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No Final Rule/Standard Yet  
National Emphasis Program Still In Place

Heat Illness Prevention:

**Outdoor & Indoor Heat Protections:** Employers must implement heat safety plans when temperatures exceed **80°F (27°C)**, including:

- Access to water, shade, and cooling areas.
- Mandatory rest breaks for workers in high-heat conditions.
- Acclimatization protocols for new or returning workers.
- Recordkeeping: Heat-related illnesses must now be logged in
- OSHA 300 logs


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# Tracking Immigration Law in 2025

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**Overview**

- Greater Scrutiny for Issuance of Visas
- Increased Audits
- I-9 Audits
- Marketplace Health Benefits





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## Greater Scrutiny for Issuance of Visas



- Consulate officers have extremely wide discretion to approve, deny, or place in "administrative processing".
- Past visa denials can impact an employee's future visa applications.
- Improper use of past visas (such as applying for a green card on a "non-immigration intent" visa) will likely cause significant problems.
- USMCA: Ordered a full review of the USMCA in preparation for a scheduled joint review of the agreement in 2026. If the U.S. chooses to pull out of the agreement, it will impact the availability of TN, L-1, E-2 work visas. B-1 is also included in the USMCA.

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## Increased Audits

Reports of unprecedented audits at nearly every stage of the visa process, including:

- Initial petitions (USCIS)
- Visa Amendments
  - In particular with dual intent visa categories, such as amending from the L-1B visa (5-year stay) to the L-1A visa (7-year stay)
- Employer Blanket Approval Petitions
- Green Card Process (sometimes referred to as the "PERM")
  - PERM prevailing wage requirements
  - Recruitment process
  - I-140 Immigrant Petition for Alien Worker
- Employer Audits



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## I-9 Audits

- Increase I-9 audits from U.S. Immigration and Customs Enforcement (“ICE”) and Department of Homeland Security (“DHS”).
- Recommend to perform random I-9 self audit and document appropriately to mitigate risk.

**Tips:**

- We recommend review of all I-9 forms created since the last audit for all employees, or at a very minimum, a random sampling of I-9s.
- Before conducting a self audit, employers should consider the purpose and scope of the audit.
  - How you will document your communications with employees, if necessary?
  - How will you ensure consistent standards when addressing any Form I-9 deficiencies revealed by the audit?
  - How will you make corrections?



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## I-9 Audits

I-9 Self Audit checklist:

- Collect a list of current employees.
- Compile list of employees terminated in the last three years.
- Review copies of all I-9 forms (electronical or physical) for current employees and those that were terminated within retention requirements.
- Create an audit log
- If any discrepancies exist, such as employees without a properly completed I-9, prioritize those employees and ensure an I-9 is completed immediately. Employees may have to complete the I-9 even if they were hired months/years ago.

**USCIS handbook provides detailed information on how to correct I-9 mistakes:**

<https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/90-correcting-errors-or-missing-information-on-form-i-9>.

- Employees may present any document or combination of documents acceptable by law. Employers cannot dictate what documents they must present.

**The information above applies to all employees, including those on work visas.**



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## Marketplace Health Insurance

- Deferred Action for Childhood Arrivals (DACA) is a U.S. immigration policy that allows some undocumented people who came to the US as children to work and temporarily delay deportation.
- In 2024, DACA recipients became eligible for Affordable Care Act (ACA) Marketplace coverage under Biden administration policies, allowing them to enroll in private health insurance plans through HealthCare.gov.
- Effective August 25, 2025, DACA recipients and consumers with certain other immigration statuses are no longer eligible for Marketplace coverage if they live in these states: Alabama, Arkansas, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Texas, and Virginia.
- Illinois DACA recipients may remain eligible.
- Employees holding valid immigration status (green card, work visa, asylee, refugee, etc.) remain eligible for coverage.

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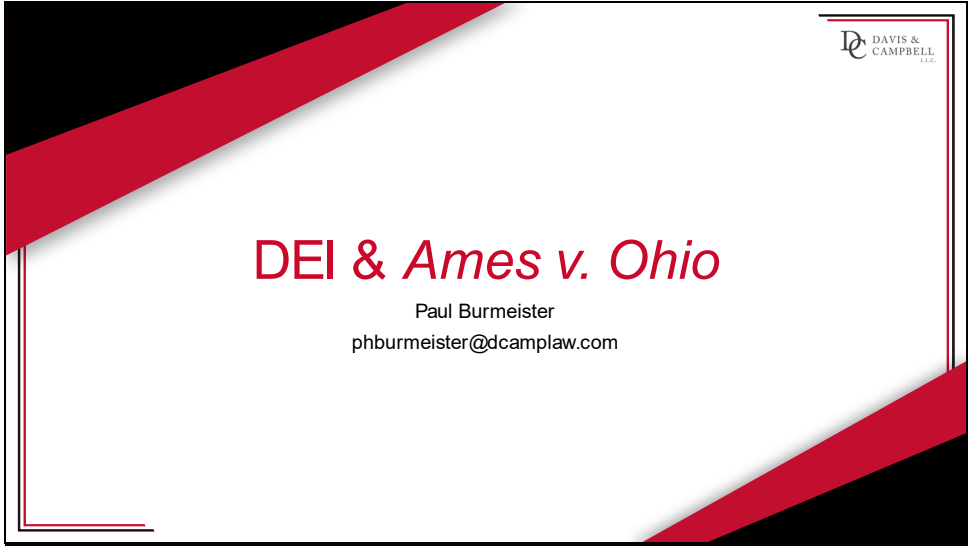
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## DEI & *Ames v. Ohio*

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# New DEI Initiatives From Executive Orders in 2025

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## Federal Contractors

- The Order also directed federal agencies to require every contractor and federal grant recipient to “certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.”

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## What About Private Sector Employers Without Federal Contractors?

The Order encouraged private sector employers to end "unlawful" DEI practices. Specifically, it directed federal agencies to:

- Investigate race- and gender-conscious employment practices, targeting major companies and non-profit organizations, state bar associations, and universities with endowments over \$1B.
- It also warned private employers that litigation and regulatory changes were possible with respect to unlawful DEI programs.

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## Attorney General Memorandum February 5, 2025

- On February 5, 2025, the U.S. Attorney General issued a memorandum titled "Ending Illegal DEI and DEIA Discrimination and Preferences".
- The Memorandum directed the U.S. Department of Justice to investigate and penalize discriminatory DEI practices in both the private sector and educational institutions receiving federal funds.

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## Diversity Celebrations Are Still Good

- The Memorandum explained:  
“educational, cultural, or historical observances” that “celebrate diversity, recognize historical contributions, and promote awareness without engaging in exclusion or discrimination” are not prohibited. In other words, employers can recognize events such as Black History Month or International Holocaust Remembrance Day, so long as this does not involve hiring preferences, quotas, or exclusionary policies that are viewed as discriminatory.

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## Voluntary Self-Reporting of Efforts to Comply with the Executive Order

- On June 27, 2025, federal government contractors received an email from the OFWVP providing an opportunity to “provide information about their efforts to wind down compliance with [Executive Order] 11246 regulatory scheme and ensure full compliance with the Nation’s non-discrimination laws.”
- Contractors are invited to provide this information in narrative form through the Contractor Portal that OFCCP previously established for contractors to use to certify compliance with the requirements of Executive Order 11246.
- There does not appear to be any benefit to self-reporting and information through the portal may be cross-shared with other government agencies.

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## April 25, 2025, Executive Order

- On April 23, 2025, President Trump issued Executive Order 14281 (the “April Order”) titled “Restoring Equality of Opportunity and Meritocracy,”

which calls for an end to liability for unlawful discrimination based on disparate impact, in which employers may face liability for neutral employment policies or practices that have substantial adverse impact on a protected group, such as race or sex.

Specifically, the April Order revoked several prior presidential approvals of federal regulations regarding disparate impact claims and directed federal agencies like the EEOC to deprioritize enforcement of disparate impact claims.



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## EEO-1 Reports

- On May 20, 2025, the EEOC opened its platform for employers to submit mandatory EEO-1 reports, and EEOC Acting Chair Andrea Lucas subsequently pointed to the April Order and cautioned employers not to use the EEO-1 data as the basis for unlawful actions.
- In particular, Acting Chair Lucas reiterated that employers may not use any potential race or sex disparities revealed in their employment data as a basis for implementing hiring or promotion policies that might give preferences to job candidates or employees based on sex, race, ethnicity, or other protected characteristics.

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**July 29, 2025**  
**DOJ Memo Regarding DEI**

- AG Bondi published additional guidance on unlawful discrimination in July.
- It is mostly similar to the April guidance with a few additions:
  - Provides a little guidance on DEI training modules, which cannot exclude or penalize employees based on protected characteristics.
  - Provided examples of unlawful training, including using the terms, 'to masculinity', 'white people are privileged', etc.
- Employers should allow for 'dissent'.

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**Best Practices Per the DOJ**

1. Ensure inclusivity
2. Focus on skills and qualifications.
3. Do not use demographic driven data.
4. Document legitimate rationales. Ensure the rationales are consistently applied and are demonstrably related to legitimate non-discriminatory objectives.
5. Review facially neutral policies for “proxy effects”.
6. No quotas
7. Avoid exclusionary training
8. Include non-discrimination clauses in vendor contracts.
9. Establish clear anti-retaliation procedures and create self reporting mechanism.

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## Current DEI Programs

- The April Memorandum has cautioned employers against simply rephrasing DEI programs as “inclusion programs” or “culture programs,” as these are still viewed as DEI programs. The current political administration has made clear that simply re-framing such programs as inclusive will not suffice.

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## Recommendations

- To mitigate risk of unlawful DEI practices, employers should take an inventory of all DEI policies and practices that may exist and conduct a privileged audit of each program and policy to evaluate whether any potential legal violation exists. The audit should be conducted under the Attorney-Client Privilege, so that the information reviewed is not discoverable in any subsequent litigation.
- After conducting a privileged audit, employers should update their programs, policies, and practices accordingly to mitigate risk. With respect to employment decisions, all hiring, promotion, and compensation decisions should be well-documented to avoid any inference of unlawful DEI influence.
- Once employers have identified and confirmed appropriate DEI policies, if any, the employer should train Human Resources and management employees on compliant practices to avoid confusion and mitigate the risk of inadvertent comments and/or decisions.

## Ames V. Ohio Department of Youth Services

What happened?

- Ames claimed her employer discriminated against her based on her sexual orientation, heterosexual. She alleged that she applied for a promotion and not only was she denied the promotion, but she was demoted from her current position. The employee who was awarded the promotion and the employee who was placed into Ames' position were both not heterosexual.
- Ames filed a lawsuit, and the lower court granted the employer's summary judgment motion, stating Ames failed to show the required "background circumstances" to demonstrate she was not promoted and was also demoted because of her sexual orientation.



**Americans With Disabilities Act  
(ADA)  
Coverage for Former Employees &  
Retirees**

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**ADA Coverage**

U.S. Supreme Court Case

*Stanley v. City of Sanford, Florida*



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# ADA Coverage

- “Unlawful for a covered employer to discriminate against a qualified individual on the basis of disability in regard to compensation”
  
- A “qualified individual” is someone who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires




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*Stanley v. City of Sanford, Florida*

- City health insurance for retirees: (1) up to age 65 if have 25 years of service; or (2) for 24 months if retire due to disability
- Stanley, a firefighter, retired from Sanford after 19 year of service due a disability
- Due to only receiving 24 months of retiree health insurance, she filed suit against the City alleging City violated ADA by providing different health insurance benefits for disabled v. non-disabled individuals

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### *Stanley v. City of Sanford, Florida*

- District Court dismissed case because the alleged discrimination occurred after Stanley was retired and therefore, she was not a “qualified individual” with a disability under the ADA because she no longer held or sought a job with the City
- Eleventh Circuit Court of Appeals affirmed the dismissal



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*Stanley v. City of Sanford, Florida*

- Supreme Court affirmed the dismissal of the case
  
- Holding – under the ADA “a plaintiff must plead and prove that she held or desired a job, and could perform its essential functions with or without reasonable accommodation, at the time of an employer’s alleged act of disability-based discrimination”

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## Artificial Intelligence in Employment

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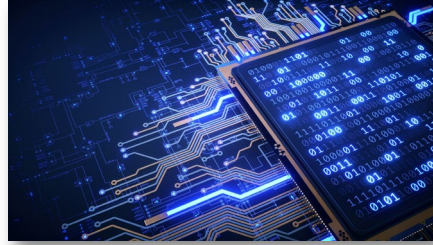
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## Federal v. State Landscape

- Federal Efforts
  - House of Representatives
    - 10-year moratorium
  - Senate
    - Rejected and stripped
- Bipartisan Opposition
- State/Local Actions



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## “Governing the Use of Artificial Intelligence”



- What Does That Mean?
  - Personnel actions
  - Automation in decision-making
  - Disparate impact theory
- Wide variations state to state
  - Disclosures
  - Recordkeeping
  - Audits
  - Interplay with medical provisions

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# Managing Employees Across Generational Lines

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## Generations in the Workforce

- Baby Boomers (1945-1964)
- Gen X (1965-1980)
- Millennials (1981-1995)
- Gen Z (1996-2012)



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**Work Styles & Expectations**

- Differences in focus
- Differences in work and career goals
- Differences in communication styles

The slide content is contained within a rectangular box. At the top center of the box is the title 'Work Styles & Expectations' in red. Below the title is a bulleted list with three items: 'Differences in focus', 'Differences in work and career goals', and 'Differences in communication styles'. In the bottom-left corner of the box is the logo for Davis & Campbell, LLC, which consists of a stylized 'DC' followed by the text 'DAVIS & CAMPBELL' and 'LLC' below it. The bottom-right corner of the box features a decorative graphic with red and black diagonal stripes.

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### Misconceptions & Stereotypes



- Baby Boomers -- conflict issues/rigid thinking
- Gen Xers -- not invested/not following rules
- Millennials -- need handholding, unrealistic, inexperienced
- Gen Zers -- short attention span, inexperienced

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## Leveraging Strengths

- Have the conversation...
  - Feedback
  - Communication style
  - Monitoring performance/status
  - Inclusion and enthusiasm
  - Engagement
- Promote positive interactions
- Recognize contributions



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# Gender Affirmation Care and Transgender Healthcare

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## U.S. v. Skrmetti

- **ADA and Gender Dysphoria as covered disability:**
  - Historically gender dysphoria has not been considered a disability under the ADA, as the ADA excludes “gender identity disorders not resulting from physical impairments.”
  - More recently, federal courts like the Fourth Circuit have found gender dysphoria to be distinct from gender identity disorders, such that gender dysphoria falls under the protection of the ADA. See *Williams v. Kincaid*, 45 F.4th 759, 773 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2414, 216 L. Ed. 2d 1270 (2023).
  - Currently being litigated in several states, expect to see circuit splits and different standards depending on where the employee lives and works.

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