



# NEW DEVELOPMENTS IN EMPLOYMENT LAW

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# Minnesota Paid Leave Update

- Claim processing through the state is still taking a long time.
  - A month?
- Private insurers seem to be doing better
- Employees are using it

## New EEOC Focus

- Rescission of Harassment Guidance: On Jan 22, 2026, the EEOC rescinded its 2024 “Enforcement Guidance on Harassment in the Workplace.” removing specific guidance on pronoun usage and bathroom access related to gender identity.
- Harassment under Title VII included denial of access to a bathroom or other sex-segregated facility consistent with an individual’s gender identity and harassing conduct included “repeated and intentional use of a name or pronoun inconsistent with an individual’s known gender identity.”
- But the EEOC will continue to prohibit harassment in the workplace. Even in the absence of the Harassment Guidance, the EEOC made clear that enforcement with respect to unlawful harassment remains a priority.

# New EEOC Focus

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- Targeted Enforcement Focus: The agency is pivoting to focus on:
  - DEI Programs: Scrutinizing “illegal” diversity, equity, and inclusion initiatives under Title VII.
  - Religious Discrimination: Prioritizing protections against religious bias, particularly antisemitism.
  - National Origin: Protecting workers from discrimination involving preferences for foreign workers.
- Audit DEI initiatives and training programs to ensure compliance with shifting federal interpretations.
- But remember that you must still comply with the MHRA.

## SF3210 Revision To MHRA – Expansion of Duty to Accommodate

- Minn. Stat. 363A.02, Subd. 1 (c) will be added.
- More people and entities would be required to engage in the interactive process to determine accommodations for people with disabilities. Would expand to employers, housing, and real property, public accommodations, public services and education.
- This would apply to businesses interacting with customers and the general public.

## SF3210 Revision To MHRA – Expansion of Duty to Accommodate

- Minn. Stat. 363A.02 subd. 1(c): Failure to engage in the process to determine if a reasonable accommodation exists that would allow people with disabilities as defined in section 363A.03, subdivision 12, to participate fully in employment, housing and real property, public accommodations, public services, and education may be an unfair discriminatory practice under this chapter.
- Status: passed both houses and sent to Governor on May 14, 2026. It is expected he will sign it into law.

# Meal and Rest Breaks

- Starting January 1, 2026, two 15-minute paid breaks are mandatory.
- Prior law only required opportunity to use a rest room.
- 30-minute minimum unpaid lunch break is mandatory if working 6 or more hours.
- Employers who fail to comply face penalties.
- Update policies, train managers and supervisors, and make sure the new policies are communicated to employees.

# Meal and Rest Breaks

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- Employers must “allow” their employees to take rest and meal breaks. Employees may choose to not take these breaks.
- If an employee voluntarily waives their breaks, obtain a written waiver or other verification.
- Make sure that policies are clear and that the employees have the option to take the breaks to which they were entitled; and any employee’s decision not to take the breaks is well documented.

# Higher Minimum Wage

- Starting January 1, 2026, Minnesota's minimum-wage rate went to \$11.41 an hour for all employers in the state.
- The 90-day training rate (for employees under 20 years old) increased to \$9.31 an hour.
- Tied to inflation going forward.

# Joint Employer Rule

- Reinstatement of 2020 Standard: DOL formally withdrew the broader 2023 standard, which had been struck down by a federal court.
- A high degree of employee control is now required. “Indirect influence” or simply reserving rights to control in a contract is not enough. The entity must actually exercise significant control over essential terms.
- The rule focuses on such things as control over hiring, firing, discipline, supervision, direction, wages, benefits, and hours. Sporadic, isolated, or *de minimis* control does not establish a joint-employer relationship.

## Voting Rights Act Ruling – Impact on Anti-Discrimination Laws?

- On April 29, 2026, the Supreme Court ruled in *Louisiana v. Callais* that creating additional majority-minority districts was not required by the Voting Rights Act (VRA), striking down a Louisiana map as an unconstitutional racial gerrymander. Politically based gerrymandering is now allowed.
- And with this decision, the Court has made it clear that racial discrimination will be allowed so long as it is done under the guise of partisanship.
- There is some concern this could negatively impact the enforcement of Title VI or put it at risk.
- MDHR will still be in place.

# Ban on Stay and Pay In Employment Agreements?

- Effective July 1, 2026, Minnesota Law (SF 2533) would ban most “stay-or-pay” provisions in employment contracts requiring employees to pay fees if they leave before a set time, often for training costs.
- Repayment cannot be required if the employee is terminated, unless it is for misconduct.
- These are deemed unenforceable, with exceptions for specific, prorated apprenticeship training and scenarios where the employee is not terminated for cause.
- Employers cannot require Minnesota-based employees to follow other states’ laws or adjudicate claims outside of Minnesota.
- Fines ranging from \$1,000 to \$5,000.
- Status: Remains in committee, not addressed prior to session adjournment.

# Non-Compete Agreements

- Non-compete Agreements are not valid in MN.
- Non-solicitation Agreements are valid.
- As of now, the FTC's sweeping nationwide ban on non-compete agreements is not in effect following federal court rulings. The FTC officially removed the rule from the federal register but has shifted to a case-by-case enforcement strategy if it is determined they are a restraint on trade.

# ICE Enforcement and I9 Audit Updates

- Operation Metro Surge officially “ended” in February 2026, with a drawdown of federal agents in Minnesota.
- Many I-9 Audits conducted during that time remain pending, however.
- According to federal authorities, most enforcement is now more targeted, quieter or covert, and localized, rather than the prior overt and large scale “show of force” tactics.
- Focus has shifted to more outstate areas.

# What to do in an I-9 Audit?

- Recap:
- You typically need to provide:
  - I-9 forms for current and recently terminated employees.
  - Current employee lists.
  - Quarterly wage and hour reports.
  - Payroll records.
  - E-Verify confirmations (if applicable).
  - Business information, including the owner's Social Security Number.

# What to do in an I-9 Audit?

- Subpoenas are required. Do not give information without a valid subpoena.
- Consider seeking the assistance of an attorney.
- The law gives 3 days to produce I-9 forms. Extensions can be requested.
- After reviewing the I-9 forms, ICE may find some employees are not authorized to work. If that happens, ICE will give you 10 days to provide valid work authorization for these employees. If you can't provide the documents by that time, you will be told to end their employment.
- Notify the worker.

# DHS I-9 Inspection

- When an employer responds to a NOI by producing Form(s) I-9, HSI agents and/or auditors conduct an inspection of the Form(s) I-9 for compliance. When HSI finds technical or procedural failures, the employer receives at least 10 business days to make corrections, pursuant to INA §274A(b)(6)(B) (8 U.S.C. § 1324a(b)(6)(B)).
- An employer may receive a monetary fine for all substantive violations and uncorrected technical or procedural failures.

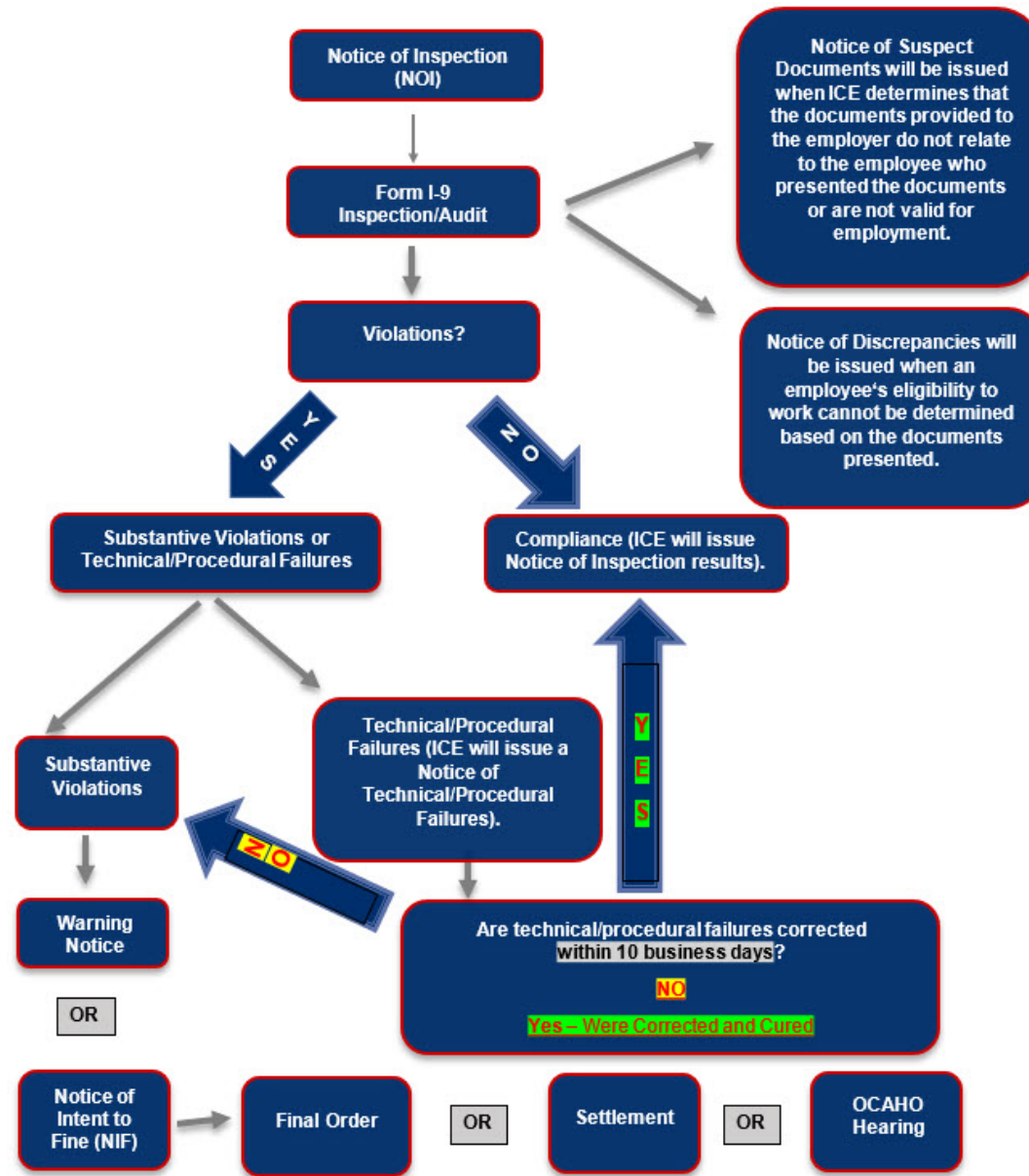
# Potential Outcomes of I-9 Audit (non-punitive):

- **Notice of Inspection Results:** Also known as a "Compliance Letter," this notice is used to notify a business that it is in compliance with applicable employee eligibility verification requirements.
- **Notice of Suspect Documents:** Advises the employer that, based on a review of the Form(s) I-9 and documentation submitted by relevant employee(s), HSI has determined that the documentation presented by employee(s) do not relate to the employee(s) or are otherwise not valid for employment. This notice also advises the employer of the possible criminal and civil penalties for continuing to employ unauthorized workers. *HSI provides the employer and employee(s) an opportunity to provide documentation demonstrating valid U.S. work authorization if they believe the finding is in error.*
- **Notice of Discrepancies:** Advises the employer that, based on a review of the Form(s) I-9 and any related documentation submitted by employee(s), HSI has been unable to determine the employees' eligibility to work in the U.S. *The employer should provide the employee(s) with a copy of the notice, as well as an opportunity to present HSI with additional documentation establishing valid U.S. employment eligibility.*
- **Notice of Technical or Procedural Failures:** Identifies technical or procedural failures found during the inspection of Form(s) I-9 and *gives the employer at least ten business days to correct the forms.* After this correction period ends, uncorrected technical or procedural failures become substantive violations.
- **Warning Notice:** Issued when substantive verification violations were identified, but there is an expectation of future compliance by the employer. However, a Warning Notice will not be issued where there the employer fails to respond, prior warnings have been given, where the documents show clear evidence of fraud or forgery (such as backdating), or where the employer was provided notice of technical failures and failed to remedy them. Companies that are served a Warning Notice may be subject to a follow-up NOI six months, or later, after a Warning Notice is issued to ensure compliance. A reinspection may be contingent on resources.

# Potential Outcomes of I-9 Audit (punitive):

- **Notice of Intent to Fine (NIF):** May be issued for substantive violations, uncorrected technical or procedural failures, knowingly hire violations, and/or continuing to employ violations.
  - In instances where a NIF is served, charging documents specifying the alleged violations committed by the employer will be provided. Pursuant to 5 U.S.C. §§ 554-557, *the employer is entitled to a hearing before an Administrative Law Judge* at the Office of the Chief Administrative Hearing Officer (OCAHO). This request must be made within 30 calendar days of receipt of the NIF.
  - If a written request for a hearing is **not** timely received, ICE will issue a Final Order. There is no appeal from a Final Order. If a written request for a hearing is timely received:
    - The employer may request to engage in settlement negotiations with ICE regarding the charges or fine(s) imposed prior to a hearing before OCAHO.
    - If the employer and ICE reach an agreement, ICE will not file a complaint with OCAHO.
    - However, if the employer and ICE do not reach an agreement, ICE will file a complaint with OCAHO.

# Audit and Enforcement Procedure



# I-9 Audit: DHS Reclassification of Violations

Under historical DHS policy and practice, certain paperwork or “technical” violations were considered non-substantive and therefore not used toward the calculation of any penalties.

- Examples = missing dates, employee date of birth, employer representative name and title, missing preparer/translator details, and in certain cases, missing supporting documentation.
- 10-day notice and safe harbor window to correct.

# I-9 Audit: DHS Reclassification

- Under that prior framework:
  - (1) the violations listed above would have been considered technical, and employers would have been afforded 10 days to correct them and,
  - (2) once corrected, those items no longer counted towards the final calculation of penalties.
- New policy issued March 16, 2026.
- Under new framework, minor errors now count as substantive violations under federal immigration laws and regulations.
- This policy subjects the business to fines, without an opportunity to correct during an ICE audit, what would normally be handled as a paperwork error.

The Complete list of “substantive” paperwork violations is found at: <https://www.ice.gov/factsheets/i9-inspection>

### Form I-9 Substantive Paperwork Violations

- Each of the following is considered a substantive violation of Form I-9 requirements, including but not limited to the examples provided below. Additional specific violations related to each section of Form I-9 are outlined in the subsequent sections.
- Failure to prepare the Form I-9.
- Failure to present the Form I-9 for inspection upon request (8 C.F.R. § 274a.2(b)(3)).
- Failure to ensure the timely preparation of Section 1 of the Form I-9 and/or failure to timely prepare Section 2 of the Form I-9 (and/or Supplement B of the Form I-9, if applicable).
- Completion of a Spanish-language version of the Form I-9 outside of its authorized area. The Spanish-language version of the Form I-9 can only be officially completed and retained by employers and employees in Puerto Rico.
- Failure to meet the standards for the electronic completion, retention, documentation, security, reproduction, electronic signature(s) for the employee, and electronic signature(s) for the employer, recruiter, or referrer for a fee, or representative, as set forth in 8 C.F.R. § 274a.2(e), (f), (g), (h), and (i).
- For **Section 1** of the Form I-9, failure to:
  - Ensure that the employee completes his or her printed or typed legal name and date of birth.
  - Ensure that the employee checks only one box attesting to whether the employee is a citizen of the United States, a noncitizen national of the United States, a Lawful Permanent Resident, or an alien authorized to work until a specified date.
  - Ensure that the employee completes the Alien Registration Number/U.S. Citizenship and Immigration Services (USCIS) Number field next to the phrase “A lawful permanent resident (Alien #).”
  - Ensure that the employee completes the Alien Registration Number/USCIS Number field or the Form I-94 Admission Number field or, if applicable, the foreign passport number and country of issuance and the employment authorization expiration date field required for aliens authorized to work in the United States until a specified date (Alien # or Admission #).
  - Ensure that the employee signs the attestation portion of Section 1.
  - Ensure that the employee dates Section 1 of the Form I-9.

- For **Section 2** of the Form I-9, failure to:
  - Verify a proper List A document or proper List B and List C documents within three business days following the date of hire, by physically examining an original and acceptable List A document or proper and acceptable List B and List C documents described in 8 C.F.R. § 274a.2(b)(1)(v)(A), and determining that the document appears to be genuine on its face and reasonably related to the individual; or by physically examining original and acceptable documentation, as described in 8 C.F.R. § 274a.2(b)(1)(v)(B)-(C), and determining that the document appears to be genuine on its face and reasonably related to the individual.
  - Record the document title, issuing authority, document number(s), and/or expiration date(s) (if any) of an acceptable List A document or original and acceptable List B and List C documents described in 8 C.F.R. § 274a.2(b)(1)(v)(A)-(C).
  - Record the document title, issuing authority, document number(s), and/or expiration date of the replacement document required to have been presented in accordance with 8 C.F.R. § 274a.2(b)(1)(vi)(A). Verify within the 90-day period described in 8 C.F.R. § 274a.2(b)(1)(vi)(A)(3) the replacement document, in the case of a document receipt issued in connection with an application to replace a lost, stolen, or damaged document, by physically examining the replacement document or any other valid List A or combination of List B and C documents presented by the employee in lieu of the replacement document. Determine that the document appears to be genuine on its face and reasonably related to the individual.
  - Mark the alternative procedure box in Section 2 if the employer used an alternative procedure authorized by DHS to examine documents.
  - Be an active E-Verify participant or registered in a DHS Non-E-Verify Remote Document Examination Form I-9 program when putting a check mark to notate that an alternative procedure was authorized by DHS to examine documents;
  - Print the complete name and title of the employer or authorized representative.
  - Provide the date of hire in the attestation portion of Section 2 of the Form I-9.
  - Sign the Certification portion of Section 2.
  - Date the Certification portion of Section 2.
- For **Supplement A** of the Form I-9, Preparer and/or Translator Certification for Section 1, failure to ensure that the preparer and/or translator's complete name, address, signature, and date are provided on the Form I-9 at the time of completion, when either a preparer and/or translator was used to assist the employee in the completion of the form.
- For **Supplement B** of the Form I-9, Reverification and Rehire (or alternate applicable section or supplement pertaining to a required reverification or rehire entry), failure to:
  - Date Supplement B of the Form I-9 not later than the date on which an employee's temporary employment authorization expires, verify the individual's continued employment eligibility by physically examining an original and acceptable document described in 8 C.F.R. § 274a.2(b)(1)(v)(A) and determining that the document appears to be genuine on its face and reasonably related to the individual; or by physically examining an original document described in 8 C.F.R. § 274a.2(b)(1)(v)(C) and determining that the document appears to be genuine on its face and reasonably related to the individual.
  - Provide the date of rehire in Supplement B, or in an alternate applicable section or supplement pertaining to a required reverification or rehire entry, of the Form I-9.
  - Record the document title, document number(s), and/or expiration date(s) (if any) of an acceptable document described in 8 C.F.R. § 274a.2(b)(1)(v)(A) or (C).
  - Record the document title, document number(s), and/or expiration date (if any) of the replacement document required to have been presented in accordance with 8 C.F.R. § 274a.2(b)(1)(vi)(A), and verify within the 90-day period described in 8 C.F.R. § 274a.2(b)(1)(vi)(A)(3) the replacement document in the case of a document receipt issued in connection with an application to replace a lost, stolen, or damaged document, by physically examining the replacement document or any other valid List A or List C document presented by the employee in lieu of the replacement document and determining that the document appears to be genuine on its face and reasonably related to the individual.
  - Print the complete name of the employer or authorized representative, sign and date the "Reverification and Rehires" portion of Supplement B, or an alternate applicable section or supplement pertaining to a required reverification or rehire entry, on or before the date the employee's previously presented temporary employment authorization expires.
  - Mark in the alternative procedure box in Supplement B if the employer used an alternative procedure authorized by DHS to examine documents.
  - Be an active E-Verify participant or registered in a DHS Non-E-Verify Remote Document Examination Form I-9 program when checking that it used an alternative procedure authorized by DHS to examine documents.

## Enhanced Wage Theft Enforcement, Especially in Construction

- As of early 2026, Minnesota continued aggressive enforcement of the 2019 “Wage Theft Prevention Act”. DOLI announced securing a record \$1.28 million in back wages for construction workers.
- In April 2026, DOLI announced that construction companies on 19 projects would repay nearly \$1.3 million to 26 workers.
- Includes the illegal withholding of wages or benefits earned by an employee. Often occurs when employers fail to pay minimum wage, refuse to pay overtime, require off-the-clock work, tip stealing, failing to pay final pay or illegally deducting from pay for broken equipment, uniforms, or cash shortages.

# PSA: Commissioned Salesperson Earnings

- **181.55 WRITTEN STATEMENT TO EMPLOYEES BY EMPLOYERS.**
- When a contract of employment is consummated between an employer and an employee for work to be performed in this state, or for work to be performed in another state for an employer localized in this state, the employer shall give to the employee a written and signed agreement of hire, which shall clearly and plainly state:
  - (1) the date on which the agreement was entered into;
  - (2) the date on which the services of the employee are to begin;
  - (3) the rate of pay per unit of time, or of commission, or by the piece, so that wages due may be readily computed;
  - (4) the number of hours a day which shall constitute a regular day's work, and whether or not additional hours the employee is required to work shall constitute overtime and be paid for, and, if so, the rate of pay for overtime work; and
  - (5) a statement of any special responsibility undertaken by the employee, not forbidden by law, which, if not properly performed by the employee, will entitle the employer to make deductions from the wages of the employee, and the terms upon which such deductions may be made.

# PSA: Commissioned Salesperson Earnings

**181.56 NO STATEMENT GIVEN; BURDEN OF PROOF.** “Where no such written agreement is entered into the burden of proof shall be upon the employer to establish the terms of the verbal agreement in case of a dispute with the employee as to its terms.”

**181.13 PENALTY FOR FAILURE TO PAY WAGES PROMPTLY.**

- (a) When any employer employing labor within this state discharges an employee, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee... If the employee's earned wages and commissions are not paid within 24 hours after demand, whether the employment was by the day, hour, week, month, or piece or by commissions, the employer is in default.

# PSA: Commissioned Salesperson Earnings

- When are commissions “earned”
- How are commissions calculated, and what expenses on the sale will the employer include when calculating the net profit / commission owed to the employee?
- How will the Employee understand the Employer’s policy on the calculation and payment of commissions? (particularly in construction, industrial sectors in which a “sale” may occur well in advance of when net profit is known or payment received by the employer.
- *Memorialize your commission structure in a written, signed, and acknowledged policy or agreement with the employee.*

# AI Job Loss Protections

- As of May 2026, the Minnesota legislature was actively considering legislation to protect workers from AI-driven job displacement, driven by reports that Minnesota has the highest rate of generative AI exposure in the Midwest.
- Proposed Legislation: The “SAFE” Act (HF 4369):
  - 90-day notice before deploying tech that could eliminate jobs.
  - Employers must offer employees affected by AI changed an opportunity for retraining or upskilling.
  - Notice of potential displacement must be provided to labor representatives, the Minnesota Department of Labor and Industry, local officials, and the relevant regional workforce board.
  - Failure to comply could disqualify companies from state contracts and result in fines of up to \$10,000 per employee.
- Status: in committee, not addressed further prior to legislative adjournment.

# Any Questions?

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