



# Critical HR Compliance Updates in 2026

# CRITICAL HR COMPLIANCE UPDATES IN 2026

## Navigating AI Regulation, EEOC Enforcement, and Wage & Hour Law in 2026

2026 presents a convergence of three high-risk employment law trends:

1. AI-driven decision-making is creating unintentional discrimination exposure.
2. EEOC enforcement priorities have shifted - and many existing programs are now higher risk.
3. The low penalty resolution window for wage & hour non-compliance litigation is closing.

You may be operating with invisible exposure that only becomes visible after litigation begins. The opportunity in 2026 is one of proactive correction, before plaintiffs, regulators, or class action lawsuits define the year for you.

### 1. AI IN THE HIRING PROCESS

#### Unintentional Algorithmic Discrimination

AI tools, whether they are used in hiring, performance management, or workforce planning, can discriminate against protected groups without anyone intending to. All AI models are trained on data, and data will always have various amounts of biased or historically skewed information. As such, the output will produce various amounts of biased results.

A high profile example: Amazon's recruiting algorithm, trained on data from predominantly male high performers, weighed against female applicants in the hiring process by penalizing resumes attached to majority women's institutions<sup>1</sup>. Amazon caught the error through internal auditing and shut the tool down (which was the correct response). However, the legal exposure still existed whether or not the discrimination was intentional.

If you think you can offload that risk by using a vendor, think again: a major class action against Workday<sup>2</sup> (whom are used by 65% of Fortune 500 companies) alleges that its applicant screening tools produced illegal race, age, and disability discrimination results (again, biased data = biased outputs, intentional or otherwise). If Workday is found liable, vendors will face added pressure to build more safeguards in; if not, employers carry the risk alone.

#### EMPLOYER ACTION ITEMS – AI Discrimination Risk

- When evaluating AI vendors, ask specifically what training data was used and request documentation that the algorithm has been tested for discriminatory outputs.
- Review vendor contracts for representations about bias auditing and non-discrimination. Retain your independent ability to audit—do not rely on vendor assurances alone.
- If audits surface discriminatory patterns, document your investigation and remediation steps immediately. Proactive discovery and correction are what regulators and courts will want to see.

# CRITICAL HR COMPLIANCE UPDATES IN 2026

## Navigating AI Regulation, EEOC Enforcement, and Wage & Hour Law in 2026

### State Specific AI Legislation

More than 1,000 AI-related bills<sup>3</sup> were introduced across all state legislatures in the last two years with about 10% of those passing<sup>4</sup>. That's still over 100 new AI related laws that employers need to be tracking, with wildly different outcomes depending on the political positioning of the state.

In contrast, Texas's new TRAIGA law, (effective Jan 1st, 26), requires proof of intentional discrimination rather than holding employers liable<sup>5</sup> for unintentional discriminatory outputs. While a breath of relief for businesses in Texas, this gets complicated for multi-state employers because conversely, New York City's Local Law 144<sup>6</sup> requires independent third-party bias audits with full public disclosure. Just because you're "safe" in one state doesn't mean you aren't exposed somewhere else.

A reminder: Title VII disparate impact liability holds employers accountable for neutral policies that disproportionately excluded protected groups (race, color, religion, sex, national origin) without a valid business necessity (such as national security). At the federal level, this supersedes any AI-specific state statute, and bias auditing is a reasonable business practice regardless of the primary state you operate in.

### EMPLOYER ACTION ITEMS – State AI Legislation

- Map where your employees work—not just where your organization is headquartered. Remote work has significantly expanded state law exposure for many employers, including AI-related obligations.
- For multi-state employers, consider adopting the most stringent applicable state standard as a unified compliance baseline. Simpler to administer and more defensible.
- If you operate in New York City, Colorado, or Illinois, confirm that you understand the specific audit and disclosure requirements in effect.
- Continue bias auditing regardless of your state's specific AI laws. The underlying Title VII exposure does not depend on whether a specific AI statute applies.

## 2. EEOC ENFORCEMENT CHANGES

### DEI Programs Under Scrutiny

The EEOC (Equal Employment Opportunity Commission) has re-oriented its enforcement agenda and is pursuing infractions of its statutes full bore<sup>7</sup>. In February 2026, the EEOC announced an investigation into Nike<sup>8</sup> for alleged discrimination against white employees and applicants, citing the company's own public materials as the basis.

# CRITICAL HR COMPLIANCE UPDATES IN 2026

## Navigating AI Regulation, EEOC Enforcement, and Wage & Hour Law in 2026

Separately, the EEOC filed suit against a Coca-Cola<sup>9</sup> bottling company over a 2024 event that was open only to female employees, seeking both compensatory and punitive damages with a jury trial. The joint EEOC and DOJ guidance<sup>10</sup> identifies specific practices that were acceptable in the past but now carry heightened risk, such as:

- Preferential hiring or promotion based on race or ethnicity.
- Using terms like “lived experience” or “cultural competence” as proxies for protected characteristics in selection decisions.
- Geographic recruiting targeted to reach specific demographic groups.
- Mentorship or training programs restricted to specific groups or genders.
- DEI training content that uses terms like “white privilege” or “toxic masculinity” in ways that could be characterized as finger-pointing at majority group members.

None of this means that inclusive hiring or belonging initiatives are unlawful per se, but instead that they may need to be designed, documented, and implemented differently than they have been in the recent past.

### EMPLOYER ACTION ITEMS – DEI Programs

- Audit publicly available organizational materials - job postings, executive statements, website content, handbook language, and published DEI commitments - for language the EEOC may characterize as evidence of preferential treatment.
- Review mentorship, sponsorship, and training programs. If any are limited to specific demographic groups, and assess whether they create liability in the current enforcement environment.
- Reframe inclusion initiatives around skills-based, objective criteria and universal participation principles rather than group-specific access.
- Ensure objective documentation exists to support every hiring, promotion, and compensation decision. Engage counsel to evaluate current programs specifically against the current EEOC enforcement posture.

### National Origin Discrimination

The EEOC issued<sup>11</sup> specific guidance in “Discrimination Against American Workers is Against the Law” targeting three categories:

# CRITICAL HR COMPLIANCE UPDATES IN 2026

## Navigating AI Regulation, EEOC Enforcement, and Wage & Hour Law in 2026

1. Job postings that express a preference for workers from specific countries or with specific visa statuses.
2. Pay practices that undercut American workers through visa-based wage differentials.
3. Stereotyping that assumes workers from certain national origin groups have a stronger work ethic or are more productive.

In practice, that means you cannot say things like:

“H-1B visa holders preferred.”

“OPT Candidates encouraged to apply.”

“Must require visa sponsorship now or in the future.”

“Only candidates eligible for H-1B will be considered.”

Instead, what can be utilized is:

“Must be legally authorized to work in the United States.”

“Employer may provide visa sponsorship for qualified candidates.”

“Open to all applicants authorized to work in the U.S.”

### **The Ames Case: Discrimination Claims Now Uniform Across All Circuits**

The Supreme Court’s Ames decision<sup>12</sup> eliminated a procedural hurdle that had historically made it harder for majority-group employees to bring discrimination claims in certain federal circuits. In the sixth, seventh, eighth, tenth, and D.C. circuits, majority-group plaintiffs (white, male, or heterosexual employees) previously had to show “background circumstances” suggesting their employer was the unusual type who discriminates against the majority. That additional requirement is now gone. Discrimination claims from majority-group employees in those circuits are now easier to bring, and employers in those jurisdictions should expect an increase. All employees are now held to the same evidentiary standard under Title VII.

#### **EMPLOYER ACTION ITEMS – National Origin Discrimination & Ames Case**

- Review all job postings for language referencing preferred national origin, country of origin, or visa status.
- Audit pay practices involving guest visa workers to ensure compensation does not disadvantage American workers without documented, legitimate business justification.
- Remove from hiring criteria any assumptions about work ethic, productivity, or reliability based on national origin.
- Ensure management in states covered by the 6th, 7th, 8th, 10th, and D.C. circuits understand the updated requirements and ensure no discrimination.

# CRITICAL HR COMPLIANCE UPDATES IN 2026

## Navigating AI Regulation, EEOC Enforcement, and Wage & Hour Law in 2026

### 3. WAGE & HOUR LAW: THE MOST EXPENSIVE AREA, AND A CLOSING WINDOW

#### The Federal/State Compliance Gap Most Employers Don't Know They Have

Federal FLSA compliance does NOT mean state compliance, and the differences are material and specific by state.

California and Maine require that more than 50% of an employee's time involve exempt duties, whereas federal law applies a more flexible primary duty test. Connecticut does not recognize the highly compensated employee exemption at all, meaning a \$107,432 federal HCE threshold is irrelevant there; instead you need to satisfy the full duties test regardless of pay level. Colorado and Connecticut have more stringent computer professional exemptions than federal law. New York and Oregon administrative exemptions cannot be satisfied by customer-facing duties; yet federal law permits it.

Salary thresholds compound this. The federal minimum wage is \$7.25; thirty-one states have higher minimums. More critically, several states tie their exempt salary thresholds to a multiplier of the state minimum wage—and those thresholds have grown significantly. In California, the minimum exempt salary currently exceeds \$70,000 annually. In Washington, it exceeds \$80,000. In Maine, it exceeds \$45,000. Employers with remote workforces who have not audited their exempt classification against state-specific standards likely have exposure they are not aware of. The question is whether that exposure surfaces now, in an environment that offers a relatively low-cost resolution path, or later, in litigation.

#### EMPLOYER ACTION ITEMS – Exempt Classification Compliance

- Do not assume FLSA compliance equals state compliance. Audit exempt classifications against the specific requirements of every state where you have employees.
- Prioritize California, Connecticut, Colorado, Maine, New York, Oregon, and Washington—each has one or more exemption standards that diverge materially from federal law.
- Account for minimum wage multiplier formulas when determining whether your exempt salary thresholds satisfy state requirements in each relevant jurisdiction.

# CRITICAL HR COMPLIANCE UPDATES IN 2026

## Navigating AI Regulation, EEOC Enforcement, and Wage & Hour Law in 2026

### The Self-Audit Opportunity: A Closing Window

The Department of Labor's current enforcement posture favors self-policing over aggressive investigation. The PAID program<sup>13</sup> (Payroll Audit Independent Determination), allows employers who have not already been sued or investigated to voluntarily disclose FLSA and FMLA violations and resolve them without the penalties and litigation costs that would otherwise apply. A June 2025 DOL bulletin<sup>14</sup> also rescinded the Wage and Hour Division's ability to seek liquidated damages unilaterally in non-litigation contexts. Employers have until mid-2028 to take advantage of the PAID program.

Virtually every organization has at least one wage or hour issue, which is the predictable result of operating any complex, multi-layered federal and state framework that changes constantly depending on the federal administration who happens to be in office at the moment.

As such, a federal employment case taken all the way to a jury verdict now costs between \$250,000 to \$350,000<sup>15</sup> in defense costs alone, before damages.

Compared to that, don't think of paying for a wage and hour audit as a cost at all, but an investment with a clear and measurable return.

#### EMPLOYER ACTION ITEMS – Exempt Classification Compliance

- Engage employment counsel now to conduct a wage and hour audit, structured under attorney-client privilege to protect findings.
- Budget for this audit if it is not already planned. The audit cost is substantially lower than the cost of defended litigation—and that gap widens if a case reaches a jury.
- Explore the PAID program for any violations identified. Resolution through PAID avoids costly penalties and eliminates litigation risk.
- Audit scope should include exempt classification accuracy across all states, minimum wage compliance, state-specific exempt salary thresholds, and off-the-clock work practices.

# CRITICAL HR COMPLIANCE UPDATES IN 2026

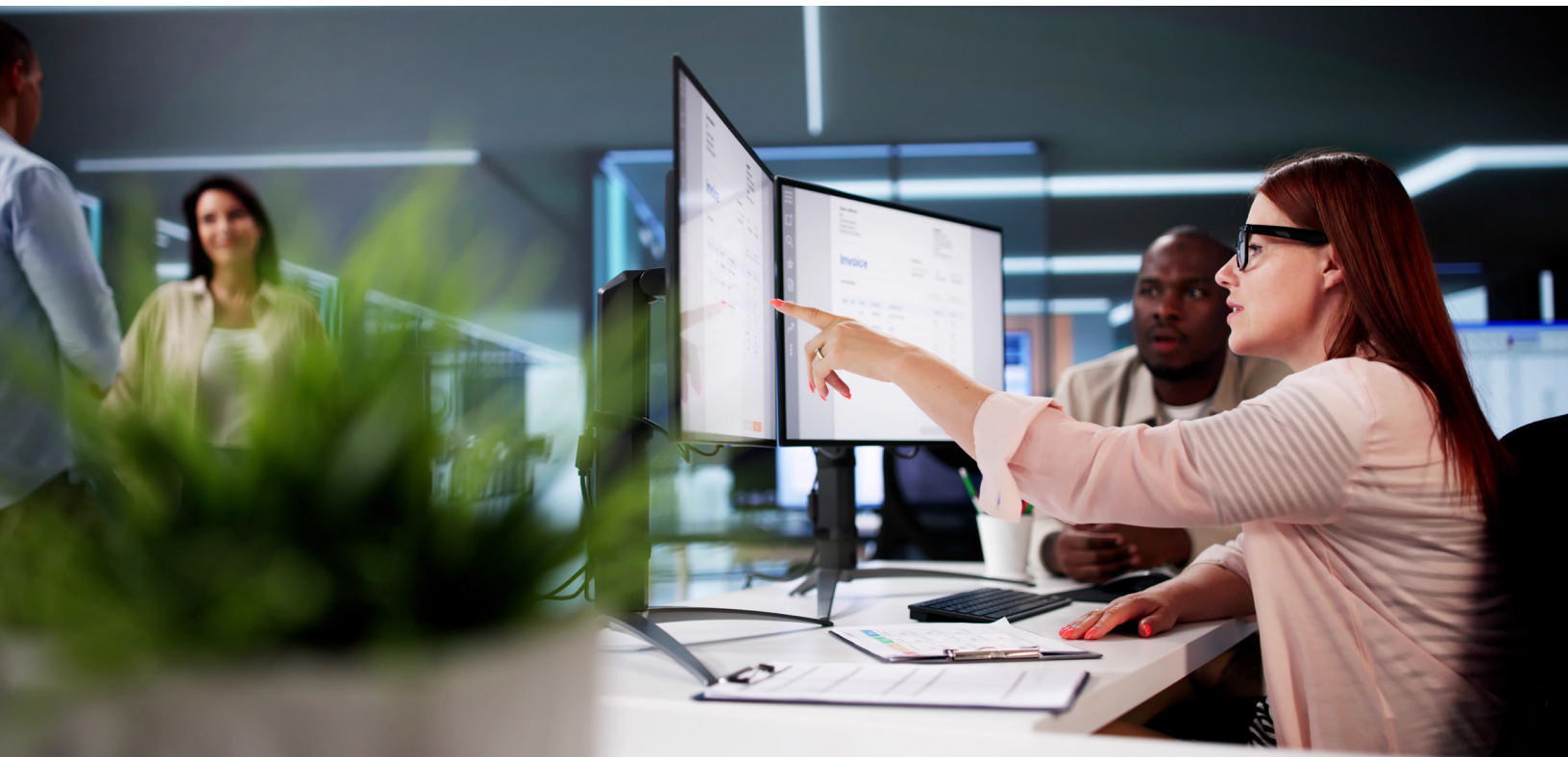
## Navigating AI Regulation, EEOC Enforcement, and Wage & Hour Law in 2026

### CONCLUSION

Proactive review now can cost less than reactive defense later. AI bias risk is real and growing faster than the regulatory framework designed to address it - employers who audit proactively may be in a stronger position than those who wait for a regulator or a plaintiff's attorney to identify the problem for them.

EEOC enforcement has shifted in a direction that requires many organizations to reexamine programs and public-facing materials they have not looked at critically in years, and the PAID program window for wage and hour self-correction at reduced cost is open now for approximately two to two-and-a-half more years.

None of this appears to require large-scale organizational change. It typically requires targeted action in specific areas, structured correctly, before the cost of not acting is significantly higher. Contact Acrisure's employment law advisory team for guidance on any of these areas specific to your organization and jurisdiction.





**ACRISURE®**

The information contained herein is provided for informational purposes only and should not be viewed as a substitute for any legal or other professional advice on any particular issue, for any particular reason, or on any particular subject matter. While the information contained herein has been compiled from sources reasonably believed to be reliable, no warranty, guarantee, or representation, either expressed or implied, is made as to the correctness or sufficiency of any representation contained herein. The author's statements and opinions regarding the subject matter expressed represent the opinions, positions or beliefs of the presenters themselves and do not necessarily reflect the opinions, positions or beliefs of Acrisure, LLC or its affiliates (collectively "Acrisure"). By providing the information herein, Acrisure does not undertake any obligation to provide any updates thereto, provide any additional information or materials, or correct any inaccuracies that may become apparent. To the maximum extent permitted by law, any responsibility or liability for the content and information contained herein is hereby expressly disclaimed.

© 2026 Acrisure, LLC. All rights reserved.