



JUNE 8, 2026

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LITIGATION

Most Stretched Argument of the Month

“Attached to” Is Not “Occupant of”. Most states’ Workers Compensation (WC) laws prevent an injured employee from suing the employer; WC is the source for all medical and compensatory payments. However, these laws still allow claims against third parties, such as non-employees causing an injury, and against insurance companies. *Gohlke v. West Bend Insurance Co.* (WI Court of Appeals) involved a construction worker who was struck by a car while cutting concrete beside a road. The concrete cutting saw had a 15-foot cable, which was attached to the company truck, which was insured by West Bend. The injured worker filed a claim against the driver, who was underinsured. So he then filed a claim under the company’s West Bend – Underinsured Driver Policy provision, which covered injury to “*anyone occupying a covered vehicle*”. West Bend Ins. denied the claim. The employee sued, arguing that he was operating equipment attached to the truck by the cable, and thus it was part of the vehicle, and made him an occupant at the time he was using the saw. The court disagreed. He was not in or on the vehicle; the only connection was a long one-inch diameter cable. The court found the argument “*not even close; attached to is not occupying, “no insured could reasonably expect he or she would be covered under the policy.”*”

U.S. Supreme Court

Arbitration Agreement Unenforceable. In *New Prime v. Oliveria* (2026), a unanimous Supreme Court ruled that a trucking company could not enforce its mandatory arbitration agreement against a driver's insufficient payment claims. The Federal Arbitration Act allows employers to have arbitration agreements, but there are certain exemptions. One of those involves transportation workers in interstate commerce. Mr. Oliveria was an Independent Contractor driving for New Prime. The company argued that the interstate commerce exemption only applied to exempt employees. Independent Contractors are a separate business entity that contracts with another, and the exception should not prevent one business from contracting with another business for the arbitration of disputes. The Court engaged in a review of the interstate commerce exemption for "transportation workers", and concluded that those doing transportation work, whether employee or Independent Contractor, qualified as "workers" and could be exempt from a mandatory arbitration clause, so the case could proceed in federal court.

Wages and Hours

Hair Stylists, Nail Technicians, and Massage Therapists Win Extra Pay – In Spite of Company's Compliance with Federal Law. This case is a reminder that employers have to comply with *both* federal and state employment laws. Just meeting the requirements of federal law is often not enough; state laws can require additional elements or even erase the federal provisions. *Bulos et al v. Waldorf Astoria Management LLC/Grand Waileu Waldorf Astoria Resort* (S. Ct. of HI, 2026) is a class action filed by a hotel's hair stylists, nail technicians, massage therapists and fitness instructors, demanding hourly pay for all hours worked. The employees received commission based compensation, and met all federal Fair Labor Standards Act requirements for commissioned retail service exemptions. Their *overall* compensation met the FLSA levels for all hours they were on the job. However, many of these hours were not doing commission-

generating work. When paying customers were not scheduled, the employees were required to do cleaning, preparing treatment rooms, laundering hotel towels and linens, floor sweeping, and work in the hotel's retail shop, all without additional pay. Though this is allowed under the FLSA as long as *overall* pay meets a minimal level, the workers claimed they should also receive Hawaii's \$16 per hour minimum wage for the non-commissioned work. The State Court agreed. The state wage law has different language from the FLSA. It requires at least minimum wage *per hour worked*. It has no provision for averaging-out over the course of a week. So, the workers were entitled to their full commissions for customer service hours, *plus* an additional \$16 per hour for duties during each non-customer hour.

Discrimination

Disability

Request For Accommodation Must Come Before Misconduct Occurs.

A police sergeant with 20 years' service suffered from Acute Stress Disorder (PTSD) following several traumatic incidents, including the suicide of his police partner. However, he did not disclose this diagnosis to the Department. While off duty, he was stopped for intoxicated driving. He became belligerent and combative, shouting profanities and insults at the officers who made the stop and threatened to fight them and "kick in their faces". He threatened to use his police sergeant status to get them fired. On arrival at the jail, he was even more belligerent. Upon release, he was placed on administrative leave pending a decision on termination for his actions. Then, the sergeant informed the Department that he felt the PTSD caused his behavior, and that he had no memory of the incident, was contrite, and requested the accommodation of treatment for PTSD and alcoholism, rather than termination. The Department terminated the employment. The sergeant sued for disability discrimination - failure to accommodate. The court ruled that the serious misconduct warranted discharge. *"An employer is not prohibited from discharging an employee based on misconduct, even if that misconduct is related to*

*his disability.” Further, the court ruled that, “An employee who engages in terminable conduct cannot avoid the consequences by then requesting an accommodation for those actions.” A request for accommodation after the fact is too late, and “a request for retroactive leniency cannot support an accommodation claim.” *Hunter v. City of Des Moines* (ID Supreme Ct., 2026)*

Damages - Danger When More Than One Law Applies

There are more employment laws than in almost any other area of compliance and litigation. One situation can trigger the application of more than one law. Just one employment action, such as a termination, can result in a cascade in which the employee brings charges of unfair discharge, wage and hour violations, OSHA violations, discrimination, and various state law claims – all in the same suit. Discrimination claims are among the most common employment cases, with multiple applicable laws; just one discrimination claim can be brought under *several* laws. Each of these laws can have very different damage awards, different timeframes for suit, different remedies, and be enforced by different agencies. So “just” one case can have multiple effects on damages, multiplying the damages award. For more information on the multiple laws applicable to discrimination cases read [The Multiple Laws Applicable to Discrimination Cases](#).

Khatahi v. Car Holdings, LLC (11th Cir, 2026) is a sex and harassment case filed under both Title VII and Florida state law. A female salesperson at a car dealership was subjected to verbal and physical harassment, told to use her sex and appearance to sell cars, and to unwanted touching. She quit and brought suit. A jury awarded \$81,000 in compensatory damages and \$750,000 in punitive damages. The company moved the court to reduce the award, arguing that Title VII caps damages at \$50,000 for a company of under 100 employees (\$300,000 for larger employers) and Florida caps punitive damages at \$100,000. So, the \$100,000 should be the maximum award. The court ruled that, though Title VII has a cap, the Florida law also allows

greater compensatory damages, and thus it could be used to keep the full \$81,000 award. It did cap the punitive at \$100,000 for a total of \$181,000. On appeal, the 11th Circuit Court of Appeals first ruled that the company had failed to assert the affirmative defense of the \$50,000 damage cap in its earlier pleadings. So it had waived the defense and was subject to the full \$300,000 Title VII damages. Then the Court ruled that the successful plaintiff was not limited to having to take damages under the one law which had the higher damages limit. Instead, the Court could “stack” both laws and award the punitive maximum allowed under each. It could award both the full \$100,000 under the Florida law and the \$300,000 under Title VII, for a combined \$400,000, plus the \$81,000 compensatory damages. *The lesson is* that one situation can trigger several laws, and cases that allege violation of multiple laws can multiply the damages.

OTHER RECENT ARTICLES

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[The Multiple Laws Applicable to Discrimination Cases](#) by [Bob Gregg](#)

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