

LEGISLATIVE UPDATE: *ROOTED IN PEOPLE, READY FOR CHANGE: KEY LEGAL UPDATES IMPACTING THE WORKPLACE*

April 2, 2026





PRESENTED BY

Margaret "Peg" O'Brien, Esquire | Employment Law Practice Group | McLane Middleton Professional Association

EMAIL: MARGARET.OBRIEN@MCLANE.COM | PHONE: 603.628.1490

*MARGARET "PEG" O'BRIEN, DIRECTOR
CHAIR, EMPLOYMENT LAW PRACTICE GROUP
EMPLOYMENT LAW AND LITIGATION*

FEDERAL – WHAT HAS NOT CHANGED

- Harassment remains a form of discrimination.
- Employers continue to have a duty to prevent, investigate, and remediate discriminatory harassment.
- *Bostock v. Clayton County* (U.S. Supreme Court 2020) remains controlling law.
- Title VII protections extend to sexual orientation and gender identity.
- Terminating or disciplining employees because they are gay or transgender constitutes unlawful discrimination.

FEDERAL - SHIFTING ENFORCEMENT PRIORITIES

- The EEOC restored its quorum in late 2025 and has issued new enforcement priorities.
- The Commission rescinded prior harassment guidance ([2-1 vote in January 2026](#)).
- Recent enforcement signals include increased focus on:
 - Claims by **U.S. citizen employees** alleging less favorable treatment than immigrant workers.
 - Alleged discrimination against **white male applicants and employees**.
 - **Religious accommodation** requests and faith-based observances.

These priorities reflect enforcement emphasis, not changes in the underlying law.

FEDERAL – UPCOMING

What's next?

Pregnant Workers Fairness Act (PWFA):

- Final regulations took effect June 18, 2024 (3-2 vote).
- Likely rescission or modification remains under consideration.

Increased scrutiny of DEI initiatives:

- Labels do not insulate programs from enforcement risk.
- Programs that rely on demographic preferences may face challenges.
- Areas of focus may include:
 - Employee resource groups
 - Supplier diversity initiatives
 - Targeted recruiting or advancement programs
- **EEOC leadership has publicly encouraged employees alleging race - or sex-based discrimination—including white male employees—to file charges.**

Now is the time to review programs to ensure they are neutral in design, tied to legitimate business objectives, and do not make employment decisions based on protected characteristics.

LEGISLATIVE UPDATE

State – New Hampshire – Reminders – Effective January 1, 2026

- **Unpaid Job-Protected Parental / Childbirth-related Leave** (effective January 1, 2026)(RSA 275:37-f) – applies to New Hampshire employers with 20 employees or more working in NH. All employees of covered employers are eligible up to 25 hours of protected unpaid leave within the first year of a child's birth or adoption for employee's own medical appointments for childbirth and postpartum care or for child's pediatric medical appointments. Leave can be taken intermittently, and employees may substitute paid time off, such as vacation time, for this unpaid leave.
- **Military Spouse Job Protection** (effective January 1, 2026)(amends RSA 110-C) (<https://legiscan.com/NH/text/HB225/id/3239772>) – applies to employers with 50 or more employees on-site in a single location in New Hampshire. Employers may not discharge, refuse to hire, or take any adverse employment action against an employee based on the involuntary mobilization of that employee's spouse for the same duration of time the employee's spouse would have reemployment rights under 38 U.S.C. Section 4312, and employers shall be required to reemploy the employee in the position he or she held, or in a position of like seniority, status and pay for which he or she is qualified. Any leave of absence of an employee due to the involuntary mobilization of their spouse shall be unpaid, and no benefits or accrual of benefits shall be provided during this leave unless the employer chooses to do so.

NH - POTENTIAL NEW LEGISLATION

(Monitor – Not Yet Law)

- **HB 1043** – Amends RSA 275:43-a – Two Hour Minimum Law
(*“Unless an employer has established a different written policy,....”*)
- **HB 1072** (NH DOL – increased notice to respond to investigation)(NHDOL to provide 30 days notice prior to a visit or inspection to the owner of a company, with stated purpose of visit, and whether the visit is related to a complaint and describe any alleged violation; ability to request extension; some exceptions)
- **HB 1168** (NH DOL – increased time to reply to wage claim)

NH - POTENTIAL NEW LEGISLATION

(Monitor – Not Yet Law)

- **HB 1245** (Portable benefits for Ind. Contractors)(The purpose of this act is to allow independent contractors and hiring parties to voluntarily participate in portable benefit plans, providing access to certain benefits without altering the classification of such workers under state law.)
- **SB 416** (NH DOL - state tip pooling laws to reflect and align with federal law)
- **SB 552** (NH HRC – modification of RSA 354-A re: bathrooms, etc.)(passed in 2024 and 2025, and vetoed by governors each year)

WHAT DO YOU THINK?

An employee with a strong performance record has worked largely behind the scenes for several years and has not worked directly with clients, even though her job description indicates such work will be included in her role. As part of a new business strategy to save money and drive growth, the executive management communicates that the employee's role will involve more client-facing meetings, group presentations, and relationship-building activities with clients.

After learning of the changes, the employee discloses an anxiety-related medical condition to her supervisor and requests accommodations that would limit public speaking and in-person client interactions. Human resources engages in discussions with her, grants some accommodations, but rejects others as inconsistent with the role's core responsibilities. Shortly thereafter, the employee raises concerns about being treated differently from other employees and is presented with alternative role options that do not include remaining in the current position.

How would you handle? Is public speaking an essential function? What documentation would you request? When do alternatives create legal risk?

ADA – ACCOMMODATION PROCESS

1. Employer Notice of Request for an Accommodation
2. Interactive Discussion of Request – *How can I help?*
3. Determine if Additional Documentation is Required –
 - This step frequently includes drafting a letter to the employee confirming the history of the employee's work with the employer and the accommodations granted up to that point, and outlining the documentation required from the employee's healthcare provider to support the request; and
 - Drafting a medical certification form for the employee to present to the employee's healthcare provider to complete with specific questions regarding the disability, the limitation, and assessment regarding the requested accommodation (or other available accommodations)
4. Engage in further discussion with the employee to identify what, if any, potential accommodations may be available and are reasonable
5. Select the accommodation that best serves the needs of the employer

ADA - COMMON ACCOMMODATION PITFALLS

- **Failure to Clearly Define and Consistently Enforce “Essential Functions.”**

An employer’s view of essential job duties is given deference, but vague job descriptions or sudden expansions of responsibilities can create fact disputes. Employers should document not just what functions are essential, but how often and to what extent they are performed.

- **Failure to Engage in the Interactive Process**

Employers satisfy the ADA when they engage in good-faith dialogue, consider proposed accommodations, explain rejections, and remain open to alternatives. The ADA does not require removing or substituting essential, client-facing, or business-critical functions.

- **Failure to Recognize Heightened Scrutiny in Post-Disclosure**

Changes in expectations, ratings, or discussions of exit options shortly after disability disclosure may be viewed as adverse or retaliatory—even if well-intended. Employers should carefully document business reasons and timing once a disability or accommodation request is raised.

Most ADA claims aren’t about bad intent – they’re about documentation, timing, and process

[See *Menninger v. PPD Development, L.P.*, First Circuit Ct. of Appeals, July 24, 2025](#)

QUESTIONS & ANSWERS



THIS PRESENTATION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT LEGAL ADVICE

UPCOMING NH EMPLOYMENT LAW SEMINAR

McLane Annual NH Employment Law Update, May 5,
2026, Castleton Event Center, Windham, NH
<https://www.mclane.com/news/mclane-middleton-presents-the-2026-new-hampshire-employment-law-update/>

THANK YOU!

Margaret (“Peg”) O’Brien, Esquire
900 Elm Street, Manchester, NH 03101
MARGARET.OBRIEN@MCLANE.COM

603.628.1490

Connect with me on LinkedIn to receive news updates and notice of seminars, etc.

Employment Law Practice Group | McLane Middleton Professional Association