



Office of Congressional Workplace Rights

Office of the General Counsel

FEDERAL CASE LAW UPDATE SEPTEMBER 30, 2026

The Congressional Accountability Act (CAA) applies more than a dozen employee protection statutes to the legislative branch. Although the OCWR Board of Directors and Hearing Officers are not bound to follow the U.S. Courts of Appeals, they usually look to those courts' decisions for guidance.¹ In this outline we round up some significant and interesting recent federal appellate opinions from the past year involving many of the statutes applied by the CAA, as well as some notable decisions of the OCWR Board, and a preview of an upcoming Supreme Court case that may have implications for employing offices raising affirmative defenses to CAA claims brought in federal court.

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¹ The Board's decisions are available on the OCWR web site at <https://www.ocwr.gov/board-decisions/>.

Applicable Laws

The CAA currently applies all or part of the following statutes to the legislative branch:

- **Genetic Information Nondiscrimination Act** – CAA section 102(c), 2 U.S.C. § 1302(c)
- **Title VII of the Civil Rights Act of 1964** – CAA section 201, 2 U.S.C. § 1311
- **Age Discrimination in Employment Act** – CAA section 201, 2 U.S.C. § 1311
- **Americans with Disabilities Act** – CAA sections 201 & 210, 2 U.S.C. §§ 1311 & 1331
- **Rehabilitation Act** – CAA section 201, 2 U.S.C. § 1311
- **Family and Medical Leave Act** – CAA section 202, 2 U.S.C. § 1312
- **Fair Labor Standards Act** – CAA section 203, 2 U.S.C. § 1313
- **Employee Polygraph Protection Act** – CAA section 204, 2 U.S.C. § 1314
- **Worker Adjustment and Retraining Notification Act** – CAA section 205, 2 U.S.C. § 1315
- **Uniformed Services Employment and Reemployment Rights Act** – CAA section 206, 2 U.S.C. § 1316
- **Veterans Employment Opportunity Act** – Pub. L. 105-339 § 4(c), 2 U.S.C. § 1316a
- **Fair Chance to Compete for Jobs Act** – CAA section 207, 2 U.S.C. § 1316b
- **Occupational Safety and Health Act** – CAA section 215, 2 U.S.C. § 1341
- **Federal Service Labor-Management Relations Statute** – CAA section 220, 2 U.S.C. § 1351
- **Pregnant Workers Fairness Act** – Pub. L. 117-328, 42 U.S.C. § 2000gg

Recent Case Law

Americans with Disabilities Act (ADA)/Rehabilitation Act (RA)

The employment discrimination provisions of the ADA (Title I) and the Rehabilitation Act apply to the legislative branch through section 201 of the CAA, 2 U.S.C. § 1311, while section 210 of the CAA applies the ADA's public access provisions (Titles II-III), 2 U.S.C. § 1331.

Failure to Accommodate

- *Buccieri v. Brewster Ambulance Serv., Inc.*, 181 F.4th 179 (1st Cir. 2026) – John Buccieri, a deaf individual, applied for a job as a medical transportation driver with Brewster. Before and during his interview, he communicated extensively with a regional manager about potential accommodations that would allow him to fulfill the communications responsibilities of the job. Namely, he proposed using Video Relay Services (VRS), a cell phone-based system enabling users of American Sign Language to communicate with voice telephone users, to communicate with dispatch, instead of radio, as was Brewster's practice (for business reasons including safety). He also proposed that he could monitor patient well-being using the rearview mirror. After he went on a trial ride-along, a supervisor expressed concerns about his ability to do the job. Other positions were explored, but ultimately Buccieri was not hired.

He sued, alleging failure to hire and failure to engage in an interactive process. The First Circuit affirmed judgment as a matter of law for Brewster, concluding that no reasonable jury could find that there was a reasonable accommodation that would have enabled Buccieri to perform the essential functions of either of its available driver positions without undue hardship to Brewster. Drivers were required to communicate with dispatch, patients, and facilities staff, and there was no accommodation that would allow Buccieri to do so without imposing an undue hardship. Using VRS in place of radio dispatch would pose a safety risk when he would have to take his eyes off the road. Monitoring patients using the rearview mirror would also pose a safety hazard. And the ADA did not require Brewster to eliminate the essential functions of communicating with patients.

- *Hileman v. W. Penn Allegheny Health Sys. Inc.*, 182 F.4th 283 (3d Cir. 2026) – Cheryl Hileman worked the midnight shift at a hospital doing CAT scans. When she was terminated for violating hospital policy forbidding sleeping on duty, she denied sleeping but admitted she might have shut her eyes to alleviate dry eye caused by her diabetes medication, which also caused fatigue. She had not previously disclosed her diabetes or requested an accommodation or leave. She brought several ADA claims and a claim for FMLA interference against her employer.

The Third Circuit affirmed summary judgment for the employer. To succeed on a failure-to-accommodate claim, an employee must show that her employer knew she needed an accommodation, but did not provide it. Hileman, however, did not disclose her disability (or request leave) prior to being confronted by her supervisor for sleeping on the job.

Even then, she did not suggest accommodation, but maintained she never slept on the job – so there was nothing for her employer to accommodate. And the fact that she waited until the last possible moment to raise any disability-related issues with her job was “weighty” timing in determining whether her employer had fair notice of those concerns.

Even if she could be considered to have requested an accommodation, the ADA did not require her employer to excuse her misconduct. Sleeping on duty violated hospital policy. Generally, “employers may enforce neutral workplace rules even when misconduct stems from a disability.” Her employer thus offered a legitimate, non-discriminatory reason for firing her, and she offered no evidence that she was actually fired for her medical condition. “When an employee is about to be fired for misconduct, she cannot save her job by belatedly telling her employer about a disability or medical need.”

- *Hall Haggins v. Wilson Air Ctr., LLC*, 163 F.4th 872 (4th Cir. 2026) – As an accounting assistant, DeAnne Hall Haggins had to be in the office at least part of the time to perform job tasks such as processing paper checks and invoices. After she was diagnosed with breast cancer during the COVID-19 pandemic, Wilson Air exceeded what was required of it by the ADA and allowed her to work fully remotely, reassigning her in-person duties to account manager Jon Cox. When Wilson Air’s business rebounded from effects of the pandemic, Cox was overwhelmed, so Wilson Air asked Hall to return to a hybrid schedule. She agreed, but only came into the office twice in three months. When she was terminated for job abandonment, she sued under the ADA.

Affirming summary judgment for Wilson Air, the Fourth Circuit concluded Hall was not a qualified individual. She argued that her requested accommodation, a hybrid work schedule, would have allowed her to perform her job’s essential functions (making her a qualified individual). But, the court noted, “this path to fulfilling some of the job’s essential functions was foreclosed by Haggins herself.” (cleaned up) Wilson Air repeatedly expressed openness to this accommodation, and it was Haggins who reneged on the hybrid compromise.

- *Redding v. Noem*, 168 F.4th 203 (4th Cir. 2026), *petition for cert. filed*, No. 25-1336 (U.S. May 28, 2026) – Stephanie Redding worked for the TSA as a Federal Air Marshal. TSA accommodated her numerous medical issues by placing her in “light duty” positions for a time. Eventually, her worsening vision led TSA to notify her that she no longer met the duty requirements of even the “light duty” job, or any vacant position at TSA. Pursuant to TSA’s recommendation, she identified (and was then reassigned to) a vacancy at FLETC, another division of the Department of Homeland Security distinct from TSA. Over a year later, she contacted TSA to “request reconsideration of the reassignment as an accommodation” for difficulties she was having at FLETC due to a new medical condition. TSA advised that it could not assist her as she was no longer a TSA employee. She sued, alleging TSA violated the Rehab Act by failing to accommodate her.

The Fourth Circuit affirmed dismissal of her complaint for failure to state a claim, largely because TSA had already provided reasonable accommodations by reassigning her to FLETC, a “manifestly reasonable” accommodation. “TSA’s obligations to Redding

ceased when they facilitated the reassignment. The Rehabilitation Act does not permit Redding to link all her current and future difficulties to TSA's accommodation decision." As the court noted, "she may request from FLETC other reasonable accommodations to aid in the performance of the essential functions of this *new* role."

- *Jones v. Fairfax Cnty. Sch. Bd.*, No. 24-1444, 2025 WL 2813607 (4th Cir. Oct. 3, 2025) – Donna Jones, an elementary school resource teacher with a lung condition, requested to be allowed to work remotely while recovering from surgery. She conceded that she could not have performed her job's essential functions relating to providing classroom support while teleworking, but argued that a temporary accommodation is reasonable if it "(1) is only necessary until the employee recovers from a short-term disability; and (2) enables the employee to perform most of the essential functions of their job while they recover from that short-term disability." The Fourth Circuit disagreed and affirmed summary judgment for the school board on Jones's failure-to-accommodate claim, reasoning that the ADA is "formulated entirely in the present tense, framing the precise issue as whether an individual 'can' (not 'will be able to') perform the job with reasonable accommodation." (internal citations omitted). Additionally, "To be reasonable, the accommodation must allow the plaintiff to perform *all* essential functions of the job."
- *Hayes v. GStek, Inc.*, 175 F.4th 603 (5th Cir. 2026) – Albert Hayes worked for Army contractor GStek. When his office returned to in-person work following COVID, he requested to be able to telework as a reasonable accommodation for autism, depression, and anxiety. GStek denied his request because Army officials determined that allowing its contractors' employees to telework was not in the Army's best interests. Soon after, he was terminated for absenteeism and other concerns. The district court dismissed his subsequent failure-to-accommodate and other ADA claims.

The Fifth Circuit affirmed, holding that Hayes could not establish a *prima facie* case for any of his claims. Regarding his failure-to-accommodate claim, he could not show that he was qualified. The court held that in-person attendance was an essential function of his job, in large part because "The Army determined that allowing full-time teleworking was not in its interests, and as an Army contractor, GStek had a business interest in honoring the Army's condition ... allowing Hayes to telework would open the floodgates of employee requests to telework and would thereby potentially damage GStek's contractual relationship with the Army." The court additionally noted that "the fact that Hayes's employer permitted him to telework while temporary COVID policies were in place does not transform the essential functions of his job."

Additionally, Hayes had acknowledged that he and his supervisor had been unable to communicate effectively on several occasions. Noting that an employer's ability to supervise an employee is a factor in determining whether a work-at-home accommodation is reasonable, the court held that permitting Hayes to telework full time was not a reasonable accommodation under these circumstances.

- *Bowles v. SSRG II, LLC*, 162 F.4th 716 (6th Cir. 2025) – When Tawna Bowles interviewed for the cashier/service team member position at fast-casual chain restaurant Chicken Salad Chick, she disclosed that she had difficulty standing for long time periods

because of arthritis in her knees and would require an unspecified amount of rest while working. After she was hired, she specified she would need to limit standing to ten minutes at a time and then sit for five minutes. The Sixth Circuit concluded that this proposed accommodation was not facially reasonable. Overwhelming employer evidence confirmed that “versatility and mobility” were essential functions of the job. Though employees referred to the position colloquially as the “cashier” role, the court noted that a position’s formal or informal name is far less meaningful than its critical functions when it comes to the essential functions analysis. The employer’s evidence showed that this role was a generalist front-of-house position involving a variety of duties such as restocking the drink station, bringing orders to customers, and maintaining cleanliness of the guest area, in addition to operating a point-of-sale system for taking customer orders. Bowles’s request would tie her to the cash register for a third of her shift, during which time she could not (and other employees would instead have to) perform the job’s numerous other front-of-house duties. The court reasoned that accommodation which transforms a jack-of-all-trades position into one in which an employee performs one task fundamentally changes the nature of the position and is thus not a reasonable accommodation under the ADA.

- *Tumbleson v. Lakota Loc. Sch. Dist.*, 175 F.4th 773 (6th Cir. 2026) – Andrea Tumbleson, an art teacher with progressive hearing and vision loss, sought paid sick leave or FMLA leave to attend three weeks of training to obtain a guide dog. When the school district, having determined that the training did not qualify for paid sick leave or FMLA leave, granted her unpaid leave instead, she brought ADA discrimination and failure-to-accommodate claims and an FMLA interference claim. The Sixth Circuit affirmed summary judgment for the school district on all claims.

Regarding her ADA discrimination claim, the court concluded that Tumbleson failed to show that the school district treated similarly situated employees more favorably in their requests for paid leave. She did not identify any comparators, and the court did not find her argument that HIPAA prevented her from finding comparators convincing.

Her failure-to-accommodate claim also failed. The court reasoned that her paid leave request was not work-related because she did not need a guide dog to work as a teacher (a job which she already performed well), nor did she offer any evidence linking *paid* leave to the performance of her job. Additionally, unpaid leave allowed her to obtain her guide dog, and an employee is not entitled to their preferred accommodation. She argued the unpaid leave accommodation caused her family financial difficulty, but the court reasoned that this was beyond the school district’s duty to accommodate under the ADA. (This case is also discussed in the FMLA section of this outline.)

- *Golat v. Skwierawski*, 184 F.4th 938 (7th Cir. 2026) – When court reporter Shannon Golat returned to work following a serious elbow injury, she was medically restricted from working more than three days a week and could type for only a limited time each day. Her judge informed her that if she needed to take time off for a medical appointment, she had to take a full day off, because it could be difficult to find a substitute court reporter for less than a full day. After she was terminated, she filed numerous claims, including for failure to accommodate under the Rehabilitation Act. The

Seventh Circuit affirmed the district court's grant of summary judgment to the employer on all claims. Regarding the RA claim, she argued that her employer's prior practice of allowing partial sick days would allow a jury to infer that this would have been a reasonable accommodation. However, the court noted that prior practice alone could not support this inference, and that it was not difficult to see how substitute reporters might turn down requests for just a few hours of work and how multiple reporters cycling through a courtroom in one day could be disruptive. It concluded that without some evidence showing that the judge's estimation of staffing needs was a fabrication, a reasonable jury could not find that the requirement that Ms. Golat use full-day sick leave to attend medical appointments was a failure to provide reasonable accommodation. (This case is also discussed in the Title VII section of this outline.)

- *Siebrecht v. Mercy Health Servs.*, 163 F.4th 524 (8th Cir. 2026) – Michelle Siebrecht was a physician assistant at a Mercy Health emergency room. The ER was usually staffed with four providers, each of whom worked three 24-hour shifts per two-week pay period. Per her doctor's recommendation, she requested a modified schedule as an accommodation for her multiple sclerosis: no more than one 24-hour shift per week and no weekend shifts. Affirming summary judgment for Mercy, the Eighth Circuit held that the ability to work three 24-hour shifts per pay period and weekend shifts was an essential function of Siebrecht's job. She argued that the essential function of her job was to treat patients, not to work specific shifts. The court disagreed: "The focus of the inquiry is not on the ultimate purpose of services that Siebrecht performed but on the specific tasks required to complete the purpose of the particular position that she occupied." It noted that it had previously held that "scheduling flexibility" could be an essential function, as could "working certain undesirable shifts" (like the weekend shifts, in Siebrecht's case), as shift rotation "enhances the non-work life of employees by spreading the shifts among them." Since Siebrecht could not perform the essential functions of her job (and no reasonable accommodations were available), she was not a qualified individual.
- *Kendall v. Zoltek Corp.*, 175 F.4th 1002 (8th Cir. 2026) – Angela Kendall worked as a production operator, a job advertised as having physical requirements that included the ability to lift at least 25 pounds overhead, turn, bend, reach, pull, walk, and stand for up to 12 hours. After an injury, Zoltek accommodated her for a few months by allowing her to sit some of the time, but then placed her on medical leave and terminated her when healthcare professionals made clear her restrictions were permanent. She sued for failure to accommodate and retaliation in violation of the ADA, and for sex discrimination in violation of Title VII.

Holding Kendall could not perform the essential functions of the production operator job with or without reasonable accommodation, the Eighth Circuit affirmed summary judgment for Zoltek on Kendall's ADA claims. Kendall first argued that standing was not an essential job function because her job performance did not suffer when Zoltek allowed her to sit as needed for a few months. Because her written job description specified standing as a requirement, the court concluded standing was an essential function and noted, "Kendall's individual experience is irrelevant to the essential functions analysis."

Kendall’s next argument – that allowing her to sit was a reasonable accommodation that would enable her to perform the essential functions of her job – failed because the court had determined that *standing* was an essential function, so her inability to stand necessarily prevented her performance of it. “Although Zoltek allowed Kendall to sit occasionally in the summer of 2021, this does not mean that this accommodation is reasonable permanently.”

The court additionally affirmed summary judgment for Zoltek on Kendall’s Title VII claim. It incorporated its ADA finding that she could not perform the essential functions of her job with or without an accommodation into the *McDonnell Douglas* framework. On this basis, it concluded she could not satisfy the element of a prima facie case that requires a plaintiff to show that “she was qualified to perform her job.”

- *Hayes v. Shawnee Cnty. Bd. of Cnty. Comm’rs*, No. 25-3155, 2026 WL 1469619 (10th Cir. May 26, 2026) – Marcus Hayes provided custodial services to Shawnee County through a staffing agency. He received Social Security disability benefits because of a traumatic brain injury and could only work a limited number of hours per month to stay under Social Security’s income limit. Believing that part-time custodial services would meet its needs, the county initially accommodated this limitation. When Hayes got a raise, he reached his monthly income limit more quickly, so he had to work fewer hours. After a few months, an employee complained about uncleanliness and lack of supplies in a restroom that Hayes was responsible for, and the county realized Hayes’s position required more hours than he could work while still qualifying for Social Security disability benefits. After the county ended his staffing agency placement, he sued the county and staffing agency for disability discrimination. The district court granted the county’s summary judgment motion and dismissed the claim against the staffing agency for procedural reasons.

The Tenth Circuit affirmed summary judgment for the county, holding that Hayes failed to establish the second element of a prima facie case for both his failure-to-accommodate and wrongful-termination claims – that he was “qualified” within the meaning of the ADA. The statute provides that “part-time or modified work schedules” may be a reasonable accommodation, but as the court explained, an “employee who proposes this accommodation may only prevail in an ADA action if he can demonstrate that he could perform the essential functions of the job while working part-time.” Although the county was able to accommodate Hayes’s part-time schedule for a time, when it received a complaint about bathroom cleanliness, it became clear that he could not perform the essential functions of the custodial position while working part-time.

- *Ebbert v. Ocean City Wright Fire Control Dist.*, No. 25-10435, 2026 WL 2296504 (11th Cir. Aug. 10, 2026) – Walter Ebbert had disabilities connected to his military service including a traumatic brain injury and PTSD. For several years, Ocean City’s former fire chief accommodated him by giving him extended time, telling him how to prioritize his tasks, and decreasing the amount of stress in his environment. Then a new fire chief took over and did not continue this practice. Despite formally requesting accommodations from HR, Ebbert was fired for failing to complete certain tasks. He sued for discrimination and failure to accommodate.

The Eleventh Circuit reversed the district court's grant of summary judgment to the city on the failure to accommodate claim. The city argued that the accommodations Ebbert requested would not have "cured his ongoing inability to perform." The court disagreed, reasoning that he had, for many years, performed similar tasks for the previous fire chief with the benefit of many of the accommodations he requested of his most recent supervisors. The city further argued that the accommodations Ebbert requested would have been ineffective, since his supervisors gave him "guidance, extensions of time, and clarification." Since there was evidence his supervisors failed to prioritize his tasks or create clear, consistent expectations for his assignments, the court concluded that a reasonable jury could find that the city negatively impacted the conditions of his employment by failing to grant his requested accommodations or to identify others through an interactive process.

In a concurring opinion, the Chief Judge wrote that "These requests are likely not specific enough" to be reasonable accommodations "or not requests at all[]" (in the case of his request for his supervisors to be willing to answer questions, since it was not a request that his supervisors do anything). However, the main opinion noted that the court was not considering those issues in reaching its decision because the city did not raise them on appeal.

Finally, the court affirmed the grant of summary judgment regarding the discrimination claim. There was no evidence that the fire chief knew of Ebbert's disability, or that he was used as a "cat's paw" by a third party who did.

Disability Discrimination

- *Rice v. Sec'y U.S. Navy*, No. 24-2815, 2025 WL 3707766 (3d Cir. Dec. 22, 2025) – Gwendolyn Rice alleged a "laundry list" of discriminatory acts by her supervisor, including berating and making inappropriate comments about Rice, encouraging other employees to engage in negative behavior toward her, and actions related to a change in her position description. She did not offer any argument as to why these acts constituted adverse employment actions, nor could the court identify how these acts worsened any identifiable term or condition of her employment. It therefore affirmed the district court's holding that Rice failed to make a prima facie case of disability or age discrimination because she failed to show that she suffered an adverse employment action.
- *Pietsch v. FMC Techs., Inc.*, No. 24-20514, 2026 WL 561183 (5th Cir. Feb. 27, 2026) – When FMC announced a mandatory COVID-19 vaccination policy, Dakota Pietsch requested an exemption due to a heart condition. FMC "reviewed and approved" his request, though it did not allow him to remain in his position, placing him on paid leave and offering him other positions. Claiming those positions were unsuitable and would lower his pay, he resigned and sued for disability discrimination.

At issue was whether Pietsch's heart condition substantially limited him in the major life activity of working. He argued not that his condition prevented him from working, but that it prevented his receiving the employer-mandated vaccine, which substantially

limited his ability to work. The court rejected this indirect limitation as being too attenuated, noting that a finding of disability required “a stronger causal link between impairment and major life activity than Pietsch contends. ... [T]he definition of disability ... encompasses the requirement that it be the impairment, and not some other factor or factors, that causes the substantial limitation[.]” (internal quotations and citations omitted). As the concurring opinion underscored, “the impairment itself must do the limiting.”

- *Kellar v. Yunion, Inc.*, 157 F.4th 855 (6th Cir. 2025) – When Yunion’s office building flooded, caseworker LaNetra Kellar experienced allergy symptoms that she ascribed to the building’s air quality. She requested to work remotely as an accommodation and was informed that if she were to work remotely, she would be shifted to part-time work, since half of her job duties involved management of hard-copy case files located in the office. She worked remotely as a part-time employee for three weeks before returning to in-person, full-time work for a year until Yunion lost funding for her role due to COVID-19. She then brought several federal and state law claims, including hostile work environment, adverse employment action (i.e., discrimination), failure to accommodate, and retaliation claims under the ADA.

First, Kellar claimed she was subjected to a hostile work environment due to her disability because Yunion denied her mileage reimbursement request, failed to timely provide paystubs, reduced her hours and rate of pay (more regarding this below), revoked her benefits and paid holidays, and sent her a text insinuating she would be fired. After the district court granted summary judgment to Yunion, the Sixth Circuit’s decision in *McNeal v. City of Blue Ash, Ohio*, 117 F.4th 887 (6th Cir. 2024) extended the *Muldrow v. City of St. Louis* “some harm” standard to hostile work environment claims. Now, in the Sixth Circuit, a plaintiff meets their summary judgment burden by providing “evidence that the environment itself was objectively hostile to the protected class, so long as the hostility produced some harm respecting an identifiable term or condition of employment” (cleaned up) and does not need to show unreasonable interference. Kellar still could not meet this lower bar: beyond conclusory statements about those incidents, she did not explain how her work environment would reasonably be perceived as hostile or abusive.

Like the district court, the Sixth Circuit analyzed Kellar’s adverse employment action and failure to accommodate claims together. The record showed that case managers had to be onsite to perform essential functions of the job related to management of hard-copy case files. Kellar argued that interns could have handled her case management responsibilities, but the ADA does not require employers to reallocate essential job functions to other employees. Since Kellar could not perform the essential functions of her job, she was not a qualified individual, and these claims both failed.

As for her retaliation claim, Kellar argued that Yunion reduced her pay, hours, and benefits in retaliation for her accommodation request, in addition to those actions constituting part of the basis for her hostile work environment claim (where the court remarked, “granting her request for remote work is not harassment”). The court did not find this argument availing with regard to the retaliation claim either. Although Yunion

did shift Kellar to part-time work when she could not perform the on-site functions of her job, reducing her hours and pay, this was in fact the very accommodation Kellar herself had sought. Since the act of granting an employee's reasonable accommodation request would not dissuade a reasonable person from seeking an accommodation, Kellar's retaliation claim failed.

- *Edwards v. Shelby Cnty., Tenn.*, 159 F.4th 489 (6th Cir. 2025) – In her job as a county health department employee, Rebecca Edwards worked at various sites in the community. She had night blindness, which impaired her ability to drive at night. She was reassigned to a 3:00 PM to 11:00 PM shift at a site where she witnessed illegal activity. She objected, telling her manager that she was concerned about driving 20 miles home in the dark with her night blindness, and about her safety as a woman working alone at that site at night. When she was terminated, she sued, alleging that the county discriminated against her based on her night blindness and retaliated against her for requesting an accommodation.

The Sixth Circuit affirmed the jury verdict in favor of Edwards on all claims. First, it rejected the county's argument that Edwards was not disabled under the ADA because driving is not a major life activity under the ADA. The court, reasoning that driving is dependent on the ability to see, examined precedent and concluded that "substantial limitations on night vision may serve as strong evidence of a substantial impairment to the major life activity of seeing."

The county also argued that Edwards could not be disabled because she occasionally drove at night when she had no alternative (such as when she was caring for her mother, who had Alzheimer's, or getting groceries and medication). However, the ADA does not require that someone be entirely unable to perform a major life activity to qualify as disabled; "courts have recognized that individuals who can technically perform an activity, but with difficulty, pain, or risk, may still be substantially limited." Therefore, the court noted, "The relevant question is not whether she is capable of driving, but whether her condition substantially limits her ability to see[.]"

Challenging the jury verdict on Edwards' retaliation claim, the county argued that her accommodation request was not made in good faith because her true concern was about crime, not night blindness. The court held that "a jury could reasonably conclude that Edwards's request was grounded in a concern about her ability to drive safely at night, even if she was also concerned about crime and personal safety."

- *Huelett v. Louisville Paving Co., Inc.*, No. 25-5241, 2025 WL 3688924 (6th Cir. Dec. 19, 2025), *cert. denied*, 146 S. Ct. 2630 (2026) – Deryck Huelett, a construction worker with a history of panic attacks on the job, was fired after an incident in which, in his car on a worksite during his lunch break, he appeared distressed, spoke about "ending it," and grabbed a handgun he kept in his car. The employer stated that Huelett was fired out of concern that he would harm himself or his coworkers. The Sixth Circuit affirmed summary judgment for the employer on Huelett's disability discrimination claim. It first concluded that managers' comments, such as "This is a tragic situation and my first inclination is to pray for [Huelett] to find help and perspective because mental health is

such a challenge for so many[,]” did not constitute direct evidence of discrimination; although the managers mentioned mental health and professional help for Huelett’s “condition,” none of the statements said that Huelett’s panic attacks were the reason for his firing.

Analyzing his indirect evidence of discrimination, the court found that Huelett could not show that the employer’s proffered reason for firing him was pretextual. One of Huelett’s arguments was that the employer’s workplace conduct rules, which banned gun possession on job sites, either post-dated his firing or were not timely provided to him. The court noted that he was not fired only for having a gun at work, but because of the safety concerns he posed to himself and others. Moreover, “an employer does not need a written policy to justify every termination. n employer may enforce any conduct rules, even those not found in workplace policies, employee handbooks or other such documents, as long as those policies are job-related and consistent with a business necessity.” (internal citations and quotation marks omitted).

- *Welch v. Heart Truss & Eng’g Corp.*, No. 24-1584, 2025 WL 2828895 (6th Cir. Oct. 6, 2025) – When Daniel Welch was fired, he sued, arguing Heart Truss’s reason for firing him – his manager’s belief that he was responsible for painting graffiti on trusses that were later delivered to customers – was pretext for disability discrimination. Heart Truss asserted the “honest belief” rule, arguing that the manager, Gustafson, reasonably and honestly relied on particularized facts gleaned from a multi-step investigation when firing Welch. Welch countered that this belief, while honest, was nonetheless unreasonable because Gustafson only interviewed one witness and did not cross-reference the graffitied loads with Welch’s assigned loads. The Sixth Circuit, affirming summary judgment for the employer, wrote that “Perhaps, as Welch suggests, Gustafson could have done more to confirm Welch’s guilt. But the honest belief rule does not require an optimal investigation that left no stone unturned. Rather, we ask only if Gustafson’s decision was reasonably informed and considered.” (internal quotations and citations omitted) The court agreed with the employer that it was, considering that Welch produced no evidence that Gustafson had reason to disbelieve the witness’s report.
- *Schmit v. Trimac Transp., Inc.*, 172 F.4th 612 (8th Cir. 2026) – Jason Schmit, a truck driver with Parkinson’s disease, failed to show that he was a qualified individual for purposes of his discrimination claim. In his application for benefits, he told the Social Security Administration it was “impossible” for him to work due to his condition, and proffered no sufficient explanation for the apparent contradiction between the statements to SSA and his litigation position. He argued that since SSA doesn’t account for the possibility of reasonable accommodation, he could be considered “unable to work” for SSA benefits purposes while still being a qualified individual under the ADA who could perform his job with reasonable accommodations. The Eighth Circuit agreed that this was not a conflict in every case, but found that Schmit’s particular statements to SSA, such as that it was “impossible” for him to work because he couldn’t “control [his] right hand, arm, right leg & foot[,],” could not be reconciled with being able to perform the essential functions of his job.

- *Stephens v. U.S. Env't Servs. LLC*, 167 F.4th 495 (8th Cir. 2026), *reh'g denied*, No. 24-3409, 2026 WL 785727 (8th Cir. Mar. 20, 2026) – Donald Stephens worked as a truck operator for USES, a position which required him to maintain a Commercial Driver's License (CDL). One day he refused a supervisor's request to clean an underground tank, citing concern over lack of safety equipment and not wanting to aggravate his heart condition, atrial fibrillation. USES's nurse put a 45-day hold on his CDL and requested he undergo testing by his cardiologist. He ultimately resigned and sued USES for disability discrimination and retaliation.

The Eighth Circuit affirmed summary judgment for USES. First, his discrimination claim failed because he could not show that he was disabled. His atrial fibrillation was found not to constitute a disability: although it was a physical impairment, he did not demonstrate that it substantially limited *him* in a major life activity. He argued that atrial fibrillation could cause shortness of breath and loss of consciousness, but the record showed that he did not experience these himself.

Stephens also could not show that his refusal to clean the tank without a respirator was a request for reasonable accommodation that would constitute protected activity for purposes of his ADA retaliation claim. He requested the respirator in the context of raising general safety concerns concerning cleaning the tank, and never said his heart condition required him to use a respirator.

- *Royston v. City of Scottsdale*, No. 24-6530, 2025 WL 3110639 (9th Cir. Nov. 6, 2025), *petition for cert. filed*, No. 26-317 (U.S. May 21, 2026) – Nichol Royston's transfer was rescinded and she later was transferred to a different position; there was no change to her rank, title, or salary. Applying the *Muldrow v. City of St. Louis* standard to her ADA and FMLA claims, the Ninth Circuit found that "Any humiliation that Plaintiff suffered, and any loss of the ability to work remotely from time to time, do not amount to an 'injury respecting her employment terms or conditions.'" It therefore affirmed summary judgment for the employer.
- *Sellman v. Aviation Training Consulting, LLC*, 155 F.4th 1215 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 2560 (Apr. 20, 2026) – Nicholas Sellman, a disabled veteran, worked for ATC for one year. During this time, his supervisor Richard Sofge made disparaging comments regarding Sellman's VA disability rating, and was reprimanded after Sellman reported this to HR. Later, ATC decided not to renew Sellman's contract. He sued, alleging ADA and USERRA violations.

Regarding his ADA claims, Sellman alleged ATC decided not to renew his employment contract because of his disability, and in retaliation for his complaining to HR about the comments disparaging his disability. On appeal, he challenged only the district court's holding, at step three of the *McDonnell Douglas* analysis, that he failed to show a fact issue as to whether ATC's reason for not renewing his employment contract – his "marginal" job performance – was merely a pretext for disability discrimination and retaliation. There was no evidence that the decisionmakers were motivated not to renew his contract by discriminatory or retaliatory animus, so he invoked the "cat's paw" theory to show pretext: that a biased subordinate "use[d] the formal decisionmaker as a dupe in a

deliberate scheme to trigger a discriminatory employment action.” He primarily contended that Sofge was the biased subordinate. However, the court found that there was no evidence that Sofge duped the decisionmakers into not renewing Sellman’s contract. Sofge did state, in an email to a decisionmaker, that he didn’t want to renew Sellman’s contract, but went on to state, “this is not my call” to make. Additionally, there was no evidence that the decisionmakers unquestioningly followed Sofge’s brief statement, and in fact they had independent grounds for their decision, including Sellman’s negative performance evaluation and the fact that he had let his FAA flight certificate lapse. (This case is also discussed in the USERRA section of this outline.)

- *Jackson v. Sumter Cnty. Ga.*, No. 25-11488, 2026 WL 2149890 (11th Cir. July 27, 2026) – Rhonda Jackson, who had chronic health conditions, was reprimanded when an investigation confirmed that she regularly followed two coworkers around the office and sprayed them with Lysol. Instead of correcting her behavior, she filed a grievance, stating she was only practicing safety precautions to protect her health. She was terminated for violating the county’s harassment policy and sued for ADA and RA discrimination and retaliation. The Eleventh Circuit affirmed summary judgment for the county.

Jackson argued firing her for spraying Lysol was discriminatory because she did so to protect herself because of her disability. However, she presented no evidence that her *reason* for spraying Lysol, rather than the fact that she sprayed it on others, motivated her termination. Her retaliation claim failed because she did not engage in statutorily protected expression: the grievance she filed did not oppose a practice or make a charge under the ADA or RA, instead presenting her disagreement with the methods and conclusions of the investigation. Any responses to that grievance could not, therefore, constitute retaliation.

Retaliation

- *Steidle v. U.S. Liab. Ins. Co.*, 179 F.4th 193 (3d Cir. 2026) – In 2020, while on FMLA leave to treat his mental health condition, Jeffrey Steidle was awarded his smallest annual salary increase and bonus since he started working at USLI in 2013. In mid-2021, his request for accommodation under the ADA was granted, allowing him to work remotely and work adjusted hours. The raise and bonus he received at the end of that year were a bit larger than those he received in 2020, but were still lower than expected. When he was terminated in 2022, he sued for discrimination under the ADA and retaliation under the ADA and FMLA, and the district court granted summary judgment to USLI on all claims. On appeal, he challenged only the holding on the retaliation claims.

The Third Circuit vacated in part and remanded. It agreed with Steidle that the district court erred in holding that he did not suffer an adverse employment action when he received the lower-than-expected bonuses in 2020 and 2021. The district court erroneously applied a pre-*Burlington Northern* definition of adverse employment action in the retaliation context – one that “alters the employee’s compensation, terms, conditions, or privileges of employment, deprives him or her of employment opportunities, or adversely affects his or her status as an employee” – and held that the lower-than-expected bonuses did not constitute adverse employment actions. The Third

Circuit held that the Supreme Court’s formulation, in *Burlington Northern*, of an adverse employment action in the Title VII retaliation context – that “it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination” – applies to retaliation claims under the ADA and the FMLA as well. Since “Receipt of a lower than anticipated bonus and salary increase could certainly dissuade a reasonable worker from engaging in protected activity[.]” it concluded that the district court had erred in holding that Steidle did not suffer adverse employment actions in 2020 and 2021.

Regarding the causation element of Steidle’s claims, the Third Circuit held that the district court erroneously concluded that he failed to establish a causal connection for the 2020 raise and bonus. The court held that even though it was USLI’s practice to make bonus decisions late in the year, and Steidle himself acknowledged he struggled with some of his work responsibilities, these facts were not relevant at the causation stage when unusually suggestive timing (the 2020 raise and bonus decision was made while he was on FMLA leave) had been established. However, the Third Circuit found that the district court appropriately held that no causal connection existed for the 2021 raise and bonus – there was a six-month gap between protected activity and adverse action, and insufficient additional evidence of a causal link.

Accordingly, the court affirmed in part and vacated in part the district court’s grant of summary judgment for USLI, and remanded for the district court to consider whether Steidle could establish pretext. (This case is also discussed in the FMLA section of this outline.)

- *Gray v. State Farm Mut. Auto. Ins. Co.*, 159 F.4th 1024 (6th Cir. 2025), *reh’g en banc denied*, No. 24-3086, 2025 WL 3970068 (6th Cir. Dec. 30, 2025) – Monica Gray helped a colleague, Sonia Mauter, advocate for an ADA accommodation. When Mauter’s manager Joe Kyle reported Gray to HR for falsifying timesheet entries (a practice Gray alleged was common at their workplace), State Farm investigated and fired Gray. She sued for retaliation under the ADA and argued State Farm had vicarious (“cat’s paw”) liability for Kyle’s retaliatory reporting of her.

Finding several issues of material fact, the Sixth Circuit reversed summary judgment for State Farm. Regarding pretext, Kyle did not report Gray’s colleague, who had nearly identical discrepancies between her computer activity and timesheets, to HR. The court held that Gray being singled out for adverse treatment in this way was sufficient to raise a material dispute over Kyle’s motives.

Regarding causal nexus, the court held that Gray could show that Kyle intended to cause an adverse action against her for retaliatory reasons and that Kyle proximately caused her termination (as necessary for a cat’s paw claim). State Farm argued that Kyle’s report to HR was not biased because he honestly believed in the truth of his allegations. But, the court noted, a supervisor does not have to lie in order to be biased – they can cause an employee’s termination by reporting true, yet selective, information.

To refute proximate causation, State Farm argued that even if Kyle made a biased report, State Farm could not be liable because it independently investigated and confirmed

Kyle's allegations. But the court pointed out that when a supervisor reports true but selective information, an investigation will *always* confirm the report. State Farm made no effort to determine whether Kyle had a retaliatory motive, and a jury could conclude that State Farm acted as a conduit of Kyle's bias. The court wrote that a supervisor's true-but-selective report will not always be the proximate cause of any subsequent adverse employment action, but "a subsequent investigation that does nothing more than confirm a supervisor's true-but-selective report is by itself insufficient to break the chain of proximate causation."

- *Smith v. Mich. Dep't of Corr.*, 159 F.4th 1067 (6th Cir. 2025), *cert. denied*, 146 S. Ct. 2791 (2026), *reh'g denied*, No. 25-1028, 2026 WL 2613923 (U.S. Sept. 4, 2026) – Corrections officer Porter Smith appealed the jury verdict in favor of his employer, the Michigan Department of Corrections, on his retaliation claim under § 504 of the Rehabilitation Act, arguing that the district court erred as a matter of law when it instructed the jury that the causation standard for a Rehab Act retaliation claim was "sole causation." Neither party raised the issue of the legal basis of such a claim. The Sixth Circuit *sua sponte* considered whether § 504 of the Rehab Act actually provides a cause of action for retaliation, writing that "to resolve the question of the proper elements of a retaliation claim, including its potential causation element, we must first determine where the cause of action comes from."

The court observed that it has been the longstanding practice of the Sixth Circuit – and in fact every other circuit – "to proceed under the assumption that a cause of action for retaliation exists under § 504[.]" but courts have always done so without rigorously analyzing or clearly confronting the issue, "relying instead on a shared judicial assumption of its existence." It noted that the Supreme Court has not interpreted the Rehab Act with regard to a claim for retaliation.

Smith argued that a cause of action for retaliation under § 504 arises from § 504(d), "Standards used in determination of section," as it expressly incorporates the standards from the ADA's anti-retaliation provision, 42 U.S.C. § 12203. From this, he argued that § 504(d)'s cross-reference to the ADA not only imports standards for evaluating claims, but also creates a substantive cause of action for retaliation. The Sixth Circuit disagreed. It first noted that, as Spending Clause legislation, the Rehab Act must unambiguously put states on notice of any conditions it attaches to the receipt of federal funds, including exposure to private lawsuits. But "Congress's decision to omit a retaliation provision from the Rehabilitation Act—after it included such a provision in statutes such as the ADA, Title VII, and the ADEA—is strong evidence that it did not intend to authorize private retaliation claims under the Act."

Next, the court reasoned that "standards," in legal parlance, is not synonymous with "cause of action" ; "standard" refers to the rule or burden used to evaluate a claim rather than the source of the claim itself." Under this understanding of "standards," the court thought it likely that the use of the term in § 504(d) "was meant to inform how claims are assessed, not to authorize new categories of claims such as retaliation."

Concluding that § 504 does not provide a cause of action for retaliation, the court

affirmed the judgment in MDOC's favor: "MDOC cannot be liable for a cause of action that does not exist."

Note: The holding in this case may be of limited application in the CAA context, since the CAA includes its own protections for retaliation in connection with its discrimination protections. 2 U.S.C. § 1317.

- *DiChiara v. Summit Med. Grp., Inc.*, 181 F.4th 692 (6th Cir. 2026) – Physician Amy DiChiara opposed her employer's COVID vaccine requirement policy on both religious and scientific grounds. She corresponded with Eric Deters, a then-disbarred attorney using social media to advertise his plan for litigation to fight area hospitals' COVID vaccine policies, and forwarded him email exchanges between her and hospital officials. Though she asked him not to share the emails publicly, he used them as exhibits to a Title VII and ADA lawsuit he filed against the hospital. Shortly after, DiChiara was terminated for "misappropriation of company property, violations of company policy, disruptive and unprofessional conduct, and breach of loyalty[.]" She sued her employer for, in part, Title VII and ADA retaliation. Analyzing these together, the Sixth Circuit affirmed summary judgment for the employer.

The court examined DiChiara's conduct in light of the two distinct ways that Title VII and the ADA provide an employee can engage in protected activity – participation and opposition – and found that she engaged in neither. The indirect assistance she provided to Deters to help build Title VII and ADA claims did not constitute direct participation in a Title VII or ADA proceeding. No lawsuit was ongoing when she forwarded the documents to Deters, she was not a party to the later lawsuit nor did she intend to pursue any litigation, and she did not engage the firm to represent her at any point.

To engage in protected opposition, an employee must challenge an employment practice that they reasonably believe to be unlawful. The court concluded that DiChiara could show that she subjectively believed that her employer was engaging in discriminatory activity, but not that such a belief was objectively reasonable. No reasonable person could have believed that the facts known to DiChiara amounted to a violation of Title VII or the ADA – her employer's vaccine policy, which promised religious and medical accommodation, was facially legal, and she showed no additional basis to think the employer would act unlawfully. Since she did not show that she engaged in protected activity, she could not establish a prima facie case of retaliation.

Medical Examinations and Disability-Related Inquiries

- *Zarn v. Minn. Dep't of Hum. Servs.*, 165 F.4th 1143 (8th Cir. 2026) – Benjamin Zarn worked as a Forensic Support Specialist, providing direct support to individuals who were committed by MDHS to a secure treatment center. When MDHS circulated a policy in 2021 requiring in-person employees to provide proof of COVID-19 vaccination or take weekly COVID tests, Zarn objected and sued. He argued that MDHS's COVID testing requirement was neither job-related nor consistent with business necessity, in violation of the ADA's prohibition on employer medical exams and inquiries. The Eighth Circuit disagreed. It found that MDHS satisfied the business necessity standard by considering

factors laid out in EEOC's COVID guidance document, including community transmission levels and what types of contacts employees have with others in the workplace. It further found that the testing requirement, at least as applied to Zarn, was job-related because his job required him to interact directly with patients and ensure a safe environment for them.

- *Carney v. Emory Univ.*, No. 24-13070, 2026 WL 1020480 (11th Cir. Apr. 15, 2026) – Following an internal investigation into concerns about Dr. K. Jeff Carney's professionalism and respectfulness, Emory directed him to receive leadership coaching from its Faculty Staff Assistance Program (FSAP). He refused to engage with FSAP until after he was notified that his appointment would not be renewed. He sued, alleging Emory had terminated him for refusing what amounted to a medical examination that was not job-related and consistent with business necessity.

The Eleventh Circuit disagreed and affirmed summary judgment for Emory. Emails communicating the requirement to Dr. Carney made clear that the coaching was for communication skills necessary for his leadership position, and did not constitute psychological counseling or require that he undergo a procedure or test. He argued that FSAP provided an array of services, including some that qualified as medical examinations, and the specific FSAP staff he had been referred to were psychologists. The court responded that the mere fact that he could have obtained mental health services from FSAP was not evidence that Emory required him to receive such services.

Dr. Carney also argued that the “invasive” questions about sleep, exercise, appetite, and stress that he was asked when he went to FSAP after his nonrenewal were evidence that Emory had required a medical exam. The court disagreed that the content of that session was necessarily comparable to the hypothetical content of an earlier session. It also found that such questions, in the context of his recent termination, were comparable to the “inquiries about an employee's well-being and ‘how an employee is doing following’ a significant life event” that are permitted in EEOC guidance on medical examinations.

Title II

- *Molosso v. Bd. of Supervisors Univ. of La. Sys.*, No. 25-30362, 2026 WL 799509 (5th Cir. Mar. 23, 2026) – When she was dismissed from nursing school at the University of Louisiana at Monroe (ULM) after failing multiple courses, Jennifer Molosso sued, alleging that ULM failed to accommodate her ADHD and depression. To succeed on appeal, she needed to prove that ULM knew of her disability and its consequential limitations – either because (1) her disability, resulting limitation, and necessary reasonable accommodation were all open, obvious, and apparent to ULM, or (2) she requested an accommodation.

First, Molosso argued that her disability and resulting limitations were “open and obvious” because she had disclosed her ADHD and testing difficulties to a professor. The court disagreed: “if an entity can only know of a disability by the plaintiff's notification, then it will not generally be open and obvious.” Even if disclosure could meet the “open and obvious” exception, the court held that her disclosure of ADHD did not also make

any resultant limitations and need for accommodation open and obvious.

She then argued that even if her disability was not “open and obvious,” ULM knew of her disability and limitations because she requested accommodations. The court held that her asking a professor about accommodations – instead of following the appropriate procedure by going to ULM’s accommodations office – did not constitute an accommodation request that would apprise ULM of her disability, limitations, and need for accommodation. Since *Molosso* could not prove that ULM knew of her disability and consequential limitations, the court affirmed summary judgment for ULM.

Note: Employing offices should note that the standard for employer knowledge of an employee’s disability under Title I differs. For instance, whereas the court in *Molosso* wrote that “a student must bring a request for accommodation to the proper office, rather than making it verbally to an advisor” (cleaned up), an employee does not need to make a formal request for accommodation to put the employer on notice of their disability and need for accommodation. Instead, *Molosso* is included here to the extent it is relevant to employing offices that provide public services covered by Title II of the ADA as applied by section 210 of the CAA.

Age Discrimination in Employment Act (ADEA)

Discrimination against employees age 40 and over is prohibited by the ADEA, applied by section 201 of the CAA, 2 U.S.C. § 1311. Since the 2020 Supreme Court decision in *Babb v. Wilkie*, 140 S. Ct. 1168 (2020), courts have applied a less stringent standard of causation to federal sector ADEA plaintiffs than the private sector’s “but-for” causation standard; however, cases involving private sector employees can still be instructive regarding other aspects of ADEA claims.

- *Warner v. DeJoy*, 153 F.4th 109 (1st Cir. 2025) – Elizabeth Warner was a 58-year-old postmaster who applied for a promotion, but the USPS chose a 36-year-old postmaster instead. During her interview, the hiring official had asked Warner whether she thought “she had the energy” to manage the more demanding office. When Warner was not selected for the promotion, she sued, alleging age discrimination. Before the district court, Warner strategically chose to apply the stricter but-for causation standard from *McDonnell Douglas* instead of the lower “free from any discrimination based on age” standard for federal employees. On appeal, the First Circuit recognized this error and held Warner to the higher standard, finding that while she established a prima facie case, she could not prove that the USPS’ reasons for the decision were pretextual. In particular, Warner was able to identify inconsistencies in the USPS’ reasoning, but that is not enough: the plaintiff must “elucidate specific facts which would enable a jury to find that the reason given is not only a sham, but a sham intended to cover up the employer’s real [discriminatory] motive.” Because Warner could not do that, her case was dismissed on summary judgment. The court also noted that comments about Warner’s “energy” do not necessarily connote age and are not enough to overcome the USPS’ evidence of a legitimate non-discriminatory basis for the decision.

- *Walsh v. HNTB Corp.*, 169 F.4th 330 (1st Cir. 2026) – Plaintiff Joanne Walsh, a 55-year-old IT employee, was placed on a Performance Improvement Plan and then resigned. She sued under the ADEA, alleging the employer discriminated against her by putting her on the PIP, not giving her any raises for three years, and forcing her out via constructive discharge. The district court held that she failed to present evidence that the company subjected her to an adverse employment action. The Supreme Court decided *Muldrow v. St. Louis*, 601 U.S. 346 (2024), while the case was on appeal. The First Circuit analyzed whether plaintiff’s case would still fail under the heightened *Muldrow* standard and found that it would. First, the court noted that whether a PIP is an adverse employment action depends on whether the PIP imposes new job responsibilities, changes the present terms of employment, or deprives an employee of potential advancement opportunities. Because this PIP did none of those, it was not actionable. Second, Walsh alleged that she did not receive a raise for three years, but the evidence showed she was unaware that that she had hit the maximum salary for her position. It was true that she could have gotten a bonus, but that was too speculative. Finally, she did not present enough evidence to show a constructive discharge. Although she did endure harsh comments, like being told to “shut up” and “stop asking” which other employees complained about her, the bulk of her allegations depended on “subjective beliefs about her manager’s style of supervision.” Complaints that her manager “made mountains out of molehills,” “micromanaged,” and “took credit” for things she had done may be unfair, but they did not make resignation her only option.
- *Lee v. W. Va. Univ. Med. Corp.*, 181 F.4th 424 (4th Cir. 2026) – Mark Lee, a 59-year-old doctor, was offered to transfer out of his position as Chair of Neurosurgery after his supervisors noticed that he was frequently absent and inattentive. When he received the offer, his supervisors told him that they “wanted to recruit someone much younger . . . who would have a 10-15 year ‘runway’ to stay.” The plaintiff argued that these statements were direct evidence that age was a but-for cause of the hospital’s decision to remove him. The Fourth Circuit disagreed, holding that these amounted to “isolated comments that recognize the effects of age and longevity on a company’s long-range planning” and were not evidence of unlawful age discrimination. The court also found that the context of the statements supported the conclusion. The supervisors made the comments during a conversation about including the plaintiff in the search for his successor. The supervisors anticipated that the plaintiff would be leaving and were discussing the criteria for his replacement, rather than revealing the reasons for the switch.
- *Richardson v. Nw. Mem’l Healthcare*, 183 F.4th 895 (7th Cir. 2026) – Defendant hospital hired Robert Richardson, a neurosurgeon, when he was 75 years old. He was paid less than other surgeons and worked in an assistant-like role to the other doctors. At the beginning of the COVID pandemic, the hospital stayed open but instructed Richardson to work from home “because of his age and because of the risk of contracting COVID, and if he was on a ventilator he’d be a goner.” The hospital then terminated Richardson in September 2020. The hospital stated that they were transitioning to a model of having nurse practitioners serve in the role Richardson occupied. Richardson countered that the hospital had hired a different, younger neurosurgeon just one year later. The hospital responded that the new surgeon was fulfilling all the duties of the other surgeons, unlike

Richardson, who was only assisting. The Seventh Circuit affirmed summary judgment for the hospital. The court reviewed the evidence and noted that Richardson had never worked for the hospital as a full-fledged neurosurgeon. He was not covering the hospital by himself and never demonstrated that he was able to. Therefore, the evidence supported the employer's lawful justification for terminating him: hiring lower-paid nurse practitioners in his place.

- *Caldron v. Circle K Stores Inc.*, 156 F.4th 952 (9th Cir. 2025) – Plaintiffs were three Circle K employees over the age of 54. A regional director position became available, but none of them were given a chance to apply. Circle K hired a 45-year-old employee for the position. The district court granted Circle K's motion to dismiss, finding that the employees failed to state a prima facie case because they did not apply for the position. The district court also held that the 9.3-year age gap between the youngest plaintiff and the selected employee was too small to give rise to a presumption of discrimination. However, the Ninth Circuit reversed and remanded. First, the court held that the plaintiffs should not be blamed for not applying to a position “when an employer declines to solicit applications and does not announce that a position is available.” Second, the court clarified its earlier precedent, which had held that “an average age difference of ten years or more between the plaintiff and replacements will be presumptively substantial.” The court explained that a plaintiff less than ten years older than their replacement can rebut this presumption with evidence showing the employer considered their age to be significant. Because the younger plaintiff provided such evidence in this case, the Ninth Circuit remanded the case for further proceedings.
- *Jiang v. City of Tulsa*, 169 F.4th 1194 (10th Cir. 2026), *reh'g en banc denied*, 181 F.4th 1333 (10th Cir. 2026) – Hua Jiang, a long-tenured Chinese-American engineer, applied to be the superintendent of a city water treatment facility. The job posting required applicants to have a college degree in a related field. The plaintiff had that degree, but the city chose a younger white employee without a degree instead. The selected candidate had leadership experience which the plaintiff lacked. The plaintiff complained about the inconsistency. The city then withdrew its offer to the white employee and reposted the position without the degree requirement. The same applicants applied and the city again chose the white employee it had selected previously. The plaintiff sued, alleging a violation of the ADEA and Title VII. He argued that the city's stated reason for hiring the selected candidate – leadership experience – was pretextual.

The plaintiff cited three aspects of the city's decisions that showed pretext: procedural irregularities in the decision, the subjective nature of the selection, and Jiang's overqualification for the position. The district court and Tenth Circuit rejected all three arguments. The court held that the procedural irregularities – mainly, rewriting the job posting so the preferred candidate met the qualifications – may not be “wise, fair, or correct,” but they did not show age discrimination. They merely showed that the city wanted a certain candidate for the position. Second, while employment decisions can be so subjective that they reveal pretext, that was not so here. The court only sends subjective decisions to a jury when they are so opaque that the criteria are entirely subjective. Here, there was no dispute that the chosen candidate had more leadership experience than the plaintiff. Similarly, it is possible for a jury to find pretext when there

is an overwhelming disparity between the qualifications of the plaintiff and the chosen candidate, but that did not happen here, given that the plaintiff did not have the leadership experience of the chosen candidate.

Title VII of the Civil Rights Act of 1964

Title VII, applied by section 201 of the CAA, 2 U.S.C. § 1311, prohibits discrimination on the basis of race, color, religion, sex (including sexual orientation and gender identity), or national origin.

The cases below are grouped loosely by subtopics within Title VII. Many of the opinions include discussions about more than one of these topics and could therefore fit into multiple categories; we have assigned each case to its category based on the topic we find most interesting or instructive within each opinion.

Adverse Action

- *Dolce v. Connetquot Cent. Sch. Dist.*, — F.4th —, No. 25-1197, 2026 WL 2560338 (2d Cir. Aug. 31, 2026) – A school district ordered three teachers – all of whom were members of the LGBTQ+ community – to remove pride flags or pride flag stickers from their classrooms, and one of the teachers was also required to make changes to the permission slips she planned to use for a field trip to an LGBT Youth Conference, to give students’ parents “more specific information” about the field trip. The teachers sued, alleging constitutional and statutory violations including employment discrimination based on sexual orientation under Title VII. The district court dismissed their complaint in its entirety, and the Second Circuit affirmed. With respect to the Title VII claims, the court quoted the recent Supreme Court case of *Muldrow v. City of St. Louis*, 601 U.S. 346, 355 (2024), which clarified that to demonstrate an adverse employment action one must show “some harm respecting an identifiable term or condition of employment.” Here, the plaintiffs failed to plead that they suffered any such harm: they “were not fired or otherwise disciplined for their advocacy. Their pay did not change. Their working hours, job titles, and job responsibilities did not, either. The most they can allege is that they used to display particular flags or stickers on the walls or doors of their classrooms and now cannot, or that they were required to remake a permission slip for an extracurricular field trip. And those changes do not in any way impact ‘an identifiable term or condition of [their] employment,’ nor do they reflect ‘some injury respecting’ one. They are therefore not enough to state a claim under Title VII.” (quoting *Muldrow*, 601 U.S. at 355, 359).
- *Gabriel v. DSM Biomedical, Inc.*, 187 F.4th 77 (3d Cir. 2026) – Gersen Gabriel, a Black factory manager, raised several claims including race discrimination, based on alleged actions by a White executive who was in charge of safety at the facility. The executive was rude to Gabriel, conducted an extra safety audit, and kept Gabriel’s facility on a list of the top ten sites company-wide that needed safety improvements; Gabriel was also required to report to the head of operations of the health division in addition to his regular supervisor. Gabriel believed that these actions were the result of him being targeted

because of his race. His claim failed, however, because he did not show that he suffered an adverse employment action. He may have alleged “some harm” – namely, pressure and stress from what he saw as the safety executive’s bullying and intimidating behavior and the extra scrutiny on safety as his facility – but he was required to show that these actions cause some harm to “an identifiable term or condition of his employment,” and there was “no evidence that his job, salary, benefits, hours, perks, prestige, opportunities, or the like were tied to getting the Factory off the top-ten list” or that any such harm was caused by the addition of an extra audit. Even if he could make this showing with respect to having an extra supervisor to report to, he did not produce any evidence linking this or any of the other alleged adverse actions to his race. Ultimately, although the court recognized that Gabriel’s stressful workplace undoubtedly made him miserable, “Title VII does not ban mere rudeness or protect against abrasive bosses.”

- *Bilyeu v. UT-Battelle, LLC*, 154 F.4th 396 (6th Cir. 2025) – Jeffrey Bilyeu alleged that the denial of his request for a religious exemption from his employer’s COVID-19 vaccination requirement constituted religious discrimination and retaliation under Title VII. The district court granted summary judgment for the employer, but the Sixth Circuit reversed. With respect to the discrimination claim, the district court had found that the alleged harm – i.e., Bilyeu being forced to take unpaid leave – was not an adverse employment action, but that was prior to the Supreme Court issuing its decision in *Muldrow*; similarly, where a plaintiff alleges failure to accommodate, being forced to choose between violating a workplace policy or violating one’s religious beliefs may be enough to satisfy the *Muldrow* “some harm” standard as well. The Sixth Circuit therefore remanded in order for the district court to apply the updated standard. As for the retaliation claim, although the court explained that the denial of a religious accommodation claim alone cannot constitute retaliation, it also considered Bilyeu’s evidence that when the employer interviewed him in connection with his accommodation request, it subjected him to “a gauntlet of inappropriate questioning of his religious beliefs and attempted re-education as to his moral views.” The court held that Bilyeu had provided “sufficient evidence for a reasonable jury to question whether UT-Battelle crossed the line from education into proselytizing to its employees as to whether vaccinations are sinful” and that a reasonable jury could determine that such an interview process could dissuade a reasonable worker from making a religious accommodation request. It therefore reversed the district court’s grant of summary judgment on Bilyeu’s retaliation claim as well.

Comparators

- *Clark v. Trs. of the Univ. of Penn.*, No. 24-2926, 2025 WL 3516770 (3d Cir. Dec. 8, 2025) – A pharmacist was fired for sleeping on the job, and sued his employer for race discrimination, alleging that similarly situated comparators outside of his protected class who had engaged in misconduct of comparable seriousness had not been fired. The district court granted summary judgment for the employer and the Third Circuit affirmed, explaining that although comparators need not be identical to the plaintiff, they must be similarly situated in all material respects, including that they engaged in the same conduct that led to the plaintiff’s discipline. Even though the comparators in this case had engaged in conduct that would typically result in termination under the employer’s

progressive discipline policy, they were not appropriate comparators because, as the court put it, “they engaged in different misconduct implicating different safety risks than sleeping on the job. ... [A]n employer’s adoption of a progressive discipline policy does not render each employee who is eligible for the same sanction ‘similarly situated’ for purposes of Title VII,” particularly when – as in this case – the policy states that progressive discipline is optional and the employer may therefore deviate from the steps.

- *Johnson v. Baltimore City, Md*, 163 F.4th 808 (4th Cir. 2026) – Wanda Johnson, a Black former Baltimore police officer, alleged race discrimination and retaliation in violation of Title VII after she was suspended and later forced to resign following an Internal Affairs investigation into an altercation at her bachelorette party. The district court granted the city’s motion to dismiss; the Fourth Circuit affirmed as to the retaliation claim, because the chain of events leading to Johnson’s termination began before she engaged in any protected activity, but reversed and remanded the dismissal of her discrimination claim. The district court had dismissed that claim on the basis that Johnson had failed to allege the existence of a similarly situated comparator outside her protected class who had been treated more favorably, but the Fourth Circuit disagreed. The court acknowledged that there is no bright-line rule for what constitutes sufficient commonality between a plaintiff and her would-be comparators, but noted that the similarity between the plaintiff and the comparators, as well as the seriousness of their respective offenses, must be clearly established in order to be meaningful. Comparators need not be similar in *all* respects, but rather in all *relevant* respects.

In this case, Johnson identified 13 non-Black comparators and listed each of their alleged offenses, including several who committed physical assaults, engaged in disorderly conduct, and/or made false statements – the same types of misconduct of which Johnson had been accused. She alleged that none of these individuals had been fired or forced to resign, some had not been disciplined at all, and some had even been promoted later on. Although none of these comparators committed the exact same offenses as Johnson, the Fourth Circuit held that the district court erred in requiring “a perfect one-to-one match between proffered comparators’ conduct and [Johnson’s] alleged conduct[.]” The comparators’ misconduct was similar enough to the plaintiff’s as to be meaningful, and would allow a jury to reach an inference of discrimination.

- *Pratt v. Wis. Aluminum Foundry*, 183 F.4th 541 (7th Cir. 2026) – Human Resources manager Debra Pratt alleged, among other things, sex discrimination and retaliation under Title VII, after receiving a poor performance review and ultimately being fired. Upon assuming her role, Pratt had taken an active role in investigating and reporting employee complaints of discrimination and harassment based on sex, race, ethnicity, and disability, which, as the court described it, “began to ruffle some feathers within the company” and “did not make her popular” with company management. This led to a poor performance review, and one week after she complained to her supervisor to say she felt that she was being retaliated against for making reports about discrimination and harassment, she was fired.

The district court granted summary judgment for the company, but the Seventh Circuit reversed. With regard to the discrimination claim, the court explained that the question

was whether Pratt would have been fired if she were a man and everything else remained the same. The court identified three types of circumstantial evidence that can support an inference of intentional discrimination – ambiguous or suggestive comments or conduct, better treatment of people similarly situated but for the protected characteristic, and dishonest employer justifications for disparate treatment – and determined that Pratt had produced substantial evidence falling within each of these categories, and that “Viewing this evidence holistically, we conclude that there is at least one reasonable way to tell the story in favor of her sex discrimination claim.”

Of particular interest is the court’s detailed analysis regarding similarly situated comparators. In this case, Pratt identified two male managers who were at a similar managerial level as Pratt, reported to the same supervisor, and were subject to the same feedback process; although, like Pratt, they both received negative feedback, neither one was disciplined or fired, and one even received a bonus. Even though they were not HR managers like Pratt, “it would be impossible to find Pratt’s twin given that Pratt was the sole leader of WAF’s HR department, and thus, no one else at WAF had the same job description as her (or, most likely, comparable experience, education, and other qualifications). We decline to read a gaping hole into Title VII precluding executives, without direct professional peers, from proving their discrimination claims.” The court cautioned that there is no “magic formula” or “hard and fast test” for deeming comparators to be similarly situated, and so the key to the inquiry is to submit relevant evidence. Here, the two male managers were reviewed in the same category as Pratt, and under the same criteria, and thus were meaningful comparators for Title VII purposes.

As for Pratt’s retaliation claim, the court pointed out that “Title VII does not just protect employees who can accurately divine whether a claim has merit before reporting it to a supervisor. Rather, it protects all who honestly and reasonably believe they are reporting prohibited conduct. On this point, the district court held Pratt to too high of a standard.” The record evidence showed that “Pratt honestly believed she was opposing unlawful behavior” and that “Her belief also appears reasonable.” Indeed, Pratt “participated in a host of protected activity by repeatedly communicating conduct to Jacobs that she believed was prohibited under Title VII. She reported multiple instances where Boyd made inappropriate comments to women, including that he called another employee a ‘bitch,’ and that she believed he treated women employees worse than men. She also reported another WAF manager for treating minority employees differently than white employees.” Her reports also included “blatantly sexist insults” made against Pratt herself, and instances where she believed she was being retaliated against. “Between her reports and her personal complaints of retaliation, Pratt established that she had a reasonable and good faith belief that she was opposing unlawful conduct under Title VII.” The district court therefore erred in holding that Pratt did not engage in protected activity, and the temporal proximity between her protected activity and her termination, combined with other evidence of pretext, was enough to survive summary judgment.

Pretext

- *Lane v. Stericycle, Inc.*, 162 F.4th 866 (7th Cir. 2025) – Four female employees of a healthcare waste disposal company sued their employer under the Equal Pay Act and

Title VII, alleging that they unlawfully received a lower base salary than their male counterparts. All four women had been promoted into the newly-created role of Key Account Director (KAD), but did not initially see a change in pay; several months later, after they complained to the company's director of human resources, their salaries were raised to \$98,000. During litigation they produced evidence of nine male KADs – two of whom had also been promoted, and the other seven of whom had been transferred – who were either making more money for performing the same job or who had received raises immediately upon promotion to the KAD role, unlike the plaintiffs. Stericycle's argument against both claims was that the disparity in base salaries was based on the difference in what the female and male employees were already being paid before they became KADs, and that it had nothing to do with their sex.

With respect to the Title VII claim, the district court granted summary judgment to Stericycle, concluding that the company's sex-neutral salary history justification was a legitimate non-discriminatory reason for the differential treatment and that the plaintiffs had failed to show that this reason was pretextual. The Seventh Circuit agreed with that conclusion as it concerned the seven men who had been transferred into the KAD position, all of whom had already been making more than \$98,000 pre-transfer and all of whom continued to receive their same salaries post-transfer. However, the court reached the opposite conclusion with respect to the two male comparators who, like the plaintiffs, had been promoted into the new role, but who had received pay raises right away. The fact that the male KADs received raises upon promotion, but the female KADs did not, and in fact did not receive raises at all until they complained to HR several months later, created a genuine dispute of material fact as to whether Stericycle's nondiscriminatory explanation for its pay decisions was inconsistently applied and therefore untrue, from which a reasonable jury could conclude that it was pretext for unlawful discrimination. The court therefore reversed and remanded. (This case is also discussed in the Fair Labor Standards Act/Equal Pay Act section of this outline.)

- *Wilson v. AIM Specialty Health*, 176 F.4th 977 (7th Cir. 2026) – The plaintiff, Kellie Wilson, worked for AIM for eight years before being promoted, and although she received merit-based salary increases during her tenure at AIM, she alleged that colleagues of other races were promoted more quickly and received higher salaries from the start. She sued, among other things, for race-based discrimination under Title VII. The district court granted summary judgment for AIM and the Seventh Circuit affirmed, holding that although reasonable jurors could find that her former supervisor disliked her and even potentially mistreated her, and could question as faulty or mistaken the reasoning behind AIM's pay and promotion decisions, that is not enough to establish discrimination under Title VII. Regardless of whether she had proffered sufficient comparators and established a prima facie case, she could not show that the reasons either for the disparate pay or the failure to promote were pretextual or that the real reason was her race. Even if AIM could be found to have "mistaken judgment" in some instances, the "heart of the pretext inquiry" is the "sincerity of AIM's belief" that other individuals were worthier of promotions and pay increases. Wilson did not produce sufficient evidence to allow a jury to "reasonably conclude that AIM's processes were phony in order to set Wilson's pay based on her race" or to "infer that AIM's justifications for

promoting other employees, but not Wilson... were dishonest.”

Hostile Work Environment

- *Brenyah v. Columbia Hosp. Corp. of Bay Area*, 181 F.4th 609 (5th Cir. 2026) –Brenda Brenyah, a Black woman of Ghanaian origin, alleged, among other things, the existence of a hostile work environment based on her race and national origin. The Fifth Circuit affirmed the district court’s grant of summary judgment on most of Brenyah’s claims, but held that the district court erred in granting summary judgment on her hostile work environment claim. The employer did not dispute that Brenyah established the first three elements of a hostile work environment claim – namely, she is a member of a protected group, she suffered unwelcome harassment, and the harassment was based on her membership in the protected group. The dispute arose over the fourth and fifth prongs: whether the harassment affected a term, condition, or privilege of employment, and whether the employer knew or should have known of the harassment and failed to take prompt remedial action.

The court held that Brenyah had produced enough evidence to create a genuine fact issue regarding whether the harassment was severe or pervasive enough to support a claim. She described many different types of racist comments directed toward her, along with other harassment such as coworkers mocking her Ghanaian accent, as well as harassment suffered by a Black colleague that Brenyah witnessed; she asserted that these incidents “occurred almost every shift and impaired her work, caused her to question how she could function in such an environment, and made her feel ‘less than human.’” She also produced evidence that the incidents “impacted her mental health, pointing to counseling records showing that she was distressed, traumatized, and afraid of being harmed.” This was enough to enable a reasonable jury to rule in her favor on this element.

Brenyah also raised a triable fact issue with respect to her employer’s knowledge and response, as there was evidence in the record that although the company did investigate her complaints, its investigation may have been insufficiently prompt and thorough, and that the actions it took based on that investigation were not reasonably calculated to end the harassment. There were discrepancies in the testimony of the investigators about the interview and their records, certain witnesses were not interviewed, statements potentially corroborating Brenyah’s complaint were left out of the investigation summary, and the company did not follow its usual practices in interviewing Brenyah and the other employee who suffered harassment. Moreover, some of the harassing behavior continued after the investigation. A reasonable jury could find for Brenyah on this element as well, and therefore summary judgment was inappropriate.

- *Smith v. P.A.M. Transp., Inc.*, 154 F.4th 375 (6th Cir. 2025) – Two Black truck drivers sued their former employer for creating a racially hostile work environment. They alleged, among other things, that they were assigned longer routes with longer wait times than their White coworkers; that their White coworkers received vacation time and holiday pay whereas the plaintiffs did not; and that they were often subjected to pejorative remarks, treated in a hostile and demeaning manner, criticized, screamed and

cursed at, and threatened with termination or the withholding of pay. They reported the conduct to their supervisor, but the alleged misconduct continued. One of the plaintiffs quit, and the other was fired, supposedly for performance issues, despite no previous formal discipline. The drivers sued, alleging race discrimination, retaliation, and hostile work environment. The district court granted summary judgment to the employer on all of the claims, and the drivers appealed only the hostile work environment claim.

The Sixth Circuit reversed the grant of summary judgment on the hostile work environment claim, holding that sufficient evidence had been produced to raise genuine issues of material fact as to each element of the prima facie case. The district court erred in holding that the supervisors' use of the terms "monkey" and "monkey ass" did not constitute evidence of racial harassment, as "The term 'monkey' has an extensive history as a racial slur against African Americans" and thus it is reasonable to conclude that the use of that term against African Americans is intended to be a racial insult; "Consequently, circuit courts, including our circuit, have overwhelmingly held that the use of the term 'monkey' against an African American employee constitutes evidence of race-based harassment sufficient to support a hostile work environment claim." Moreover, the court's analysis was not affected by the fact that one of the supervisors using this term against the plaintiffs was himself African American, because although that may be material depending on the context, courts recognize that Title VII can be violated by members of the same protected class as the victim of discrimination. The court also noted that when it comes to egregious racial slurs, even a single incident may be severe enough to constitute a hostile work environment, particularly when the slur is used by a manager.

The court went on to hold that the district court erred in rejecting the plaintiffs' additional evidence regarding extra loads, work assignments, and excessive hours as compared to non-African American drivers in support of their hostile work environment claims. That unfavorable treatment, combined with the racial slurs and other verbal abuse in the record, was enough for a reasonable jury to find that they had suffered actionable race-based harassment that unreasonably interfered with their employment.

- *Hamm v. Pullman SST, Inc.*, 167 F.4th 382 (6th Cir. 2026) – Construction worker Kevin Hamm alleged that his coworkers harassed him after learning that he was bisexual, and that his employer later fired him for complaining about the harassment. The district court granted summary judgment for the employer, and the Sixth Circuit affirmed. First, the court held that the company was not liable for the sexual harassment because it took adequate steps to address Hamm's concerns: HR conducted a good-faith investigation starting the day after Hamm formally complained, and even though they could not corroborate Hamm's claim that his coworkers violated the company's antiharassment policy, they decided to take several preventive measures, including requiring all company employees to re-read and re-sign the policy and requiring supervisors to attend in-person antiharassment training. The company also agreed to reassign Hamm to another worksite where he would not have to work with the individuals who allegedly had harassed him. This was enough to satisfy the requirement that employers take "prompt and appropriate corrective action" after learning of harassment, and thus Pullman could not be liable.

Second, the court held that Pullman had identified a non-retaliatory reason for terminating Hamm – i.e., after the company agreed to reassign him, he refused to accept any alternative job that was subsequently proposed to him, raising a variety of concerns including the distance to one job site, the quick start date for another job, his fear of heights, or conflicts with the shift times, such that Pullman had no work to give him – and Hamm could not demonstrate that this reason was pretextual. Therefore no reasonable jury could find that Pullman retaliated against Hamm for complaining about the harassment, and summary judgment was appropriate.

- *Bruce v. Adams & Reese, LLP*, 168 F.4th 367 (6th Cir. 2026), *reh'g en banc denied*, No. 25-5210, 2026 WL 1642204 (6th Cir. Apr. 9, 2026) – Before coming to work as a paralegal at Adams & Reese (A&R), plaintiff Randi Bruce worked at another law firm, in the same group as an attorney named Rob Pinson. That group later switched firms, joining A&R. Bruce was eventually terminated after chronic lateness that she attributed to medical conditions and medication, and she subsequently sued, alleging among other things a Title VII claim based on Pinson's alleged sexual harassment of her, which she claimed began at their previous firm and continued after they moved to A&R.

Notably, the court declined to consider Bruce's allegations regarding Pinson's conduct toward her at their previous employer. Because Bruce was proceeding against A&R on a theory of vicarious liability, which "requires an employment or agency relationship between a defendant and a malfeasor," A&R could not be held liable for actions Pinson took before he worked there.

However, Bruce's allegations about Pinson's harassing behavior after they started working at A&R were sufficient to state a plausible claim for sexual harassment under Title VII. She alleged that he continuously made inappropriate comments about Bruce's appearance, clothing, and private life, including inappropriate comments related to her engagement and her relationship with her fiancé; it was not necessary for her to allege the precise details of each and every such comment in order to survive a motion to dismiss. Indeed, requiring her to "recount with specificity each instance of Pinson's behavior... would impose a higher burden than is required even at summary judgment." The allegations were worded in such a way as to suggest the harassing language was regular and habitual, not simply discrete one-time comments, and viewed in the light most favorable to Bruce and drawing all inferences in her favor, the court held that she plausibly alleged conduct sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment.

- *Pannek v. U.S. Bank Nat'l Ass'n*, 186 F.4th 382 (6th Cir. 2026), *reh'g en banc denied*, No. 25-3706, 2026 WL 2823597 (6th Cir. Sept. 11, 2026) – Two former employees of U.S. Bank, Mark Pannek and Thomas Strotman, sued for hostile work environment and retaliation under Title VII, among other things. They alleged that one of their supervisors had created a hostile work environment by sharing explicit details with them about his sex life, and by belittling Pannek and forcing him to bet on how much an audit would cost the company. They also alleged that they were terminated in retaliation for Pannek filing an internal ethics complaint about that supervisor's conduct. The district court granted summary judgment in favor of the employer on all claims.

With respect to the hostile work environment claim, the court acknowledged that Title VII covers same-sex harassment, such as that complained of by the male plaintiffs here, who alleged that their male supervisor sexually harassed them by making frequent inappropriate comments about women. However, in this case U.S. Bank successfully asserted the *Faragher/Ellerth* affirmative defense, which requires an employer to show (1) that it exercised reasonable care to prevent and correct any harassing behavior, and (2) that the plaintiffs unreasonably failed to take advantage of the preventive or corrective opportunities provided by the employer. Here, the court determined that U.S. Bank had a reasonable sexual harassment policy, which prohibits sexual harassment and other inappropriate conduct, defines sexual harassment and gives examples of such behavior, requires managers and supervisors to report any issues, provides employees with several options for reporting misconduct, and requires training for new employees as well as periodic refresher training. After the ethics complaint was filed, U.S. Bank issued a written warning to the plaintiffs' supervisor, reprimanding him for his behavior, and as a result he faced several financial consequences; afterwards, the offensive behavior stopped. Therefore the court found that U.S. Bank satisfied the first prong. As to the second prong, the court held that the plaintiffs unreasonably failed to take advantage of U.S. Bank's corrective opportunities: it took four months after the behavior started for Pannek to file the complaint, and even then he mostly focused on the belittling conduct rather than the sexual harassment; meanwhile, the other plaintiff, Strotman, never reported the supervisor's conduct at all. Therefore the employer's defense was successful and the hostile work environment claim failed.

However, the Sixth Circuit reversed the district court's judgment on the retaliation claim. The plaintiffs demonstrated temporal proximity between their protected activity (i.e., the filing of the ethics complaint) and their termination – less than two months – and although U.S. Bank claimed that the decision to terminate them was made before Pannek filed the ethics complaint, which would defeat causation, there was testimony showing that the “final determination” about whom to terminate wasn't made until *after* the ethics complaint was filed. Moreover, U.S. Bank asserted that the plaintiffs were terminated as part of a reorganization, but there was evidence that this explanation was pretextual – in particular, testimony that the decisionmaker's supervisor did not expect the reorganization to involve terminating employees. This was enough to raise a genuine issue of material fact as to whether the plaintiffs' protected activity factored into the decision to terminate them, and summary judgment was not appropriate.

- *Sanchez v. El Milagro, Inc.*, 176 F.4th 961 (7th Cir. 2026), *reh'g en banc denied*, No. 24-3250, 2026 WL 1998473 (7th Cir. July 9, 2026) – Alma Sanchez, an employee at an El Milagro tortilla factory, alleged that she was sexually harassed by a coworker and that the company did not promptly investigate her allegations. She alleged three discrete instances in which the same coworker touched her buttocks, including rubbing his genitals against her, and claimed that she had reported those instances to her supervisor shortly after they happened, before eventually submitting a written statement to HR.

Although there were only three instances, and therefore the harassment was not pervasive, the court explained that it is well established in the case law of the Seventh

Circuit and other circuits that “the inappropriate touching of an intimate body part presents a particularly egregious situation.” A reasonable factfinder could conclude that, especially given the circumstances surrounding the touching – including comments Sanchez overheard from coworkers about the incidents, and some evidence that the harasser was upset that Sanchez had been granted a work accommodation – these incidents constituted “the type of sexual harassment that the law was designed to prevent.”

However, the court ultimately affirmed summary judgment for El Milagro, because the record showed that the company took prompt corrective action to address the harassment once it was put on notice. To begin with, the court did not believe a reasonable jury could conclude that Sanchez gave her supervisor enough information after the first two instances to put the employer on notice that she was being sexually harassed, because the way she described the incidents made it seem like she thought her coworker bumped her accidentally while they were working together in close quarters. When she finally submitted a written complaint and made it clear that she felt she was being sexually harassed, HR began its investigation right away, interviewing both parties separately three days after the complaint was filed, and concluding the investigation within two weeks. Indeed, after the investigation there were no further incidents of harassment. Thus the court held that El Milagro’s response was adequate and it was not liable for the conduct of Sanchez’s coworker.

- *Golat v. Skwierawski*, 184 F.4th 938 (7th Cir. 2026) – Shannon Golat, who worked as a court reporter for a judge, alleged among other things that she had been subjected to a hostile work environment because of her sex. After explaining the “severe or pervasive” standard, the court laid out several considerations that may make certain types of conduct more or less severe:
 - Comments that are perceived as threats, expressions of sexual interest, sexual advances, or comments that are demeaning or embarrassing, are more likely to be severe (although conduct does not need to be overtly sexual to be actionable);
 - Comments that can be characterized as jokes or “vulgar banter” are less likely to be severe;
 - Comments directed at someone other than the plaintiff, or at a group of people that simply includes the plaintiff, are less likely to be severe than comments made directly and exclusively to the plaintiff; and
 - Courts should consider the professional and personal relationship between the speaker and the plaintiff; comments uttered by a supervisor are more likely to be severe than comments uttered by a co-worker.

Considering these factors, the court concluded that the conduct was not sufficiently severe to support a hostile work environment claim: “Although these incidents were unprofessional, rude, and offensive, it is undisputed that the conduct here was not threatening and that Ms. Golat did not construe them as sexual advances. Nor did she have a personal relationship with Judge Anderson that would suggest that they would be

perceived as such. On the other hand, Judge Anderson held a position of power, not only as a judge, but also as the sole individual responsible for Ms. Golat's hiring and firing. She served at his pleasure, which certainly increases the seriousness of his comments. ... However, some of the conduct (like the mug [i.e., a mug used by the judge that was decorated with male genitalia and the words "hung jury"]) was not directed exclusively at Ms. Golat, and the rest of the conduct cannot be characterized as more than the 'occasional vulgar banter, tinged with sexual innuendo, of coarse or boorish workers,' which is not enough." Because the conduct was also not pervasive – only a handful of comments over the course of several years – it did not constitute a "relentless pattern" of lesser harassment, but rather was too sporadic to support liability. (This case is also discussed in the ADA/RA section of this outline.)

- *EEOC v. Sun Chem. Corp.*, 185 F.4th 836 (8th Cir. 2026) – Bryan Banks, a technician at a Sun Chemical plant, alleged that his coworker, Ricardo Nevarez, unleashed an angry outburst at him, including punching Banks's locker hard enough to damage it and calling him a "f***ing n****r" three times. Banks reported the incident, and the company suspended Nevarez without pay for five days and informed him that future incidents would lead to more discipline up to and including termination. Banks was not satisfied with this outcome and filed a charge with the EEOC, which in turn filed a hostile work environment claim in federal district court under Title VII.

A jury eventually found in favor of the employer, and the EEOC appealed, challenging the district court's jury instructions, which did not reflect the EEOC's theory that Sun could have prevented the harassment. The jury had been instructed that liability depended on whether the EEOC proved, among other things, that the company "knew or should have known of the harassing conduct" and "failed to take prompt and appropriate corrective action to end the harassment." The EEOC argued that the jury should have been instructed to consider not only whether the employer adequately *responded* to the harassment, but also whether it had failed to *prevent* that harassment from happening in the first place.

In affirming the judgment of the district court, the Eighth Circuit did not decide whether the jury instruction adequately reflected the EEOC's failure-to-prevent theory because the evidence in the record did not support such a conclusion anyway. To be liable under Circuit precedent for failing to prevent harassment, Sun had to (1) have actual or constructive knowledge of ongoing harassment by Nevarez, and (2) decline to take remedial action reasonably calculated to stop it. The evidence here showed that at most the employer may have known of a single past incident in which Nevarez reportedly used a racial slur, which was not enough to demonstrate knowledge of "ongoing" harassment, and would not have put the employer on notice that Nevarez was a "known serial harasser" such that it had an obligation to take preventive measures beyond the remedial disciplinary action it took after that first incident.

- *Young v. Colo. Dep't of Corr.*, 174 F.4th 1283 (10th Cir. 2026), *petition for cert. filed*, No. 26-310 (U.S. Sept. 4, 2026) – The Colorado Department of Corrections instituted mandatory Equity, Diversity, and Inclusion (EDI) training, which led the plaintiff, Joshua Young, to resign and then sue the Department, claiming that the training subjected him to

a hostile work environment. He alleged that the training, consisting of several online modules that employees viewed on their own computers, contained many negative stereotypes of White people, and that not only did he feel harassed by the training, but knowing that his coworkers were taking the same training exacerbated the hostile work environment for him, to the point where he no longer felt comfortable working for the Department.

A previous version of Young's complaint had been dismissed by the district court, and the Tenth Circuit had affirmed the dismissal, holding that although the training was arguably offensive, it had only been given once, and Young had failed to allege that he suffered severe or pervasive hostile treatment resulting from the training. Young subsequently filed an amended complaint; this too was dismissed by the district court, and the Tenth Circuit again affirmed the dismissal. Although Young had added allegations to his amended complaint regarding his experience in the aftermath of the training, those allegations still did not rise to the level of "severe or pervasive" necessary to satisfy the *Harris v. Forklift Systems, Inc.* standard for a hostile work environment under Title VII. He alleged that the Department had committed to providing the training on an ongoing basis, but he himself had only taken the training once; he claimed that his job required him to endorse the ideology espoused by the training, but the training itself clearly said that employees did *not* need to change their values or beliefs, and encouraged them to discuss questions and challenges arising from the training; and his allegations about the training's effect on his coworkers' views of him as racist were based on suspicions about unspoken attitudes, not on any views actually expressed by anyone, which could not create an abusive working environment. Young also added an allegation that the training caused him to second-guess his decisions about using force and screening for contraband, but the court determined that "these allegations don't refer to particular instances or suggest that the changes jeopardized security. Instead, the new allegations reflect only hesitation – not alteration of the job." Finally, the court rejected Young's argument that the Department's alleged failure to investigate his concerns about the training constituted an independent reason to credit his allegations of a hostile work environment; as the court explained, the failure to investigate only preserved the circumstances giving rise to Young's complaint, and those alleged circumstances did not describe a work environment permeated with discriminatory intimidation, ridicule, and insult that would give rise to a hostile work environment claim.

- *Sharpe-Miller v. Walmart, Inc.*, 181 F.4th 1037 (10th Cir. 2026) – Jerry Sharpe-Miller, a gay Walmart employee, sued for disparate treatment, retaliation, and hostile work environment based on his sexual orientation. The district court granted summary judgment on all counts. The Tenth Circuit affirmed with respect to the disparate treatment claims, holding that his demotion-based claim was time-barred, and his termination-based claim failed because he was quickly reinstated without any loss of pay or benefits, and so the termination did not in fact qualify as an adverse employment action because he could not demonstrate that he suffered any harm from it. The court also affirmed summary judgment for Walmart on the retaliation claim, because the record did not show that the plaintiff engaged in any protected activity under Title VII.

However, the Tenth Circuit reversed the grant of summary judgment on the hostile work

environment claim. Not only did the district court misstate the standard as requiring a “steady barrage” of discriminatory comments, rather than the proper “severe or pervasive” standard that permits a finding of a hostile work environment for a smaller number of more severe acts, but the district court also erred in failing to consider certain acts in its analysis:

- Certain comments that may seem facially neutral in isolation may nevertheless contribute to a hostile work environment when viewed in the larger context of abusive treatment;
- Not every comment must be described in complete detail, and even those made by unidentified speakers may be considered as part of the pattern;
- Comments that are not directed at the plaintiff but which have the effect of polluting the plaintiff’s environment with discrimination may also be considered; and
- Even if particular comments did not affect the plaintiff’s ability to do his job, they may still factor into the analysis, because a plaintiff should not be penalized for his ability to succeed in the face of harassment.

Finally, as a matter of first impression in the Tenth Circuit, the court considered whether discrete acts that could be actionable on their own, such as demotion and termination, may form part of a hostile work environment claim, and held that they can be. Citing the Supreme Court cases of *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002), and *Green v. Brennan*, 578 U.S. 547 (2016), the court explained that although those two cases arose in the context of whether the statute of limitations had run, they nonetheless stand for the proposition that hostile work environment claims require a “totality-of-the-circumstances approach,” and that the language in those cases “provides significant support for the view that—starting with *Morgan* and continuing through *Green*—the Supreme Court has effectively held that discrete, independently actionable discriminatory acts can be part of a hostile-work-environment claim.”

- *Melton v. I-10 Truck Ctr. Inc.*, 166 F.4th 905 (11th Cir. 2026) – Truck salesman Clennon Melton alleged that he experienced a race-based hostile work environment and that his termination from I-10 was racially discriminatory as well as retaliatory. The district court granted summary judgment on all claims. The Eleventh Circuit affirmed summary judgment with respect to the discrimination and retaliation claims, because while Melton had produced evidence that the work environment was generally hostile to racial minorities – other employees regularly used racial slurs and derogatory comments to refer to nonwhite customers – and even that some coworkers referred to Melton amongst themselves using racist language, the record did not contain evidence of racial animus directed toward Melton himself by anyone who could be considered a decisionmaker in his termination. Nor could Melton demonstrate that the company’s non-discriminatory and non-retaliatory reason for firing him – i.e., documented ongoing performance issues including communication and paperwork failures, culminating in a major customer complaint – was pretextual.

However, the court reversed the grant of summary judgment on Melton’s hostile work environment claim, holding that taken together, the evidence regarding the routine use of racial slurs and other derogatory language in reference to dark-skinned customers, the fact that one of Melton’s coworkers, Joseph Andrews – who eventually became his supervisor – either ignored nonwhite customers or sent them to Melton, and an instance of that same individual calling Melton the racially charged term “boy,” was enough for a jury to infer a hostile workplace environment. The court pointed out that Melton was the only nonwhite employee at I-10, and “In that environment, the routine targeting of any nonwhite customer by a dominant white majority could reasonably make the environment hostile for a black employee. Our conclusion is reinforced by the fact that Andrews and the Brigmans [the business owner and his son] regularly confirmed that their prejudices extended to black customers, by questioning the source of a black customer’s money ‘[n]early every time’ a black customer paid with cash. And in using a racial slur to his face, Andrews confirmed what a reasonable person in his position could have concluded long ago: that Melton too was disfavored because of his race.” Moreover, Melton provided substantial evidence that his performance was affected by the stress and anxiety of having to work in such an environment, such that “a jury could infer that the harassment affected Melton’s performance throughout his employment or prevented him from improving his performance.”

- *Mukhina v. Walmart, Inc.*, 162 F.4th 1128 (11th Cir. 2025), *cert. denied*, 146 S. Ct. 2700 (2026) – Elena Mukhina, a Russian national and adherent of Russian Folk Christianity, alleged among other things that during her time working at Walmart she was subject to a hostile work environment because of her national origin. Mukhina did not speak English well, and as a result customers expressed dissatisfaction with her communication skills or even mocked her; she complained to her supervisor and requested a transfer to the night shift, but six weeks later she still had not been transferred. At that point she complained again, this time about mistreatment by both customers and coworkers, and three days later she was transferred to the night shift. However, she continued to experience negative treatment by her coworkers, which she attributed to her Russian nationality, including one instance in which a coworker was verbally abusive about the Russian invasion of Ukraine. She was ultimately terminated from her position, and sued under Title VII.

The district court granted summary judgment for Walmart, and the Eleventh Circuit affirmed. The court acknowledged that there was evidence in the record of “daily instances of customers, coworkers, and supervisors laughing at her, mocking her, and becoming angry with her due to her inability to communicate in English.” However, the court went on to explain that “frustration with her inability to communicate does not constitute harassment based on her national origin,” and that although “comments about an employee’s accent or linguistic mannerisms can support an inference of discrimination when combined with other harassing conduct motivated by national origin,” the language an employee prefers to use is not equivalent to her national origin. The court also determined that Mukhina had failed to produce evidence that most of the other incidents she complained about were connected to her national origin; the only one that fit into that category was the comment about the Russian invasion of Ukraine, which was not physically threatening or humiliating and did not unreasonably interfere with Mukhina’s

job performance, and therefore could not be considered severe enough to constitute a hostile work environment. Finally, the court held that Walmart could not be held liable anyway, because her first complaint to her supervisor was only about communication issues with customers, and once she complained about discrimination and harassment by her coworkers, she was transferred to the night shift as she requested, such that Walmart took immediate and appropriate corrective action after learning about the coworker harassment.

Religious Accommodations/Discrimination

- *Weiss v. Permanente Med. Grp., Inc.*, 182 F.4th 1139 (9th Cir. 2026) – Mimi Weiss, who identified as a Christian Jew, was initially granted her requested religious exemption from her employer’s COVID-19 vaccine policy, but was subsequently asked to provide more information after the employer learned of what it called “a pattern of insincere religious-exemption requests among its employees.” When she did not fully respond to the employer’s supplemental questions, her religious exemption was revoked, and she was then terminated for failing to get vaccinated. She sued for, among other things, failure to accommodate her religious beliefs in violation of Title VII. The district court granted the employer’s motion to dismiss, based on its conclusion that the “generic explanations” in her initial request and her incomplete answers to the employer’s supplemental questions did not adequately put the employer on notice of a conflict between her religious beliefs and the vaccine mandate.

The Ninth Circuit reversed, holding that Weiss’s submissions adequately informed the employer of her need for a religious exemption. Although “conclusory assertions” are not enough to constitute notice, and an employee must provide enough information about her religious needs to allow the employer to understand the existence of a conflict with an employment requirement, in this case Weiss had done enough to meet that threshold: she identified herself to management as “a Christian Jew” and described specific religious doctrines and passages from scripture that she asserted prohibited her from “accepting foreign material” into her body and instructed her to maintain her “body and blood uncontaminated.” This was enough to put the employer on notice of a conflict between her religious belief and the vaccine mandate.

Although the case was decided on the issue of notice, it is worth mentioning that the employer also attempted to question the sincerity of Weiss’s asserted religious belief on the basis that she had acknowledged receiving other vaccines in the past. Weiss explained that her concern over receiving the COVID-19 vaccine arose not because that vaccine was different from others she had received, but “because her religious commitment had changed” since she received those vaccines, in the sense that she had recommitted to her faith after the start of the pandemic. This goes to the point that simply because one’s religious observance has not been consistent does not necessarily mean that one’s religious belief is not sincere.

- *Cherry v. Wash. Dep’t of Fish & Wildlife*, — F.4th —, No. 25-4763, 2026 WL 2451427 (9th Cir. Aug. 21, 2026) – Five employees who worked for the Washington Department of Fish and Wildlife requested religious exemptions from Washington State’s COVID-19

vaccine mandate that required most state employees to be vaccinated or face termination. Although the plaintiffs were granted exemptions, they were told they could not be accommodated in their current roles, which required them to be in the physical presence of others. The department informed the plaintiffs that “Reassignment remains a possibility, although opportunities may be limited.” The plaintiffs did not complete the reassignment process and were eventually fired for being unvaccinated. They sued, asserting among several other claims that the employer violated Title VII.

The district court granted summary judgment for the Department, assuming that the plaintiffs established a prima facie case of failure to accommodate their religious beliefs, but concluding that the Department showed it initiated good faith efforts to engage in the interactive process, in which the employees did not fully participate.

However, the Ninth Circuit reversed, holding that a genuine issue of fact remained as to whether the Department offered the plaintiffs a reasonable accommodation. The court explained that a reasonable accommodation is one that eliminates the conflict between the employee’s religious beliefs and the employment situation while reasonably preserving the employee’s employment status, such as the compensation, terms, conditions, or privileges of employment, unless such an accommodation would cause undue hardship to the employer. Once the employer has offered a reasonable accommodation, this triggers the employee’s duty to cooperate in good faith, but in this case the district court erred in holding that the employees failed to satisfy their duty to cooperate with the reassignment process. Rather, the Ninth Circuit held that the Department’s invitation to participate in the reassignment process, with the caveat that “opportunities may be limited,” was not an offer of a reasonable accommodation in the first place, and thus did not trigger the employees’ duty to cooperate. The court rejected the Department’s argument that its offer, which the court described as “offering a process that holds out a mere possibility of an accommodation” and as an offer that was “couched in language that made success appear unlikely,” qualified as a reasonable accommodation. Even though employees are not entitled to their own preferred accommodation, this presupposes that the employer has actually offered its own reasonable accommodation, which the Department did not do here.

- *Brown v. Alaska Airlines, Inc.*, 179 F.4th 707 (9th Cir. 2026) – Two Alaska Airlines flight attendants, Marli Brown and Lacey Smith, sued the airline for religious discrimination under Title VII, alleging they were fired because of their religious beliefs. In response to the airline’s post on its employee intranet in support of the Equality Act – proposed federal legislation that would extend certain nondiscrimination requirements to cover discrimination involving sex, sexual orientation, and gender identity – Smith posted a comment asking “As a company, do you think it’s possible to regulate morality?” This comment prompted responses and complaints from other Alaska Airlines employees, and the airline eventually posted its own response supporting protection against discrimination for its LGBTQ+ employees and guests. Brown independently posted a response to the airline’s original post about the Equality Act, expressing opposition to the proposed law. Brown’s comment also came to the attention of the airline’s management, and that night the airline deleted both plaintiffs’ comments, shut

down further comments, and began investigating the plaintiffs, both of whom were ultimately terminated.

The district court granted summary judgment for the airline, but the Ninth Circuit reversed and remanded, holding that genuine issues of material fact existed as to whether the airline discriminated against the plaintiffs because of their religious beliefs. Brown's post specifically mentioned "the Church" and "suppression of religious freedom," and she made clear to management during the investigation that her post was grounded in her religious beliefs; moreover, there was evidence in the record that management understood the religious basis for the post. The district court erred in its reasoning that Brown did not point to specific Bible passages or religious teachings in support of her belief, as the Ninth Circuit explained that the role of the courts is limited to determining whether a plaintiff's beliefs are sincerely held and whether they fit into the plaintiff's own religious scheme: "It did not matter whether Brown could support her Alaska's World post with chapter and verse from an authoritative religious text. Nor is the religious nature of Brown's post undermined by the fact that more than one religion may share in the same underlying views, or that the beliefs expressed could be regarded as non-religious human values." (citations omitted) The airline argued that it fired Brown not because of her religious beliefs but because it regarded her as having violated the company's anti-discrimination and harassment policies, but the court determined that a reasonable jury could find that reason to be pretextual, so summary judgment was not warranted.

As for Smith, whose post did not explicitly invoke religion, the court nevertheless held that she too had raised triable fact issues about whether her termination was motivated by her religious beliefs. There was enough evidence in the record to suggest that the airline "could have reasonably understood that Smith was invoking beliefs about 'morality' that are commonly tied to religion, that is, moral beliefs that are held because of religious convictions." And the airline considered the posts by Brown and Smith together, lumping both employees together in discussions regarding the posts and terminating them on the same day. As with Brown's termination, a reasonable jury could conclude that the reasons given for firing Smith were pretextual.

Retaliation

- *Crisp v. Scioto Ambulance Dist.*, 182 F.4th 490 (6th Cir. 2026) – An EMT reported to her supervisor that a coworker had harassed her, but she believed her supervisor did not respond sufficiently. She did not file any kind of EEO claim, but instead took revenge several years later by sharing with other coworkers pornographic images of the harasser, which led to her being fired. She sued, alleging retaliation under Title VII. The court rejected this claim, explaining that "Title VII protects a broad range of employee conduct, but the rule still has limits." (citation omitted) Employees are not protected when violating their employer's legitimate rules or orders, disrupting the employment environment, or interfering with the attainment of their employer's goals. In this case, sharing pornographic images while at work was not protected activity; even though the plaintiff's coworker's alleged actions toward her were, if true, "deplorable and

sanctionable,” that still would not excuse the plaintiff’s actions. And although raising those earlier concerns to her supervisors did qualify as protected activity, “that is not enough for her claim to survive. When an employee engages in both protected and unprotected conduct under Title VII, she cannot use the protected conduct to seek shelter from a firing that is based on her unprotected conduct.”

- *Bruce v. Becerra*, No. 24-5453, 2026 WL 74507 (9th Cir. Jan. 9, 2026) – A Black employee of the Department of Health and Human Services sued for race discrimination and retaliation after not being selected for a promotion. The district court granted summary judgment for HHS on both claims. The Ninth Circuit affirmed with respect to the discrimination claim, holding that the plaintiff had failed to show that his qualifications were “clearly superior” to those of the selected candidates, or that the agency deviated from its own procedures; moreover, the selected candidate was also Black, which tended to show that the plaintiff’s race was not the reason for his non-selection.

However, the Ninth Circuit reversed the district court’s grant of summary judgment on the plaintiff’s retaliation claim. The district court had held that too much time had passed between the plaintiff’s protected activity (several EEOC complaints) and his non-selection for the promotion. The Ninth Circuit emphasized that “Proximity in time is not essential to establish causation.” Although temporal proximity makes it easier to demonstrate causation in retaliation cases, it is possible to establish causation without it, if there is other evidence to suggest that the employer had a retaliatory motive. In this case, one of the interviewers was a supervisor whom the plaintiff had named in several of his prior EEOC complaints, and who had in fact been found by an ALJ to have discriminated against the plaintiff, and as a result was required to take four hours of anti-discrimination training. Another interviewer had mentioned the plaintiff’s prior EEOC activity in his interview notes. This evidence, combined with the fact that the plaintiff’s interview scores were very close to those of two of the selected candidates, was enough for a reasonable jury to find pretext.

- *Russo v. N.H. Neurospine Inst., P.A.*, — F.4th —, No. 25-1519, 2026 WL 2491680 (1st Cir. Aug. 25, 2026) – Gina Russo, a physician’s assistant at a medical institute, was terminated after a series of negative interactions with one of the institute’s surgeons. The institute allowed her to continue working there while negotiating a separation agreement, and also contemplated allowing her to work as an independent contractor at a separate nursing home facility; however, during that time period Russo’s attorney sent the institute a demand letter containing allegations that her termination was the result of sex discrimination, at which point the institute stopped negotiating and immediately ended Russo’s employment.

The district court granted summary judgment to the institute on both Russo’s discrimination and retaliation claims. The First Circuit affirmed with respect to the discrimination claim, holding that Russo had raised arguments based on sex stereotyping, the surgeon’s animus toward women, differential treatment of similarly situated comparators, and a generally discriminatory atmosphere at the institute, but failed to produce sufficient evidence under any of these theories. Nor did the court find her

evidence of inconsistent explanations for various adverse actions sufficient to demonstrate pretext.

However, despite upholding summary judgment for the institute on the discrimination claim, the First Circuit vacated and remanded the district court's grant of summary judgment on Russo's retaliation claim. Emphasizing that "A plaintiff may prevail on a retaliation claim even when the conditions she complains of do not amount to a Title VII violation," the court held that accelerating Russo's termination and denying her the opportunity to work as an independent contractor at the nursing home were both adverse actions. The institute argued that the only adverse action Russo suffered was the decision to terminate her, but the court disagreed, because the loss of several months' guaranteed wages and benefits resulting from moving up a termination would dissuade a reasonable employee from complaining about discrimination, as would the withdrawal of a voluntary benefit like the potential for alternative employment. Russo produced enough evidence for a reasonable factfinder to conclude that her protected activity – i.e., the demand letter complaining of sex discrimination – was the cause of those adverse actions.

Discussion of McDonnell Douglas

- *Awe v. Harris Health Sys.*, 163 F.4th 969 (5th Cir. 2026) – The plaintiff worked as a chaplain for Harris Health System, left, and then a year later reapplied for a job with the same employer but was not hired. During his employment with Harris, he had raised several complaints, including that he and other minority chaplains were being underpaid; he alleged that, among other things, the decision not to re-hire him was the result of retaliation for that protected activity, in violation of Title VII. The district court granted summary judgment and the Fifth Circuit affirmed, holding that Awe had failed to establish that the employer's proffered reason for not hiring him – i.e., preference for internal candidates – was pretextual.

In a concurring opinion, Chief Judge Jennifer Walker Elrod wrote separately "to join the resounding chorus calling for a reconsideration of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973), especially as applied at summary judgment." She listed a string of case citations from the First, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits, and also quoted a dissent from Supreme Court Justice Clarence Thomas, all criticizing the use of the *McDonnell Douglas* framework in deciding motions for summary judgment. Chief Judge Elrod explained that although Circuit precedent required the panel to apply the *McDonnell Douglas* framework, and thus she was bound to concur in the judgment, "This case illustrates the problem perfectly. Everyone—including the district court—agrees, or at least assumes without deciding, that Awe has established a *prima facie* case of retaliation. But because Awe's employer was able to provide a non-retaliatory reason for its action that Awe failed to rebut, he loses. Consequently, although Awe has raised genuine disputes of fact relevant to whether retaliation occurred, he is left without a chance to prove his case before a jury. This outcome, while dictated by precedent, is contrary to the text of Title VII and Rule 56." (citation omitted)

- *Holloway v. Procter & Gamble Mfg. Co.*, 185 F.4th 545 (5th Cir. 2026) – A terminated Procter & Gamble employee sued the company for race discrimination and retaliation, but lost on summary judgment after he failed to show that P&G’s proffered reasons for his termination – i.e., violating the company’s procurement policy and misusing a company credit card – were pretextual. The Fifth Circuit affirmed, analyzing the evidence using the *McDonnell Douglas* burden-shifting framework. This opinion is notable mainly for its concurring opinion, authored by Judge James C. Ho and joined by Chief Judge Jennifer Walker Elrod, which uses Holloway’s case to demonstrate why the judges believe the *McDonnell Douglas* analysis is wrong and should be abandoned. They praise the Supreme Court’s decision in *Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025), which “fixed” the “defect” in *McDonnell Douglas* that seemed to exclude White plaintiffs from the protection of Title VII. However, they go on to echo Justice Thomas’s criticisms of *McDonnell Douglas*: first, that framework was originally designed for courts to use in bench trials, not at the summary judgment stage, and is contrary to the requirements of Rule 56 of the Federal Rules of Civil Procedure; second, it requires a plaintiff to show that an employer’s reason for taking an adverse employment action was wholly pretextual, whereas Title VII only requires a plaintiff to show that unlawful discrimination was a motivating factor, so a plaintiff should still be able to prevail even if the employer’s stated reason was part of the reason for its action. Thus, Judge Ho writes, “Accordingly, in an appropriate case, I would welcome the opportunity to revisit our precedent to better align the law of our circuit with the plain text of Title VII and Rule 56.”
- *Plump v. GEICO*, 161 F.4th 1222 (10th Cir. 2025) – Dion Plump, a sales representative for GEICO, was terminated because of issues surrounding his failure to obtain a New York insurance license. He alleged, among other things, discrimination on the basis of race in violation of Title VII. The district court granted summary judgment for GEICO, and the Tenth Circuit affirmed, but on a different basis. Before the district court, Plump had produced evidence that he was a member of a protected class (a Black male), he was qualified for the position, he had suffered an adverse employment action (termination), and that his position had remained open after his termination; the district court focused on the final element and concluded that evidence of a position remaining open is relevant only in failure-to-hire cases, not termination cases like Plump’s. The Tenth Circuit disagreed, cautioning that the *McDonnell Douglas* prima facie requirements are “an entirely flexible standard,” and holding that the district court erred in holding that Plump’s evidence was irrelevant in a termination case. However, because Plump failed to demonstrate that GEICO’s stated reason for terminating him was pretextual, the Tenth Circuit still affirmed the grant of summary judgment for GEICO on his Title VII discrimination claim.

Other Title VII Cases

- *Crawford v. Salve Regina Univ.*, 178 F.4th 734 (1st Cir. 2026) – Linda Crawford, a White cisgender woman and a tenured university professor, taught a lesson in her Spanish American Culture and Civilization class that concerned gender and sexuality in Latin America, assigning a reading and leading a brief discussion in class on LGBTQ+ rights in Latin American countries. A student became upset and had an outburst in class, and

afterward several other students complained about Crawford – allegedly encouraged by the chair of the Modern Languages Department – accusing her of using “offensive language and hateful rhetoric” towards the LGBTQ+ community and people of color, and saying that they did not feel safe around her. The university investigated and subsequently fired her “for cause,” citing “continued misconduct,” “failure to communicate,” and “failure to comply with the requirements of a faculty member in accordance with the Faculty Manual.” Crawford appealed to the Faculty Hearing Board, which upheld the termination, with the majority opinion citing longstanding concerns about her lack of responsiveness to students, colleagues, and administrators, as well as complaints over the years about her grading practices and teaching methods. Even the minority opinion, while disagreeing with the termination and pointing out problems with the investigation, acknowledged that Crawford “had a pattern of relationship problems over the years with every level of the [U]niversity” including students, faculty colleagues, and administrators.

Among her many claims, Crawford sued for discrimination under Title VII based on her gender, race, sexual orientation, and religion. The district court dismissed her claims and the First Circuit affirmed. She failed to allege gender bias, race bias, sexual orientation bias, or religious bias on the part of anyone involved in the decision to terminate her. She alleged that the department chair sought to retaliate against her for a history of disagreements and a prior grievance she had filed against him, but she did not plead any facts suggesting that those issues had any relationship to her protected characteristics. Nor did she include facts in her complaint to indicate that the individuals she identified outside of her protected class who were allegedly treated differently, were similarly situated to her in relevant respects.

Crawford also sued for a hostile work environment based on the same characteristics, but the comments she cited in support of her claim were all related to criticisms of the language Crawford herself used about the LGBTQ+ community and people of color – not about Crawford’s own gender, sexual orientation, race, or religion. As the court explained, “The students’ and faculty’s statements may reflect disagreement with -- or criticism of -- her views about certain minority groups. But it does not follow from that disagreement that Crawford’s protected characteristics were targeted.” Finally, Crawford’s Title VII retaliation allegations failed, because she did not plead facts regarding any instance of protected activity preceding her termination that could form the basis for such a claim.

- *Hood-Wilson v. Bd. of Trs. of Cmty. Coll. of Baltimore Cnty.*, 162 F.4th 101 (4th Cir. 2025) – The plaintiff, a Black woman, alleged that the college’s decision not to hire her for an Associate Dean position was the result of race and sex discrimination. The college argued that the non-Black man it hired to fill the position was better qualified than Hood-Wilson, but she argued that this explanation was pretextual. The district court granted summary judgment for the college, and the Fourth Circuit affirmed. The hiring process involved a five-person hiring committee that asked 14 standard interview questions of each applicant, then scored each answer on a 5-point scale; the hiree received the highest score for the position while Hood-Wilson received the lowest score. The court deferred to the college’s determination of which criteria were relevant to the position in question,

assessed the two candidates' relative qualifications based on those criteria, and determined that Hood-Wilson failed to establish that she was "demonstrably more qualified" than the individual who was hired. Nor could she show that the college's alleged "preselection" of candidates for open positions was discriminatory, as "preselection is not indicative on its own of discrimination." Finally, her allegation that one member of the hiring committee had made stray racist remarks over the years was insufficient to raise a triable issue regarding discriminatory intent in the hiring process, especially in light of the fact that there were four other committee members and that the remarks had no connection to the ultimate decision maker.

- *Liedtke v. City of Austin*, 185 F.4th 560 (5th Cir. 2026) – Police officer Samantha Liedtke was recruited to an all-male patrol shift in an effort to improve diversity, and alleged that she was subjected to a hostile work environment and discrimination because of her sex. She alleged, among other things, that she was subjected to "near-daily" sexist comments about women generally and female officers in particular, including Liedtke herself, and that she was left to patrol alone while the male officers usually patrolled in pairs. She reported this treatment to her supervisor, who did nothing about it. Subsequently, two male officers, concerned that Liedtke was going to file an EEO complaint, reported Liedtke for supposedly causing "officer safety issues," resulting in the issuance of an Employee Success Plan (ESP) documenting the accusations against her and identifying areas for improvement. Liedtke resigned a few weeks later, and sued for discrimination, retaliation, and hostile work environment.

The district court granted summary judgment in favor of the city on all three claims. The Fifth Circuit affirmed with respect to hostile work environment because Liedtke failed to adequately brief that claim on appeal, but it reversed and remanded with respect to the discrimination and retaliation claims.

First, Liedtke presented enough evidence for a reasonable jury to find *direct* evidence of sex discrimination, which requires a showing that "the remarks were (1) related to her protected characteristic; (2) proximate to an adverse employment decision; (3) made by someone with authority over the challenged decision; and (4) related to the challenged decision." The evidence, viewed in the light most favorable to Liedtke, could lead a jury to believe that her shiftmates' comments showed intentional discrimination against her and that those shiftmates influenced the decisionmaker who issued the ESP, which could support a cat's paw theory of discrimination. There was also a genuine issue of fact as to whether the ESP, which is similar to a Performance Improvement Plan (PIP), was an adverse employment action: courts have held that in some circumstances PIPs can qualify as adverse employment actions, and here there was an indication that the issuance of the ESP may have affected the terms and conditions of Liedtke's employment. And there was enough evidence to create a triable fact issue as to whether the department would have issued the ESP absent the evidence of discrimination.

With respect to her retaliation claim, although Liedtke's case rested on circumstantial evidence rather than direct evidence, the court applied the *McDonnell Douglas* framework and determined that there were genuine issues of material fact as to whether she suffered an adverse employment action (in this case, constructive discharge) and

whether her protected activity (i.e., making internal complaints about workplace discrimination) caused that action. And as with her discrimination claim, a reasonable jury could conclude that the department’s proffered reasons for its actions were pretextual.

- *Spengler v. Coop. Educ. Serv. Agency* 7, 180 F.4th 1015 (7th Cir. 2026), *reh’g denied*, No. 25-2532, 2026 WL 2253761 (7th Cir. Aug. 4, 2026) – Becky Spengler, an employee of a state education agency under contract to the Wisconsin Department of Public Instruction (DPI), sued for race discrimination and retaliation after she was reassigned to a position that paid much less, allegedly for refusing to adopt a required “equity mindset.” Spengler repeatedly voiced her view that the “equity mindset” – which required employees in her position to consider concepts such as white privilege, historical and systemic impacts of white supremacy, and the potential effect of the employees’ thoughts and actions could negatively impact marginalized communities – was itself racist against White people. The district court granted summary judgment for the agency, reasoning that Spengler was demoted because of her opinion or ideology rather than her race. The Seventh Circuit affirmed, noting that the policy of adopting an “equity mindset” applied equally to employees of all races, and that Spengler herself admitted that a Black employee in her position also would likely have been demoted for disagreeing with DPI’s policies on race, so she could not show she was discriminated against because of her race. Contrary to Spengler’s assertions, nothing in the DPI policy or any other record evidence stated that White people are naturally or necessarily racist, or that she was required to adopt such a view as a condition of her employment. Her retaliation claim failed as well, because for the same reasons given in the court’s analysis of the discrimination claim, her objections to the “equity mindset” policy could not reasonably be considered protected activity.
- *Crowe v. Averill*, No. 25-1400, 2026 WL 1298100 (9th Cir. May 12, 2026) – Steven Crowe, an Army police officer, sued the Army for disparate treatment, hostile work environment, and retaliation based on his sexual orientation. The district court granted summary judgment for the Army, but the Ninth Circuit reversed. The district court had concluded that he had failed to establish the last prong of the prima facie case – i.e., that the circumstances surrounding the adverse employment actions against him gave rise to an inference of discrimination – but on appeal the Ninth Circuit cited evidence in the record that those actions were tainted by “subordinate bias”: not only was the person who conducted the investigation into Crowe’s supposed misconduct the same person whom Crowe had previously reported for using homophobic slurs against him, but that investigator only took statements from people with personal vendettas against Crowe and refused to take statements from witnesses favorable to him, and those statements were the sole basis upon which the adverse actions were taken. He also produced enough evidence for a reasonable jury to find retaliation, based on temporal proximity and subordinate bias, as well as enough evidence to survive summary judgment on his hostile work environment claim, given the repeated use of homophobic slurs and the surrounding circumstances, including the use of the slur at a work presentation in front of several colleagues and while introducing Crowe to a new colleague in the presence of several other officers.

- *Byrnes v. St. Catherine Hosp.*, 158 F.4th 1107 (10th Cir. 2025) – Matthew Byrnes, a medical doctor, alleged that he was fired and reported to the Kansas medical licensing board in retaliation for reporting another doctor’s sexual harassment of nurses at the hospital where he worked. The hospital countered that Dr. Byrnes was fired for deficiencies in patient care and other misconduct. The district court granted summary judgment for the hospital, holding that Dr. Byrnes had failed to establish a prima facie case or to show that the hospital’s proffered reasons were pretextual, but on appeal the Tenth Circuit reversed and remanded. Although the individuals who ultimately decided to fire Dr. Byrnes were unaware of his protected activity – i.e., his complaint about his colleague’s sexually harassing behavior – Dr. Byrnes had produced enough evidence to support a cat’s paw theory of retaliation, namely that the actual decisionmakers terminated him based on information provided by biased subordinates.

To establish a successful cat’s paw theory of liability, a plaintiff must show that (1) the subordinate took action motivated by discriminatory animus, (2) the subordinate intended the action to cause an adverse employment action, and (3) the subordinate’s actions proximately caused the intended adverse employment action. Here, Dr. Byrnes raised a genuine issue of material fact as to whether the individuals conducting the investigation into his conduct harbored retaliatory animus against him, whether they intended their report to lead to his termination, and whether their report was a but-for cause of his termination. A cat’s paw theory can be defeated by showing a break in the causal chain or a lack of uncritical reliance by the unbiased decisionmaker, but in this case there was no evidence of such a break, and the record supported Dr. Byrnes’s argument that the decisionmakers relied uncritically on the biased investigators’ report and reached their conclusion about Dr. Byrnes’s termination based on one-sided information.

The same evidence regarding the biased investigation also created a genuine issue of material fact as to whether the hospital’s stated reasons for the termination were pretextual, especially when combined with the temporal proximity (less than one month) between the most recent protected activity and the termination.

- *Beazer v. Richmond Cnty. Constructors, LLC*, 169 F.4th 1082 (11th Cir. 2026) – After timely filing a charge with the EEOC and receiving a right-to-sue notice, plaintiff Phillip Beazer diligently attempted to hire an attorney, paying a consultation fee and following up repeatedly for weeks, until the firm belatedly informed him that they could not represent him. He hastily put together a pro se complaint and paid the U.S. Postal Service to deliver it to the court via Priority Mail, with a money back guarantee that it would arrive before the filing deadline. However, Hurricane Idalia caused a delay in mail delivery, and Beazer’s complaint arrived at the court two days after the 90-day filing deadline, and was not docketed until three days after that. The district court deemed his complaint untimely, but the Eleventh Circuit reversed, holding that Beazer had satisfied both prongs of the test for equitable tolling: he showed that he had pursued his rights diligently, and that an extraordinary circumstance – in this case the combination of the law firm’s belated response turning down his case and the hurricane – prevented timely filing. Moreover, the court held that the defendant suffered no prejudice from the five-day delayed filing, especially since it already had notice of the substance of his claim through the EEOC process.

Family and Medical Leave Act (FMLA)

The FMLA, applied to the legislative branch through CAA section 202, 2 U.S.C. § 1312, allows employees to take job-protected leave for certain medical reasons or to care for family members under specified circumstances.

Interference

- *Tumbleson v. Lakota Loc. Sch. Dist.*, 175 F.4th 773 (6th Cir. 2026) – Andrea Tumbleson, an art teacher with progressive hearing and vision loss, sought paid sick leave or FMLA leave to attend three weeks of training to obtain a guide dog. When the school district, having determined that the training did not qualify for paid sick leave or FMLA leave, granted her unpaid leave instead, she brought ADA discrimination and failure-to-accommodate claims and an FMLA interference claim. The Sixth Circuit affirmed summary judgment for the school district on all claims.

The court flagged that questions of causation (such as, what type of causal connection does the FMLA require between a serious health condition and an inability to work?) could impact the analysis. However, because the parties did not brief this issue, the court assumed that the FMLA applied to Tumbleson’s leave, and held that the school district was not required to allow her to substitute paid sick leave for unpaid FMLA. Since the FMLA gives employees the right to substitute their accrued paid leave for FMLA leave but does not require an employer to provide paid leave if it would not normally do so, Tumbleson must satisfy the requirements in the district’s paid leave policy in order to obtain paid leave. That policy incorporates Ohio law and the collective bargaining agreement by allowing teachers to “use sick leave for absence due to personal illness.” The court affirmed the district court’s holding that the connection between her absence and her condition was too indirect to make the training a “personal illness” (though it flagged another issue the parties did not raise: what kind of causation is required for an absence to be *due to* personal illness?). (This case is also discussed in the ADA/RA section of this outline.)

- *Chitwood v. Ascension Health All.*, 168 F.4th 493 (7th Cir. 2026) – The same year Elizabeth Chitwood was approved for intermittent FMLA for her own serious health condition, she was approved to take two months of continuous FMLA to care for her son. When her continuous leave ended, she failed to return to work as instructed and was terminated for “Leave Exhaust/Failure to Return to Work.” The next day she attempted to retroactively report using intermittent FMLA leave for those days after her continuous leave ended, to no avail. She then sued for FMLA interference and retaliation. The Seventh Circuit affirmed summary judgment for the employer.

Regarding her interference claim, the court found that she could not show that Ascension denied her FMLA benefits to which she was entitled. At the time she attempted to retroactively report her absences, she was no longer employed by Ascension, having been terminated the previous day. She argued she was entitled to retroactively report the absences as FMLA leave, but failed to follow (as the statute requires) Ascension’s policy

requiring such FMLA usage to be reported the same day it occurs, and the record was clear that it was practicable for her to do so.

Regarding her retaliation claim, she failed to show a causal nexus between her protected activity and her termination. The record was clear that it was her failure to return to work, not her use of FMLA leave, that caused her termination. Her evidence of emails between other employees expressing concern about her attendance and FMLA use did not show pretext – at most, they established that coworkers honestly suspected she was abusing FMLA leave.

- *James v. FedEx Freight, Inc.*, No. 24-12907, 2025 WL 3121784 (11th Cir. Nov. 7, 2025) – Freight handlers for FedEx were required to check with the dock supervisor before clocking out at the end of a shift, and were expected to work overtime if there were still trailers that needed to be unloaded. In June 2020, freight handler Teryl James told his supervisors that his wife’s pregnancy was high-risk and that there would be times when he needed to leave early or miss days to care for her. No one informed James of his rights under the FMLA, even when he explicitly asked. On June 25 and July 1, he left at the end of his scheduled shift, without working required overtime, to care for his wife or drive her to doctor’s appointments. On both occasions he told supervisors why he needed to leave, but they wrote him up for “job abandonment” and recommended his termination. After his baby was born on July 2, he requested and received FMLA leave, and was terminated a few weeks later for insubordination.

The Eleventh Circuit held that James could show prejudice, as required for an FMLA interference claim, even though FedEx’s actions did not prevent him from caring for his wife. He argued that the prejudice he suffered was not inability to care for his wife, but being fired from his job as a direct result of leaving work to do so; had he known he could take FMLA leave for that period, he would not have been fired for refusing to work overtime. The court agreed: “a reasonable jury could conclude that he was entitled to FMLA benefits, and FedEx’s interference with his benefits caused him to be fired.”

Retaliation

- *Dries v. Smith & Nephew, Inc.*, No. 25-925, 2026 WL 912615 (2d Cir. Apr. 3, 2026) – After he requested paternity leave under the FMLA, Danny Dries’s employer put him on a performance improvement plan (PIP) and, 12 days later, fired him. Holding that Dries did not show that the employer’s proffered explanation for its actions was pretextual, the Second Circuit affirmed summary judgment for the employer. It reasoned that the imposition of a PIP, like counseling memos, negative job evaluations, and notices of discipline, does not rise to the level of an adverse employment action for purposes of a retaliation claim. After all, the record reflected that, had he complied with the terms of the PIP, there would have been no effect on his employment. Regarding his termination, he conceded he did not comply with the terms of the PIP, such as communicating weekly with his supervisor and providing a weekly activity log, and he offered no other evidence that the termination was pretextual.

- *Steidle v. U.S. Liab. Ins. Co.*, 179 F.4th 193 (3d Cir. 2026) – In 2020, while on FMLA leave to treat his mental health condition, Jeffrey Steidle was awarded his smallest annual salary increase and bonus since he started working at USLI in 2013. In mid-2021, his request for accommodation under the ADA was granted, allowing him to work remotely and work adjusted hours. The raise and bonus he received at the end of that year were a bit larger than those he received in 2020, but were still lower than expected. When he was terminated in 2022, he sued for discrimination under the ADA and retaliation under the ADA and FMLA, and the district court granted summary judgment to USLI on all claims. On appeal, he challenged only the holding on the retaliation claims.

The Third Circuit vacated in part and remanded. It agreed with Steidle that the district court erred in holding that he did not suffer an adverse employment action when he received the lower-than-expected bonuses in 2020 and 2021. The district court erroneously applied a pre-*Burlington Northern* definition of adverse employment action in the retaliation context – one that “alters the employee’s compensation, terms, conditions, or privileges of employment, deprives him or her of employment opportunities, or adversely affects his or her status as an employee” – and held that the lower-than-expected bonuses did not constitute adverse employment actions. The Third Circuit held that the Supreme Court’s formulation, in *Burlington Northern*, of an adverse employment action in the Title VII retaliation context – that “it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination” – applies to retaliation claims under the ADA and the FMLA as well. Since “Receipt of a lower than anticipated bonus and salary increase could certainly dissuade a reasonable worker from engaging in protected activity[.]” it concluded that the district court had erred in holding that Steidle did not suffer adverse employment actions in 2020 and 2021.

Regarding the causation element of Steidle’s claims, the Third Circuit held that the district court erroneously concluded that he failed to establish a causal connection for the 2020 raise and bonus. The court held that even though it was USLI’s practice to make bonus decisions late in the year, and Steidle himself acknowledged he struggled with some of his work responsibilities, these facts were not relevant at the causation stage when unusually suggestive timing (the 2020 raise and bonus decision was made while he was on FMLA leave) had been established. However, the Third Circuit found that the district court appropriately held that no causal connection existed for the 2021 raise and bonus – there was a six-month gap between protected activity and adverse action, and insufficient additional evidence of a causal link.

Accordingly, the court affirmed in part and vacated in part the district court’s grant of summary judgment for USLI, and remanded for the district court to consider whether Steidle could establish pretext. (This case is also discussed in the ADA/RA section of this outline.)

- *Ahmed v. Hamtramck Pub. Schs.*, 178 F.4th 975 (6th Cir. 2026), *reh’g en banc denied*, No. 24-1775, 2026 WL 2389705 (6th Cir. July 16, 2026) – School superintendent Jameelah Ahmed took three months of FMLA leave related to severe emotional distress. When she notified the district of her plan to return to work, the school board informed her that it was placing her on a paid leave of absence “pending investigation into alleged

misconduct.” She sued under several laws. Her motion for leave to file a Fourth Amended Complaint was denied as futile and the district’s subsequent motion to dismiss was granted.

Ahmed appealed the district court’s futility determination as to the FMLA retaliation claim (which she tried to add in her Fourth Amended Complaint). The Sixth Circuit agreed that she alleged a plausible FMLA retaliation claim, so it held that the district court should have granted her leave to amend her complaint to add it.

In concluding that Ahmed alleged a plausible FMLA retaliation claim, the court first considered whether she alleged a retaliatory act. The district court had incorrectly applied the anti-discrimination standard for adverse action instead of the *Burlington Northern* retaliation standard. The Sixth Circuit held that “It is at least plausible that placement on paid administrative leave for over a year, pending investigation of alleged misconduct, would dissuade a reasonable worker from taking FMLA leave, so Ahmed has plausibly alleged retaliation under the *Burlington Northern* standard.”

Additionally, the court held that Ahmed pled sufficient facts to raise a plausible inference of discrimination – that the district placed her on administrative leave at least in part because she exercised her rights under the FMLA. “Even though the District and Board members knew of Ahmed’s FMLA leave when she left three months prior, they took the first opportunity they had to retaliate against Ahmed. After all, they could not retaliate by placing Ahmed on leave when she was already on leave.” Therefore, she could rely on temporal proximity even with the three-month gap between her protected activity and the adverse action.

- *Paris v. MacAllister Mach. Co., Inc.*, 175 F.4th 787 (6th Cir. 2026), *reh’g en banc denied*, No. 25-1726, 2026 WL 2013951 (6th Cir. June 23, 2026) – Daniel Paris worked as a field technician for MacAllister. He requested information regarding the FMLA process via email, and an “FMLA request form” was sent to him later the same day, but he did not respond to the email or return the form. When he was subsequently terminated, he filed numerous claims against MacAllister, including FMLA interference and retaliation. The Sixth Circuit disagreed with the district court’s determination that Paris did not establish a prima facie case of FMLA retaliation, but affirmed summary judgment for the employer on both FMLA claims.

Paris could not establish a prima facie case of FMLA interference: he failed to establish a “serious health condition” since he did not consult with a health care provider or receive treatment for his anxiety. Therefore, he was not an “eligible employee” entitled to FMLA leave.

Holding that the FMLA protects an employee’s right to request FMLA paperwork before they have requested leave, the Sixth Circuit concluded that Paris established a prima facie case of FMLA retaliation. Even though he did not request leave, he “took the step required to initiate the FMLA’s process by requesting paperwork, and this first step must fall within the scope of protected activity for our law to uphold the Act’s aim of protecting the ‘exercise or attempt to exercise’ FMLA rights.” (cleaned up) However, the

court affirmed the grant of summary judgment to MacAllister on Paris’s retaliation claim because he provided no evidence that his termination was pretextual.

Fair Labor Standards Act (FLSA)/Equal Pay Act (EPA)

The Fair Labor Standards Act applies through section 203 of the CAA, 2 U.S.C. § 1313. This section of the outline also includes decisions issued under the Equal Pay Act, which amended the FLSA to prohibit sex-based discrimination in wages.

- *Sec’y U.S. Dep’t of Lab. v. Comprehensive Healthcare Mgmt. Servs., LLC*, 177 F.4th 427 (3d Cir. 2026) – The Labor Department sued a healthcare company over unpaid “overtime gap” wages, i.e., unpaid straight-time wages for hours in which the employee worked overtime. For example, if an employee is scheduled to work 38 hours in a week, but works 43 hours in a week and the employer pays her three hours of overtime and 38 hours of non-overtime wages, the remaining two hours are “overtime gap” wages. The court held that “overtime gap” wages are not cognizable under the FLSA. The FLSA requires employers to pay nonexempt employees a minimum wage and overtime pay for hours worked in excess of 40 hours per workweek. There is no claim under the FLSA for unpaid non-overtime wages, though plaintiffs could pursue this under state law. This reinforces a circuit split as the Second Circuit has also found overtime gap wages non-cognizable under the FLSA, *Lundy v. Catholic Health System of Long Island, Inc.*, 711 F.3d 106 (2d Cir. 2013), but the Fourth Circuit has found that the FLSA does provide such a claim, *Conner v. Cleveland County*, 22 F.4th 412 (4th Cir. 2022).
- *Lane v. Stericycle, Inc.*, 162 F.4th 866 (7th Cir. 2025) – Four female employees of a healthcare waste disposal company sued their employer under the Equal Pay Act and Title VII, alleging that they unlawfully received a lower base salary than their male counterparts. All four women had been promoted into the newly-created role of Key Account Director (KAD), but did not initially see a change in pay; several months later, after they complained to the company’s director of human resources, their salaries were raised to \$98,000. During litigation they produced evidence of nine male KADs – two of whom had also been promoted, and the other seven of whom had been transferred – who were either making more money for performing the same job or who had received raises immediately upon promotion to the KAD role, unlike the plaintiffs. Stericycle’s argument against both claims was that the disparity in base salaries was based on the difference in what the female and male employees were already being paid before they became KADs, and that it had nothing to do with their sex.

With respect to the Equal Pay Act claim, the plaintiffs established a prima facie case by showing that higher wages were paid to the male KAD comparators, who performed substantially similar work under similar working conditions. Whereas the district court granted summary judgment for the company based on its affirmative defense, which attributed the pay discrepancy to the employees’ prior positions and salary histories, the Seventh Circuit held that this affirmative defense was successful only as it concerned the seven comparators who transferred into the KAD role, not the two who – like the plaintiffs – were promoted into the role. It explained that to succeed on the affirmative

defense, Stericycle had to show that “a sex-neutral factor explains the disparity between the salaries of Plaintiffs and the Hospital KADs”; that was true of the transfers, whose salaries were based on the salaries they received before the transfers, but not for the two males who were promoted. Stericycle argued that the four female plaintiffs and the two male comparators who were promoted all received raises, and that this practice was sex-neutral, but the evidence showed that the male comparators’ salaries were raised at the time they were promoted, whereas the plaintiffs did not receive their raises until later, and only after they complained about the gender disparities. Moreover, the plaintiffs’ salaries were all raised to \$98,000, but one of the male KADs who was promoted into the role received a salary of \$110,990, and the company’s affirmative defense did not explain the reason for that disparity. Thus, genuine issues of material fact existed, and summary judgment was inappropriate. (This case is also discussed in the Title VII section of this outline.)

- *Hollis v. R&R Rests., Inc.*, 159 F.4th 677 (9th Cir. 2025), *cert. denied*, 146 S. Ct. 2612 (2026) – Zoe Hollis, a gender non-binary stripper at a strip club called Sassy’s, sued the club for misclassifying them as an independent contractor and for various wage and hour violations. After Hollis filed suit, a partner of Sassy’s cancelled Hollis’s ongoing agreement to perform at a different club called Dante’s, which the partner also owned. Hollis amended their complaint to allege that barring them from performing at Dante’s constituted retaliation under the FLSA. The district court dismissed the retaliation claim, reasoning that Hollis could not bring a successful retaliation claim without establishing that they were an employee of Dante’s. Because the performances at Dante’s were much more like an independent contractor relationship than the performances at Sassy’s, the district court reasoned that Hollis was likely not employee at Dante’s and therefore unable to establish a retaliation claim. The Ninth Circuit reversed, holding that the key relationship is between Hollis and Sassy’s, not Hollis and Dante’s. The FLSA defines “employer” broadly, as “any person acting directly or indirectly in the interest of an employer.” Here, the business partner was acting “indirectly” in the interest of Sassy’s when he cancelled the agreement for Hollis to perform at Dante’s, making a retaliation lawsuit against Sassy’s appropriate, regardless of whether Hollis was an employee at Dante’s.
- *Maccagnan v. Cherry Creek Sch. Dist. No. 5*, 182 F.4th 1169 (10th Cir. 2026) – Plaintiff Linda Maccagnan was a principal of a public elementary school until she was demoted to be an assistant principal at a different school in response to complaints from the teachers’ union. She sued, alleging violations of the First and Fourteenth Amendments, Title IX, and the Equal Pay Act. For the Equal Pay Act claim, she alleged that the school district improperly adjusted her experience credit after her demotion, so as to pay her less than male administrators. The district court granted the school district’s motion for summary judgment, finding that the plaintiff met her prima facie case but failed to provide evidence of pretext to rebut the school district’s defense. On appeal, the Tenth Circuit held that the district court erred in applying a burden-shifting framework similar to a Title VII case. Nonetheless, applying the EPA’s “form of strict liability,” the court found for the school district. EPA claims consist of the prima facie case and the affirmative defenses; pretext is irrelevant because there is no requirement to prove intent. Here, the plaintiff proved that she was paid less than male colleagues, but the school district

showed that it paid administrators based on years of experience. Even if she could show that the school district miscounted her experience credits, her case would fail because the credits are based on experience, not sex.

Uniformed Services Employment and Reemployment Rights Act (USERRA)

USERRA, applied through section 206 of the CAA, 2 U.S.C. § 1316, prohibits discrimination and retaliation against employees who serve, have served, or have applied to serve in the uniformed services. It also provides returning service members with certain reemployment rights.

- *Sellman v. Aviation Training Consulting, LLC*, 155 F.4th 1215 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 2560 (Apr. 20, 2026) – Nicholas Sellman, a disabled veteran, worked for ATC for one year. During this time, his supervisor made disparaging comments regarding Sellman’s VA disability rating, and was reprimanded after Sellman reported this to HR. Later, ATC decided not to renew Sellman’s contract. He sued, alleging ADA and USERRA violations.

Sellman alleged ATC violated USERRA by refusing to renew his contract because of his disability, and in retaliation for his complaining to HR about the comments disparaging his disability. The court held that USERRA’s protections do not extend to disability status. Sellman did not allege that ATC discriminated against him because he had previously served in the military, but because of the VA disability rating he had as a result of his military service. The court held that such a claim “clearly falls outside the relevant statutory language.” (This case is also discussed in the ADA/RA section of this outline.)

- *Porter v. Trans States Holdings, Inc.*, No. 24-1486, 2025 WL 3772561 (10th Cir. Dec. 31, 2025) – Kenneth Porter worked as a pilot for TSH for 14 years. Throughout this time, he was a member of the U.S. Navy Reserve and took military leave from TSH multiple times. Despite applying for several open positions for which he was qualified, he was only promoted once, after five years; he was never promoted again during his remaining nine years working there. When he sued, alleging TSH failed to promote him because of his military status in violation of USERRA, he relied on one comment that his supervisor, Randall Zehnder, made to him in a private conversation: Porter asked Zehnder why he kept getting passed over for promotion in favor of more junior pilots, and Zehnder stated, “Well, you also do a lot of military duty.” Finding, among other things, that Porter had no evidence to support his claim and that TSH established legitimate independent reasons for declining to promote him, the district court entered summary judgment for TSH.

The Tenth Circuit reversed and remanded. As to the first step of its inquiry, it found that Porter presented sufficient direct evidence – Zehnder’s statement – to satisfy his initial burden of showing that his protected status was a motivating factor his non-promotion (“though it is a close case”). TSH argued the statement was merely a stray remark that could not create an issue of fact regarding discriminatory intent, and that Zehnder was not a decisionmaker with regard to the promotions. Reasoning that “remarks are only ‘stray’

when they lack a nexus to the challenged employment decision[]” and that it didn’t matter whether Zehnder was a decisionmaker or simply knew about the reasons for Porter’s non-promotion, the court held that Zehnder’s statement tended to show that Porter’s military duty factored into TSH’s decisions not to promote him.

The burden then shifted to TSH to prove it would have taken the same action had Porter not been in the military. The district court failed to apply the proper standard at this step: under USERRA, both the burden of production and the burden of persuasion shift to the employer once the employee meets their initial burden, so the burden was not on Porter to disprove TSH’s proffered legitimate reasons for not promoting him (i.e., his attitude and demeanor). Rather, it was TSH’s burden to establish as a matter of uncontroverted fact that it would have declined to promote Porter regardless of his military status, and it did not do so.

- *Sorenson v. Delta Air Lines, Inc.*, 174 F.4th 54 (11th Cir. 2026), *petition for cert. filed sub nom. McLean v. Delta Air Lines, Inc.*, No. 26-275 (U.S. Aug. 28, 2026) – Two former Delta pilots resigned after Delta accused them of abusing military- and sick-leave benefits, and brought USERRA claims against their former employer. They alleged, in relevant part, that Delta violated USERRA’s rights-and-benefits provision by allowing pilots on “known leaves of absence” to accrue vacation time, but not pilots on long-term military leave. The Eleventh Circuit affirmed summary judgment for Delta. It examined the USERRA regulations’ comparability factors – duration, purpose, or ability to choose when to take leave – and found that none of the factors showed that known leaves of absence are comparable to long-term military leave. Duration was not comparable, as Delta offers known leaves of absence only one month at a time, in contrast to potentially years for long-term military leave. Purpose was not comparable, as known leaves of absence are used to furlough employees when Delta is overstaffed, and pilots on known leaves of absence are considered “active” and can be recalled. The ability to choose when to take leave was not comparable, as pilots can choose whether to take a known leave of absence if Delta offers it, while military pilots must take leave when they are ordered to report to military service.

Veterans Employment Opportunity Act (VEOA)

The VEOA gives veterans improved access to federal job opportunities and establishes a redress system for preference eligibles in the event that their veterans’ preference rights are violated. The CAA applies section 4(c) of the VEOA to covered employees in the legislative branch. 2 U.S.C. § 1316a.

- *Brimer v. Dep’t of the Navy*, — F.4th —, No. 2024-1388, 2026 WL 2359399 (Fed. Cir. Aug. 14, 2026) (en banc) – David Brimer, a preference-eligible veteran, applied for a merit promotion to a position that stated it was open to current permanent employees and VEOA eligibles. When his application was not referred to the hiring manager, he filed an appeal with the MSPB, alleging that the Navy had obstructed his right to compete for

employment and violated his veterans' preference rights under 5 U.S.C. § 3304(f)(1).² The MSPB, relying on *Kerner v. Dep't of the Interior*, 778 F.3d 1336 (Fed. Cir. 2015), held that he was not entitled to corrective action because he was already a federal employee and § 3304(f) is inapplicable to veterans who are already employed by the federal government, and a Federal Circuit panel affirmed.

On rehearing en banc, the Federal Circuit agreed that the MSPB's holding was in error. It agreed with Brimer that nothing in the language of § 3304(f)(1) ("Preference eligibles or veterans ... may not be denied the opportunity to compete for vacant positions for which the agency making the announcement will accept applications from individuals outside its own workforce under merit promotion procedures[.]") makes any reference to a preference-eligible veteran's current employment or limits its application to candidates new to the federal government. It held that "under § 3304(f)(1) an agency cannot rely on a veteran's or preference eligible's status as a current federal employee to deny him or her the right to compete, a right enforceable before the Board[.]" and overruled *Kerner* to the extent it held otherwise. It remanded for the MSPB "to consider whether, without the grounds in *Kerner*, Mr. Brimer was deprived of an opportunity to compete under the VEOA."

Occupational Safety and Health Act (OSH Act)

The OSH Act applies to the legislative branch through section 215 of the CAA, 2 U.S.C. § 1341. The OSH Act requires that every employer "shall furnish to each of [its] employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to [its] employees." 29 U.S.C. § 654(a)(1). Employers are also required to "comply with occupational safety and health standards promulgated under this chapter." 29 U.S.C. § 654(a)(2). The OCWR General Counsel is granted much of the same investigative and prosecutorial authority as the Secretary of Labor, and can issue citations and file complaints if hazards identified by the OGC staff are not abated promptly and appropriately.

- *Exxon Mobil Corp. v. OSHRC*, 183 F.4th 378 (5th Cir. 2026) – An Exxon employee was diagnosed with PTSD stemming from his involvement in an emergency response effort following an accident at an Exxon petroleum refinery. The Secretary of Labor cited Exxon for failing to record the employee's work-related mental illness in its illness and injury log (OSHA Form 300) or fill out the associated incident report (OSHA Form 301), as required by an OSHA-promulgated rule, 29 C.F.R. § 1904.5(b)(2)(ix). Exxon challenged the citation, arguing that requiring employers to record employees' work-related mental illnesses exceeds OSHA's rulemaking authority under section 8 of the OSH Act. Relying on the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Fifth Circuit independently interpreted the statute – specifically, the word "illnesses," which is left undefined in the OSH Act – looking at statutory context, dictionary definitions contemporaneous with the enactment of the law, and the statutory delegation of power to OSHA generally. The court concluded that the

² As noted in footnote 3 of the *Brimer* opinion, the "opportunity to compete" provision is now located at 5 U.S.C. § 3304(l)(1).

best reading of the statute is “that ‘illnesses,’ as used there, refers to physical, and not mental, work-related ailments and conditions.” The Fifth Circuit therefore held that, “However commendable OSHA’s desire to improve mental health in the workplace,” OSHA exceeded its rulemaking authority in promulgating 29 C.F.R. § 1904.5(b)(2)(ix) to require employers to record employee-reported work-related mental illnesses. The court therefore vacated the citation and penalty against Exxon, “as well as the rule itself.”

- *Precision Refractory Servs., L.L.C. v. Sonderling*, No. 25-60377, 2026 WL 2031830 (5th Cir. July 14, 2026) – An employee was injured when a three-foot-long metal pipe fell off a scaffold and hit him. The OSHRC found the employer, PRS, in serious violation of an OSHA regulation requiring employers to take certain steps to prevent objects from falling off scaffolding and striking employees. That standard applies to situations in which “there is a danger of tools, materials, or equipment falling from a scaffold and striking employees below,” 29 C.F.R. § 1926.451(h)(2), and provides employers with a choice of possible safeguards, including that “The area below the scaffold to which objects can fall shall be barricaded, and employees shall not be permitted to enter the hazard area,” or that the employer shall install toeboards, paneling, guardrails, or a canopy, debris net, or catch platform. PRS argued that the only option for the type of scaffolding it was using would be toeboards, and that only its subcontractor could have installed those toeboards, so PRS itself should not be liable; the Fifth Circuit rejected that argument, because the standard offered several alternative means of compliance – including simply barricading the area below the scaffold so employees could not enter, which PRS could have done – and PRS failed to implement any of those means. The court also disagreed with PRS’s assertion that it lacked knowledge of the violation, pointing to substantial evidence in the record that PRS’s supervisory personnel had actual or constructive knowledge of the risk of falling objects striking workers below the scaffolding. The court therefore denied the employer’s petition for review of the OSHRC decision.
- *Henkels & McCoy, Inc. v. OSHRC*, No. 22-13133, 2026 WL 950135 (11th Cir. Apr. 8, 2026) – One of the company’s employees was fatally injured while operating a hydraulic boom on a digger derrick, as a result of a bolt shearing off and the boom detaching from its pedestal and falling, ejecting the employee from the attached chair onto the pavement. The digger derrick’s manual instructed owners to conduct inspections that included an annual “torque test” – i.e., testing the bolts with a torque wrench to ensure that the bolts are tight enough – and both the manual and the digger derrick’s pedestal also contained warning decals stating that failure to inspect and properly torque the bolts could cause structural failure resulting in death or serious injury. Despite these instructions and warnings, the employer in this case did not conduct torque testing, and its agreement with an inspection contractor did not include torque testing either. After investigating the fatal accident, OSHA issued a citation against the employer for violating the OSH Act’s General Duty Clause, for failing to ensure proper maintenance of the bolts and thus exposing employees to struck-by and crushing hazards.

The Occupational Safety and Health Review Commission upheld the citation, and the Eleventh Circuit affirmed the Commission’s decision. The evidence supported the Commission’s finding that (1) the hazard – being struck by or crushed by the boom as a result of improper bolt torquing – was likely to cause death or serious harm; (2) the

industry recognized the hazard of not properly torquing the bolts, as evidenced by the manufacturer's warning labels; (3) there was a feasible and effective way for the employer to abate the risk from the hazard, namely testing the bolts in compliance with the manufacturer's instructions; and (4) the employer knew, or with reasonable diligence could have known, of the presence of the violation, such that the violation qualified as serious.

- *TCP Specialists, LLC v. Sec'y of Lab.*, 178 F.4th 701 (D.C. Cir. 2026) – TCP Specialists was one of several contractors hired for a “workover” project at a gas well. Two other contractors, Jaguar Energy Services and Reliance Well Services, controlled the flow rate and pressure of the well, while TCP's employees provided “wireline services,” using a specialized cable to lower tools and equipment into the well. A failure to properly depressurize the well caused a corroded pipe to rupture, striking several employees; two non-TCP employees were killed, and one of TCP's employees was hospitalized. The Secretary of Labor cited TCP under the OSH Act's General Duty Clause, alleging that TCP's employees had been standing unnecessarily close to the well during the depressurization attempt, and noting two abatement measures that could have prevented the injuries: establishing a buffer zone around the wellhead and restraining the pressurized piping.

The ALJ determined that the evidence satisfied the four required elements of a General Duty Clause violation: (1) a hazard existed, i.e., the risk posed by the workers' close proximity to the “frac stack” (the assemblage of equipment used to control a well's flow rate and pressure) during depressurization; (2) the hazard was recognized by one of TCP's supervisors, and was therefore imputed to the employer; (3) the hazard caused or was likely to cause death or serious physical harm, as evidenced by the accident itself; and (4) the hazard was preventable, because although TCP did not have authority to restrain the piping, it could feasibly have established a buffer zone and thus materially reduced the risk to its employees. The OSHRC denied TCP's request for discretionary review, so the ALJ's decision became final, and TCP appealed to the D.C. Circuit, which affirmed the ALJ's decision. The ALJ had correctly defined the risk, as he explained the hazardous condition with reference to the “physical agents” underlying that risk – i.e., the frac stack and pressured piping near which the employees were standing – as well as a “condition or practice” over which TCP had control, namely its employees' conduct and location during the depressurization. The court also rejected TCP's argument that the ALJ's finding that TCP could have prevented the accident by establishing a buffer zone lacked substantial evidence, as well as TCP's assertion that the General Duty Clause was unconstitutional as applied.

Labor-Management Relations

Section 220 of the CAA, 2 U.S.C. § 1351, applies the protections of certain sections of the Federal Service Labor-Management Relations Statute (FSLMRS) to some employing offices in the legislative branch. The OCWR Board usually looks to FSLMRS decisions issued by the Federal Labor Relations Authority or the federal courts, but may also consider cases involving

the National Labor Relations Act, to the extent that the NLRA has provisions equivalent to those in the FSLMRS.

FSLMRS

- *AFGE v. Trump*, 178 F.4th 456 (9th Cir. 2026) – After President Trump issued an executive order excluding employees of many agencies from unionizing, citing the FSLMRS’ sections permitting him to do so, the unions sued in federal district court, alleging that the exclusion amounted to First Amendment retaliation because the unions had opposed Trump. One of the government’s defenses was that the unions should have brought the claims as unfair labor practices with the FLRA. The Ninth Circuit disagreed. The FSLMRS states that “the FLRA shall be responsible for carrying out the purpose of this chapter,” but the purpose of the section at issue is to exclude unions and employees from coverage under the FSLMRS. There is no mechanism under the unfair labor practice procedure or otherwise to challenge an executive order at the FLRA. As such, a federal lawsuit was appropriate.

NLRA

- *Home Depot U.S.A., Inc. v. NLRB*, 158 F.4th 910 (8th Cir. 2025) – Following George Floyd’s murder, an employee at a Minnesota Home Depot wrote “BLM” on his orange employee apron. His manager notified him that this violated the dress code and offered him a new apron. The employee refused the new apron and resigned. He filed an unfair labor practice charge with the NLRB alleging that he was constructively discharged because he engaged in activity protected by the National Labor Relations Act. The NLRB found that writing “BLM” on his apron was protected concerted activity, and that Home Depot failed to prove that “special circumstances” warranted forcing him to remove it. The Eighth Circuit reversed, finding that Home Depot met its burden of showing “special circumstances.” In particular, the court found that the racially-charged environment in Minnesota after Floyd was killed justified Home Depot’s decision to require a less divisive message. The court noted that “Context matters . . . [it was not] at a random location in the United States; it was not at a normal moment in time.”
- *Hosp. Menonita De Guayama, Inc. v. NLRB*, 183 F.4th 745 (D.C. Cir. 2026) – For decades, the NLRB has enforced a “successor bar,” which compels new owners of a business to recognize and bargain with an incumbent union regardless of whether the union demonstrated majority support from the bargaining unit. The D.C. Circuit had previously upheld the successor bar as a “reasonable” policy choice, but the Supreme Court vacated and remanded for a decision consistent with *Loper Bright v. Raimondo*, 603 U.S. 369 (2024). On remand, the D.C. Circuit found that the “successor bar” violated the NLRA. Giving no deference to the NLRB’s legal conclusions, the court found the bar effectively suspends the Act’s core guarantees of employee freedom and majority rule in collective bargaining, and therefore the NLRB lacks authority to impose this rule.

AI

It is becoming increasingly common for federal courts to admonish or even sanction parties for problems arising from the use or suspected use of artificial intelligence, often involving “hallucinations.” A small sample of such opinions is listed below. Although the OCWR Board of Directors has not yet issued a decision or established specific guidelines addressing the use of AI in OCWR administrative proceedings, practitioners should exercise caution when using AI to produce filings either in federal court or at the OCWR – and, indeed, should verify the accuracy of citations regardless of whether they use AI or not, as noted in several of the opinions below.

- *Hileman v. W. Penn Allegheny Health Sys. Inc.*, 182 F.4th 283 (3d Cir. July 20, 2026) – In this case – which is also discussed in the ADA/RA section of this outline – the plaintiff’s lawyer was sanctioned for including misquotations in a motion to supplement the record. Although the court acknowledged that it could not tell whether these misquotations were AI hallucinations, it went on to state, “Either way, misquotations are serious, and we expect counsel to guard against them by checking citations.” In a sanction similar to those imposed by other courts for misconduct related to AI hallucinations, the Third Circuit ordered the attorney to reimburse the opposing party “for the attorney’s fees that it paid to respond to his antics: \$14,636.50.” And the court added a warning that the attorney “may not recoup those costs from [his client], but must pay them himself.”
- *In re Nwaubani*, No. 25-9517, 2026 WL 687194 (4th Cir. Mar. 11, 2026) – The court initiated disciplinary proceedings against an attorney after concerns arose about his use of AI in an employment discrimination appeal, which resulted in citations to three nonexistent cases. The court publicly admonished Nwaubani, stating that whether using AI or not, submitting a brief with nonexistent cases interferes with the administration of justice. “The facts here should remind all members of the Fourth Circuit Bar that there is no shortcut around the rules. Whether done in modern, innovative ways or old-fashioned ways, citing nonexistent decisions is not permitted.”
- *Amarsingh v. Frontier Airlines, Inc.*, No. 24-1391, 2026 WL 352016 (10th Cir. Feb. 9, 2026) – The Tenth Circuit imposed sanctions on an attorney representing herself, who used ChatGPT to write her brief in opposition to the defendant’s motion to dismiss. The brief contained “serious flaws, including citations to nonexistent cases and attribution of propositions or quotations to two real cases that did not stand for the propositions or contain the quotations.” The sanctions included \$1,000 in attorney fees and a report to the attorney’s state bar detailing her misconduct. The court warned that “Although there is nothing inherently problematic with the use of GenAI in the practice of law, careless use of the tool can waste both judicial resources and the opposing party’s time and money, and it can damage the credibility of the legal system.”
- *Akerlund v. Atlas Air, Inc.*, 181 F.4th 1200 (11th Cir. 2026) – In its opinion dismissing a complaint that involved, among other things, Title VII religious discrimination claims related to the airline’s COVID-19 vaccination policy, the Eleventh Circuit devoted five paragraphs to a scathing critique of the misconduct committed by plaintiff’s counsel, Anthony Sabatini, in relying on AI to draft his briefs. The attorney’s opening brief

contained at least eight hallucinated cases; when defendant’s counsel pointed this out, Sabatini used his reply brief to attempt to “withdraw” his reliance on those cases, but in fact listed eight *different* hallucinated cases. In referring the matter to the Eleventh Circuit’s Committee on Lawyer Qualifications and Conduct, the court slammed Sabatini’s representation of his clients and his shirking of his professional responsibility as an officer of the Court:

It goes without saying that completely outsourcing one’s legal work to artificial intelligence software is not competent. *See* A.B.A. Comm. on Ethics & Pro. Resp., Formal Op. 512, at 3–4 (2024). Doing so is a dramatic violation of the client’s interests. ...

We expect that when lawyers submit briefs, they give us their best view of what the law is, and how that law supports their clients. We read those briefs carefully—not just because they are the product of counsel’s time, effort, and skill, but because they help us as we try to reach the right answer. All that is lost if a lawyer decides that it is not worthwhile to do the work to persuade us—if he is willing to sign his name on whatever a machine churns out without so much as checking it for accuracy. ...

When lawyers rely on AI tools, there is no way to get around the obligation to verify that the software got it right, and that what it got wrong will not end up in court filings. By signing his name on briefs filled with hallucinated citations—not once but twice—Sabatini violated his professional obligations, both to his clients and to this Court.

OCWR Board

- *Brown v. Off. of the Chief Admin. Officer of the U.S. House of Representatives*, No. 24-HS-27 (DA, RP), 2025 WL 4687014 (OCWR Board Sept. 30, 2025) – Demetrice Brown filed a claim form with OCWR alleging, inter alia, discrimination and harassment on the basis of disability and failure to accommodate his disability. When the CAO filed a motion to dismiss for failure to state a claim, Brown filed an opposition including detailed allegations about reasonable accommodation requests and denials, but did not seek leave to amend his claim form. The Hearing Officer granted the motion to dismiss. It was not clear whether the Hearing Officer had considered the materials in Brown’s opposition.

The OCWR Board vacated and remanded the Hearing Officer’s decision. Regarding the appropriate pleading standard, it concluded that the Hearing Officer had incorrectly applied the pleading standard used in district court proceedings to the initial administrative request (i.e., the OCWR claim form). “The Hearing Officer should dismiss for failure to state a claim only if the claim form fails to give fair notice of the claims and grounds upon which they rest, or if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” (internal quotation omitted)

Then, discussing how the courts and the Federal Rules of Civil Procedure favor amendment of pleading over dismissal, the Board adopted the approach of the Third Circuit in *Shane v. Fauver*, 213 F.3d 113 (3d Cir. 2000). It concluded that “where, as here, a claim is subject to dismissal for failure to state a claim, the merits hearing officer must permit a curative amendment, regardless of whether the claimant seeks to amend, unless an amendment would be inequitable or futile.”

- *Fraternal Order of Police, D.C. Lodge No. 1, U.S. Capitol Police Lab. Comm. & U.S. Capitol Police*, No. 25-LM-04 (NG), 2026 WL 933231 (OCWR Board Mar. 24, 2026) – The Fraternal Order of Police, District of Columbia Lodge No. 1 filed a negotiability petition after the United States Capitol Police took the position that a proposal was outside its duty to bargain. The proposal pertained to the USCP’s prohibition on substitute employees (i.e., employees seeking to substitute for another) working double shifts on holidays, a prohibition that was issued in 2019, suspended in 2022, and reinstated in July 2025. Specifically, the proposal involved “allowing bargaining unit employees to work additional duty as a qualified substitute on holidays so long as the Department determines they are qualified to do so pursuant to CBA Section 18.03.” Section 18.03 gives consideration to whether a substitute meets the rest period requirement and places limitations on hours of additional duty per pay period.

USCP’s position was that this proposal was not negotiable as it excessively interfered with its management right to assign work. The OCWR Board disagreed, explaining, “Procedures are a mandatory subject of bargaining even where an agency is exercising the right to assign work under section 7106(a)(2)(B). Proposals governing how management would select employees for assignments have been found to be negotiable procedures, as long as management has reserved the right to determine that the available employees were equally qualified.” (citation omitted)

The Union’s proposal involved the assignment of work, using existing procedures, to employees whose qualifications were determined by the USCP. It did not ask the USCP to forgo its management right to assign work or to determine the qualifications of employees assigned that work. The proposal was thus a negotiable procedure that did not impermissibly affect the USCP’s management right to assign work. Accordingly, the OCWR Board concluded that the proposal was a procedure under section 7106(b)(2) and was therefore negotiable, and ordered the USCP to bargain over the proposal.

- *Fraternal Order of Police, D.C. Lodge No. 1, U.S. Capitol Police Lab. Comm. & U.S. Capitol Police*, No. 24-LMR-01 (CA), 2026 WL 1026079 (OCWR Board Mar. 24, 2026) – The Capitol Police Board (CPB) oversees the USCP and issues regulations relating to USCP officers’ pay and other conditions of employment. The regulations are not subject to any public comment or the Freedom of Information Act, and the USCP has refused to provide them to the FOP (the officers’ union). The FOP filed an unfair labor practice charge alleging that the USCP’s refusal to provide CPB orders and regulations violates the FSLMRS. The OCWR Board found that CPB orders and regulations are “presumptively necessary for a full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.” The Board remanded the case to

the Hearing Officer to conduct an in-camera review of CPB orders and regulations in lieu of settlement.

- *Fraternal Order of Police, D.C. Lodge No. 1, U.S. Capitol Police Lab. Comm. & U.S. Capitol Police*, No. 25-LMR-01 (CA) (OCWR Board Aug. 28, 2026)³ – At the beginning of the COVID-19 pandemic, the USCP suspended its Bi-Weekly Pay Limitation. The USCP reinstated the Limitation on April 1, 2024, without providing prior notice to the FOP. After the USCP reinstated the Limitation, the FOP proposed one change to how the USCP calculates the Limitation: each hour of compensatory time counts toward the Limitation only in the pay period the officer uses it, instead of both when it is earned and when it is used. The USCP refused to bargain over the proposal, asserting it was non-negotiable. The OCWR Board found that USCP committed two unfair labor practices. First, the USCP committed a violation when it reimplemented the Limitation without providing the FOP with prior notice and opportunity to bargain. Second, the OCWR Board found that the FOP’s proposal was negotiable, and therefore the USCP committed an unfair labor practice when it refused to bargain over it.

Supreme Court Preview

The Supreme Court has not yet granted cert in any cases directly involving CAA-applied statutes. However, the Court will be hearing an appeal of an Eleventh Circuit decision regarding a civil procedure matter, which may have implications for legislative branch employing offices raising affirmative defenses to complaints filed in federal district court.

- *Younge v. Fulton Jud. Cir. Dist. Atty’s Off., Ga.*, No. 23-11418, 2025 WL 974309 (11th Cir. Apr. 1, 2025), *cert. granted*, No. 25-352, 146 S. Ct. 1861 (2026) – As third-in-command of the Fulton County District Attorney’s Office, Jasmine Younge worked closely with DA Paul Howard. After she told Howard she was pregnant, he excluded her from meetings and fired her two weeks later. She sued for, in relevant part, pregnancy discrimination in violation of Title VII.

The DA’s office failed to raise Title VII’s personal-staff exemption (i.e., that Younge was part of Howard’s “personal staff” and thus exempt from Title VII’s protection) until after discovery closed, but invoked the exemption when it moved for summary judgment. Younge opposed summary judgment and argued that the DA’s office could not belatedly raise this exemption – which she characterized as an affirmative defense – absent good cause. The district court found that the DA’s office could assert the personal-staff exemption as a belated affirmative defense because the late assertion would not prejudice Younge, and granted summary judgment for the DA’s office.

The Eleventh Circuit affirmed. First, it assumed without deciding that the personal-staff exemption is an affirmative defense (as opposed to an element of a plaintiff’s *prima facie*

³ This decision has not yet been published on Westlaw, but is available on the OCWR web site at <https://www.ocwr.gov/board-decisions/fraternal-order-of-police-district-of-columbia-lodge-no-1-u-s-capitol-labor-committee-and-united-states-capitol-police-case-no-25-lmr-01-ca/>.

case).

Then, it concluded that a district court may consider a defendant's unpleaded affirmative defense at summary judgment if there is no prejudice to the plaintiff. Younge had argued that the DA's office needed to show good cause for not timely pleading the personal-staff exemption. But the court noted, "the liberal pleading rules established by the Federal Rules of Civil Procedure apply to the pleading of affirmative defenses. ... When a plaintiff has notice that an affirmative defense will be raised at trial, the defendant's failure to comply with Rule 8(c) ['In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense...'] does not cause the plaintiff any prejudice." Younge argued that consideration of the DA's office's unpleaded affirmative defense prejudiced her because her opportunity to conduct discovery on the personal-staff exemption was limited. However, the Eleventh Circuit found that the record contained "copious discovery evidence" concerning each of the six factors courts use to determine whether an individual is on an elected official's personal staff, and Younge rejected the magistrate judge's invitation to seek more discovery. Thus, the district court did not clearly err by finding that Younge had not suffered prejudice from the DA's office's late assertion of the personal-staff exemption.

Finally, the court analyzed the six factors, and concluded that five of six weighed in favor of finding that Younge was on Howard's personal staff. Thus, Younge was not an "employee" under Title VII, and she could not invoke Title VII's protections.

Younge's petition for certiorari was granted on March 30, 2026, and the case is set for argument before the Supreme Court on November 2, 2026. The question presented is: "Rule 8(c)(1) of the Federal Rules of Civil Procedure provides that a party 'must' plead 'any' affirmative defense. ... Where a defendant has filed an answer without pleading an affirmative defense, may the defendant nonetheless assert that affirmative defense as the basis for a summary judgment motion, without amending or seeking to amend its answer to plead that affirmative defense, and may a defendant do so even if an amendment adding that affirmative defense would be barred by Rule 16(b)(4)?"

Note: The OCWR procedural rules state at section 4.09(f)(3) that "Affirmative defenses not raised in an answer that could have reasonably been anticipated based on the facts alleged in the claim form shall be deemed waived." FRCP 8 does not have equivalent language. It is therefore not clear whether the outcome of the *Younge* case would be relevant to OCWR administrative hearings. However, regardless of whether it affects the OCWR ADR process, the outcome of this case will still apply to CAA cases being litigated in federal court.