

Fiery Debates: Current Challenges in the Modern Workplace

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Five Ward and Smith attorneys provided guidance on a number of legal issues with implications for the workplace, including politics, budgets and elections, Diversity, Equity and Inclusion (DEI), changes to the minimum salary threshold for exempt employees, and OSHA's proposed Heat Hazard Rule.

The rapid-fire session was a part of the firm's annual Employment Law Symposium. It featured insights on a variety of hot-button topics with the potential to spark future changes in the business landscape.

Budgets and Elections

The state budget for Fiscal Year 2025-26 is likely to be another record-breaker, advised [Whitney Campbell Christensen](#), a government relations attorney who served as president of the North Carolina Professional Lobbyists' Association. "We are still expecting conservative spending for 2025, however," said Christensen.

Several factors may cool future state revenue collections, including recently enacted tax cuts, approved tax cuts that are yet to be implemented, and the leveling off of inflation, which will moderate sales tax revenue growth. In light of these factors, leaders will likely favor non-recurring items when allocating any surplus revenue.

Those who follow politics are likely already aware that in the 2024 Short Session of the General Assembly, the North Carolina House and Senate disagreed over the state budget and a handful of major policy issues. A number of important pieces of legislation were still enacted in 2024, however.

Newly enacted House Bill (HB) 223 updated the NC Human Resources Act; Senate Bill 790 revised State Bar disciplinary practices; and HB 971 mandates human trafficking awareness training. Lodging operators, short-term rentals, and property management companies are required to implement the training outlined by HB 971 by July 2025.

Any unspent revenue surplus from Fiscal Year 2024-2025 will flow into the revenue total for the 2024-2025 fiscal year. In terms of campaign ads and other campaign expenses, Attorney General Stein has outspent Lt. Gov. Robinson by a factor of three to one at the time of the Symposium.

This spending gap is expected to grow. Political watchers will also note a significant uptick in campaign ads from the presidential candidates. “We are the ‘purplest’ of the purple states,” laughed Christensen, referencing the closeness of the current Presidential race and narrow margin of victory for President Trump – his most narrow of all 50 states - in the last Presidential election.

Looking ahead to the 2025 General Assembly, Christensen predicted that Republican majorities in the NC House and Senate are almost guaranteed, and a Republican supermajority in at least one chamber is highly likely. Representative Destin Hall of Catawba County will almost certainly be the next Speaker of the House in North Carolina and President Pro Tem Phil Berger will maintain control of the Senate.

“We’re likely to see a large volume of bill filing in March and June, so stay tuned,” added Christensen.

Faring the Political Heat Wave

[Emily Massey](#), a labor and employment attorney, shared a strategy for employers to consider for the upcoming political season. “I am going to avoid the standard lawyer-speak of ‘it depends,’ or ‘that’s a gray area’ and just give you my bright line rule today,” said Massey, “and that is to keep politics out of the workplace this fall.”

Avoiding incendiary rhetoric is key because, even in a best case scenario, it could be offensive. “In a worst case scenario, political speech could result in discriminatory conduct or a retaliatory action,” added Massey.

“Training is essential to douse the flames of political speech,” advised Massey. “It’s vital to understand the interaction between politics and the protected classes of race, religion, gender, and national origin. Federal, state, and local laws protect these classes, and the most heated political issues can be enmeshed with the various identities within these classes.”

Even a policy that is facially non-discriminatory could have negative implications. Massey shared the example of a case with Home Depot, in which a policy stated that anything related to causes, politics, or messages unrelated to the business could not be displayed on the company’s orange apron.

Though acceptable on the surface, the problem with the policy was enforcement. “A low-level manager said an employee would be fired if he didn’t remove the ‘BLM’ slogan from his work apron. The problem was the policy was enforced in a way that impeded with protected concerted activity, as the employee was speaking out about discriminatory behavior with his coworkers,” said Massey.

Consistency is paramount in regard to prohibiting solicitations, slogans within dress codes, and the distribution of political materials. An example could include banning the distribution of union materials while continuing to allow staff members to sell Girl Scout cookies.

“Dress codes need to be facially neutral, meaning certain types of speech should not be singled out. But again, managers should not enforce these policies in a way that is discriminatory,” added

Massey.

Employers should consider granting time off requests from employees for days around the election. One reason is doing so could prevent inflammatory political rhetoric; another is that certain states have laws that prohibit interfering with employee political activity, a factor that could have implications for those with a remote workforce.

Diversity, Equity, and Inclusion

[X. Lightfoot](#), a labor and employment attorney, reported that workplace investments into Diversity, Equity and Inclusion (DEI) initiatives fell by a factor of approximately 33% between 2022 and 2023. In a global survey, however, around 63% of the respondents said they prefer companies that make DEI a priority.

“DEI may be under attack for the simple fact it involves change, and anytime there’s change, there is going to be resistance,” noted Lightfoot. He mentioned a recent decision by the Supreme Court that now prevents colleges and universities from using race as a factor in the admissions process.

“This overturned decades of precedent, effectively bringing affirmative action to an end,” Lightfoot explained.

In a substantial number of states, legislative actions are being used to prohibit DEI funding in higher education. “Within the context of the private sector, it’s easy to see why an employer may worry about a DEI initiative subjecting their company to a potential lawsuit,” said Lightfoot.

A recent case involved a challenge to the Fearless Fund, a venture capital fund that was created to provide grants to businesses with Black women as majority owners. The Fearless Fund ended its grant program in a settlement with the American Alliance for Equal Rights, which claimed it was unlawful due to race-based discrimination.

The Society for Human Resource Management (SHRM) announced that it would drop the word ‘Equity’ from its “IE&D” strategy, partly because the definition of equity created confusion and had become a divisive issue. “DEI may need to be rebranded, but the workforce demands it, so it isn’t going anywhere,” noted Lightfoot.

Challenges related to adoption still persist. To ensure leaders and staff recognize the benefits of DEI initiatives, it is important to:

- Continue connecting DEI to positive business outcomes
 - Higher workforce engagement
 - Reduced employee turnover
 - Improved recruitment effectiveness
 - Mitigating risk from lawsuits
- Share DEI success stories; focus on commonalities among employees within your organization
- Connect DEI to employee health/wellness

Lightfoot added it is essential to communicate the importance of pay equity and recognize the value of inclusive leadership. He referenced a quote from Dr. Maya Angelou:

"I note the obvious differences in the human family
Some of us are serious, some thrive on comedy
Some declare their lives are lived as true profundity
And others claim they really live the real reality

The variety of our skin tones can confuse, bemuse, delight
Brown and pink, and beige, and purple, tan and blue, and white
I've sailed upon the seven seas and stopped in every land
I've seen the wonders of the world
Not yet one common man...

I note the obvious differences between each sort and type
But we are more alike, my friends, than we are unlike"

Lightfoot concluded "I firmly believe your workforces and people are also more alike than they are unlike."

Minimum Salary Threshold

[Avery J. Locklear](#), a labor and employment attorney, noted that employers can break into a sweat about overtime pay. "Some employers think they can avoid this by placing the employee on salary, but they need to be careful because the DOL recently increased the minimum salary threshold," noted Locklear.

In order for an employee to be exempt from overtime pay, an employer has to demonstrate that the employee qualifies for an exemption. For purposes of this discussion, the Fair Labor Standards Act exempts bona fide administrative, professional, or executive employees from minimum wage and overtime requirements.

To qualify for such exemptions, employees must meet certain tests regarding their job duties *and* be paid a salary not less than the minimum salary threshold amount. Prior to July 1, 2024, the minimum salary threshold for an administrative, professional, or executive exemption was \$684 per week (\$35,568 per year).

However, beginning on July 1, 2024, the minimum salary threshold has increased to \$844 per week (\$43,888 per year) for individuals meeting the administrative, professional, or executive exemptions. Additionally, beginning July 1, 2024, the DOL increased the highly compensated employees' salary threshold to \$132,964 per year.

In addition to the drastic increase that took effect on July 1st, another increase is set to take effect on January 1, 2025. Beginning on January 1, 2024, to qualify for the administrative, professional, and executive exemption, the salary threshold is set to increase to \$1,128 per week (\$58,656 annually), and highly compensated employees minimum salary threshold will increase as well to \$151,164 per year. Locklear pointed out it may not be a cause of concern: "Since the overturning of the Chevron doctrine, the courts have an increased ability to find the DOL rule is an improper interpretation of the FLSA." Still, she urged employers to begin considering how another increase could impact their workforce and operations.

OSHA Heat Hazard

[Justin Hill](#), a labor and employment attorney, discussed a proposed rule from the Occupational Safety and Health Administration (OSHA) designed to prevent heat-related hazards in the workplace. “This is important since it would create liability for any indoor and outdoor workplaces,” advised Hill.

The rule would require employers to develop a Heat Injury and Illness Prevention Plan. With a heat index surpassing 80 degrees, employers would be required to provide frequent breaks and water.

At a heat index exceeding 90 degrees, employers would be required to monitor for signs of heat illness and provide a paid 15-minute break every two hours. Additionally, employers are expected to train the staff in identifying heat hazards, overheating, and heat exhaustion.

There are a number of notable exceptions, including firefighters and other first responders, short-duration exposures, remote work, and sedentary work performed outside.

“The takeaway is that employees who cannot stand the heat should get...an attorney? Seriously though, this could be strenuous for employers, and it’ll be interesting to see how it plays out,” concluded Hill.

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National Law Review, Volume XIV, Number 306

Source URL: <https://natlawreview.com/article/fiery-debates-current-challenges-modern-workplace>