

Employment Law Update

OCTOBER 8, 2026

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LITIGATION

Immigration - H-2A Visas

Human Trafficking. Five Guatemalan farm workers were awarded \$1.5 million in a case alleging violation of the H-2A Temporary Agricultural Workers Program (H-2A Program), Fair Labor Standards Act, Trafficking Victims Protection Reauthorization Act, and State law. The H-2A Program authorizes hiring of foreign workers for agricultural jobs. There are strict requirements for employers regarding terms and conditions, wages, and living arrangements for these workers. The case alleged that upon arrival, the farm owners confiscated the workers' visas and other documents to hold them hostage, then charged them illegal recruitment/visa costs and fees, provided squalid living conditions, charged them for food, did not pay them required wages, destroyed their pay records, and failed to provide or allow them to seek medical care when injured. The workers were regularly threatened with deportation if they complained or told anyone about the conditions, all of which were in violation of the H-2A Program requirements. The jury found the farm guilty on every count. On appeal, the court upheld the verdict. *Gomez-Echeverra et al v. Purpose Print Harvesting, LLC* (6th Cir. 2026)

National Labor Relations Act

Starbucks Can Enforce Dress Code. The National Labor Relations Act (NLRA) gives employees' rights to express support for unions or other concerted activities. These include wearing pro-union messages. Starbucks workers in New York wore shirts prominently displaying their union affiliation during a national campaign to negotiate a Collective Bargaining Agreement. Starbucks directed them to change clothing to match the company dress code, which allowed for only one pin identifying their union affiliation and no buttons or pins that advocated for political, religious, or personal

issues. The workers filed a complaint claiming that any mandated uniform code “*presumptively*” constituted an Unfair Labor Practice in violation of the NLRA. The National Labor Relations Board agreed. On appeal, the Federal Circuit Court overturned that ruling and found that Starbucks’ one-button policy provided a proper balance between employees’ rights of expression and the company’s business needs to maintain discipline and avoid the distraction from its business message that a number of union buttons or prominent clothing display would risk. *Siren Retail Corp. d/b/a Starbucks v. NLRB & Workers United* (2nd Cir. 2026)

DISCRIMINATION

Standard for Religious Accommodation

Employees’ Religious Beliefs Do Not Have to Seem “Logical” or “Rational” to the Employer in Order to Qualify for Accommodation. The First Amendment, Title VII, and the Religious Freedom Restoration Act provide protection of religious beliefs (or the right not to have a religion). The latter two laws require Reasonable Accommodation of an employee’s religious practices, observances, and sincerely held religious beliefs. Employers have too often made the mistake of rejecting accommodation requests due to an opinion that the underlying religious belief is somehow invalid or lacks foundation in the eyes of the employer. *Wilkins-Bailey v. Essity Professional Hygiene, LLC* (4th Cir. 2026) involved a health organization that worked with medical facilities. It required all employees to have ongoing COVID-19 vaccinations. Ms. Wilkins-Bailey, a company administrative employee, requested a Religious Exemption from the vaccine requirement. She claimed that as a Jehovah’s Witness she “*must honor the commands of God; she considers her body to be her Temple, and she cannot put harmful things into it and rejects all vaccines,*” she quoted her personal interpretation of Bible passages in support of her beliefs. She also stated a belief that the vaccine was made from aborted fetuses. Though the company did grant the accommodation of religious vaccine exemption to other employees, it rejected Ms. Watkins-Bailey’s request as being invalid and without sound basis. First, it provided scientific evidence to refute the claim of use of fetuses. Ms. Watkins-Bailey still claimed that all vaccines were none-the-less harmful to the “Temple.” The company felt her personal interpretation of the Bible verses was just an unreasonable personal viewpoint that was not shared or advocated by the religion in general, and other Jehovah’s Witness employees readily followed the vaccination policy. So, the accommodation request was seen as not factually based, inaccurate, and a personal opinion that was inconsistent with others of her faith. She was terminated due to her refusal to be vaccinated. She then filed a Title VII case. **The court ruled in her favor.** It was the employer that was invalid, inaccurate, and substituted its own personal opinion as to what constitutes a sincerely-held religious

belief when evaluating the accommodation request. Employers are not qualified to be Theologians and should tread carefully when evaluating employees' religious requests. A request does not have to be "*based on facts*," "*make sense*," or "*seem logical*" to the employer to still be "*sincerely held*" by the employee. There are many religions, and the beliefs of one may often seem illogical to another. **The court's decision contained several key pieces of advice on the standards for sincere belief and how not to judge it.** Ms. Watkins-Bailey clearly stated that her belief was based on her religion and was "*an essential part of her own religious faith*." An employee's *bona fide* beliefs can be based on their "*own scheme of things*" (their personal interpretation of scriptures). The employee's belief does not have to match the general beliefs of others or the official position of their religious organization, as long as it is sincere. "*Religious beliefs do not have to be acceptable, logical, consistent or comprehensible to others*." The employer shall not attempt to "dissect religious beliefs" because they are not articulated in a sophisticated manner. Employers should not attempt to be "*arbiters of scriptural interpretations*." "*Many religions encourage adherents to discern or interpret official texts, teachings, and tenets in order to decide for themselves which actions are required to fulfill religious obligations*." **So,** employers should not attempt to be theologians and insert their own views, logic, and beliefs when judging someone else's religion and beliefs.

Race

Unequal Treatment Regarding Drug Test Makes Case. Two Black labor workers complained about hostile racial remarks and discriminatory treatment by their White supervisor. The company did not investigate. Soon after that supervisor claimed that he thought the two workers had used marijuana on the job, he said he was ordering the whole crew to go at noon to take a drug test. The two Black workers said this was a false report and was retaliation for their complaint, and they would refuse the test. They were told that refusal would result in discharge. They continued to refuse and were fired. A White co-worker also refused, believing he might not pass. He too was fired. So far, seemingly equal treatment. However, the White co-worker was fully paid for the rest of the day, while the two Black workers were not. Then, two days later, the White worker called the company and asked if he could have his job back. He was immediately rehired, with no drug test required. Upon learning of this, the two Black workers also requested rehire. The company refused. The company also hired two White workers to replace them, one of whom had also previously been fired for failing a drug test. The two Black workers filed suit under Title VII and 42 U.S. Code Section 1981 (which can carry far greater damage awards and personal liability) for racial discrimination and retaliation. The court found a *prima facie* case of discrimination and retaliation in the company's failure to even investigate the workers' complaints about their supervisor; the same supervisor's suspicious timing

of the drug accusation and test so soon after the complaints; and especially the dramatically different treatment of similarly situated White workers in rehire after test refusal or test failure while refusing the same treatment toward the Black workers. *Hall and Hughes v. Coal Bed Services Inc./Pate Holdings, Inc.* (11th Cir. 2026)

Unequal Treatment Regarding Drug Test Makes Case.

In *Slack v. City of St. Louis* (8th Cir. 2026) the City cancelled the hiring process for the position of Police Commissioner after only two candidates completed the process, both of whom were White. Mr. Slack rated first. The mayor opined that there were too few options to choose from and that they only included White males, while she wanted a more diverse group. So, the hiring process was cancelled and re-opened. This time there were four candidates selected; two Black and two White, including Mr. Slack. The two top-scoring candidates, who were the Black candidates, withdrew again, leaving only two candidates, who were White. The other White candidate, not Mr. Slack, was hired. Mr. Slack then filed a case under 42 U.S. Code Section 1983 against the city, the mayor, and the safety director for violation of Constitutional Equal Protection and racial discrimination, claiming the first hiring process was canceled for racial reasons, and that he should have been hired. The City defended itself by claiming that Mr. Slack remained eligible and was still a candidate in the second process and that a White applicant had ultimately been hired, so there was no discriminatory outcome. The court saw the case differently and denied the City's motion to dismiss. There was clear evidence that the original process was cancelled due to racial considerations. Absent that consideration, it is likely Mr. Slack would have been hired then. Thus, there was a discriminatory basis to challenge that decision, and the validity of the whole re-opening of the process. The court allowed the case to proceed against the city, the mayor, and the safety director.

RETALIATION - IT'S NOT OVER WHEN YOU THINK IT'S OVER

Employers can **win** a case on discrimination, wages, FMLA, or other protected activities, then **lose** a Retaliation case which follows. The employee's initial claim does not have to be correct in order to still be the basis for a claim of Retaliation.

Termination Decision Was Justified – Early Exit Was Retaliation. A Physician Assistant and a Physician had a contentious work relationship. The physician gave notice that he could not remain if the Assistant continued to work there. So, the medical practice decided to end the Assistant's employment. However, she was provided with a 3-month pre-termination transition period, a \$15,000 severance payment, and an Independent Contractor arrangement for future work. She then raised a concern that the termination was based on sex discrimination. The practice

then abruptly ended discussions of any severance or contractor arrangement and made the termination immediate. The Assistant filed a Title VII suit for sex discrimination and retaliation. The court ruled against her on the sex discrimination claim. However, this did not affect the retaliation case. Retaliation is based on suffering adverse action due to having raised concerns about discrimination, whether or not those concerns are accurate. Though the termination decision was not discriminatory, the decision to abruptly cancel the transition period and end the arrangements for severance and consulting were retaliation for raising the sex discrimination concern. Thus, the Assistant stayed fired but could seek damages for the early exit and denial of severance and consulting opportunities. *Russo v. New Hampshire Neurospine Institute* (1st Cir. 2026)

Claims Made in EEOC Complaints Are Completely Protected Activity – Even if False. Employees’ discrimination complaints to the EEOC or other government agencies are often found to be unproven and result in No Cause determinations. That does not mean the complaint was baseless; it can mean that there was just not enough evidence to prove the allegations. However, sometimes a complaint is demonstrably mischaracterized, deceptive or even false. The employer can then be motivated to take action against the employee for having made such a baseless, false complaint. Be aware that engaging in such action is prohibited retaliation and can result in large damage awards against the employer. Statements made in complaints to federal and state agencies are “protected activities” and the employee is largely immune from any employer punitive actions. *Ellis v. Sheriff of Hillsborough County* (11th Cir. 2026) involved a Sheriff’s Deputy-Community Service Officer who filed disability and religious discrimination complaints with the EEOC and Florida State Civil Rights agency. The complaints contained some erroneous information. The EEOC eventually issued a 90-Day Right to Sue Notice without making a finding on the complaint allegations. The deputy decided not to file a suit because his employment issues had improved, so the 90-day suit period elapsed. Then, the Sheriff’s Department decided to launch an investigation of the deputy for having made the complaints. It then fired him for “falsifying an official document” (the EEOC and State complaints) because it contained some erroneous allegations, and for “publicly disparaging the Department” by his filing of the discrimination complaints. The Deputy filed a retaliation complaint with the EEOC. This time he filed a suit and a jury awarded him \$250,000 in damages, plus reinstatement and attorney’s fees. On appeal, the court upheld the verdict. Filing formal complaints with the EEOC or other governmental agencies is a highly protected activity. An employer may not terminate or take any adverse action against a person who does so “*even if the allegations are false.*” This is necessary to protect the integrity of the EEOC and other agencies’ processes, and not chill employees’ right to file complaints out of fear of retribution. There is a counterbalance if a person takes a false or frivolous complaint to the

hearing or trial level, then the court can award fees and sanctions against that person for having pursued the case to that level. This is only after the judge makes a finding that the complaint is false or frivolous, and the employer may still not take any adverse action other than what the judge orders. Internal complaints are not so strictly protected. Employees may be disciplined for false/dishonest internal complaints. However, there must be solid proof of actual intentional dishonesty. Simply erroneous, unwarranted perceptions or frivolous internal complaints are still protected activity. Never have language in an Anti-Harassment/Discrimination Policy which threatens discipline for making a false or frivolous complaint. That is automatically viewed by the EEOC and other agencies as a chilling, retaliatory threat, designed to discourage people from raising complaints. For more information on these issues, request the articles [Retaliation](#) and/or [Effective Harassment Policy and Procedures](#) by Boardman & Clark.

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