

## 10 Employment Law Risks HR Must Track in 2026

HR Morning | Carol Warner | January 30, 2026



If you're looking for employment law predictions for 2026, a new survey from Norton Rose Fulbright highlights where employment and labor risk remains most persistent for employers.

The firm's 21st Annual Litigation Trends Survey examines where businesses faced litigation in 2025 and how that legal risk is expected to shift in the year ahead.

Just 34% reported employment and labor litigation last year (down from 42%), suggesting things turned out better than expected – yet employment law claims still ranked second overall.

### **Employment Law Trends: What Should Be on HR's Radar**

Specifically, here are the types of employee lawsuits respondents expect to see this year.

#### 1. Discrimination and Harassment Claims

Discrimination and harassment account for more expected employment and labor litigation exposure than any other category. Forty-seven percent of respondents cited these issues as a risk in 2026, down slightly from last year.

"Respondents reported a decline in exposure to employment and labor litigation, but even so, it remains top of mind for corporate counsel," according to Jesika Silva Blanco, a partner in the firm's Employment and Labor Group in Houston.

While respondents anticipate fewer traditional discrimination and harassment claims, they expect employment law risks to focus on how policies are designed, enforced, and applied to employees.

“Discrimination and harassment litigation is not going to go away. We will likely see a different type of discrimination and harassment litigation,” Blanco said.

That shift follows the Supreme Court’s 2025 decision in *Ames v. Ohio Department of Youth Services*, which clarified that a heightened standard does not apply to reverse discrimination claims. Survey respondents expect the *Ames* ruling to contribute to an increase in reverse discrimination lawsuits in the year ahead.

## 2. Disability Accommodations

Disability accommodations moved sharply up the list of employment law risks in the latest survey, ranking second overall based on expectations of increased exposure in 2026. In fact, 42% of respondents pointed to disability accommodation issues as a major source of expected litigation.

That aligns with recent enforcement activity. Data from the Equal Employment Opportunity Commission shows disability-related claims account for a significant share of agency litigation. In FY 2024, the agency filed 111 merit lawsuits. Of those, about 43% (48 cases) included disability claims under the ADA.

“We’ve seen an increase in disability accommodation requests after the COVID-19 pandemic, as well as those related to remote work and mental health,” said Kimberly Cheeseman, Co-Head of Litigation and Disputes in the firm’s Houston office. “More recently, we’ve also started to see employer pushback on accommodation requests, which could result in more litigation.”

Taken together, the survey results and enforcement data suggest disability accommodation risk is being driven less by isolated disputes and more by ongoing tension between employee expectations and employer limits, particularly as organizations reassess post-pandemic flexibility and return-to-office practices.

## 3. Wrongful Termination

Wrongful termination appeared as a standalone area of concern in this year’s survey, marking a notable change from the prior year. This year, 37% of respondents said wrongful termination claims are likely to increase their employment litigation risk over the next 12 months, even though the issue did not rank among top risks in last year’s results.

The increase reflects growing pressure around termination decisions – especially as organizations adjust headcount, enforce return-to-office policies, and address performance issues. Survey responses show these risks often stem from prior issues like accommodation requests, protected leave, or internal complaints, putting routine terminations at higher legal risk.

#### 4. Paid Sick and Family Leave Requirements

Paid sick and family leave requirements are now considered a bigger employment law risk as state and local mandates continue to expand and change.

Survey results reflect that pressure: More than one-third (36%) of respondents said they expect expanded sick or family leave requirements to increase litigation risk this year.

Ongoing legislative activity has been a key driver, according to Blanco. Jurisdictions including Alaska, California, Connecticut and Nebraska expanded or enacted paid sick leave requirements in 2025, adding new compliance obligations for employers operating across multiple locations.

That shift continues in 2026. Minnesota's paid family and medical leave program began on January 1, with additional states implementing new paid sick or family leave requirements.

The risk most often shows up when leave policies are applied inconsistently across employees or locations, Blanco noted. Leave litigation more often arises when employers struggle to coordinate paid sick leave, family leave, and other protected time off in real-world situations.

#### 5. Employee Classification, Gig Worker and Contract Laws

Employee classification remains a key litigation risk for employers – especially those using contract labor or flexible staffing. Forty-two percent of respondents expect more disputes over employee classification, gig workers, and contract laws in 2026, up slightly from last year.

Rather than pointing to a single regulatory direction, respondents described ongoing uncertainty around how classification rules will be applied and enforced. Disputes over employee or independent contractor status continue to put employers at legal risk, especially as companies adjust workforce models in response to economic pressure and labor availability.

Blanco noted that classification risk tends to resurface when employers revisit staffing strategies or expand the use of contractors, even when formal rules appear settled. That dynamic keeps classification disputes active across industries that rely on nontraditional work arrangements.

#### 6. Employee Data Management and Data Privacy Requirements

Concerns about employee data management and privacy requirements have dropped sharply, with only 33% of respondents now citing them as an employment law risk for 2026 – down significantly from last year.

“In 2025, 50% cited employee data management and privacy requirements as an issue contributing to their employment and labor exposure,” Blanco said.

Blanco said expectations have eased in part because of how current laws are written. Most state data privacy laws still focus on consumer data and exempt HR data, limiting employee lawsuits and litigation exposure.

Even so, the risk has not disappeared. Employers continue to retain large volumes of sensitive employee information, and litigation tied to data breaches or cybersecurity incidents remains possible when employee data is exposed.

## 7. The Use of AI in Hiring and Other Employment Decisions

Employers continue to factor AI use into employment law risk discussions, especially around hiring decisions. In the latest survey, 32% of respondents said they expect exposure tied to AI use in 2026 – a slight decline from last year.

That dip may reflect employers' shifting expectations on federal enforcement priorities. For example, the Trump administration has recently deprioritized the disparate impact theory, Blanco points out.

Plus, as companies get more comfortable with AI tools and their new governance practices, some respondents expect fewer employment law claims tied to early or experimental use.

Even so, litigation risk remains. Courts are beginning to examine how automated tools influence employment decisions and consider where responsibility sits when outcomes are challenged. One closely watched example is the ongoing Workday case, where a job applicant has been allowed to pursue claims alleging discrimination tied to automated screening tools.

Blanco cautioned that employers should not read the slower pace of AI-related claims as a reason to ease oversight. As AI becomes embedded in everyday employment decisions, scrutiny is likely to concentrate on how HR tech tools are set up, tested, and relied on in practice.

## 8. Regulatory Scrutiny

Nearly one-third (31%) of respondents expect increased regulatory scrutiny to raise labor and employment risk in 2026.

That concern reflects uncertainty following the Supreme Court's decision to overturn the Chevron doctrine, which has raised questions about how employment laws will be interpreted and enforced when long-standing agency guidance may no longer carry the same weight in court.

"There is a general lack of clarity and stability," a management consulting respondent said in the report. "We are not sure what areas are going to be enforced."

Rather than signaling a pullback in oversight, the survey points to a more uneven enforcement environment. As agencies reassess their authority and courts revisit prior interpretations, employers expect greater variability in how rules are applied, particularly across regulators and jurisdictions.

For HR teams, that uncertainty complicates compliance planning. Policies built on prior guidance may face renewed scrutiny as enforcement approaches continue to evolve.

## 9. Wage and Hour Issues – Including Pay Equity and Pay Transparency

Nearly one-third (29%) of respondents said wage and hour issues are expected to raise labor and employment risk in 2026, reflecting ongoing pressure around pay practices rather than a resolved risk.

That expectation tracks with legislative and regulatory movement already underway in a handful of high-impact states. In Washington, exempt salary thresholds will continue to rise through 2028 under a formula tied to the state minimum wage, automatically expanding overtime eligibility each year. For multistate employers, that creates a widening gap between Washington roles and similarly titled positions elsewhere, increasing misclassification risk even without changes to job duties.

Pay transparency is following a similar path of incremental expansion. New York's statewide salary range disclosure law is now in effect, with lawmakers and regulators already debating amendments tied to enforcement scope and posting accuracy. Other states are watching closely, and several have revived stalled proposals modeled on early adopters, signaling that pay range disclosure requirements are likely to spread rather than slow.

Together, these developments point to a 2026 risk landscape shaped less by surprise legislation and more by automatic triggers and follow-on enforcement. As states raise wage minimums and disclosure rules on different schedules, employers face growing risk if they can't adjust pay structures to match, highlighting the value of payroll technology that keeps HR ahead of compliance changes.

#### 10. Varying Workplace Requirements and Regulations Across Jurisdictions

More than a quarter (28%) of respondents said navigating employment law compliance across jurisdictions is likely to drive more claims, down slightly from 29% last year. The shift suggests the risk has stabilized, not disappeared.

Many years ago, California was the lone big player in major state regulation and legislation as it relates to employment law. But that's not the case anymore. Now, more states — and municipalities — are passing local laws so compliance has become more complicated.

Take pay transparency, for example. On Jan. 1, California's amended pay transparency law took effect, revising the definition of "pay scale" to include a good-faith estimate of salary or wage ranges listed in job postings. It also updates the definition of "wages" to explicitly cover base salary, all bonuses, stock, equity, profit-sharing, benefits, travel reimbursements and more. And several other states — Illinois, Maryland, Washington, D.C. — are now enforcing their laws with penalties. As more jurisdictions continue to pass — and amend — legislation, multistate employers will have to figure out how to comply with a hodgepodge of laws.

#### **Rising Legal Costs For Employment Law Claims**

A majority (77%) of respondents said they were increasingly concerned with the growing prominence of so-called "nuclear verdicts" — unexpectedly high jury verdicts exceeding \$10 million. Here are a few examples:

- A \$58 million jury verdict for a workplace injury – a California man broke his foot while working at a train manufacturing yard.
- A \$35 million jury verdict for an ADA claim – a truck driver in Nebraska alleged he was not hired because he is deaf.
- An \$11.25 million jury verdict for retaliation – a Black fitness instructor in New York alleged she was fired after she complained about a co-worker's racist and sexually inappropriate comments.

When asked about the business impacts of such nuclear verdicts, 39% of respondents said they've noticed increased insurance premiums and 29% said they've attempted earlier settlement negotiations to avoid trial risks.

### **Next Steps for HR: Building a Strategy for 2026**

With remote and hybrid teams now the norm, HR teams face a patchwork of state-specific rules on pay transparency, payroll, benefits, and more that are tougher to track and enforce in 2026.

Tracking employment law risk is only part of the job. The bigger challenge is making sure HR, Legal, and risk teams are aligned on how those rules get applied in real situations.