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ISSUE 12
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CALENDAR

August 4 - Coast Guard Birthday

August 12 - Baseball Fans Day

August 16 - National Senior Citizens Day

August 26 - Women's Equality Day

September 7 - Labor Day

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September 22 - First day of Autumn

September 26 - National Public Lands Day

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Legal/Legislative Update

THE LATEST NEWS, VIEWS, AND ANNOUNCEMENTS

DOL Moves to Rewrite Joint Employer and Independent Contractor Rules

Bottom Line: Nothing changes for you yet — but by October 2026, one of these proposals could become final.

Back in February, we covered how joint employer and co-employment obligations flow from control and influence, not contractual labels. That framework just became more relevant: the U.S. Department of Labor's Wage and Hour Division (WHD) has proposed rewriting both the joint employer standard and the independent contractor test under the Fair Labor Standards Act — rolling back 2024 rules in favor of versions closer to those used in 2021.

What's Being Proposed

- **Independent Contractor Status** — Published February 27, 2026, this proposal would rescind the 2024 independent contractor rule and replace it with an economic-reality-test analysis resembling the 2021 rule. A final rule is expected October 2026.
- **Joint Employer Status** — Published April 23, 2026, this proposal would revise how joint employer status is determined under the FLSA, FMLA, and MSPA for multi-entity staffing and contracting arrangements. The public comment period closed June 22, 2026; no final rule date has been set.

Where Things Stand

Both are proposed rules, not final ones. Current 2024 standards remain in effect until (and unless) WHD issues final rules, and more protective state wage-and-hour laws continue to apply regardless of what happens federally. This is a signal of direction, not a compliance deadline — but the direction is clear: both proposals aim to narrow joint employer exposure and simplify independent contractor classification for businesses.

Employer Action Items

- **Keep classifying under current rules.** Continue applying the 2024 independent contractor and joint employer standards — they still govern until a final rule takes effect.
- **Mark October 2026 on your calendar.** That's when the independent contractor final rule is expected. We'll flag it the moment it's issued.
- **Keep using the February framework.** For joint employer questions, control-and-influence is still the operative standard today — nothing here has replaced it.
- **Check your state law too.** Whatever the federal standard ends up being, a more protective state law in your operating states still applies.

Proposed rules aren't the law until they're final. We'll keep tracking this and let you know the moment that changes.

For additional information, see: [Independent Contractor NPRM (Federal Register)] | [Joint Employer NPRM (Federal Register)] | [U.S. Department of Labor]

State AI Law Spotlight: Illinois, Texas & Colorado

In our June issue, we flagged Illinois, Texas, and Colorado as states where AI-related employer obligations were either already in effect or fast approaching, while federal AI policy remained unsettled. Six weeks later, the picture has shifted — two of those laws are now live, and the third has been dramatically rewritten. Here's where things stand.

Illinois: HB 3773 — Effective January 1, 2026

What It Does

Amends the Illinois Human Rights Act (via HB 3773) to make it a civil rights violation for an employer to use AI that has the effect of discriminating against employees or applicants based on a protected class — covering recruitment, hiring, promotion, discharge, discipline, and other terms of employment. Liability attaches even without discriminatory intent. The law also bans using zip codes as a stand-in for protected-class data, and requires employers to notify employees and applicants when AI is used in these decisions.

Where It Stands

The Illinois Department of Human Rights formally published proposed rules ('Subpart J') in the Illinois Register on May 15, 2026, opening a public comment period. On June 2, IDHR temporarily postponed the rulemaking process, including a scheduled hearing, to allow further coordination with other state agencies. No revised timeline has been announced, though the underlying notice and anti-discrimination requirements under HB 3773 remain in effect.

Employer Action Items

- Inventory every AI tool touching recruitment, hiring, promotion, discipline, or termination in Illinois.
- Draft (or finalize) applicant/employee notices for AI use in covered decisions.
- Watch for finalized IDHR rules on notice timing and format.
- Confirm vendor tools don't rely on zip code or other geographic proxies for screening.

For additional information, see: *Illinois HB 3773 / Public Act 103-0804 (Illinois General Assembly)* | *Illinois Department of Human Rights*

Texas: TRAIGA (HB 149) — Effective January 1, 2026

What It Does

The Texas Responsible Artificial Intelligence Governance Act (TRAIGA / HB 149) takes a narrower approach than Illinois or Colorado's original law. Rather than imposing broad impact-assessment duties, TRAIGA is intent-based — it prohibits specific harmful uses of AI (like behavioral manipulation or discrimination), rather than penalizing any AI system that happens to produce a disparate outcome.

Key Features for Employers

- **Applies broadly** — to any entity doing business in Texas, offering products/services used by Texas residents, or developing/deploying AI in the state.
- **No private right of action**. Only the Texas Attorney General can enforce it.
- **60-day cure period — employers get one** before penalties apply.
- **Preempts local ordinances** — avoiding a Texas-specific patchwork.

Employer Action Items

- Confirm whether TRAIGA applies to your Texas operations — the reach is broader than "headquartered in Texas."
- Review AI systems for intentional discriminatory or manipulative design. This is a lower bar than Illinois's disparate-impact standard, but document good-faith compliance efforts regardless.
- Know that a violation notice starts a 60-day clock to cure before the AG can pursue penalties.

For additional information, see: *Texas HB 149 / TRAIGA, 89th Legislature (Texas Legislature Online)*

State AI Law Spotlight: Illinois, Texas & Colorado

Colorado: The AI Act That Wasn't — Update From Our June Issue

Editor's Note: *In June, we reported that Colorado AI Act obligations were already in effect and that the U.S. Department of Justice had intervened in litigation against the law. That litigation resolved faster than almost anyone expected — and the law itself no longer exists in its original form.*

What Happened

- **April 9, 2026** — xAI sued to block the original Colorado AI Act (SB 24-205) on constitutional grounds.
- **April 24, 2026** — DOJ intervened in support of xAI — its first-ever move to challenge a state AI law in court, under the authority of Executive Order 14365.
- **April 27, 2026** — A federal court stayed enforcement of the law pending a legislative rewrite already underway in Colorado.
- **May 14, 2026** — Governor Polis signed SB 26-189, repealing the original AI Act entirely. In its place: a narrower Automated Decision-Making Technology Act, dropping the algorithmic-discrimination duty and mandatory bias audits in favor of a disclosure-and-notice framework. New effective date: January 1, 2027.

Why This Matters Beyond Colorado

This is the first real-world test of the federal-state tension we described in June — and, for now, the more aggressive state framework lost ground. Whether this becomes a template other states follow, or an outlier, is still unfolding. The Commerce Department is reportedly still compiling a list of additional state AI laws it may target, though that list hasn't been made public.

Employer Action Items

- No immediate Colorado AI Act compliance deadline — but January 1, 2027 will arrive faster than it sounds, and the rulemaking process for the new law will shape what "notice" actually requires.
- The Colorado Attorney General's pre-rulemaking comment period for SB 26-189 ran June 15 through July 13, 2026, and has now closed. Formal rulemaking — including public notice, written comment, and at least one public hearing — is the next step; there's no proposed rule text yet.
- Don't assume this pattern will repeat in other states — Illinois and Texas obligations are unaffected and already in effect.
- Keep monitoring — Colorado's legislative and regulatory posture on AI has shifted twice in under a year.

For additional information, see: *Colorado SB 24-205 (Colorado General Assembly)* | *Colorado SB 26-189 (Colorado General Assembly)* | *Executive Order 14365 (Federal Register / GovInfo)* | *DOJ press release on Colorado AI Act intervention*

Employer Action Checklist: Illinois, Texas & Colorado AI Laws

- **Inventory your AI tools.** Identify every platform using automated or algorithmic decision-making across recruiting, screening, scheduling, performance, and termination — in Illinois and Texas now, and in Colorado ahead of January 2027.
- **Map your state footprint.** Confirm which of your locations or hires trigger Illinois HB 3773, Texas TRAIGA, or (later) Colorado's new ADMT law — obligations and deadlines differ by state.
- **Build your notice language.** Illinois requires applicant/employee notice now. Prepare template disclosures your HR and recruiting teams can deploy quickly.
- **Audit vendor contracts.** Confirm AI vendor agreements address bias testing, transparency, and liability — and clarify who owns notice obligations.
- **Don't wait on Colorado.** The new effective date (1/1/2027) feels distant, but pre-rulemaking comments closed July 13, 2026 — formal rulemaking is next, and it will define what's required.
- **Document everything.** Regulators in every state will ask what steps you took. A paper trail demonstrates good faith.

These laws are evolving quickly and vary by state. We recommend working closely with your legal counsel to assess how they apply to your specific operations.

Client Alert: San Francisco Fair Chance Ordinance Amendments Take Effect August 10, 2026

San Francisco's Fair Chance Ordinance (FCO) — the city's ban-the-box law, in place since 2014 — has been significantly amended. The amendments were passed by the Board of Supervisors on July 7, 2026, signed by Mayor Daniel Lurie on July 10, and take effect August 10, 2026. The FCO applies to employers with five or more employees located or doing business in San Francisco, covering any position involving at least eight hours of work per week in the city — and it applies on top of, not instead of, California's statewide Fair Chance Act.

New Off-Limits Categories

The amendments create categories of conviction and arrest records that can never be treated as job-related, regardless of the position — a departure from how fair chance laws have traditionally worked. Employers may not inquire about or rely on out-of-state convictions or unresolved arrests for conduct that is lawful in California and relates to: abortion-related healthcare, gender-affirming care, drag performances, or spontaneous abortion. Previously, employers retained discretion to assess whether any conviction was job-related; these four categories now remove that discretion entirely.

Updated Adverse Action Timeline

The amendments tighten the FCO's already-detailed adverse action process, adding specific deadlines for employers to acknowledge an individual's response and reconsider a preliminary decision — requirements that go beyond what California's state law requires.

Increased Penalties

The amendments increase the administrative penalties the Office of Labor Standards Enforcement (OLSE) may assess, as well as the liquidated damages available in a civil lawsuit, for violations of the ordinance.

Employer Action Items

- If you have employees or open positions in San Francisco, update job applications, background check processes, and adverse action letters to reflect the new off-limits categories.
- Don't rely on out-of-state conviction or arrest records tied to the four newly protected categories — even if the underlying conduct would be considered elsewhere.
- Review your adverse action timeline and documentation practices against the FCO's updated requirements, which are more prescriptive than the state Fair Chance Act.
- Confirm the required FCO notice is posted at every San Francisco worksite.
- As with all the laws in this issue, work with your legal counsel to confirm how the amended FCO applies to your San Francisco operations.

For additional information, see: *San Francisco Fair Chance Ordinance overview (SF.gov, Office of Labor Standards Enforcement)*

Washington State Spotlight: Fair Chance Act Amendments Take Effect in 2026

Washington's [Fair Chance Act] has protected job applicants and employees with criminal records since 2018. In 2025, the legislature significantly expanded the law's requirements. The amendments took effect July 1, 2026 for employers with 15 or more employees, and take effect January 1, 2027 for smaller employers - and they apply to staffing agencies and their clients alike. The Attorney General's office also published its Fair Chance Act guide for employers and applicants alongside the July 1 effective date.

New Definitions

The amendments add formal definitions for adult conviction record, arrest record, juvenile conviction record, legitimate business reason, and tangible adverse employment action (which covers rescinding an offer, or for current employees, termination, suspension, or discipline).

When Background Checks Can Happen

Any inquiry into criminal history — and the background check itself — may only happen after a conditional offer of employment has been extended.

What Employers Can and Can't Consider

- Employers may not take adverse action based on an arrest record or a juvenile conviction record. The one exception: an adult arrest where the individual is out on bail or released on personal recognizance pending trial.
- Employers may consider an adult conviction record only if they have a legitimate business reason, documented against specific factors: the seriousness of the conduct, the number and types of convictions, time elapsed since the conviction (excluding incarceration), verifiable evidence of rehabilitation and good conduct, the duties of the position, and the setting in which the work is performed.

Notice and a Two-Business-Day Window

Before taking adverse action, an employer must notify the individual, identify the specific record at issue, and hold the position open for at least two business days so the person can respond, correct the record, or provide information about rehabilitation.

If the employer proceeds with adverse action afterward, it must issue a written decision documenting its reasoning against each factor. Note that the two-day window is how long the position must stay open — not a mandatory gap between an employer's own internal letters or steps.

Voluntary Disclosure

If an applicant voluntarily discloses criminal history on their own, the employer must still inform them in writing of the law's requirements and provide the Attorney General's Fair Chance Act guide for employers and job applicants.

Penalties

The Attorney General may waive a first or minor violation, or impose a penalty starting at $1,500, with escalating amounts for repeat violations. Penalties are assessed per affected applicant or employee, per violation, and are generally payable to that individual.

Employer Action Items

- ·Remove any criminal history questions from applications and interviews — wait until after a conditional offer.
- Update background check workflows so notice, the two-business-day hold, and the written decision process happen in the right order and are documented.
- Build a standard voluntary-disclosure notice that includes the Attorney General's guide.
- Confirm which effective date applies to your organization — July 1, 2026 or January 1, 2027 — based on employee count.
- As with all the laws in this issue, work with your legal counsel to apply these requirements to your specific hiring practices.

For additional information, see: Washington Fair Chance Act overview (WA Attorney General) | RCW 49.94.010 — Inquiries, adverse actions, timing | RCW 49.94.030 — Enforcement and penalties

As a matter of standard practice, Staffmark's background check vendor does not report juvenile conviction records, which supports compliance with this requirement from the outset. Clients who prefer to use their own screening vendor should confirm that vendor's practices align with this requirement.