

The Latest in Labor, Employment + Benefits: Nutter's Legal Roundup

July 2026 Edition

The Nutter Labor, Employment + Benefits' Legal Roundup is a periodic newsletter highlighting notable developments, decisions, and enforcement actions impacting employers and plan sponsors in Massachusetts and beyond. We provide updates, summaries of recent cases, and agency directives to help identify trends, compliance priorities, and emerging areas of risk. For more information about these developments or how they may affect your organization, please contact your Nutter attorney.

- **Connecticut Joins California, Colorado, NYC, and Others in Requiring AI-Related Employment Disclosures (and Massachusetts May Be Next)**
- **A PIP is Not *Per Se* an Adverse Employment Action Under the ADEA in the First Circuit**
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Connecticut Joins California, Colorado, NYC, and Others in Requiring AI-Related Employment Disclosures (and Massachusetts May Be Next)

On May 27, 2026, Connecticut Governor Ned Lamont signed Senate Bill 5 into law. "An Act Concerning Online Safety" has several implications for companies with employees or potential employees in the state related to the use and results of artificial intelligence (AI). In so doing, Connecticut joins a growing number of states and localities considering oversight of AI tools involved in employment-related decision-making. Employers, no matter their principal place of business, will have to consider each of these laws with respect to their employees and applicants who may work or live in those jurisdictions.

Effective October 1, 2027, employers in Connecticut that utilize automated employment-related decision technology (AEDT) must inform employees and applicants who interact with the technology in plain language that they are interacting with AEDT, unless it would be obvious to a reasonable person. AEDT includes any technology that processes personal data and uses computation to generate an output that is a "substantial factor" used to make or materially

influence an employment-related decision. Among other disclosures, the employer must provide written notice that it has deployed the technology to make an employment decision. Failure to provide notice will constitute an unfair or deceptive trade practice enforceable by the state attorney general. As a result, employers will need to consider now how they will use AEDT in their hiring and firing practices and be prepared to make the necessary disclosures next year.

Even sooner, effective October 1, 2026, the law amends the Connecticut Fair Employment Practices Act so that the use of AEDT technology is not a defense to an anti-discrimination claim. As a result, even when utilizing AEDT, employers must continue to evaluate holistically the impact of any personnel decisions to make sure they are not running afoul of state discrimination laws. Additionally, employers serving written notice under the federal WARN Act must disclose whether the workforce reductions are related to the use of AI or other technological changes.

Connecticut's law finds company with other state and local laws throughout the country. New York City, Colorado, and California have enacted similar laws, with each state having its own idiosyncrasies within the laws.

Meanwhile, in Massachusetts, the legislature is contemplating Bill SD 3007, "An Act to Ensure Non-Discrimination by Improving Algorithmic System." This comprehensive bill would place significant restrictions on employers' use of AI-related tools in all aspects of recruiting, performance management, and terminations. Specifically, the bill would prohibit covered entities from using an "automated decision system" to make or inform decisions related to "fundamental

opportunities" in a way that discriminates on the basis of a protected characteristic. A "fundamental opportunity" includes hiring, pay, independent contracting, worker management, promotion, and termination. The bill adopts a strict liability framework and requires covered entities using the technology to conduct regular audits to detect discriminatory effects, provide clear notice to users, allow individuals to opt out, and make available a clear statement detailing the entity's use of the tool.

As with all aspects of AI in society, related legislation will be subject to constant change and swift development.

A PIP is Not *Per Se* an Adverse Employment Action Under the ADEA in the First Circuit

To make out a case of employment discrimination, an employee must demonstrate, among other things, that they suffered an "adverse employment action." This may include a termination, demotion, or reduction in pay. But whether other actions, such as a performance improvement plan (PIP), constitute an "adverse employment action" are up for constant debate. The First Circuit recently concluded that the answer is "it depends." Specifically, in *Walsh v. HNTB Corp.*, the First Circuit held in affirming summary judgment for the employer that whether a PIP qualifies as an adverse action turns on its specific effect on the terms and conditions of employment, not on a categorical rule.

In *Walsh*, a longtime IT employee in HNTB's Boston office was placed on a three-month PIP after a supervisor flagged concerns with her performance. The PIP identified specific problem areas and corresponding steps to improve, but it did not assign new duties, change her job title, or reduce compensation. The employee successfully completed the PIP in November 2019, but then resigned in September 2020.

After resigning, the employee sued HNTB under the federal Age Discrimination Employment Act (ADEA) and Massachusetts law (Chapter 151B), alleging that the company discriminated against her based on age, both by placing her on the PIP and by constructively discharging her.

The district court granted summary judgment for HNTB, and the First Circuit affirmed. The First Circuit explained that courts should not apply a categorical rule to PIPs. Instead, the analysis is fact-intensive and case-specific, focusing on whether the PIP worsened the employee's terms or conditions of employment. Here, the employee failed to show that the PIP negatively changed her employment. The First Circuit similarly rejected the constructive discharge claim because the alleged "unpleasantness, hurt feelings, and wounded pride," would not have caused a reasonable person to feel compelled to resign.

What the *Walsh* decision does offer for guidance is that employers should be sure to draft PIPs as genuine counseling tools, framing concrete and achievable steps around correcting identified and communicated deficiencies. Courts, as shown here, will review PIPs in their totality to glean any illustration of animus or clearly negative implications on employment.

EEOC Issues Guidance Regarding Telework ADA Accommodations

Six years after COVID forced many to work from home, employers have continued to struggle in assessing requests from employees to telework as a reasonable accommodation for a disability, with the last guidance on this topic from the Equal Employment Opportunity Commission (EEOC) issued in 2003. The EEOC has finally provided some updated guidance in response to the Administration's January 2025 directive to federal government employees to return to 100% in-office work. Though drafted for government agencies, the underlying principles are equally applicable to private employers. Specifically:

Issue	Guidance
Essential functions	The fact that an employer excused performance of one or more essential functions when it initially chose to permit telework does not mean that the employer permanently changed a job's essential functions. The employer may restore all of an employee's essential duties at such time as it chooses to restore the prior work arrangement, and then evaluate any requests for continued or new accommodations.
Alternative accommodations	Telework is mandatory under the ADA only if all other options are demonstrably ineffective. If the employer reasonably believes in the likely effectiveness of an in-office accommodation instead of telework, the employer may require the employee to try the in-office accommodation on a trial basis. If the in-office measure is ineffective, employers may then reconsider full-time or recurring telework (without removing essential functions or incurring undue hardship).
Reevaluating requests	Employers may reevaluate and/or adjust an existing accommodation on a periodic (i.e., annually) or situational basis. If the reevaluation reveals that the employee no longer requires telework, the employer may rescind the accommodation, or replace it with a reasonable and effective in-office option (or combination of options).
Medical documentation upon reevaluation	If an employee previously documented a permanent disability and limitations, do not ask for that information again. Any new requests should focus on whether effective alternative reasonable accommodations can be provided to enable the employee to return to the office (i.e., schedule modification, rest breaks, or even partial telework).
Commuting	It is the employee's—not the employer's—responsibility to arrange for getting to and from work. However, the employer may need to provide accommodations such as flexible scheduling to enable the employee to commute effectively. Also, temporary telework may be reasonable to allow the employee time to relocate closer to the workplace or make alternative commuting arrangements.
Anxiety	The EEOC has advised that the ADA "does not create a general right to be free from all discomfort and distress in the workplace, including anxiety" and that common anxiety, without more, is unlikely to impose a material barrier. Based on an employer's observation, if the employee is able to perform to the employer's satisfaction, then anxiety likely does not need to be accommodated with telework.
Noncompliance	An employee who refuses to report to the office may be considered absent without leave. After ensuring that the employee understands why telework is not or is no longer available and inviting suggestions for in-office alternatives, if the employee still refuses to return, the employer may discipline the employee in accordance with the employer's attendance policy.

EEOC Also Releases New National Enforcement Plan for Fiscal Years 2025–2029

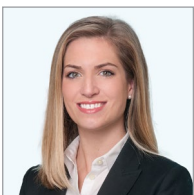
In June, the EEOC issued a new national enforcement plan (NEP), replacing the agency's Biden-era strategic plan with a new one reflecting the current Administration's priorities. The NEP guides the EEOC's work, including outreach, public education, technical assistance, and, critically, enforcement and litigation. In many ways, the NEP is a restatement of previously announced areas of focus of this Administration, including DEI programs, gender as a binary construct, religious accommodations, and "anti-American" national origin discrimination.

Consistent with the focus of the current Administration's prior Executive Orders, particularly EO 14281, "Restoring Equality of Opportunity and Meritocracy," the NEP directs the EEOC to pursue the following priorities:

- **Intentional discrimination claims (disparate treatment).** Per an earlier EO, the EEOC will eliminate disparate impact (facially neutral policies that disproportionately impact a protected group) investigations "to the maximum degree possible." Instead, the EEOC will look into, for example, "facially discriminatory policies," such as job advertisements seeking "diverse candidates" or visa holders (i.e., that reflect an anti-American bias).
- **Diversity, equity, and inclusion programs.** The NEP continues the Administration's focus on eliminating programs based on protected characteristics, such as training, internships, mentorship, etc., demographic data sharing, diverse slates in hiring, and tying compensation to reaching demographic goals.
- **Developing new case law on priority issues.** The EEOC will focus on clarifying recent United States Supreme Court decisions regarding "majority-group" workplace bias claims, voluntary affirmative action programs, the standard of harm for Title VII cases, and religious accommodation.

For further guidance or if you have questions regarding any of the topics discussed in this newsletter, please contact your Nutter attorney or a member of Nutter's Labor, Employment and Benefits group.

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