costing the government \$400 million per day to compensate them. RIFs anticipated soon. ([Federal News Network](#))

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D.1. Federal Case Law

[Trump v. Wilcox](#), --- S.Ct. ----, 2025 WL 1063917 (Mem) (Apr. 9, 2025) NLRB and MSPB Board Members

Supreme Court allowed President to remove without cause for now Gwynne Wilcox of the National Labor Relations Board and Cathy Harris of the Merits Systems Protection Board, whose terms end in 2028.

In an unsigned two-page order, the court explained that the decision to put the lower courts' orders on hold "reflects our judgment that the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty."

Justice Elena Kagan dissented from the court's order, in an eight-page opinion joined by Justices Sonia Sotomayor and Ketanji Brown Jackson.

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D.2. Federal Case Law

[Trump v. Slaughter](#) , --- S.Ct. ----, 2025 WL 2582814 (Mem)(Sept. 8, 2025) FTC Commissioner's Removal

The Supreme Court cleared the way for President Trump to remove FTC Commissioner Rebecca Slaughter and agreed to decide on the president's ability to fire the heads of independent agencies. The case could dramatically upend Supreme Court precedent and give the executive branch much greater authority over federal agencies.

In a brief, unsigned order, the court agreed to take up the case of Rebecca Slaughter, a member of the Federal Trade Commission whom President Donald Trump attempted to fire earlier this year. A federal judge in Washington, D.C., had ordered the Trump administration to allow Slaughter to return to office while her challenge to her termination continues. The justices put that order by U.S. District Judge Loren AliKhan on hold until they issue a ruling in Slaughter's case, effectively allowing Trump to move forward with firing Slaughter.

Justice Elena Kagan dissented from the decision to pause AliKhan's order, in a two-paragraph opinion joined by Justices Sonia Sotomayor and Ketanji Brown Jackson



D.3. Federal Case Law

[Trump v. Cook](#), --- S.Ct. ----, 2025 WL 2784699(Mem)(Oct. 1, 2025)

Federal Reserve Governor's Removal

- The Supreme Court delayed its decision on the administration's plea to pause a [ruling](#) by a federal judge in Washington, D.C., that keeps Lisa Cook, a member of the Federal Reserve's Board of Governors, in office at the Federal Reserve despite President Donald Trump's efforts to remove her from the board. The Court will hear oral arguments in January on a request from the Trump administration to allow the president to fire Cook.
- A decision may turn on [Humphrey's Executor v. United States](#), 295 U.S. 602 (1935), in which the Supreme Court unanimously upheld a federal law that prevented the president from firing commissioners of the Federal Trade Commission unless there was good cause for removal.

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D.4. Federal Cases

[U.S. Office of Personnel Mgmt., et al. v. American Fed. of Gov't Employees, AFL-CIO, et al.](#), 145 S.Ct. 1914 (Apr. 8, 2025) Reinstatement of Terminated Federal Employees

The United States Supreme Court has granted the federal government's application to stay the preliminary injunction granted by a California federal district court to non-profit organizations, in an action in which unions for federal employees and non-profit organizations are seeking declaratory and injunctive relief under the Administrative Procedure Act (APA), based on allegations that the Office of Personnel Management (OPM) engaged in ultra vires conduct when it directed federal agencies to fire probationary employees.

The Supreme Court's unsigned order stated that the preliminary injunction was “based solely on the allegations of the nine non-profit-organization plaintiffs in this case,” but “under established law, those allegations are presently insufficient to support the organizations’ standing.” The Court provided no elaboration, beyond a cite to *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 133 S.Ct. 1138, 185 L.Ed.2d 264 (2013).

The order said that it did not address the claims of the other plaintiffs because they did not form the basis of the district court’s preliminary injunction.

Justices Sotomayor and Jackson dissented.

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D.5. Federal Case Law

Ames v. Ohio Dept. of Youth Services, 605 U.S. 303 (2025) Title VII Disparate Treatment

Petitioner Marlean Ames, a heterosexual woman, has worked for the Ohio Department of Youth Services in various roles since 2004. In 2019, the agency interviewed Ames for a new management position but ultimately hired another candidate—a lesbian woman. The agency subsequently demoted Ames from her role as a program administrator and later hired a gay man to fill that role. Ames then filed this lawsuit against the agency under Title VII, alleging that she was denied the management promotion and demoted because of her sexual orientation. The District Court granted summary judgment to the agency, and the Sixth Circuit affirmed. The courts below analyzed Ames’s claims under *McDonnell Douglas Corp. v. Green*, 411 U. S. 792, which sets forth the traditional framework for evaluating disparate-treatment claims that rest on circumstantial evidence. At the first step of that framework, the plaintiff must make a prima facie showing that the defendant acted with a discriminatory motive. Like the District Court, the Sixth Circuit held that Ames had failed to meet her prima facie burden because she had not shown “ ‘background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority.’ ” 87 F. 4th 822, 825. The court reasoned that Ames, as a straight woman, was required to make this showing “in addition to the usual ones for establishing a prima-facie case.” *Ibid*.

Held: The Sixth Circuit’s “background circumstances” rule—which requires members of a majority group to satisfy a heightened evidentiary standard to prevail on a Title VII claim—cannot be squared with the text of Title VII or the Court’s precedents.

JACKSON, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion, in which GORSUCH, J., joined.



D.6. Federal Case Law

Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Comm'n, 605 U.S. 238 (2025) Unemployment Compensation Taxes | First Amendment

Wisconsin law exempts certain religious organizations from paying unemployment compensation taxes. The relevant statute exempts nonprofit organizations “operated primarily for religious purposes” and “operated, supervised, controlled, or principally supported by a church or convention or association of churches.” Wis. Stat. §108.02(15)(h)(2). Petitioners, Catholic Charities Bureau, Inc., and four of its subsidiaries, sought this exemption as organizations controlled by the Roman Catholic Diocese of Superior, Wisconsin. The Wisconsin Supreme Court denied the exemption, holding that petitioners were not “operated primarily for religious purposes” because they neither engaged in proselytization nor limited their charitable services to Catholics.

Held: The Wisconsin Supreme Court’s application of the Wisconsin law to petitioners violates the First Amendment.

SOTOMAYOR, J., delivered the opinion for a unanimous Court. THOMAS, J., and JACKSON, J., filed concurring opinions.

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D.7. Federal Cases

E.M.D. Sales, Inc. v. Carrera, 604 U.S. 45 (2025) Fair Labor Standards Act

Employees, who were sales representatives for distributor of international food products, brought action alleging that employer violated the Fair Labor Standards Act (FLSA) by failing to pay them overtime wages. Following bench trial, the United States District Court for the District of Maryland concluded that employer failed to prove by clear and convincing evidence that employees qualified as outside salesmen exempt from FLSA, and therefore ordered employer to pay overtime wages and liquidated damages. Both parties appealed. The United States Court of Appeals for the Fourth Circuit affirmed. Certiorari was granted.

Holding: In a unanimous opinion, the Supreme Court, Justice Kavanaugh, held that the preponderance-of-the-evidence standard applies when an employer seeks to show that an employee is exempt from the minimum-wage and overtime-pay provisions of the FLSA.

Reversed and remanded.

Justice Gorsuch filed a concurring opinion, in which Justice Thomas joined.



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II. CALIFORNIA DEVELOPMENTS





A.1. Changing Landscape for States: State Lawsuits Challenging the New Federalism

- **Lawsuits over mass firings**

In March 2025, a coalition of 20 states and the District of Columbia sued the Trump administration over the mass firing of thousands of probationary federal employees. States involved: Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Wisconsin joined the suit.

Case details: The states argued that the firings inflicted serious and irreparable harm by creating a sudden surge in unemployment without proper notice, as required by federal regulations. Lawsuits were also filed specifically regarding mass layoffs at the Department of Education, the Department of Health and Human Services (HHS), and the AmeriCorps program. In September 2025, a federal appeals court ruled that the states lacked the legal standing to challenge the mass firings of probationary workers, citing that the states could not prove direct harm.

- **Lawsuits over diversity, equity, and inclusion (DEI)**

Several states have sued the administration over executive actions that threaten to end DEI programs for federal contractors and recipients of federal funds. States involved: In April 2025, 19 states sued the administration over its actions against DEI programs in schools, arguing the actions distorted federal civil rights law. The states joining the lawsuit included New York, California, Illinois, and Rhode Island, among others.

Case details: The lawsuits challenge executive orders that direct federal agencies to halt enforcement actions based on disparate-impact theory and threaten funding to states with certain diversity programs. As of September 2025, contradictory rulings from various courts, including a Supreme Court decision limiting nationwide injunctions, have created an unclear path for the enforcement of these executive orders.

- **Lawsuits over changes to the federal workforce**

States have supported unions in challenging Trump administration executive orders that modify the structure of the federal workforce. State involved: Several state-affiliated labor organizations and local cities and counties in California, Illinois, Maryland, Texas, and Washington have supported these lawsuits.

Case details: On September 2, 2025, the American Federation of Government Employees (AFGE) filed a lawsuit over the administration's reinstatement of "Schedule F," which threatens to reclassify tens of thousands of federal employees into at-will positions.

A.2. California Response to Federal Developments

- A significant share of federal funding for California flows through the state budget. The Governor’s \$492.9 billion proposed state budget for 2025-26 includes more than \$170 billion in federal funds. This is over one-third (34.6%) of the total state budget. (See [California Budget & Policy Center](#).)
- Immediately following the November 2024 election, which launched the second Trump administration, California Gavin Newsom first [announced](#) the establishment of a new litigation fund for the California Department of Justice and state agencies to defend California from “unconstitutional federal overreach,” challenge “illegal federal actions” in court, and take “administrative actions” to reduce potential harm under the second Trump administration. Another \$500,000 was earmarked to commence legal action right away.
- In November 2024, Governor Newsom issued a [proclamation](#) convening a special session of the California Legislature “to safeguard California values and fundamental rights in the face of an incoming Trump administration.”
- Out of the December 2024 [special session](#), the State Legislature amended the [Budget Act](#) to “include \$25 million in funding proposed by Governor Newsom for the California Department of Justice to bolster legal resources” against the federal government.
- In February 2025, Governor Newsom sought \$40 billion in federal funds from President Trump for the Los Angeles and Altadena wildfires. (See [CalMatters](#).)
- In May 2025, Governor Newsom unveiled an updated 2025–26 state budget plan ([May Revise](#)) with a projected \$11.9 billion shortfall. Blaming the tariffs, he proposed cuts that to scale back the state’s offer of health insurance to low-income undocumented immigrants. Nonetheless, Governor Newsom pledged to continue pushing back against the President’s agenda in court. California has already filed more than a dozen lawsuits against the Trump administration. (See [KQED](#) article.)
- In June 2025, President Trump is reportedly considering a large-scale cancellation of federal funding for California, because of the state’s transgender students’ participation in women/girls’ sports and antisemitism on U.C. campuses. (See [CNN](#) article.) In response, Governor Newsom has threatened to withhold California taxes from the federal government. (See [Politico](#).) Californians contribute [\\$234.5 billion](#) to or 15% of federal income taxes.
- In October 2025, President Trump offered a [Compact for Academic Excellence](#) to certain universities, which provides priority access to federal funding in exchange for adopting his administration’s policy priorities. In response, Governor Newsom threatened to [cut billions in state funding](#) from any California university that signs Trump’s compact.

B.1. Enforcement Agencies: California Civil Rights Department (CRD, formerly DFEH)

- CRD (formerly Department of Fair Employment and Housing, DFEH) enforces the Fair Employment and Housing Act (FEHA, Gov. Code § 12900 et seq.), Unruh Civil Rights Act (Civ. Code, § 51 et seq.), Ralph Civil Rights Act (Civ. Code, § 51.7), Disabled Persons Act (Civ. Code, § 54 et seq.), Government Code sections 11135 et seq., and related statutes (See Cal. Code Regs., tit. 2, § 10000 et seq.)
- The largest state civil rights agency in the nation, CRD has a budget of \$67.854 million in FY 2025-26, of which \$6.123 consists of federal funds from the EEOC and HUD.
- CRD is a Fair Employment Practices Agency with respect to the EEOC. CRD and the EEOC have a [worksharing agreement](#) to dual file cases for which CRD is paid by the EEOC for handling such cases.
- Historically, DFEH and the EEOC had collaborated well. However, in 2022, DFEH publicly opposed an \$18 million sexual harassment settlement between the EEOC and Activision Blizzard. (See [American University Business Law Review](#).) The U.S. District Court approved the EEOC's settlement. EEOC maintained that DFEH had breached the worksharing agreement that gave the federal agency the lead with the sexual harassment claims against Activision, leaving the sex discrimination claim for the state agency to resolve. (See [Courthouse News Service](#).)
- Suspension of EEOC's federal funding to California would impact CRD's ability to carry out its statutory authority.

B.2. California Enforcement Agencies: Department of Industrial Relations (DIR)

- The Department of Industrial Relations (DIR) protects and improves the health, safety and economic well-being of workers in California. DIR is responsible for enforcing the sections of the Labor Code that protect the health and safety of workers; promulgating regulations and enforcing laws relating to wages, hours, and workers' compensation insurance laws; adjudicating workers' compensation claims, and working to prevent industrial injuries and deaths. The Department also promotes apprenticeship and other on-the-job training, as well as analyzes and disseminates statistics measuring the condition of labor in the state.
- In FY 2025-26, DIR's budget is \$1.498 billion of which \$38.161 million is federal funding.
- DIR's Division of Occupational Safety and Health (Cal/OSHA) State Plan program receives federal funding from two grants. Cal/OSHA receives a grant of \$26,563,600 in federal funds, which constitutes 29.1% of the State Plan budget for enforcement.
- The California On-Site Consultation program is funded by a cooperative agreement for \$5,526,300 in federal funds, which constitutes 46 percent of the program budget for consultation services.
- Suspension of federal funding to California would impact DIR's ability to carry out its statutory authority.



Your Partner in Resolution

The image shows the interior of the US Capitol Dome, featuring a large circular fresco at the top, surrounded by ornate architectural details and a balcony with columns. The lighting is warm and golden.

B.3. California Enforcement Agencies: Department of Justice (CalDOJ)

- The California Constitution establishes the Attorney General, currently Rob Bonta, as the state's chief law officer, responsible for ensuring that the laws of the state are uniformly and adequately enforced. The Attorney General is vested with broad powers and carries out these important responsibilities through the California Department of Justice.
- CalDOJ includes over 5,600 employees. It has a [budget](#) of \$1.498 billion in FY 2025-26, of which \$38.16 million, 2.5%, consists of federal funds.
- Between 2017 and 2021, California reportedly filed more than [123 lawsuits](#) and spent [\\$41 million](#) challenging the first Trump administration's authority on health care, gun control, civil rights issues and immigration.
- Now, under Trump 2.0, the state is filing lawsuits at almost [double the pace](#) of his first administration. So far CalDOJ has filed or joined 39 [lawsuits](#) and 40 [amicus briefs](#) against the federal government. CalDOJ posts on its Web site [lawsuits](#) it has file against the federal government.
- Suspension of federal funding to California would impact CalDOJ's ability to carry out its constitutional and statutory authority.

A vertical photograph of the interior of the US Capitol dome, showing the ornate architecture and the central fresco.

C. California Legislation & Regulations

1. Regulation: CRD Employment Regulations re AI

On June 30, 2025, the Civil Rights Council, a rulemaking body under the CRD, secured final approval for [regulations](#) to protect against potential employment discrimination as a result of the use of artificial intelligence, algorithms, and other automated-decision systems.

Effective October 1, 2025, the regulations clarify that it is unlawful to use AI and automated decision-making systems to make employment decisions that discriminate against applicants or employees in ways prohibited by the FEHA or other California antidiscrimination laws.

The proposed regulations cover the following:

- Key terms such as “agent,” “automated decision-making,” “artificial intelligence,” and “machine-learning.”
- Unlawful selection criteria.
- Pre-employment practices.
- Unlawful medical or psychological inquiries.
- Third-party liability.

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C. California Legislation & Regulations

2. Regulation: CPPA AI Regulations

- The California Privacy Protection Agency (CPPA) has promulgated [regulations](#) covering cybersecurity audits, risk assessments, automated decision-making technology (ADMT), insurance companies, and updates to existing CCPA regulations.
- Approved by the Office of Administrative Law and made effective January 1, 2026, the CPPA AI regulations:
 1. update existing CCPA regulations;
 2. implement requirements for certain businesses to conduct risk assessments and complete annual cybersecurity audits;
 3. implement policies on consumers' rights to access and opt-out of businesses' use of ADMT; and
 4. clarify when insurance companies must comply with the CCPA.

A vertical photograph of the interior of the US Capitol dome, showing the ornate architecture, including the central fresco and the surrounding galleries.

C. California Legislation & Regulations

3.a. 2025 Legislation Signed into Law: Artificial Intelligence

[SB 53](#) by Senator Scott Wiener (D-San Francisco) – Artificial intelligence models: large developers (Transparency in Frontier Artificial Intelligence Act (TFAIA))

- Requires large artificial intelligence (AI) developers to publish safety frameworks, disclose specified transparency reports, and report critical safety incidents to the Office of Emergency Services (OES).
- Creates enhanced whistleblower protections for employees reporting AI safety violations and establishes a consortium to design a framework for “CalCompute,” a public cloud platform to expand safe and equitable AI research.



C. California Legislation & Regulations

3.c. 2025 Legislation Signed into Law: Labor Organizing

[AB 288](#) by Assemblymember Tina McKinnor (D–Inglewood) –
Employment: labor organization and unfair practices

- Expands the jurisdiction of the Public Employment Relations Board (PERB) by authorizing certain workers to petition the PERB to protect and enforce their rights if certain conditions are satisfied.

The image shows the interior of the US Capitol dome, featuring a large circular fresco at the top and a series of arches and columns below. The lighting is warm and golden.

C. California Legislation & Regulations

3.d. 2025 Legislation Signed into Law: Labor Organizing

[AB 1340](#) by Assemblymember Buffy Wicks (D-Oakland) –
Transportation network company drivers: labor relations

Establishes the Transportation Network Company Drivers Labor Relations Act, which provides that Transportation Network Company (TNC) drivers (Uber and Lyft) have the right to form, join, and participate in collective bargaining and unions. The Public Employment Relations Board (PERB) will administer the act, including overseeing a driver organization election process, sectoral bargaining, and the determination of unfair practices.



US Capitol Dome

III. IMPACT OF NEW FEDERALISM RESOLVING EMPLOYMENT DISPUTES

A.1. Mediation in California

- While California constitutes 12% of the United States population, it accounts for nearly 60% of the nation's class actions.
- Since 2023-24, California court caseloads have increased by over 20%. Los Angeles is the largest judicial district in both state and federal courts.
- In California, one out of every six litigated cases is mediated. Less than 2% go to trial.
- There are over 196,000 active California attorneys, of which approximately 102,000 are litigators.
- Of the cases that undergo ADR, 80% are mediations and 16% are arbitrations (of which many are also settled in mediation).
- Of the mediations, 80% are virtual, 20% are in person.
- Of the cases mediated, 80% are resolved on day of mediation, and 92% are resolved in the aggregate.

A.2. Impact of New Federalism on Resolving Employment Disputes

- Growing conflicts between federal and state law and enforcement agencies create uncertainty.
- Alternative dispute resolution is growing ever more important in resolving conflicts for litigants.
- Recognize that policies, statutory and regulatory guidance will be in flux.
- Stay current on legal developments at the federal and state levels.



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Questions



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THANK YOU



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