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2025 Labor & Employment Update

Annie Eiden

Agenda

Federal Update

Litigation Review

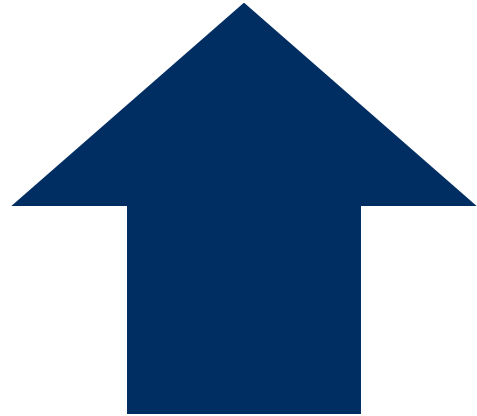
**State Law Trends and
Developments**

Federal Administration Priorities and Actions

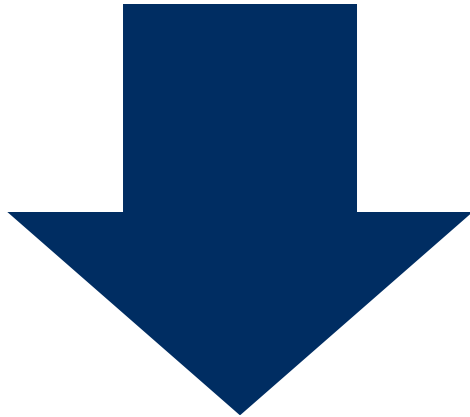
Presidential Priorities

- ▶ Deregulation
- ▶ Gender Ideology and Gender Identity
- ▶ Immigration
- ▶ Merit-Based Systems (anti-DEI)

Executive Orders: What can they do?



Executive Orders can impact which laws federal agencies enforce and how federal resources are used



Executive Orders cannot change existing law

Where an Executive Order does not align with existing law, agencies may refrain from enforcing that law, but there is still a risk of liability should an employee sue.

Executive Orders

As is often the case in the early days of an administration, Presidential priorities have been expressed in a series of executive actions. The following is a non-exhaustive list:

- ▶ Executive Order 14192: Unleashing Prosperity Through [Deregulation](#)
- ▶ Executive Order 14173: Ending Illegal Discrimination and Restoring [Merit-Based](#) Opportunity
- ▶ Executive Order 14168: Defending Women from [Gender Ideology](#) Extremism and Restoring Biological Truth to the Federal Government

Federal Agency Action



EEOC

- ▷ Loss of quorum following termination of two commissioners
- ▷ Limited Delegation Authority: Action passed by the EEOC in December 2024 in anticipation of a loss of quorum
 - ▶ Allows for contracting approval, decisions on petitions to revoke or modify enforcement subpoenas, and ministerial changes to regulations compelled by statute
- ▷ Acting Chair Andrea Lucas
- ▷ The EEOC continues to intake, process and investigate claims



Enforcement Guidance on Harassment in the Workforce

- ▶ Guidance issued April 29, 2024
- ▶ Executive Order 14168 directed the rescission of the EEOC Guidance
- ▶ Commissioner Lucas acknowledges that she cannot unilaterally reverse documents passed by a majority vote
- ▶ The Guidance remains in effect

Pregnancy Worker Fairness Act ("PWFA") Regulations

- ▶ Effective: June 18, 2024, and currently in effect
 - ▷ 17 states have challenged the regulations
 - ▶ *State of Tennessee et al. v. EEOC*, No. 24-2249 (Feb. 20, 2025)
- ▶ Challenges have specifically targeted the agency's interpretation of "related medical conditions," as including abortion

EEOC and DEI

- ▶ Guidance on DEI in the Workplace
 - ▷ Informal Guidance was issued in conjunction with the DOJ
 - ▷ Much of the guidance reiterates policies and practices that are already illegal under Title VII
 - ▷ Employers should watch out for training programs, affinity groups, and employee interest groups
- ▶ Delay of EEO Data Collection
 - ▷ The Trump Administration's stance on DEI generally has brought into question the continuation of EEO data collection
 - ▷ Currently, collection is delayed, but has not been abandoned

NLRB

- ▷ Loss of quorum following termination of board member
 - ▶ UPDATE: Wilcox reinstated by court order...
- ▷ Without quorum, can continue day to day operations but cannot adjudicate labor disputes or change policies



Rescinded Memos

- ▶ **Limitations on Non-Disparagement and Confidentiality:** Responding to the Board's *McLaren Macomb* decisions scrutinizing non-disparagement and confidentiality provisions in Separation Agreements
- ▶ **Unlawful Non-Competes:** Arguing that most non-compete agreements unlawfully interfere with employees' Section 7 rights

State laws limit the use of non-disparagement, confidentiality, and non-compete provisions outside of the NLRA context



Employers must still comply with these laws, even though risk of enforcement from the NLRB is lower

DOL

Independent Contractor Rule

- ▶ Six-Factor “Economic Realities Test”
 - ▷ Effective: March 11, 2024, and is still the prevailing standard
 - ▷ Focus on totality of circumstances; no predetermined weight
 - ▷ Challenges to the rule are currently on pause



Court Shuts Down the DOL's Salary Increase for White Collar Exemptions

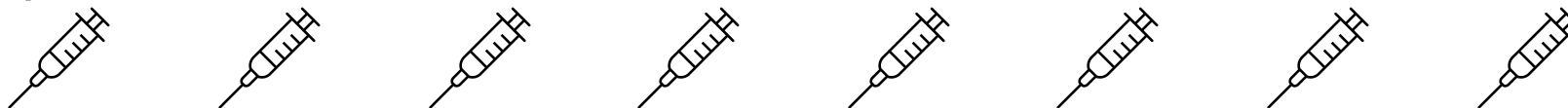
- ▶ In April 2024, the DOL issued a final rule that increased the salary-level for exempt Executives, Administrative, and Professional employees
- ▶ On Friday, November 15, 2024, the United States District Court for the Eastern District of Texas vacated the rule
- ▶ Current federal salary basis is a minimum of \$684 per week (\$35,568 per year)

DOL Opinion Letters

- ▶ **Tip Sharing:** Managers and supervisors may not share in tip pools, regardless of whether they performed managerial duties on the shift



- ▶ **Clinical Trials and FMLA:** When using FMLA for the treatment of a “serious health condition,” this includes treatment given as part of a clinical trial



- ▶ **Expense Reimbursement and Overtime:** Employers must provide reasonable reimbursement that correspond to the actual expense. Expenses are only excludable from the regular rate of pay for the purposes of calculating overtime where they are genuinely incurred



FTC

Noncompete Ban



FTC Votes to
Ban Most
Noncompete
Clauses in
Employment
Contracts

Noncompete
Ban is Struck
Down
Ryan LLC v. FTC

Noncompete
Ban is
Scheduled to
Go Into Effect



OSHA

Electronic Recordkeeping Rule

- ▶ Deadline for submissions this year was March 2, 2025, but employers who missed the deadline must still submit
 - ▷ Stay tuned for requirements in future years
- ▶ First full year of data has reported tracking workplace injuries. The report provides a number of metrics including types of injuries, injuries reported by month, and occupational groups with the highest reported injuries.



Smart Glasses



- ▶ OSHA's use of Vuzix Smart Glasses announced in December 2024
- ▶ Vuzix M400™ smart glasses can record video, access the internet, and have augmented reality capabilities
- ▶ Raises privacy concerns for employers



Litigation Update

SCOTUS Decisions & Cases to Watch



► *Loper Bright Enterprises v. Raimondo*

- Court overturned *Chevron*, which required courts to defer to a federal agency's position on the law when a statute is open to interpretation

► *E.M.D. Sales Inc. v. Carerra*

- Court held that a preponderance of the evidence standard governs when an employer seeks to prove that an employee is exempt from minimum wage and OT

U.S. Supreme Court: Case to Watch

- ▶ *Stanley v. City of Sanford, Florida*
 - ▷ Does a former employee, who was qualified and who earned post-employment benefits *during employment*, lose the right to sue under the ADA with respect to those benefits because she no longer holds that job?



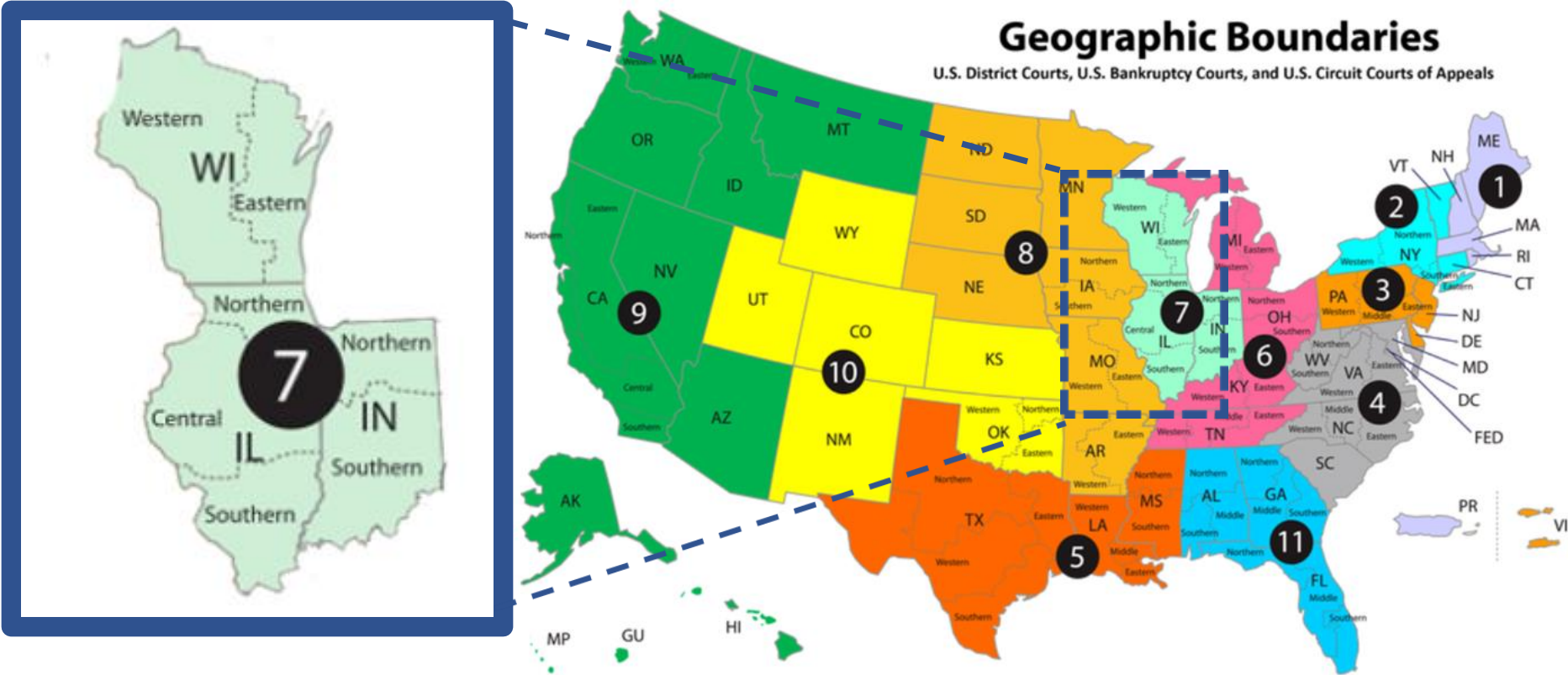
U.S. Supreme Court: Case to Watch

“Reverse” Discrimination Standard

Ames v. Ohio Department of Youth Services

- ▶ Ames, a straight woman, has positive performance reviews from 2004-2018
 - ▶ In 2014, she is promoted
 - ▶ In 2019, she applies for a promotion, but is not selected
 - ▶ Her boss is LGBTQ+, as was the person selected for the promotion
 - ▶ Later, Ames is demoted and is earning less
- ▶ Ames sues under Title VII –
 - ▷ She alleges reverse discrimination based on her sexual orientation
 - ▶ Before the Supreme Court:
 - ▷ Must a discrimination plaintiff, who is in a majority group, show “background circumstances” to support reverse discrimination allegations?

Seventh Circuit Decisions & Cases to Watch



Seventh Circuit Decisions

FLSA

- ▶ *Walters v. Professional Labor Group*
 - ▷ Travel to remote client sites is compensable time under the FLSA
- ▶ *Osborn v. JAB Management Services, Inc.*
 - ▷ If the employer does not keep accurate time records, a relaxed burden of proof applies at the damages stage of a FLSA claim

ADA

- ▶ *Nawara v. Cook County*
 - ▷ Requiring an employee to submit to a medical examination/making medical inquiries of an employee is discrimination under the ADA, *even if* the employee does not have a disability.

Seventh Circuit: Cases to Watch



► *Kluge v. Brownsburg Community School Corp.*

- ▷ Should a teacher's religious objection to using students' preferred pronouns be accommodated under Title VII?

► *Johnson v. Bosman Trucking, Inc.*

- ▷ Is "shuttling work" interstate commerce such that the Motor Carrier Exemption from OT and Minimum Wage apply?

Other Circuit Court Decisions: FMLA

▶ ***Chapman v. Brentlinger Enterprises (6th Cir.)***

- ▶ An *in loco parentis* relationship can form after the dependent is 18 years old, as well as after a medical condition develops

▶ ***Walkingstick Dixon v. Oklahoma (8th Cir.)***

- ▶ An individual can be held liable as an “employer” under the FMLA

Cases before the Wisconsin Supreme Court



- ▶ ***Oconomowoc Area School District v. Gregory L. Cota***
 - ▷ Arrest record discrimination
- ▶ ***Lorbecki v. Pabst Brewing Co.***
 - ▷ Safe Place Statute liability
- ▶ ***McDaniel v. Wis. Department of Corrections***
 - ▷ Compensable time: Pre- and Post-shift activities

WI Court of Appeals Weighs in on Non-Compete Remedies

- ▶ *Frey Construction & Home Improvement, LLC v. Hasheider Roofing & Siding, Ltd.*



Wisconsin Labor & Industry Review Commission (LIRC)

*Lorenz v.
Woodman's Food
Market*

- Use of Lawful Products outside of work

*Richards v.
Milwaukee Transport
Services, Inc.*

- SSDI and Workers' Compensation payments did not offset back pay award in Equal Rights case

Tubbs v. TMG

- "Good cause" standard for a complainant's failure to appear at an Equal Rights hearing

State Law Trends and Developments

Wisconsin State Law Update

- ▶ **Worker's Compensation Benefits Increase:**
Effective January 1, 2025

Permanent Partial Disability Maximum Weekly Rate	
Injuries occurring on and after March 24, 2024	Injuries occurring on and after January 1, 2025
\$438	\$446

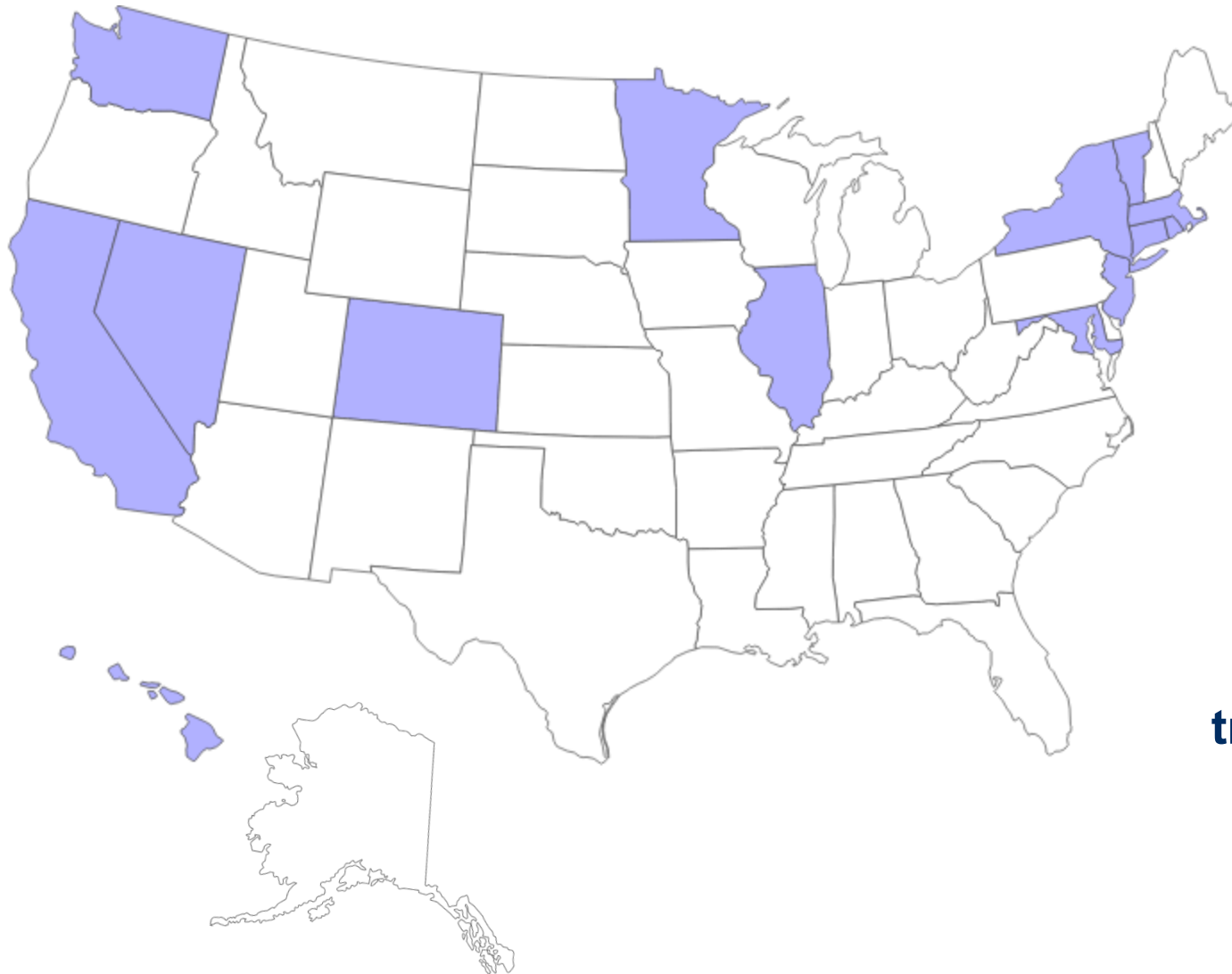
- ▶ **Act 237, Human Trafficking:** Requires employers in industries with frequent interactions with vulnerable populations to provide employee training to prevent human trafficking.
- ▶ **DWD Hotline:** Requires the DWD to establish a hotline to assist employers in hiring individuals with arrest and conviction.

State Trends

Freelance Worker and Independent Contractor Acts

- ▶ Several states, including Illinois and New York, have passed laws mandating certain information in contracts with freelance workers
 - ▷ California's Freelance Worker Protection Act went into effect on January 1, 2025, and contains similar requirements

Pay Transparency Laws

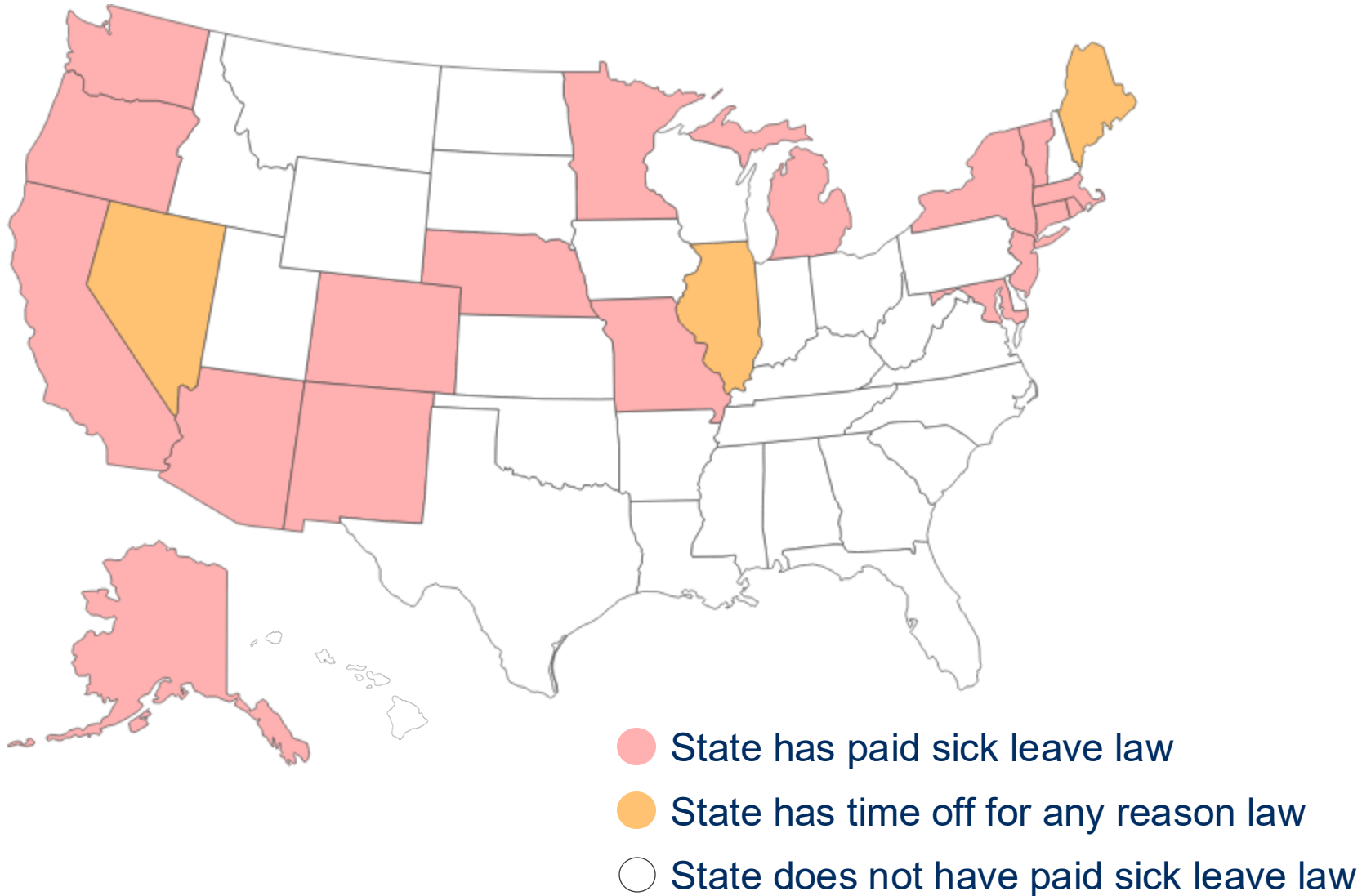


Effective in 2025

- Illinois
- Massachusetts
- Minnesota
- New Jersey
- Vermont

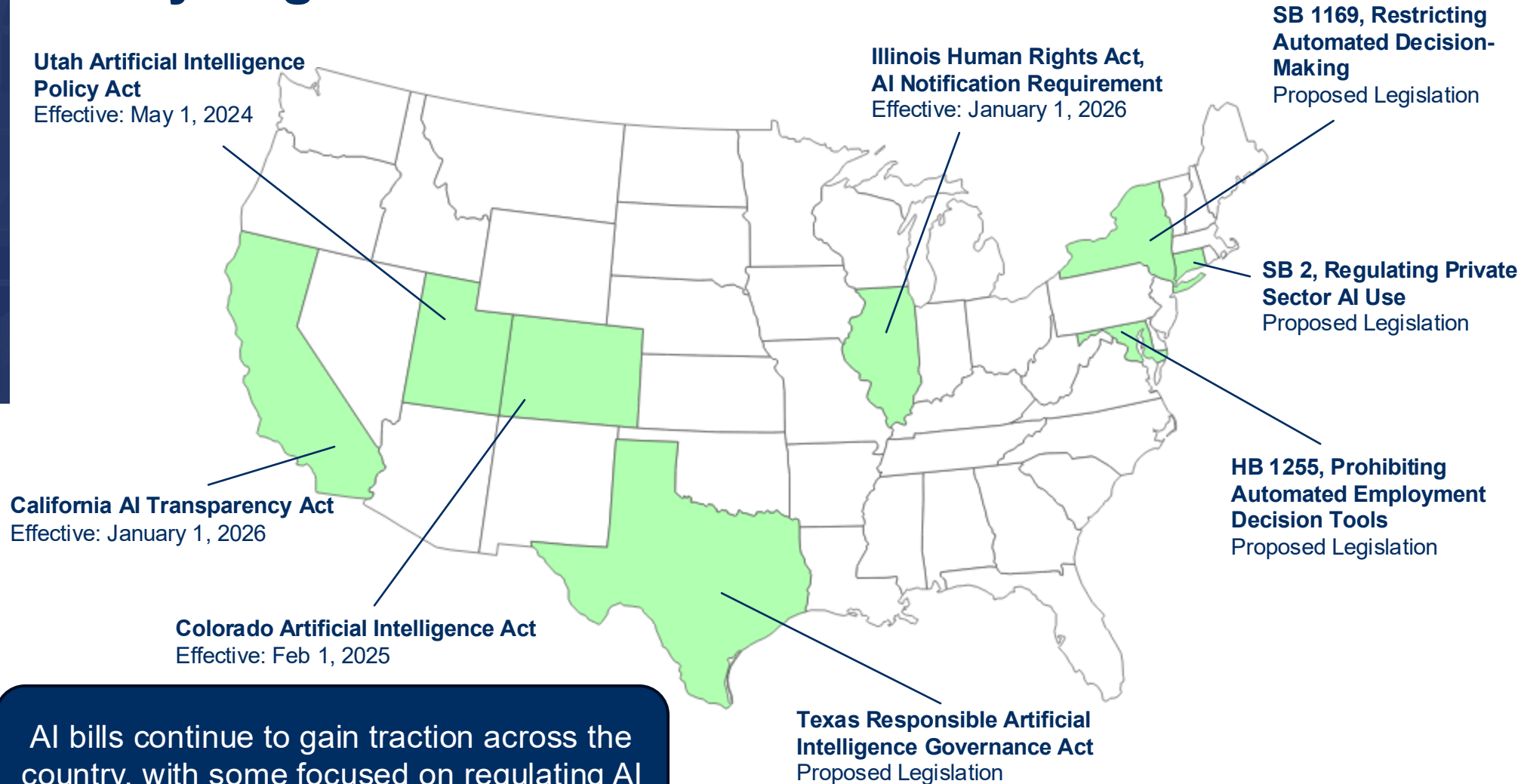
**Thirteen states
have passed pay
transparency laws,
and many others
have proposed
legislation**

State Paid Sick Leave Laws



Artificial Intelligence

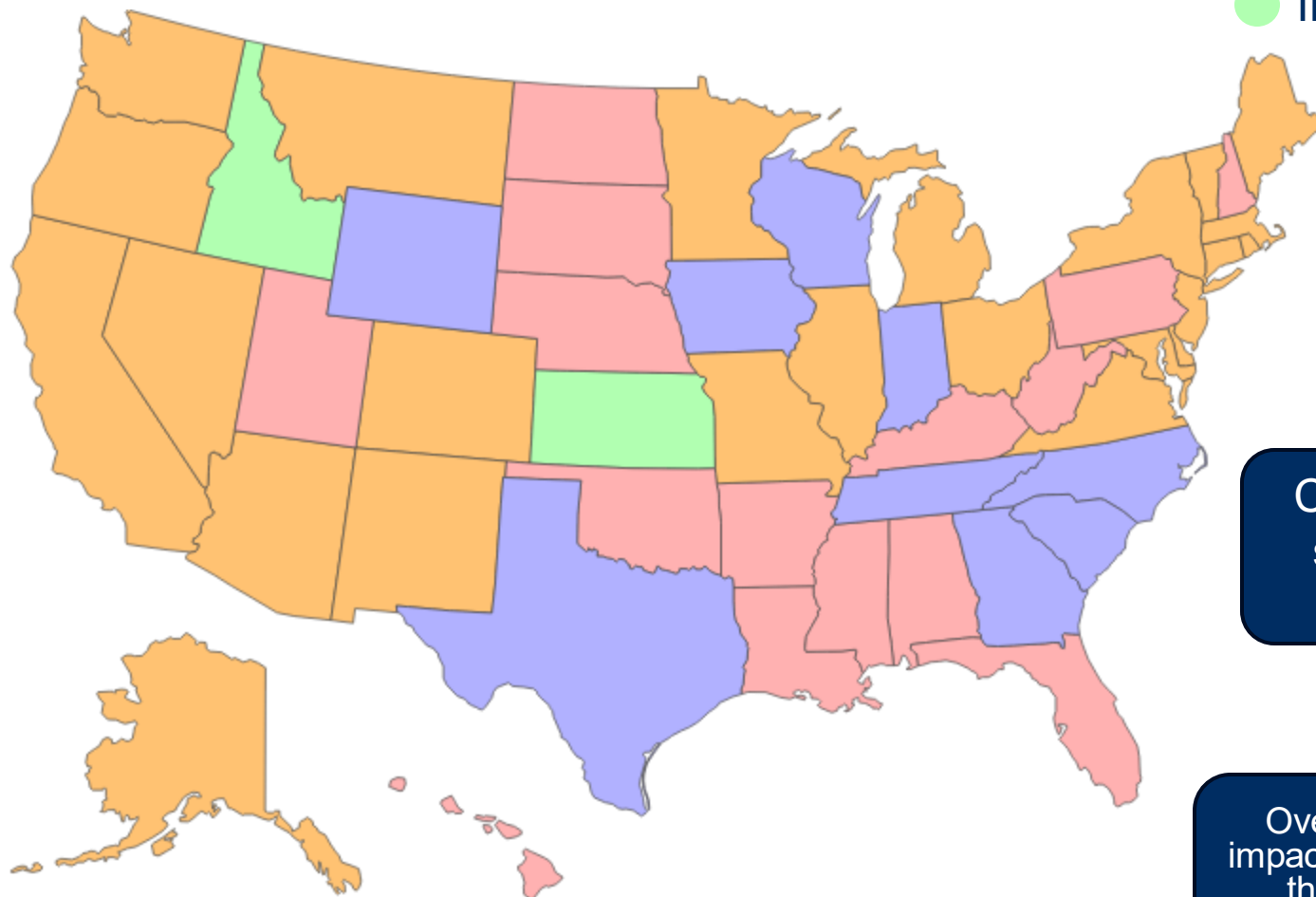
Key Legislation



AI bills continue to gain traction across the country, with some focused on regulating AI developers and others focused on AI use

Cannabis Laws

- Medical Use
- Adult and Medical Use
- Low THC
- Illegal



Cannabis is legal to some extent in 48 states



Over half of all states have laws impacting drug and alcohol testing in the workplace, taking varying approaches as to legal use of cannabis

Other Notable State Laws

The following state laws went into effect January 1, 2025:

California

- TROs Against Workplace Harassers
- Workplace Meeting
- Fair Employment and Housing Act Expansion

Illinois

- Caregiver Responsibility Law
- Reproductive Health Decisions
- Worker Freedom of Speech Act

New York

- Equal Rights Amendment, Proposition 1
- Prenatal Care Leave

Thank you!



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