WIMBERLY LAWSON WRIGHT DAVES & JONES, PLLC

# BRIEFLY

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## Have Certain Immigration Workplace Raids Stopped?

The landscape of Immigration and Customs Enforcement (ICE) workplace raids targeting industries like agriculture, restaurants, and hotels has been marked by rapid policy shifts and conflicting directives from the Trump administration since our last update. These developments have created significant uncertainty for employers reliant on immigrant labor, particularly in sectors critical to the U.S. economy.

**Initial Pause on Workplace Raids**

On June 12, 2025, The New York Times reported that a senior ICE official, Tatum King, issued an internal email directing ICE's Homeland Security Investigations division to pause worksite enforcement operations targeting agriculture (including farms, aquaculture, and meatpacking plants), restaurants, and operating hotels, unless related to criminal investigations. This directive followed President Trump's acknowledgment on Truth Social that his aggressive immigration policies were harming farmers and hospitality businesses, key industries reliant on immigrant workers. Trump's post suggested a forthcoming "short-term fix" for migrant labor, prompted by concerns raised by Agriculture Secretary Brooke Rollins about disruptions to the food supply chain and political backlash from rural constituencies.

The pause was seen as a response to economic concerns, as industries reported significant labor shortages and reduced consumer spending. For example, farmworker absences in California led to unharvested fields, and businesses like restaurants and retail saw declines in Hispanic consumer traffic, with companies like Coca-Cola and Colgate-Palmolive reporting sales drops. Trump's comments reflected a rare concession that the scale of ICE's enforcement was alienating critical sectors, with 42% of U.S. farmworkers and a significant portion of hospitality workers being undocumented.

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Our Firm is a full service labor, employment, and immigration law firm representing management exclusively. We have offices in Knoxville, Cookeville, and Nashville, Tennessee, and maintain our affilliation with the firms of Wimberly, Lawson, Steckel, Schneider & Stine, P.C., in Atlanta GA; and M. Lee Daniels Jr., P.C., in Greenville SC.

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**Swift Reversal of the Pause**

Just days later, on June 16, 2025, the Department of Homeland Security (DHS) reversed this guidance, instructing ICE agents to resume worksite raids at farms, hotels, and restaurants. This abrupt shift followed pressure from immigration hardliners, notably White House Deputy Chief of Staff Stephen Miller, who advocated for intensified enforcement to meet a target of 3,000 daily arrests. DHS Assistant Secretary Tricia McLaughlin emphasized that "worksite enforcement remains a cornerstone of our efforts to safeguard public safety, national security, and economic stability," signaling no exemptions for industries employing undocumented workers.

The reversal came after Trump's June 15, 2025, Truth Social post calling for a focus on "crime-ridden and deadly inner cities" and the "largest Mass Deportation Program in History," particularly targeting Democratic strongholds like Los Angeles, Chicago, and New York. This shift underscored possible competing influences from Miller, who pushed for aggressive raids, and Rollins, who highlighted the economic fallout for agriculture. ICE's daily arrest rate, which had risen to about 2,000 from 660 earlier in Trump's term, remained below Miller's target, prompting continued pressure for large-scale operations, such as those at meatpacking plants yielding hundreds of arrests.

**Legal Developments Affecting CHNV Parolees and Haitian TPS Holders**

Major changes are underway for individuals with temporary immigration statuses under programs created by prior administrations. On June 20, 2025, E-Verify launched a new status report feature to alert employers of revoked employment authorization for workers paroled into the U.S. under the Biden-era humanitarian parole programs for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV). Employers with direct E-Verify access can retrieve the report under the "Reports" tab; those using an E-Verify agent should request a copy from the agent. Employers who receive notice that an employee's work authorization has been revoked must determine whether the employee has acquired new, valid work authorization and, if not, proceed with termination. The notice states that any required re-verification must occur within "a reasonable period of time."

Separately, on July 1, 2025, a federal judge in the Eastern District of New York ruled in Haitian Evangelical Clergy Association v. Trump, No. 1:25-cv-01464-BMC, that the Department of Homeland Security (DHS) lacks the authority to terminate Temporary Protected Status (TPS) for Haitian nationals before February 3, 2026. The Trump Administration had attempted to shorten that period to end TPS as early as August 3, 2025, with formal termination announced effective September 3, 2025. The ruling leaves open the question of whether judicial review of the agency's action is permitted, and the Trump Administration is expected to appeal. Employers with Haitian TPS workers should continue monitoring for developments in this case, as it may affect work authorization timelines and obligations.

**Ongoing Economic and Social Impacts**

The reinstatement of raids has intensified fear among immigrant workers, leading to significant workforce disruptions. In California's agricultural heartland, up to 45% of farm workers stopped reporting to work, leaving fields unharvested and packinghouses idle. Businesses like Arteaga's Food Center in California reported sharp declines in customer traffic, with some stores seeing daily revenue drop from $2,000 to $300. Hospitality and retail sectors, including chains like Wingstop and El Pollo Loco, noted reduced Hispanic consumer spending, with broader economic ripple effects.

**Implications for Employers**

The rapid policy reversals create significant challenges for employers in agriculture, hospitality, and related sectors:

- Operational Uncertainty: The reinstatement of raids means no industry is exempt, despite earlier assurances. Employers must prepare for potential ICE inspections and arrests, which could disrupt operations and exacerbate labor shortages.

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- Compliance Pressure: ICE has increased I-9 audits tenfold since January 2025, often as a precursor to raids, with agents arresting workers during inspections. Employers should ensure meticulous compliance with immigration documentation to mitigate risks.

- Economic Fallout: The loss of workers and reduced consumer spending threaten supply chains and business viability, particularly in agriculture, where 42% of workers are undocumented. Employers may face higher costs and delays due to labor shortages.

- Legal Navigation: The CHNV parole revocation complicates workforce planning, but the USCIS's lifting of the asylum claim freeze may offer temporary options for some workers. Employers should consult immigration counsel to explore legal pathways, such as H-2A visas, for retaining workers.

**Looking Ahead**

As of the publication of this newsletter, no further policy reversals have been reported since the June 16 reinstatement of raids. However, the Trump administration's conflicting messaging, balancing economic concerns with aggressive deportation goals, suggests continued volatility. ICE's focus on meeting arrest quotas, supported by other federal agencies like the FBI and Customs and Border Protection, indicates sustained pressure on employers. The administration's commitment to deporting millions, including those with expired or terminated temporary status, remains firm, though legal challenges to CHNV revocations and judicial oversight of ICE actions may influence future enforcement.

**Employers should:**

- Strengthen Compliance: Review I-9 forms and employment authorization records to ensure compliance with immigration laws.
- Monitor Developments: Stay informed about ICE policies and court rulings, as further shifts could occur.

The Trump administration's immigration enforcement strategy continues to evolve, leaving employers in a precarious position. Our firm will monitor these developments and provide updates as new information emerges. For tailored guidance, contact our employment law team.

## Supreme Court Clarifies Title VII Protections Apply to All: No Heightened Burden for Majority-Group Plaintiffs

On June 5, 2025, the U.S. Supreme Court issued a unanimous decision in Ames v. Ohio Department of Youth Services, striking down a judicially imposed requirement that majority-group plaintiffs meet a higher evidentiary standard to pursue discrimination claims under Title VII of the Civil Rights Act of 1964. This landmark ruling resolves a circuit split and reaffirms that Title VII's protections against workplace discrimination apply equally to all individuals, regardless of their demographic status. For employers, this decision underscores the need for consistent, nondiscriminatory practices across all employee groups and may signal an uptick in claims from majority-group plaintiffs.

**Case Background: Challenging the "Background Circumstances" Standard**

The case arose when Marlean Ames, a heterosexual employee of the Ohio Department of Youth Services, alleged discrimination based on her sexual orientation after being denied a promotion and demoted, with her position filled by a gay male colleague. Ames filed a Title VII claim, asserting that these actions violated the statute's prohibition on intentional discrimination based on protected characteristics, including sexual orientation as established by Bostock v. Clayton County (2020).

Without direct evidence of discrimination, Ames relied on the McDonnell Douglas framework, which requires plaintiffs to establish a prima facie case of discrimination through circumstantial evidence. However, the district court and the Sixth Circuit Court

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of Appeals dismissed her claim, citing a longstanding rule requiring majority-group plaintiffs —those not part of a historically disadvantaged group—to show "background circumstances" indicating that the employer is the "unusual" type that discriminates against the majority. In Ames' case, the courts demanded evidence, such as statistical data or details about the decisionmakers' protected characteristics, to prove such circumstances. Ames' failure to meet this additional threshold led to summary judgment in favor of the employer.

**Supreme Court's Unanimous Ruling**

In a decision authored by Justice Ketanji Brown Jackson, the Supreme Court unanimously rejected the Sixth Circuit's "background circumstances" requirement, holding that it conflicts with Title VII's text and purpose. The statute prohibits employers from discriminating against "any individual" based on protected traits such as race, sex, religion, or sexual orientation, without distinguishing between majority and minority groups. The Court emphasized that imposing a heightened evidentiary burden on majority-group plaintiffs creates an unequal standard that undermines Title VII's commitment to uniform protections.

The Court clarified that the McDonnell Douglas framework, used to evaluate circumstantial discrimination claims, is designed to be flexible and tailored to the specific facts of each case. The Sixth Circuit's rigid rule, which required majority-group plaintiffs to provide additional proof solely due to their demographic status, was deemed inconsistent with the framework's purpose. The Court noted that such a requirement effectively penalized plaintiffs for their group identity, contrary to Title VII's intent to ensure equal treatment.

Addressing the employer's argument that the "background circumstances" rule was merely a contextual tool to assess discrimination, the Court found that the Sixth Circuit explicitly applied it as an extra hurdle because Ames belonged to a majority group. The Court held that Ames had otherwise met the standard elements of a prima facie case—membership in a protected class, qualification for the position, an adverse employment action, and circumstances suggesting discrimination—but was unfairly blocked by this additional requirement.

**Resolving a Circuit Split**

The Ames decision resolves a split among federal circuit courts. The Sixth (which includes Tennessee), Eighth, and D.C. Circuits had required majority-group plaintiffs to demonstrate "background circumstances" to establish a prima facie case, while other circuits, such as the Third, Fifth, and Eleventh, applied the standard McDonnell Douglas framework without additional burdens. By eliminating this requirement, the Supreme Court has standardized the evidentiary threshold for Title VII claims nationwide, ensuring consistency in how courts evaluate discrimination allegations.

**Implications for Employers**

The Ames ruling has significant implications for employers, particularly those represented by our firm in employment law matters:

- Uniform Standards for All Claims: Employers must recognize that Title VII applies equally to all employees, regardless of whether they belong to a majority or minority group. Claims of "reverse discrimination" by majority-group employees, such as those based on race, sex, or sexual orientation, will now face the same evidentiary threshold as other discrimination claims, potentially increasing the volume of such lawsuits.

- Heightened Scrutiny of Employment Practices: With the barrier to majority-group claims lowered, employers should expect closer scrutiny of hiring, promotion, and termination decisions. Policies and decisions must be demonstrably based on legitimate, nondiscriminatory reasons to withstand potential challenges.

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- Review of Workplace Policies: Employers should audit their employment practices to ensure compliance with Title VII's nondiscrimination requirements. Training for managers and HR personnel on equitable decision-making and documentation of employment actions will be critical to defending against claims.

- Potential Increase in Litigation: The removal of the "background circumstances" requirement may embolden majority-group employees to pursue Title VII claims, particularly in industries or regions where such claims were previously discouraged by stricter standards. Employers should prepare for a possible rise in litigation and ensure robust legal strategies to address these cases.

- Focus on Documentation: Under the McDonnell Douglas framework, employers can rebut a prima facie case by providing legitimate, nondiscriminatory reasons for their actions. Clear, consistent documentation of employment decisions will be essential to demonstrate compliance and counter allegations of bias.

**Looking Ahead**

The Ames decision marks a significant step toward ensuring equal application of Title VII's protections, reinforcing that discrimination claims must be evaluated on their merits, not the plaintiff's group status. While this ruling promotes fairness, it also heightens the need for employers to maintain vigilant, nondiscriminatory practices. As the legal landscape evolves, our firm will continue to monitor developments and provide guidance to help employers navigate these changes. For tailored advice on compliance or defending against Title VII claims, you can contact an attorney with our firm.

## NLRB and EEOC Firings Escalate to Supreme Court Showdown

In a rapidly evolving legal saga, President Trump's unprecedented firings of National Labor Relations Board (NLRB) member Gwynne Wilcox and Equal Employment Opportunity Commission (EEOC) commissioners Jocelyn Samuels and Charlotte Burrows have set the stage for a potential landmark Supreme Court decision. These terminations, initiated shortly after Trump's second-term inauguration in January 2025, challenge longstanding precedents protecting the independence of federal agencies. For employers, the outcome of this dispute could significantly impact labor and employment law enforcement, potentially reshaping the operational landscape of the NLRB and EEOC. This article provides an update on recent court developments since our last newsletter, outlines the legal issues at stake, and offers practical guidance for employers navigating this uncertainty.

Background: A Challenge to Agency Independence

The firings of Wilcox, Samuels, and Burrows mark a bold move by the Trump administration to assert greater control over independent federal agencies. The NLRB, which enforces laws protecting workers' rights to organize and oversees unfair labor practice cases, and the EEOC, which administers anti-discrimination laws, are designed to operate with a degree of independence from presidential influence. A 1935 Supreme Court decision, Humphrey's Executor v. United States, established that members of multi-member, bipartisan commissions like the NLRB and EEOC can only be removed for cause, such as neglect of duty or malfeasance, rather than at the president's discretion.

However, the Trump administration has argued that these statutory protections infringe on the president's

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Article II authority to execute executive power, asserting that the president should have the ability to remove agency members at will, particularly those perceived as misaligned with administration policy goals. The dismissals of Wilcox, Samuels, and Burrows, all Democratic appointees, were executed without stated cause, prompting legal challenges that have now escalated through the courts.

**Recent Court Developments**

Since our last newsletter, the legal battles over these firings have progressed significantly, with key developments in the D.C. Circuit and the Supreme Court:

- Initial Lawsuits and Reinstatements: In February 2025, Gwynne Wilcox filed a lawsuit in the U.S. District Court for the District of Columbia, arguing that her removal from the NLRB violated the National Labor Relations Act (NLRA) and Humphrey's Executor. The district court ordered her reinstatement on March 6, 2025, restoring the NLRB's quorum. Similarly, a D.C. Circuit ruling on April 7, 2025, reinstated both Wilcox and Cathy Harris, a fired Merit Systems Protection Board (MSPB) member, finding that their dismissals contravened statutory protections.

- Supreme Court Interventions: The Trump administration sought emergency relief from the Supreme Court. On April 9, 2025, Chief Justice John Roberts issued a temporary stay halting the reinstatement orders, leaving the NLRB without a quorum to decide cases. On May 22, 2025, the Supreme Court, in a 6-3 decision split along ideological lines, extended the stay, preventing Wilcox and Harris from returning to their posts while their cases proceed through the D.C. Circuit. The majority opinion signaled that the NLRB and MSPB exercise "considerable executive power," suggesting skepticism about the applicability of Humphrey's Executor to these agencies. However, the Court deferred a final ruling on the merits pending full briefing and argument.

- Dissent and Broader Implications: Justice Elena Kagan, joined by Justices Sotomayor and Jackson, issued a sharp dissent, warning that the majority's decision risks undermining the independence of agencies like the NLRB, EEOC, and others by allowing the president to "overrule Humphrey's by fiat." The dissent emphasized that Congress created these agencies to make decisions insulated from political influence, advancing the public good through bipartisan expertise. The majority's carve-out for the Federal Reserve's unique structure further highlighted concerns about the broader implications for other independent agencies.

- EEOC Commissioners: While Wilcox's case has garnered significant attention, the fired EEOC commissioners, Samuels and Burrows, have also indicated they are exploring legal challenges. Their removals have left the EEOC without a quorum, paralyzing its ability to issue new regulations, revoke existing guidance, or file certain cases.

**The Stakes for Employers**

The ongoing litigation has immediate and long-term implications for employers:

- Operational Paralysis at the NLRB and EEOC: Without a quorum, the NLRB cannot issue decisions on unfair labor practice cases or review union election disputes, creating a backlog that delays resolution for employers facing labor disputes. Similarly, the EEOC's inability to act stalls enforcement of anti-discrimination laws, including Title VII, and delays guidance on workplace issues like gender identity protections. Employers should anticipate prolonged uncertainty in pending cases and regulatory actions.

- Potential Shift in Agency Priorities: If the Supreme Court ultimately rules in favor of the Trump administration, allowing at-will removals, the

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president could replace current NLRB and EEOC members with appointees aligned with his policy goals. This could lead to a reversal of recent labor-friendly NLRB rulings, such as those expanding worker protections, and a rollback of EEOC guidance on issues like workplace diversity or harassment policies. Employers may face a more business-friendly regulatory environment but should remain cautious about rapid policy shifts.

- Broader Impact on Federal Agencies: A decision undermining Humphrey's Executor could extend beyond the NLRB and EEOC, potentially affecting agencies like the Federal Trade Commission (FTC), Federal Communications Commission (FCC), and Securities and Exchange Commission (SEC). This could lead to increased presidential influence over regulatory frameworks, impacting employer compliance obligations across industries.

**Looking Ahead**

The Supreme Court's final ruling on the Wilcox and Harris cases could redefine the balance of power between the executive branch and independent agencies, with significant consequences for employers. While the Court's May 22, 2025, stay suggests a willingness to reconsider Humphrey's Executor, the outcome remains uncertain. Employers should brace for continued delays at the NLRB and EEOC and prepare for a potential shift in regulatory priorities. Our firm will continue to monitor this case closely and provide updates as developments unfold. For tailored advice on how these changes may impact your organization, you may contact our employment law team.

## "Are Our Non-Competes Still Valid?"

We frequently get that question from clients who understandably question the current status of non-compete agreements. The answer, of course, is "it depends."

In April of 2024, the Federal Trade Commission (FTC) issued a Final Rule which – had it become effective – would have essentially banned non-compete agreements with certain, limited exceptions for existing agreements with senior executives. The Final Rule was slated to become effective September 4, 2024 but on August 20, 2024, a District Court in Texas issued a nationwide injunction to prevent enforcement of the Rule. The FTC has appealed and the case is currently pending in the Fifth Circuit Court of Appeals. On March 7, 2025, lawyers for the FTC requested a 120-day stay to allow the agency to evaluate future steps under the new administration.

Does that mean non-competes are out from under the radar? Not quite.

On February 26, 2025, the FTC Chairman announced the creation of a Joint Task Force made of the FTC's Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, and Office of Policy Planning to prioritize investigation and prosecution of deceptive, unfair and anticompetitive labor market conduct. In the Memorandum issued by FTC Chairman Ferguson, he notes the FTC's jurisdiction applies to no-poaching, non-solicitation, no-hire agreements, as well as noncompete agreements, and employment contract termination penalties.

While Judges often do not favor non-compete agreements because they are a restriction on employment, in our experience, most Tennessee Courts will enforce non-compete contracts when the terms are reasonable and the agreements have been validly executed. In 2023, Tennessee passed legislation banning the use of non-competes by temporary healthcare staffing agencies on or after May 11, 2023. Tenn. Code Ann. § 68-11-2303. Tennessee also has a statute which places restrictions on non-competes for healthcare providers. Tenn. Code Ann. § 63-1-148. At present, there are two bills pending in the Tennessee Legislature which would significantly impact the law in Tennessee with respect to non-compete agreements. The two bills (House Bill 1034 and Senate Bill 995) would effectively prohibit and invalidate non-compete agreements for most employees and contractors in Tennessee. Neither bill passed in the recent session, and both were referred to committees for further study.

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The analysis can become more complex when a non-compete agreement was entered in another state and the employer wants to hire the individual who signed it, or if the Tennessee employer needs to enforce a non-compete in another state. Many states have passed laws which greatly restrict the ability of employers to enforce non-competes and in some cases, they are entirely prohibited, such as California, Oklahoma, Minnesota and North Dakota.

Some states, such as Illinois, have detailed statutory provisions which much be carefully analyzed. On January 1, 2022, Illinois' Freedom to Work Act went into effect, limiting the use of non-competes in the state. For agreements signed on or after that date, employees must work for an employer for at least two years after signing the noncompete or receive some other financial or professional benefit "adequate" to support a noncompete. The new law also added additional factors for determining whether an employer has a protectable business interest, created a schedule for increasing the state's wage threshold, and added penalties for noncompliance. Non-competes are prohibited for certain workers, and bans such agreements for employees making less than $75,000 per year.

Likewise, in March of 2025, Wyoming passed a law voiding any non-competes signed after July 1, 2025 except those related to the sale of a business, or which cover trade secrets, or that apply to executives, managers, and professional staff. The law also voided all non-competes that restricts physician's right to practice.

Given the pace of change at both the federal and state levels, employers should not assume that previously valid non-compete agreements will remain enforceable in all jurisdictions. Now more than ever, it is critical to review the scope, duration, and geographic limitations of restrictive covenants—and to assess whether they are truly necessary to protect legitimate business interests such as confidential information or client relationships. Our firm continues to monitor developments closely and regularly advises clients on how to revise restrictive covenant

## Be Careful if Using AI in HR

We have previously counseled and cautioned employers about the use of artificial intelligence (AI) in performing human resources functions. During the Biden Administration, the Chair of the EEOC, Charlotte Burrows stated: "As employers increasingly turn to AI and other automated systems, they must ensure that the use of these technologies aligns with the civil rights laws and our national values of fairness, justice and equality." EEOC, Guidance on ADA and Use of AI, (2022). In April of 2023, in a Joint Statement published by the DOJ, EEOC, FTC and other agencies, the FTC stated: "We already see how AI tools can turbocharge fraud and automate discrimination, and we won't hesitate to use the full scope of our legal authorities to protect Americans from these threats…There is no AI exemption to the laws on the books, and the FTC will vigorously enforce the law to combat unfair or deceptive practices or unfair methods of competition." Many states have enacted recent legislation regarding the use of AI such as Illinois, where employers using AI analysis in video interviewing must give advance notice to applicants of how AI tool works and what characteristics will be used to evaluate them.

Readers may recall the case of EEOC v. iTutorGroup, et al., (USDC, E.D.N.Y. 2022) , wherein the EEOC alleged the employer, iTutor, used an applicant screening software which auto-rejected applicants based on age in violation of the Age Discrimination in Employment Act, which prohibits discrimination against individuals 40 years of age and over. EEOC alleged iTutorGroup programmed their application software to automatically reject applicants based on age and as a result, iTutorGroup rejected more than 200 qualified applicants based in the United States because of their age. iTutorGroup denied the allegations but the parties entered into a Consent Decree, in which the Company agreed to injunctive relief, monitoring by the EEOC for five (5) years and payment of $350,000 to a settlement fund for applicants discriminated against.

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***Mobley v. Workday, Inc.* (3:23-cv-00770; U.S.D.C., N. Ca.).**

In 2023, Derek Mobley sued Workday, Inc., a human resources management services company which provides applicant screening analysis services to its customers on a subscription basis. Mobley had applied for hundreds of jobs with various companies which used Workday to score, sort, rank and screen job applicants. Mobley is a black male over the age of 40 and he alleges Workday has imbedded AI into its screening processes so that the screening results delivered to the employer (the end-user customer) provide recommendations and scoring results which disfavor candidates based on race, age and disability. In February 2025, Mobley asked the U.S. District Court for the Northern District of California to allow others to join in the lawsuit against Workday so as to make it a collective action, which is essentially a class action. (Under the ADEA, a class action is termed a "collective action" for reasons which are not relevant here).

On May 16, 2025, the Court issued an order granting Mobley's motion for preliminary certification of the collective action against Workday. Mobley now has the ability to notify hundreds, possibly thousands of similarly-situated rejected applicants of the lawsuit and provide them an opportunity to join in the lawsuit. A second stage of the class action analysis and process will come after the parties engage in relevant discovery.

The facts in this case are complex, and the potential participants could reach "hundreds of millions" of potential members, according to Workday. The Court was not put off by this and held that the potential size of the class was no reason to deny Mobley's Motion.

Because of the significant implications regarding the use of AI in human resource functions for both AI companies and employers, this is a definitely a case to watch – stay tuned!

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