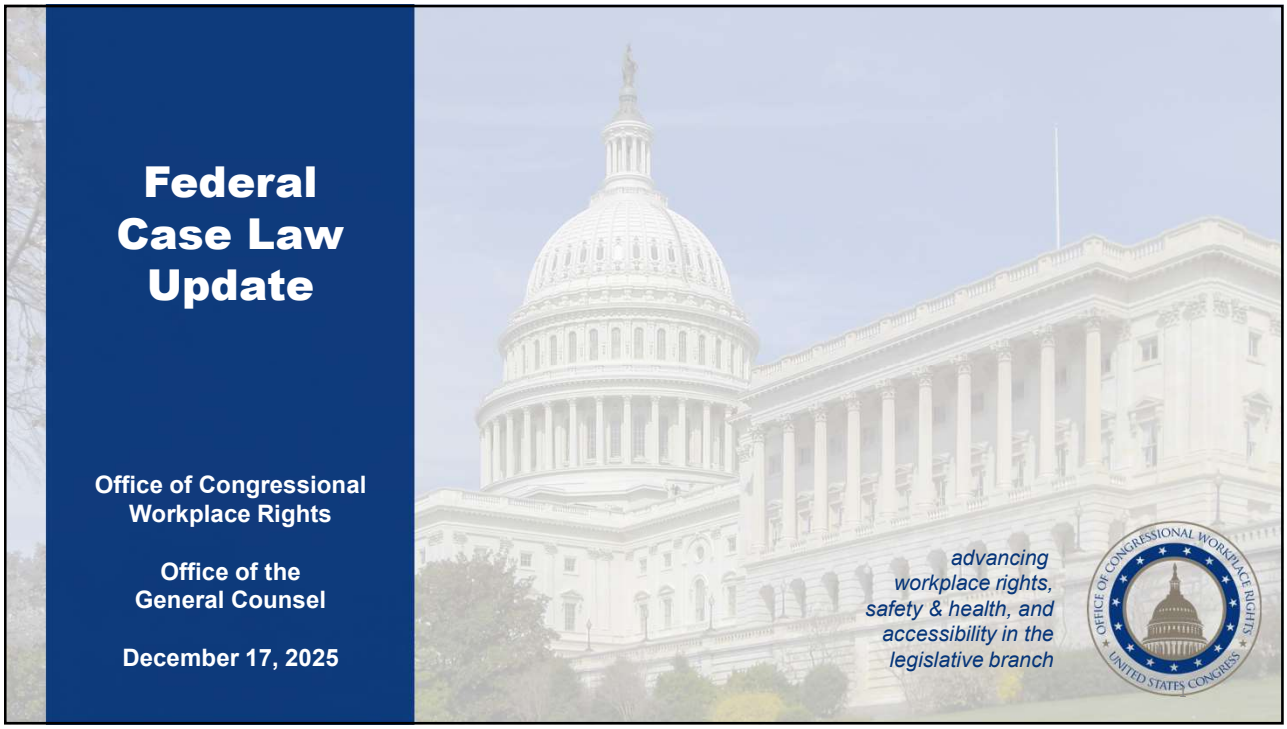
Federal Case Law Update
Office of Congressional Workplace Rights
Office of the General Counsel
December 17, 2025
advancing workplace rights, safety & health, and accessibility in the legislative branch
OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS
UNITED STATES CONGRESS

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Welcome

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Overview – Recent Federal Cases

- Claims brought under CAA-applied statutes
- First Amendment claims involving government employees

Note: Opinions of federal Courts of Appeals and District Courts are not binding on the OCWR Board of Directors or OCWR-appointed Hearing Officers, but their reasoning may be persuasive.

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Presenters

- Hillary Benson, Deputy General Counsel
- Dynah Haubert, Associate General Counsel
- John Mickley, Associate General Counsel

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Americans with Disabilities Act/ Rehabilitation Act

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ADA/RA – Medical Examinations and Inquiries

- *Nawara v. Cook Cnty.*, 132 F.4th 1031 (7th Cir. 2025) – When a nondisabled employee proves a violation of Title I's prohibition on medical examinations and inquiries, this still constitutes discrimination "on the basis of disability" for purposes of a backpay award.
- *Mullin v. Sec'y, U.S. Dep't of Veterans Affs.*, 149 F.4th 1244 (11th Cir. 2025) – When an employer conditions an employee's access to statutorily protected leave, such as FMLA, on the submission of medical information, that is an "inquiry" under the confidentiality provision of the ADA and RA.

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ADA/RA – Application of *Muldrow*

- *Herkert v. Bisignano*, 151 F.4th 157 (4th Cir. 2025) – In light of *Muldrow*, the Fourth Circuit vacated and remanded for a jury to assess whether Herkert's reassignment to a non-supervisory role was sufficiently adverse for purposes of her discrimination claim.
- *Strife v. Aldine Indep. Sch. Dist.*, 138 F.4th 237 (5th Cir. 2025) – Unlike some of its sister circuits, the Fifth Circuit held that *Muldrow* did not apply in an ADA/RA case. It rejected the plaintiff's reference to *Muldrow* as support for her argument that her employer altered the terms, conditions, or privileges of her employment, writing in a footnote that "*Muldrow* concerns Title VII discrimination cases, not ADA violations."

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ADA/RA – "Regarded As" Claims

- *Meza v. Union Pac. R.R. Co.*, 144 F.4th 1115 (8th Cir. 2025) – Union Pacific may have regarded an employee with a traumatic brain injury as currently disabled when it placed restrictions on him out of concern about how his injury would affect him in the future.
- *Pajer v. Walt Disney Co.*, No. 24-11146, 2025 WL 1826050 (11th Cir. July 2, 2025) – Disney did not impermissibly regard employees who failed to report their COVID-19 vaccination status as disabled. The ADA does not extend to an employer's belief than an employee might develop an impairment in the future.

8

Age Discrimination in Employment Act

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ADEA

- *Kean v. Brinker Int'l, Inc.,* 140 F.4th 759 (6th Cir. 2025) – A 59-year-old manager of a successful Chili's restaurant was terminated for "not living our culture" and replaced with a 33-year-old. Summary judgment was inappropriate because fact issues existed as to whether that stated reason was pretextual, in light of the store's good performance with regard to employee turnover, sales, and guest experience – all evidence of "culture" – and the fact that Chili's offered no evidence except a post-hoc report and did not produce a witness to support its justification.

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ADEA (cont'd)

- *Murphy v. Caterpillar Inc.*, 140 F.4th 900 (7th Cir. 2025) – 58-year-old employee was offered a performance action plan with one deadline already passed and one item already deemed failed. He refused to sign, resigned, and sued for unlawful constructive discharge. The fact that full completion of the plan was impossible created a genuine issue of material fact regarding Caterpillar's motive and precluded summary judgment.
- *Arnold v. United Airlines, Inc.,* 142 F.4th 460 (7th Cir. 2025) – Employee resigned before finishing a performance improvement plan and sued, alleging that the PIP was unlawful and led to her constructive discharge. The Seventh Circuit affirmed summary judgment for the employer, holding that a PIP by itself is not an adverse action under *Muldrow.*

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ADEA (cont'd)

- *Mobley v. Workday, Inc.,* 740 F. Supp. 3d 796 (N.D. Cal. 2024) – Applicant rejected for over 100 jobs alleged disparate impact and intentional discrimination based on age, resulting from Workday's artificial intelligence screening tools. The court dismissed his intentional discrimination claim because he alleged only that Workday was aware of the discriminatory effects, but allowed his disparate impact claim to proceed to discovery.

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Title VII of the Civil Rights Act of 1964

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Title VII – Similarly Situated Comparators

- *Hayes v. Clariant Plastics & Coatings USA, Inc.*, 144 F.4th 850 (6th Cir. 2025) – A coworker need not be identical in all respects to the plaintiff to be a valid comparator, as long as they are similarly situated in all relevant aspects of their jobs. Plaintiff and her proffered comparator had some differences in their skill sets, but had similar job duties, reported to the same manager, and were subject to the same work standards, so a jury could find them "similarly situated."

14

Title VII – Pretext

- *Wannamaker-Amos v. Purem Novi, Inc.*, 126 F.4th 244 (4th Cir. 2025) – Several factors suggested the employer's reasons were pretextual, including:
  - Doubts about the veracity of the employer's proffered reason
  - Shifting and inconsistent justifications for the plaintiff's termination
  - Evidence of the supervisor's discriminatory animus
  - Failure to follow the company's performance improvement policy

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Title VII – Cat's Paw Theory

- *Iweha v. Kansas*, 121 F.4th 1208 (10th Cir. 2024) – The key to a cat's paw theory is an "unbroken causal chain connecting the biased employee's action to the unbiased decisionmaker's adverse decision." The most common way to demonstrate a break in that chain, and thereby defeat the cat's paw argument, is to show that the employer conducted an independent investigation.

16

Title VII – Subjective Hiring Criteria

- *Cunningham v. Austin*, 125 F.4th 783 (7th Cir. 2025) – Reliance on candidates' responses to standardized subjective interview questions was not evidence of pretext. The employer faced "a common HR dilemma: whether to prioritize subject matter expertise or difficult-to-measure intangibles, such as skilled customer service, familiarity with process improvement, and passion for the position evinced by thorough interview preparation. DFAS chose the intangibles, and we will not second guess its decision."

17

Family and Medical Leave Act

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FMLA

- *Rodriquez v. Se. Penn. Transp. Auth.*, 119 F.4th 296 (3d Cir. 2024) – An employee does not have a "serious health condition," as required to be entitled to FMLA leave, if the employee only sees a healthcare provider after the leave is taken.
- *Jackson v. U.S. Postal Serv.*, 149 F.4th 656 (6th Cir. 2025) – A medical certification form providing an estimate for intermittent unforeseeable leave cannot create an exact limitation of the total amount of FMLA days an employee can take.

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FMLA (cont'd)

- *Chapman v. Brentlinger Enters.*, 124 F.4th 382 (6th Cir. 2024) – In this opinion, the Sixth Circuit provided guidance on how to determine if an *in loco parentis* relationship exists between two adults for the purposes of FMLA coverage. "The touchstone of this inquiry is intention" – not just whether someone has assumed obligations of a parental nature, but whether they have done so with the intention of serving as a parent.

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Fair Labor Standards Act

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FLSA

- *Micone v. Levering Reg'l Health Care Ctr., LLC.,* 132 F.4th 1074 (8th Cir. 2025) – Genuine issue of material fact existed as to whether nursing home employees knew about the employer's unwritten policy requiring submission of timesheets for work during unpaid lunch breaks, and whether employer had constructive knowledge that the work occurred.

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FLSA (cont'd)

- *Doe No. 1 v. United States*, 129 F.4th 1362 (Fed. Cir. 2025) – In analyzing a dispute over whether an FBI employee was entitled to pay for attending mandatory training, the Federal Circuit held that OPM regulations that did not conform to DOL regulations are valid "if they are consistent with the statute and, to the extent they differ from DOL regulations, any differences are justified." Here, the differences were justified because OPM has authority to regulate federal employees.

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Occupational Safety and Health Act

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OSH Act

- *UHS of Del., Inc. v. Sec'y of Lab.*, 140 F.4th 1329 (11th Cir. 2025) – Where there was no dispute about the existence of a recognized hazard likely to cause death or serious harm, the Secretary only needed to show that one feasible abatement method existed in order for the citation to be upheld, and the employer was free to develop and implement its own abatement method as long as it abated the hazard and met its obligation under the General Duty Clause.
- *Mar-Jac Poultry MS, LLC, v. Sec'y, U.S. Dep't of Lab.*, No. 24-60026, 2025 WL 1904565 (5th Cir. July 10, 2025) – Employee misconduct defense failed. The employer had a work rule prohibiting the conduct that led to an employee's fatal injury, but it did not adequately communicate the work rule to employees, take reasonable steps to discover violations of the rule, or effectively enforce the rule. The rule was frequently and fragrantly violated by many employees, so the violation still would have existed even in the absence of an injury.

25

Genetic Information Nondiscriminaton Act

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GINA

- *Russo v. Patchogue-Medford Sch. Dist.*, 129 F.4th 182 (2d Cir. 2025) – A family member's vaccine history does not qualify as genetic information within the meaning of GINA.

27

Uniformed Services Employment and Reemployment Rights Act

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USERRA

- *Knox v. DOJ*, 125 F.4th 1059 (Fed. Cir. 2025) – A promotion need not be automatic for a USERRA plaintiff to prevail on a promotion reemployment claim. The correct question is whether they "may have been entitled to" the promotion, which is determined by considering the three factors enumerated in 5 C.F.R. § 353.106(c), including whether the promotion was generally granted to all employees and whether it was reasonably certain that the benefit would have accrued to the employee but for their absence for military service.

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Pregnant Workers Fairness Act

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PWFA

- *Keiper v. CNN Am., Inc.*, No. 24-CV-875, 2024 WL 5119353 (E.D. Wis. Dec. 16, 2024) – An employee could not state a PWFA failure-to-accommodate claim when nothing in her maternity leave request signaled that it was due to any limitation.
- *Underwood v. Baldwin Cnty. Bd. of Commissioners*, No. 5:25-CV-40 (MTT), 2025 WL 1361746 (M.D. Ga. May 9, 2025) – An employee stated a PWFA claim when her employer granted her remote work request, but only after forcing her to take leave for 5 days while it considered her request, and refusing her request for an extension of deadlines due to the forced leave.

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Labor-Management Relations

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LMR – NLRB in Circuit Courts post-*Loper Bright*

- *Miller Plastic Prods. Inc v. NLRB*, 141 F.4th 492 (3d Cir. 2025) – Court "looked to" NLRB's interpretation of "protected concerted activity" to find that employee acting alone was unlawfully terminated for bringing "truly group complaints to the attention of management."

  The court looked to the NLRB's reading of the statute "as a body of experience and informed judgment." Acknowledging its obligation to "independently interpret statutory text," the court also stated that it "finds [past NLRB decisions] helpful to begin by considering the evolution of the concept of concerted activity."

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First Amendment

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First Amendment – Speech on Social Media

- *Hussey v. City of Cambridge*, 149 F.4th 57 (1st Cir. 2025) – Police officer's Facebook posts about George Floyd were not protected under First Amendment because police department's interest in preventing disruption outweighed the officer's right to the speech.
- *Melton v. City of Forrest City, Ark.*, 147 F.4th 896 (8th Cir. 2025) – The city did not provide sufficient evidence of disruption to the fire department that would outweigh a firefighter's right to post provocative image on Facebook.
- *Patterson v. Kent State Univ.*, 155 F.4th 635 (6th Cir. 2025) – Professor's rude, profane, and disparaging Twitter tirade attacking colleagues was not protected, even though it included some generalized comments about homophobia and other bias in academia.

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First Amendment – Content Moderation on Social Media

- *Garnier v. O'Connor-Ratcliff*, 136 F.4th 1181 (9th Cir. 2025) – School Board Trustee had actual authority to speak on behalf of the state, and exercised that authority through her Facebook posts regarding Board activities and policies, so her deletion of comments on those posts constituted state action for First Amendment purposes.
- *Krasno v. Mnookin*, 148 F.4th 465 (7th Cir. 2025) – The interactive comment threads attached to the public university's social media posts are limited public forums, such that speech restrictions imposed by the university on the comment threads must be reasonable and viewpoint neutral. The school's vague "off topic" rule for moderating comments was unconstitutional, and its restrictions of an animal rights activist's posts violated her First Amendment rights.

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First Amendment – Citizen Speech or Official Duties?

- *Burch v. City of Chubbuck*, 146 F.4th 822 (9th Cir. 2025) – Public employee's display of a lawn sign supporting the mayor's political opponent was private citizen speech, but his criticism of the mayor's policies and performance was made pursuant to his official duties.
- *Long v. Byrne*, 146 F.4th 282 (2d Cir. 2025) – Court clerk's cooperation with investigation into a judge's misconduct was protected citizen speech, not made pursuant to her official duties, and therefore protected.
- *Gotfryd v. City of Newburgh*, No. 24-1039-CV, 2025 WL 973040 (2d Cir. Apr. 1, 2025) – City planner's opposition to allegedly discriminatory housing policies was made pursuant to her official duties, regardless of the fact that her supervisor told her to stop, because her speech owed its existence to her professional responsibilities.

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Questions?

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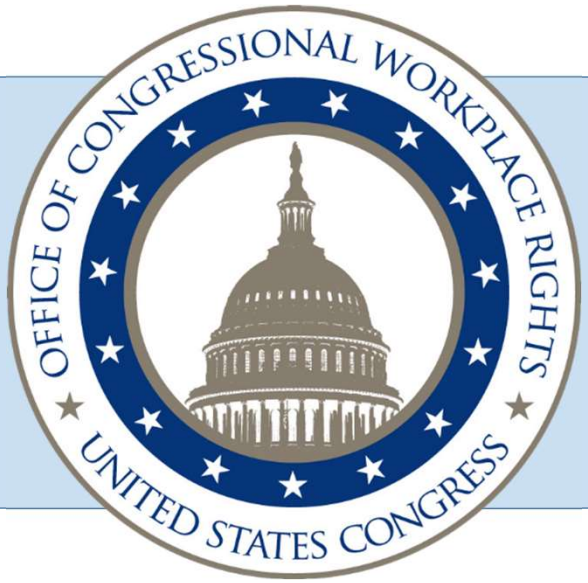
(202) 724-9250

110 2nd Street SE
Room LA-200
Washington, DC 20540



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