



Lowenstein Sandler's Executive Compensation and Employee Benefits Podcast: Just Compensation

Episode 58

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Megan Monson:

Welcome to the Lowenstein Sandler podcast series. Before we begin, please take a moment to subscribe to our podcast series at Lowenstein.com/podcast or find us on Amazon Music, Apple Podcasts, Audible, iHeartRadio, Spotify, SoundCloud, or YouTube. Now, let's take a listen.

Welcome back to part two of this episode of *Just Compensation*. Now that we've covered a few state-specific updates in part one, let's zoom out and hit the big national trends: non-competes, pay transparency, AI rules, and what's shifting under the Trump administration. Let's jump in.

But let's talk about some broader trends. What's happening with non-competes?

Amy Wiwi:

The Biden administration's attempt with the Federal Trade Commission to ban non-competes has been fully abandoned. The Trump administration has pivoted to case-by-case enforcement actions against employers. In September 2025, the Federal Trade Commission issued a press release indicating it intends to redirect its focus into the healthcare sector. But overall, an increasing number of states have banned or restricted non-competes for physicians and other healthcare professionals. So, states with pay thresholds for non-competes and non-solicits may have increased dollar thresholds as of January 1, 2026. So if you are relying on those or if you have employees in those states that have a threshold, you should really check to make sure. Various bills are pending in states.

The proposed New York state bill would ban all non-competes for those making less than \$500,000 on an annual basis and would also ban non-competes for health-related professionals. This bill has passed the New York State Senate and is awaiting to vote in the assembly. So then after that, it would obviously go to the governor to either sign into law or to veto.

A bill initially proposed in New Jersey in 2025 would have banned non-competes going forward and deemed existing non-competes unenforceable unless the existing non-compete complies with very specific requirements, including, in most cases, pay during the restricted period. The bill died when the legislative session ended in January 2026, but we expect that it will be reintroduced.

There has been increased scrutiny in the sale of business context, significantly under Delaware case law. And as an outlier, Florida has passed the very favorable CHOICE Act in 2025, which permits up to four-year non-competes for certain circumstances. So, we've got to keep checking and keep looking because there is most definitely a trend here against non-competes other than for Florida.

Megan Monson: What about pay transparency? Is that trend still continuing?

Amy Schwind: It is. Pay transparency laws continue to be the trend with laws now in New Jersey, California, Colorado, Illinois, Maryland, New York State, New York City, and Washington State. These types of laws require employers to disclose salary ranges, and in some cases, additional compensation information like benefits, bonuses, or commissions to job applicants or employees. Some jurisdictions require pay ranges to be posted in job postings while others require pay disclosure upon request or only at a certain stage in the hiring process.

California has clarified that for employers with 15 or more employees, the pay scale and job postings must be a good faith estimate of the salary or hourly wage range that the employer reasonably expects to pay for the position upon hire. And that clarification was essentially to address a perception that employers were flouting the spirit of the law by including implausibly broad pay scales in their postings.

A pending New York City bill would add to the existing salary transparency law requirements for job description, benefit, and non-wage compensation, including bonuses, commission, stock, bonds, options, profit sharing, and equity or ownership. And a similar bill is pending in New York State. Though not yet law, but perhaps on the horizon.

There is also a related trend of pay data reporting. So, California requires private employers with a hundred or more employees to submit annual pay data reports categorized by race, ethnicity, and gender demographics to the California Civil Rights Department. Recent amendments require demographic data to be stored separately from personnel records and also expand the number of job categories for the data effective January 1st, 2027. Illinois and Massachusetts also have laws regarding paid data reporting.

New York City has also passed a bill requiring private employers with 200 or more employees within New York City to submit employee demographic and pay data annually. The city council actually overrode the former mayor, then mayor's vote in December, meaning the legislation is in effect, but the reporting timeline depends on how quickly the government acts. The mayor will need to designate a responsible agency within 12 months, so by December 4th, 2026. And then once designated, the agency has up to 12 months to create the standardized reporting format and establish submission procedures. And then employer deadlines will kick in, which will need to be within the 12-month timeframe after that standardized form is published, and then annually after that. So, coming up for large New York City employers, this is something to take note and ensure you know when those dates are going into effect.

Megan Monson: The AI in employment is another hot topic. What's happening on that front?

Amy Schwind: States are passing laws regulating AI in employment and hiring. Those laws focus generally on preventing discrimination and bias, ensuring transparency, and promoting accountability. As of July 2023, at the forefront of these laws, New York City enacted a law that prohibits employers and employment agencies

from using an automated employment decision tool to make an employment decision unless the employer conducts a bias audit on the tool, publishes the audit summary, and provides certain notice. This law is known as NYC 144, and there are very specific requirements, and this is a law that is currently in effect.

In Illinois, as of January 1st, 2026, employers must notify employees when they use AI for recruitment, hiring, promotion, renewal of employment, selection for training, discharge, discipline, tenure, or the terms, privileges, or conditions of employment. Also, under the Illinois law, employers may not use ZIP codes as a proxy for protected classes.

California has regulations prohibiting using automated decision systems or selection criteria to discriminate based on their Employment Housing Act protected categories. So essentially saying you cannot use AI to discriminate based on the existing protected categories. Employers must preserve automated decision system related records for at least four years. By January 1st, 2027, employers subject to the California Consumer Privacy Act will also have additional requirements if they use automated decision-making technology for employment-related decisions without meaningful human involvement. There will be a requirement for pre-use notices. Also, employers will need to honor certain opt-out and access rights, and there are also requirements to conduct detailed risk assessments.

In Colorado, coming up as of June 30th, 2026, there is still the possibility that this date will get pushed because it already has once, but currently, as of June 30th, 2026, to protect against algorithmic discrimination, employers and tool developers have certain obligations when AI is involved in the decision-making process affecting personnel.

Megan Monson: Thanks, Amy. That's really helpful to just be aware of all of these AI-related laws going into effect. I suspect that as we continue to have AI become more and more involved in the workplace, I would expect that more states will have similar laws come up.

Amy Schwind: Yes, especially given what's happening at the federal level, which I know Amy W. Will talk about here shortly.

Megan Monson: So finally, what are some shifts that we are seeing under the Trump administration that employers should know about?

Amy Wiwi: So, on the DEI front, there was technical assistance document published by the Equal Employment Opportunity Commission in March 2025 that is titled "What To Do If You Experience Discrimination Related to DEI at Work." There have been so many terminations of agency leaders at EEOC and the National Labor Relations Board that neither has a quorum. So, these agencies are significantly limited in what they can do. In 2026, the National Labor Relations Board reinstated its 2020 joint employer standard. This action withdraws a Biden 2023 rule and restores a narrower framework for determining when two businesses share legal responsibility for the same group of workers.

The U.S. Department of Labor also has proposed a new rule to differentiate between employees and independent contractors under the Fair Labor Standards Act and a few other laws. The rule would establish a similar standard to the one the Department of Labor issued under the first Trump administration. The rule would focus on two main factors: control over the work and entrepreneurial opportunity. The public comment process will close at the end of April, so there's not yet any change here. It is unclear whether the administration will revisit and attempt to increase the salary threshold for exemption under the Fair Labor Standards Act.

So, regarding immigration, the Trump administration's immigration related policy changes and related enforcement actions mean employers generally should expect more I-9 audits, and we do expect that employers will have more difficulty recruiting and hiring talent from outside of the United States, given the stricter immigration procedures, the scrutiny and processing speed.

Regarding AI, the Trump administration is not happy about all of these states who are implementing their own AI-related rules. His administration has emphasized deregulation and technological competitiveness. On December 11th, 2025, the Trump administration issued an executive order that instructs the attorney general to establish an AI litigation task force to challenge state AI rules. The Trump administration wants one uniform AI law, and we will see how that goes. The Secretary of Commerce also was ordered to publish an evaluation of AI laws and issue a policy notice providing that states with onerous AI laws are ineligible for certain funding and preparation of legislative recommendations establishing a uniform federal policy framework for AI.

Megan Monson: So, before we wrap up, can you speak a bit about the recent New York case regarding employee speech on social media? I know that's kind of been a hot, notable case.

Amy Wiwi: Absolutely. So, the case was Sander versus Westchester Reform Temple. The Court of Appeals of New York issued the opinion on December 16th, 2025. The plaintiff alleged that she was fired from her teaching position at Westchester Reform Temple for authoring a blog post that was critical of Israel and Zionism in violation of the New York labor law provision that prohibits an employer from taking adverse action against an employee based on legal recreational activities. So the court acknowledged that it had not yet had the occasion to consider whether that law's protection of recreational activities would reach to public expression of one views, but the court reserved on that question and actually held that the claim was barred by the ministerial exception, which precludes application of employment discrimination laws to claims involving an employment relationship between a religious institute and its ministers. So, we did not get an answer to the question about the outside activities law, but I would expect that we'll see more of those in the future.

Megan Monson: This was a very helpful discussion highlighting the many employment law updates and trends employers need to navigate in 2025 and 2026. We encourage you to consult with counsel on specific questions regarding

employment law compliance. Thanks for joining us today, and thanks for our guests, Amy and Amy. We look forward to having you back for our next episode of *Just Compensation*.

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